

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 MOTION AND MEMORANDUM TO MODIFY
COMPLAINT COUNSEL’S FINAL EXHIBIT LIST AND TO INTRODUCE NEW
EVIDENCE TO THE COURT ON THE ISSUE OF RESPONDENTS’ FINANCIAL
CONDITION**

Complaint Counsel respectfully move this Court pursuant to additional provision 15 of the Court’s Scheduling Order of October 28, 2008¹ for an order permitting Complaint Counsel to modify Complaint Counsel’s final exhibit list and to introduce new evidence from Citizens Bank and American Express regarding Respondents’ financial condition at the Court’s April 21, 2009 hearing on jurisdiction in this matter.²

Respondents maintain that Daniel Chapter One is a non-profit corporation outside of the FTC’s jurisdiction. Respondents, however, have failed repeatedly to provide any information regarding their financial condition and operation beyond broad self-serving generalizations.

¹Additional provision 15 of the Scheduling Order provides: “The final exhibit lists shall represent counsels’ good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by order of the Administrative Law Judge upon a showing of good cause.”

²Counsel for Respondents represented to Complaint Counsel that they oppose this motion based on the fact that they have not had a chance to review the new evidence. As soon as Complaint Counsel receives the new evidence from Citizens Bank and American Express, Complaint Counsel will share it with Respondents and revisit the issue of what objections, if any, they have.

Respondents' refusal to provide this information constitutes good cause and Complaint Counsel should be permitted to introduce evidence recently obtained from third parties as to Respondents' financial status. In fact, this evidence will show that contrary to their assertions, Respondents are engaged in for-profit enterprises.

I. Respondents' Refusals to Provide Financial Documents

A. Complaint Counsel's (First) Motion to Compel

Complaint Counsel filed a Motion to Compel Production of Documents on December 16, 2008. In this motion, Complaint Counsel sought an order compelling Respondents to produce financial documents related to the acts or practices alleged in the Complaint. Specifically, Complaint Counsel sought to compel responses to paragraph 22 of the First Request for Production of Documents, "Documents sufficient to identify all bank accounts or other financial institution destinations into which any proceeds or sales of the Challenged Products were directed, placed or transferred." Complaint Counsel also sought to compel responses to paragraph 23 of the First Request for Production of Documents, "All documents concerning any third party checks, cashier's checks, money orders or other financial instruments endorsed to the Respondents or deposited into any checking or savings account maintained by the Respondents, on behalf of the Respondents, or for the benefit of the Respondents relating to monies received in exchange for the Challenged Products or to the sales or proceeds of sales of the Challenged Products."

This Court granted Complaint Counsel's Motion to Compel on January 9, 2009. Despite this order, Respondents failed to provide the requested information.

B. Deposition of James Feijo

On January 13, 2009, Complaint Counsel took the deposition of James Feijo and during the course of his deposition requested that Respondents produce the following responsive and relevant financial documents, which Complaint Counsel reiterated in a letter from David Dulabon to James Turner dated January 21, 2009 (attached hereto as Ex. 1):

- Daniel Chapter One corporation sole bank account statements from Citizens Bank.
- Messiah Y'Shua Shalom corporation sole bank account statements from Citizens Bank.
- American Express account (under Daniel Chapter One's name) statements.
- Statements, if any, from Citizens Bank account in name of James Feijo (account may be closed).

Despite Complaint Counsel's requests for production of these relevant and discoverable documents, Respondents did not comply with Complaint Counsel's requests.

C. Complaint Counsel's Second Motion to Compel

On January 21, 2009, Complaint Counsel submitted a second Motion to Compel, once again seeking relevant and discoverable information and documents concerning Respondents' financial condition. On February 11, 2009, this Court issued an Order Granting Complaint Counsel's Motion to Compel discovery. This order required Respondents to, among other things, provide complete answers to Complaint Counsel's Second Set of Interrogatories ("Interrogatories"), Numbers 8-14, and provide responses and produce all relevant documents responsive to Complaint Counsel's Second Request for Production of Documentary Materials and Tangible Things ("Documents"), Numbers 7-12, and 14. Feb. 11, 2009 Order at p. 3. These Interrogatories and Document Requests all related to Respondents' financial condition.

