

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)
)
DANIEL CHAPTER ONE,)
a corporation, and)
)
JAMES FEIJO,)
individually, and as an officer of)
Daniel Chapter One)
)
)
_____)

Docket No. 9329
Public Document

COMPLAINT COUNSEL’S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE

Pursuant to Commission Rule of Practice 3.24, 16 C.F.R. § 3.24, and in support of their motion for summary decision, Complaint Counsel submit this Statement of Material Facts as to Which There is No Genuine Issue.

A. DANIEL CHAPTER ONE AND THE FEIJOS

- 1. Respondent Daniel Chapter One (“DCO”) is a corporation sole organized in 2002 under the laws of the state of Washington. Respondents’ Answer to FTC’s Compl., dated Oct. 14, 2008 (hereinafter referred to as the “Answer”) at ¶ 1; *see also* Complaint Counsel’s Summary Decision Exhibit (hereinafter referred to as S.D. Ex. __) 3 (Declaration of FTC Investigator Michael Marino, dated Feb. 23, 2009, (hereinafter referred to as “Marino Dec.”) at ¶ 23, Exhibit L).
- 2. Respondent James Feijo is responsible for the activities of Respondent DCO as its Overseer. Answer ¶ 2.
- 3. Patricia Feijo, Respondent James Feijo’s wife, is the secretary for DCO. Deposition of Patricia Feijo, January 14, 2009, (hereinafter referred to as *P. Feijo Dep. Tr.*) at 10, l. 17-21; 52, l. 3-16.
- 4. Respondent James Feijo and his wife, Patricia, originally started DCO as a health food store in 1986. *P. Feijo Dep. Tr.* at 39, l. 14-25 - 40, l. 1-20.

5. Respondents' principal office and place of business is located at 1028 East Main Road, Portsmouth, Rhode Island 02871. Answer ¶ 1; Deposition of James D. Feijo, January 13, 2009, (hereinafter referred to as *J. Feijo Dep. Tr.*) at 99, l. 10-18.
6. James Feijo sold DCO products prior to registering as a corporation sole. *J. Feijo Dep. Tr.* at 224, l. 4-6.
7. DCO offers 150 to 200 products today. *J. Feijo Dep. Tr.* at 37, l. 11-13.
8. Respondent James Feijo is responsible for the development, creation, and production of Bio*Shark, 7 Herb Formula, GDU, and BioMixx (collectively, the "DCO Products"). S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 2*); *J. Feijo Dep. Tr.* at 116, l. 17-21.
9. Respondent James Feijo is the trustee for all Daniel Chapter One assets, including all funds which are held in trust. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 9*).
10. Daniel Chapter One has a bank account with Citizens Bank. Deposition of Jill Susan Feijo, January 22, 2009, (hereinafter referred to as *Jill Feijo Dep. Tr.*) at 33, l. 19-23.
11. Patricia Feijo is a signatory to DCO's bank account and writes checks on behalf of the DCO account. *P. Feijo Dep. Tr.* at 54, l. 8-19.
12. Jill Feijo, James Feijo's daughter and Respondents' corporate representative, also has authority to write checks on behalf of the DCO account. *Jill Feijo Dep. Tr.* at 34, l. 15-17.
13. Respondent James Feijo receives all the bank statements for the DCO account. *Jill Feijo Dep. Tr.* at 34, l. 10-11.
14. Respondent James Feijo maintains the financial records for DCO. *Jill Feijo Dep. Tr.* at 47, l. 6-8.
15. Respondent DCO defrays James Feijo's expenses as Overseer and provides for his support. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 3*).
16. Respondent James Feijo pays his daughter Jill \$700 per week cash for her work at Daniel Chapter One. *Jill Feijo Dep. Tr.* at 13, l. 3-9.
17. DCO has two buildings in Portsmouth, Rhode Island – one contains the office with the Order Center and the other contains the products that DCO offers to the public. *Jill Feijo Dep. Tr.* at 20, l. 9-24.

18. DCO is not registered with the Internal Revenue Service as a charity. *J. Feijo Dep. Tr.* at 45, l. 11-13.
19. Messiah Y'Shua Shalom, a Washington corporation sole, owns the property that Respondents use in Rhode Island. *J. Feijo Dep. Tr.* at 72, l. 7-25 - 73, l. 1-3; *see generally* S.D. Ex. 3 (Marino Dec. at ¶ 23, Exhibit M).
20. Respondent James Feijo is the overseer for Messiah Y'Shua Shalom. *J. Feijo Dep. Tr.* at 72, l. 7-25 - 73, l. 1-3; *see also* S.D. Ex. 3 (Marino Dec. at ¶ 23, Exhibit M).
21. Messiah Y'Shua Shalom houses the buildings where Respondents perform their ministry of Daniel Chapter One. *J. Feijo Dep. Tr.* at 72, l. 7-25 - 73, l. 1-3.
22. Daniel Chapter One owns a three-bedroom property in Deerfield Beach, Florida. *J. Feijo Dep. Tr.* at 70, l. 22-25 - 71, l. 1-15.
23. James and Patricia Feijo live in the properties owned by Messiah Y'Shua Shalom and DCO. *J. Feijo Dep. Tr.* at 70, l. 25 - 71, l. 1-2; 78, l. 20-25 - 79, l. 1.
24. Daniel Chapter One owns two cars - a 2003 Cadillac and a 2004 Cadillac. DCO purchased one Cadillac new and the other Cadillac used. *J. Feijo Dep. Tr.* at 71, l. 16-23.
25. Respondent James Feijo uses the two Cadillacs owned by DCO. *J. Feijo Dep. Tr.* at 96, l. 9-10, 14-16; 97, l. 7-13.
26. Respondents practice a science they call BioMolecular Nutrition. S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0307).
27. According to Respondents, “[t]here are two aspects of BioMolecular Nutrition, the spiritual and the physical.” S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0307).
28. “The principles of BioMolecular Nutrition were those missing principles needed to bind together those of the nutritionists and the biochemists.” S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0309).
29. According to Respondents, “[b]ecause of BioMolecular nutritional products developed at that time, we’ve been able to support other naturopathic disciplines – chiropractic, acupuncture, herbology, and homeopathy – and using the principles of BioMolecular Nutrition has allowed many natural health practitioners to be complete.” S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0308).

