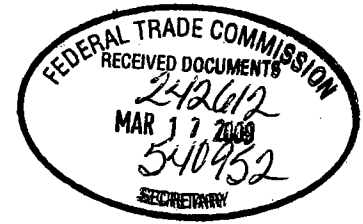


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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

_____)
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

**COMPLAINT COUNSEL'S MOTION IN LIMINE AND MEMORANDUM IN
SUPPORT TO PRECLUDE RESPONDENTS FROM INTRODUCING AT TRIAL
EVIDENCE OF PURPORTED CONSUMER SATISFACTION
AS A DEFENSE TO LIABILITY**

I. INTRODUCTION

Complaint Counsel hereby move to preclude Respondents from introducing at trial evidence of purported consumer satisfaction and consumer testimonials as a defense to liability. Based on their Exhibit List and Witness List, Respondents intend to defend against the allegation that they have made unsubstantiated disease claims about their products by introducing evidence of satisfied consumers to show the claims were not deceptive and evidence of consumer testimonials to show the claims were not unsubstantiated. Neither category of evidence is relevant to the issues in dispute 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. Rule of Practice 3.43(b).

Respondents have included 34 written testimonials from consumers on their list of

exhibits for trial, Exhibits R8-a through R8-ah, attached hereto as Exhibit A. Furthermore, Respondents have listed five consumers on their proposed trial witness list, attached hereto as Exhibit B.¹ These consumers will allegedly testify “with regard to their belief about their experience with DCO products.”² Several additional consumers appear on Respondents’ extensive witness list, ostensibly for the purpose of testifying “[w]ith regard to the operation of the Daniel Chapter One Ministry including the collection and dissemination of information and the management of ministry programs.” However, in the individual descriptions of these witnesses’ proposed testimony, several are being offered also to testify about “the positive impact” of DCO and its products.³

Because such evidence is not relevant to whether Respondents violated the FTC Act, the Court should neither permit the written testimonials to be used as evidence of purported consumer satisfaction nor permit any live testimony from purportedly satisfied customers (or other individuals who allegedly have positive views about DCO’s activities) as evidence that Respondents are not liable for their advertising claims.

¹These consumers are: Ernie Jensen, Sherman C. “Red” Smith, Robert Hicks, Glenda Shaw, and Laura Phair-Rudin.

²Three of these consumers will testify about their own experiences taking DCO products, one will testify about her son who took DCO products, and one will testify about her dog who took DCO products. *See Ex. B.*

³These witnesses are: Jedidiah Harrison (who will testify about how DCO “affects him and his family”), Dean Mink (who will testify “on his experience of the nature of James Feijo’s activities as the Overseer of Daniel Chapter One”), Pastor Wayne Robertson (who will testify about “the positive impact that DCO has had on hundreds of lives of which he is aware”), David Bertrand (who will testify about how DCO information and products “have enhanced his life and health, and the life and health of others”), Richard Duffy (who will testify that “DCO helped support the home church in Israel”), and Tracy Kulikowski (who will testify that DCO products “helped save her life from leukemia and tumors on the brain, liver, and behind her heart”).

