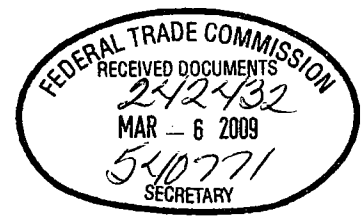


ORIGINAL



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 MEMORANDUM IN OPPOSITION
TO RESPONDENTS’ SECOND MOTION TO DISMISS**

Complaint Counsel oppose Respondents’ Second Motion to Dismiss for Lack of Jurisdiction and Violation of Respondents’ Constitutional Rights (the “Motion”) which, for the reasons set forth below, should be denied.

I. INTRODUCTION

For the third time, Respondents now ask this Court to dismiss the Complaint based on flawed legal arguments.¹ For the third time, Respondents misconstrue both the Complaint and the First Amendment. For the third time, this Court should reject Respondents’ flawed arguments.

As the Court already ruled in its Feb. 2 Order, and again in its Feb. 23 Order, the Complaint and record are sufficient to enable this case to move forward and to defeat a motion to dismiss. In fact, given Respondents’ dilatory tactics to thwart discovery, and failure to provide

¹This Court on February 2, 2009 (“Feb. 2 Order”) denied Respondents’ January 13, 2009 Motion to Dismiss (“Jan. 13 Motion”). The Court on February 23, 2009 (“Feb. 23 Order”) also denied Respondents’ February 6, 2009 Motion to Reconsider the Feb. 2 Order (“Feb. 6 Motion”).

Complaint Counsel with full discovery even in the face of Court orders requiring it, Complaint Counsel is entitled to an adverse inference regarding the issue on which Respondents premise their Motion – Daniel Chapter One’s (“DCO”) for-profit status.

II. THIS COURT PREVIOUSLY DENIED RESPONDENTS’ MOTION TO DISMISS

Respondents style their current Motion as a “Motion to Dismiss for Lack of Jurisdiction.” However, on February 2, this Court denied Respondents’ Jan. 13 Motion, ruling that the FTC has jurisdiction over DCO.² In its Feb. 2 Order, the Court noted: “Even assuming that DCO is organized as a non-profit, the Complaint sufficiently alleges a basis for subject matter jurisdiction.” Feb. 2 Order at 4. The Court went on to rule that Complaint Counsel set forth sufficient allegations in the Complaint that DCO is engaged in commerce:

The Complaint contains sufficient allegations that Respondents are engaging in deceptive commercial speech, including allegations that the Respondents promote and advertise the Challenged Products, that the Challenged Products are offered for sale at not insignificant prices, and that the advertisements refer to specific products and attributes. These allegations, and the content of the exhibits to the Complaint, are more than sufficient for a reasonable fact-finder to infer that the speech proposes a commercial transaction, refers to specific products and is economically or commercially motivated. Respondents point to no facts that would dispute such an inference. Moreover, disputed facts or inferences, to the extent they may exist, will not be resolved on a motion to dismiss.

Feb. 2 Order at 8.

On February 23, the Court denied Respondents’ Feb. 6 Motion. In the Feb. 23 Order, the Court specifically considered and rejected Respondents’ prior restraint, due process and separation of powers arguments. Feb. 23 Order at 3-7. The Court also noted (in language that is apt here): “to the extent that Respondents’ Motion for Reconsideration recharacterizes and/or

²Respondents also claim in the current Motion that the Complaint violates their constitutional rights. This argument has repeatedly been rejected by the Court as well. *See, e.g.*, Feb. 23 Order, discussed below.

attempts to enhance their previous arguments or contentions, those arguments or contentions need not, and will not, be addressed.” Feb. 23 Order at 3.

III. RESPONDENTS’ LATEST MOTION PRESENTS ESSENTIALLY THE SAME ARGUMENTS AS THOSE RAISED IN RESPONDENTS’ PREVIOUS MOTIONS

In the current Motion, Respondents repeat the same arguments they previously made to the Court – namely, that there is no evidence that Daniel Chapter One is a religious corporation of a type over which the FTC has jurisdiction, and that the FTC has placed unconstitutional and unlawful burdens upon Respondents. Both of these arguments have already been raised by Respondents, and considered and rejected by the Court. *See* Feb. 2 and Feb. 23 Orders.

A. Respondents Previously Argued That The FTC Lacks Jurisdiction Over Them And The Court Previously Considered And Rejected This Argument

In Respondents’ Jan. 13 Motion, Respondents’ lead argument was that the FTC has no statutory jurisdiction in this matter. Jan. 13 Motion at 5-11. Respondents argued that DCO is a nonprofit organization with James Feijo as its Overseer. They claimed: “Respondent Daniel Chapter One (‘DCO’) is a nonprofit organization, a religious ministry organized as a church, and recognized as a corporate sole under the laws of Washington State. Respondent James Feijo is Overseer of the DCO corporate sole in accordance with the laws of Washington State.” Jan. 13 Motion at 1.

Respondents argued further that the FTC failed to allege that DCO is organized or operated as a commercial enterprise. They explained: “The FTC Complaint, however, fails to allege that Daniel Chapter One is a corporation organized to carry on business for its own profit or that of its members or that it so operates, as required by Section 4 of the FTC Act. Thus, on the face of the Complaint, the FTC has no jurisdiction of this matter, having failed to state a cause of action.” Jan. 13 Motion at 11.

