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FEDERAL TRADE COMMISSION

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

-----)

Thursday, December 3, 2009

Room 532
Federal Trade Commission
6th & Pennsylvania Ave., N.W.
Washington, D.C. 20580

BEFORE THE HONORABLE COMMISSION:

CHAIRMAN JON LEIBOWITZ
COMMISSIONER PAMELA JONES HARBOUR
COMMISSIONER WILLIAM E. KOVACIC
COMMISSIONER J. THOMAS ROSCH

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12:28:10 1 P R O C E E D I N G S

12:31:54 2 - - - - -

01:00:49 3 CHAIRMAN LEIBOWITZ: Good afternoon. The
01:00:53 4 Commission is meeting today in open session to hear the
01:00:55 5 oral argument in the matter of Daniel Chapter One and
01:00:59 6 James Feijo, Docket Number 9329, on appeal of the
01:01:06 7 Respondents from the initial decision issued by the
01:01:08 8 Administrative Law Judge.

01:01:09 9 The Respondents are represented by Mr. James S.
01:01:13 10 Turner, and counsel supporting the complaint are
01:01:16 11 represented by the Northeast Region Regional Director
01:01:21 12 Leonard L. Gordon.

01:01:22 13 During this proceeding, each side will have 30
01:01:25 14 minutes to present their arguments. The Respondents are
01:01:27 15 the appellants and therefore their counsel will make the
01:01:29 16 first presentation and will be permitted to reserve up
01:01:31 17 to five minutes for rebuttal. Counsel supporting the
01:01:34 18 complaint will then make his presentation. Counsel for
01:01:36 19 the Respondents will conclude the argument with his
01:01:39 20 rebuttal presentation.

01:01:42 21 Mr. Turner, do you wish to reserve any time for
01:01:46 22 rebuttal?

01:01:47 23 MR. TURNER: Yes, sir, I have arranged to
01:01:49 24 reserve five minutes.

01:01:50 25 CHAIRMAN LEIBOWITZ: You, then, may begin.

01:01:53 1 MR. TURNER: Good afternoon, Commissioners. My
01:02:02 2 name is James Turner, and I represent Respondents in
01:02:06 3 this case, Daniel Chapter One and James Feijo.

01:02:11 4 The Respondents are here today to ask the
01:02:16 5 Commission to reject the final decision and dismiss the
01:02:20 6 complaint against them. There are three reasons the
01:02:25 7 Commission should grant Respondents' request: First, the
01:02:31 8 Commission does not have jurisdiction over Respondents
01:02:35 9 and for the Commission to attempt to extend the
01:02:38 10 jurisdiction to cover them would be unsound law and poor
01:02:41 11 policy; second, the Respondents have not violated the
01:02:47 12 law; and third, if the law, as written, or applied, is
01:02:53 13 such that Respondents' actions are held by the
01:02:56 14 Commission to be a violation of law, then the law is
01:02:59 15 unconstitutional, either as written or as applied.

01:03:02 16 Basically, there are three points in the
01:03:08 17 argument that we present today, and as laid out in our
01:03:11 18 briefs on this matter. Daniel Chapter One is a
01:03:18 19 nonprofit religious organization --

01:03:22 20 CHAIRMAN LEIBOWITZ: Well, let me ask a question
01:03:23 21 about that. You know, your client is selling to people
01:03:29 22 who aren't members of its church and using the proceeds
01:03:33 23 to buy things like two Cadillacs, two homes, restaurant
01:03:36 24 meals, tennis memberships, country clubs, pool and
01:03:40 25 gardening services, cigars, carries around a Gold

01:03:43 1 American Express card. How can you say in the appeal,
01:03:50 2 but how can you say here that "Mr. Feijo and his wife
01:03:52 3 have taken an effective vow of poverty?" How can you say
01:03:56 4 it's a nonprofit religious institution? I don't
01:03:58 5 understand this. You don't have to be St. Francis of
01:04:02 6 Assisi here, but it seems to me it's not close to that
01:04:04 7 vow of poverty.

01:04:07 8 MR. TURNER: Well, first of all, what I said was
01:04:09 9 it is a nonprofit religious organization. It is
01:04:11 10 recognized by the State of Washington as a corporation
01:04:14 11 sole. If you were to add up all of the material that
01:04:19 12 was presented as costs, as money that was in the bank
01:04:21 13 account of this organization, and add up all of the
01:04:24 14 things that you just described, it totals about three
01:04:28 15 percent of the total amount.

01:04:30 16 The things that they were involved in are --
01:04:33 17 they're routine things that people would be involved in.
01:04:35 18 If the FTC is going to say, we think that individuals
01:04:41 19 who drive a Cadillac and smoke a cigar and play golf,
01:04:45 20 that makes them subject to the jurisdiction of the FTC,
01:04:48 21 that's very likely to bring in very many ministers
01:04:52 22 across this country.

01:04:54 23 COMMISSIONER HARBOUR: Excuse me, Mr. Turner, I
01:04:56 24 think that question is going to the truth and veracity
01:04:58 25 of your clients, and I believe it was the vow of poverty

01:05:02 1 and perhaps their definition of what a vow of poverty
01:05:08 2 is, and I'm curious about that as well.

01:05:10 3 MR. TURNER: The issue that they are -- what
01:05:14 4 they have done is live the life of an individual -- the
01:05:18 5 vow of poverty piece is not to take profits, not to
01:05:24 6 expend money in excess, not to be luxurious. They are
01:05:29 7 living within the framework that is what would be the
01:05:34 8 framework for any minister in any church. That's the
01:05:39 9 position that they have taken throughout this -- this
01:05:43 10 presentation, throughout their lives.

01:05:47 11 COMMISSIONER ROSCH: Let me ask a question, if I
01:05:48 12 may, about that. Is your position, then, that
01:05:52 13 Mr. Feijo, and I'm going to focus on him, not
01:05:55 14 necessarily to the exclusion of his wife, but he is in
01:05:58 15 the reply brief said to be a member of this
01:06:01 16 organization. Is your position that the sale of these
01:06:07 17 products was not profitable to him?

01:06:10 18 MR. TURNER: That is correct. Our position
01:06:12 19 is --

01:06:15 20 COMMISSIONER ROSCH: That is your position? If
01:06:17 21 I may follow up.

01:06:18 22 MR. TURNER: Yes.

01:06:18 23 COMMISSIONER ROSCH: You are not taking the
01:06:19 24 position that the Administrative Law Judge erred by
01:06:23 25 weighing the evidence, in other words, in reaching that

01:06:25 1 finding? Challenging that finding?

01:06:28 2 MR. TURNER: Which evidence? When you say
01:06:31 3 weighing -- could you restate your first question, the
01:06:33 4 premise question?

01:06:34 5 COMMISSIONER ROSCH: Yes, are you taking the
01:06:35 6 position that the Administrative Law Judge could not
01:06:38 7 lawfully weigh the evidence with respect to whether or
01:06:42 8 not the sale of these products was profitable to
01:06:45 9 Mr. Feijo?

01:06:47 10 MR. TURNER: There are three parts to this
01:06:53 11 argument that we are presenting today, and I want to be
01:06:56 12 very clear that the part that I was addressing at this
01:06:58 13 point, before you asked these three questions, was the
01:07:04 14 jurisdictional part.

01:07:05 15 COMMISSIONER ROSCH: I understand that.

01:07:06 16 MR. TURNER: We do not believe the FTC has
01:07:08 17 jurisdiction, period. We do not believe that that
01:07:09 18 Administrative Law Judge should have gone beyond the
01:07:12 19 finding that the Commission has no jurisdiction here.

01:07:15 20 Everything after that, we believe then becomes a
01:07:18 21 matter of discussion in a framework where we think it
01:07:22 22 was improper to even address.

01:07:24 23 COMMISSIONER ROSCH: I understand that, but now
01:07:25 24 I'm asking two questions.

01:07:26 25 MR. TURNER: Okay.

01:07:27 1 COMMISSIONER ROSCH: The first is whether or not
01:07:29 2 in challenging the Commission's jurisdiction here, you
01:07:33 3 are taking the position that Mr. Feijo as the sole
01:07:38 4 member of DCO, which, as you said, is organized under
01:07:45 5 Washington law, did he profit at all from the sale of
01:07:51 6 these four products? Is that your position?

01:07:54 7 MR. TURNER: Our position is that he did not
01:07:56 8 profit, that the items that were identified as things
01:08:01 9 for which he spent money are the routine items that any
01:08:04 10 minister in any church would be spending money on. But
01:08:08 11 further, there was not evidence taken on an issue such
01:08:11 12 as what was the store like that he shopped in, or that
01:08:15 13 his wife shopped in. We had pictures to present and so
01:08:19 14 forth, there was no evidence presented that it was an
01:08:21 15 upscale store, it was actually mostly a second-hand
01:08:24 16 store.

01:08:25 17 COMMISSIONER ROSCH: Was there any evidence
01:08:26 18 presented to the contrary?

01:08:27 19 MR. TURNER: Yes, they testified, specifically,
01:08:29 20 on each point, they testified, what they spent for, how
01:08:31 21 they spent for, they live relatively modest lives. The
01:08:36 22 argument, for example, that their house is on a country
01:08:39 23 club is just not true.

01:08:40 24 COMMISSIONER ROSCH: Then the second question I
01:08:41 25 have to you, sir, is whether or not you fault the

01:08:44 1 Administrative Law Judge for weighing the evidence, that
01:08:49 2 is to say, hearing Mr. and Mrs. Feijo testify on the one
01:08:54 3 hand, and on the other hand looking at their bank
01:08:57 4 accounts, their statements, their withdrawals, et
01:09:00 5 cetera, weighing that evidence in reaching his
01:09:04 6 conclusion? Are you faulting that?

01:09:05 7 MR. TURNER: Well, let me explain what I think
01:09:08 8 the fault is, and then we can -- you can ascertain
01:09:12 9 whether I think he was wrong to weigh it or not. But
01:09:14 10 the statement that there was a profit made is not
01:09:19 11 supported by his arguments. The argument that he made
01:09:22 12 is that this amount of money was taken in, on the sale
01:09:28 13 of a product, and this amount of money is what they
01:09:32 14 spent to manufacture -- to buy the manufactured product.
01:09:36 15 And the differential he looked at is if it was all going
01:09:40 16 to Mr. Feijo. Did not look at any of the intermediate
01:09:44 17 costs, the marketing costs, any of the things that go
01:09:47 18 into figuring out a net income line.