II. EVIDENCE OF ALLEGEDLY SATISFIED CONSUMERS AND CONSUMER TESTIMONIALS ARE NOT A DEFENSE TO LIABILITY

A. Evidence Of Satisfied Consumers Is Irrelevant And Should Be Excluded

It is well-settled that the existence of some satisfied consumers is not a defense to false and misleading advertising. *FTC v. Amy Travel Svcs., Inc.*, 875 F.2d 564, 572 (7th Cir. 1989) (excluding postcards and letters of satisfied customers as evidence because “the existence of some satisfied customers does not constitute a defense under the FTCA.”); *Basic Books v. FTC*, 276 F.2d 718, 721 (7th Cir. 1960) (finding “[t]he fact that petitioners had satisfied customers was entirely irrelevant”); *Erickson v. FTC*, 272 F.2d 318, 322 (7th Cir. 1950) (stating fact “that petitioner had satisfied customers is not a defense to Commission action for deceptive practices”); *Independent Directory Corp. v. FTC*, 188 F.2d 468, 471 (2d Cir. 1951) (affirming exclusion of proof of satisfied customers stating petitioners cannot be excused for deceptive practices by showing that consumers, “even in large numbers, were satisfied with the treatment petitioners accorded them”); *FTC v. Gill*, 71 F. Supp. 2d 1030, 1049 (C.D. Cal. 1999) (finding even when there are thousands of satisfied customers, such customers are still injured when that satisfaction arises out of the illegal practices of defendants); *FTC v. Slim America, Inc.*, 77 F. Supp. 2d 1263, 1273 (S.D. Fla. 1999) (existence of some satisfied customers is not a defense to FTC Act liability); *FTC v. Silueta Distributors, Inc.*, 1995 U.S. Dist. LEXIS 22254, at *16 (N.D. Cal. Feb. 23, 1995) (finding satisfied consumers is not a defense to liability when defendant corporation charged with disseminating false advertising representing product would eliminate cellulite). Similarly, the FTC need not prove that every consumer was injured. *Amy Travel*, 875 F.2d at 572; *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 530 (S.D.N.Y. 2000).

Consequently, the Court should not permit Respondents to introduce evidence of

purported consumer satisfaction in an attempt to show consumers were not deceived by the advertising claims. For example, in *Amy Travel*, the Seventh Circuit affirmed the exclusion of evidence of satisfied consumers on the grounds that the existence of satisfied consumers did not provide a defense to the Federal Trade Commission Act. Defendants were charged with unfair and deceptive marketing practices relating to the sale of vacation vouchers. In making its ruling, the court rejected defendants' argument that unsolicited postcards from satisfied customers constituted evidence that consumers were not deceived by their practices. 875 F.2d at 572. The court stated that the "FTC need not prove every consumer was injured," and affirmed a magistrate's ruling excluding the evidence of satisfied customers. *Id.*

Similarly, in *Independent Directory Corp.*, the Second Circuit affirmed the trial judge's exclusion of evidence of satisfied customers. The court affirmed the trial judge's ruling finding that "the fact that petitioners had satisfied customers was entirely irrelevant" and that the petitioners "cannot be excused for the deceptive practices here shown and found, and be insulated from action by the Commission in respect to them, by showing that others, even in large numbers, were satisfied with the treatment petitioners accorded them." 188 F.2d at 471; *see also Five-Star Auto Club, Inc.*, 97 F. Supp. 2d at 530 (discounting evidence of satisfied consumers when offered by defendants to show that no consumers were deceived and providing that by the very nature of the pyramid scheme, there should be participants at top who were satisfied). These cases demonstrate that the Court should exclude evidence of consumer satisfaction offered by Respondents in an attempt to demonstrate that consumers were not deceived.

Satisfied consumer evidence is also irrelevant here because the claims made by Respondents are either express or strongly implied and there is no need for extrinsic to prove

their meaning. *See, e.g., FTC v. Bronson Partners*, 564 F. Supp. 2d 119, 126-27 (D. Conn. 2008); *In re Thompson Medical Co.*, 104 F.T.C. 648, 789-90, 794 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086. Moreover, Respondents have admitted that the claims at issue were made. Answer ¶ 14. As a result, Respondents' satisfied consumer evidence is irrelevant and should be excluded.

B. Consumer Testimonials Do Not Constitute Substantiation And Should Be Excluded

Respondents may not use the testimonials of purportedly satisfied consumers as evidence of substantiation for the advertising claims at issue, and such evidence should be excluded. In *Slim America*, the FTC sought a permanent injunction and other equitable relief against a corporation, its founder, and its general manager for false and misleading advertising in connection with a weight loss product. At trial, defendants produced eight consumer witnesses who allegedly lost substantial amounts of weight while using the product. 77 F. Supp. 2d at 1273. The court found that this "anecdotal information does not constitute meaningful proof of the weight loss claims." *Id.* Furthermore, the court found: "Even if the testimony of the defendants' witnesses regarding weight loss are [sic] true to any extent, some could be explained as a placebo effect – a perceived reaction to an inactive substance, e.g., a 'sugar pill,' where a remedial effect is otherwise medically explainable." *Id.*