B. RESPONDENTS DISTRIBUTE THEIR PRODUCTS IN COMMERCE TO CONSUMERS

30. Respondents distribute the DCO Products in commerce. Answer ¶ 4; *J. Feijo Dep. Tr.* at 102, l. 13-16.
31. Respondent DCO has an 800 number and a call center for consumers to purchase the DCO Products. *P. Feijo Dep. Tr.* at 67, l. 7-13; *Jill Feijo Dep. Tr.* at 15, l. 5-14.
32. Respondent James Feijo created, managed, and maintained the toll-free telephone number, designed so that consumers can order the DCO Products. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 33*).
33. On the front page of their BioMolecular Nutrition Product Catalog, Respondents inform consumers to "Call Toll FREE 1-800-504-5511 or shop online at www.danielchapterone.com." S.D. Ex. 6 (*J. Feijo Dep. Ex. 6 - BioMolecular Nutrition Product Catalog* at FTC-DCO 0060).
34. Respondents operate the website www.danielchapterone.com. Answer ¶ 5; *J. Feijo Dep. Tr.* at 62, l. 10-13.
35. DCO also operates the Web sites dc1pages.com and dcstore.com. *J. Feijo Dep. Tr.* at 232, l. 21-25 - 233, l. 1-19.
36. Consumers learn of DCO's 800 number from the DCO Web site, the BioGuide, and the radio program. *Jill Feijo Dep. Tr.* at 15, l. 15-25.
37. Respondent James Feijo established the price of the DCO Products. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 25*); *P. Feijo Dep. Tr.* at 77, l. 13-16.
38. Jill Feijo has supervised Respondent DCO's Order Center for the past nine years and has taken telephone orders. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 30*).
39. DCO employs Kevin Vandeburg, Axel Busche, and Jay Butler to work in the building that contains the DCO Products and to ship the DCO Products ordered by consumers. *Jill Feijo Dep. Tr.* at 21, l. 7-22.
40. DCO's Order Center is open Monday through Friday from 9:00 a.m. to 8:00 p.m. *Jill Feijo Dep. Tr.* at 16, l. 5-10.
41. DCO receives payments through its Order Center through credit card and COD. *Jill Feijo Dep. Tr.* at 18, l. 6-10.

42. DCO also accepts consumers' orders on the Internet. *Jill Feijo Dep. Tr.* at 18, l. 11-13.
43. DCO's Web site contains a tab inviting consumers to shop at DCO's "On-Line Store." S.D. Ex. 7 (*J. Feijo Dep. Ex. 4 - Exhibits A - D to Administrative Complaint* at FTC-DCO 0011); S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility ¶ 1*).
44. DCO's Web site contains an icon inviting consumers to "Buy Now." S.D. Ex. 7 (*J. Feijo Dep. Ex. 4 - Exhibits A - D to Administrative Complaint* at FTC-DCO 0011); S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility ¶ 1*).
45. Respondents' acquisition costs for the products they sell is 30 percent of the price Respondents charge to consumers for products such as 7 Herb Formula. *J. Feijo Dep. Tr.* at 232, l. 3-8.
46. Over a thousand consumers have purchased DCO's products. *P. Feijo Dep. Tr.* at 57, l. 13-18.
47. Respondents have generated approximately \$2 million in annual sales for the years 2006, 2007, and 2008 for all of DCO's two-hundred products. *J. Feijo Dep. Tr.* at 206, l. 18-20; 212, l. 14-24; S.D. Ex. 9 (*J. Feijo Dep. Ex. 9 - Daniel Chapter One Monthly Gross Sales*).
48. There is no indication in the BioMolecular Nutrition Product Catalog that the price listed is for a donation. *J. Feijo Dep. Tr.* at 158, l. 11-17; *P. Feijo Dep. Tr.* at 76, l. 11-17; 77, l. 5-12.
49. There is no mention of the DCO ministry in the BioMolecular Nutrition Product Catalog. *J. Feijo Dep. Tr.* at 161, l. 4-10.
50. Jill Feijo does not recall whether there is anything in writing regarding any alleged "donation policy." *Jill Feijo Dep. Tr.* at 22, l. 25 - 23, l. 1-3.
51. Most consumers pay DCO's alleged "suggested donation" price and "not many" people per day ask Jill Feijo to pay a lowered amount. *Jill Feijo Dep. Tr.* at 23, l. 14-21.
52. On January 3, 2008, FTC investigator Michael Marino ("Marino") purchased the DCO Products from Respondents' Web site. S.D. Ex. 3 (Marino Dec. at ¶ 9-10, Exhibit C).
53. Prior to making the purchase, Marino created an undercover e-mail account to confirm and monitor the progress of the purchase and received four emails from Respondents