01:09:51 19 In addition, he did not weigh what the money was
01:09:54 20 spent for. He did not look at where he -- for example,
01:09:58 21 the Feijos have all through their career, since 1983,
01:10:02 22 they have traveled around the country and around the
01:10:04 23 world. They have traveled around carrying bibles,
01:10:08 24 holding meetings, doing various kinds of religious
01:10:10 25 activities. One hundred percent of the money that they

01:10:13 1 spent was in those activities. If they were spending
01:10:17 2 money in a restaurant, it was because they were in a
01:10:19 3 town where there was a restaurant to spend money in. It
01:10:22 4 wasn't an upscale activity, it was an activity that was
01:10:25 5 integral to their religious mission.

01:10:28 6 COMMISSIONER ROSCH: I understand that.

01:10:28 7 MR. TURNER: That was not evaluated.

01:10:30 8 COMMISSIONER ROSCH: That is their testimony,
01:10:31 9 and the question I ask is was the Administrative Law
01:10:35 10 Judge entitled to weigh that evidence, having seen them
01:10:38 11 testify, against the evidence that was presented by
01:10:42 12 complaint counsel with respect to lifestyles that they
01:10:45 13 were living?

01:10:46 14 MR. TURNER: The -- with regard to -- we're
01:10:50 15 discussing jurisdiction.

01:10:52 16 COMMISSIONER ROSCH: Yes.

01:10:53 17 MR. TURNER: And with regard to jurisdiction, it
01:10:54 18 was incorrect for him to weigh that information, because
01:10:58 19 they do not have jurisdiction. It's a religious
01:11:01 20 organization, it's a nonprofit organization. It's not a
01:11:04 21 trade association. There is no court case, there is no
01:11:08 22 legal finding, there is no legislation that says the FTC
01:11:12 23 has jurisdiction over an institution. "...[inaudible]"

01:11:15 24 CHAIRMAN LEIBOWITZ: So, what you're saying is
01:11:17 25 something a little bit different, and I want to go back

01:11:19 1 to Commissioner Harbour's point before. Why did you say
01:11:22 2 in your brief that Mr. Feijo and his wife had taken a
01:11:26 3 vow of poverty? Because what you're saying now is that
01:11:29 4 they're behaving in the way of typical ministers, or
01:11:32 5 he's behaving in a manner that's typical. It's not
01:11:36 6 a vow of poverty. Is it a vow of poverty?

01:11:38 7 MR. TURNER: The vow of poverty is in the
01:11:42 8 corporation sole filing papers.

01:11:45 9 CHAIRMAN LEIBOWITZ: So, he filed a vow of
01:11:46 10 poverty?

01:11:47 11 MR. TURNER: Yes.

01:11:48 12 CHAIRMAN LEIBOWITZ: Isn't that different from
01:11:49 13 taking a vow of poverty? I don't see how you can
01:11:52 14 take a vow of poverty and have a golf club membership at
01:11:55 15 the same time. And I want to understand why that's in
01:11:57 16 your brief.

01:11:58 17 MR. TURNER: Well --

01:11:59 18 CHAIRMAN LEIBOWITZ: I mean -- go ahead.

01:12:00 19 MR. TURNER: There are priests and ministers
01:12:02 20 across the country who belong to golf clubs, to country
01:12:07 21 clubs.

01:12:07 22 CHAIRMAN LEIBOWITZ: That's certainly true.
01:12:09 23 That doesn't relate to whether they've taken -- that
01:12:11 24 doesn't necessarily relate to whether they've taken any
01:12:14 25 vow of poverty.

01:12:15 1 MR. TURNER: And there are corporations sole filed
01:12:17 2 across the country in every state where the people who
01:12:19 3 are the managing directors or managing overseers belong
01:12:22 4 to golf clubs, to country clubs.

01:12:25 5 CHAIRMAN LEIBOWITZ: Well, let me -- go ahead.

01:12:27 6 MR. TURNER: I mean, first of all, there has
01:12:29 7 been no evidence --

01:12:30 8 CHAIRMAN LEIBOWITZ: But you're not -- until
01:12:33 9 now, you weren't saying he took a vow of poverty. You
01:12:35 10 said he took a vow of poverty in your brief. He didn't
01:12:38 11 take a vow of poverty. He may not have taken a -- he
01:12:42 12 might not be asserting an affluent lifestyle, but there is
01:12:46 13 no vow of poverty here, except for maybe in the filing
01:12:49 14 in the State of Washington. Isn't that correct?

01:12:51 15 MR. TURNER: Well, I'm willing to grant you that
01:12:53 16 point for this discussion; however, you have to
01:12:56 17 understand that these people have traveled the world
01:12:59 18 with nothing in their pockets, they have spent --

01:13:04 19 COMMISSIONER HARBOUR: But they don't need
01:13:05 20 anything in their pockets because it's all coming out of
01:13:07 21 DCO. DCO --

01:13:11 22 MR. FEIJO: Not true.

01:13:11 23 MR. TURNER: Please don't speak up.

01:13:15 24 COMMISSIONER HARBOUR: Isn't DCO financing their
01:13:17 25 expenses? The country club, the cigars, the

01:13:21 1 restaurants?

01:13:21 2 MR. TURNER: There is no evidence that they
01:13:23 3 belong to a country club. He golfed there several
01:13:26 4 times. But with regard to -- what I'm saying is that
01:13:31 5 they have traveled the world with nothing, no golf
01:13:33 6 clubs, no -- nothing. When they left and went to Europe
01:13:36 7 and went to Poland and so forth, they left all of that
01:13:39 8 in the hands of the people who were back in the home,
01:13:44 9 and they received no payments, no money.

01:13:46 10 COMMISSIONER HARBOUR: I don't find that
01:13:47 11 persuasive, but I would like to ask you another
01:13:49 12 question, though. Is it possible for an entity to have
01:13:52 13 a dual purpose, a religious mission and then a
01:13:55 14 commercial one, in your opinion?

01:13:58 15 MR. TURNER: Not -- I don't think it can have
01:14:00 16 that mission. I think that religious institutions do
01:14:07 17 carry on activities which would be commercial, all of
01:14:11 18 them do. I mean, you can walk out here in the churches
01:14:14 19 here in Washington, you will find a store which sells
01:14:16 20 all kinds of materials that have been brought to the
01:14:18 21 store through a process of making available things that
01:14:22 22 they sell.

01:14:23 23 And those things are a part of the income for
01:14:26 24 what that institution does.

01:14:28 25 COMMISSIONER HARBOUR: So, are you arguing that

01:14:29 1 your clients are not engaged in commercial speech?

01:14:33 2 MR. TURNER: In commercial speech?

01:14:35 3 COMMISSIONER HARBOUR: Correct.

01:14:37 4 MR. TURNER: Well, well, first of all, we're
01:14:39 5 saying that if they are engaged in commercial speech,
01:14:42 6 it's covered commercial speech, they are allowed to do
01:14:44 7 what they're doing. The Constitution does not allow
01:14:47 8 them to be prohibited from doing what they are doing.
01:14:50 9 But what we're saying is their basic message is that it
01:14:52 10 is your choice as an individual how you treat yourself
01:14:56 11 in a health situation, that the integral part of their
01:15:00 12 entire message is your body can heal itself. We will
01:15:06 13 provide you with materials that will help the structure
01:15:10 14 and function of your body that heals itself to that.
01:15:13 15 And that's an integral part of their message, of their
01:15:16 16 total presentation of their mission.

01:15:20 17 COMMISSIONER HARBOUR: Does the fact that your
01:15:23 18 clients once operated for a period of I think 1990
01:15:27 19 through '98 as a for-profit organization selling these
01:15:32 20 challenged products have any relevance in determining
01:15:35 21 whether jurisdiction, in fact, exists?

01:15:38 22 MR. TURNER: I do not believe that it does.
01:15:40 23 First of all, the issue -- the matters at issue are all
01:15:45 24 in the last five years, when that particular formal
01:15:50 25 filing was not in force. Secondly, that particular

01:15:56 1 filing was done by people at Daniel Chapter One when, in
01:16:00 2 fact, he was actually in China when that was done. At
01:16:03 3 no time did he ever run the operation as a business.

01:16:08 4 What he did do was when presented with the
01:16:11 5 papers that his people pulled together, he signed them.
01:16:13 6 He did not, however, in any way run the institution any
01:16:18 7 differently than he does now. And he talked with the
01:16:22 8 lawyer about it, told him that he didn't -- that that
01:16:34 9 did not seem like the way he was going to run it. He
01:16:36 10 did not file his follow-up papers routinely, he did not
01:16:40 11 -- continuously did not file, and in fact, in some of
01:16:44 12 those instances, the lawyer actually came by and said,
01:16:46 13 you've got to sign these papers.

01:16:48 14 But he did not at any time from 1983 until the
01:16:51 15 present did he change the way that the operation was
01:16:54 16 run. It was run as a nonprofit religious institution,
01:16:59 17 and not until he came across the corporation sole form did
01:17:03 18 he understand how to form it in a manner that was
01:17:06 19 compliant with the law.

01:17:07 20 COMMISSIONER HARBOUR: I want to just turn for a
01:17:09 21 moment to substantiation. Your clients have said
01:17:13 22 repeatedly that they are a religious organization, and
01:17:16 23 they've developed these four products to serve the
01:17:20 24 health concerns, as they say, of their followers. The
01:17:23 25 complaint alleges that the ads for those products claim

01:17:26 1 that they inhibit tumor growth, they are effective in
01:17:32 2 treating and curing cancer. My question is, did your
01:17:37 3 clients conduct any scientific testing of the effects of
01:17:41 4 these four challenged products?

01:17:43 5 MR. TURNER: First of all, my clients have
01:17:48 6 disputed and denied that they said cure, treat,
01:17:51 7 mitigate, prevent or --

01:17:52 8 COMMISSIONER HARBOUR: But I'm looking at the
01:17:54 9 ads here, and when I see these ads, it certainly says to
01:17:58 10 me that these products can treat, cure, ameliorate the
01:18:05 11 negative effects of radiation. So, you're telling me
01:18:07 12 that they do not believe the net effect of those ads?

01:18:11 13 MR. TURNER: What I'm saying is that their
01:18:13 14 position is that these products help the body engage its
01:18:19 15 natural ability to fight cancer. That's what they do.
01:18:25 16 That's what they said.

01:18:28 17 COMMISSIONER HARBOUR: They may say that, but
01:18:29 18 their ads don't say that.

01:18:32 19 MR. TURNER: That's what you say.

01:18:33 20 CHAIRMAN LEIBOWITZ: But let me ask --

01:18:35 21 COMMISSIONER HARBOUR: That's what the ALJ said.

