

**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)

DOCKET NO. 9329

JAMES FEIJO,)
Individually, and as an officer of)
Daniel Chapter One.)
_____)

PUBLIC DOCUMENT

I. RESPONDENTS' RESPONSES TO COMPLAINT COUNSEL'S PROPOSED FINDINGS OF FACT

A. Daniel Chapter One and the Feijos

[Note: For Respondents' responses to Complaint Counsel's proposed findings of fact, the response of "Respondents concur" indicates that Respondents agree that Complaint Counsel's proposed finding is an accurate factual statement. The response that "Respondents have no specific response" indicates that Respondents do not believe that such proposed finding, whether or not true and/or accurate, is relevant to a material fact.]

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) ¶ 1; Complaint Counsel's Trial Exhibit (hereinafter referred to as CX __) 35; J. Feijo, Hearing on Jurisdiction Transcript, April 21, 2009, (hereinafter referred to as HOJ Tr. __) at 84).

Response to Finding No. 1

Respondents concur but note that CX 35 is the Articles of Incorporation for

Messiah Y'Shua Shalom, and not for DCO.

2. According to its Articles of Incorporation, Respondent DCO's mailing and principal location is 21916 Southeast 392nd Street, Enumclaw, Washington, but neither Respondent DCO nor Respondent James Feijo maintains a building at that address. (CX 31; J. Feijo, HOJ Tr. 93-94).

Response to Finding No. 2

Exhibit CX 31 was filed with the Secretary of State for the State of Washington in 2002. The address cited is that of DCO's registered agent in Washington (HOJ, Feijo, J., Tr. 95). DCO's notice of Corporation Sole status states that Respondent James Feijo's mailing address and principle location are non-domestic (CX 31 at FTC-DCO 0739), and that Patricia Feijo's mailing address is non-domestic (CX 31 at FTC-DCO 0740).

3. According to Respondents, their 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 R15 (J. Feijo, Dep. ___)) at 99).

Response to Finding No. 3

Respondents concur but note that Respondent James Feijo practices his ministry at not just one, but many, locations (R 15 (Feijo, J., Dep. at 70, 218-19); R 16 (Feijo, P., Dep. at 38-39); HOJ, Feijo, J., Tr. 94, 96, 204; HOJ, Feijo, P., Tr. 262-64, 277).

4. Respondent James Feijo is responsible for the activities of Respondent DCO as its Overseer. (Answer ¶ 2; J. Feijo, HOJ Tr. 70; J. Feijo, Trial Transcript (hereinafter referred to as Tr. ___) at 416).

Response to Finding No. 4

Respondents concur.

5. Patricia Feijo, Respondent James Feijo's wife, is the secretary for DCO. (Deposition of

Patricia Feijo, January 14, 2009, (hereinafter referred to as (R16 (P. Feijo, Dep. at __) at 10, 52; P. Feijo, HOJ Tr. 276).

Response to Finding No. 5

Respondents concur.

6. Respondent James Feijo and his wife, Patricia, originally started DCO as a health food store in 1986. (R16 (P. Feijo, Dep. at 39-40); J. Feijo, Tr. 418).

Response to Finding No. 6

DCO did not begin as a health food store. DCO began as a ministry in 1983 (R 16 (Feijo, P., Dep. at 204-05); HOJ, Feijo, J., Tr. 182). DCO was first a street ministry and then was also a ministry to help home churches in communist countries (where church activities conducted in Christian practitioners' homes were discouraged, if not illegal) (R 15 (Feijo, J., Dep. at 73); HOJ, Feijo, J., Tr. 99, 182-83, 236-37).

7. Respondent James Feijo sold DCO products prior to registering as a corporation sole. (R15 (J. Feijo, Dep. at 224)).

Response to Finding No. 7

Respondents concur.

8. Respondents offer 150 to 200 products today, including Bio*Shark, 7 Herb Formula, GDU, and BioMixx (collectively, the "DCO Products"). (R15 (J. Feijo, Dep. at 37); P. Feijo, Tr. 392; Marino, HOJ Tr. 54; J. Feijo, HOJ Tr. 314-15).

Response to Finding No. 8

Respondents concur.

9. DCO has two buildings in Rhode Island – one is the Order Center and the other is the warehouse. (J. Feijo, HOJ Tr. 110).

Response to Finding No. 9

Respondent DCO uses, but does not own, two buildings in Rhode Island (R 15 (Feijo, J., Dep. at 72-73)).

