FEDERAL TRADE COMMISSION

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of:
DANIEL CHAPTER ONE, a corporation,
JAMES FEIJO, individually, and as an officer of Daniel Chapter One, a corporation.

Docket No. 9329

ORAL ARGUMENT

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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Chairman Leibowitz: Good afternoon. The Commission is meeting today in open session to hear the oral argument in the matter of Daniel Chapter One and James Feijo, Docket Number 9329, on appeal of the Respondents from the initial decision issued by the Administrative Law Judge.

The Respondents are represented by Mr. James S. Turner, and counsel supporting the complaint are represented by the Northeast Region Regional Director Leonard L. Gordon.

During this proceeding, each side will have 30 minutes to present their arguments. The Respondents are the appellants and therefore their counsel will make the first presentation and will be permitted to reserve up to five minutes for rebuttal. Counsel supporting the complaint will then make his presentation. Counsel for the Respondents will conclude the argument with his rebuttal presentation.

Mr. Turner, do you wish to reserve any time for rebuttal?

Mr. Turner: Yes, sir, I have arranged to reserve five minutes.

Chairman Leibowitz: You, then, may begin.
MR. TURNER: Good afternoon, Commissioners. My name is James Turner, and I represent Respondents in this case, Daniel Chapter One and James Feijo.

The Respondents are here today to ask the Commission to reject the final decision and dismiss the complaint against them. There are three reasons the Commission should grant Respondents’ request: First, the Commission does not have jurisdiction over Respondents and for the Commission to attempt to extend the jurisdiction to cover them would be unsound law and poor policy; second, the Respondents have not violated the law; and third, if the law, as written, or applied, is such that Respondents' actions are held by the Commission to be a violation of law, then the law is unconstitutional, either as written or as applied.

Basically, there are three points in the argument that we present today, and as laid out in our briefs on this matter. Daniel Chapter One is a nonprofit religious organization --

CHAIRMAN LEIBOWITZ: Well, let me ask a question about that. You know, your client is selling to people who aren't members of its church and using the proceeds to buy things like two Cadillacs, two homes, restaurant meals, tennis memberships, country clubs, pool and gardening services, cigars, carries around a Gold
American Express card. How can you say in the appeal, but how can you say here that “Mr. Feijo and his wife have taken an effective vow of poverty?” How can you say it's a nonprofit religious institution? I don't understand this. You don't have to be St. Francis of Assisi here, but it seems to me it's not close to that vow of poverty.

MR. TURNER: Well, first of all, what I said was it is a nonprofit religious organization. It is recognized by the State of Washington as a corporation sole. If you were to add up all of the material that was presented as costs, as money that was in the bank account of this organization, and add up all of the things that you just described, it totals about three percent of the total amount.

The things that they were involved in are -- they're routine things that people would be involved in. If the FTC is going to say, we think that individuals who drive a Cadillac and smoke a cigar and play golf, that makes them subject to the jurisdiction of the FTC, that's very likely to bring in very many ministers across this country.

COMMISSIONER HARBOUR: Excuse me, Mr. Turner, I think that question is going to the truth and veracity of your clients, and I believe it was the vow of poverty
and perhaps their definition of what a vow of poverty is, and I'm curious about that as well.

MR. TURNER: The issue that they are -- what they have done is live the life of an individual -- the vow of poverty piece is not to take profits, not to expend money in excess, not to be luxurious. They are living within the framework that is what would be the framework for any minister in any church. That's the position that they have taken throughout this -- this presentation, throughout their lives.

COMMISSIONER ROSCH: Let me ask a question, if I may, about that. Is your position, then, that Mr. Feijo, and I'm going to focus on him, not necessarily to the exclusion of his wife, but he is in the reply brief said to be a member of this organization. Is your position that the sale of these products was not profitable to him?

MR. TURNER: That is correct. Our position is --

COMMISSIONER ROSCH: That is your position? If I may follow up.

MR. TURNER: Yes.

COMMISSIONER ROSCH: You are not taking the position that the Administrative Law Judge erred by weighing the evidence, in other words, in reaching that
finding? Challenging that finding?

MR. TURNER: Which evidence? When you say weighing -- could you restate your first question, the premise question?

COMMISSIONER ROSCH: Yes, are you taking the position that the Administrative Law Judge could not lawfully weigh the evidence with respect to whether or not the sale of these products was profitable to Mr. Feijo?

MR. TURNER: There are three parts to this argument that we are presenting today, and I want to be very clear that the part that I was addressing at this point, before you asked these three questions, was the jurisdictional part.

COMMISSIONER ROSCH: I understand that.

MR. TURNER: We do not believe the FTC has jurisdiction, period. We do not believe that that Administrative Law Judge should have gone beyond the finding that the Commission has no jurisdiction here.

Everything after that, we believe then becomes a matter of discussion in a framework where we think it was improper to even address.

COMMISSIONER ROSCH: I understand that, but now I'm asking two questions.

MR. TURNER: Okay.
COMMISSIONER ROSCH: The first is whether or not in challenging the Commission's jurisdiction here, you are taking the position that Mr. Feijo as the sole member of DCO, which, as you said, is organized under Washington law, did he profit at all from the sale of these four products? Is that your position?