01:18:37 22 MR. TURNER: That's what the ALJ said, we think
01:18:40 23 that's incorrect, yes.

01:18:41 24 CHAIRMAN LEIBOWITZ: Let me follow up. I think
01:18:43 25 if you look at Exhibit 13, or actually Exhibit 12, it

01:18:45 1 says that BioShark can "stop tumor growth." Isn't that
01:18:53 2 a specific health claim? Isn't that a curative claim?
01:18:57 3 I understand that it's a gray area of structure
01:19:01 4 function and other things, or that it's a complicated
01:19:03 5 sort of totality of circumstances test, not
01:19:06 6 everything is clear, but why is that not a health claim?

01:19:11 7 MR. TURNER: Well, first of all, it could be a
01:19:13 8 structure function claim, which is what we claim.

01:19:15 9 CHAIRMAN LEIBOWITZ: It could be a?

01:19:17 10 MR. TURNER: A structure function claim, which
01:19:19 11 is what we claim. That's why they don't use the words
01:19:22 12 that are health claim words. They're a structure
01:19:23 13 function claim. The body has certain kinds of functions
01:19:24 14 and certain kinds of structures, and the argument is
01:19:27 15 that those structures and functions are assisted by
01:19:31 16 these herbal products in a way that helps the body do
01:19:33 17 the natural thing, which is to stop the growth of
01:19:36 18 tumors.

01:19:36 19 CHAIRMAN LEIBOWITZ: And I'm not disputing that
01:19:38 20 there's a sort of continuum and there might be some
01:19:41 21 murky areas, but when you say a structure function
01:19:44 22 claim, isn't that things like weight loss, fitness?
01:19:46 23 This is a disease-related claim, right? I mean, it
01:19:49 24 seems to me that's on the other side of the spectrum.
01:19:52 25 Towards the other side of the spectrum.

01:19:54 1 MR. TURNER: Well, look, it may well be, and if
01:19:56 2 it were, that should have been a part of the case, but
01:19:59 3 that is not the position that complaint counsel and his
01:20:01 4 expert took. They took the position that these
01:20:03 5 statements, the statements you just made, turns these
01:20:05 6 into a drug and therefore they must be regulated as a
01:20:08 7 drug, and then the information that was presented was
01:20:10 8 scientific information saying that drug requirements
01:20:13 9 should be applied as a way of evaluating the claims.
01:20:17 10 The drug requirements being double-blind,
01:20:21 11 placebo-controlled studies and we're saying that's not
01:20:23 12 correct.

01:20:23 13 We said these are structure function claims,
01:20:26 14 their guy said, their expert said, I don't know what a
01:20:29 15 structure function claim is. I have never heard of --
01:20:31 16 basically he said I've never heard of it, I don't know
01:20:33 17 how it works, I don't know what it means.

01:20:35 18 We brought our experts in, we had five
01:20:38 19 scientific experts, who all, two of them read -- three
01:20:43 20 of them were on important points in this case, one of
01:20:45 21 them was on double-blind studies, not being a sound way
01:20:48 22 to evaluate information, that was from a world-class
01:20:51 23 scientist who we brought in. We think his information
01:20:54 24 needs to be looked at.

01:20:55 25 The second person, the second one of the persons

01:20:57 1 was an individual who manages scientific studies almost
01:21:01 2 exactly the same way as their expert does, and he said
01:21:06 3 he had talked hours with Mr. Feijo to validate the
01:21:10 4 science. And the third one was one that made one of
01:21:12 5 these products and said how it worked. These are all
01:21:15 6 scientific experts.

01:21:16 7 Now, the two experts that looked at the claims
01:21:17 8 you're talking about looked at the exact words that were
01:21:21 9 presented, by the clients, by the Respondents, and they
01:21:25 10 said those words were supported by the information that
01:21:29 11 was supplied to them as the substantiation.

01:21:31 12 COMMISSIONER HARBOUR: Mr. Turner?

01:21:33 13 MR. TURNER: Yes?

01:21:33 14 COMMISSIONER HARBOUR: Did any of the experts,
01:21:35 15 Respondents' experts, have a doctorate in medicine? Did
01:21:39 16 they have any specialized training or experience
01:21:41 17 regarding cancer treatment? Did they conduct any
01:21:44 18 clinical trials? And I know I asked a compound
01:21:47 19 question, I'll go back to the first, were any of them
01:21:50 20 medical doctors?

01:21:51 21 MR. TURNER: One was a -- there were no medical
01:21:53 22 doctors, there was a naturopathic.

01:21:56 23 COMMISSIONER HARBOUR: Thank you. Did any of
01:21:58 24 them have specialized training or experience regarding
01:22:01 25 cancer treatment?

01:22:01 1 MR. TURNER: Cancer treatment?

01:22:03 2 COMMISSIONER HARBOUR: Yes.

01:22:03 3 MR. TURNER: Well, the naturopath does, in fact,
01:22:06 4 work with cancer patients, yes. Her activities are to
01:22:11 5 work with other doctors that are also skilled cancer --

01:22:15 6 COMMISSIONER HARBOUR: Specialized training, not
01:22:16 7 working with those who have specialized training.

01:22:19 8 MR. TURNER: No.

01:22:20 9 COMMISSIONER HARBOUR: Thank you. Have they
01:22:21 10 conducted any clinical trials?

01:22:23 11 MR. TURNER: No. The clinical trials --

01:22:25 12 COMMISSIONER HARBOUR: Thank you.

01:22:26 13 MR. TURNER: The clinical trials you're talking
01:22:27 14 about, to do what they were doing would cost \$100
01:22:30 15 million per unit, per chemical entity.

01:22:32 16 COMMISSIONER HARBOUR: But don't they have an
01:22:33 17 obligation to terminally ill patients if they're selling
01:22:35 18 or peddling these treatments to be specialized? People
01:22:41 19 who are terminally ill are relying on these medicines to
01:22:44 20 cure them, because the net effect of your ads gives
01:22:47 21 people hope. More than hope.

01:22:50 22 MR. TURNER: Nothing -- nothing in these ads
01:22:52 23 told people not to go to their doctor, and in fact, it
01:22:56 24 said specifically, this was not medical advice.

01:22:59 25 COMMISSIONER HARBOUR: The mouse type? Are you

01:23:00 1 talking about that very small disclaimer?

01:23:03 2 MR. TURNER: On every page.

01:23:04 3 COMMISSIONER HARBOUR: On every page that you
01:23:05 4 have to have a microscope to see. Is that what you're
01:23:08 5 talking about, the very small disclaimers?

01:23:10 6 MR. TURNER: Well, call it small, I don't think
01:23:12 7 it's that small, but you can call it small. The -- you
01:23:15 8 asked a compound question, and I --

01:23:17 9 COMMISSIONER HARBOUR: And you answered all
01:23:18 10 three of the questions, but I would like to ask you --

01:23:20 11 MR. TURNER: I didn't think I did, but that's
01:23:23 12 okay.

01:23:23 13 COMMISSIONER HARBOUR: I would like to ask you
01:23:24 14 one more question. How would you respond to complaint
01:23:26 15 counsel's expert, Dr. Miller, who concluded that your
01:23:29 16 client's reference materials didn't constitute competent
01:23:33 17 or reliable scientific evidence?

01:23:38 18 MR. TURNER: The answer is that he grounded his
01:23:40 19 entire testimony in placebo-controlled, double-blind
01:23:44 20 studies, and we are saying that is not the proper
01:23:46 21 standard. He didn't -- he offered no other explanation
01:23:49 22 of that, and these are not placebo-controlled,
01:23:54 23 double-blind studies. That's what his whole testimony
01:23:56 24 was about.

01:23:56 25 COMMISSIONER HARBOUR: Did your expert,

01:23:57 1 Dr. Duke, did he determine whether any other studies
01:23:59 2 existed regarding your four products?

01:24:02 3 MR. TURNER: He determined that for some of them
01:24:04 4 they did, but he also pointed out, and this is a huge
01:24:07 5 national debate about whether we're going to go down
01:24:10 6 this chemical, surgery, radiation road alone, or whether
01:24:14 7 there are going to be other things to go along with it.

01:24:18 8 He pointed out that there are hundreds of years,
01:24:20 9 and in fact, 2,000 years in the case of tumeric, of
01:24:24 10 experience that says these products help the body to
01:24:27 11 solve the kinds of problems that we're dealing with.

01:24:29 12 COMMISSIONER HARBOUR: Did he analyze any of
01:24:30 13 those four products?

01:24:32 14 MR. TURNER: No.

01:24:32 15 COMMISSIONER HARBOUR: Did he --

01:24:33 16 MR. TURNER: Tumeric --

01:24:36 17 COMMISSIONER HARBOUR: Did he look at the
01:24:37 18 ingredients of any of the four products?

01:24:40 19 MR. TURNER: Tumeric has between 500 and 5,000
01:24:43 20 ingredients. One of the problems we're addressing here
01:24:44 21 is the idea of separating out an ingredient out of a
01:24:47 22 product is one of the things that the Respondents' side
01:24:51 23 of the debate says destroys their ability to be
01:24:53 24 effective, as effective as the nutrients would be for
01:24:57 25 assisting the body to solve the problems that it has.

01:25:00 1 The idea of -- the idea of the herbal
01:25:04 2 intervention is to create strength for the body to deal
01:25:08 3 with whatever happens. That's why the Feijos have been
01:25:11 4 clear. If you use chemotherapy or you use radiation or
01:25:15 5 you use surgery, these products can help you.

01:25:17 6 They do not say don't use those things, they're
01:25:20 7 saying whatever you do, these products can help you.

01:25:22 8 COMMISSIONER HARBOUR: But isn't it very likely
01:25:24 9 that terminally ill patients have foregone other
01:25:28 10 treatments based upon these particular four products?

01:25:33 11 MR. TURNER: I don't believe it's very likely at
01:25:34 12 all. I think that people with -- you know, my own
01:25:36 13 reading of people who are terminally ill, who I have
01:25:39 14 talked to and been with, is that they will try
01:25:42 15 everything. Not forego this instead of that. And that
01:25:44 16 seems to be a more likely result.

01:25:46 17 COMMISSIONER HARBOUR: But that's speculation.

01:25:48 18 MR. TURNER: Pardon?

01:25:49 19 COMMISSIONER HARBOUR: You're selling treatments
01:25:51 20 that you haven't substantiated and it appears that your
01:25:55 21 experts have not done the proper testing, they don't
01:25:58 22 know the ingredients.