10. Messiah Y'Shua Shalom, a Washington corporation sole, owns the property that Respondents use in Rhode Island. (R15 (J. Feijo, Dep. at 72-73); CX 35).

Response to Finding No. 10

Messiah Y'Shua Shalom owns one of the two buildings used by DCO in Rhode Island (R 15 (Feijo, J., Dep. at 72)). The other is rented from an owner unrelated to Respondents (R 15 (Feijo, J., Dep. at 174)).

11. Respondent James Feijo is the overseer for Messiah Y'Shua Shalom. (R15 (J. Feijo, Dep. at 72-73); CX 35).

Response to Finding No. 11

Respondents concur.

12. Respondents practice a science they call BioMolecular Nutrition. (CX 21).

Response to Finding No. 12

Respondent James Feijo created a combined spiritual and scientific approach to maintain the balance of bodily systems that he named BioMolecular Nutrition.

13. According to Respondents, "[t]here are two aspects of BioMolecular Nutrition, the spiritual and the physical." (CX 21).

Response to Finding No. 13

Respondents concur.

14. “The principles of BioMolecular Nutrition were those missing principles needed to bind together those of the nutritionists and the biochemists.” (CX 21).

Response to Finding No. 14

Respondents concur.

15. 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.” (CX 21).

Response to Finding No. 15

Respondents concur that they made this statement.

- B. **The FTC Has Jurisdiction Over Respondent DCO, which is a Corporation within the Meaning of Section 4 of the FTC Act, and Respondent James Feijo**

Respondents’ Response:

The FTC Lacks Jurisdiction Over Respondent DCO, which is a Non-Profit,

Charitable, Religious Corporation Sole and Not a

Corporation Within the Meaning of Section 4 of the FTC Act, and Over

Respondent James Feijo, the Overseer of Daniel Chapter One

16. Respondent DCO was previously incorporated as “Daniel Chapter One, Inc.,” a Rhode Island for-profit corporation, on October 30, 1990. (CX 50; J. Feijo, HOJ Tr. 101).

Response to Finding No. 16

Between 1990 and 1997, annual for-profit corporation reports, of which Overseer Feijo has only a vague recollection, were filed on behalf of a corporation with the

name Daniel Chapter One, Inc. with the State of Rhode Island. During that time, Daniel Chapter One, Inc.'s corporate status was repeatedly revoked, and for significant periods of time between 1991 and 1997, Daniel Chapter One, Inc. was not recognized by Rhode Island as a corporation in good standing. Respondent James Feijo never intended for DCO to be a for-profit corporation. The Challenged Products were created after Daniel Chapter One, Inc.'s corporate status was revoked (HOJ, Feijo, J., Tr. 124-25).

17. Respondent DCO's Articles of Incorporation from 1990 state that the purposes for which Daniel Chapter One, Inc. was organized were: "To engage in the sale, retail, wholesale and distribution of health products, including but not limited to health foods and supplements, namely those with special nutritive qualities and values." (CX 50; J. Feijo, HOJ Tr. 101-02).

Response to Finding No. 17

See Response to Finding No. 16. Also, the documents constituting CX 50 do not accurately reflect the manner in which Respondent DCO was conducting its activities. Instead of acting as a business engaged in the "sale, retail, wholesale, and distribution of health products," DCO was in fact a house ministry, a home church, and a home fellowship. These ministry activities were based on biblical principles and were designed to fulfill the spiritual needs of the ministry's constituents. These activities included: holding religious meetings, performing baptisms, delivering babies, performing marriage ceremonies, and making healings (HOJ, Feijo, J., Tr. 180-82). Eric Chappell, a lawyer and designated local agent named in DCO's Articles of Incorporation in Rhode Island, may have

prepared the corporate documents (HOJ, Feijo, J., Tr. 200). James Feijo never intended to incorporate DCO as a for-profit corporation (HOJ, Feijo, J., Tr. 200-202). DCO frequently gave away its products free of charge (R 15 (Feijo, J., Dep. at 210-11); HOJ, Feijo, J., Tr. 137, 184; HOJ, Feijo, P., Tr. 274). DCO makes no profit from any of its activities (R 15 (Feijo, J., Dep. at 40-43, 67, 165, 191, 193, 196, 209-10, 236); R 16 (Feijo, P., Dep. at 50-51); HOJ, Feijo, J., Tr. 313, 316), including providing information through print or through its website, or from its radio show (HOJ, Feijo, J., Tr. 188).

