



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

DOCKET NO. 9329

PUBLIC DOCUMENT

**RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S
MOTION IN LIMINE TO PRECLUDE RESPONDENTS FROM
INTRODUCING AT TRIAL EVIDENCE OF RESPONDENTS'
"GOOD FAITH" AND NON-EXPERT OPINIONS ABOUT THE
DCO PRODUCTS AS A DEFENSE TO LIABILITY**

I. INTRODUCTION

Complaint Counsel's Motion in Limine and Memorandum in Support to Preclude Respondents from Introducing at Trial Evidence of Respondents' "Good Faith" and Non-Expert Opinions About the DCO Products as a Defense to Liability asserts that:

"Respondents intend to defend against the allegation that they have made unsubstantiated disease claims about their products by introducing evidence that Respondents acted in good faith and believed that the claims they made with respect to the DCO Products were substantiated....

Evidence of Respondents' 'good faith' and their subjective non-expert beliefs about the DCO Products do not make up for a lack of adequate substantiation and should be excluded pursuant to Commission Rule of Practice 3.43(b), which requires that evidence must be relevant, material and reliable in order to be admitted."

Complaint Counsel's Motion in Limine and Memorandum in Support to Preclude Respondents from Introducing at Trial Evidence of Respondents' "Good Faith" and Non-Expert Opinions About the DCO Products as a Defense to Liability, at pp. 1 and 2.

In fact, the testimony intended by and on behalf of Respondents referred to by Complaint Counsel is not intended to offer good faith as a defense but rather to—as it says—offer the testimony to support Respondents' belief and argument that the claims Respondents made were in fact substantiated.

II. RESPONDENTS' WITNESSES ARE NOT OFFERED AS EVIDENCE FOR A GOOD FAITH DEFENSE

Respondents' proposed witnesses that Complaint Counsel seeks to suppress intend to present testimony that the statements DCO makes about the contested products are in fact substantiated. The testimony of how they devised the statements, the material they relied upon to support the claims and the reliance on Biblical passages, Respondents argue, all combine to substantiate the statements they make and the testimonials they intend to introduce at trial, and are offered as evidence of entirely different matters from a good faith defense.

The facts Respondents and the witnesses that Respondents intend to call are relevant to Respondents' response to the allegations that it has violated the FTC Act. Yet Complaint Counsel argues that the Court should not even permit individuals who can describe how DCO substantiated its statements to testify. Such a standard would effectively deprive Respondents of relevant and appropriate evidence. For example, Patricia Feijo will testify that each statement made on behalf of the Challenged Products was drawn from the standard scientific literature that describes the herbs and the uses of the herbs contained in the products.

Respondent James Feijo, Daniel Chapter One Overseer, will testify about how the products were created, their relationship to Biblical texts and the Daniel Chapter One eating regimen taken from the Bible. He will also testify about his experience in applying the principles that he drew on from biblical and scientific literature to athletes he coached and highly stressed individuals. This testimony is intended to support Respondents' assertion that they did in fact properly substantiate the statements they made about the herbs in their products.

III. IF GRANTED, COMPLAINT COUNSEL'S PROPOSED ORDER WOULD DEPRIVE RESPONDENTS OF IMPORTANT EVIDENCE IN DEFENSE OF THE ALLEGATIONS AGAINST THEM

Despite the fact that Respondents have not indicated in their pleadings that they intend to use testimony to claim a "good faith" defense, Complaint Counsel's proposed order would exclude from the trial evidence describing how the Challenged Products were developed and how the messages about them were created, regardless of the issue for which they were offered in evidence. It would deprive Respondents of their due process rights if the fact that a witness will, or might, among other things, testify that they believed then, and continue to believe now, that the way Respondents approached their substantiation responsibilities complied with the law is justification for preventing them from testifying.

Respondents believed at the time and believe today that the statements they made for the products they provided their community met the requirements of substantiation under the law. Prohibiting them from testifying to these facts, for whatever reason, unreasonably denies them the opportunity to be heard.

