

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<hr/>)
UNITED STATES OF AMERICA)
DEPARTMENT OF JUSTICE,)
)
Plaintiff,)
)
v.)
)
DANIEL CHAPTER ONE, <i>et al.</i> ,)
)
Defendants.)
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Civil Action No. 10-1362 (EGS)

ORDER

For the reasons stated in the accompanying Memorandum Opinion issued on this date, it is hereby

ORDERED that the United States' motion for entry of final judgment is **GRANTED**; and it is

FURTHER ORDERED as follows:

I. DEFINITIONS

For the purpose of this Order, the following definitions apply:

- A. "Business" means any business, including a business carried on not for its own profit or the profit of its members.
- B. "Defendants" mean the Corporate Defendant and the Individual Defendant, individually, collectively, or in any combination.
 - 1. "Corporate Defendant" means Daniel Chapter One,

and its successors and assigns.

2. "Individual Defendant" means James Feijo.

C. "Dietary supplement" means:

1. any product labeled as a dietary supplement or otherwise represented as a dietary supplement; or
2. any pill, tablet, capsule, powder, softgel, gelcap, liquid, or other similar form containing one or more ingredients that are a vitamin, mineral, herb or other botanical, amino acid, probiotic, or other dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of any ingredient described above, that is intended to be ingested, and is not represented to be used as a conventional food or as a sole item of a meal or the diet.

II. MONETARY JUDGMENTS FOR EQUITABLE RELIEF AND CIVIL PENALTIES

It is **FURTHER ORDERED** that:

- A. Judgment in the amount of \$1,345,832.43 is entered in favor of Plaintiff against Defendants, jointly and severally, as equitable monetary relief.
- B. Judgment in the amount of \$3,528,000, is entered in favor of Plaintiff against Defendants, jointly

and severally, as civil penalties.

- C. Defendants are ordered to pay of \$1,345,832.43 to the Commission within 7 days of entry of this Order by electronic fund transfer in accordance with instructions provided by a representative of the Commission.
- D. Defendants are ordered to pay \$3,528,000, to the Plaintiff, by making payment to the Treasurer of the United States. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions provided by a representative of Plaintiff.
- E. Defendants are required to submit to Plaintiff and the Commission their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.
- F. All money paid as equitable monetary relief pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that

direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have no right to challenge any actions Plaintiff, the Commission, or its representatives may take pursuant to this Subsection.

III. BAN ON DIETARY SUPPLEMENTS

It is **FURTHER ORDERED** that Defendants are permanently restrained and enjoined from advertising, promoting, or offering for sale, selling, or distributing, or assisting others in the advertising, promoting, offering for sale, selling, or distributing, of any dietary supplement.

IV. BAN ON DISEASE CLAIMS

It is **FURTHER ORDERED** that Defendants are permanently restrained and enjoined from making, directly or indirectly, in connection with the advertising, promoting, or offering for sale, selling, or distributing, of any product or service, or assisting others in the advertising, promoting, offering for sale, selling, or distributing, of any product or service any

representation, expressly or by implication, that the product or service cures, treats, mitigates, prevents, or reduces the risk of any disease.

V. INJUNCTION AGAINST UNSUBSTANTIATED AND MISLEADING CLAIMS

It is **FURTHER ORDERED** that Defendants and their officers, agents, representatives, employees, and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently enjoined from making, directly or indirectly, in connection with the advertising, promoting, or offering for sale, selling, or distributing, of any product or service:

- A. any representation, expressly or by implication, about the health benefits, performance or efficacy of the product or service, unless the representation is true, non-misleading, and, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence, that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable evidence, to substantiate that the representation is true. For purposes of this Section, "competent and reliable scientific evidence" means tests, analyses, research, studies, that (1) have been

conducted and evaluated in an objective manner by qualified persons and (2) are generally accepted in the profession to yield accurate and reliable results;

- B.** any representation, expressly or by implication, about the benefits, performance, or efficacy of any product or service, unless the representation is true, non-misleading, and, at the time of making such representation, Defendants possess and rely upon competent and reliable evidence, which when appropriate based on the expertise of professionals in the relevant area must be competent and reliable scientific evidence, that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable evidence, to substantiate that the representation is true. For purposes of this Section, "competent and reliable evidence" means tests, analyses, research, studies or other evidence based on expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified, using procedures generally accepted in the profession to yield accurate and reliable results. For purposes of this Section, "competent and reliable scientific evidence" means

tests, analyses, research, studies, that (1) have been conducted and evaluated in an objective manner by qualified persons and (2) are generally accepted in the profession to yield accurate and reliable results; or

C. any misrepresentation of any fact material to consumers concerning the product or service, including its total costs, any material restrictions, limitations, or conditions, or its benefits, performance, efficacy, or other central characteristics.