18. Consistent with its status as a for-profit corporation incorporated in Rhode Island, Respondent DCO filed annual reports from 1991 through 1997, during which time the stated character of the business remained substantially similar, namely “To engage in the sale, retail, wholesale and distribution of health products, including health foods and supplements.” (CX 50; J. Feijo, HOJ Tr. 102-08).

Response to Finding No. 18

Respondents deny that DCO was ever a for-profit corporation and that it ever made a profit, and note that if DCO was ever a for-profit corporation, it ceased being one after its standing in Rhode Island was revoked (CX 50). Respondents also note that James Feijo has no recollection of how DCO was organized under the Rhode Island articles of incorporation, or of filing any annual reports (HOJ, Feijo, J., Tr. 107, 120-24).

19. Each of these for-profit corporation annual reports bears the signature of Respondent James Feijo. (J. Feijo, HOJ Tr. 102-08).

Response to Finding No. 19

Respondents concur that the signatures appear to belong to Respondent James Feijo's, but note that James Feijo does not recall ever having signed the documents (HOJ, Feijo, J., Tr. 106, 197).

20. DCO is not registered with the Internal Revenue Service as a charity. (R15 (J. Feijo, Dep. at 45); J. Feijo, HOJ Tr. 209).

Response to Finding No. 20

DCO has always been a religious ministry, and later became a corporation sole (HOJ, Feijo, J., Tr. 236-38). Churches, religious orders, and religious corporation soles are not required to register with the IRS. 26 U.S.C. § 501(c)(3)).

1. Respondents Are Engaged in Commerce

21. Respondents distribute the DCO Products in commerce. (Answer ¶ 4; R15 (J. Feijo, Dep. at 102); Marino, HOJ Tr. 53-55; Harrison, Tr. 295-96).

Response to Finding No. 21

Respondents do not distribute DCO products in commerce. Respondents frequently give away DCO products free of charge, works through churches or church related organizations or through members of its fellowship (R 15 (Feijo, J., Dep. at 209-11); R 16 (Feijo, P., Dep. at 69); HOJ, Feijo, J., Tr. 137, 184-88; HOJ, Feijo, P., Tr. 274; HOJ, Mink, Tr. 293-94; HOJ, Hicks, Tr. 306-07).

22. Anyone can buy and use DCO products, including people who do not believe in God. (Marino, HOJ Tr. 55; P. Feijo, Tr. 410-11).

Response to Finding No. 22

Any interested person may *obtain* DCO products (Feijo, P., Tr. 410-11).

Respondents' goal is to reach out to followers of its ministry or any other interested persons to inform them about Respondents' perspectives on the integration of spiritual and physical well-being (Feijo, P., Tr. 325-26).

23. Respondent DCO has an 800 number and a call center for consumers to purchase the DCO Products. (R16 (P. Feijo, Dep. at 67); J. Feijo, HOJ Tr. 212; P. Feijo, HOJ Tr. 273-74; J. Feijo, HOJ Tr. 168, 204, 211-12).

Response to Finding No. 23

Respondent DCO has a toll-free telephone number that enables followers of its ministry to obtain dietary supplements and discuss their physical and spiritual well-being and order dietary supplements to support their well-being (Feijo, P., Tr. 357-58).

24. Respondent James Feijo created, managed, and maintained the toll-free telephone number, designed so that consumers can order the DCO Products. (CX 39).

Response to Finding No. 24

Respondent James Feijo created, managed, and maintained the toll-free telephone number so that followers of his ministry and other interested persons may call and discuss their physical and spiritual well-being and order dietary supplements in support of their well-being (Feijo, P., Tr. 357-58).

25. 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." (CX 17).

Response to Finding No. 25

Respondents have no specific response.

26. Respondents operate the Web site www.danielchapterone.com. (Answer ¶ 5; R15 (J. Feijo, Dep. at 62)).

Response to Finding No. 26

Respondents concur.

27. DCO also operates the Web sites dclpages.com and dclstore.com. (R15 (J. Feijo, Dep. at 232-33)).

Response to Finding No. 27

Respondents concur.

28. Respondents advertise their products on the Internet through the BioGuide, the Cancer Newsletter, and The Most Simple Guide to the Most Difficult Diseases, each of which is available to read or download from the Internet. (CX 1; CX 13 at FTC-DCO 0013; CX 13A at FTC-DCO 2828A; CX 29 at FTC-DCO 0430; P. Feijo, Tr. 395; J. Feijo, Tr. 453-55; Tr. at 264).