MR. TURNER: Our position is that he did not profit, that the items that were identified as things for which he spent money are the routine items that any minister in any church would be spending money on. But further, there was not evidence taken on an issue such as what was the store like that he shopped in, or that his wife shopped in. We had pictures to present and so forth, there was no evidence presented that it was an upscale store, it was actually mostly a second-hand store.

COMMISSIONER ROSCH: Was there any evidence presented to the contrary?

MR. TURNER: Yes, they testified, specifically, on each point, they testified, what they spent for, how they spent for, they live relatively modest lives. The argument, for example, that their house is on a country club is just not true.

COMMISSIONER ROSCH: Then the second question I have to you, sir, is whether or not you fault the
Administrative Law Judge for weighing the evidence, that is to say, hearing Mr. and Mrs. Feijo testify on the one hand, and on the other hand looking at their bank accounts, their statements, their withdrawals, etc., weighing that evidence in reaching his conclusion? Are you faulting that?

MR. TURNER: Well, let me explain what I think the fault is, and then we can -- you can ascertain whether I think he was wrong to weigh it or not. But the statement that there was a profit made is not supported by his arguments. The argument that he made is that this amount of money was taken in, on the sale of a product, and this amount of money is what they spent to manufacture -- to buy the manufactured product. And the differential he looked at is if it was all going to Mr. Feijo. Did not look at any of the intermediate costs, the marketing costs, any of the things that go into figuring out a net income line.

In addition, he did not weigh what the money was spent for. He did not look at where he -- for example, the Feijos have all through their career, since 1983, they have traveled around the country and around the world. They have traveled around carrying bibles, holding meetings, doing various kinds of religious activities. One hundred percent of the money that they
spent was in those activities. If they were spending
money in a restaurant, it was because they were in a
town where there was a restaurant to spend money in. It
wasn't an upscale activity, it was an activity that was
integral to their religious mission.

COMMISSIONER ROSCH: I understand that.

MR. TURNER: That was not evaluated.

COMMISSIONER ROSCH: That is their testimony,
and the question I ask is was the Administrative Law
Judge entitled to weigh that evidence, having seen them
testify, against the evidence that was presented by
complaint counsel with respect to lifestyles that they
were living?

MR. TURNER: The -- with regard to -- we're
discussing jurisdiction.

COMMISSIONER ROSCH: Yes.

MR. TURNER: And with regard to jurisdiction, it
was incorrect for him to weigh that information, because
they do not have jurisdiction. It's a religious
organization, it's a nonprofit organization. It's not a
trade association. There is no court case, there is no
legal finding, there is no legislation that says the FTC
has jurisdiction over an institution. “...[inaudible]”

CHAIRMAN LEIBOWITZ: So, what you're saying is
something a little bit different, and I want to go back
to Commissioner Harbour's point before. Why did you say
in your brief that Mr. Feijo and his wife had taken a
vow of poverty? Because what you're saying now is that
they're behaving in the way of typical ministers, or
he's behaving in a manner that's typical. It's not
a vow of poverty. Is it a vow of poverty?

MR. TURNER: The vow of poverty is in the
corporation sole filing papers.

CHAIRMAN LEIBOWITZ: So, he filed a vow of
poverty?

MR. TURNER: Yes.

CHAIRMAN LEIBOWITZ: Isn't that different from
taking a vow of poverty? I don't see how you can
take a vow of poverty and have a golf club membership at
the same time. And I want to understand why that's in
your brief.

MR. TURNER: Well --

CHAIRMAN LEIBOWITZ: I mean -- go ahead.

MR. TURNER: There are priests and ministers
across the country who belong to golf clubs, to country
clubs.

CHAIRMAN LEIBOWITZ: That's certainly true.

That doesn't relate to whether they've taken -- that
doesn't necessarily relate to whether they've taken any
vow of poverty.
MR. TURNER: And there are corporations sole filed across the country in every state where the people who are the managing directors or managing overseers belong to golf clubs, to country clubs.

CHAIRMAN LEIBOWITZ: Well, let me -- go ahead.

MR. TURNER: I mean, first of all, there has been no evidence --

CHAIRMAN LEIBOWITZ: But you're not -- until now, you weren't saying he took a vow of poverty. You said he took a vow of poverty in your brief. He didn't take a vow of poverty. He may not have taken a -- he might not be asserting an affluent lifestyle, but there is no vow of poverty here, except for maybe in the filing in the State of Washington. Isn't that correct?

MR. TURNER: Well, I'm willing to grant you that point for this discussion; however, you have to understand that these people have traveled the world with nothing in their pockets, they have spent --

COMMISSIONER HARBOUR: But they don't need anything in their pockets because it's all coming out of DCO. DCO --

MR. FEIJO: Not true.

MR. TURNER: Please don't speak up.

COMMISSIONER HARBOUR: Isn't DCO financing their expenses? The country club, the cigars, the
MR. TURNER: There is no evidence that they belong to a country club. He golfed there several times. But with regard to -- what I'm saying is that they have traveled the world with nothing, no golf clubs, no -- nothing. When they left and went to Europe and went to Poland and so forth, they left all of that in the hands of the people who were back in the home, and they received no payments, no money.

COMMISSIONER HARBOUR: I don't find that persuasive, but I would like to ask you another question, though. Is it possible for an entity to have a dual purpose, a religious mission and then a commercial one, in your opinion?

MR. TURNER: Not -- I don't think it can have that mission. I think that religious institutions do carry on activities which would be commercial, all of them do. I mean, you can walk out here in the churches here in Washington, you will find a store which sells all kinds of materials that have been brought to the store through a process of making available things that they sell.