Despite the Court's February 11 Order, Respondents have continued to defy their discovery obligations and have only produced non-responsive, incomplete, and evasive answers to Complaint Counsel.

II. Respondents Still Have Not Complied With the Court's Orders and With Complaint Counsel's Reasonable Discovery Requests

Respondents clearly do not want to disclose their financial information in this matter, most likely because such information will show that they operate as a for-profit entity. Respondents cannot simply claim the contrary, and then produce no documents to support their position. This is the stance that Respondents have repeatedly taken in their motion papers, such as their Second Motion to Dismiss, which was filed after the close of discovery. Respondents make entirely self-serving statements but refuse to submit any documents allowing Complaint Counsel or this Court to test the veracity of their statements. Respondents' blatant disregard of this Court's multiple orders and repeated failure to provide discovery in support of their position should not be countenanced.

For example, Complaint Counsel's Second Set of Interrogatories to Respondents, Interrogatory No. 10, requested: "For each bank account or trust identified in Response to Interrogatory Number 9 above, identify the date in which the account was opened or the trust was created, the financial institution where the bank account or trust is located, and the current balance of the bank account or trust." To date, the only answer Respondents have provided is the following: "Records not accessible to Respondent at this time, but oral information of what is known was provided at James Feijo's deposition." In Mr. Feijo's deposition, 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.

Further, Complaint Counsel's Second Request for Production of Documentary Materials and Tangible Things, Document Request No. 7, requested: "All 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,' as described by Respondents in response to Interrogatory Number 3 in Complaint Counsel's First Set of Interrogatories." To date, the sole answer Respondents have provided is the following: "Respondents do not have such documents."

Complaint Counsel's Second Request for Production of Documentary Materials and Tangible Things, Document Request No. 10, requested: "All 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." To date, the sole answer Respondents have provided is the following: "No such documents exist."

III. Complaint Counsel Request Permission to Introduce Relevant Financial Evidence to be Obtained from Citizens Bank and American Express

As a result of Respondents' failure to produce responsive information and documents with respect to their financial condition, on March 26, 2009 Complaint Counsel served two third-party subpoenas to obtain some of the relevant financial information, and some of the documents that Respondents should have produced directly to Complaint Counsel. Copies of these subpoenas are attached hereto as Ex. 2.

The first subpoena was served on Citizens Bank and requested bank statements, correspondence, and other documents related to any Citizens Bank account held by or in trust for Daniel Chapter One, Messiah Y'Shua Shalom, Accent Radio Network, or James Feijo. The second subpoena was served on American Express, and requested credit card statements,

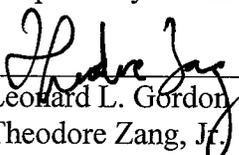
correspondence, and other documents related to any American Express account of Daniel Chapter One or James Feijo. Responses to these subpoenas are due on April 7, 2009.

Complaint Counsel respectfully requests the Court's permission to add the documents obtained in response to these subpoenas to Complaint Counsel's final exhibit list, so that Complaint Counsel may introduce into evidence these documents at the Court's hearing on jurisdiction and at trial. Respondents will not be prejudiced by the addition of these documents onto Complaint Counsel's final exhibit list. These documents are – or should be – in the custody, possession, or control of Respondents, and should have been produced by Respondents.

IV. Conclusion

Respondents respectfully request that the Court enter the attached proposed order permitting Complaint Counsel to modify Complaint Counsel's final exhibit list and to introduce any new and relevant evidence that is obtained in response to the subpoenas to Citizens Bank and American Express, at the Court's April 21, 2009 hearing on jurisdiction, and at the trial in this matter.