01:26:01 23 MR. TURNER: We believe that they are properly
01:26:03 24 substantiated. We believe that that's what the law
01:26:05 25 calls for. The law -- an example of the kind of problem

01:26:08 1 that we're dealing with is there are two pieces of it in
01:26:12 2 the ALJ's report, or in his questioning, said, well,
01:26:16 3 can't you come up with a message that they can use?
01:26:18 4 They don't want to stop selling the products, these
01:26:20 5 people say the products are fine, not a problem with
01:26:23 6 that, but we don't like the messages.

01:26:25 7 Kevin Trudeau, for example, is on the TV all the
01:26:28 8 time talking about how bad the FTC is. And our point is
01:26:31 9 if you lump Kevin Trudeau and these people in the same
01:26:34 10 category as the FTC, I see only trouble down the road
01:26:37 11 for consumers, for the FTC, and for this society,
01:26:40 12 because there's a huge difference.

01:26:43 13 On the Q-Ray case, the argument the judge made
01:26:48 14 was there is nothing, zero, on the side of Q-Ray doing
01:26:55 15 what they claim. Nothing. They actually claim the
01:26:58 16 placebo effect. Our argument is that there is a settled
01:27:01 17 science in the herbal world that is hundreds of years
01:27:06 18 old that says these products are valuable for these
01:27:09 19 things. And we are saying that the Constitution did not
01:27:13 20 allow that to be suppressed. We're saying that the FTC
01:27:16 21 law does not allow the FTC to suppress it. And we're
01:27:19 22 saying that in providing the substantiation that was
01:27:23 23 provided, Respondents provided the proper substantiation
01:27:27 24 under the law.

01:27:28 25 The law does not say double-blind studies, it

01:27:30 1 does not say -- in fact, it does not say studies. It
01:27:34 2 says, scientific information, and these individuals who
01:27:40 3 testified, Mr. Duke, Dr. Duke, was for 27 years, he was
01:27:44 4 a key herbal advisor to both the National Cancer
01:27:47 5 Institute, and the U.S. Department of Agriculture.

01:27:50 6 COMMISSIONER HARBOUR: The red light is blinking
01:27:52 7 and I just have one final observation. You know,
01:27:56 8 ultimately the Commission will render its judgment, but
01:27:58 9 I know that your clients must realize that there will
01:28:02 10 come a time when their actions will be judged by a
01:28:04 11 higher tribunal, and I hope they understand that the
01:28:10 12 treatments that they are selling, they're selling these
01:28:13 13 to terminally ill patients that are potentially
01:28:17 14 foregoing treatments that could prolong or improve the
01:28:20 15 quality of their lives. That's all I want to say.

01:28:25 16 COMMISSIONER KOVACIC: Mr. Turner, I would like
01:28:26 17 you to take a couple of more minutes if you could to
01:28:28 18 come back to the jurisdictional point. In laying out
01:28:34 19 your thoughts about whether the Commission has
01:28:37 20 jurisdiction to address the behavior here, you focus
01:28:41 21 again on the nonprofit religious institution status of
01:28:50 22 your client, and you raised points about the kind of
01:28:54 23 evidence that the Commission could consider with respect
01:28:56 24 to the claim about jurisdiction.

01:29:01 25 Let's suppose that a party contests the

01:29:04 1 jurisdiction of the Commission and says, we are a
01:29:09 2 not-for-profit religious institution. What evidence
01:29:12 3 would you say the Federal Trade Commission can examine
01:29:16 4 to evaluate whether it is precluded from exercising
01:29:20 5 jurisdiction?

01:29:22 6 MR. TURNER: Well, the Commission had, actually
01:29:24 7 on the Internet, has a filed statement saying that it
01:29:27 8 will not -- essentially it will not go after 501(c)(3)
01:29:31 9 organizations because they do not believe they have that
01:29:34 10 jurisdiction. That's a posted note, which the public is
01:29:36 11 aware of and which actually causes people to rely on it.

01:29:40 12 That is the first place that I would start. And
01:29:43 13 then I would argue, that is looking at the structural
01:29:46 14 framework. Then I would argue that look at the
01:29:49 15 corporation sole structure. I don't think that the FTC
01:29:52 16 has jurisdiction over a corporation sole. I don't think
01:29:54 17 it has jurisdiction over any 501(c)(3), for example.

01:29:59 18 COMMISSIONER KOVACIC: So, would you say that as
01:30:01 19 long as a firm is listed as a 501(c)(3) entity, that's
01:30:05 20 the end of the inquiry?

01:30:06 21 MR. TURNER: Well, I would not say that's the
01:30:08 22 end of the inquiry, but I'm saying that's the beginning
01:30:10 23 of the inquiry. The notice of -- we filed a brief in
01:30:15 24 the California Dental case supporting FTC jurisdiction,
01:30:19 25 because the commercial activity that was engaged, and

01:30:23 1 that was a 501(c)(6) organization, the activity it was
01:30:27 2 engaged in was providing a series of economic benefits
01:30:32 3 for the membership, which included an insurance plan,
01:30:37 4 business placement, business consulting, a whole range
01:30:40 5 of things that were listed. And the issue was lucre,
01:30:44 6 lucre. These individual dentists had a very strong
01:30:48 7 economic support moving them forward under the structure
01:30:55 8 of the American Dental Association, in a 501(c)(6). I
01:30:58 9 believe that the Commission has jurisdiction over trade
01:31:02 10 associations, and so that it's the kind of nonprofit
01:31:07 11 that we're discussing here.

01:31:08 12 COMMISSIONER KOVACIC: But beyond looking at the
01:31:10 13 classification for purposes of the Internal Revenue
01:31:14 14 Service regulatory scheme, what else can the Commission
01:31:17 15 look at to test the nature of the entity before it?

01:31:23 16 MR. TURNER: Let me try to be clear about this
01:31:32 17 case.

01:31:33 18 COMMISSIONER KOVACIC: Yes.

01:31:34 19 MR. TURNER: The Administrative Law Judge held a
01:31:35 20 special hearing on the question of the nature of the
01:31:37 21 organization, and found that it was a religious -- a
01:31:41 22 nonprofit religious organization.

01:31:42 23 So, at that point, there was no further --
01:31:45 24 nothing else that comes in goes to that question. That
01:31:49 25 question was settled before the hearing actually

01:31:51 1 started.

01:31:51 2 Now, if it was going to go and evaluate the
01:31:53 3 kinds of things that were being suggested in the
01:31:55 4 questions here, that should have been part of what would
01:31:58 5 have gone forward, but that was not. Nothing that was
01:32:00 6 brought in there was looked at as helping to support the
01:32:05 7 fact that this was not a religious institution.

01:32:09 8 CHAIRMAN LEIBOWITZ: May I just follow up on
01:32:13 9 Commissioner Kovacic's question, and I am no expert on
01:32:14 10 this, but does the State of Washington in evaluating
01:32:17 11 corporation sole status or does the IRS in determining
01:32:22 12 nonprofit status, do they conduct any investigation, or
01:32:25 13 do you simply file?

01:32:26 14 MR. TURNER: You simply file, and the -- that
01:32:30 15 issue was tested in court, and the complaint counsel
01:32:35 16 presented one case in which it said you can't as an
01:32:39 17 individual file and become a corporation sole as a tax
01:32:46 18 shelter, but it did not submit the case in which it said
01:32:49 19 that the thousands of corporations sole that have been
01:32:52 20 filed by the individual who was the subject of the case
01:32:55 21 were proper, and had been done right. And the way they
01:32:59 22 were doing it was correct.

01:33:00 23 Now, for jurisdictional purposes, the IRS does
01:33:07 24 not have -- specifically does not have jurisdiction over
01:33:11 25 religious organizations. They are not required to file,

01:33:13 1 they aren't asked to file, they stay out of that. And
01:33:15 2 that includes corporations sole.

01:33:17 3 COMMISSIONER KOVACIC: So, your argument is that
01:33:22 4 the Administrative Law Judge, having reached a decision
01:33:24 5 preliminarily about the nature of the organization
01:33:27 6 should have dismissed the case after that proceeding?

01:33:29 7 MR. TURNER: Well, it was not a preliminary
01:33:32 8 determination. I mean, it was a final determination and
01:33:34 9 it remains still there.

01:33:35 10 COMMISSIONER KOVACIC: And it's your argument
01:33:37 11 that as soon as that process was completed, that that
01:33:41 12 phase of the proceedings was completed, that that ought
01:33:44 13 to have been the end of the case?

01:33:46 14 MR. TURNER: Well, I would argue -- yes, that's
01:33:48 15 my argument. That's the answer to the questions that
01:33:51 16 you were asking me. That's my argument. However, my
01:33:53 17 second argument is, if the material that went on further
01:33:57 18 was going to be utilized to determine or be used to
01:34:00 19 evaluate whether it was a religious organization or not,
01:34:04 20 I'm saying that use of that information was precluded by
01:34:07 21 that decision. We weren't even on notice that we
01:34:10 22 were -- that this information was going to come in and
01:34:13 23 say, ah-hah, you see, he ruled it was a religious
01:34:16 24 organization, but after all that, we've decided it's
01:34:18 25 not.

01:34:18 1 COMMISSIONER KOVACIC: So, just so that I
01:34:20 2 understand, you're claiming that the subsequent
01:34:22 3 consideration of that information was illegitimate
01:34:25 4 because the earlier ruling should have precluded coming
01:34:29 5 back to that issue?

01:34:30 6 MR. TURNER: For the purposes of jurisdiction.

01:34:32 7 COMMISSIONER KOVACIC: Okay.

01:34:33 8 MR. TURNER: And also, I want to underline that
01:34:34 9 we are saying that this jurisdictional issue applies to
01:34:38 10 all 501(c)(3)s, not just religious 501(c)(3)s, and that
01:34:44 11 there is nothing in the law or in the cases that says
01:34:46 12 that the FTC can evaluate those kinds of institutions.

01:34:51 13 COMMISSIONER KOVACIC: Are you also saying that
01:34:54 14 because of the sequencing of the consideration of this
01:34:59 15 information that you lacked an adequate opportunity to
01:35:03 16 rebut it when it was brought up?

01:35:07 17 MR. TURNER: Well, it was never brought up. The
01:35:08 18 information that's being talked about now and what they
01:35:13 19 spent money for and so forth was not brought up about
01:35:17 20 jurisdiction. It was brought up about -- the issue was
01:35:19 21 all about their behavior, whether it was accurate and
01:35:21 22 all that sort of thing. But in terms of the
01:35:23 23 religious -- whether the FTC has jurisdiction over an
01:35:26 24 organization that has been found to be a religious
01:35:28 25 organization was not in the hearing as it went on.