Response to Finding No. 28

Respondents do not advertise DCO dietary supplements. Evidence shows that most of the viewers and users of DCO's website are followers of DCO's ministry who visit DCO's website to obtain more information about DCO's products (R 15 (Feijo, J., Dep. 151-152)). Respondent DCO has no advertising budget (Feijo, J., Tr. 459, 464). Respondents do not advertise for their products through the BioGuide, the Cancer Newsletter, or the Most Simple Guide. The BioGuide was intended for sharing the Feijos' own religious testimony, and quotes verses from the Bible (R 16 (Feijo, P., Dep. at 117); Feijo, J., Tr. 452-53). The Cancer Newsletter, a one-time brochure reprinted once with minor updates, was intended for sharing testimony from users of DCO's products (Feijo, J., Tr. 452). The Most

Simple Guide was originally created for doctors at those doctors' request for information on the DCO products that people have found to be helpful (Feijo, J., Tr. 453-54).

29. Consumers learn of DCO's 800 number from the DCO Web site, the BioGuide, and Respondents' radio program, "Daniel Chapter One Health Watch." (P. Feijo, HOJ Tr. 273-74; CX 21; CX 29 (FTC-DCO 0451)).

Response to Finding No. 29

DCO's website, BioGuide, and Respondents' radio show are intended to provide information about Respondents' perspectives on spiritual and physical well-being, and do not promote DCO's products (CX 2, CX 21, CX 5). DCO's website enables the followers of Respondents' ministry to obtain DCO's products, and such followers would understand that the money they send in is a donation in support of the ministry (R 15 (Feijo, J., Dep. 151-152)). The BioGuide was intended for sharing the Feijos' own religious testimony, and quotes verses from the Bible (R 16 (Feijo, P., Dep. at 117); Feijo, J., Tr. 452-53). The radio show enables followers of Respondents' ministry to discuss their physical and spiritual well-being and to learn about non-drug approaches to balancing the body, mind, and spirit, including the use of dietary supplements to support their well-being, and does not promote DCO's products (R 15 (Feijo, J., Dep. at 238-39); R 16 (Feijo, P., Dep. at 92-93, 95); HOJ, Feijo, J., Tr. 221-24; HOJ, Feijo, P., Tr. 272-74).

30. The "Daniel Chapter One Health Watch" radio program is broadcast on the "Accent

Radio Network,” a subsidiary of Respondent DCO. (CX 32; R15 (J. Feijo, Dep. at 235).

Response to Finding No. 30

Accent Radio Network is not a subsidiary of Respondent Daniel Chapter One, and Respondents note the lack of documentary evidence to that effect (HOJ, Feijo, J., Tr. 112, 202-03; HOJ, Harrison, Tr. 246).

31. The Accent Radio Network Web site states, “Put your money where our mouth is: Accent Radio Network! We can do it for you whether you’re in a small local market or you want to hit the big time.” (CX 32). The Web site also contains an advertising schedule, which lists Accent Radio Network’s advertising rates. (CX 32; J. Feijo, HOJ Tr. 112).

Response to Finding No. 31

CX 32 does not support this proposed finding. Respondents’ copy of CX 32 consists only of page FTC-DCO 0498, and includes only introductory information about Accent Radio Network. Any revenue that Accent Radio Network receives from selling advertising time is insufficient to even support itself (R 15 (Feijo, J., Dep. at 236-37)). DCO maintains no program to sell radio advertising, has sold no such advertising, and actually pays to use the time it obtains on broadcasting networks (R 16 (Feijo, P., Dep. at 104)).

32. Respondent James Feijo’s daughter, Jill Feijo, has supervised Respondent DCO’s Order Center for the past nine years and has taken telephone orders. (CX 39; J. Feijo, HOJ Tr. 204).

Response to Finding No. 32

Respondents have no specific response.

33. DCO also accepts consumers’ orders on the Internet. (P. Feijo, Tr. 397; Marino, HOJ Tr. 54).

Response to Finding No. 33

The evidence shows that it is the followers of DCO's ministry, and not "consumers," who obtain DCO's dietary supplements via the internet (Feijo, J., Dep. 151-152).