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: April 3, 2009

EXHIBIT 1



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
NORTHEAST REGION

One Bowling Green
Suite 318
New York, NY 10004
(212) 607-2829

Leonard L. Gordon
Regional Director

January 21, 2009

VIA FEDERAL EXPRESS AND EMAIL

James S. Turner, Esquire
Swankin & Turner
1400 16th Street, NW, Suite 101
Washington, D.C. 20036

Re: *In the Matter of Daniel Chapter One - Fact and Expert Discovery*

Dear Mr. Turner:

This letter addresses a number of issues related to fact and expert discovery, many of which we already have raised with you, but to which we have received no response. Your failure to address the issues that we previously raised with you is very troubling and is hindering Complaint Counsel's efforts to complete fact discovery and to proceed with expert discovery.

I. Respondents' Responses to Complaint Counsel's First Set of Discovery Requests

We addressed this issue in our January 7, 2009 letter to you, but we have yet to receive a response from Respondents. We expect a response by the close of business tomorrow – January 22, 2009.

On December 8, 2008, Respondents provided the following answer to Interrogatory Number 18 to Complaint Counsel's First Set of Interrogatories:

Documents that substantiate representations made concerning the products, alleged health claims for which are the subject of the Complaint, are referenced in Exhibit 7. Respondents have also relied on a variety of other sources of information, both published and unpublished, and will undertake to supplement this response when documentation of such sources has been identified.

Complaint Counsel is concerned that Respondents continuously will revise and expand their purported substantiation. Without waiving our rights to object at a later time, to the extent that any such supplemental substantiation referenced in your response above exists, Complaint

Counsel respectfully request that you identify and produce such supplemental substantiation by the close of business tomorrow. In our January 7, 2009 letter, we requested that you produce such supplemental substantiation by Friday, January 9, 2009 so that Complaint Counsel could have everything in time for the depositions held the week of January 12, 2009. We did not receive anything from Respondents' counsel. You now have had two weeks to produce this information. In light of the Court's Scheduling Order establishing January 21, 2009 as the close of discovery, Complaint Counsel's position is that your failure to supplement Respondents' alleged substantiation indicates that Respondents in fact have no further substantiation.

Also on December 8, 2008, Respondents provided the following response to Document Request Number 30 to Complaint Counsel's First Request for Production of Documentary Materials and Tangible Things:

As Respondents understand this question, Respondents have no such documents, except for property tax returns in Rhode Island and Florida, which are not in the possession of Respondents but are being obtained from the public records and will be submitted upon receipt.

We would like to know immediately the status of the property tax returns in Rhode Island and Florida referenced above. In our January 7, 2009 letter, we asked that Respondents produce these tax returns by Friday, January 9, 2009. Respondents have not produced anything relating to this issue. Please produce all relevant tax returns by the close of business tomorrow – January 22, 2009.

II. Bates Numbering Financial Documents

On January 13, 2009, Respondents' counsel produced a few pages of financial documents that the Court compelled Respondents to produce. Respondents' counsel assured Complaint Counsel that you would send us Bates numbered copies of these documents. We still have yet to receive anything from you. Please produce Bates numbered copies of these documents by the close of business tomorrow – January 22, 2009.

III. Documents Requested at the Deposition

We requested the following documents at the January 13, 2009 deposition of James Feijo:

- Article written by Dr. Jimmie Angel about the computer program written by Jim Feijo. (J. Feijo Dep. Tr. at 58).
- Copy of computer program developed by Jim Feijo and described in his deposition testimony as the "Daniel Chapter One monitoring program." (*Id.* at 66).
- Daniel Chapter One corporation sole bank account statements from Citizens Bank. (*Id.* at 157).
- Messiah Y'Shua Shalom corporation sole bank account statements from

- Citizens Bank. (*Id.*).
- American Express account (under Daniel Chapter One's name) statements. (*Id.* at 80, 157).
- Flier that states money paid for DCO products is a "suggested donation." (*Id.* at 146, 163, 246).
- Statements, if any, from Citizens Bank account in name of James Feijo (account may be closed). (*Id.* at 157, 192).
- Documents relating to the cost of Daniel Chapter One's broadcasting on the radio. (*Id.* at 223, 246).

