

Respondents Daniel Chapter One, James Fiejo as an individual, and James Fiejo as an officer of Daniel Chapter One (collectively referred to as “Respondents”), by and through their attorneys, state as follows for their Answer and Affirmative Defenses to the Complaint (“Complaint”) filed by the Federal Trade Commission (“FTC”):

ANSWER

1. Respondents admit that their principal office and place of business are located at 1028 East Main Road, Portsmouth, Rhode Island 02871. Respondents admit that Daniel Chapter One is a corporation sole organized under the laws of the state of Washington, Revised Washington Code 24.12 010/24.12 060.

2. Respondents answer the allegations in paragraph 2 of the Complaint as follows: deny that James Feijo is the president of Respondent Daniel Chapter One, deny that James Feijo owns Daniel Chapter One, which is a corporation sole and has no stockholders, deny that James Feijo has taken or caused to be taken any actions set forth in the Complaint that are illegal or improper, admit that James Feijo is responsible for the activities of Daniel Chapter One as its Overseer, a position set forth in Revised Washington Code 24.12 010/24.12 060, and admit that James Feijo’s principal office and place of business is the same as that of Daniel Chapter One.

3. Respondents answer the allegations in paragraph 3 of the Complaint as follows: admit that they distribute the named products but otherwise deny the allegations contained in paragraph 3 of the Complaint, and answer further that the products sold by Respondent Daniel Chapter One are dietary supplements within Section 201 (21 U.S.C. 321) of the 1938 Food Drug and Cosmetic Act as amended.

4. Respondents answer the allegations in paragraph 4 of the Complaint as follows: admit that they distribute the named products in commerce but otherwise deny the allegations contained in paragraph 4 of the Complaint.

5. Respondents answer the allegations in paragraph 5 of the Complaint as follows: admit they operate a website that provides information on the named products in a religious and educational context, but otherwise deny the allegations contained in paragraph 5 of the Complaint.

6. Respondents admit the allegations contained in paragraph 6 of the Complaint.

7. Respondents answer the allegations in paragraph 7 of the Complaint as follows: admit that they distribute the named product, admit that they publish information about the product, deny that they do so to “induce” consumers “to purchase” the product and further assert that they provide only truthful and non-deceptive information to consumers in a religious and educational context.

8. Respondents admit the allegations in paragraph 8 of the Complaint.

9. Respondents answer the allegations in paragraph 9 of the Complaint as follows: admit that they distribute the named product, admit that they publish information about the product, deny that they do so to “induce” consumers “to purchase” the product and further assert that they provide only truthful and non-deceptive information to consumers in a religious and educational context, and that individual testimonies are protected speech under the First Amendment to the U.S. Constitution.

10. Respondents admit the allegations contained in paragraph 10 of the Complaint.

11. Respondents answer the allegations in paragraph 11 of the Complaint as follows: admit that they distribute the named product, admit that they publish information about the product, deny that they do so to “induce” consumers “to purchase” the product and further assert that they provide only truthful and non-deceptive information to consumers in a religious and educational context.

12. Respondents admit the allegations contained in paragraph 12 of the Complaint.

13. Respondents answer the allegations in paragraph 13 of the Complaint as follows: admit that they distribute the named product, admit that they publish information about the product, deny that they do so to “induce” consumers “to purchase” the product and further assert that they provide only truthful and non-deceptive information to consumers in a religious and educational context.

14. Respondents answer the allegations in paragraph 14 of the Complaint as follows: while continuing to deny any allegations contained in paragraphs 6 through 13 that are denied in this Answer, Respondents admit making the representations contained in subparagraphs a through h of paragraph 14.

15. Respondents answer the allegations in paragraph 15 of the Complaint as follows: while continuing to deny any allegations contained in paragraphs 6 through 13 that are denied in these Answers, Respondents admit the allegations contained in paragraph 15 of the Complaint.

16. Respondents deny the allegations contained in paragraph 16 of the Complaint and answer further that they did, in fact, possess and rely upon a reasonable basis that substantiated their representations at the time the representations were made.

17. Respondents deny the allegations contained in paragraph 17 of the Complaint, and answer further that none of their acts or practices were unfair or deceptive and answer further that blocking access of consumers to information at issue would in itself be unfair and deceptive.