Respondents repeat the same arguments in the current Motion. They argue that DCO is organized as a nonprofit religious corporation. Motion at 2-3. They argue that DCO operates as a nonprofit religious ministry. Motion at 3-5. And then they argue that DCO is not within the class of nonprofit corporations over which the FTC has jurisdiction. Motion at 5-6.

There is nothing new in these arguments. The Court considered them all and rejected them in its Feb. 2 Order:

Even assuming that DCO is organized as a non-profit, the Complaint sufficiently alleges a basis for subject matter jurisdiction. . . . Interpreting the language of Section 4, courts have consistently held that non-profit corporations are not exempt from the reach of the FTC Act. *California Dental Association v. Federal Trade Commission*, 526 U.S. 756, 119 S.Ct. 1604 (1999); *Federal Trade Commission v. National Commission on Egg Nutrition*, 517 F.2d 485, 489 (7th Cir. 1975), *cert. denied*, 426 U.S. 919, 96 S.Ct. 2623 (1976); *Community Blood Bank*, 405 F.2d at 1017; *Federal Trade Commission v. Ameridebt, Inc.*, 343 F. Supp.2d 451 (2004). Rather, the Commission’s jurisdiction extends to “any legal entity without shares of capital which engages in business for profit within the traditional meaning of that language,” and “the question of the jurisdiction over the corporations or other associations involved should be determined on an ad hoc basis.” *California Dental Association*, 526 U.S. 767, n.6 (quoting *Community Blood Bank*, 405 F.2d at 1018).

Paragraph 1 of the Complaint alleges that Daniel Chapter One is a “corporation.” It is not necessary for the Complaint also to allege that DCO is “operated for its own profit or that of its members,” in order to survive a motion to dismiss. *FTC v. Ameridebt, Inc.*, 343 F. Supp.2d 451, 461 (D. Md. 2004) (denying motion to dismiss and holding FTC need not allege non-profit was organized for its own profit or that of its members).

Feb. 2 Order at 4-5.

Therefore, the Court should reject Respondents’ jurisdictional arguments raised once again here.

(i). **Respondents Have Failed To Meet Their Discovery Burden, And Therefore The Court May Draw Adverse Inferences About Respondents' For-Profit Status**

As the Court indicated in the Feb. 2 Order, disputed facts will not be resolved on a motion to dismiss. Feb. 2 Order at 8. Moreover, the allegations contained in the FTC's Complaint, and the content of the exhibits to the Complaint, are more than sufficient for a reasonable fact-finder to infer that Respondents' speech proposes a commercial transaction, refers to specific products and is economically or commercially motivated. Feb. 2 Order at 8. However, to the extent necessary the Court is permitted by the Part III Rules, Section 3.38, to draw adverse inferences about Respondents' for-profit status based on Respondents' failure to comply with their discovery obligations with respect to this issue.

In the Motion, Respondents include a number of self-serving statements about the allegedly nonprofit nature of DCO and James Feijo's lack of "personal" income. *See, e.g.*, Motion at 4. However, self-serving statements are about all that Respondents have provided regarding their financial condition, operation and non-profit status. Respondents have continued to provide non-responsive, incomplete, and evasive answers to Complaint Counsel's requests for documents and information about Respondents' financial situation, even in their most recent responses after the Court's February 11, 2009 Order to Compel Answers.

For example, with respect to their bank account records, Respondents now assert: "Records not accessible to Respondent at this time, but oral information of what is known was provided at James Feijo's deposition." Respondents' Response to Complaint Counsel's Second Set of Interrogatories, Response No. 10 (attached hereto as Ex. A). Respondents, however, do not provide any reasons why this basic information is not available. Moreover, James Feijo was unable to provide meaningful information on the bank accounts when he was asked about them

at his deposition. For example, when asked how much money was in one of his ministry bank accounts, he answered: “I have no idea right now” and said that he could not even venture a guess. James Feijo Dep. at 76-77.

With respect to the cost of producing and making available the Challenged Products, Respondents now answer: “This is not available information.” Respondents’ Response to Complaint Counsel’s Second Set of Interrogatories, Response No. 13 (Ex.A). Indeed, the sum total of documents relating to Respondents’ financial condition and operation produced by Respondents is fourteen pages – a summary of the gross sales for all of DCO’s products, and some additional incomplete financial records – attached hereto as Ex. B.

In response to Complaint Counsel’s document request for “[a]ll documents relating to the Individual Respondent’s ‘expenses as Overseer’ and the ‘donations’ he receives and has received from Daniel Chapter One ‘to defray his expenses,’” Respondents now answer: “Respondents do not have such documents.” Respondents’ Response to Complaint Counsel’s Second Request for Production for Documentary Materials and Tangible Things, Response No. 7 (attached hereto as Ex. C).

The Court ordered Respondents to provide “[a]ll documents relating to any donations made to the Corporate Respondent or on behalf of the Corporate Respondent, including, but not limited to, donations made to the Individual Respondent.” In response, Respondents now answer: “No such documents exist.” Respondents’ Response to Complaint Counsel’s Second Request for Production for Documentary Materials and Tangible Things, Response No. 10 (Ex. C). Respondents offer no explanation why this is so.

Thus, to the extent that there is any dispute as to this issue, because Respondents have repeatedly failed to comply with Complaint Counsel’s requests for documents and information,

and this Court's Order to compel responses, the Court is entitled to make adverse inferences against Respondents and presume their for-profit status.

