



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

In the Matter of)
DANIEL CHAPTER ONE,)
a corporation, and)

DOCKET NO. 9329

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

PUBLIC DOCUMENT

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

I. INTRODUCTION

Complaint Counsel's Motion in Limine to Preclude Respondents from
Introducing at Trial Evidence of Purported Consumer Satisfaction as a Defense to
Liability states that:

“Based on [Respondents'] Exhibit List and Witness List, Respondents intend to defend against the allegation that they have made unsubstantiated disease claims about their products by introducing evidence of satisfied consumers to show the claims were not deceptive and evidence of consumer testimonials to show the claims were not unsubstantiated. Neither category of evidence is relevant to the issues in dispute and should be excluded pursuant to Commission Rule of Practice 3.43(b)...”

Complaint Counsel's Motion in Limine to Preclude Respondents from Introducing at
Trial Evidence of Purported Consumer Satisfaction as a Defense to Liability, at 1.

In fact, none of the written testimonials or witnesses to which Complaint Counsel objects is offered for the purpose of “introducing evidence of satisfied consumers to show the claims were not deceptive and evidence of consumer testimonials to show the claims were not unsubstantiated.”

II. RESPONDENTS’ WITNESSES ARE NOT OFFERED AS EVIDENCE OF CONSUMER SATISFACTION

Respondents’ proposed witnesses, and the testimonials they intend to introduce at trial, are offered as evidence of entirely different matters. Respondent DCO is a ministry, it is operated in a not-for-profit manner for religious, educational and humanitarian purposes, Respondent James Feijo is its Overseer and acts in a fiduciary capacity, and the individuals who access its website, listen to its radio programs, and use its products are members of a unique religious constituency. Those facts are relevant to both Respondents’ challenge to the jurisdiction of the FTC and its response to the allegations that it has violated the FTC Act. Yet Complaint Counsel argues that the Court should not even permit “other individuals who allegedly have positive views about DCO’s activities” to testify. Such a standard would effectively deprive Respondents of relevant and appropriate evidence. For example, Complaint Counsel’s challenge of Pastor Wayne Robertson “(who will testify about “the positive impact that DCO has had on hundreds of lives of which he is aware),” begs the question of how Respondents can support their argument that DCO is operated as a non-profit ministry if they cannot provide evidence of the charitable works of Respondents.

III. RESPONDENTS' TESTIMONIALS ARE NOT OFFERED AS EVIDENCE OF SUBSTANTIATION

Respondents Exhibit List contains nearly 50 publications on which Respondents relied for substantiation of their statements. In addition, several of Respondents' expert witnesses will testify to the validity of the information contained in those exhibits. Respondents have never claimed in their pleadings that they intend to rely on testimonials as evidence of substantiation.

IV. COMPLAINT COUNSEL'S PROPOSED ORDER IS UNNECESSARILY OVERBROAD

Despite the fact that Respondent has not indicated in its pleadings that it intends to use "consumer satisfaction" as a defense, Complaint Counsel's proposed order would exclude all "live testimony and written testimonials of consumers" from the trial, regardless of the issue for which they were offered in evidence. The fact that a witness will, or might, among other things, testify to their personal experience with the DCO products does not mean that the witness's testimony is offered as evidence of "consumer satisfaction," and should not prohibit that witness from testifying. For example, Tracy Kulikowski, who appears on Respondents' Witness List, will testify that she created a web entry to share with others her belief that the Challenged Products saved her life. The Court will not be asked to believe whether they did or not, or whether Ms. Kulikowski was satisfied or not, but rather to understand the relationship between Respondents and their religious community and the source of the statements on Ms. Kulikowski's website, which were not written or solicited by Respondents.

The five other witnesses that Complaint Counsel has moved to exclude, Ernie Jensen, Sherman Smith, Robert Hicks, Glenda Shaw and Laura Phair-Rudin are offered to show that Daniel Chapter One is a ministry that engages in charitable activities and that the participants in the DCO community—the listeners to its radio program, attendees to its in-person presentations and those who use its products—share a common religious orientation and view of health as an integration of body, mind and spirit based in teaching drawn from the Christian Bible.

The facts these witnesses attest to will help evaluate the nature of the mosaic of impression created by the statements made by Respondents particularly in the context of the FTC principle that “If the representation or practice affects or is directed primarily to a particular group, the Commission examines reasonableness from the perspective of that group.” *Cliffdale Associates*, 103 FTC 110, 174 (1984) FTC Policy Statement.

IV. CONCLUSION

Complaint Counsel’s Motion to preclude Respondent from introducing witnesses and testimonials at trial as evidence of purported consumer satisfaction as a defense to liability is without basis, since consumer satisfaction is not an element of Respondents’ defense and the referenced witnesses and testimonials will be offered for an entirely different purpose. As a result, Respondents respectfully request that the Court enter the attached [Proposed] Order denying Complaint Counsel’s Motion.

Respectfully submitted,

Dated: March 26, 2009.



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[PROPOSED] ORDER DENYING MOTION IN LIMINE

Upon consideration of Complaint Counsel's Motion In Limine and Memorandum in Support to Preclude Respondents from Introducing at Trial Evidence of Purported Consumer Satisfaction as a Defense to Liability and Respondents' Opposition thereto,

IT IS HEREBY ORDERED that Complaint Counsel's Motion is DENIED.

ORDERED:

D. Michael Chappell
Administrative Law Judge

Date:

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

11
12 **CERTIFICATE OF SERVICE**

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

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

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

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

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

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