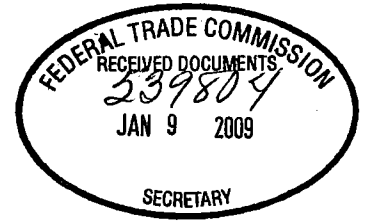


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



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In the Matter of )  
 )  
 )

DANIEL CHAPTER ONE, )  
a corporation, and )

JAMES FEIJO, )  
Respondents. )  
\_\_\_\_\_ )

DOCKET NO. 9329

**ORDER GRANTING COMPLAINT COUNSEL'S  
MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

**I.**

Complaint Counsel filed a Motion to Compel Production of Documents ("Motion") on December 16, 2008. Respondents filed their Objection and Memorandum in Opposition ("Opposition") to the Motion on December 30, 2008. For the reasons set forth below, the Motion is GRANTED.

**II.**

Pursuant to 16 C.F.R. §§3.22 and 3.38, Complaint Counsel seeks an order compelling Respondents to produce financial documents related to the acts or practices alleged in the Complaint. Specifically, Complaint Counsel's First Request for Production of Documents, paragraphs 22 and 23 seek:

22. Documents sufficient to identify all bank accounts or other financial institution destinations into which any proceeds of sales of the Challenged Products were directed, placed or transferred.

23. 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.

Complaint Counsel asserts that Respondents failed to object to the document requests within the time required by the Scheduling Order in this case, and therefore waived their right to do so. Complaint Counsel further argues that the requested documents are relevant and within the proper scope of discovery.

Respondents contend that the document requests are unduly burdensome and irrelevant. In addition, they assert various constitutional objections to these proceedings. Respondents do not respond to Complaint Counsel's waiver argument.

### III.


Complaint Counsel served its First Request for Production of Documents on Respondents on November 17, 2008. Pursuant to Rule 3.37(b) of the Commission's Rules of Practice, a party must respond to each document request, either by advising that discovery will be permitted or by stating its objection and the reason(s) therefor. The Scheduling Order in this case, issued on October 28, 2008, required that "[o]bjections to document requests . . . shall be due within 10 days of service" of the requests. Scheduling Order, Additional Provision No. 10. Respondents' objections to any requests were due by November 28, 2008. Respondents responses are dated December 8, 2008, and any objections therein are, therefore, untimely. Respondents' Opposition does not explain, justify, or in any way address their failure to comply with the Scheduling Order deadline. Accordingly, any objections to document requests 22 and 23 are waived.

Respondents' waiver notwithstanding, the financial records requested in document requests 22 and 23 are properly discoverable. Parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint. 16 C.F.R. § 3.31(c)(1). An Administrative Law Judge may limit discovery if the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; or if the burden and expense of the proposed discovery outweigh its likely benefit. 16 C.F.R. § 3.31(c). In addition, an Administrative Law Judge may enter a protective order to protect a party from undue burden or expense. 16 C.F.R. § 3.31(d). Parties resisting discovery of relevant information carry a heavy burden of showing why discovery should be denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9<sup>th</sup> Cir. 1975). The Complaint alleges that Respondents sold the challenged products to the public, and the requested financial records "may be reasonably expected to yield information relevant to" those allegations. In addition, the requests are not unduly burdensome but are narrowly tailored to require production of financial documents specifically related to the products at issue in the Complaint.

In light of the foregoing, it is unnecessary to address constitutional arguments raised by Respondents in the Opposition. Moreover, such arguments are not appropriately raised in the context of a discovery motion.

Complaint Counsel's motion to compel production of documents in response to document requests 22 and 23 is GRANTED. Respondents shall produce all responsive documents within 10 calendar days of the date of this order.

ORDERED:

  
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D. Michael Chappell  
Administrative Law Judge

Dated: January 9, 2009