In the instant case, such written comments or testimony from purportedly satisfied consumers would similarly be nothing more than anecdotal evidence of the products' efficacy claims. Courts consistently have found such anecdotal testimonials evidence inadequate to support such claims. *See, e.g., Direct Marketing Concepts*, 569 F. Supp. 2d at 304 (entering summary judgment for FTC where it was undisputed that respondents had no scientific studies

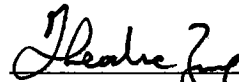
supporting health-related efficacy claims, despite testimonials from customers); *FTC v. Simeon Mgmt. Corp.*, 579 F.2d 1137, 1143-44 (9th Cir. 1978) (anecdotal evidence of weight loss insufficient to support weight loss claims); *Koch v. FTC*, 206 F.2d 311, 316 (6th Cir. 1953) (evidence regarding case histories did not support cancer claims); *FTC v. QT, Inc.*, 512 F.3d 858, 862 (7th Cir. 2008) (“a person who promotes a product that contemporary technology does not understand must establish that this ‘magic’ actually works”; “[p]roof is what separates an effect new to science from a swindle” and testimonials “are not a form of proof because most testimonials represent a logical fallacy: *post hoc ergo propter hoc*. (A person who experiences a reduction in pain after donning the [Q-Ray] bracelet may have enjoyed the same reduction without it. That’s why the ‘testimonial’ of someone who keeps elephants off the streets of a large city by snapping his fingers is the basis of a joke rather than proof of cause and effect”). Testimonials do not constitute valid substantiation and should be excluded.

III. CONCLUSION

Evidence of satisfied consumers does not prove Respondents’ advertisements were not deceptive. Consumer testimonials do not constitute adequate substantiation for Respondents’ disease claims. As a result, Complaint Counsel respectfully requests that the Court enter the

proposed order annexed hereto, to preclude Respondents from introducing at trial evidence of purported consumer satisfaction and consumer testimonials.

Respectfully submitted,



Leonard L. Gordon	(212) 607-2801
Theodore Zang, Jr.	(212) 607-2816
Carole A. Paynter	(212) 607-2813
David W. Dulabon	(212) 607-2814
Elizabeth K. Nach	(202) 326-2611

Federal Trade Commission
Alexander Hamilton U.S. Custom House
One Bowling Green, Suite 318
New York, NY 10004

Dated: March 16, 2009

EXHIBIT A

COPY

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4 **IN THE UNITED STATES OF AMERICA**
5 **BEFORE THE FEDERAL TRADE COMMISSION**
6 **OFFICE OF ADMINISTRATIVE LAW JUDGES**

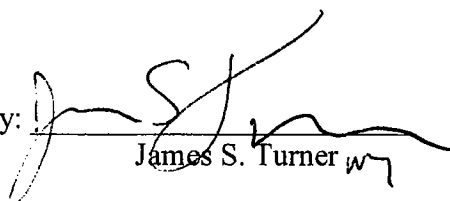
7 **In the Matter of**) **Docket No.: 9329**
8 **DANIEL CHAPTER ONE,**)
9 **a corporation, and**)
10 **JAMES FEIJO,**) **PUBLIC DOCUMENT**
11 **individually, and as an officer of**)
12 **Daniel Chapter One**)
13)

14 **RESPONDENTS' LIST OF EXHIBITS**

15 Pursuant to the Scheduling Order of October 28, 2008 docketed in this action, the
16 following pages provide the designations of the exhibits Respondents intend to introduce at the
17 hearing of the above-captioned administrative action. Respondents reserve the right not to
18 introduce all the exhibits designated. Respondents further reserve the right to introduce any
19 exhibit identified by Complaint Counsel, and to supplement this list should additional evidence
20 be produced by Complaint Counsel.
21

22
23 Dated this 3rd day of March, 2009.