VI. INJUNCTION AGAINST VIOLATING THE FTC ORDER

It is **FURTHER ORDERED** that Defendants and their officers, agents, representatives, employees, and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently enjoined from violating, directly or indirectly, any provision of the Commission's Modified Final Order, In the Matter of Daniel Chapter One and James Feijo, issued January 25, 2010, a copy of which is attached as Attachment A.

VII. PROHIBITIONS CONCERNING INFORMATION ON PAST CUSTOMERS

It is **FURTHER ORDERED** that Defendants and their officers, agents, representatives, employees, and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order are permanently

restrained and enjoined from directly or indirectly:

A. failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. Defendants must, within 21 days after the date this Order is entered, deliver to the Commission a list, in the form of a sworn affidavit, of all consumers who purchased any of the following products: BioShark, 7 Herb Formula, GDU, Endo 24, BioMixx, on or after April 10, 2010. Such list shall include each consumer's name and address (and, if available, the consumer's telephone number and email address), the quantity of each such product purchased, the amount paid for each, the total amount paid, and the date of the purchase. If a representative of the Commission requests in writing any information related to redress, Defendants must provide it, in the form prescribed by the Commission, within 14 days.

B. disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order;

and

- C. failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission. Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

VIII. ORDER ACKNOWLEDGMENTS

It is **FURTHER ORDERED** that Defendants obtain acknowledgments of receipt of this Order:

- A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 20 years after entry of this Order, Individual Defendant, for any business that such Defendant, individually or collectively with any other Defendant, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order;

and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order (including the attached Modified Final Order of the Commission).

IX. COMPLIANCE REPORTING

It is **FURTHER ORDERED** that Defendants make timely submissions to the Commission:

- A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission and Plaintiff may use to communicate with Defendant; (b) identify all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business,

including the products and services offered, the means of advertising, marketing, and sales; (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For 20 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission and Plaintiff may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of the other Defendant (which Individual Defendant must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order

Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.
- C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on:___" and supplying the date, signatory's full name, title (if

applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The subject line must begin: US v. DCO X100052.

X. RECORDKEEPING

It is **FURTHER ORDERED** that each Defendant must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendant, in connection with the advertising, promoting, or offering for sale, selling, or distributing of any product or service, and Individual Defendant for any business that such Defendant, individually or collectively with the other Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. accounting records showing the revenues from all products or services sold;
- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that

person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

- C. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- D. a copy of each unique advertisement or other promotional material containing any representation of the benefit, performance or efficacy of any product or service;
- E. all materials that were relied upon in disseminating the representation; and
- F. all tests, reports, studies, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

XI. COMPLIANCE MONITORING

It is **FURTHER ORDERED** that, for the purpose of monitoring Defendants' compliance with this Order, including any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission or Plaintiff, Defendants must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission and Plaintiff are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Order, the Commission and Plaintiff are authorized to communicate directly with each Defendant. Defendants must permit representatives of the Commission and Plaintiff to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. The Commission and Plaintiff may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order

limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

XII. RETENTION OF JURISDICTION

It is **FURTHER ORDERED** that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED.

**Signed: Emmet G. Sullivan
United States District Judge
March 31, 2015**

Attachment A

E. Unless otherwise specified, “Respondents” shall mean Daniel Chapter One and its successors and assigns, affiliates, or subsidiaries, and its officer, James Feijo, individually and as an officer of the corporation; and each of the above’s agents, representatives, and employees.

F. “Commerce” shall mean “commerce” as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

G. “Endorsement” shall mean “endorsement” as defined in 16 C.F.R. § 255.0(b).

II.