34. DCO's Web site contains a tab inviting consumers to shop at DCO's "On-Line Store." (CX 12-15, 43).

Response to Finding No. 34

The evidence shows that (1) it is the followers of DCO's ministry, not "consumers," who obtain DCO's dietary supplements via the internet; (2) such persons likely hear about the website through DCO's radio show; and (3) such persons would understand that any money they send constitutes a donation in support of the ministry (R 15 (Feijo, J., Dep. 151-152)).

35. DCO's Web site contains an icon inviting consumers to "Buy Now." (CX 12; CX 12A; CX 13; CX 13A; CX 14; CX 14A; CX 15; CX 43; J. Feijo, HOJ Tr. 144).

Response to Finding No. 35

CX 15 and CX 43 do not support this finding. Furthermore, the pages on the dc1store.com website are from a "canned," or pre-designed, computer program.

Respondent James Feijo would like to change certain terms used in that program, but it is expensive to hire someone to do so (R 15 (Feijo, J., Dep. at 149-152)). In addition, the "Buy Now" icon appears only inconspicuously on the side of the webpage constituting CX 12; the icon appears only once in the entire 15 pages constituting CX 13; and CX 14 has no such icon, but rather only two very

inconspicuous links in fine print on the side of one page.

36. 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. (R15 (J. Feijo, Dep. at 232)).

Response to Finding No. 36

The above-mentioned 30 percent constitutes only the cost of production (R 15 (Feijo., J, Dep. at 232)). There are many other costs involved, and DCO makes no net profit from its products (R 15 (Feijo, J., Dep. at 40, 42-43, 165); R 16 (Feijo, P., Dep. at 65); HOJ, Feijo, J., Tr. 313, 316). Also, Respondents do not "charge" "consumers" for DCO's products. The price is a suggested donation amount from the followers of DCO's ministry and other interested persons (R 15 (Feijo, J., Dep. at 146-147, 210-12)). The suggested donation amount is fair and reflects the extrinsic value of the products (HOJ, Mink, Tr. 286-89). In addition, DCO has a program that provides products at free or reduced prices to individuals whose ministry vouches for them (HOJ, Mink, Tr. 283-86).

37. Over a thousand consumers have purchased DCO's products. (R16 (P. Feijo, Dep. at 57)).

Response to Finding No. 37

There is no evidence that "over a thousand consumers have purchased" DCO's products. Patricia Feijo stated that she does not know the number of people who have obtained DCO's products (R16 (P. Feijo, Dep. at 57)). Furthermore, "consumers" do not "purchase" DCO's products. The price is a suggested

donation amount from the followers of DCO's ministry and other interested persons seeking to learn about or use agents that are alternative and complementary to pharmaceutical agents (R 15 (Feijo, J., Dep. at 146-47, 210-12)).

38. Respondents have generated approximately \$2 million in annual sales for the years 2006, 2007, and 2008 for all of DCO's two-hundred products. (CX 44; R15 (J. Feijo, Dep. at 206, 212); J. Feijo, HOJ Tr. 109, 223-24).

Response to Finding No. 38

Page 206 of James Feijo's deposition, as cited by Complaint Counsel, does not support this finding. Respondents James Feijo did testify that the total annual current contributions to the ministry are about \$1.7 million per year and that donations via the web are a small percentage of that amount (R 15 (Feijo, J., Dep. at 223-25)). Even though Respondents have provided \$1.7 million worth of DCO dietary supplements, Respondents make no net profit from their products (R 15 (Feijo, J., Dep. at 40, 42-43, 165); R 16 (Feijo, P., Dep. at 65); HOJ, Feijo, J., Tr. 313, 316). Respondents have often received no donation for its their dietary supplements, and at other times have received much less than the suggested donation amount (R 15 (Feijo, J., Dep. at 38, 146-47, 155, 209-11); R 16 (Feijo, P., Dep. at 64, 68-69); HOJ, Feijo, J., Tr. 137, 184-88, 313; HOJ, Feijo, P., Tr. 274; HOJ, Mink, Tr. 283-86, 291, 293-94; HOJ, Hicks, Tr. 306-07).

39. There is no indication in the BioMolecular Nutrition Product Catalog that the price listed is for a donation. (R15 (J. Feijo, Dep. at 158); R16 (P. Feijo, Dep. at 76-77); J. Feijo, HOJ Tr. 140).