- relating to the purchase of the DCO Products. S.D. Ex. 3 (Marino Dec. at ¶ 11, Exhibit D).
54. On or about January 24, 2008, Marino received the DCO Products. S.D. Ex. 3 (Marino Dec. at ¶ 12).
 55. Included in the shipment of the DCO Products ordered by Marino were the following: (a) BioGuide 3: The BioMolecular Nutrition Guide to Natural Health 3; (b) “BioMolecular Nutrition Product Catalog;” (c) a blank purchase order form; and (d) an invoice form. S.D. Ex. 3 (Marino Dec. at ¶ 12, Exhibits E-H).
 56. According to the UPS Ground shipping label attached to the package containing the DCO Products and the DCO materials, the shipment originated from Daniel Chapter One, 822 Anthony Road, Portsmouth Rhode Island 02871-5604 and was sent to an FTC undercover address in a state other than Rhode Island in the United States. S.D. Ex. 3 (Marino Dec. at ¶ 12).
 57. Marino inspected the contents of the shipment of the DCO Products and did not observe a separate document indicating that the purchase was a “donation” or thanking the purchaser for making a “donation” to Daniel Chapter One. S.D. Ex. 3 (Marino Dec. at ¶ 13).
 58. According to Commission records, the amount charged to the undercover credit card used for the purchase of the DCO Products was \$175.75. These records also indicate that this charged was made by “DANIEL CHAPTER ONE.” S.D. Ex. 3 (Marino Dec. at ¶ 14).
 59. DCO’s shipping and handling fees for its products are \$20.95. *J. Feijo Dep. Tr.* at 152, l. 22-25 - 153, l. 1-3.
 60. DCO offers coupons to consumers for their next online store order. *J. Feijo Dep. Tr.* at 154, l. 2-7.
 61. Respondents run promotions from time to time to “give [consumers] more of an opportunity to . . . get things at a lower rate.” *J. Feijo Dep. Tr.* at 154, l. 8-24.
 62. For example, consumers can buy multiple bottles and get a bottle free. *J. Feijo Dep. Tr.* at 232, l. 16-20.
 63. A number of stores nationally sell DCO’s products, including stores in Georgia and a store in Pennsylvania. *P. Feijo Dep. Tr.* at 72, l. 16-24.
 64. Doctors and stores that carry DCO’s product line get the product at a lesser price because they are going to be selling it. *P. Feijo Dep. Tr.* at 71, l. 3-9.

65. Respondents' Cancer Newsletter, entitled How to Fight Cancer is Your Choice!!!, costs \$5.95. S.D. Ex. 10 (*DCO's Cancer Newsletter, Millenium [sic] Edition, 2002 - "How to Fight Cancer is Your Choice!!!"* at FTC-DCO 0405).
66. In their Cancer Newsletter, Respondents instruct consumers to call "1-800-504-5511" to order their products. S.D. Ex. 10 (*DCO's Cancer Newsletter, Millenium [sic] Edition, 2002 - "How to Fight Cancer is Your Choice!!!"* at FTC-DCO 0405).
67. In their Cancer Newsletter, entitled How to Fight Cancer is Your Choice!!!, Respondents state that their "[l]atest Bioguide" is "[o]nly \$9.95." S.D. Ex. 10 (*DCO's Cancer Newsletter, Millenium [sic] Edition, 2002 - "How to Fight Cancer is Your Choice!!!"* at FTC-DCO 0397).
68. Respondents' publication entitled The Most Simple Guide to the Most Difficult Diseases: The Doctors' How-To Quick Reference Guide costs \$12.95. S.D. Ex. 3 (Marino Dec. at ¶ 24, Exhibit N at FTC-DCO 2825).
69. On their Web site *dc1store.com*, Respondents state: "For Information on Special offers for *purchasing* multiple bottles of 7-Herb call 1-800-504-5511 between 9-6 EST Mon-Fri." S.D. Ex. 11 (*Pages from Respondents' Web site dc1store.com listing contact information, dated Mar. 31, 2008, at FTC-DCO 0084*) (emphasis added) .
70. On their Web site *dc1store.com*, Respondents state the following regarding their affiliate program: "**Welcome to the DC1 Affiliate Program!** Our program is free to join, it's easy to sign-up and requires no technical knowledge. Affiliate programs are common throughout the Internet *and offer website owners a means of profiting from their websites. Affiliates generate sales for commercial websites* and in return receive a percentage of the value of those sales. **How Does It Work?** When you join the DC1 Affiliate Program, you will be supplied with a range of banners and textual links that you place within your site. When a user clicks on one of your links to the DC1 Affiliate Program, their activity will be tracked by our affiliate software. You will earn a commission based on your commission type. **Real-Time Statistics and Reporting!** Login 24 hours a day to check your sales, traffic, account balance and see how your banners are performing. You can even test conversion performance by creating your own custom links! Affiliate Program Details. Pay-Per-Sale: 10% of all sales you deliver. \$100.00 USD - Minimum balance required . . . Payments are made on the 1st of each month, for the previous month." S.D. Ex. 12 (*Pages from Respondents' Web site dc1store.com discussing "DC1 Affiliate Program," dated Dec. 12, 2007 at FTC-DCO 0461 - 0462*) (emphasis in bold in original; emphasis in italics supplied) .
71. When discussing the cost of DCO's products generally, Terry Brotherton, a consumer whose testimonial was provided by Respondents in discovery, stated "*[i]t wasn't cheap but it was the best money I ever spent.*" S.D. Ex. 13 (*Terry Brotherton Statement produced by Respondents as DCO 0156*) (emphasis added).