01:35:33 1 COMMISSIONER ROSCH: If I may just follow up on
01:35:34 2 that for just a second, I thought you told me that
01:35:40 3 Mr. Feijo, and maybe his wife, testified with respect to
01:35:46 4 their travels around the world that basically what they
01:35:48 5 had done and how this was financed, et cetera. They
01:35:52 6 testified that they never belonged to a country club,
01:35:54 7 that he just golfed at a club occasionally, that they
01:35:59 8 didn't live on a golf course after all. At what point
01:36:08 9 did they testify to that, sir?

01:36:10 10 MR. TURNER: Well, they both testified twice,
01:36:12 11 once in the religious jurisdiction -- you know, the
01:36:14 12 jurisdictional issue, which is a separate day's hearing,
01:36:17 13 and then again in the basic hearing, and I would have to
01:36:22 14 go through and parse out where those things came up.

01:36:24 15 COMMISSIONER ROSCH: Thank you.

01:36:25 16 MR. TURNER: Because the information came up
01:36:26 17 with -- well, I think it was in both instances the
01:36:29 18 complaint counsel presented economic information about
01:36:31 19 the religious nature of the -- the commercial nature of
01:36:34 20 the organization.

01:36:34 21 COMMISSIONER ROSCH: Thank you.

01:36:36 22 CHAIRMAN LEIBOWITZ: All right. If there are no
01:36:39 23 more questions, thank you, Mr. Turner.

01:36:41 24 Mr. Gordon, you may come up and begin your
01:36:46 25 argument.

01:36:46 1 MR. GORDON: Thank you.

01:36:49 2 Let me quickly answer the question that
01:36:52 3 Commissioner Rosch was posing. If you look at the
01:36:55 4 transcript from the hearing on jurisdiction at page 154,
01:36:57 5 I asked Mr. Feijo if Daniel Chapter One paid for his
01:37:00 6 country club membership and he said yes. At page 155 of
01:37:05 7 that transcript, I asked him about the golf course
01:37:07 8 behind his home in Florida and he confirmed that there
01:37:09 9 is a golf course behind his home in Florida, that the
01:37:13 10 ministry pays for.

01:37:14 11 Mr. Turner is just wrong, as with most of his
01:37:19 12 arguments, it is completely untethered to the facts in
01:37:22 13 this case.

01:37:27 14 Daniel Chapter One and James Feijo advertised
01:37:29 15 over the Internet that their products, BioShark, 7 Herb
01:37:33 16 Formula, GDU and BIO MIXX could treat, prevent or cure
01:37:36 17 cancer. Respondents touted these products as
01:37:40 18 alternatives to conventional cancer therapies and as
01:37:44 19 based on the science of Biomolecular Nutrition
01:37:47 20 supposedly developed by Mr. Feijo.

01:37:50 21 The alternative point is important. Take a look
01:37:52 22 at Exhibit 24, page Bates stamped 421, where they tout,
01:37:57 23 This is an alternative, not a complement. And if you
01:38:03 24 really want to find out the Feijos' view on
01:38:07 25 complementary medicine, look at their own words at

01:38:09 1 Exhibit 5, page 25 and 26, they are not before you now,
01:38:12 2 but we have them in the record, Exhibit 5, page 28, and
01:38:16 3 Exhibit 8, pages 4 and 5. Those are transcripts from
01:38:18 4 the Feijos' radio show, where they tell patients, cancer
01:38:23 5 patients, don't do what your doctor has told you, take
01:38:25 6 our stuff instead.

01:38:26 7 That is why we are here today. This is
01:38:32 8 dangerous. This is not some academic debate about the
01:38:35 9 contours of FTC jurisdiction, this is not some academic
01:38:39 10 debate proper for a law school article about U.S. v.
01:38:44 11 Johnson. This is about --

01:38:46 12 COMMISSIONER KOVACIC: What's wrong with law school
01:38:48 13 articles? You're not suggesting that those aren't useful
01:38:52 14 contributions to the body of human knowledge, are you?

01:38:56 15 MR. GORDON: They have a very useful
01:38:58 16 contribution.

01:38:58 17 COMMISSIONER KOVACIC: Of course. I thought so.
01:39:01 18 I knew it. I knew it.

01:39:03 19 MR. GORDON: Especially from the Harvard on the
01:39:05 20 Potomac, which is also my alma mater.

01:39:06 21 This is dangerous. This is not an academic
01:39:09 22 debate.

01:39:10 23 COMMISSIONER ROSCH: Let me back up. Was there
01:39:11 24 a dispute at trial between yourself and counsel for the
01:39:16 25 Respondents with respect to whether or not when you were

01:39:19 1 making -- whether the ALJ was making a determination as
01:39:24 2 to what messages were conveyed by these advertisements
01:39:29 3 that the ALJ should look at the overall net impression
01:39:34 4 that these ads make? Was there a dispute about that as
01:39:37 5 a matter of law at the trial?

01:39:40 6 MR. GORDON: There was a dispute as to whether
01:39:42 7 that was the proper analytical framework. We introduced
01:39:49 8 the advertisements, I walked, in both my opening and my
01:39:51 9 closing, the ALJ through those advertisements to
01:39:55 10 buttress our arguments as to why the claims that were
01:39:58 11 pled in the complaint were made. The Respondents made
01:40:00 12 absolutely no reference, in this advertising case, to
01:40:02 13 the advertisements. They did argue at times a legal
01:40:06 14 point of view that we had to provide extrinsic evidence,
01:40:11 15 but they provide no alternative textual explanation.

01:40:14 16 COMMISSIONER ROSCH: That's a second issue. The
01:40:15 17 question I'm putting is did they argue about the
01:40:19 18 standard of overall net impression? Did they ever say
01:40:22 19 that was the wrong standard?

01:40:25 20 MR. GORDON: They did not say that was the wrong
01:40:26 21 standard. They said that that standard required
01:40:29 22 extrinsic evidence.

01:40:30 23 COMMISSIONER ROSCH: Okay, that's a different
01:40:31 24 matter.

01:40:32 25 MR. GORDON: Understood.

01:40:32 1 COMMISSIONER ROSCH: That was their argument?

01:40:33 2 MR. GORDON: Correct.

01:40:35 3 COMMISSIONER ROSCH: And that was where the
01:40:36 4 dispute lay with respect to that matter, the meaning of
01:40:41 5 the ads?

01:40:41 6 MR. GORDON: Yes.

01:40:42 7 COMMISSIONER ROSCH: Let me move on to a second
01:40:44 8 issue. Was there a dispute between yourself and counsel
01:40:46 9 for the Respondents, at trial, about whether or not an
01:40:50 10 advertisement could be deceptive for two reasons, one of
01:40:55 11 which would be that it was false, and the second would
01:40:58 12 be that it was unsubstantiated? Was there a dispute
01:41:01 13 about that as a matter of law?

01:41:05 14 MR. GORDON: In our papers, we focused on the
01:41:08 15 lack of substantiation. They, again, seemed to think
01:41:13 16 that extrinsic evidence was required, as to the meaning
01:41:16 17 of the ad, so they never really got to the
01:41:18 18 substantiation. Their substantiation was completely
01:41:21 19 focused on a sort of disputatious dissection of the
01:41:24 20 particular words in the ad, rather than the whole of the
01:41:27 21 ad.

01:41:28 22 COMMISSIONER ROSCH: I understand that, but the
01:41:29 23 question I'm putting to you right now is was there a
01:41:32 24 dispute between yourselves with respect to whether or
01:41:34 25 not the lack of substantiation in itself might make an

01:41:37 1 ad deceptive?

01:41:39 2 MR. GORDON: That was certainly our position,
01:41:42 3 they didn't really argue about that.

01:41:44 4 COMMISSIONER ROSCH: Okay. Now, their argument,
01:41:45 5 as I read their briefs, and I should have asked you
01:41:48 6 about this, Counsel, and I apologize, perhaps you will
01:41:51 7 want to take this up on the rebuttal, seems to be rather
01:41:55 8 that if you're going to just focus on substantiation,
01:42:01 9 you can't make that substantiation uncertain. That is
01:42:04 10 to say, it needs to be fixed, on the one hand; on the
01:42:11 11 other hand, they argue that if it's fixed at a high
01:42:13 12 enough point, as, for example, to require placebo-based,
01:42:19 13 double-blind testing, that that's too high.

01:42:22 14 The question I have for you, and for you as
01:42:25 15 well, sir, the next time you stand up and deliver your
01:42:29 16 rebuttal, is whether or not Daniel Chapter One is
01:42:33 17 advantaged instead of disadvantaged by that flexible
01:42:37 18 standard. I would think that as a company that sells
01:42:44 19 some 200 products, only four of which are alleged to be
01:42:50 20 cures or treatments for cancer, which the ALJ may have,
01:42:57 21 indeed, thought in his own mind should be substantiated
01:43:01 22 to a very high degree, that on the other hand, they're
01:43:06 23 selling some things that are good for indigestion, some
01:43:11 24 products that are -- that are ingested for hair loss,
01:43:16 25 that sort of thing. Those may be held to be

01:43:18 1 substantiated by a much lower standard.

01:43:21 2 Aren't they advantaged by that as a company who
01:43:25 3 is selling some 200 products for multiple
01:43:29 4 uses?

01:43:31 5 MR. GORDON: It seems obvious to me that that
01:43:33 6 is, yes.

01:43:37 7 Let me turn to jurisdiction. Mr. Turner seems
01:43:42 8 to indicate that there's some danger to the Commission
01:43:46 9 if they -- if you find that there is jurisdiction over
01:43:49 10 Daniel Chapter One and Mr. Feijo. There is danger if
01:43:53 11 you do not. The basis of their argument is that they
01:43:58 12 filed corporation sole papers with the State of
01:44:01 13 Washington. Well, the State of Washington has now
01:44:03 14 abolished any new entity taking advantage of a
01:44:07 15 corporation sole, because it has been found to be a
01:44:10 16 notorious tax dodge.

01:44:13 17 COMMISSIONER ROSCH: Well, is that in the
01:44:15 18 record?