24 Swankin & Turner
25 Attorneys for Respondents

26
27 By: 
28 James S. Turner wj

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1400 16th Street, NW
Washington, DC 20036
Phone: 202-462-8800
Fax: 202-265-6564
Email: jim@swankin-turner.com

RESPONDENTS' LIST OF EXHIBITS
In the Matter of Daniel Chapter One
(Docket #9329)

Exhibit & Sub-exhibit Number	Description of Exhibit	Date
R1	Certificate of Existence/Authorization and Articles of Incorporation of Daniel Chapter One	10/30/2002
R2	Revised Code of Washington, §§ 24.12.010 <i>et seq.</i>	
R3	Expert Witness Report of James Duke	2/4/2009
R4	Expert Witness Report of Sally LaMont	2/4/2009
R5	Expert Witness Report of Rustum Roy	2/4/2009
R6	Expert Witness Report of James Dews	2/4/2009
R7	Expert Witness Report of Jay Lehr	
R8	Testimonials	
R8-a	Brotherton, Terry	
R8-b	McGee, Robert & Carolyn	11/12/2008
R8-c	Couzens, Norma	7/29/2008
R8-d	Phillips, Mary Jo	
R8-e	Koehler, Mariann R.	8/13/2008
R8-f	Rocha, Joe	
R8-g	Carpenter, Janet	
R8-h	Shaw, Glenda	6/17/2008
R8-i	Paulk, Everett	7/1/2008
R8-j	Whittenburg, Ron & Cheryl	7/9/2008
R8-k	Rice, Charlotte	6/17/2008
R8-l	McGee, Carolyn	4/14/2008
R8-m	Mello, Carol	6/17/2008
R8-n	Ferreira, Beverly R.	7/30/2008
R8-o	Geary, Elizabeth M.	8/58/2008
R8-p	Manko, Barbara	
R8-q	Lundgren, Amy	11/19/2008
R8-r	McKay, Donald M. "Buzz"	
R8-s	Sedguick, David	
R8-t	Anderson, Don	8/8/2008
R8-u	Meeks, Douglas, re:	
R8-v	Dellinger, Drew for Dick N.	
R8-w	Davis, Earl	
R8-x	Jensen, Ernie	
R8-y	Groover, James M.	11/17/2008
R8-z	Harris, Jason	10/14/2008
R8-aa	Hatfield, Jim & Judy	2/23/2008
R8-ab	Carlton, Kathy	11/11/2008

Respondents' List of Exhibits

R8-ac	Bunker, Lori	11/6/2008
R8-ad	Patterson, Mary	
R8-ae	McMeans, Patricia	8/28/2008
R8-af	Kulikowski, Tracey	
R8-ag	Harms, Wayne L.	
R8-ah	Gordon, Yvonne	6/6/2008
R9	References	
R9-a	Lane, I. William; Comac, Linda; Sharks Don't Get Cancer: How Shark Cartilage Could Save Your Life 1992	1992
R9-b	Folkman, M. Judah; Putting Theory Into Action	
R9-c	Nieper, Hans A.; Conversion of Gravity Field Energy: Revolution in Technology Medicine and Society May, 1985	1985
R9-d	Breast Cancer: Post-Surgical Radiation Treatment Senseless? March 28,1982	3/28/1982
R9-e	Blumenthal, Mark; Goldberg, Alicia; Brinckmann, Josef; Herbal Medicine Expanded Commission E Monographs 2000	2000
R9-f	Flynn, Rebecca; Roest, Mark; Your Guide to Standardized Herbal products January 2005	2005
R9-g	Majeed, Muhammed; Badmaev, Vladimir; Murray, Frank; Turmeric and the Healing Curcuminoids: Their Amazing Antioxidant and Protective Power 1996	1996
R9-h	Steinberg, Phillip N.; Uncaria Tomentosa (Cat's Claw): A Wondrous Herb from the Peruvian Rainforest May 1994	1994
R9-i	Schecter, Steven R.; Herbs For Life: Herbs For Immunity September 1993	1993
R9-j	Foster, Steven; Echinacea Helping Rebuild Your Immune System February 1996	1996
R9-k	Herbs: Turmeric Research Heats Up February 1997	2/1997
R9-l	Keville, Kathi; Strengthening Your Immune System with Herbs July 1985	7/1985
R9-m	Goldenseal: Infections	
R9-n	American, Korean and Siberian Ginseng: Wellness and Vitality	
R9-o	Echinacea Complex: Immune Function	
R9-p	Clute, Mitchell; Research Sharpens Interest in Cat's Claw	
R9-q	Echinacea In-Depth	
R9-r	Kloss, Jethro;The Authentic Kloss Family: The Classic Guide to Herbal Medicine, Natural Foods, and Home Remedies 1949	1949
R9-s	Kelley, William Donald; One Answer to Cancer: A Do-It-Yourself Booklet 1997	1997