72. When discussing the cost of 7 Herb Formula specifically, Charlotte Rice, a consumer whose testimonial was provided by Respondents in discovery, stated, “I then proceeded to reduce my 7 Herb Formula to a maintenance dosage. Tricia & Jim Feijo did not agree with my decision. They felt I should stay on the maximum dosage to be safe, **but I was having financial problems, and could not afford the cost.**” S.D. Ex. 14 (*Charlotte Rice Statement produced by Respondents as DCO 0170 - 0171* at DCO 0170) (emphasis added).
73. When discussing the cost of 7 Herb Formula, GDU, Bio*Shark, and other DCO products, Earl Davis, a consumer whose testimonial was provided by Respondents in discovery, stated, “[t]he only drawback that we’ve experienced is the pricing of the products. **There should be discounts for customers who have referred lots of people and for those customers who consume lots of product monthly** because alternative therapy is expensive. . . .” S.D. Ex. 15 (*Earl Davis Statement produced by Respondents as DCO 0187*) (emphasis added).
74. When discussing the cost of 7 Herb Formula, Ernie Jensen, a consumer whose testimonial was provided by Respondents in discovery, stated “I could not afford the 7 Herb [Formula].” S.D. Ex. 16 (*Ernie Jensen Statement produced by Respondents as DCO 0189 - 0193* at DCO 0189).
75. The trademark symbol appears next to Respondents’ term “BioMolecular Nutrition” and Respondents’ products 7 Herb Formula, GDU, and BioMixx. S.D. Ex. 6 (*J. Feijo Dep. Ex. 6 - BioMolecular Nutrition Product Catalog* at FTC-DCO 0060 - 0061).

BioShark

76. Bio*Shark is a product that contains, among other ingredients, Shark Cartilage. Answer ¶ 6.
77. Respondents offer one bottle of Bio*Shark for \$65.95 (300 of the 800 mg capsules) and \$30.95 (100 of the 800 mg capsules). Answer ¶ 6.
78. Respondents pay Universal Nutrition \$3.15 per unit for the 100 capsule bottle of Bio*Shark and \$8.75 per unit for the 300 capsule bottle of Bio*Shark. Deposition of Claudia Petra Bauhoffer-Kinney, January 15, 2009, (hereinafter referred to as *Kinney Dep. Tr.*) at 44, l. 15-19.
79. During 2008, Respondents paid Universal Nutrition approximately \$1,437 to manufacture 479 units of the 100 capsule bottle of Bio*Shark and approximately \$6,256 to manufacture 782 units of the 300 capsule bottle of Bio*Shark. *Kinney Dep. Tr.* at 45, l. 3-10.
80. Universal Nutrition does two things - it has its own brand of products, and it also is a private label manufacturer. *Kinney Dep. Tr.* at 17, l. 10-23.

81. DCO falls under the private label part of Universal Nutrition. *Kinney Dep. Tr.* at 17, l. 24-25.
82. Universal Nutrition makes approximately 35-40 products for DCO, including Bio*Shark, GDU, and BioMixx. *Kinney Dep. Tr.* at 21, l. 1-19.
83. Universal Nutrition started manufacturing Bio*Shark for Respondents approximately eight to ten years ago. *Kinney Dep. Tr.* at 42, l. 23-25 - 43, l. 1.

7 Herb Formula

84. 7 Herb Formula is a liquid tea concentrate product that contains, among other ingredients, distilled water, Cat's Claw, Burdock Root, Siberian Ginseng, Sheep Sorrel, Slippery Elm, Watercress, and Turkey Rhubarb Root. Answer ¶ 8.
85. Respondents offer one 32-ounce bottle of 7 Herb Formula for \$70.95. Answer ¶ 8.
86. On their Web sites danielchapterone.com and dc1pages.com, Respondents state the following regarding 7 Herb Formula: "I think it costs too much: Essiac formulas normally retail for \$45 to \$69 per bottle. If you compare that to the cost of a hospital stay and drug treatment, this is cheap! ***Daniel Chapter One's 7 Herb Formula is equally priced with most other brands but with ours you get a great deal more.*** Remember you are not only getting 32 ounces per bottle, when some of the other brands are only 16 ounces; you are also getting 2 more expensive herbs (Cat's Claw and Siberian Ginseng). We use 3 times the herbs and prepare each individually using a double water filtering process. If that is the case you must at least double the price they are asking to get equal price comparison." S.D. Ex. 17 (*Pages from Respondents' Web sites dc1pages.com, dated April 2, 2008, at FTC-DCO 0159 - 0160, and danielchapterone.com, dated November 7, 2008, at FTC-DCO 0495, stating "I think it costs too much"*) (emphasis added).