Rule 3.38 provides: "If a party. . . fails to comply with any discovery obligation imposed by these rules, upon motion by the aggrieved party, the Administrative Law Judge. . . may take such action in regard thereto as is just, including but not limited to. . . Order that the matter be admitted or that the admission, testimony, documents, or other evidence would have been adverse to the party [or] Rule that for the purposes of the proceeding the matter or matters concerning which the order or subpoena was issued be taken as established adversely to the party. . . ." Similarly, courts permit adverse inferences where a party shows a general disregard for the discovery process, including missed deadlines, failure to respond to multiple requests, and submitting responses completely devoid of substantive answers. *See Reilly v. Natwest Mkts. Group Inc.*, 181 F.3d 253 (2d Cir. 1999) (allowing an adverse inference jury instruction where defendant had acted with gross negligence in both searching for the documents and producing the documents in a timely manner, and that the documents were essential to plaintiff's case); *Cine Forty-Second St. Theatre Corp. v. Allied Artists Picture Corp.*, 602 F.2d 1062 (2d Cir. 1979) (permitting an adverse inference on damages where plaintiff failed to meet deadlines for interrogatories, filed deficient answers to discovery requests, and did not retain an expert in a reasonable amount of time); *Residential Funding Corp. v. DeGeorge Fin. Corp.*, 306 F.3d 99, 101 (2d Cir. 2002) ("[A] judge's finding that a party acted with gross negligence or bad faith . . . is ordinarily sufficient to support a finding that the missing . . . evidence would have been harmful to that party, even if the . . . unavailability of the evidence was not caused by acts constituting bad faith or gross negligence."). Failing to respond to discovery requests becomes even more abusive when the missing evidence is essential to the requesting party's case. *See*

Smoothline Ltd. v. N. Am. Foreign Trading Corp., 2003 U.S. Dist. LEXIS 3085, at *5 (S.D.N.Y. March 6, 2003) (adverse inference made in an action to pierce the corporate veil where defendant did not initially produce account books of the corporation, and such failure to produce had an “effect on [the plaintiff’s] ability to illuminate the relationship between [the defendants]” (internal citation omitted)).

Here, Respondents have placed their financial condition squarely at issue by claiming non-profit status. Respondents, however, have refused to provide any meaningful information regarding their financial condition. In such a situation, an adverse inference that the information sought in discovery would have defeated Respondents’ non-profit argument is warranted.

B. **Respondents Previously Argued That The FTC Has Violated Respondents’ Constitutional Rights And The Court Previously Considered And Rejected This Argument**

In their Jan. 13 Motion, Respondents argued that “DCO is a church, a nonprofit entity engaged in protected First Amendment religious and speech activities concerning health care matters of great public importance, matters that are completely outside the jurisdiction of the FTC.” Jan. 13 Motion at 11. Respondents fleshed out this argument in their brief, urging the Court to recognize that: (1) the Complaint is based on the erroneous assumption that Respondents’ speech is totally unprotected by the First Amendment, Jan. 13 Motion at 11-13; (2) the Complaint rests upon the erroneous assumption that Respondents’ speech deserves only the First Amendment protection afforded commercial speech, whereas Respondents’ speech deserves the highest protection afforded political speech, Jan. 13 Motion at 13-15; (3) the Complaint rests upon a constitutionally impermissible legal theory of viewpoint discrimination, Jan. 13 Motion at 15-17; (4) the Complaint would impose an unconstitutional orthodoxy of opinion and belief upon Respondents, Jan. 13 Motion at 17-21; (5) as an integral part of a

prolonged administrative process, Complaint Counsel's motion to compel operates as an unconstitutional prior restraint, Jan. 13 Motion at 21-24; and (6) the FTC action lacks the necessary impartiality, and appearance of impartiality, required by the constitutional principles of due process of law and separation of powers, Jan. 13 Motion at 24-27.

Respondents repeated several of these arguments in their Feb. 6 Motion. In the Feb. 6 Motion, they argued that this proceeding, including the injunctive relief sought, operates as an unconstitutional prior restraint in violation of the First Amendment. Feb. 6 Motion at 2-4. They argued that Respondents' due process and First Amendment rights are being violated by this administrative proceeding. Feb. 6 Motion at 4-7. And they argued that Respondents' rights are being denied by the FTC's failure to adhere to the constitutional doctrine of separation of powers. Feb. 6 Motion at 7-9.

Once again Respondents repeat these same arguments in the current Motion. They argue that the FTC has unconstitutionally burdened Respondents' speech. Motion at 6-7. They argue that the FTC has placed an unconstitutional burden on Respondents' religious and political speech. Motion at 7-9. They argue that the FTC has unconstitutionally burdened Respondents' freedom of religion. Motion at 9-12. Finally, they argue that the FTC seeks to substantially burden Respondents' exercise of religion in violation of 42 U.S.C. Section 2000bb-1. Motion at 12-14.³

The Court considered and rejected these arguments in its Feb. 2 Order and again in its Feb. 23 Order, in which it attempted – once and for all – to put them to rest:

³42 U.S.C. Section 2000bb-1 generally protects free exercise of religion. As explained more fully in Complaint Counsel's Opposition to Respondents' Second Motion for Leave to Amend, the FTC does not seek to stop Respondents from the exercise of their religion, but from making unsubstantiated and deceptive claims in connection with the sale of products.