Respondents' List of Exhibits

R9-t	Kirschmann, John D.; Dunne Lavon J.; Second Edition Nutrition Almanac 1984	1984
R9-u	Lucas, Richard M.; Miracle Medicine Herbs 1991	1991
R9-v	Barney D. Paul; Clinical Applications of Herbal Medicine 1996	1996
R9-w	Shark and Bovine Cartilage	
R9-x	The Protocol Journal of Botanical Medicine Autumn 1995	1995
R9-y	Snow, Joanne Marie; Herbal Monograph: Curcuma longa L. (Zingiberaceae)	
R9-z	The Protocol Journal of Botanical Medicine	
R9-aa	Lane, I.W., Contreras E.; Shark Cartilage Research: High Rate of Bioactivity (Reduction in Gross Tumor Size) Observed in Advanced Cancer Patients Treated With Shark Cartilage Material	
R9-ab	Lee, Anne; Langer, Robert; Research Abstract: Shark Cartilage Contains Inhibitors of Tumor Angiogenesis September 1983	1983
R9-ac	Journal Articles; Shark Cartilage Contains Inhibitors of Tumor Angiogenesis	
R9-ad	Research Abstract: Clinical Trial Abstracts	
R9-ae	Lopez, Jose R. Menendez; Rodriguez, Jose E. Femandez- Britto; Lane I.W. Journal Article: Shark Cartilage Administration in Human Advanced Cancer Diseases	
R9-af	Brem, Henry; Folkman, Judah; Inhibition of Tumor Agiogenesis Mediated by Cartilage	
R9-ag	Murray, Michael; Pizzorno, Joseph; Encyclopedea of Natural Medicine: Learn How to Use Herbs, Vitamins, Minerals and Diet and Nutritional Supplement Safely and Effectively 1991	1991
R9-ah	Grieve, M; A Modern Herbal: The Medicinal, Culinary, cosmetic and Economic Properties 1971	1971
R9-ai	Heinerman, John; Heinerman's Encyclopedia of Healing Herbs and Spices 1996	1996
R9-aj	Mindell, Earl; Mindell's Herb Bible 1992	1992
	Hemphill, John & Rosemary; Hemphill's Herbs for Health 1985	1985
R9-ak	Bethel, May; The Healing Power of Herbs July 1968	1968
R9-al	Airola, Paavo; Handbook of Natural Healing: How to Get Well 1974	1974
R9-am	Kadans, Joseph M.; Modern Encyclopedia of herbs with the Herb-O Matic Locator Index 1970	1970
R9-an	Naturopathic Handbook of Herbal Formulas: A Practical & Concise Herb User's Guide 1995	1995