GDU

87. GDU is a product that contains, among other ingredients, Bromelain, Turmeric, Quercetin, Feverfew, and Boron. Answer ¶ 10.
88. Respondents offer GDU for \$45.95 (300 capsules) and \$29.95 (120 capsules). Answer ¶ 10.
89. Respondents pay Universal Nutrition \$3.28 per unit for the 120 tablet [sic] bottle of GDU and \$7.07 per unit for the 300 tablet [sic] bottle of GDU. *Kinney Dep. Tr.* at 34, l. 21-25 - 35, l. 1-4.

90. During 2008, Respondents paid Universal Nutrition approximately \$5,127 to manufacture 1,709 units of the 120 tablet [sic] bottle of GDU and approximately \$52,661 to manufacture 7,523 units of the 300 tablet [sic] bottle of GDU. *Kinney Dep. Tr.* at 34, l. 5-25 - 35, l. 1-4.

BioMixx

91. BioMixx is a product that contains, among other ingredients, Goldenseal, Echinacea, and Ginseng. Answer ¶ 12.
92. Respondents offer BioMixx for \$40.95 (3 lb. powder) and \$22.95 (1 lb. powder). Answer ¶ 12.
93. Respondents pay Universal Nutrition \$11.50 per unit for the 3 pound bottle of BioMixx. *Kinney Dep. Tr.* at 46, l. 8-16.
94. During 2008, Respondents paid Universal Nutrition approximately \$8,778 to manufacture 798 units of the 3 pound bottle of BioMixx. *Kinney Dep. Tr.* at 46, l. 8-16.

C. RESPONDENTS DIRECT CONSUMERS ON HOW TO TAKE THEIR PRODUCTS

95. Respondent James Feijo and his wife, Patricia Feijo, have been solely responsible for creating, drafting, and approving the directions for usage and the recommended usages of the DCO Products. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 16*).
96. There only has been one version of each of the DCO Products, and the information relating to the identity of each ingredient and the amount of each ingredient is contained on the labels for the DCO Products. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 17*).
97. Each Bio*Shark product label directs users to take 2-3 capsules three times a day or as directed by a physician or by a BioMolecular Nutrition health care professional. Answer ¶ 6; S.D. Ex. 18 (*P. Feijo Dep. Ex. 14 - Bio*Shark Labels at FTC-DCO 0065 - 0066, 0122 - 0123*).
98. Respondent James Feijo and his wife developed the suggested dosage for Bio*Shark, and the suggested dosage was based on their "reading and from experience." *P. Feijo Dep. Tr.* at 166, l. 19-25 - 167, l. 1-4.
99. Respondents' product label directs users to take 1-2 ounces of 7 Herb Formula with 2-4 ounces of hot or cold filtered or distilled water. The label further directs users to take 7 Herb Formula twice daily or as directed by a BioMolecular Nutrition Health care

professional. Answer ¶ 8; S.D. Ex. 19 (*P. Feijo Dep. Ex. 15 - 7 Herb Formula Labels at FTC-DCO 0064, 0124*).

100. Respondent James Feijo and his wife developed the suggested dosage for 7 Herb Formula. *P. Feijo Dep. Tr.* at 175, l. 13-16.
101. Respondents' GDU product label directs users to take 3-6 capsules 2 to 4 times per day or as directed by a physician or by a BioMolecular Nutrition health care professional. Answer ¶ 10; S.D. Ex. 20 (*P. Feijo Dep. Ex. 16 - GDU Caps Labels at FTC-DCO 0125 - 0126, 0067 - 0068*).
102. Respondent James Feijo and his wife developed the suggested dosage for GDU. *P. Feijo Dep. Tr.* at 192, l. 20-23.
103. Respondents' product label for BioMixx directs users to take five scoops daily. Answer ¶ 12; S.D. Ex. 21 (*P. Feijo Dep. Ex. 17 - BioMixx Labels at FTC-DCO 0127 - 0128*).

D. RESPONDENTS CLAIM THAT THEIR PRODUCTS CURE, MITIGATE, TREAT, OR PREVENT CANCER OR TUMORS.

104. DCO's Web site depicts pictures of the DCO Products next to the statement "Daniel Chapter One's Cancer Solutions." *P. Feijo Dep. Tr.* at 176, l. 20-25 - 177, l. 1-19; S.D. Ex. 7 (*J. Feijo Dep. Ex. 4 - Exhibits A - D to Administrative Complaint at FTC-DCO 0014*); S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility ¶ 2*).
105. On their Web site dc1pages.com, Respondents publish information about the DCO Products, including, but not limited to, the following:

Supporting Products

To enhance 7 Herb Formula's healing quantities Daniel Chapter One advises [sic] to get familiar with the supporting products below:

**CANCER
TREATMENT:**

**7Herb Formula
Bio*Shark
BioMixx
GDU Caps**

also

Ezekiel Oil
topically

S.D. Ex. 22 (*Pages from Respondents' Web site dclpages.com regarding "Supporting Products," dated April 2, 2008 at FTC-DCO 0190*).

106. In DCO's The Most Simple Guide to the Most Difficult Diseases: The Doctors' How-To Quick Reference Guide, DCO recommends the following products for cancer:

CANCER

All types of Cancer

7*Herb Formula TM

2 ounces in juice or water
(minimum intake)
2 times daily

Bio*Shark ^{TM****}(for tumors only)

2 - 4 capsules
3 times daily with meals

BioMixx TM (Boosts immune system)

4 - 5 scoops in soy milk
2 times daily

GDU Caps TM

3 - 6 capsules
3 times daily; ½ hr.
BEFORE meals

S.D. Ex. 3 (M. Marino Dec. at ¶ 24, Exhibit N at FTC-DCO 2739).