And those things are a part of the income for what that institution does.

COMMISSIONER HARBOUR: So, are you arguing that
your clients are not engaged in commercial speech?

MR. TURNER: In commercial speech?

COMMISSIONER HARBOUR: Correct.

MR. TURNER: Well, well, first of all, we're saying that if they are engaged in commercial speech,
it's covered commercial speech, they are allowed to do what they're doing. The Constitution does not allow them to be prohibited from doing what they are doing.

But what we're saying is their basic message is that it is your choice as an individual how you treat yourself in a health situation, that the integral part of their entire message is your body can heal itself. We will provide you with materials that will help the structure and function of your body that heals itself to that.

And that's an integral part of their message, of their total presentation of their mission.

COMMISSIONER HARBOUR: Does the fact that your clients once operated for a period of I think 1990 through '98 as a for-profit organization selling these challenged products have any relevance in determining whether jurisdiction, in fact, exists?

MR. TURNER: I do not believe that it does.

First of all, the issue -- the matters at issue are all in the last five years, when that particular formal filing was not in force. Secondly, that particular
filing was done by people at Daniel Chapter One when, in fact, he was actually in China when that was done. At no time did he ever run the operation as a business. What he did do was when presented with the papers that his people pulled together, he signed them. He did not, however, in any way run the institution any differently than he does now. And he talked with the lawyer about it, told him that he didn't -- that that did not seem like the way he was going to run it. He did not file his follow-up papers routinely, he did not -- continuously did not file, and in fact, in some of those instances, the lawyer actually came by and said, you've got to sign these papers.

But he did not at any time from 1983 until the present did he change the way that the operation was run. It was run as a nonprofit religious institution, and not until he came across the corporation sole form did he understand how to form it in a manner that was compliant with the law.

COMMISSIONER HARBOUR: I want to just turn for a moment to substantiation. Your clients have said repeatedly that they are a religious organization, and they've developed these four products to serve the health concerns, as they say, of their followers. The complaint alleges that the ads for those products claim
that they inhibit tumor growth, they are effective in
treating and curing cancer. My question is, did your
clients conduct any scientific testing of the effects of
these four challenged products?

MR. TURNER: First of all, my clients have
disputed and denied that they said cure, treat,
mitigate, prevent or --

COMMISSIONER HARBOUR: But I'm looking at the
ads here, and when I see these ads, it certainly says to
me that these products can treat, cure, ameliorate the
negative effects of radiation. So, you're telling me
that they do not believe the net effect of those ads?

MR. TURNER: What I'm saying is that their
position is that these products help the body engage its
natural ability to fight cancer. That's what they do.

That's what they said.

COMMISSIONER HARBOUR: They may say that, but
their ads don't say that.

MR. TURNER: That's what you say.

CHAIRMAN LEIBOWITZ: But let me ask --

COMMISSIONER HARBOUR: That's what the ALJ said.

MR. TURNER: That's what the ALJ said, we think
that's incorrect, yes.

CHAIRMAN LEIBOWITZ: Let me follow up. I think
if you look at Exhibit 13, or actually Exhibit 12, it
says that BioShark can "stop tumor growth." Isn't that a specific health claim? Isn't that a curative claim?
I understand that it's a gray area of structure function and other things, or that it’s a complicated sort of totality of circumstances test, not everything is clear, but why is that not a health claim?
MR. TURNER: Well, first of all, it could be a structure function claim, which is what we claim.
CHAIRMAN LEIBOWITZ: It could be a?
MR. TURNER: A structure function claim, which is what we claim. That's why they don't use the words that are health claim words. They're a structure function claim. The body has certain kinds of functions and certain kinds of structures, and the argument is that those structures and functions are assisted by these herbal products in a way that helps the body do the natural thing, which is to stop the growth of tumors.
CHAIRMAN LEIBOWITZ: And I'm not disputing that there's a sort of continuum and there might be some murky areas, but when you say a structure function claim, isn't that things like weight loss, fitness? This is a disease-related claim, right? I mean, it seems to me that's on the other side of the spectrum. Towards the other side of the spectrum.
MR. TURNER: Well, look, it may well be, and if it were, that should have been a part of the case, but that is not the position that complaint counsel and his expert took. They took the position that these statements, the statements you just made, turns these into a drug and therefore they must be regulated as a drug, and then the information that was presented was scientific information saying that drug requirements should be applied as a way of evaluating the claims. The drug requirements being double-blind, placebo-controlled studies and we're saying that's not correct.

We said these are structure function claims, their guy said, their expert said, I don't know what a structure function claim is. I have never heard of -- basically he said I've never heard of it, I don't know how it works, I don't know what it means.

We brought our experts in, we had five scientific experts, who all, two of them read -- three of them were on important points in this case, one of them was on double-blind studies, not being a sound way to evaluate information, that was from a world-class scientist who we brought in. We think his information needs to be looked at.

The second person, the second one of the persons
was an individual who manages scientific studies almost exactly the same way as their expert does, and he said he had talked hours with Mr. Feijo to validate the science. And the third one was one that made one of these products and said how it worked. These are all scientific experts.

Now, the two experts that looked at the claims you're talking about looked at the exact words that were presented, by the clients, by the Respondents, and they said those words were supported by the information that was supplied to them as the substantiation.