We also requested the following documents at the January 14, 2009 deposition of Patricia Feijo:

- Key Sheet explaining DCO's substantiation produced in response to Interrogatory No. 7 of Complaint Counsel's First Set of Interrogatories. (P. Feijo Dep. Tr. at 138, line 18).
- Statement identifying additional substantiation. (*Id.* at 146, line 2).
- Records of when Bioshark was first sold or first developed and sold to public. (*Id.* at 156, line 20).

Please produce all documents requested at last week's depositions by the close of business tomorrow – January 22, 2009.

IV. Expert Disclosures

Pursuant to the Scheduling Order, Respondents were required to submit the following information when they disclosed their six expert witnesses on Monday, December 29, 2008:

1. The qualifications of each witness, including a list of all publications authored by the witness within the preceding 10 years;
2. The compensation to be paid for the study and testimony;
3. A listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding 4 years; and
4. Transcripts of such testimony in the possession, custody or control of the listing party or expert.

In our January 8, 2009 letter, Complaint Counsel requested that Respondents produce the information listed above as soon as possible, but no later than Tuesday, January 13, 2009. In fact, Michael McCormack promised that we would have this information by 5:00 p.m. (PST) on Friday, January 16, 2009. We have not received any of the information listed above for the six expert witnesses Respondents identified on Monday, December 29, 2008. Respondents' failure

to produce this information as required by the Court is hindering and prejudicing Complaint Counsel's preparation for expert discovery.

Your immediate attention to these matters is requested and expected. If Respondents continue to ignore Complaint Counsel's proper requests in discovery (specifically topics I and IV listed above), we will have no choice but to raise these issues with the Court. Please contact us if you have any questions.

Very truly yours,

A handwritten signature in black ink that reads "David W. Dulabon". The signature is written in a cursive style with a large initial "D".

David W. Dulabon

EXHIBIT 2



SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

<p>1. TO</p> <p>Citizens Bank Attn: Maureen Powers Subpoena Compliance 20 Cabot Road Medford, MA 02155</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<p>3. PLACE OF PRODUCTION OR INSPECTION</p> <p>Federal Trade Commission Northeast Region 1 Bowling Green, Suite 318 New York, NY 10004</p>	<p>4. MATERIAL WILL BE PRODUCED TO</p> <p>Carole A. Paynter</p> <hr/> <p>5. DATE AND TIME OF PRODUCTION OR INSPECTION</p> <p>April 7, 2009, COB</p>
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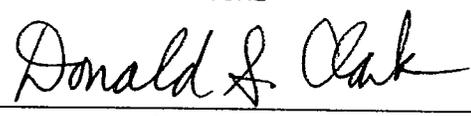
6. SUBJECT OF PROCEEDING

In the Matter of Daniel Chapter One and James Feijo, Docket No. 9329

7. MATERIAL TO BE PRODUCED

See attached specifications.

<p>8. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>9. COUNSEL REQUESTING SUBPOENA</p> <p>Carole A. Paynter Federal Trade Commission - Northeast Region One Bowling Green Suite 318 New York, NY 10004 Counsel Supporting the Complaint</p>
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<p>DATE ISSUED</p> <p>March 25, 2009</p>	<p>SECRETARY'S SIGNATURE</p> 
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GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

SCHEDULE A

Demand is made for the following documents created for any Citizens Bank account held by or in trust for: 1) **DANIEL CHAPTER ONE ("DCO")**, 2) **MESSIAH Y'SHUA SHALOM ("MESSIAH")**, 3) **ACCENT RADIO NETWORK ("ACCENT")**, or 4) **James Feijo**. The applicable period of compliance is January 1, 2006 through the date of full and complete compliance with this *subpoena duces tecum*:

