

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v.

JAMES FEIJO,
PATRICIA FEIJO, and
DANIEL CHAPTER ONE
Defendants.

Criminal Case No. 14-0489 **M** - 01
In Violation of
Counts 1-16: 26 U.S.C. § 7202 (Willful
Failure to Pay Employment Taxes)
Counts 17-18: 26 U.S.C. § 7203
(Willful Failure to File Tax Returns)
Counts 19-24: 21 U.S.C. § 331(d)
(Introduction of New Unapproved Drug)

FILED

APR 22 2014

U.S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

FIRST SUPERSEDING INDICTMENT

The Grand Jury charges that:

At all times relevant to this Indictment:

The Defendants

1. Defendants JAMES and PATRICIA FEIJO (collectively "the FEIJOs") were residents of Portsmouth, Rhode Island.
2. Defendant JAMES FEIJO owned, operated, and controlled DANIEL CHAPTER ONE, a business also located in Portsmouth, Rhode Island. The FEIJOs and DANIEL CHAPTER ONE were engaged in the sale, retail, wholesale and distribution of health products, including but not limited to health foods and supplements. Among the products sold by the FEIJOs and DANIEL CHAPTER ONE were "7 Herb Formula," "Bio Shark," and "GDU" (collectively "the Products"). DANIEL CHAPTER ONE operated in interstate commerce.

The Introduction of New Unapproved Drugs

3. The United States Food and Drug Administration ("FDA") was the federal agency within the United States Department of Health and Human Services charged with the responsibility for protecting the health and safety of the American public by ensuring that drugs are safe and effective for their intended uses before they may be legally marketed in interstate commerce. In order to legally market a drug in interstate commerce, the drug's manufacturer must comply with all applicable provisions of the Federal Food, Drug, and Cosmetic Act ("FDCA"), and its implementing regulations.

4. Under the FDCA, whether a product is a drug depends on the intended uses of the product. If a product is intended to diagnose, cure, mitigate, treat, or prevent disease, then it is a drug.

5. The FDCA prohibited causing the introduction or delivery for introduction into interstate commerce or introducing or delivering for introduction into interstate commerce "new drugs," that were not the subject of an FDA-approved marketing or investigational application.

6. A drug was a new drug if it was not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof. The Products -- 7 Herb Formula, Bio Shark, and GDU -- were not generally recognized as safe and effective by qualified experts for the cure, mitigation, treatment, or prevention of cancer.

7. The defendants, JAMES FEIJO, PATRICIA FEIJO, and DANIEL CHAPTER ONE, did not submit marketing or investigational applications with the FDA for 7 Herb Formula, Bio Shark, or GDU. The FDA did not approve marketing or investigational applications for 7 Herb Formula, Bio Shark, or GDU.

8. From at least in or about 2007 through in or about 2010, JAMES and PATRICIA FEIJO and DANIEL CHAPTER ONE marketed, advertised and sold the Products as cancer mitigation and treatment options through DANIEL CHAPTER ONE's various websites, in-store advertisements, the FEIJOs' daily radio program, and promotional materials, including but not limited to a publication entitled "Bioguide: The BioMolecular Natural Guide to Natural Health." JAMES FEIJO, PATRICIA FEIJO, and DANIEL CHAPTER ONE also advertised the Products through customer testimonials and direct mitigation and treatment claims. These representations included but were not limited to the following:

- a. The DANIEL CHAPTER ONE website stated that the product "7 Herb Formula," "fights tumor formation." The website also stated, "If you suffer from any type of cancer, Daniel Chapter One suggests taking this [sic] products, to fight it:

7*Herb Formula™. . .

Bio*Shark™. . .

GDU Caps™. . ."

- b. The Products and others were characterized as "Daniel Chapter One's Cancer solutions."

c. Additionally, the defendants' advertising for 7 Herb Formula stated, "7 Herb Formula battles cancer."