COMMISSIONER HARBOUR: Mr. Turner?

MR. TURNER: Yes?

COMMISSIONER HARBOUR: Did any of the experts, Respondents' experts, have a doctorate in medicine? Did they have any specialized training or experience regarding cancer treatment? Did they conduct any clinical trials? And I know I asked a compound question, I'll go back to the first, were any of them medical doctors?

MR. TURNER: One was a -- there were no medical doctors, there was a naturopathic.

COMMISSIONER HARBOUR: Thank you. Did any of them have specialized training or experience regarding cancer treatment?
MR. TURNER: Cancer treatment?

COMMISSIONER HARBOUR: Yes.

MR. TURNER: Well, the naturopath does, in fact, work with cancer patients, yes. Her activities are to work with other doctors that are also skilled cancer --

COMMISSIONER HARBOUR: Specialized training, not working with those who have specialized training.

MR. TURNER: No.

COMMISSIONER HARBOUR: Thank you. Have they conducted any clinical trials?

MR. TURNER: No. The clinical trials --

COMMISSIONER HARBOUR: Thank you.

MR. TURNER: The clinical trials you're talking about, to do what they were doing would cost $100 million per unit, per chemical entity.

COMMISSIONER HARBOUR: But don't they have an obligation to terminally ill patients if they're selling or peddling these treatments to be specialized? People who are terminally ill are relying on these medicines to cure them, because the net effect of your ads gives people hope. More than hope.

MR. TURNER: Nothing -- nothing in these ads told people not to go to their doctor, and in fact, it said specifically, this was not medical advice.

COMMISSIONER HARBOUR: The mouse type? Are you
talking about that very small disclaimer?

MR. TURNER: On every page.

COMMISSIONER HARBOUR: On every page that you have to have a microscope to see. Is that what you're talking about, the very small disclaimers?

MR. TURNER: Well, call it small, I don't think it's that small, but you can call it small. The -- you asked a compound question, and I --

COMMISSIONER HARBOUR: And you answered all three of the questions, but I would like to ask you--

MR. TURNER: I didn't think I did, but that's okay.

COMMISSIONER HARBOUR: I would like to ask you one more question. How would you respond to complaint counsel's expert, Dr. Miller, who concluded that your client's reference materials didn't constitute competent or reliable scientific evidence?

MR. TURNER: The answer is that he grounded his entire testimony in placebo-controlled, double-blind studies, and we are saying that is not the proper standard. He didn't -- he offered no other explanation of that, and these are not placebo-controlled, double-blind studies. That's what his whole testimony was about.

COMMISSIONER HARBOUR: Did your expert,
Dr. Duke, did he determine whether any other studies existed regarding your four products?

MR. TURNER: He determined that for some of them they did, but he also pointed out, and this is a huge national debate about whether we're going to go down this chemical, surgery, radiation road alone, or whether there are going to be other things to go along with it. He pointed out that there are hundreds of years, and in fact, 2,000 years in the case of turmeric, of experience that says these products help the body to solve the kinds of problems that we're dealing with.

COMMISSIONER HARBOUR: Did he analyze any of those four products?

MR. TURNER: No.

COMMISSIONER HARBOUR: Did he --

MR. TURNER: Turmeric --

COMMISSIONER HARBOUR: Did he look at the ingredients of any of the four products?

MR. TURNER: Turmeric has between 500 and 5,000 ingredients. One of the problems we're addressing here is the idea of separating out an ingredient out of a product is one of the things that the Respondents' side of the debate says destroys their ability to be effective, as effective as the nutrients would be for assisting the body to solve the problems that it has.
The idea of -- the idea of the herbal intervention is to create strength for the body to deal with whatever happens. That's why the Feijos have been clear. If you use chemotherapy or you use radiation or you use surgery, these products can help you. They do not say don't use those things, they're saying whatever you do, these products can help you.

COMMISSIONER HARBOUR: But isn't it very likely that terminally ill patients have foregone other treatments based upon these particular four products?

MR. TURNER: I don't believe it's very likely at all. I think that people with -- you know, my own reading of people who are terminally ill, who I have talked to and been with, is that they will try everything. Not forego this instead of that. And that seems to be a more likely result.

COMMISSIONER HARBOUR: But that's speculation.

MR. TURNER: Pardon?

COMMISSIONER HARBOUR: You're selling treatments that you haven't substantiated and it appears that your experts have not done the proper testing, they don't know the ingredients.

MR. TURNER: We believe that they are properly substantiated. We believe that that's what the law calls for. The law -- an example of the kind of problem
that we're dealing with is there are two pieces of it in
the ALJ's report, or in his questioning, said, well,
can't you come up with a message that they can use?
They don't want to stop selling the products, these
people say the products are fine, not a problem with
that, but we don't like the messages.
Kevin Trudeau, for example, is on the TV all the
time talking about how bad the FTC is. And our point is
if you lump Kevin Trudeau and these people in the same
category as the FTC, I see only trouble down the road
for consumers, for the FTC, and for this society,
because there's a huge difference.
On the Q-Ray case, the argument the judge made
was there is nothing, zero, on the side of Q-Ray doing
what they claim. Nothing. They actually claim the
placebo effect. Our argument is that there is a settled
science in the herbal world that is hundreds of years
old that says these products are valuable for these
things. And we are saying that the Constitution did not
allow that to be suppressed. We're saying that the FTC
law does not allow the FTC to suppress it. And we're
saying that in providing the substantiation that was
provided, Respondents provided the proper substantiation
under the law.
The law does not say double-blind studies, it
does not say -- in fact, it does not say studies. It says, scientific information, and these individuals who testified, Mr. Duke, Dr. Duke, was for 27 years, he was a key herbal advisor to both the National Cancer Institute, and the U.S. Department of Agriculture.

