

**IN THE UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF THE 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

**RESPONDENTS' STIPULATED MOTION FOR LEAVE TO AMEND THEIR
OPPOSITION TO COMPLAINT COUNSEL'S MOTION FOR SUMMARY
DECISION**

On February 24, 2009, Complaint Counsel filed a Motion for Summary Decision in the above-captioned matter. Respondents filed their opposition to the motion on March 10, 2009. After filing their opposition to Complaint Counsel's motion, Respondents' counsel noted errors on two pages of its memorandum in opposition. Respondents' counsel conferred with Complaint Counsel regarding a proposed amendment curing the errors in the memorandum in opposition. Complaint Counsel do not oppose the proposed amendment. Therefore, Respondents move for an order of the Court providing that:

1. Page 12 of Respondents' Opposition to Complaint Counsel's Motion for Summary Decision may be amended by substituting the attached pages numbered 12-Corrected and 12-A-Corrected for the original page 12.

2. Page 27 of Respondents' Opposition to Complaint Counsel's Motion for Summary Decision may be amended by substituting the attached page 27-Corrected for the original page 27.

Respectfully submitted,

Dated: March 20, 2009



Leonard L. Gordon, Esq.
Theodore Zang, Jr., Esq.
Carole A. Paynter, Esq.
David W. Dulabon, Esq.
Elizabeth Nach, Esq.
Federal Trade Commission
Alexander Hamilton U.S. Custom House
One Bowling Green, Suite 318
New York, NY 10004

Dated: March 20, 2009



James S. Turner, Esq.
for
Swankin & Turner
Attorneys for Respondent
1400 16th Street, NW, Suite 101
Washington, DC 20036

[PROPOSED] ORDER ON STIPULATION

The above stipulation is approved.

It is ORDERED that Respondents Opposition to Complaint Counsel's Motion for Summary Decision be, and is hereby amended by substituting the attached pages 12-Corrected and 12-A-Corrected for the original page 12, and the attached page 27-Corrected for the original page 27.

D. Michael Chappell
Chief Administrative Law Judge

Date: _____, 2009

Ex. 4 and Ex. 3.

c. GDU

GDU contains, among other ingredients, Bromelain, Turmeric, Quercetin, Feverfew, and Boron. CCSF* #87. Respondents' 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. CCSF #101. Respondents recommend a donation that is an amount comparable the pricing of the product in the dietary supplement industry.

Respondents' herbal expert Dr. Duke stated "There is a reasonable basis for the claims that the ingredients of 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. . .'" Duke expert report, Summary of Opinion, p. 3.

Expert Lemont stated "There is a reasonable basis to claim that the ingredients of GDU contain bromelain, a source of natural proteolytic enzymes from the pineapple, which helps digest unwanted proteins. GDU also contains turmeric, feverfew and quercetin, which help to reduce inflammation and relieve pain. Next, it is reasonable to claim that these ingredients as a whole may be used as an adjunct to cancer therapy, and that the ingredients possess a wide range of actions as anti-inflammatory agents." Lamont expert witness report, Summary and Conclusions, p. 40.

d. BioMixx

BioMixx contains, among other ingredients, Goldenseal, Echinacea, and

* Complaint Counsel's statement of material facts as to which there is no genuine issue.

Ginseng. CCSF #91. Respondents' label for BioMixx directs users to take five scoops daily. CCSF #103. and has a recommended dosage comparable to precise of similar dietary supplement products.

Respondents' herbal expert Duke said "There is a reasonable basis for the claims that the ingredients of BioMixx boosts the immune 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.'" Duke expert report, Summary of Opinion, p. 4.

Respondents' herbal expert Lamont concluded "There is a reasonable basis to claim that the ingredients of BioMixx boost the immune system, build lean body mass and support healing. It is also reasonable to claim that these ingredients assist the body in fighting cancer, cachexia and in healing the destructive effects of radiation and chemotherapy treatments." Lamont expert witness report, Summary and Conclusions, p. 40.

medicine; but that is not the object of the act, and might make it unconstitutional, because creating a monopoly.” North Carolina’s Supreme Court in *State v McKnight*, 42 S.E. 580 (1902) at p 582.

The problem raised by these examples and the issues they address is not how they should be resolved. The Problem is that Complaint Counsel has completely ignored their existence and plowed ahead arguing the only appropriate answer is the one supplied by their cancer expert for single entity inherently dangerous chemicals that might have some benefit that outweighs their harm.

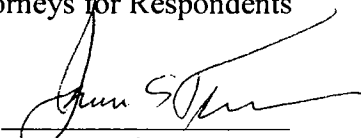
Counsel failed to address the issues that are at the heart of the case. Respondent has presented evidence that they complied with the standards that govern herbal claims. Complaint Counsel has presented no evidence they, Respondents, have not.

CONCLUSION

Complaint Counsel’s motion for Summary Decision should be denied.

Date this 18th day of March, 2009

Swankin & Turner
Attorneys for Respondents

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11
12 **CERTIFICATE OF SERVICE**

13
14 I certify that on March 20, 2009, I served the following document on the individuals
15 listed below by hand delivery:

16 Respondents' Stipulated Motion for Leave to Amend Their Opposition to Complaint Counsel's
17 Motion for Summary Decision

18 Service to:

19 Donald S. Clark
20 Office of the Secretary
21 Federal Trade Commission
22 600 Pennsylvania Avenue, NW, Room H-135
23 Washington, DC 20580
24 Email: secretary@ftc.gov

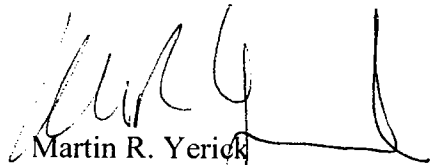
25 Elizabeth Nach, Esq.
26 Federal Trade Commission
27 601 New Jersey Avenue, NW
28 Washington, DC 20580

Courtesy Copies:

Hon. D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Avenue, NW, Room H-106
Washington, DC 20580

1
2 I further certify that on March 20, 2009, I served the above document on the individuals listed
3 below by electronic mail at the email addresses shown:

4 Leonard L. Gordon, Esq. (lgordon@ftc.gov)
5 Theodore Zang, Jr., Esq. (tzang@ftc.gov)
6 Carole A. Paynter, Esq. (cpaynter@ftc.gov)
7 David W. Dulabon, Esq. (ddulabon@ftc.gov)

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