01:44:15 19 MR. GORDON: It is a matter of public
01:44:17 20 information, as we said in our papers, it happened after
01:44:20 21 we filed our brief, it actually became official. It is
01:44:23 22 in the record that the State of Washington was
01:44:25 23 considering doing so, in our appellate papers, we cited
01:44:29 24 to the Secretary of the State of Washington's website
01:44:33 25 where he now says that they have, in fact, abolished --

01:44:36 1 CHAIRMAN LEIBOWITZ: Whoa, whoa, whoa, Mr.
01:44:38 2 Gordon, are you suggesting that Daniel Chapter One is a
01:44:39 3 tax dodge or a sham? Because that's the implication
01:44:42 4 that I think is what you're saying.

01:44:43 5 MR. GORDON: What we know is that Mr. Feijo
01:44:45 6 stopped paying his taxes sometime in the mid-1990s, and
01:44:51 7 what we know is that thereafter, he incorporated Daniel
01:44:55 8 Chapter One as a Washington corporation sole. The woman
01:44:58 9 who incorporated it, Nancy Johnson, was then prosecuted
01:45:01 10 by the IRS for tax evasion in connection with
01:45:07 11 corporations sole. That was the reference that
01:45:09 12 Mr. Turner made.

01:45:09 13 You don't need to find that this was created
01:45:14 14 solely for purposes of tax evasion, but the fact that
01:45:17 15 they keep absolutely no records.

01:45:18 16 CHAIRMAN LEIBOWITZ: But you keep on inferring
01:45:20 17 or suggesting, you just said not solely for the purposes
01:45:22 18 of tax evasion, but you keep on suggesting that that's
01:45:25 19 why they're doing it.

01:45:25 20 MR. GORDON: It may well be.

01:45:27 21 COMMISSIONER ROSCH: Well, let's assume that it
01:45:29 22 isn't. Does that make any difference to the question of
01:45:33 23 jurisdiction in this case?

01:45:33 24 MR. GORDON: At the end of the day, no. Because
01:45:35 25 at the end of the day, what we have is compelling

01:45:38 1 evidence that this is a commercial enterprise, and that
01:45:42 2 the results of that commercial enterprise inured to the
01:45:48 3 benefit of James Feijo.

01:45:49 4 As to the commercial enterprise, this entity, \$2
01:45:53 5 million in sales annually, it engages in comparative
01:45:56 6 advertising, comparing its products to those of its
01:45:58 7 competitors, competitive brands. It has 15 or so
01:46:04 8 distributors that sell its product at a profit. In
01:46:07 9 enticing distributors, it has a brochure, you've got a
01:46:12 10 copy of it in front of you, that talks about the high
01:46:15 11 profits that distributors can make selling this product.
01:46:17 12 Certainly, if the distributors can make a profit selling
01:46:22 13 this one step down in the distribution chain, when
01:46:25 14 Daniel Chapter One sells it directly, they must be
01:46:26 15 making a profit.

01:46:28 16 COMMISSIONER HARBOUR: Mr. Gordon, can we just
01:46:30 17 talk about the religious issues for a second?

01:46:32 18 MR. GORDON: Yes.

01:46:33 19 COMMISSIONER HARBOUR: Is the Religious Freedom
01:46:35 20 Restoration Act of 1993 applicable to this case?

01:46:37 21 MR. GORDON: I don't believe so directly,
01:46:40 22 because the ads make so little reference to religion. I
01:46:46 23 mean, look at the exhibits in front of you. The
01:46:50 24 catalog, no religious reference. The 7 Herb formula
01:46:54 25 websites, 12 pages long, you've got the first page of it

01:46:57 1 there. If you go to the twelfth page, buried in the
01:47:01 2 footnote, the mouse print there, is one sentence about
01:47:06 3 religion. Right after that is the one sentence
01:47:09 4 disclaimer that is completely ineffective to cure the
01:47:12 5 claims made above.

01:47:13 6 Moreover, even if the Act is found to apply
01:47:16 7 here, there is certainly a compelling interest being
01:47:21 8 served. We are trying to protect vulnerable, sick
01:47:26 9 cancer patients, and the remedy that we are seeking is
01:47:29 10 narrowly tailored to protect that interest.

01:47:32 11 COMMISSIONER HARBOUR: But would a finding of
01:47:34 12 jurisdiction somehow violate the Act's protections over
01:47:37 13 the free exercise of an entity's religious practices?

01:47:42 14 MR. GORDON: No. If that were the case, every
01:47:47 15 charlatan out there would proclaim themselves a
01:47:50 16 religious ministry, claim themselves a nonprofit, and we
01:47:56 17 would lose jurisdiction over a vast majority of bad
01:48:00 18 guys.

01:48:01 19 COMMISSIONER ROSCH: Well, as the Chairman has
01:48:04 20 pointed out, that implies at least that they are
01:48:07 21 charlatans, and let's assume that they are not. Does
01:48:09 22 that make any difference?

01:48:11 23 MR. GORDON: Whether they actually believe that
01:48:13 24 which they say is irrelevant. Intent is irrelevant
01:48:18 25 under Section 5 of the FTC Act.

01:48:21 1 CHAIRMAN LEIBOWITZ: Well, let me ask you this,
01:48:23 2 when considering jurisdiction or finding liability over
01:48:25 3 what is arguably a religious institution, and as
01:48:30 4 Commissioner Rosch said, let's consider it a religious
01:48:32 5 institution, don't you think the FTC ought to be very,
01:48:35 6 very careful before it holds itself to a higher standard
01:48:40 7 when essentially before it brings a case, or before it
01:48:45 8 finds liability, because we are dealing with, you know,
01:48:47 9 core First Amendment issues.

01:48:52 10 MR. GORDON: I agree that the FTC should be very
01:48:54 11 careful in proceeding against an entity that proclaims
01:48:56 12 itself to be a religious institution, and I believe the
01:48:59 13 evidence here will allow the Commission to proceed
01:49:04 14 carefully, but confidently, that it has jurisdiction over
01:49:09 15 Daniel Chapter One and James Feijo.

01:49:13 16 CHAIRMAN LEIBOWITZ: Has the Federal Trade
01:49:14 17 Commission brought other cases like this?

01:49:15 18 MR. GORDON: If you look at Ohio Christian
01:49:18 19 Academy, it was --

01:49:19 20 CHAIRMAN LEIBOWITZ: In the last 20 years?
01:49:21 21 Fine.

01:49:21 22 MR. GORDON: In the last 20 years, not to my
01:49:23 23 recollection.

01:49:24 24 CHAIRMAN LEIBOWITZ: Did it ever bring a case
01:49:26 25 involving, say, the sale of rosaries by -- but not by

01:49:29 1 the Catholic Church?

01:49:31 2 MR. GORDON: If it did, I'm not aware of it.

01:49:33 3 CHAIRMAN LEIBOWITZ: And why do you think that
01:49:34 4 is? Do you think there's more substantiation in the use
01:49:39 5 of rosaries than there is substantiation here by Daniel
01:49:41 6 Chapter One?

01:49:43 7 MR. GORDON: I'm not sure I follow your
01:49:45 8 question, I'm sorry.

01:49:46 9 CHAIRMAN LEIBOWITZ: Well, my question is, why
01:49:50 10 has the FTC selected this entity to go after when others
01:49:55 11 might say that there are other products that have,
01:50:00 12 sort of the only substantiation is on faith which
01:50:07 13 essentially is the nature of a rosary, for example, not
01:50:10 14 all of which are sold by the Catholic Church.

01:50:13 15 MR. GORDON: The reason that we are here is
01:50:14 16 because they, they being Daniel Chapter One and
01:50:17 17 Mr. Feijo, are touting the products that they sell as
01:50:21 18 alternative cures for cancer. And the stakes are
01:50:25 19 extraordinarily high in that instance.

01:50:27 20 CHAIRMAN LEIBOWITZ: But I want to say,
01:50:28 21 my sense, you can correct me if I'm wrong, is that
01:50:34 22 certainly things like rosaries, that I'm sure other
01:50:38 23 religions have similar materials, are also touted, in
01:50:47 24 part, not in whole, as having miraculous or
01:50:52 25 extraordinary healing potential, or powers. Why is this

01:50:58 1 different?

01:50:59 2 COMMISSIONER ROSCH: Or to a put a sharper point
01:51:01 3 on it, are there any higher stakes on whether or not you
01:51:04 4 go to heaven?

01:51:06 5 COMMISSIONER HARBOUR: In answer --

01:51:08 6 MR. GORDON: The issue here is the way these are
01:51:09 7 sold. These are not sold in church basements, they are
01:51:11 8 not sold face to face. We are challenging the
01:51:14 9 advertisements that they, Daniel Chapter One, post on
01:51:17 10 the Internet, on their webpage, that anyone can go to.
01:51:20 11 Our investigator went to that. The webpage, the ads
01:51:23 12 that are before you have very little or no religious
01:51:26 13 content.

01:51:27 14 COMMISSIONER HARBOUR: Mr. Gordon, you had
01:51:29 15 mentioned that the sale of these products was dangerous.
01:51:32 16 Now, I have never seen anything dangerous about a
01:51:36 17 rosary. So, would you make that distinction for me,
01:51:39 18 please?

01:51:39 19 MR. GORDON: Sure. Our expert, Dr. Miller,
01:51:41 20 talked about the danger that these products pose, and
01:51:44 21 there are two: One is that a patient will take these
01:51:49 22 products instead of their chemotherapy, instead of
01:51:53 23 pursuing surgery, and that is exactly what the Feijos
01:51:56 24 and Daniel Chapter One urge.

01:51:57 25 COMMISSIONER HARBOUR: But Mr. Frank said that

01:51:59 1 he knew that they weren't doing this, that they were
01:52:01 2 using these, and if I'm misquoting you, you will
01:52:04 3 certainly correct me when you stand up, but I understand
01:52:09 4 him to say that it wasn't a dangerous product because
01:52:13 5 they were using his treatments in addition to or as a
01:52:17 6 supplement to their chemotherapy. Did you find that to
01:52:20 7 be true in your review of the record?

01:52:22 8 MR. GORDON: That is not what their
01:52:25 9 advertisements say. I mean, that is rhetoric from
01:52:27 10 counsel. That is not even what the Feijos say. Exhibit
01:52:32 11 24, this is the cancer newsletter, page 421, "There are
01:52:36 12 natural, safe and sane alternatives to chemo, radiation
01:52:40 13 and surgery." That's touting these products. Take a
01:52:44 14 look at the transcripts from their radio show, Exhibit 5
01:52:47 15 and Exhibit 8. Again and again, they're advising
01:52:51 16 patients to not pursue conventional cancer treatments
01:52:54 17 and instead to take these products. That is a real
01:52:56 18 danger. And that's the first danger, that a patient
01:53:00 19 will forego conventional cancer treatment and instead
01:53:05 20 take this.