COMMISSIONER HARBOUR: The red light is blinking and I just have one final observation. You know, ultimately the Commission will render its judgment, but I know that your clients must realize that there will come a time when their actions will be judged by a higher tribunal, and I hope they understand that the treatments that they are selling, they're selling these to terminally ill patients that are potentially foregoing treatments that could prolong or improve the quality of their lives. That's all I want to say.

COMMISSIONER KOVACIC: Mr. Turner, I would like you to take a couple of more minutes if you could to come back to the jurisdictional point. In laying out your thoughts about whether the Commission has jurisdiction to address the behavior here, you focus again on the nonprofit religious institution status of your client, and you raised points about the kind of evidence that the Commission could consider with respect to the claim about jurisdiction.

Let's suppose that a party contests the
jurisdiction of the Commission and says, we are a not-for-profit religious institution. What evidence would you say the Federal Trade Commission can examine to evaluate whether it is precluded from exercising jurisdiction?

MR. TURNER: Well, the Commission had, actually on the Internet, has a filed statement saying that it will not -- essentially it will not go after 501(c)(3) organizations because they do not believe they have that jurisdiction. That's a posted note, which the public is aware of and which actually causes people to rely on it. That is the first place that I would start. And then I would argue, that is looking at the structural framework. Then I would argue that look at the corporation sole structure. I don't think that the FTC has jurisdiction over a corporation sole. I don't think it has jurisdiction over any 501(c)(3), for example.

COMMISSIONER KOVACIC: So, would you say that as long as a firm is listed as a 501(c)(3) entity, that's the end of the inquiry?

MR. TURNER: Well, I would not say that's the end of the inquiry, but I'm saying that's the beginning of the inquiry. The notice of -- we filed a brief in the California Dental case supporting FTC jurisdiction, because the commercial activity that was engaged, and
that was a 501(c)(6) organization, the activity it was engaged in was providing a series of economic benefits for the membership, which included an insurance plan, business placement, business consulting, a whole range of things that were listed. And the issue was lucre, lucre. These individual dentists had a very strong economic support moving them forward under the structure of the American Dental Association, in a 501(c)(6). I believe that the Commission has jurisdiction over trade associations, and so that it's the kind of nonprofit that we're discussing here.

COMMISSIONER KOVACIC: But beyond looking at the classification for purposes of the Internal Revenue Service regulatory scheme, what else can the Commission look at to test the nature of the entity before it?

MR. TURNER: Let me try to be clear about this case.

COMMISSIONER KOVACIC: Yes.

MR. TURNER: The Administrative Law Judge held a special hearing on the question of the nature of the organization, and found that it was a religious -- a nonprofit religious organization.

So, at that point, there was no further -- nothing else that comes in goes to that question. That question was settled before the hearing actually
started.

Now, if it was going to go and evaluate the kinds of things that were being suggested in the questions here, that should have been part of what would have gone forward, but that was not. Nothing that was brought in there was looked at as helping to support the fact that this was not a religious institution.

CHAIRMAN LEIBOWITZ: May I just follow up on Commissioner Kovacic's question, and I am no expert on this, but does the State of Washington in evaluating corporation sole status or does the IRS in determining nonprofit status, do they conduct any investigation, or do you simply file?

MR. TURNER: You simply file, and the -- that issue was tested in court, and the complaint counsel presented one case in which it said you can't as an individual file and become a corporation sole as a tax shelter, but it did not submit the case in which it said that the thousands of corporations sole that have been filed by the individual who was the subject of the case were proper, and had been done right. And the way they were doing it was correct.

Now, for jurisdictional purposes, the IRS does not have -- specifically does not have jurisdiction over religious organizations. They are not required to file,
they aren't asked to file, they stay out of that. And that includes corporations sole.

COMMISSIONER KOVACIC: So, your argument is that the Administrative Law Judge, having reached a decision preliminarily about the nature of the organization should have dismissed the case after that proceeding?

MR. TURNER: Well, it was not a preliminary determination. I mean, it was a final determination and it remains still there.

COMMISSIONER KOVACIC: And it's your argument that as soon as that process was completed, that that phase of the proceedings was completed, that that ought to have been the end of the case?

MR. TURNER: Well, I would argue -- yes, that's my argument. That's the answer to the questions that you were asking me. That's my argument. However, my second argument is, if the material that went on further was going to be utilized to determine or be used to evaluate whether it was a religious organization or not, I'm saying that use of that information was precluded by that decision. We weren't even on notice that we were -- that this information was going to come in and say, ah-hah, you see, he ruled it was a religious organization, but after all that, we've decided it's not.
COMMISSIONER KOVACIC: So, just so that I understand, you're claiming that the subsequent consideration of that information was illegitimate because the earlier ruling should have precluded coming back to that issue?

MR. TURNER: For the purposes of jurisdiction.

COMMISSIONER KOVACIC: Okay.

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

COMMISSIONER KOVACIC: Are you also saying that because of the sequencing of the consideration of this information that you lacked an adequate opportunity to rebut it when it was brought up?