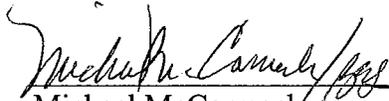
IV. CONCLUSION

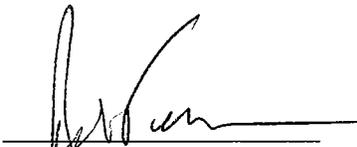
Complaint Counsel's Motion in Limine and Memorandum in Support to Preclude Respondents from Introducing at Trial Evidence of Respondents' "Good Faith" and Non-Expert Opinions About the DCO Products as a Defense to Liability misrepresents the intentions of Respondents and would, if granted, violate Respondents' rights and deprive the Court of useful information, .

Respondents respectfully request that the Court deny Complaint Counsel's motion and permit Respondents' witnesses to testify.

Respectfully submitted,

Dated: March 26, 2009.


Michael McCormack
26828 Maple Valley Hwy, Suite 242
Maple Valley, WA 98038
Phone: 425-785-9446


James S. Turner
Swankin & Turner
1400 16th Street NW, Suite 101
Washington, DC 20036
Phone: 202-462-8800
Fax: 202-265-6564

Of Counsel:

Herbert W. Titus
William J. Olson
John S. Miles
Jeremiah L. Morgan
William J. Olson, P.C.
8180 Greensboro Drive, Suite 1070
McLean, VA 22102-3860
Phone: 703-356-5070
Fax: 703-356-5085
Email: wjo@mindspring.com

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5 **In the Matter of**) **Docket No.: 9329**
6 **DANIEL CHAPTER ONE,**)
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8 **JAMES FEIJO,**)
9 **individually, and as an officer of**)
10 **Daniel Chapter One**)

11
12 **CERTIFICATE OF SERVICE**

13
14 I certify that on March 26, 2009, I served or caused to be served the following documents
15 on the individuals listed below by electronic mail, followed by Federal Express delivery (except
16 as noted below):

17 **RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S MOTIONS TO EXCLUDE THE TESTIMONY**
18 **AND REPORTS OF RESPONDENTS' EXPERT WITNESSES DRS. JAMES DUKE, SALLY LAMONT,**
RUSTUM ROY, AND JAY LEHR AND MR. JAMES DEWS

19 **RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S MOTION IN LIMINE TO EXCLUDE**
20 **EVIDENCE RELATING TO DANIEL CHAPTER ONE'S FOR-PROFIT STATUS**

21 **RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S MOTION IN LIMINE TO PRECLUDE**
22 **RESPONDENTS FROM INTRODUCING AT TRIAL EVIDENCE OF RESPONDENTS' "GOOD**
FAITH" AND NON-EXPERT OPINIONS ABOUT THE DCO PRODUCTS AS A DEFENSE TO
LIABILITY

23 **RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO PRECLUDE**
24 **RESPONDENTS FROM INTRODUCING AT TRIAL EVIDENCE OF PURPORTED CONSUMER**
SATISFACTION AS A DEFENSE TO LIABILITY

25 **Service to:**

26 **Donald S. Clark**
27 **Office of the Secretary**
Federal Trade Commission
28 **600 Pennsylvania Avenue, NW, Room H-135**
Washington, DC 20580

1 Email: secretary@ftc.gov
2 (Original and one copy)

3 Leonard L. Gordon, Esq. (lgordon@ftc.gov)
4 Theodore Zang, Jr., Esq. (tzang@ftc.gov)
5 Carole A. Paynter, Esq. (cpaynter@ftc.gov)
6 David W. Dulabon, Esq. (ddulabon@ftc.gov)
7 Federal Trade Commission – Northeast Region
8 One Bowling Green, Suite 318
9 New York, NY 10004
10 (One paper copy each and by email)

11 Elizabeth Nach, Esq. (enach@ftc.gov)
12 Federal Trade Commission
13 Division of Advertising Practices
14 601 New Jersey Ave., NW
15 Washington, DC 20580
16 (By email only)

17 Courtesy Copies (2):

18 Hon. D. Michael Chappell
19 Administrative Law Judge
20 600 Pennsylvania Avenue, NW, Room H-106
21 Washington, DC 20580
22 Email: oalj@ftc.gov

23
24
25
26
27
28

Martin R. Yenick
Swankin & Turner
1400 16th Street, NW, Suite 101
Washington, DC 20036