107. Through the "Testimonies" tab on the danielchapterone.com Web site, Respondents provide the following titles for testimonials from their customers, who claim that DCO's Products were effective in the cure, mitigation, treatment, or prevention of cancer or tumors:

Cancer, Bladder (Drew Dellinger)
Cancer, Breast Mass (Deloris Winter)
Cancer, Cancerous Lung Tumor (Douglas Meeks)
Cancer, Cancerous Tumor (Joe Rocha)
Cancer, Leukemia, Brain Tumor (Tracey Kulikowski)
Cancer, Prostate (Jim Givens)
Cancer, Prostate Cancer (Joe)
Special Forces Officer Overcomes Prostate Cancer

Cancer, Prostate (Sherman “Red” Smith)
Cancer, Renal Cell (Jim Hatfield)
Cancer, Skin (Pastor Wayne Harms)
Cancer, Stage 4 (Joseph Jungles)

S.D. Ex. 23 (*Testimonials from Respondents’ Web site at FTC-DCO 0100 - 0119*).

108. In Respondents’ BioGuide: The BioMolecular Nutrition Guide to Natural Health 3, Respondents published the following testimonial from Tracey Kulikowski that states: “I had contracted leukemia and had three inoperable tumors. When I decided not to do chemotherapy or radiation, my father sent me **BIOMIXX** and **7 HERB FORMULA**. Each day as I took it and got it into my system more and more, the better I felt. Then I added Garlic, Siberian Ginseng, and **Bio*Shark**. I am now in complete remission. The cancer cell count has dropped, the doctors tell me. I had a tumor just above the brain stem in my brain that has completely disappeared. The tumor on my liver is shrinking and the tumor behind my heart has shrunk over 50%. . . . There are alternatives besides chemo and radiation!” S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3 at FTC-DCO 0353*)(emphasis in bold added).
109. Respondent James Feijo was responsible for putting together BioGuide 3. *J. Feijo Dep. Tr.* at 243, l. 12-21.
110. Patricia Feijo was responsible for writing the BioGuide. *P. Feijo Dep. Tr.* at 20, l. 15-25.
111. Bio*Shark, 7 Herb Formula, GDU, and BioMixx all appear in Respondents’ Cancer Newsletter, entitled How to Fight Cancer is Your Choice!!!. S.D. Ex. 10 (*DCO’s Cancer Newsletter, Millenium [sic] Edition, 2002 - “How to Fight Cancer is Your Choice!!! at FTC-DCO 0390 - 405*).
112. The Cancer Newsletter is “strictly all about the products for cancer.” *J. Feijo Dep. Tr.* at 143, l. 17-22.
113. Patricia Feijo was responsible for writing the Cancer Newsletter. *P. Feijo Dep. Tr.* at 26, l. 23-25 - 27, l. 1-19; 28, l. 5-10.
114. James and Patricia Feijo are not doctors. *P. Feijo Dep. Tr.* at 114, l. 15-16.
115. James Feijo never held a position where he had to use any skills involving medicine. *J. Feijo Dep. Tr.* at 47, l. 12-17.
116. James and Patricia Feijo are not research scientists. *P. Feijo Dep. Tr.* at 114, l. 16.
117. During the July 8, 2008 DCO Healthwatch radio program, James Feijo stated that “the FTC, the FDA, the Canadian Government don’t like the fact that we’ve told people about

what to do about natural methods of health and healing, especially cancer.” S.D. Ex. 3 (Marino Dec. at ¶ 22, Exhibit J at 7, l. 16-19 (FTC-DCO 0506)).

118. During the July 14, 2008 DCO Healthwatch radio program, Patricia Feijo stated the following: “And while the FTC does not want us saying that anything natural can be used to treat cancer and that nothing certainly can cure cancer, we know that the truth is different than what they want us to say. The truth is God has given us herbs in His creation and nutrients that can heal cancer, even cure cancer.” S.D. Ex. 3 (Marino Dec. at ¶ 22, Exhibit K at 4, l. 17-23 (FTC-DCO 0612)).

BioShark

119. Respondents publish information about Bio*Shark, including, but not limited to, the following:

PRODUCTS

Bio*Shark: Tumors & Cysts

Pure skeletal tissue of sharks which provides a protein that inhibits angiogenesis - the formation of new blood vessels. This can stop tumor growth, and halt the progression of eye diseases such as diabetic retinopathy and macular degeneration. . .

Answer ¶ 7; S.D. Ex. 8 (*Respondents’ Responses and Objections to Complaint Counsel’s Request for Admissions, Respondents’ Answer to Complaint Counsel’s Req. for Admis. Regarding Authenticity and Admissibility ¶ 1*); see also *J. Feijo Dep. Tr.* at 61, l. 11-14; 100, l. 24-25 - 101, l. 1; 107, l. 15-18; *P. Feijo Dep. Tr.* at 156, l. 14-25 - 157, l. 1-7.