Response to Finding No. 39

The evidence shows that the BioMolecular Nutrition Product Catalog was printed once and likely is no longer in use (R 15, Feijo, J., Dep. at 159; R 16, Feijo, P., Dep. at 75-77). Furthermore, Patricia Feijo was not familiar with the BioMolecular Nutrition Product Catalog until it was shown to her the night before her deposition (R 16 (Feijo, P., Dep. at 75-77)). Therefore, Complaint Counsel's above citation to Patricia Feijo's deposition does not support its Proposed Finding No. 39. In addition, as a one-time publication, there is no indication that the Product Catalog is a primary, or even significant, source of information about DCO's activities.

40. There is no mention of the DCO ministry in the BioMolecular Nutrition Product Catalog. (R15 (J. Feijo, Dep. at 161)).

Response to Finding No. 40

See Response to Finding No. 39. The evidence shows that the BioMolecular Nutrition Product Catalog was printed once and is no longer in use (R 15 (Feijo, J., Dep. at 159); R 16 (Feijo, P., Dep. at 75-77)).

41. On January 3, 2008, FTC investigator Michael Marino ("Marino") purchased the DCO Products from Respondents' Web site. (CX 10; Marino, HOJ Tr. 53-55, 62-67).

Response to Finding No. 41

Any evidence of the undercover "purchase" of dietary supplements through the DCO website would be a characterization given the transaction by Complaint Counsel or their investigator. Respondents have repeatedly testified that they treat all money from the website and other parts of the ministry as donations.

Investigator Marino was directed to the web site by FTC officials seeking to prosecute Respondents (R 11 (Marino, Dep. at 16-18)). There is no evidence that anyone not seeking alternative and complementary products to conventional chemotherapeutic medical treatments would seek, or even know to look for, dietary supplements from Respondents.

42. At the time of Marino's purchase, each of the DCO Products was displayed on Respondents' Web site with a picture of the product, a short description of the product, and a corresponding price. (Marino, HOJ Tr. 54).

Response to Finding No. 42

The term "price" on the DCO website is part of the "canned" software used by the ministry that is expensive and difficult to change (Feijo, J., Dep. 149-152).

43. There were no indications on Respondents' Web site that the DCO Products could be obtained in exchange for a donation, that these products could be purchased for a reduced price, or that these products could be received for free. (Marino, HOJ Tr. 54-55).

Response to Finding No. 43

Respondents do not advertise the existence of the website. The evidence shows that most of the viewers and users of the website become aware of its existence from listening to the ministry's radio programs. Those viewers/users would be aware that they are receiving agents alternative and complementary to chemotherapeutic agents and that they are making donations to the ministry (R 15 (Feijo, J., Dep. 151-152)). The availability of products for free or for a reduced donation is made known to people who indicate that they have limited resources (R 16 (Feijo, P., Dep. at 64, 68)). These people are either given free products or

may go to a church and have the minister vouch for them (R 16 (Feijo, P., Dep. at 64, 68); R 15 (Feijo, J., Dep. at 38, 146-47); HOJ, Mink, Tr. 283-86, 291).

44. 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. (CX 33; Marino, HOJ Tr. 56-59).

Response to Finding No. 44

Respondents have no specific response.

45. One of the emails Marino received, which was sent the day after he purchased the DCO Products, stated, "We appreciate your business with us," and offered a ten percent discount on a subsequent purchase. (Marino, HOJ Tr. 59).

Response to Finding No. 45

Respondents have no specific response.

46. On or about January 24, 2008, Marino received the DCO Products. (CX 34; Marino, HOJ Tr. 60).

Response to Finding No. 46

Respondents have no specific response.

47. 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. (CX 34; Marino, HOJ Tr. 55-56, 61).

Response to Finding No. 47

Respondents have no specific response.

48. 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. (CX 34; Marino, HOJ Tr.

60).

Response to Finding No. 48

CX 34 does not support this proposed finding. Page FTC-DCO 2943 of CX 34

states at the top:

Daniel Chapter One
1028 E Main Road
P.O. Box 223
Portsmouth, RI 02871-0223

49. The shipment of the DCO Products did not contain any documents indicating that the purchase was a “donation” or thanking the purchaser for making a “donation” to Daniel Chapter One. (CX 34; Marino, HOJ Tr. 60).

Response to Finding No. 49

If ordering products through DCO’s website, a person would know before receiving the products that any money given constitutes a donation. As previously mentioned, persons who obtain DCO products through DCO’s website are aware that they are making donations to the ministry (R 15 (Feijo, J., Dep. at 151-52)). If ordering products through DCO’s call center, a person would be informed during the call that any money given for a product constitutes a donation (R 16 (Feijo, P., Dep. at 64)).