Respondents' List of Exhibits

R9-ao	Mindell, Earl; Earl Mindell's Secret Remedies: The Essential Guide to treating Common Ailments with Vitamins, Minerals, herbs and Other Cutting-Edge Supplement 1997	1997
R9-ap	Tenney, Louise: Today's Herbal Health 3 rd Edition 1992	1992
R9-aq	Treatments for the World's 160 Most Common Ailments: Plus A Complete Guide to Vitamins Minerals, Herbs, Amino Acids and Tissue Salts	
R9-ar	Weiner, Michael; Weiner's Herbal: The Guide to Herb Medicine October 1990	1990
R9-as	Weiner, Michael; Weiner's Herbal: The Guide to Herb Medicine 1980	1980
R9-at	The Anticancer Potential of Foods and Spices: Tumeric 1994	1994
R9-au	DanielChapterOne: Sinusitis and the Ezekiel Oil Solution	
R10	List of Documents substantiating challenged claims (Previously provided in response to Complaint Counsel's First Set of Interrogatories (Interrogatory #18, this exhibit was Exhibit 7 to Respondents' responses to the interrogatories)	12/8/2008
R11	Deposition Transcript – Michael Marino	1/22/2009
R12	Deposition Transcript – Lynne J. Colbert	1/22/2009
R13	Deposition Transcript – Richard L. Cleland	1/22/2009
R14	Deposition Transcript – Denis R. Miller	2/6/2009
R15	Deposition Transcript – James D. Feijo	1/13/2009
R16	Deposition Transcript – Patricia A. Feijo	1/14/2009
R17	Deposition Transcript – Claudia Bauhoffer-Kinney	1/15/2009
R18	Deposition Transcript (w/ Exhibits) – James A. Duke	2/9/2009
R19	Deposition Transcript (w/ Exhibits) – James Dews	2/11/2009
R20	Deposition Transcript (w/ Exhibits) – Rustum Roy	2/12/2009
R21	Deposition Transcript (w/ Exhibits) – Jim Lehr	2/13/2009
R22	Deposition Transcript (w/ Exhibits) – Sally LaMont	2/17/2009

EXHIBIT B

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

COPY

In the Matter of)
)
DANIEL CHAPTER ONE,)
a corporation, and)
) Docket No. 9329
JAMES FEIJO,)
individually, and as an officer of) Public Document
Daniel Chapter One)
_____)

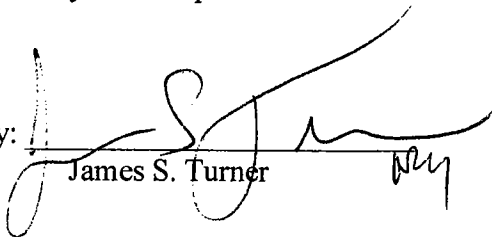
RESPONDENTS' FINAL PROPOSED WITNESS LIST

Pursuant to the Court's Scheduling Order, dated October 28, 2008, Respondents submit their *Final Proposed Witness List*, identifying the individuals likely to testify as part of Respondents' direct case and a description of each witnesses' anticipated testimony.

The information disclosed herein is based upon the information reasonably available to Respondents' Counsel at the current time. Without prejudicing the ability of Respondents' Counsel to supplement this *Final Proposed Witness List* on motion to the Court for good cause shown, Respondents' Counsel offer their *Final Proposed Witness List*.

The order of witnesses on the attached list is not necessarily the order in which the witnesses will be called.

Swankin & Turner
Attorneys for Respondents

By: 
James S. Turner

Dated: March 3, 2009

Respondents' Final Proposed Witness List
In the Matter of Daniel Chapter One
(Docket #9329)

Respondents expect to call the following witnesses:

A. With regard to the operation of the Daniel Chapter One Ministry including the collection and dissemination of information and the management of ministry programs:

1. James Feijo
P.O. Box 223
Portsmouth, R.I. 02871

We anticipate that Mr. Feijo, Overseer of Daniel Chapter One Ministry ("DCO"), will testify about the organization and management of the ministry, the health message the Ministry delivers, the relationship between the health message and supplement products DCO provides its followers and the background of DCO and its activities.

2. Patricia Feijo
P.O. Box 223
Portsmouth, R.I. 02871

We anticipate that Mrs. Feijo, trained in homeopathy, will testify about the nature of the DCO ministry, its basis on religious faith and on the efforts she went through to ensure that statements made about health and the supplements DCO provides its followers complied with legal rules as she understood them.

3. Jedidiah Harrison
14171 176th St.
McAlpin, FL 32062

We anticipate that Mr. Harrison, who manages some activities of DCO, will testify about aspects of the Daniel Chapter One Ministry, how it is organized, how it operates and how it affects him and his family

4. Jill Feijo
33 North Drive
Portsmouth, R.I. 02871

We anticipate that Ms. Feijo, who manages certain DCO tasks, will testify about the operation of DCO with which she is familiar.