18. Respondents specifically deny, if necessary, any statements, representations or allegations contained in the headings of the Complaint.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof on any defenses that would otherwise rest with FTC, and expressly denying any and all wrongdoing, Respondents allege the following additional reasons why FTC is not entitled to pursue its claims or obtain any relief from Respondents. In addition to the Affirmative Defenses set forth below, Respondents intend to rely on all other properly provable defenses and reserve the right to assert other defenses as discovery proceeds and to amend their Answer to and through the time of administrative hearing.

FIRST AFFIRMATIVE DEFENSE

As and for a first separate, distinct and affirmative defense, Respondents allege that the actions of the Federal Trade Commission in filing the Complaint in this matter overreach the agency's authority since they are based on a definition of "competent and reliable scientific evidence" (Proposed Order definitions #1) that is narrower than the legislation regulating dietary supplement advertising allows, thereby improperly excluding evidence of traditional use, relying on an excessively restrictive, vague, and contradictory definition ("expertise...that has been conducted and evaluated") and excluding credible information from sources that Respondents have a right to rely upon.

SECOND AFFIRMATIVE DEFENSE

As and for a second separate, distinct and affirmative defense, Respondents allege that the actions of the Federal Trade Commission in filing the Complaint in this matter are improperly based on assertions about and a definition of “advertisement” (Proposed Order definitions #4) that is overbroad and false or misleading in that it assumes that Respondents “designed” (or in other words, “intended”) their communications about the products at issue “to affect the sale or to create interest in the purchasing of goods or services” when in fact Respondents provided truthful information to consumers which the consumers sought, were able to use and which it would be false or misleading to withhold from them.

THIRD AFFIRMATIVE DEFENSE

As and for a third separate, distinct and affirmative defense, Respondents allege that the actions of the Federal Trade Commission in filing the Complaint in this matter are improperly based upon the assertion that Respondents intended to provide “drugs” to its consumers when in fact it is the opposite intention of Respondents to provide, and they did provide, truthful information about products that are other than drugs for the evaluation and use of consumers seeking such information.

FOURTH AFFIRMATIVE DEFENSE

As and for a fourth separate, distinct and affirmative defense, Respondents allege that the actions of the Federal Trade Commission in filing the Complaint in this matter are improper in that the Commission bases its Complaint at least in part on stating and requiring Respondents to state to their customers that “conventional cancer treatments...have been scientifically proven to be safe and effective in humans” which falsely or misleadingly implies that consumers can use these products without fear of harm, and does so by forcing Respondents to make statements that they believe, based on evidence they have reviewed, to be untrue.

FIFTH AFFIRMATIVE DEFENSE

As and for a fifth separate, distinct and affirmative defense, Respondents allege that the actions of the Federal Trade Commission in filing the Complaint in this case are an infringement of Respondents’ rights to free speech under the First Amendment to the U.S. Constitution.

SIXTH AFFIRMATIVE DEFENSE

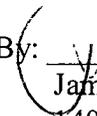
As and for a sixth separate, distinct and affirmative defense, Respondents allege that the actions of the Federal Trade Commission in filing the Complaint in this case are an unconstitutional infringement of Respondents' right to practice religion under the First Amendment to the U.S. Constitution.

WHEREFORE, Respondents respectfully request that the Commission (i) deny any relief to the FTC; (ii) dismiss the Complaint in its entirety with prejudice; (iii) award Respondents their cost of suit, including attorneys' fees; and (iv) award such other and further relief as the Commission may deem proper.

Dated: October 14, 2008

Respectfully submitted,

SWANKIN & TURNER

By:  _____
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7 **IN THE UNITED STATES OF AMERICA**
BEFORE THE FEDERAL TRADE COMMISSION

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

15
16 I certify that on October 14, 2008, I served the attached Notice of Appearance and
17 Answer by Daniel Chapter One and James Fiejo on the following individuals by the means
18 indicated:

19 By hand delivery:

20 Office of the Secretary
21 Federal Trade Commission
22 600 Pennsylvania Avenue, NW, Room H-159
Washington, DC 20580

23 Hon. D. Michael Chappell
24 Administrative Law Judge
25 600 Pennsylvania Avenue, NW, Room H-528
Washington, DC 20580

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By first class mail and electronic mail:

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