50. 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.” (CX 34; Marino, HOJ Tr. 58, 60).

Response to Finding No. 50

Respondents have no specific response.

51. DCO's shipping and handling fees for its products are \$20.95. (R15 (J. Feijo, Dep. at 152-53)).

Response to Finding No. 51

Respondents have no specific response.

52. DCO offers coupons to consumers for their next online store order. (R15 (J. Feijo, Dep. at 154); Marino, HOJ Tr. 59; J. Feijo, HOJ Tr. 149-50).

Response to Finding No. 52

Respondents have no specific response.

53. Respondents run promotions from time to time to "give [consumers] more of an opportunity to . . . get things at a lower rate." (R15 (J. Feijo, Dep. at 154)).

Response to Finding No. 53

Respondent James Feijo never used the word "consumers" in the sentence above.

In the sentence above, James Feijo actually used the word "people," which

Complaint Counsel replaced with the word "consumers." In using the word

"people," James Feijo was referring to the followers of his ministry and other

persons who are interested in DCO and its products (R15 (J. Feijo, Dep. at 154)).

54. For example, consumers can buy multiple bottles and get a bottle free. (R15 (J. Feijo, Dep. at 232)).

Response to Finding No. 54

See Response to Finding No. 53 regarding the use of the term "consumers." In

addition, Complaint Counsel has taken the sentence out of context. James Feijo

was proceeding to explain how interested persons are able to obtain an extra bottle

if they are in need and cannot afford to make a donation (R15 (Feijo, J., Dep. at 232)).

55. Consumers can also join DCO's Bucket-A-Month Club to obtain volume discounts on DCO's products. (CX 29 at FTC-DCO 0430; J. Feijo, HOJ Tr. 140-41).

Response to Finding No. 55

The purpose of the Bucket-A-Month Club is not to give incentives to "consumers" to buy DCO's products, but rather to make products available to followers of DCO's ministry or other interested persons who cannot afford to make a donation (HOJ, Feijo, J., Tr. 141). "Interested persons" specifically means those who share DCO's view that using agents that are alternative and complementary to pharmaceutical agents is healthier and more in line with their views of humanity, values, and spiritual and physical health ((R 16 (Feijo, P., Dep. at 80-81; Feijo, P. Tr. 337-40, 342, 349, 356-57, 404, 412-413)).

56. 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." (CX 17 (emphasis added)).

Response to Finding No. 56

The pages on the dc1store.com website are from a "canned" program.

Respondent James Feijo would like to change certain terms used in that program, but it is expensive to hire someone to do so (Feijo, J., Dep. at 149-152).

57. Respondents' Cancer Newsletter, entitled How to Fight Cancer is Your Choice!!!, costs \$5.95. (CX 23; CX 24).

Response to Finding No. 57

Respondent DCO has never charged money for the Cancer Newsletter (Feijo, P., Tr. 387). The price, which is in small font and printed inconspicuously on the very last page, is merely the suggested value. There is no evidence that anyone has ever paid for the Cancer Newsletter (Feijo, P., Tr. 387).

58. In their Cancer Newsletter, Respondents instruct consumers to call “1-800-504-5511” to order their products. (CX 23; CX 24).

Response to Finding No. 58

Respondents’ Cancer Newsletter does not “*instruct*” consumers to call 1-800-504-5511 to order their products. Instead, the 800-number is passively listed at the bottom of the web page in a font size/style that is not inconsistent with the font used throughout the Newsletter (CX 23; CX 24). In addition, the Cancer Newsletter is not intended for “consumers.” Instead, the purpose of the Cancer Newsletter is to share testimonies and product information with Respondents’ ministry and other interested persons – persons seeking something other than chemotherapeutic agents (Feijo, P., Tr. 387).

59. In their Cancer Newsletter, Respondents state that their “[l]atest Bioguide” is “[o]nly \$9.95.” (CX 23; CX 24).

Response to Finding No. 59

Respondent DCO has never charged money for the Bioguide (Feijo, P., Tr. 389). As for all of the literature that DCO has published, the price shown is merely the suggested value (Feijo, P., Tr. 387). In addition, Complaint Counsel’s Proposed

Finding No. 60 supports the fact that Respondents do not charge money for the Cancer Newsletter, as interested persons may download the Cancer Newsletter for free.