120. Respondents publish information about Bio*Shark, including, but not limited to the following:

If you suffer from any type of cancer, Daniel Chapter One suggests taking this products [sic], to fight it: [emphasis added]

7*Herb Formula™ . . .

Bio*Shark™ . . . [emphasis added]

BioMixx™ . . .

GDU Caps™ . . .

[depiction of bottles of BioMixx, 7 Herb Formula, Bio*Shark, and GDU]

Daniel Chapter One’s Cancer solutions

To Buy the products click here

How to fight cancer is your choice!. . . [emphasis added]

Answer ¶ 9; S.D. Ex. 8 (*Respondents’ Responses and Objections to Complaint Counsel’s Request for Admissions, Respondents’ Answer to Complaint Counsel’s Req. for Admis. Regarding Authenticity and Admissibility ¶ 2*); see also *J. Feijo Dep. Tr.* at 61, l. 11-14; 100, l. 24-25 - 101, l. 1; 110, l. 23-25 - 111, l. 13-20.

121. In their BioMolecular Nutrition Product Catalog, next to the pictures of the BioShark bottles, Respondents state that “Shark Cartilage protein inhibits angiogenesis, stops tumor growth, and halts eye disease.” S.D. Ex. 6 (*J. Feijo Dep. Ex. 6 - BioMolecular Nutrition Product Catalog* at FTC-DCO 0061).
122. On a prior Daniel Chapter One Web site, Respondents stated “**Bio*Shark Shark Cartilage** Stops tumor growth in its tracks.” S.D. Ex. 24 (*Respondents’ “Web Pages from prior Daniel Chapter One Web sites”* at FTC-DCO 2032) (emphasis in original).

7 Herb Formula

123. 7 Herb Formula is a product that can be used by a person who is suffering from cancer. *P. Feijo Dep. Tr.* at 171, l. 4-8.
124. Respondents publish information about 7 Herb Formula, including, but not limited to, the following:

INFO CENTER

Cancer News.

7 Herb Formula

- purifies the blood
- promotes cell repair
- **fight**s tumor formation [emphasis in original]
- fights pathogenic bacteria

...

If you suffer from any type of cancer, Daniel Chapter One suggests taking this products [sic], to fight it: [emphasis added]

7*Herb Formula™... [emphasis added]

Bio*Shark™...

BioMixx™...

GDU Caps™...

[depiction of bottles of BioMixx, 7 Herb Formula, Bio*Shark, and GDU]

Daniel Chapter One’s Cancer solutions

To Buy the products click here

How to fight cancer is your choice!... [emphasis added]

Answer ¶ 9; S.D. Ex. 8 (*Respondents’ Responses and Objections to Complaint Counsel’s Request for Admissions, Respondents’ Answer to Complaint Counsel’s Req. for Admis. Regarding Authenticity and Admissibility* ¶ 2); see also *J. Feijo Dep. Tr.* at 60, l. 17-22; 101, l. 2-6; 110, l. 23-25; 111, l. 13-20.

125. Respondents publish information about 7 Herb Formula, including, but not limited to, the following:

7 Herb Formula battles cancer.

Tracey was given no hope!

The doctors had pretty much given up on Tracey. She had leukemia and tumors on the brain, behind the heart and on her liver. . .

This is Tracey's story in her own words as told in 1997: 'I had contracted leukemia and had three inoperable tumors. When I decided not to do chemotherapy or radiation, my father sent me Bio*Mixx and 7 Herb Formula. Each day as I took it and got it into my system more and more, the better I felt. Then I added Garlic Pur, Siberian Ginseng and BioShark.' "I am now in complete remission. . .'

Answer ¶ 9; S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility* ¶ 2); see also *J. Feijo Dep. Tr.* at 60, l. 17-22; 101, l. 2-6; 110, l. 23-25; 111, l. 13-20.

126. In their BioMolecular Nutrition Product Catalog, next to the picture of the 7 Herb Formula bottle, Respondents state that the herbs in 7 Herb Formula "purify the blood and promote cell repair, clear skin, cleanse the liver, decrease cell mutation, fight pathogenic bacteria and **tumor formation.**" S.D. Ex. 6 (*J. Feijo Dep. Ex. 6 - BioMolecular Nutrition Product Catalog* at FTC-DCO 0061) (emphasis added).
127. In Respondents' BioGuide: The BioMolecular Nutrition Guide to Natural Health 3, Respondents published the following testimonial from Buzz McKay: "I had beam radiation for **prostate cancer**. I also took 7 Herb Formula, 6 ounces a day, and BioMixx; I never had a bad day, never felt sick. When my PSA went from 7.6 to 0.5 in the month after I finished radiation, my doctor was surprised. Several months later, it was down to 0.16! 7 Herb Formula is extremely well done - fantastic. I still take 2 ounces of **7 Herb Formula** every morning; I plan to stay on that forever! **I figure 6 ounces (2 morning, 2 afternoon, 2 evening) did such a good job fighting cancer**, 2 ounces is a good prophylaxis!" S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0330) (emphasis added).
128. On their Web sites danielchapterone.com and dc1pages.com, Respondents publish information about 7 Herb Formula, including, but not limited to, the following: "With Jim Feijo's addition to the [7 Herb] formula, we now have the most effective and potent formula available in the battle against tumors." S.D. Ex. 25 (*Pages from Respondents' Web sites dc1pages.com, dated April 2, 2008, at FTC-DCO 0142, and danielchapterone.com, dated November 7, 2008, at FTC-DCO 0493, regarding "I want the Original Essiac Formula, not some knock off brand"*).
129. On their Web site dc1pages.com, Respondents publish information about 7 Herb Formula, including, but not limited to, the following: "The 7 Herb Formula has been used by patients involved in clinical studies in cancer clinics and sold in doctor's offices around the country." S.D. Ex. 26 (*Pages from Respondents' Web site dc1pages.com regarding "I use Brand X," dated April 2, 2008, at FTC-DCO 0157*).