9. Notwithstanding the lack of FDA approval, defendants JAMES FEIJO, PATRICIA FEIJO, and DANIEL CHAPTER ONE sold defendant DANIEL CHAPTER ONE's Products online, through a call center, through distributors and other retailers, and in DANIEL CHAPTER ONE's Portsmouth, Rhode Island retail store.

Failure to File Income Tax Returns

10. The Internal Revenue Service ("IRS") is an agency within the United States Department of the Treasury responsible for administering and enforcing the federal internal revenue laws regarding the ascertainment, computation, assessment and collection of taxes owed to the United States by its citizens and businesses.

11. Citizens of the United States who have income in any one calendar year in excess of a threshold amount are obligated to file a U.S. Individual Income Tax Return, Form 1040 ("Form 1040") with the IRS for that calendar year.

12. Defendant JAMES FEIJO has not filed an individual income tax return, Form 1040, for at least the last ten years. During calendar years 2007 and 2008, FEIJO earned annual gross receipts in excess of \$2,000,000 through DANIEL CHAPTER ONE's business activities, and as a result JAMES FEIJO had gross income well above the threshold amount obligating him to file an individual income tax return. Despite earning annual income exceeding the threshold amount in each tax year, FEIJO did not file 2007 and 2008 individual income tax returns, Forms 1040.

Employment Taxes

13. The Internal Revenue Code and associated regulations require employers to file with the IRS an Employer's Quarterly Federal Tax Return, Form 941 ("quarterly employment tax return"), reporting all wages paid to employees during each calendar quarter and the federal withholding taxes, social security taxes and Medicare taxes due thereon ("federal employment taxes") on the last day of the month following the end of each quarter (the three month periods ending March 31st, June 30th, September 30th and December 31st). In filing their Form 941 with the IRS, employers must also report their total payments to employees and both the employees' share and the employers' share of federal employment taxes, and pay over to the IRS both the employees' share and the employers' share of federal employment taxes.

14. JAMES FEIJO and DANIEL CHAPTER ONE employed various individuals who provided a variety of labor, including assisting in the marketing, advertising, and selling of the Products, as well as in providing maintenance of the facilities owned and operated by JAMES FEIJO and DANIEL CHAPTER ONE.

15. From in or around 2006 through at least 2011, defendant JAMES FEIJO falsely represented to DANIEL CHAPTER ONE employees that they were independent contractors, when in truth and in fact, as FEIJO well knew, they were employees of DANIEL CHAPTER ONE. During this time, FEIJO did not issue IRS Wage and Tax Statements, Forms W-2, to DANIEL CHAPTER ONE's employees accounting for each employee's wages and withheld taxes. Further, FEIJO paid, and caused to be paid,

DANIEL CHAPTER ONE employees through checks written out to cash and, beginning in 2012, through checks written out to nominee entities.

16. Defendant JAMES FEIJO doing business as DANIEL CHAPTER ONE was required by law to withhold, report, and pay over employment taxes of the employees of DANIEL CHAPTER ONE to the IRS on the amount of wages paid to its employees on a quarterly basis. FEIJO was the responsible person at DANIEL CHAPTER ONE for the accounting for, collecting, and paying over of employment taxes. From at least 2007 through 2012, FEIJO did not account for, collect or pay over employment taxes for the employees of DANIEL CHAPTER ONE.

17. From at least 2007 through 2012, defendant JAMES FEIJO did not file or caused to be filed DANIEL CHAPTER ONE's Forms 941.