The Complaint contains sufficient allegations that Respondents are engaging in deceptive commercial speech, including allegations that the Respondents promote and advertise the Challenged Products, that the Challenged Products are offered for sale at not insignificant prices, and that the advertisements refer to specific products and attributes. These allegations, and the content of the exhibits to the Complaint, are more than sufficient for a reasonable fact-finder to infer that the speech proposes a commercial transaction, refers to specific products and is economically or commercially motivated. Respondents point to no facts that would dispute such an inference. Moreover, disputed facts or inferences, to the extent they may exist, will not be resolved on a motion to dismiss. *See In Re R.J. Reynolds*, 1988 WL 490114 (1988) (reversing grant of motion to dismiss, and holding that whether communications constituted commercial speech was a question of fact that could not be resolved on a motion to dismiss).

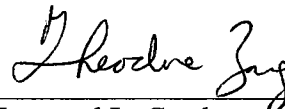
Feb. 23 Order at 8.

Therefore, the Court should reject Respondents' previously considered constitutional arguments here.

IV. CONCLUSION

For the reasons set forth above, Complaint Counsel respectfully requests that the Administrative Law Judge deny Respondents' Motion to Dismiss.

Respectfully submitted,



Leonard L. Gordon (212) 607-2801
Theodore Zang, Jr. (212) 607-2816
Carole A. Paynter (212) 607-2813
David W. Dulabon (212) 607-2814

Federal Trade Commission
Alexander Hamilton U.S. Custom House
One Bowling Green, Suite 318
New York, NY 10004

Dated: March 5, 2009

EXHIBIT A

1
2
3
4 **IN THE UNITED STATES OF AMERICA**
5 **BEFORE THE FEDERAL TRADE COMMISSION**
6 **OFFICE OF ADMINISTRATIVE LAW JUDGES**

7 **In the Matter of**) **Docket No.: 9329**
8 **DANIEL CHAPTER ONE,**)
9 **a corporation, and**)
10 **JAMES FEIJO,**) **PUBLIC DOCUMENT**
11 **individually, and as an officer of**)
12 **Daniel Chapter One**)
13 _____)

14 **RESPONDENTS' RESPONSE TO COMPLAINT COUNSEL'S**
15 **SECOND SET OF INTERROGATORIES**

16 As ordered by the Administrative Law Judge's Order of February 11, 2009, Respondents,
17 through their counsel, respond to Complaint Counsel's Second Set of Interrogatories. Each
18 interrogatory is repeated below, followed by the response.

19
20 1. Describe the nature of the employment relationship between the Corporate Respondent
21 and Dr. Bill Maclean and describe in detail any and all positions, titles, duties, or responsibilities
22 Dr. Bill Maclean has held with the Corporate Respondent or tasks he has performed on behalf of
23 the Corporate Respondent, and set forth any wages, income or other consideration he has
24 received from the Corporate Respondent since January 1, 2003.

25
26 **RESPONSE:** Previously answered; Dr. Bill Maclean was a consultant for the
27 manufacture of 7 Herb Formula. He receives no wages from Corporate Respondent.
28

1 2. Describe in detail Dr. Bill Maclean's educational and employment background,
2 including, but not limited to, his education, experience, research, and training related to cancer
3 and/or medicine and his academic degrees and/or course work from accredited institutions or
4 programs.
5

6 **RESPONSE:** Respondent does not have this information.

7 3. Identify specifically the titles, dates, and locations (where applicable) of all articles,
8 books, papers, theses, treatises, or other works that Dr. Bill Maclean has authored, co-authored,
9 edited, researched, or published relating to the Challenged Products, cancer, the prevention of
10 cancer, or the treatment of cancer; all lectures or speeches he has given relating to the
11 Challenged Products, cancer, the prevention of cancer, or the treatment of cancer; and all broadcast
12 appearances he has made relating to the Challenged Products, cancer, the prevention of cancer, or the
13 treatment of cancer.
14

15 **RESPONSE:** None known.
16

17 4. Identify all income, payments, or other consideration Respondents have paid, donated,
18 provided, or given to Universal Nutrition for producing BioShark, GDU, and BioMixx or for any
19 other activities or work relating to the Challenged Products.
20

21 **RESPONSE:** Respondents do not have this information. They believe it was obtained by the
22 FTC in the deposition of Claudia Kinney

23 5. Identify the supplier and/or producer of each of the ingredients found in the Challenged
24 Products.
25

26 **RESPONSE:** Not known, not readily obtainable.

27 6. Describe all studies (analytical or others), if any, that the Respondents have relied upon
28 or have performed, have caused others to perform, or have retained others to perform on their

1 behalf on the ingredients contained in the Challenged Products or on the Challenged Products
2 themselves.

3 **RESPONSE:** Refer to materials previously provided and the deposition of Patricia Feijo.

4
5 7. Identify all human, animal, and other such studies performed or conducted on or relating
6 to the Challenged Products.

7 **RESPONSE:** There are none known to Respondents other than those referred to in the response
8 to Interrogatory No. 6, above.

9
10
11 8. Describe Individual Respondent's "expenses as Overseer" and the "donations" he
12 receives from Daniel Chapter One "to defray his expenses," as stated by Respondents in
13 response to Interrogatory Number 3 in Complaint Counsel's First Set of Interrogatories.