MR. TURNER: Well, it was never brought up. The information that's being talked about now and what they spent money for and so forth was not brought up about jurisdiction. It was brought up about -- the issue was all about their behavior, whether it was accurate and all that sort of thing. But in terms of the religious -- whether the FTC has jurisdiction over an organization that has been found to be a religious organization was not in the hearing as it went on.
COMMISSIONER ROSCH: If I may just follow up on that for just a second, I thought you told me that Mr. Feijo, and maybe his wife, testified with respect to their travels around the world that basically what they had done and how this was financed, et cetera. They testified that they never belonged to a country club, that he just golfed at a club occasionally, that they didn't live on a golf course after all. At what point did they testify to that, sir?

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

COMMISSIONER ROSCH: Thank you.

MR. TURNER: Because the information came up with -- well, I think it was in both instances the complaint counsel presented economic information about the religious nature of the -- the commercial nature of the organization.

COMMISSIONER ROSCH: Thank you.

CHAIRMAN LEIBOWITZ: All right. If there are no more questions, thank you, Mr. Turner.

Mr. Gordon, you may come up and begin your argument.
MR. GORDON: Thank you.

Let me quickly answer the question that Commissioner Rosch was posing. If you look at the transcript from the hearing on jurisdiction at page 154, I asked Mr. Feijo if Daniel Chapter One paid for his country club membership and he said yes. At page 155 of that transcript, I asked him about the golf course behind his home in Florida and he confirmed that there is a golf course behind his home in Florida, that the ministry pays for.

Mr. Turner is just wrong, as with most of his arguments, it is completely untethered to the facts in this case.

Daniel Chapter One and James Feijo advertised over the Internet that their products, BioShark, 7 Herb Formula, GDU and BIO MIXX could treat, prevent or cure cancer. Respondents touted these products as alternatives to conventional cancer therapies and as based on the science of Biomolecular Nutrition supposedly developed by Mr. Feijo.

The alternative point is important. Take a look at Exhibit 24, page Bates stamped 421, where they tout, This is an alternative, not a complement. And if you really want to find out the Feijos' view on complementary medicine, look at their own words at
Exhibit 5, page 25 and 26, they are not before you now, but we have them in the record, Exhibit 5, page 28, and Exhibit 8, pages 4 and 5. Those are transcripts from the Feijos' radio show, where they tell patients, cancer patients, don't do what your doctor has told you, take our stuff instead.

That is why we are here today. This is dangerous. This is not some academic debate about the contours of FTC jurisdiction, this is not some academic debate proper for a law school article about U.S. v. Johnson. This is about --

COMMISSIONER KOVACIC: What's wrong with law school articles? You're not suggesting that those aren't useful contributions to the body of human knowledge, are you?

MR. GORDON: They have a very useful contribution.

COMMISSIONER KOVACIC: Of course. I thought so.

I knew it. I knew it.

MR. GORDON: Especially from the Harvard on the Potomac, which is also my alma mater.

This is dangerous. This is not an academic debate.

COMMISSIONER ROSCH: Let me back up. Was there a dispute at trial between yourself and counsel for the Respondents with respect to whether or not when you were
making -- whether the ALJ was making a determination as to what messages were conveyed by these advertisements that the ALJ should look at the overall net impression that these ads make? Was there a dispute about that as a matter of law at the trial?

MR. GORDON: There was a dispute as to whether that was the proper analytical framework. We introduced the advertisements, I walked, in both my opening and my closing, the ALJ through those advertisements to buttress our arguments as to why the claims that were pled in the complaint were made. The Respondents made absolutely no reference, in this advertising case, to the advertisements. They did argue at times a legal point of view that we had to provide extrinsic evidence, but they provide no alternative textual explanation.

COMMISSIONER ROSCH: That's a second issue. The question I'm putting is did they argue about the standard of overall net impression? Did they ever say that was the wrong standard?

MR. GORDON: They did not say that was the wrong standard. They said that that standard required extrinsic evidence.

COMMISSIONER ROSCH: Okay, that's a different matter.

MR. GORDON: Understood.
COMMISSIONER ROSCH: That was their argument?

MR. GORDON: Correct.

COMMISSIONER ROSCH: And that was where the dispute lay with respect to that matter, the meaning of the ads?

MR. GORDON: Yes.

COMMISSIONER ROSCH: Let me move on to a second issue. Was there a dispute between yourself and counsel for the Respondents, at trial, about whether or not an advertisement could be deceptive for two reasons, one of which would be that it was false, and the second would be that it was unsubstantiated? Was there a dispute about that as a matter of law?

MR. GORDON: In our papers, we focused on the lack of substantiation. They, again, seemed to think that extrinsic evidence was required, as to the meaning of the ad, so they never really got to the substantiation. Their substantiation was completely focused on a sort of disputatious dissection of the particular words in the ad, rather than the whole of the ad.

COMMISSIONER ROSCH: I understand that, but the question I'm putting to you right now is was there a dispute between yourselves with respect to whether or not the lack of substantiation in itself might make an
ad deceptive?

MR. GORDON: That was certainly our position, they didn't really argue about that.

COMMISSIONER ROSCH: Okay. Now, their argument, as I read their briefs, and I should have asked you about this, Counsel, and I apologize, perhaps you will want to take this up on the rebuttal, seems to be rather that if you're going to just focus on substantiation, you can't make that substantiation uncertain. That is to say, it needs to be fixed, on the one hand; on the other hand, they argue that if it's fixed at a high enough point, as, for example, to require placebo-based, double-blind testing, that that's too high.

