IN THE 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
) )
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) )

Withdrawal of
Second Errata for Respondents’ Motion for Summary Decision,
Request for Leave to Amend Respondents’ Motion for Summary Decision and Argument in Support thereof

Come now Respondents’ Counsel and:

1. Withdraws the prior pleading in this administrative action entitled “Second Errata for Respondents’ Motion for Summary Decision”; and

2. Requests leave to amend Respondents’ Motion for Summary Decision by including the attached pleading, “Respondents’ Statement of Undisputed Facts in Support of Respondents’ Motion for Summary Decision.”

ARGUMENT

Respondents’ Counsel submit that all of the facts listed in the attached pleading were incorporated into Respondents’ Motion for Summary Decision; however, they were not provided as a “separate” statement of facts as required by FTC Rules of Practice §
3.24(a). In an effort to comply with the requirements of the Rules of Practice, Counsel respectfully requests leave to amend the prior pleading to include the attached Statement of Undisputed Facts.

Dated March 2, 2009.

Respectfully submitted,

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RESPONDENTS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
RESPONDENTS' MOTION FOR SUMMARY DECISION

Each of these statements is identified and supported in DCO's Motion for Summary
Decision:

1. DCO is formed as a Corporation Sole in Washington State under the Revised
Code of Washington § 24.12, et. seq.

2. DCO states on its website the following:

   Welcome to Daniel Chapter One Online!

   Daniel Chapter One got its name from the Old Testament, book of Daniel,
   first chapter. In that account, Daniel and his men were being held in
   Babylonian captivity, and were expected to eat the king's food -so as to be
   fit and strong servants.

   But Daniel asked permission to eat a vegetable diet and to drink only
   water, rather than partake of the rich meats and wine of the king. The
   king's men said no; surely Daniel would get sick, maybe die! So Daniel
asked for a trial of 10 days. At the end of Chapter One, it is recorded that Daniel and men, after that trial, were strong in flesh, with bright eyes, and continued to grow in knowledge and wisdom.

So it was that the founders of Daniel Chapter One®, since trying their own "Daniel Chapter One" diet for 10 days and discovering that indeed they felt fantastic, decided to name the health food store they began, after that portion of the bible. The company, then and now, does not push a vegetarian diet for wellness, but simply a healthy diet of wholesome, natural foods - rather than the unwholesome, artificial food of the modern world. It's about eating with purpose, and partaking of the good food God has given us for health and healing. Good food for physical, mental, and emotional health includes herbs and nutrients.

The tiny health food supplement store Daniel Chapter One® grew and grew, from one to several locations. As the store grew, so the founders grew - in knowledge and wisdom, as in fact Daniel had experienced! The store quickly became more of a natural healing center. From their hands-on expertise, the couple began next to design the nutritional supplement product line now known world over as Daniel Chapter One.

3. DCO states on every page of its website the following:

The information on this website is intended to provide information, record, and testimony about God and His Creation. It is not intended to diagnose a disease. The information provided on this site is designed to support, not replace, the relationship that exists between a patient/site visitor and his/her health care provider. Caution: some herbs or supplements should not be mixed with certain medications.

4. DCO states on its website the following in regard to each of the Challenged Products:

*These statements have not been evaluated by the FDA. This product is not intended to diagnose, treat, cure or prevent disease.

5. DCO stated the following about the Challenged Product Bioshark:

"Bioshark is 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 . . ."
6. DCO stated the following about the Challenged Product 7 Herb Formula:

"[7 Herb Formula] purifies the blood, promotes cell repair, fights tumor formation, and fights pathogenic bacteria . . ."

7. DCO stated the following about the Challenged Product GDU:

"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...GDU is also used for. . .and as an adjunct to cancer therapy. GDU possesses a wide range of actions including anti-inflammatory and antispasmodic activity. . ."

8. DCO stated the following about the Challenged Product BioMixx:

"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."

9. DCO did not expressly state any of the following about the Challenged Product Bioshark:

"Bioshark inhibits tumor growth"

"Bioshark is effective in the treatment of cancer"

10. DCO did not expressly state any of the following about the Challenged Product 7 Herb Formula:

"7 Herb Formula is effective in treating and curing cancer"

"7 Herb Formula inhibits tumor formation"

11. DCO did not expressly state any of the following about the Challenged Product GDU:

"GDU eliminates tumors"
12. DCO did not expressly state any of the following about the Challenged Product BioMixx:

"BioMixx is effective in the treatment of cancer"

"BioMixx heals the destructive effects of radiation and chemotherapy"

13. The Commission has no factual extrinsic evidence that DCO alleged practices caused substantial injury to consumers.

14. The Commission has no factual extrinsic evidence that DCO alleged practices are likely to cause substantial injury to consumers.

15. The Commission has no factual extrinsic evidence that DCO alleged practices cannot be reasonably avoided by consumers.

16. The Commission has no factual extrinsic evidence that DCO alleged practices are not outweighed by countervailing benefits to consumers.

17. The Commission has no factual extrinsic evidence that DCO alleged practices are not outweighed by countervailing benefits to competition.

18. The Commission has no factual evidence of consumer perceptions about DCO, its products or its claims, either express or implied.

19. The Commission has no factual evidence of consumer expectations about DCO, its products or its claims, either express or implied.

20. The Commission has no factual evidence about the cost of developing substantiation for DCO's express claims.

21. The Commission has no factual evidence about the amount of substantiation experts in the field of dietary supplements believe is reasonable for structure/function claims about those supplements.
22. The Commission has no factual evidence concerning whether the express statements made by DCO as described in ¶¶ 5-8 above are false, misleading, unfair, or deceptive.

23. DCO has substantiation for the express claims it made about the Challenged Products, as described in ¶¶ 5-8 above.

24. The Commission’s expert did not testify about the DCO express statements described in ¶¶ 5-8 above.

25. DCO’s experts have given competent testimony that the DCO express statements described in ¶¶ 5-8 above are accurate.

Respectfully submitted,

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Docket No.: 9329
PUBLIC DOCUMENT

CERTIFICATE OF SERVICE

I certify that on March 2, 2009, I served or caused to be served the following documents on the individuals listed below by electronic mail, followed by Federal Express delivery:

Withdrawal of Second Errata for Respondents’ Motion for Summary Decision, Request for Leave to Amend Respondents’ Motion for Summary Decision and Argument in Support thereof
Respondents’ Statement of Undisputed Facts in Support of Respondents’ Motion for Summary Decision

Service to:
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