01:53:05 21 The second danger is that the patient will take
01:53:09 22 these products and that they will interfere with or
01:53:13 23 complicate their condition, can interfere with the
01:53:16 24 medication or complicate their condition, and Dr.
01:53:18 25 Miller addressed that. These products can have serious

01:53:22 1 side effects, even Curcumin, there are bleeding issues,
01:53:26 2 some of the infection-fighting properties of these
01:53:32 3 products supposedly have can interfere with the way
01:53:36 4 chemotherapy is supposed to work. These people are
01:53:39 5 touting these products as alternatives to regular
01:53:41 6 medicine, and that is very dangerous. And I think that
01:53:44 7 differentiates this from someone selling rosary beads on a
01:53:47 8 corner to a true believer.

01:53:47 9 The Feijos don't know who's buying this stuff
01:53:52 10 over the Internet, and they don't know who's looking at
01:53:54 11 their webpage, and then go and find a similar product
01:53:59 12 from others. Seven Herb Formula is essentially essiac tea,
01:54:03 13 which is sold by lots of other folks out there. Their
01:54:07 14 webpage talks about it being essiac tea, and why you should
01:54:11 15 be buying their brand rather than somebody else's.

01:54:13 16 So, there is also the danger that someone is
01:54:15 17 going to look at this webpage and decide to buy a
01:54:18 18 cheaper version of this product. That is why these ads
01:54:20 19 are so dangerous, and that is why we are here.

01:54:22 20 COMMISSIONER ROSCH: Well, let me press you a
01:54:23 21 little bit more. You've suggested, and I agree with
01:54:25 22 you, that the Commission needs to be cautious in this
01:54:29 23 area, because of the First Amendment issues, among other
01:54:33 24 things, and also the religious issues. First of all,
01:54:37 25 with respect to whether the ads were deceptive, are you

01:54:43 1 aware of any other cases in which the Commission has
01:54:48 2 held that ads are deceptive under these circumstances,
01:54:53 3 that is to say in the face of the First Amendment, where
01:54:57 4 they're not false, they're just unsubstantiated? Are
01:55:01 5 you aware of any other cases like that?

01:55:03 6 MR. GORDON: The Commission has brought many
01:55:06 7 cases on a lack of substantiation theory.

01:55:09 8 COMMISSIONER ROSCH: But I'm talking about
01:55:11 9 whether there's been a First Amendment defense raised.

01:55:13 10 MR. GORDON: In the Direct Marketing Case
01:55:14 11 there's been a First Amendment argument raised, in the
01:55:18 12 National Urological case there's been a First Amendment
01:55:22 13 raised, in Kraft, there was a First Amendment issue
01:55:24 14 raised. And that decision ultimately went both to the
01:55:28 15 Commission where they found that the First Amendment
01:55:30 16 issue was overcome, and to the Court of Appeals. So,
01:55:33 17 yes.

01:55:33 18 COMMISSIONER ROSCH: Okay. Now, the second
01:55:36 19 question, assume that that is so, that, indeed,
01:55:40 20 advertisements are not challenged on the grounds that
01:55:43 21 they're false, but rather on the grounds that they're
01:55:45 22 unsubstantiated. Does that have any consequences at
01:55:50 23 all?

01:55:53 24 MR. GORDON: For purposes of the First
01:55:54 25 Amendment?

01:55:55 1 COMMISSIONER ROSCH: At all. With respect to
01:55:57 2 the remedy, for example, does it have any consequences?

01:56:01 3 MR. GORDON: I am certain that it has some
01:56:05 4 consequences, but I don't think it makes a material
01:56:09 5 difference in the remedy that we're seeking here,
01:56:11 6 because what we're seeking here is that if they're going
01:56:13 7 to make claims, they have to have competent, reliable,
01:56:16 8 scientific evidence to substantiate those claims.

01:56:21 9 COMMISSIONER ROSCH: Okay.

01:56:22 10 MR. GORDON: Okay.

01:56:23 11 COMMISSIONER HARBOUR: Should there be a higher
01:56:24 12 duty? Because we seem to be talking about here
01:56:26 13 treatments for terminally ill patients, this is not a
01:56:30 14 treatment for weight loss or a treatment for warts or
01:56:34 15 the like. So, let me step back, a couple of questions.

01:56:38 16 Looking at the First Amendment, I know that
01:56:44 17 that's a claim, they're wrapping themselves in the First
01:56:47 18 Amendment, but when you analyze these cases, would you
01:56:52 19 first analyze it by saying is this speech commercial,
01:56:56 20 and then if you determine whether the speech is
01:56:58 21 commercial, then that would give you the hook for the
01:57:03 22 Commission to then analyze whether it is deceptive. Is
01:57:10 23 that how one has to look at this?

01:57:12 24 MR. GORDON: I'm sorry to cut you off. That is
01:57:14 25 certainly how we proceeded and that is certainly how the

01:57:16 1 ALJ proceeded. And if you look at these ads, these are
01:57:19 2 clearly pieces of commercial speech. They are
01:57:22 3 advertisements. Mr. Feijo sat right there in the
01:57:24 4 witness chair and admitted that DCO advertises on the
01:57:27 5 Internet.

01:57:28 6 COMMISSIONER HARBOUR: And that therefore takes
01:57:29 7 it out of the First Amendment in your opinion?

01:57:31 8 MR. GORDON: Not ipse dixit, but if you look at
01:57:34 9 the ads, I mean, the claims are right next to buttons
01:57:36 10 that say, "Buy Now." The purpose of the speech, when
01:57:39 11 you look at the entirety of the advertisements, is to
01:57:42 12 convince someone to buy Daniel Chapter One's products,
01:57:47 13 and that trying to convince a consumer to buy is the
01:57:50 14 hallmark of commercial speech.

01:57:52 15 COMMISSIONER HARBOUR: And should there be a
01:57:54 16 higher standard in these cases in which one is dealing with
01:57:56 17 a treatment that affects the terminally ill rather than
01:58:00 18 treatment for weight loss, or is the standard the same?

01:58:03 19 MR. GORDON: Well, the nature of the product, I
01:58:08 20 think, implicates several issues. It implicates the
01:58:11 21 degree of substantiation that is required, but if you're
01:58:14 22 talking about First Amendment issues, when you consider
01:58:16 23 the interest that the state is trying to protect,
01:58:19 24 clearly trying to protect sick, possibly dying,
01:58:26 25 vulnerable consumers from a phony cancer cure, the

01:58:29 1 interest is higher than for wart cream. So, I mean, I
01:58:33 2 think the First Amendment is flexible to some extent, in
01:58:36 3 that regard.

01:58:38 4 CHAIRMAN LEIBOWITZ: And just going back to the
01:58:41 5 what you believe are commercial advertisements, there's
01:58:43 6 nothing on their website, and I have to go back and look
01:58:46 7 at this, that relates to Daniel Chapter One, that is the
01:58:50 8 book of Daniel Chapter One? There's nothing in the
01:58:54 9 website, there's nothing that talks about it at all?

01:58:57 10 MR. GORDON: That is not our position. If you
01:58:59 11 look at the entirety of their website.

01:59:00 12 CHAIRMAN LEIBOWITZ: Right.

01:59:01 13 MR. GORDON: There are references in places to
01:59:03 14 Daniel Chapter One.

01:59:04 15 CHAIRMAN LEIBOWITZ: Well, when you go on the
01:59:06 16 first screen, what does it say?

01:59:07 17 MR. GORDON: Very little, on the landing page.
01:59:13 18 But if you look at the ads, and there's ten or so of
01:59:17 19 them in --

01:59:19 20 CHAIRMAN LEIBOWITZ: You know what, I just find
01:59:20 21 it hard to believe that a perfectly credible religious
01:59:22 22 institution can't try to sell products on a screen, a
01:59:27 23 particular screen if you click down that doesn't have --
01:59:31 24 doesn't have some religious -- it might not have some
01:59:34 25 religious component to it, right? Once you click down

01:59:37 1 to the sale page. Or the product page.

01:59:41 2 MR. GORDON: But if you look at what they're
01:59:42 3 saying about the product, that message is not a
01:59:45 4 religious message, it is a commercial message. It is
01:59:49 5 comparing their product to other brands. It's talking
01:59:50 6 about how it is a good value. It is not a religious
01:59:53 7 message. It is a commercial message.

01:59:56 8 CHAIRMAN LEIBOWITZ: But with respect to the
01:59:57 9 fact is you know it when you see it, right, as opposed
02:00:01 10 to Euclidean geometry, for example.

02:00:03 11 MR. GORDON: To some extent, but if you look at
02:00:05 12 the Supreme Court's opinion in Central Hudson, if you
02:00:08 13 look at the opinion in Zauderer, if you look at the
02:00:09 14 Supreme Court's opinion in Bolger, in all of those
02:00:13 15 cases, the Court considered the argument that because
02:00:14 16 there was some comment by the defendant in those
02:00:17 17 cases, on matters of public interest, of matters perhaps
02:00:23 18 on a public debate, that somehow the defendants argued
02:00:28 19 the speech was transformed not to commercial speech, but
02:00:31 20 to opinion speech, but obviously which would be more
02:00:35 21 protected, and the Court ruled in those cases that just
02:00:40 22 because there might be some mention of a public issue
02:00:44 23 does not create this higher level of scrutiny, because
02:00:49 24 if that were the case, it would be very easy for the bad
02:00:53 25 guys to wrap themselves in the First Amendment and get

02:00:56 1 away with selling or in this case selling phony cancer
02:01:02 2 cures.

02:01:05 3 COMMISSIONER HARBOUR: Can I go back to the
02:01:06 4 danger theme? I am not a First Amendment expert, but I
02:01:09 5 do know that one cannot shout fire in a movie theater,
02:01:13 6 because it would present a clear and present danger.
02:01:16 7 Could one argue that these dangerous treatments, as
02:01:21 8 you've characterized them, could present a clear and
02:01:24 9 present danger and therefore would not be protected
02:01:27 10 under the First Amendment?

02:01:29 11 MR. GORDON: You could argue that, but I don't
02:01:31 12 think you have to go there, because the case law is
02:01:34 13 clear that there is no First Amendment protection for
02:01:38 14 commercial speech that is false, misleading, or
02:01:42 15 deceptive, which is what the speech in this case is, it
02:01:45 16 is commercial speech that is false, misleading, or
02:01:48 17 deceptive, under Central Hudson and its progeny, there
02:01:52 18 is no First Amendment protection for such speech. You
02:01:55 19 don't need to go to worrying about the firehouse
02:01:59 20 analogy, or fire in the movie house analogy, excuse me.