1. All monthly bank statements from accounts.
2. All documents evidencing records of credits and wire transfers or other debit instrument, all deposit tickets, any accompanying documentation for debits, all money orders, and all cashier's checks.
3. All canceled checks, including the fronts and backs of such checks for all applicable accounts.
4. All signature cards, powers of attorney, history sheets and corporate resolutions.
5. All financial statements, credit reports, and employment verifications.
6. All correspondence between Citizens Bank and any agent of: 1) DCO, or 2) Messiah, or 3) Accent.
7. All correspondence between Citizens Bank and James Feijo.
8. All schedules, memoranda, correspondence, and other documents that support or explain the documents listed above.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail.

by leaving copy at principal office or place of business, to wit:

on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)

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

**DECLARATION OF THEODORE ZANG IN SUPPORT OF
COMPLAINT COUNSEL'S MOTION TO MODIFY COMPLAINT COUNSEL'S FINAL
EXHIBIT LIST AND TO INTRODUCE NEWLY OBTAINED EVIDENCE TO THE
COURT ON THE ISSUE OF RESPONDENTS' FINANCIAL CONDITION**

I, Theodore Zang, declare as follows:

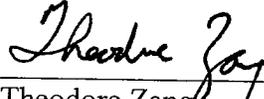
1. I am a United States citizen over eighteen years of age. I am an Attorney with the Federal Trade Commission ("FTC" or "Commission"). My business address is Federal Trade Commission, Northeast Region, One Bowling Green, Suite 318, New York, New York 10004.

2. On April 2, 2009, I conferred with James S. Turner, one of the attorneys of record for Respondents in the above-captioned matter to inquire if Respondents would consent to the attached Motion to modify Complaint Counsel's final exhibit list and to introduce newly obtained evidence to the Court on the issue of Respondents' financial condition.

3. Mr. Turner indicated that he could not so consent to this motion.

I declare under penalties of perjury that the above statement is true and correct.

Dated this 2nd day of March, 2009.



Theodore Zang

**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

**[Proposed] ORDER GRANTING MOTION TO MODIFY COMPLAINT COUNSEL'S
FINAL EXHIBIT LIST AND TO INTRODUCE NEWLY OBTAINED EVIDENCE TO
THE COURT ON THE ISSUE OF RESPONDENTS' FINANCIAL CONDITION**

On April 3, 2009, Complaint Counsel filed a motion to modify Complaint Counsel's final exhibit list and to introduce newly obtained evidence on the issue of Respondents' financial condition to the Court at the April 21, 2009 hearing on jurisdiction in this matter.

IT IS HEREBY ORDERED that the motion is GRANTED.

ORDERED:

D. Michael Chappell
Administrative Law Judge

Dated:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 3, 2009, I have filed and served the attached **COMPLAINT COUNSEL'S MOTION AND MEMORANDUM TO INTRODUCE NEWLY OBTAINED EVIDENCE TO THE COURT ON THE ISSUE OF RESPONDENTS' FINANCIAL CONDITION, Exhibits 1-2 thereto, DECLARATION OF THEODORE ZANG IN SUPPORT OF COMPLAINT COUNSEL'S MOTION, and [Proposed] ORDER GRANTING COMPLAINT COUNSEL'S MOTION** upon the following as set forth below:

The original and one paper copy via overnight delivery and one electronic copy via email to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, DC 20580
E-mail: secretary@ftc.gov

Two paper copies via overnight delivery to:

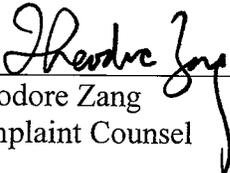
The Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Ave., N.W., Room H-528
Washington, DC 20580

One electronic copy via email and one paper copy via overnight delivery to:

James S. Turner, Esq.
Betsy Lehrfeld, Esq.
Martin Yerick, Esq.
Swankin & Turner
1400 16th St., N.W., Suite 101
Washington, D.C. 20036
jim@swankin-turner.com

One electronic copy via email to:

Michael McCormack, Esq.
M.mccormack@mac.com



Theodore Zang
Complaint Counsel