14 **RESPONSE:** Refer to deposition of Respondent James Feijo: He, as Overseer, gets basic
15 livelihood support from the ministry; house to live in, car to drive in, food to eat and clothes to
16 wear. Respondent James Feijo lives responsibly and frugally, and does not squander ministry
17 monies. Since he suffered multiple sclerosis (10 yrs ago), his weight escalated and his physical
18 condition makes a comfortable and dependable car necessary. For the record, Respondent James
19 Feijo has not been to an eye doctor in about 15 years, and buys the cheapest glasses he can get.
20 He gets his clothes at WalMart and hates to spend more than \$5.00 for a shirt. James and Patricia
21 Feijo do not have a housecleaner or cook, nor do they have health insurance, life insurance, IRA
22 accounts, savings account, retirement fund, etc., etc. – never had college funds for the 2 children.
23 They live simply by faith, and have lived for 25 years in accordance to God's command not to
24 owe anybody.
25
26
27
28

1 9. Identify the Corporate Respondent's bank account or accounts, all financial institutions
2 with which it does business, and any trust or trusts held in its name, including, but not limited to,
3 the trusts listed by Respondents in response to Interrogatory Numbers 3 and 9 in Complaint
4 Counsel's First Set of Interrogatories.
5

6 **RESPONSE:** Information already provided.
7

8 10. For each bank account or trust identified in response to Interrogatory Number 9 above,
9 identify the date in which the account was opened or the trust was created, the financial
10 institution where the bank account or trust is located, and the current balance of the bank account
11 or trust.
12

13 **RESPONSE:** Records not accessible to Respondent at this time, but oral information of what is
14 known was provided at James Feijo's deposition.
15

16
17 11. Describe the meaning, source, and amount of the "donated funding" provided to the
18 individuals identified by Respondents in their response to Interrogatory Number 12 in Complaint
19 Counsel's First Set of Interrogatories.
20

21 **RESPONSE:** Over the past 20 years, the individuals referred to in Respondents' response to
22 Interrogatory No. 12 in Complaint Counsel's First Set of Interrogatories received support for their
23 living expenses for assistance they provided to the ministry. The source of the funding was from
24 donations received by the ministry. The amounts of financial support given to the individuals varied
25 by individual and the amount of service they provided to the ministry. Respondent James Feijo does
26 not recall the exact amounts provided to the individuals, and neither respondent maintains records of
27 those expenditures.
28

1
2 12. Disclose the total amount "expended [by Respondent Daniel Chapter One] in accordance
3 with its purposes and to support charitable and educational activities," as described by
4 Respondents in their response to Interrogatory Number 26 in Complaint Counsel's First Set of
5 Interrogatories.
6

7 **RESPONSE:** Respondents have provided all records in their possession in an effort to respond
8 to this question and have no additional information to provide.
9

10
11 13. For each of the Challenged Products from 2003 to the present, describe the "cost of
12 producing and making available that product," as described by Respondents in their response to
13 Interrogatory Number 19 in Complaint Counsel's First Set of Interrogatories.
14

15 **RESPONSE:** This is not available information. Respondents have no records, and the total cost
16 includes everything from product manufacture to overhead, including ministry overhead, which
17 includes radio network operational costs.
18

19 14. Specify the basis for the statement that, with regard to Respondents' sale of its products
20 from 2003 to the present, "[Receipts of Daniel Chapter One are considered donations to a
21 religious organization," and set forth any statements from any local, state, or federal taxing
22 authority with regard to this statement and DCO's products.
23

24 **RESPONSE:** Respondent Daniel Chapter One is a Corporation Sole, and Respondent James
25 Feijo is its Overseer. Evidence of this has been previously submitted. It has been the unqualified
26 intention and practice of Respondents to treat all funds received as donations to support the work
27 of the ministry.
28

1
2 15. Describe how the Individual Respondent and Patricia Feijo "researched the structure and
3 function of each ingredient," as described by Respondents in response to Interrogatory Number
4 20 in Complaint Counsel's First Set of Interrogatories.
5

6 **RESPONSE:** Over the past two decades James and Patricia Feijo did much research and reading
7 into the structure and function of the body and the way they are affected by nutrients and herbs,
8 which provided the basis for the information they provide. The FTC request for all documents
9 they had in their possession at the time information was written, was responded to as completely
10 as possible but not necessarily with all Respondents possess because of the vast amount of
11 material, most of it widely known, that they relied on. Respondents believe that most of their
12 information is generally known and accepted as true among herbalists and others in naturopathy
13 and homeopathy. The products are made in licensed labs, and manufactured to comply with
14 FDA rules.
15
16

17 16. Specifically describe the situation, as identified by Respondents in response to
18 Interrogatory Number 32 in Complaint Counsel's First Set of Interrogatories, where a "doctor told [a
19 consumer] not to take [Respondents' product]," including the name of the doctor(s), the name of the
20 consumer(s), the place(s) the alleged statement(s) was made, and the date of the alleged statement(s).
21

22 **RESPONSE:** The few times in the past 22 years recalled where a doctor told a consumer not to
23 take a DCO product was because of fear and ignorance about the product. No specifics are
24 recalled or known at this time.

25 Dated this 23rd day of February, 2009.
26

27 _____
28 James Feijo
Individual Respondent, and
Overseer of Corporate Respondent

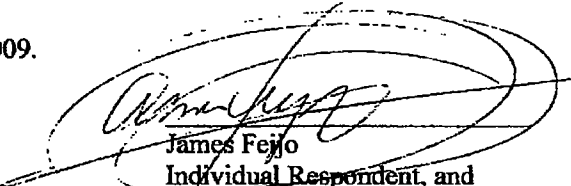
15. Describe how the Individual Respondent and Patricia Feijo "researched the structure and function of each ingredient," as described by Respondents in response to Interrogatory Number 20 in Complaint Counsel's First Set of Interrogatories.