5. Dean Mink, D.C.
Mink Chiropractic Center
409 Northside Dr.
Valdosta, GA. 31602-1895

We anticipate that Dr. Mink will testify to the quality, safety, and efficacy of DCO supplements. He will also testify on his role in making these supplements available to clients. He has made DCO supplements available in his Chiropractic Center for many years and has found it to be the best group of supplements he has experienced. He will also testify on his experience of the nature of James Feijo's activities as the Overseer of Daniel Chapter One.

6. Pastor Wayne Robertson
Morningside Baptist Church
Northside Drive at Bemiss Rd.
Valdosta, GA. 31604

We anticipate that Pastor Robertson will testify about the charitable program he has worked out with DCO and the positive impact that DCO has had on hundreds of lives of which he is aware, and that which DCO gives to the Ministry of Morningside Baptist Church. He will also testify on the role of James Feijo as Overseer of Daniel Chapter One.

7. David Bertrand
36 Mary Lane
Tiverton, R.I. 02878

We anticipate that Mr. Bertrand will testify that he has been part of the house church for many years, how the house church approach works and how he worked in the DCO ministry including recounting how DCO programs including its information and products have enhanced his life and health, and the life and health of others.

8. Richard Duffy
P.O. Box 1366
Jerusalem, Israel

We anticipate that Mr. Duffy will testify that the DCO 7 Herb Formula website was the idea and creation of him and his late wife Ruth, to be a source of information. Ruth designed the website as a ministerial offering, and did not receive payment from DCO for it.

We anticipate that Mr. Duffy will also testify that DCO helped support the home church in Israel, and that it paid for the Israeli Jr. Men's Fastpitch Softball Team to travel to Australia to compete in the World Championship the year they qualified and could not otherwise afford to go.

9. Tracy Kulikowski (website contribution quoted in the FTC Complaint).

200 E. Burgess Rd., #8 B
Pensicola, FL 32503

We anticipate that Ms. Kulikowski will testify that she created her DCO web entry because she wanted to share with other DCO followers her belief that DCO 7 Herb Formula, Bio*Mixx, GDU, and BioShark helped save her life from leukemia and tumors on the brain, liver, and behind her heart. We anticipate that she will also testify that she has remained cancer free for over ten years.

B. With regard to their belief about their experience with DCO products:

1. Ernie Jensen
5329 Mum Ct.
Las Vegas, NV 89031

We anticipate that Mr. Jensen will testify that he was diagnosed with incurable non-Hodgkin's lymphoma, and that after a bone marrow transplant failed, DCO products including 7 Herb Formula helped him. His doctor is amazed he survived.

2. Sherman C. "Red" Smith
P.O. Box 770
Cooper Landing, AK 99572

We anticipate that Mr. Smith will testify that DCO 7 Herb Formula has helped him combat prostate cancer. He has taken the product for many years, and has referred to it as "7 Herb Savior."

3. Robert Hicks
P.O. Box 1013
Jackson, AL 36545

We anticipate that Mr. Hicks will testify that his son Cole (age 3) drowned at age 2. After Cole miraculously survived, the prognosis was poor for rehabilitation. Mr. Hicks credits the many DCO products he gives his son to saving Cole's life and helping him to recover.

4. Glenda Shaw
1610 Reynolds Rd. Lot 261
Lakeland, FL 33801

We anticipate that Mrs. Shaw will testify to having had breast cysts. Now, after she used DCO 7 Herb Formula and GDU, the cysts are gone.

5. Laura Phair-Rudin
38 Ridgefield Rd.
Center Port, NY 11721

We anticipate that Mrs. Phair-Rudin will testify that her dog had glioblastoma and the

dog survived well beyond the prognosis from the vet after being given DCO 7 Herb Formula, BioShark, and GDU, that she attributes the extended survival of her dog to use of BioShark and GDU by her dog, and that she desires to share her belief that these products contributed to the significant shrinkage of the dog's brain tumor that is shown in the dog's veterinary medical records.

