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

DOCKET NO. 9329

**IN THE MATTER OF
DANIEL CHAPTER ONE, a corporation**

and

JAMES FEIJO, individually and as an officer of Daniel Chapter One

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October 20, 2009

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INTRODUCTION

Judge Chappell got it right. He made 425 detailed findings of fact and then applied well-established precedent to those findings. Based on those findings and conclusions, Judge Chappell issued a cease and desist Order consistent with Federal Trade Commission (“FTC”) practice and precedent.

Regarding jurisdiction, Judge Chappell correctly found that Respondent Daniel Chapter One (“DCO”) operates a multi-million dollar commercial enterprise, and that Respondent James Feijo (“Feijo”) treats DCO’s funds as his own. The ALJ correctly found that the FTC has jurisdiction over both Respondents.

Regarding the advertisements, Judge Chappell correctly found that a facial analysis of Daniel Chapter One’s advertisements for Bio*Shark, 7 Herb Formula, GDU, and BioMixx (the “Challenged Products”) demonstrates that Respondents made claims that their products could treat, cure, or prevent cancer, inhibit tumors, or ameliorate the adverse effects of radiation and chemotherapy. They told consumers **“How to fight cancer is your choice!”** and that the Challenged Products were “Daniel Chapter One’s Cancer solution” which would “stop tumor growth” and “battle cancer.” The record in this case reveals that Respondents lacked any reasonable substantiation for those claims, making those claims deceptive.

In their appeal, Respondents make no effort to demonstrate that the ALJ’s Findings of Fact were not supported by the evidence. Indeed, in this advertising case, the Respondents discuss everything but the advertisements at issue. Respondents’ decision to ignore their advertisements is not surprising, because the advertisements at issue make the claims alleged in the Complaint.

Similarly, Respondents make no serious effort to distinguish the legal authority relied

upon by Judge Chappell. Rather, Respondents spout rhetoric invoking Due Process and the First Amendment but ignore the long string of well-established precedents on which Judge Chappell relied and based his decision.

Respondents build their argument on a flawed foundation. Respondents premise their rhetoric on the notion that absent extrinsic evidence they can only be found liable for the exact words used in their advertisements. Respondents assert that because the claims alleged in the Complaint go beyond the exact words of their advertisements and Complaint Counsel offered no extrinsic evidence, the ALJ erred in finding that the claims alleged in the Complaint were made. Respondents ignore and fail to distinguish the well-recognized body of law (upon which the ALJ relied) finding that a court and the Commission can conduct a facial analysis of the advertisements to determine what claims were made. Indeed, rather than addressing the detailed findings of fact made by the ALJ concerning the claims made by the advertisements, Respondents simply ignore them and then complain that the ALJ adjudicated by presumption. Respondents' decision to ignore the claims conveyed by their advertisements does not make those advertisements disappear.

Respondents build upon this error in discussing substantiation. Respondents at trial proffered "experts" who were not even medical doctors, who could not and did not opine on whether DCO possessed substantiation for the claims alleged in the Complaint. Rather, DCO's experts limited their opinions to selected excerpts from some of the advertisements. The ALJ correctly noted this error, but the Respondents continue to argue in this fashion on appeal. Respondents ignore that a facial analysis of the advertisements reveals that the Respondents tout the Challenged Products as effective cancer and tumor treatments and then chastize the ALJ for relying on a world-recognized oncologist to find the claims made unsubstantiated. Respondents

ignore that the advertisements tout the Challenged Products as effective cancer and tumor treatments and argue that because no cancer treatment claims were made they need not offer the level of substantiation necessary to support such claims.

Respondents' First Amendment argument, the penthouse in this house of cards, rests on the same shaky foundation. The ALJ correctly found that because the advertisements were deceptive they were entitled to no First Amendment protection. Based on the same flawed arguments, Respondents assert that the advertisements have not been adequately shown to be false and, therefore, First Amendment protection applies.

The ALJ's Initial Decision contains detailed findings of fact well supported by the evidence and applies straight-forward and well-established law to those facts. Nothing in the Respondents' rhetoric changes that. The Initial Decision should be affirmed.¹

STATEMENT OF FACTS

A. History of the Proceedings

On September 16, 2008, the FTC issued the Complaint in this matter. The Court held a hearing on jurisdiction on April 21, 2009. On April 22, 2009, the ALJ issued a ruling from the bench that Complaint Counsel had demonstrated, by a preponderance of the evidence, that jurisdiction exists in the case. The trial commenced on April 23, 2009 and the testimonial portion concluded on April 27, 2009. Closing arguments were heard on July 9, 2009. A total of eleven witnesses testified at the hearing on jurisdiction and at trial. In an initial decision filed on

¹ On appeal, the Commission may make its own legal determinations and *de novo* factual findings from the hearing record. *See* 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also* Federal Register, Vol. 74, No. 8 (16 CFR Parts 3 and 4 Rules of Practice; Final Rule) (January 13, 2009).

August 5, 2009 (the “Decision”), the ALJ found that the FTC has jurisdiction over Respondents, held that Respondents are liable under Sections 5(a) and 12 of the FTC Act, and issued a cease and desist Order.

B. Summary of the Relevant Facts

1. DCO Operated as a For-Profit Enterprise to Funnel Money to the Feijos.

DCO opened as a health food store in 1986. F. 12.² From 1990 to 1997, DCO was a for-profit Rhode Island corporation that was organized “[t]o 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.” F. 22-27. In 2002, DCO was organized as a corporation sole under Washington state laws. F. 28. James Feijo serves as DCO’s overseer and trustee for all DCO assets. F. 5-6. Patricia Feijo is Respondent James Feijo’s wife and DCO’s Secretary. F. 7.

DCO is a multi-million dollar commercial operation run by James Feijo, who treats DCO’s assets as his own to completely support himself and his family. DCO pays all of the Feijos’ living expenses. F. 58. James Feijo does not have his own individual bank account. F. 76. Sometime in the mid-1990s, James Feijo stopped paying personal income taxes. F. 78, Transcript of Hearing on Jurisdiction at p. 78. Respondents do not maintain any records of how much DCO money is spent on the Feijos’ living expenses. F. 59. However, it is undisputed that Mr. and Mrs. Feijo use DCO’s funds so that they can (i) live in and make use of two houses, one in Florida on country club land with a pool in the back; and (ii) drive two Cadillacs. Moreover, Complaint Counsel obtained banking records showing that James Feijo has frequently used an

² “F. _” refers to the ALJ’s Findings of Fact set forth in the Decision at pp. 6-66.