RESPONSE: Over the past two decades James and Patricia Feijo did much research and reading into the structure and function of the body and the way they are affected of nutrients and herbs, which provided the basis for the information they provide. The FTC request for all documents they had in their possession at the time information was written, was responded to as completely as possible but not necessarily with all Respondents possess because of the vast amount of material, most of it widely known, that they relied on. Respondents believe that most of their information is generally known and accepted as true among herbalists and others in naturopathy and homeopathy. The products are made in licensed labs, and manufactured to comply with FDA rules.

16. Specifically describe the situation, as identified by Respondents in response to Interrogatory Number 32 in Complaint Counsel's First Set of Interrogatories, where a "doctor told [a consumer] not to take [Respondents' product]," including the name of the doctor(s), the name of the consumer(s), the place(s) the alleged statement(s) was made, and the date of the alleged statement(s).

RESPONSE: The few times in the past 22 years recalled where a doctor told a consumer not to take a DCO product was because of fear and ignorance about the product. No specifics are recalled or known at this time.

Dated this 23rd day of February, 2009.


James Feijo
Individual Respondent, and
Overseer of Corporate Respondent

1
2 **IN THE UNITED STATES OF AMERICA**
3 **BEFORE THE FEDERAL TRADE COMMISSION**
4 **OFFICE OF ADMINISTRATIVE LAW JUDGES**

5 **In the Matter of**) **Docket No.: 9329**
6 **DANIEL CHAPTER ONE,**)
7 **a corporation, and**) **PUBLIC DOCUMENT**
8 **JAMES FEIJO,**)
9 **individually, and as an officer of**)
10 **Daniel Chapter One**)

11
12 **CERTIFICATE OF SERVICE**

13
14 I certify that on February 23, 2009, I served or caused to be served the following
15 documents on the individuals listed below by electronic mail, followed by Federal Express
16 delivery:

17 Respondents' Response to Complaint Counsel's Second Set of Interrogatories
18 Respondents' Response to Complaint Counsel's Second Request for Production of Documentary
19 Materials and Tangible Things

20 Service to:

21 Leonard L. Gordon, Esq. (lgordon@ftc.gov)
22 Theodore Zang, Jr., Esq. (tzang@ftc.gov)
23 Carole A. Paynter, Esq. (cpaynter@ftc.gov)
24 David W. Dulabon, Esq. (ddulabon@ftc.gov)
25 Federal Trade Commission – Northeast Region
26 One Bowling Green, Suite 318
27 New York, NY 10004

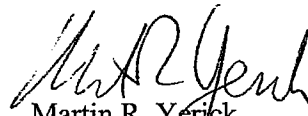
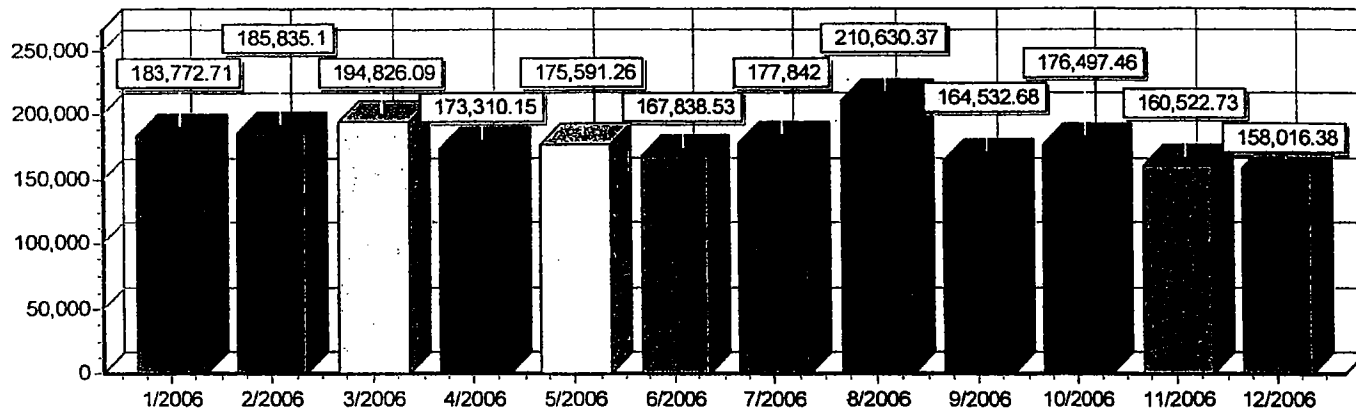
28

Martin R. Yerick
Swankin & Turner
1400 16th Street, NW, Suite 101
Washington, DC 20036

EXHIBIT B

Daniel Chapter One
Monthly Gross Sales

1/10/2009

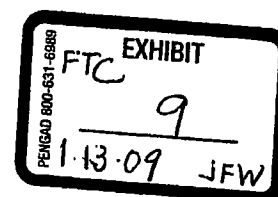


Page 1 of 1

| Month | Sales |
|---------|--------------|
| 1/2006 | 183,772.71 |
| 2/2006 | 185,835.10 |
| 3/2006 | 194,826.09 |
| 4/2006 | 173,310.15 |
| 5/2006 | 175,591.26 |
| 6/2006 | 167,838.53 |
| 7/2006 | 177,842.00 |
| 8/2006 | 210,630.37 |
| 9/2006 | 164,532.68 |
| 10/2006 | 176,497.46 |
| 11/2006 | 160,522.73 |
| 12/2006 | 158,016.38 |
| <hr/> | |
| | 2,129,215.46 |