02:02:03 21 COMMISSIONER KOVACIC: Just to underscore this
02:02:04 22 again, so I have the benefit of your thoughts on this,
02:02:08 23 that if you have a manifest falsehood, or a clear lack
02:02:13 24 of substantiation for a claim, that the First Amendment
02:02:18 25 does not rescue you simply by the fact that it is speech

02:02:23 1 and speech is otherwise protected?

02:02:25 2 MR. GORDON: Correct.

02:02:27 3 COMMISSIONER KOVACIC: And that there is a long
02:02:29 4 history of FTC intervention that involves the imposition
02:02:33 5 of orders to correct or forbid speech of that kind?

02:02:38 6 MR. GORDON: Absolutely. Again and again
02:02:41 7 defendants have tried to evade FTC jurisdiction, or FTC
02:02:43 8 sanction, by wrapping themselves in the First Amendment.
02:02:46 9 And again and again, this Commission and the courts have
02:02:49 10 found that the First Amendment does not protect false,
02:02:54 11 deceptive or misleading commercial speech.

02:02:56 12 COMMISSIONER KOVACIC: And that's a
02:02:58 13 well-established principle in our jurisprudence.

02:03:02 14 MR. GORDON: Very well-established. Even an
02:03:04 15 antitrust lawyer like me figured it out.

02:03:08 16 Absent further questions, thank you.

02:03:12 17 CHAIRMAN LEIBOWITZ: Any further questions?

02:03:13 18 (No response.)

02:03:13 19 CHAIRMAN LEIBOWITZ: Thank you, Mr. Gordon.

02:03:15 20 Mr. Turner, you may begin your rebuttal. And
02:03:19 21 Mr. Turner, by the way, has at least five minutes. You
02:03:26 22 have five minutes.

02:03:27 23 MR. TURNER: Let me first address the net
02:03:31 24 impression question that you raised. We were asked
02:03:34 25 specifically whether we think net impression was the

02:03:36 1 standard, and, in fact, we argued vigorously initially
02:03:39 2 that it was, and continue to, and we are talking about
02:03:41 3 the net impression of the entire website and the radio
02:03:44 4 program and the presentation that's being made.

02:03:45 5 Our argument is that the Respondents in this
02:03:48 6 case are engaged in a social debate about how to
02:03:51 7 approach health, and that debate expresses itself in
02:03:55 8 various ways in the law, and we're saying --

02:03:57 9 COMMISSIONER ROSCH: Let me just understand,
02:03:59 10 with respect to whether or not that is a legal standard,
02:04:01 11 but whether or not you looked at the overall net
02:04:04 12 impression of all of the advertising, that was something
02:04:07 13 that you didn't contest as a matter of law? Is that
02:04:10 14 correct?

02:04:10 15 MR. TURNER: We urged as a matter of law, and we
02:04:13 16 are arguing that the ALJ did not consider the net
02:04:16 17 impression. He picked out specific words and specific
02:04:19 18 aspects of one or two pages in a huge mass presentation.
02:04:23 19 There is a presentation about a view of life, a view of
02:04:26 20 being, that is involved in the Daniel Chapter One
02:04:31 21 presence. Their presence is to be involved in a
02:04:34 22 national debate, and all of the things that they do are
02:04:36 23 a part of that, and our argument was that had to be a
02:04:39 24 part of the net impression.

02:04:41 25 CHAIRMAN LEIBOWITZ: Mr. Turner, are all of the

02:04:43 1 purchasers or even most of the purchasers members of
02:04:46 2 Daniel Chapter One?

02:04:46 3 MR. TURNER: There are a thousand people that
02:04:48 4 buy.

02:04:49 5 CHAIRMAN LEIBOWITZ: A thousand?

02:04:50 6 MR. TURNER: There are a thousand. They are
02:04:52 7 people who we don't -- we can't say that all of them are
02:04:55 8 or aren't, but they travel around from -- they go to --
02:04:58 9 they go to motels and meeting places and people come and
02:05:01 10 meet them and it is their experience that they would say
02:05:05 11 all, but virtually all of the sales that they get are
02:05:08 12 from people who have heard their radio program or come
02:05:10 13 to their tent show type activity.

02:05:14 14 CHAIRMAN LEIBOWITZ: So, I just want to
02:05:16 15 understand this, the thousand or thousand ultimate
02:05:18 16 consumer purchasers or a thousand sort of affiliates who
02:05:21 17 sell the product?

02:05:22 18 MR. TURNER: There are a thousand people who
02:05:24 19 have gone on that website and bought things.

02:05:27 20 CHAIRMAN LEIBOWITZ: What's the church
02:05:28 21 membership? Does it have --

02:05:29 22 MR. TURNER: It's a home church, it's a church
02:05:31 23 that holds meetings in private homes, and it doesn't
02:05:34 24 have a discrete membership.

02:05:36 25 CHAIRMAN LEIBOWITZ: What's the ballpark figure

02:05:38 1 of membership?

02:05:39 2 MR. TURNER: It would probably be four or
02:05:42 3 five times that from the standpoint of people who come
02:05:44 4 to the tent meetings and all of the things, all of the
02:05:47 5 things that they do, or the baptisms I'm supposed to
02:05:49 6 call it, baptisms. Those people are --

02:05:52 7 I want to now, I would like to go back to the
02:05:54 8 closing argument that you made, regarding Mr. Feijo's
02:05:59 9 relationship with higher authority. I can assure you
02:06:02 10 that Mr. Feijo is deeply religious and very committed to
02:06:06 11 moving forward in his life in a way that helps people.
02:06:12 12 And the issue that you raise is one side of a national
02:06:14 13 debate, a huge national debate.

02:06:16 14 You can get a flavor of that by reading the
02:06:18 15 first case that is presented in the materials that the
02:06:22 16 complaint counsel handed to you. This is a -- this is a
02:06:24 17 person who was terminally ill, said she only would have
02:06:30 18 a few months to a year to live, and that was about 14
02:06:33 19 years ago. She is telling her story about how Daniel
02:06:37 20 Chapter One's involvement with her, after she got that
02:06:40 21 involvement, her case went in a positive way. She was
02:06:44 22 identified in the complaint, she came here to testify,
02:06:48 23 there were 82 people that said they would come and
02:06:50 24 testify that Daniel Chapter One had helped them. There
02:06:53 25 could have been more. We negotiated it down to ten, and

02:06:56 1 then they weren't allowed to testify on their
02:06:59 2 experience, because it was considered to be irrelevant.

02:07:01 3 But the argument that needs to be made back is
02:07:03 4 the people who are using chemotherapy, radiation and
02:07:07 5 surgery also have to answer to that same authority. And
02:07:10 6 if the argument is going to be everyone is forced to use
02:07:14 7 those particular approaches and no one is allowed to
02:07:17 8 hear information about the different ways of approaching
02:07:19 9 cancer, the answer that they are going to have to have
02:07:23 10 with their maker might be a lot tougher than the one
02:07:26 11 that the Feijos are going to have.

02:07:28 12 COMMISSIONER HARBOUR: But you're saying that
02:07:29 13 the treatments cure cancer.

02:07:30 14 MR. TURNER: I can't hear you.

02:07:31 15 COMMISSIONER HARBOUR: Patients, terminally ill
02:07:33 16 patients, when they read your advertisements, they
02:07:36 17 believe that your products will cure cancer. That is
02:07:40 18 the difference.

02:07:41 19 MR. TURNER: Once again, the point is that if
02:07:45 20 you take these products, the part of your body that
02:07:48 21 works to cure your cancer will be strengthened. The
02:07:53 22 immune system. The internal -- the main intelligence
02:07:58 23 will be strengthened. That will allow you to cure your
02:08:02 24 cancer.

02:08:02 25 COMMISSIONER HARBOUR: That is not what your ads

02:08:04 1 say. That is not what your ads say.

02:08:06 2 MR. TURNER: If you took the net impression of
02:08:08 3 the entire presentation, as we urged, that is what it
02:08:10 4 says. Now, what's been happening here is not only is it
02:08:13 5 a page, but two words on a page, are taken out, and
02:08:16 6 said, now you see --

02:08:18 7 COMMISSIONER HARBOUR: If I were a terminally
02:08:19 8 ill patient, those two words would jump out at me and I
02:08:23 9 would grab onto them like a life preserver.

02:08:26 10 MR. TURNER: And would you not talk to your
02:08:28 11 doctor?

02:08:29 12 COMMISSIONER HARBOUR: But your ad is saying you
02:08:31 13 need not do that.

02:08:32 14 MR. TURNER: Those words are about the same size
02:08:34 15 as the disclaimer. And if you were going to read the
02:08:37 16 small words, you could read the disclaimer and you could
02:08:39 17 read those words. This is a national debate, and I will
02:08:41 18 tell you that it's a huge debate, and the 130 groups
02:08:46 19 signed consent orders, 129 out of 130 signed consent
02:08:49 20 orders on this, and the customers, the customers are the
02:08:51 21 issue here. The customers are angry about having been
02:08:54 22 interfered with in their own treatments. There is a --
02:08:58 23 people are getting money back from the FTC and signing
02:09:01 24 the checks over back to the companies. You're stepping
02:09:04 25 into a major social debate, and the speech that you made

02:09:07 1 at the end, that speech, that argument, is one half of
02:09:10 2 that debate. And it does not -- the people who control
02:09:14 3 that half of the debate do not have the right under the
02:09:16 4 First Amendment to close the other people out of that
02:09:18 5 debate. That's the argument here.

02:09:21 6 COMMISSIONER HARBOUR: Thank you, sir.

02:09:22 7 MR. TURNER: Thank you very much.

8 (Whereupon, at 2:09 p.m., the proceedings were
9 adjourned.)

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1 C E R T I F I C A T I O N O F R E P O R T E R

2

3 DOCKET NUMBER: 9329

4 CASE TITLE: DANIEL CHAPTER ONE/JAMES FEIJO

5 DATE: DECEMBER 3, 2009

6

7 I HEREBY CERTIFY that the transcript contained
8 herein is a full and accurate transcript of the notes
9 taken by me at the hearing on the above cause before the
10 FEDERAL TRADE COMMISSION to the best of my knowledge and
11 belief.

12

13 DATED: 12/4/09

14

15

16 SALLY JO QUADE

17

18 C E R T I F I C A T I O N O F P R O O F R E A D E R

19

20 I HEREBY CERTIFY that I proofread the transcript
21 for accuracy in spelling, hyphenation, punctuation and
22 format.

23

24

25 SARA J. VANCE