60. The Cancer Newsletter is available online on DCO's web site. (CX 13 at FTC-DCO 0013; CX 13A at FTC-DCO 2828A; Tr. 264).

Response to Finding No. 60

The Cancer Newsletter may be downloaded for free from DCO's website (CX 13; [Turner], Tr. 264).

61. Respondents' publication entitled The Most Simple Guide to the Most Difficult Diseases: The Doctors' How-To Quick Reference Guide costs \$12.95. (CX 20).

Response to Finding No. 61

DCO has never charged money for The Most Simple Guide (Feijo, P., Tr. 383-84). The price is merely the suggested value. In addition, Complaint Counsel's Proposed Finding No. 62 supports the fact that Respondents do not charge money for The Most Simple Guide, as interested persons may download the Guide for free (Feijo, P. Tr. 395; Feijo, J., Tr. 453-455).

62. The Most Simple Guide can be accessed by anyone online. (P. Feijo, Tr. 395; J. Feijo, Tr. 453-55).

Response to Finding No. 62

Respondents have no specific response.

63. A number of stores nationally sell DCO's products, including stores in Georgia and a store in Pennsylvania. (R16 (P. Feijo, Dep. at 72)).

Response to Finding No. 63

Patricia Feijo was asked by Complaint Counsel how many stores *carry*, and not how many stores *sell*, DCO products. There are “not that many” stores which carry DCO’s products (R 16 (Feijo, P., Dep. at 72)). There are “a couple” of such stores in Georgia, “one or two” in Florida, and one in Pennsylvania (R 16 (Feijo, P., Dep. at 72)), all of which are similar ventures managed by individuals who share Respondents’ view of the need for the balancing of mind, body, and spirit (R 16 (Feijo, P., Dep. at 71, 73); J. Feijo, HOJ Tr. 189; HOJ, Mink, Tr. 289-90, 311-12; Harrison, Tr. 296-97).

64. Respondents use distributors in various states who carry DCO’s products. (J. Feijo, HOJ Tr. 132-35).

Response to Finding No. 64

Respondents’ “distributors” are actually followers of Respondents’ ministry or are otherwise well aware of DCO’s religious principles (R 16 (Feijo, P., Dep. at 71, 73); J. Feijo, HOJ Tr. 189; HOJ, Mink, Tr. 289-90, 311-12; Harrison, Tr. 296-97).

65. Respondents have created a brochure entitled “The Truth Will Set You Free” to convince companies to become carriers of DCO products. (CX 22; J. Feijo, HOJ Tr. 135). Among the benefits listed in the brochure are financial rewards such as “boost[ed] sales” and “earnings potential.” (CX 22; J. Feijo, HOJ Tr. 136). The brochure also states that Respondent DCO “is the ONLY nutrition company where the owners personally tell thousands of people to visit your office or store.” (CX 22).

Response to Finding No. 65

Respondents’ brochure is not meant to convince companies to carry DCO

products. Respondents do not solicit companies to carry their products (R 16 (Feijo, P., Dep. at 71)). The stores and doctors' offices that carry DCO products have approached DCO on their own initiative, and have done so because they are part of DCO's ministry or are otherwise in support of DCO's religious message (R 16 (Feijo, P., Dep. at 71)). Furthermore, in their brochure, Respondents make clear from the initial pages that DCO's mission is religion-based and that DCO's goal is to help people attain a better quality of life. It urges readers of the brochure to "call DCO today and make a difference" (CX 22).

66. Respondent have called some distributors of DCO products "silver-line carriers" and "gold-line carriers." (J. Feijo, HOJ Tr. 125). "Gold-line carriers" maintain a broader range of products than the "silver-line carriers." (J. Feijo, HOJ Tr. 126).

Response to Finding No. 66

Respondents have no specific response.

67. Respondents' distributors have included stores such as Nature's Pharmacy in Altoona, Florida; Herb Shop Unlimited, in Adel, Georgia; The Poppyseed in Peculiar, Missouri; Herbal Connection in Lake Park, Georgia; Beehive Natural Foods in Poplar Bluff, Missouri; Discount Nutrition in Monroeville, Pennsylvania; and Organic Pride in Plant City, Florida. (J. Feijo, HOJ Tr. 131-32).

Response to Finding No. 67

See Response to Finding No. 63. Respondents have no further specific response.

68. Respondents' distributors have also included chiropractic centers. (J. Feijo, HOJ Tr. 134-35).

Response to Finding No. 68

The chiropractic centers that carry DCO products are owned by members or