The question I have for you, and for you as well, sir, the next time you stand up and deliver your rebuttal, is whether or not Daniel Chapter One is advantaged instead of disadvantaged by that flexible standard. I would think that as a company that sells some 200 products, only four of which are alleged to be cures or treatments for cancer, which the ALJ may have, indeed, thought in his own mind should be substantiated to a very high degree, that on the other hand, they're selling some things that are good for indigestion, some products that are -- that are ingested for hair loss, that sort of thing. Those may be held to be
substantiated by a much lower standard.

Aren't they advantaged by that as a company who is selling some 200 products for multiple uses?

MR. GORDON: It seems obvious to me that that is, yes.

Let me turn to jurisdiction. Mr. Turner seems to indicate that there's some danger to the Commission if they -- if you find that there is jurisdiction over Daniel Chapter One and Mr. Feijo. There is danger if you do not. The basis of their argument is that they filed corporation sole papers with the State of Washington. Well, the State of Washington has now abolished any new entity taking advantage of a corporation sole, because it has been found to be a notorious tax dodge.

COMMISSIONER ROSCH: Well, is that in the record?

MR. GORDON: It is a matter of public information, as we said in our papers, it happened after we filed our brief, it actually became official. It is in the record that the State of Washington was considering doing so, in our appellate papers, we cited to the Secretary of the State of Washington's website where he now says that they have, in fact, abolished --
CHAIRMAN LEIBOWITZ: Whoa, whoa, whoa, Mr. Gordon, are you suggesting that Daniel Chapter One is a tax dodge or a sham? Because that's the implication that I think is what you're saying.

MR. GORDON: What we know is that Mr. Feijo stopped paying his taxes sometime in the mid-1990s, and what we know is that thereafter, he incorporated Daniel Chapter One as a Washington corporation sole. The woman who incorporated it, Nancy Johnson, was then prosecuted by the IRS for tax evasion in connection with corporations sole. That was the reference that Mr. Turner made.

You don't need to find that this was created solely for purposes of tax evasion, but the fact that they keep absolutely no records.

CHAIRMAN LEIBOWITZ: But you keep on inferring or suggesting, you just said not solely for the purposes of tax evasion, but you keep on suggesting that that's why they're doing it.

MR. GORDON: It may well be.

COMMISSIONER ROSCH: Well, let's assume that it isn't. Does that make any difference to the question of jurisdiction in this case?

MR. GORDON: At the end of the day, no. Because at the end of the day, what we have is compelling
evidence that this is a commercial enterprise, and that
the results of that commercial enterprise inured to the
benefit of James Feijo.

As to the commercial enterprise, this entity, $2
million in sales annually, it engages in comparative
advertising, comparing its products to those of its
competitors, competitive brands. It has 15 or so
distributors that sell its product at a profit. In
enticing distributors, it has a brochure, you've got a
copy of it in front of you, that talks about the high
profits that distributors can make selling this product.

Certainly, if the distributors can make a profit selling
this one step down in the distribution chain, when
Daniel Chapter One sells it directly, they must be
making a profit.

COMMISSIONER HARBOUR: Mr. Gordon, can we just
talk about the religious issues for a second?

MR. GORDON: Yes.

COMMISSIONER HARBOUR: Is the Religious Freedom
Restoration Act of 1993 applicable to this case?

MR. GORDON: I don't believe so directly,
because the ads make so little reference to religion. I
mean, look at the exhibits in front of you. The
catalog, no religious reference. The 7 Herb formula
websites, 12 pages long, you've got the first page of it
there. If you go to the twelfth page, buried in the footnote, the mouse print there, is one sentence about religion. Right after that is the one sentence disclaimer that is completely ineffective to cure the claims made above.

Moreover, even if the Act is found to apply here, there is certainly a compelling interest being served. We are trying to protect vulnerable, sick cancer patients, and the remedy that we are seeking is narrowly tailored to protect that interest.

COMMISSIONER HARBOUR: But would a finding of jurisdiction somehow violate the Act's protections over the free exercise of an entity's religious practices?

MR. GORDON: No. If that were the case, every charlatan out there would proclaim themselves a religious ministry, claim themselves a nonprofit, and we would lose jurisdiction over a vast majority of bad guys.

COMMISSIONER ROSCH: Well, as the Chairman has pointed out, that implies at least that they are charlatans, and let's assume that they are not. Does that make any difference?

MR. GORDON: Whether they actually believe that which they say is irrelevant. Intent is irrelevant under Section 5 of the FTC Act.
CHAIRMAN LEIBOWITZ: Well, let me ask you this, when considering jurisdiction or finding liability over what is arguably a religious institution, and as Commissioner Rosch said, let's consider it a religious institution, don't you think the FTC ought to be very, very careful before it holds itself to a higher standard when essentially before it brings a case, or before it finds liability, because we are dealing with, you know, core First Amendment issues.

MR. GORDON: I agree that the FTC should be very careful in proceeding against an entity that proclaims itself to be a religious institution, and I believe the evidence here will allow the Commission to proceed carefully, but confidently, that it has jurisdiction over Daniel Chapter One and James Feijo.