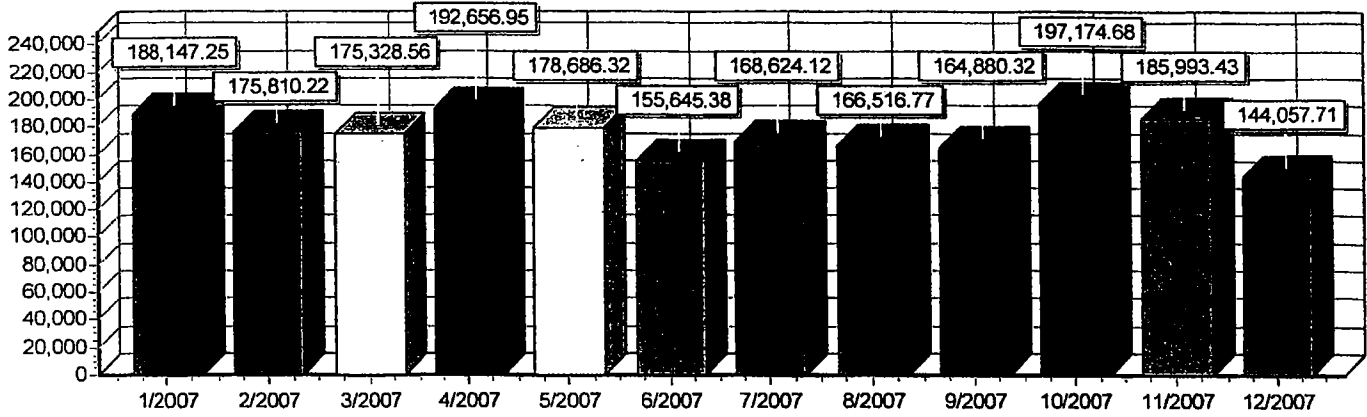
Please note that prices on this report are line item prices and do not reflect transaction level discounts.

DCO 0309



Daniel Chapter One
 Monthly Gross Sales

1/10/2009



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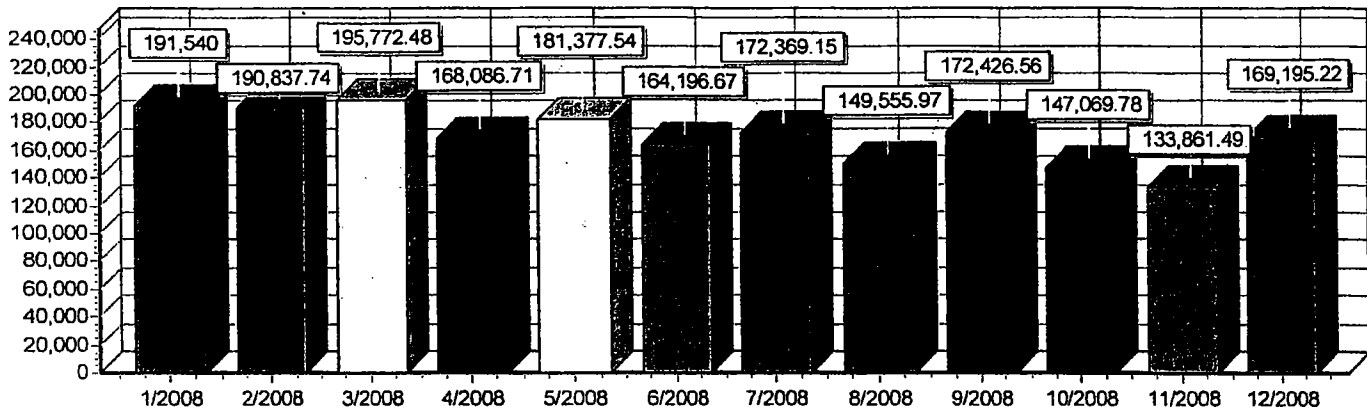
| Month | Sales |
|---------|--------------|
| 1/2007 | 188,147.25 |
| 2/2007 | 175,810.22 |
| 3/2007 | 175,328.56 |
| 4/2007 | 192,656.95 |
| 5/2007 | 178,686.32 |
| 6/2007 | 155,645.38 |
| 7/2007 | 168,624.12 |
| 8/2007 | 166,516.77 |
| 9/2007 | 164,880.32 |
| 10/2007 | 197,174.68 |
| 11/2007 | 185,993.43 |
| 12/2007 | 144,057.71 |
| <hr/> | |
| | 2,093,521.71 |

Please note that prices on this report are line item prices and do not reflect transaction level discounts.