IT IS HEREBY ORDERED that Respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of BioShark, 7 Herb Formula, GDU, and BioMixx, or any substantially similar health-related program, service, or product, or any other Covered Product or Service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of product or program names or endorsements, that such health-related program, service, product, or Covered Product or Service prevents, treats, or cures or assists in the prevention, treatment, or cure of any type of tumor or cancer, including but not limited to representations that:

1. BioShark inhibits tumor growth;
2. BioShark is effective in the treatment of cancer;
3. 7 Herb Formula is effective in the treatment or cure of cancer;
4. 7 Herb Formula inhibits tumor formation;
5. GDU eliminates tumors;
6. GDU is effective in the treatment of cancer;
7. BioMixx is effective in the treatment of cancer; or
8. BioMixx heals the destructive effects of radiation or chemotherapy;

unless the representation is true, non-misleading, and, at the time it is made, Respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that Respondents, directly or through any person, corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product or Service, in or affecting commerce, shall not make any representation, in any manner, directly or by implication, including through the use of a product name, endorsement, depiction, or illustration, about the efficacy, performance, or health-related benefits of any Covered Product or Service unless the representation is true, non-misleading, and, at the time it is made, Respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

A. Nothing in this order shall prohibit Respondents from making any representation for any drug that is permitted in labeling for such drug under any tentative or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and

B. Nothing in this order shall prohibit Respondents from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall, within seven (7) days after the final and effective date of this order, deliver to the Commission a list, in the form of a sworn affidavit, of all consumers who purchased BioShark, 7 Herb Formula, GDU, and/or BioMixx, on or after January 1, 2005 and until the date this order becomes final and effective. Such list shall include each consumer's name and address, the product(s) purchased, and, if available, the consumer's telephone number and email address;

B. Within forty-five (45) days after the final and effective date of this order, Respondents shall send by first class mail, postage prepaid, an exact copy of the notice attached as Attachment A to all persons identified in Part V.A., above. The face of the envelope containing the notice shall be an exact copy of Attachment B. The mailing shall not include any other documents; and

C. Except as provided in this order, Respondents, and their officers, agents, servants, employees, attorneys, and representatives shall not sell, rent, lease, transfer, or otherwise disclose the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Respondent, at any time and until the date this order becomes final and effective, in connection with the purchase of BioShark, 7 Herb Formula, GDU, and/or BioMixx. *Provided, however,* that Respondents may disclose such identifying information to the FTC pursuant to Part V.A., above, or any law enforcement agency, or as required by any law, regulation, or court order.

VI.

IT IS FURTHER ORDERED that for a period of five (5) years after the last date of dissemination of any representation covered by this order, Respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VII.

IT IS FURTHER ORDERED that Respondents shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the final and effective date of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

IT IS FURTHER ORDERED that Respondent Feijo, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include the individual Respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Paragraph shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that Respondent DCO and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which Respondent DCO learns less than thirty (30) days prior to the date such action is to take place, Respondent DCO shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Paragraph shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

X.

IT IS FURTHER ORDERED that Respondents shall, within sixty (60) days after the final and effective date of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XI.

IT IS FURTHER ORDERED that this order will terminate on January 25, 2030, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any paragraph in this order that terminates in less than twenty (20) years;

B. This order's application to any Respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph. *Provided further*, that if such complaint is dismissed or a federal court rules that the Respondents did not violate any provision of this order, and the dismissal is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: January 25, 2010

ATTACHMENT A
LETTER TO BE SENT BY FIRST CLASS MAIL
[To be printed on letterhead of Daniel Chapter One]

[Name and address of recipient] [Date]

Dear [Recipient]:

Our records show that you bought [**names of products**] from our website [**name of website**] or through a call center using our toll-free number. We are writing to tell you that the Federal Trade Commission (“FTC”) has found our advertising claims for these products to be deceptive because they were not substantiated by competent and reliable scientific evidence, and the FTC has issued an Order prohibiting us from making these claims in the future.

The Order entered against us by the FTC requires that we send you the following information from the FTC about the scientific evidence on these products:

Competent and reliable scientific evidence does not demonstrate that any of the ingredients in BioShark, 7 Herb Formula, GDU or BioMixx, are effective when used for prevention, treatment or cure of cancer.

It is important that you talk to your doctor or health care provider before using any herbal product in order to ensure that all aspects of your medical treatment work together. Some herbal products may interfere or affect your cancer or other medical treatment, may keep your medicines from doing what they are supposed to do, or could be harmful when taken with other medicines, or in high doses. It is also important that you talk to your doctor or health care provider before you decide to take any herbal product instead of taking cancer treatments that have been scientifically proven to be safe and effective in humans.

Sincerely,

ATTACHMENT B

Daniel Chapter One
1028 East Main Road
Portsmouth, Rhode Island, 02871

[name and address of purchaser]

GOVERNMENT ORDERED NOTICE