C. With regard to the FTC activities that identified Daniel Chapter One as the focus of FTC actions, Respondents seek to call the following FTC witnesses who do not appear on Complaint Counsel's witness list (A motion with regard to these witnesses will be submitted separately):

1. Richard Cleland
600 New Jersey Avenue, NW
Washington, DC 20580

We anticipate that Mr. Cleland to testify to the details of the process by which the FTC organized its case against Respondents.

2. Lynn J. Colbert
600 New Jersey Avenue, NW
Washington, DC 20580

We anticipate that Ms. Colbert will testify about the organization, conduct and review of the FTC cancer cure internet "surf" that provided the basis for the allegations made against Daniel Chapter One.

D. Daniel Chapter One Expert Witnesses:

1. James Duke, Ph. D.
8210 Murphy Road
Fulton, MD 20759

We anticipate that Dr. Duke will provide substantiation for health claims about natural products generally and the use of herbs as medicine in the Bible.

2. Sally LaMont, N.D.
Marin Natural Medicine Clinic
131 Camino Alto, Suite F
Mill Valley, CA 94941

We anticipate that Ms. LaMont will provide pre-claim substantiation for Respondents' challenged claims; substantiation for health claims about natural products generally; contradict FTC claims of the safety and effectiveness of conventional cancer treatments, including the inadequacy of the "scientific method" in evaluating the usefulness of nutritional supplements and natural healing.

3. Rustum Roy, Ph. D.
Evan Pugh Professor of the Solid State Emeritus
Professor of Science Technology and Society Emeritus
The Pennsylvania State University
102 MRL
University Park, PA. 16802

Visiting Professor of Medicine
University of Arizona
Distinguished Professor of Materials
Arizona State University

We anticipate that Dr. Rustum Roy will testify on the inappropriateness of relying on and the lack of scientific validity of randomly-controlled trials to evaluate whole person healing; the science of homeopathy; and the scientific validity of traditional testing of herbal medicines.

4. James Dews
Dews Research , LLC
P.O. Box 637
Mineral Wells, TX 76068

We anticipate that Mr. Dews will provide pre-claim substantiation of Respondents' challenged claims.

5. Jay Lehr Dr
6011 Houseman Rd.
Ostrander, OH 43061

We anticipate that Dr. Lehr will provide pre-claim substantiation of Respondents' challenged claims.

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)	
)	
DANIEL CHAPTER ONE,)	
a corporation, and)	Docket No. 9329
)	
JAMES FEIJO,)	Public Document
individually, and as an officer of)	
Daniel Chapter One)	
)	
)	

[Proposed] ORDER GRANTING MOTION IN LIMINE

On March 16, 2009, Complaint Counsel filed a Motion in Limine to exclude the live testimony and written testimonials of consumers from any trial in this case.

IT IS HEREBY ORDERED that Complaint Counsel's Motion in Limine is GRANTED.

ORDERED:

D. Michael Chappell
Administrative Law Judge

Dated:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 16, 2009, I have filed and served the attached **COMPLAINT COUNSEL'S MOTION IN LIMINE AND MEMORANDUM IN SUPPORT TO PRECLUDE RESPONDENTS FROM INTRODUCING AT TRIAL EVIDENCE OF PURPORTED CONSUMER SATISFACTION AS A DEFENSE TO LIABILITY** and **EXHIBITS A-B** thereto and **[Proposed] ORDER GRANTING MOTION IN LIMINE** upon the following as set forth below:

The original and one paper copy via overnight delivery and one electronic copy via email to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, DC 20580
E-mail: secretary@ftc.gov

Two paper copies via overnight delivery to:

The Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Ave., N.W., Room H-528
Washington, DC 20580

One electronic copy via email and one paper copy via overnight delivery to:

James S. Turner, Esq.
Betsy Lehrfeld, Esq.
Martin Yerick, Esq.
Swankin & Turner
1400 16th St., N.W., Suite 101
Washington, D.C. 20036
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One electronic copy via email to:

Michael McCormack, Esq.
M.mccormack@mac.com



Theodore Zang
Complaint Counsel