COUNTS 1-16
Willful Failure to Collect, Account For, and Pay Over Employment Taxes
26 U.S.C. § 7202

18. Paragraphs 1 and 2, and 13 through 17 of this Indictment are re-alleged as if set forth in full herein.

19. On or about the dates set forth below, in the District of Rhode Island and elsewhere, defendant JAMES FEIJO, being a person required to collect, truthfully account for, and pay over employment taxes to the United States, namely the Internal Revenue Service, for sixteen quarters corresponding to the below-listed counts, did knowingly and willfully fail to collect, account for, and pay over employment taxes due

and owing to the United States for DANIEL CHAPTER ONE employees:

Count	Quarter	Quarterly Due Date
1	1 st Quarter 2008	April 30, 2008
2	2 nd Quarter 2008	July 31, 2008
3	3 rd Quarter 2008	October 31, 2008
4	4 th Quarter 2008	January 31, 2009
5	1 st Quarter 2009	April 30, 2009
6	2 nd Quarter 2009	July 31, 2009
7	3 rd Quarter 2009	October 31, 2009
8	4 th Quarter 2009	January 31, 2010
9	1 st Quarter 2010	April 30, 2010
10	2 nd Quarter 2010	July 31, 2010
11	3 rd Quarter 2010	October 31, 2010
12	4 th Quarter 2010	January 31, 2011
13	1 st Quarter 2011	April 30, 2011
14	2 nd Quarter 2011	July 31, 2011
15	3 rd Quarter 2011	October 31, 2011
16	4 th Quarter 2011	January 31, 2012

Each in violation of Title 26, United States Code, Section 7202.

COUNTS 17-18
Willful Failure to File Individual Income Tax Returns
26 U.S.C. § 7203

20. Paragraphs 1 through 12 of this Indictment are re-alleged as if set forth in full herein.

21. During the calendar years referenced below, defendant JAMES FEIJO, who was a resident of Portsmouth, Rhode Island, had and received gross income in excess of the minimum filing requirement, which required him by law on or before the dates specified below, to make an individual income tax return, Form 1040, to the Internal Revenue Service Center, to a person assigned to receive returns at the local office of the Internal Revenue Service at or near Portsmouth, Rhode Island, or to another Internal Revenue Service office permitted by the Commissioner of Internal

Revenue, stating specifically the items of his gross income and any deductions and credits to which he was entitled. Well knowing all of the foregoing, he did willfully fail to make an individual income tax return on or about the dates listed below:

Count	Calendar Year	Threshold Amount	Date to be Filed
17	2007	\$17,500	April 15, 2008
18	2008	\$17,900	April 15, 2009

Each in violation of Title 26, United States Code, Section 7203.

COUNTS 19-24

Introduction of a New Unapproved Drug into Interstate Commerce
21 U.S.C. § 331(d)

22. Paragraphs 1 through 9 of this Indictment are re-alleged as if set forth in full herein.

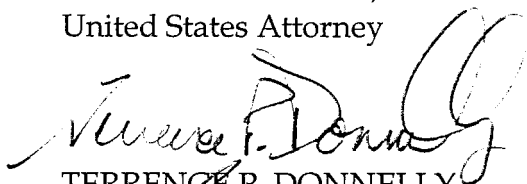
23. On or about the following dates as set forth for each count, within the District of Rhode Island, and elsewhere, defendants JAMES FEIJO, PATRICIA FEIJO, and DANIEL CHAPTER ONE did introduce and deliver for introduction into interstate commerce and cause to be introduced and delivered into interstate commerce the new drug described below which new drug was not the subject of an approved marketing or

investigational application on file with FDA:

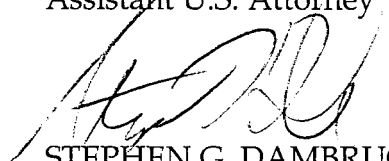
Count	New Drug	Approximate Dates
19	7 Herb Formula	August 5, 2009
20	Bio Shark	August 5, 2009
21	GDU	August 5, 2009
22	7 Herb Formula	June 18, 2010
23	Bio Shark	June 21, 2010
24	GDU	July 27, 2010

Each in violation of Title 21, United States Code, Sections 331(d), 355(a) and 333(a)(1).

PETER F. NERONHA,
United States Attorney



TERRENCE P. DONNELLY
Assistant U.S. Attorney



STEPHEN G. DAMBRUCH
First Assistant U.S. Attorney

A TRUE BILL:

REDACTED

Grand Jury Foreperson

Date: 4/22/2014