130. During the July 8, 2008 DCO Healthwatch radio program, James Feijo stated the following: “Here’s a testimony from Pastor Wayne Hamm, Henderson, Nevada. He had the Gulf War illness. He was told that he needed surgery and radiation treatment for his cancer, that he developed skin cancer because of the Gulf War, he was exposed out there. He didn’t take it. He decided to use Daniel Chapter One 7 Herb Formula, internally and topically. He also used Ezekiel Oil topically, BioShark and GDU. My skin cleared up after a few months in the late 1980s, early ‘99, I was told there was no trace of cancer. The FDA does not want us to let you know about this.” S.D. Ex. 3 (Marino Dec. at ¶ 22, Exhibit J at 104, l. 13-24 (FTC-DCO 0603)).
131. During the July 14, 2008 DCO Healthwatch radio program, Patricia Feijo stated that 7 Herb Formula is “great for cancer.” S.D. Ex. 3 (Marino Dec. at ¶ 22, Exhibit K at 83, l. 8-13 (FTC-DCO 0691)).

GDU

132. Respondents publish information about GDU, including, but not limited to, the following:

PRODUCTS

...

Contains natural proteolytic enzymes (from pineapple source bromelain) to help digest protein - even that of unwanted **tumors** and cysts. This formula also helps to relieve pain and heal inflammation. . . .and as an adjunct to **cancer** therapy. [emphasis added]

Answer ¶ 11; S.D. Ex. 8 (*Respondents’ Responses and Objections to Complaint Counsel’s Request for Admissions, Respondents’ Answer to Complaint Counsel’s Req. for Admis. Regarding Authenticity and Admissibility* ¶ 3); see also *J. Feijo Dep. Tr.* at 101, l. 7-9; 138 l. 22-25 - 139, l. 1-2; *P. Feijo Dep. Tr.* at 185, l. 24-25 - 186, l. 1-16.

133. Respondents publish information about GDU, including, but not limited to, the following:

If you suffer from any type of cancer, Daniel Chapter One suggests taking this products [sic], to fight it: [emphasis added]

7*Herb Formula TM . . .

Bio*Shark TM . . .

BioMixx TM . . .

GDU Caps TM . . . [emphasis added]

[depiction of bottles of BioMixx, 7 Herb Formula, Bio*Shark, and GDU]

Daniel Chapter One’s Cancer solutions

To Buy the products click here

How to fight cancer is your choice! . . . [emphasis added]

Answer ¶ 9; S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility* ¶ 2); see also *J. Feijo Dep. Tr.* at 101, l. 7-9; 110, l. 23-25; 111, l. 13-20.

134. In their BioMolecular Nutrition Product Catalog, next to the pictures of the GDU bottles, Respondents state that GDU “[c]ontains natural proteolytic enzymes (from pineapple source bromelain) to help digest protein, *even that of unwanted tumors* and cysts. Helps to relieve pain, inflammation, and as *an adjunct to cancer therapy.*” S.D. Ex. 6 (*J. Feijo Dep. Ex. 6 - BioMolecular Nutrition Product Catalog* at FTC-DCO 0062)(emphasis added).
135. In Respondents' BioGuide: The BioMolecular Nutrition Guide to Natural Health 3, Respondents published the following testimonial from Deloris Winter: “I went in for a breast examination by mammography. On 10/8/01 they said they found a mass that they believed was not cancerous, but benign. I began taking GDU six times a day: 2 before breakfast, 2 before lunch, and 2 before dinner, and in a month I went to my doctor for the breast examination, and he found nothing on either breast.” S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0331); see also *P. Feijo Dep. Tr.* at 190, l. 5-19.
136. During the July 14, 2008 DCO Healthwatch radio program, Patricia Feijo advised a consumer whose father was diagnosed with colon cancer that she should get her father “on . . . GDU, BioShark and 7 Herb Formula. And if you can get him to, you know, go right now to the website, How To Fight Cancer Is Your Choice, or you can get him a hard copy from our order center, while we have them. It's what the FTC wants to shut us down over and they certainly want us to, you know, crash the website and they want to, you know, burn our material. They don't want us circulating How To Fight Cancer Is Your Choice.” S.D. Ex. 3 (Marino Dec. at ¶ 22, Exhibit K at 85, l. 13-25 - 86, l. 1-25 (FTC-DCO 0693 - 0694)).

BioMixx

137. Respondents publish information about BioMixx, including, but not limited to, the following:

Bio*Mixx boosts the immune system, cleanses the blood and feeds the endocrine system to allow for natural healing. It is used to assist the body in **fighting cancer** and in healing the destructive effects of **radiation** and **chemotherapy** treatments. [emphasis added]

Answer ¶ 13; S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility* ¶ 4); see also *J. Feijo Dep. Tr.* at 101, l. 10-11.