DCO 0310

Daniel Chapter One
 Monthly Gross Sales

1/10/2009



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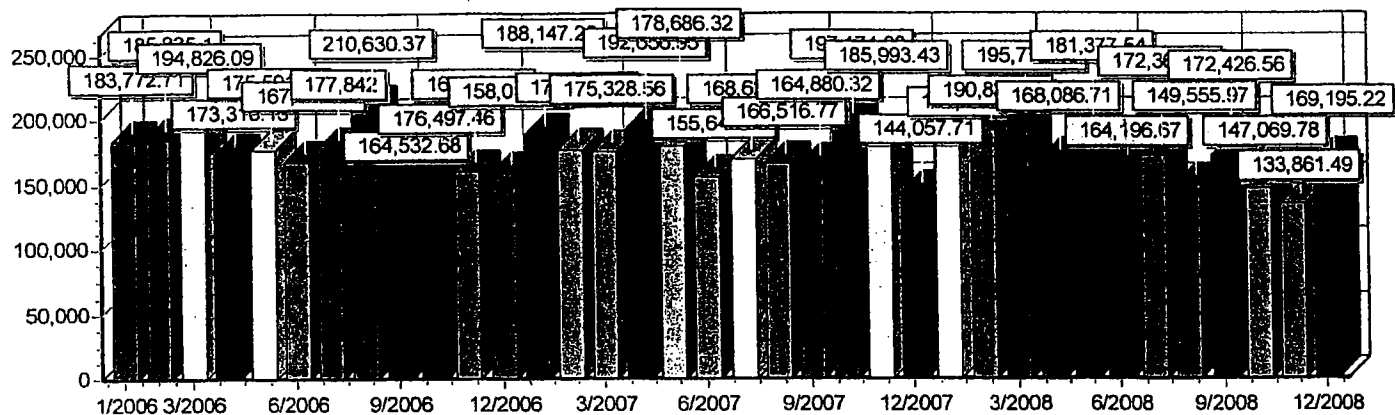
| Month | Sales |
|---------|--------------|
| 1/2008 | 191,540.00 |
| 2/2008 | 190,837.74 |
| 3/2008 | 195,772.48 |
| 4/2008 | 168,086.71 |
| 5/2008 | 181,377.54 |
| 6/2008 | 164,196.67 |
| 7/2008 | 172,369.15 |
| 8/2008 | 149,555.97 |
| 9/2008 | 172,426.56 |
| 10/2008 | 147,069.78 |
| 11/2008 | 133,861.49 |
| 12/2008 | 169,195.22 |
| <hr/> | |
| | 2,036,289.31 |

Please note that prices on this report are line item prices and do not reflect transaction level discounts.

DCO 0311

Daniel Chapter One
Monthly Gross Sales

1/10/2009



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| Month | Sales |
|---------|---------------------|
| 1/2006 | 183,772.71 |
| 2/2006 | 185,835.10 |
| 3/2006 | 194,826.09 |
| 4/2006 | 173,310.15 |
| 5/2006 | 175,591.26 |
| 6/2006 | 167,838.53 |
| 7/2006 | 177,842.00 |
| 8/2006 | 210,630.37 |
| 9/2006 | 164,532.68 |
| 10/2006 | 176,497.46 |
| 11/2006 | 160,522.73 |
| 12/2006 | 158,016.38 |
| 1/2007 | 188,147.25 |
| 2/2007 | 175,810.22 |
| 3/2007 | 175,328.56 |
| 4/2007 | 192,656.95 |
| 5/2007 | 178,686.32 |
| 6/2007 | 155,645.38 |
| 7/2007 | 168,624.12 |
| 8/2007 | 166,516.77 |
| 9/2007 | 164,880.32 |
| 10/2007 | 197,174.68 |
| 11/2007 | 185,993.43 |
| 12/2007 | 144,057.71 |
| 1/2008 | 191,540.00 |
| 2/2008 | 190,837.74 |
| 3/2008 | 195,772.48 |
| 4/2008 | 168,086.71 |
| 5/2008 | 181,377.54 |
| 6/2008 | 164,196.67 |
| 7/2008 | 172,369.15 |
| 8/2008 | 149,555.97 |
| 9/2008 | 172,426.56 |
| 10/2008 | 147,069.78 |
| 11/2008 | 133,861.49 |
| 12/2008 | 169,195.22 |
| | 6,259,026.48 |

Please note that prices on this report are line item prices and do not reflect transaction level discounts.

DCO 0312

From: Jay Harrison <gm@accentradio.com>
Date: Mon, Dec 15, 2008 at 7:38 PM
To: Tricia Feijo <tricia@danielchapterone.com>
Cc: Jim Turner <jim@swankin-turner.com>, Betsy Lehrfeld <betsy@swankin-turner.com>, Jim Feijo <feijomail123@gmail.com>

Hi all,

I talked to Tricia today, and she wanted to get aggregate totals from this account to see how much monies ran through it during the last 5 years.

Let me also say that this PayPal account was originally setup more to make purchases (for example, used equipment from eBay) than to receive revenue. We just used the revenue received to offset future purchases.

Here's the data that I pulled out to get a better handle on the account. As you can see, it was used for more purchases than revenue that came through it in five years.

Revenue

eBay Payments Received = \$261.00
eChecks Received = \$50.00
Merchant Referral Bonuses = \$1.00
Payments Received = \$1,295.66
Refunds/Reversals from purchases = \$143.49
Web Accept Payments Received (CD Orders) = \$1,923.55
Total = \$3,674.70

Expenditures:

Donations Sent = -\$4.54
eBay Payments Sent = -\$5,850.60
Express Checkout Payments Sent = -\$1,403.91
Musician's Friend, Inc. Order = -\$399.96
Payments Sent = -\$964.70
Preapproved Payments Sent = -\$474.52
Refunds from revenue = -\$286.75
Subscription Payments Sent = \$1,242.00
Web Accept Payments Sent = -\$1,863.88
Total = -\$12,490.86

TOTAL DIFFERENCE = -\$8,816.16