CHAIRMAN LEIBOWITZ: Has the Federal Trade Commission brought other cases like this?

MR. GORDON: If you look at Ohio Christian Academy, it was --

CHAIRMAN LEIBOWITZ: In the last 20 years?

Fine.

MR. GORDON: In the last 20 years, not to my recollection.

CHAIRMAN LEIBOWITZ: Did it ever bring a case involving, say, the sale of rosaries by -- but not by
the Catholic Church?

MR. GORDON: If it did, I'm not aware of it.

CHAIRMAN LEIBOWITZ: And why do you think that is? Do you think there's more substantiation in the use of rosaries than there is substantiation here by Daniel Chapter One?

MR. GORDON: I'm not sure I follow your question, I'm sorry.

CHAIRMAN LEIBOWITZ: Well, my question is, why has the FTC selected this entity to go after when others might say that there are other products that have, sort of the only substantiation is on faith which essentially is the nature of a rosary, for example, not all of which are sold by the Catholic Church.

MR. GORDON: The reason that we are here is because they, they being Daniel Chapter One and Mr. Feijo, are touting the products that they sell as alternative cures for cancer. And the stakes are extraordinarily high in that instance.

CHAIRMAN LEIBOWITZ: But I want to say, my sense, you can correct me if I'm wrong, is that certainly things like rosaries, that I'm sure other religions have similar materials, are also touted, in part, not in whole, as having miraculous or extraordinary healing potential, or powers. Why is this
COMMISSIONER ROSCH: Or to put a sharper point on it, are there any higher stakes on whether or not you go to heaven?

COMMISSIONER HARBOUR: In answer --

MR. GORDON: The issue here is the way these are sold. These are not sold in church basements, they are not sold face to face. We are challenging the advertisements that they, Daniel Chapter One, post on the Internet, on their webpage, that anyone can go to. Our investigator went to that. The webpage, the ads that are before you have very little or no religious content.

COMMISSIONER HARBOUR: Mr. Gordon, you had mentioned that the sale of these products was dangerous. Now, I have never seen anything dangerous about a rosary. So, would you make that distinction for me, please?

MR. GORDON: Sure. Our expert, Dr. Miller, talked about the danger that these products pose, and there are two: One is that a patient will take these products instead of their chemotherapy, instead of pursuing surgery, and that is exactly what the Feijos and Daniel Chapter One urge.

COMMISSIONER HARBOUR: But Mr. Frank said that
he knew that they weren't doing this, that they were using these, and if I'm misquoting you, you will certainly correct me when you stand up, but I understand him to say that it wasn't a dangerous product because they were using his treatments in addition to or as a supplement to their chemotherapy. Did you find that to be true in your review of the record?

MR. GORDON: That is not what their advertisements say. I mean, that is rhetoric from counsel. That is not even what the Feijos say. Exhibit 24, this is the cancer newsletter, page 421, "There are natural, safe and sane alternatives to chemo, radiation and surgery." That's touting these products. Take a look at the transcripts from their radio show, Exhibit 5 and Exhibit 8. Again and again, they're advising patients to not pursue conventional cancer treatments and instead to take these products. That is a real danger. And that's the first danger, that a patient will forego conventional cancer treatment and instead take this.

The second danger is that the patient will take these products and that they will interfere with or complicate their condition, can interfere with the medication or complicate their condition, and Dr. Miller addressed that. These products can have serious
side effects, even Curcumin, there are bleeding issues, some of the infection-fighting properties of these products supposedly have can interfere with the way chemotherapy is supposed to work. These people are touting these products as alternatives to regular medicine, and that is very dangerous. And I think that differentiates this from someone selling rosary beads on a corner to a true believer.

The Feijos don't know who's buying this stuff over the Internet, and they don't know who's looking at their webpage, and then go and find a similar product from others. Seven Herb Formula is essentially essiac tea, which is sold by lots of other folks out there. Their webpage talks about it being essiac tea, and why you should be buying their brand rather than somebody else's.

So, there is also the danger that someone is going to look at this webpage and decide to buy a cheaper version of this product. That is why these ads are so dangerous, and that is why we are here.

COMMISSIONER ROSCH: Well, let me press you a little bit more. You've suggested, and I agree with you, that the Commission needs to be cautious in this area, because of the First Amendment issues, among other things, and also the religious issues. First of all,
aware of any other cases in which the Commission has held that ads are deceptive under these circumstances, that is to say in the face of the First Amendment, where they're not false, they're just unsubstantiated? Are you aware of any other cases like that?

MR. GORDON: The Commission has brought many cases on a lack of substantiation theory.

COMMISSIONER ROSCH: But I'm talking about whether there's been a First Amendment defense raised.

MR. GORDON: In the Direct Marketing Case there's been a First Amendment argument raised, in the National Urological case there's been a First Amendment raised, in Kraft, there was a First Amendment issue raised. And that decision ultimately went both to the Commission where they found that the First Amendment issue was overcome, and to the Court of Appeals. So, yes.

COMMISSIONER ROSCH: Okay. Now, the second question, assume that that is so, that, indeed, advertisements are not challenged on the grounds that they're false, but rather on the grounds that they're unsubstantiated. Does that have any consequences at all?

MR. GORDON: For purposes of the First Amendment?
COMMISSIONER ROSCH: At all. With respect to the remedy, for example, does it have any consequences?

MR. GORDON: I am certain that it has some consequences, but I don't think it makes a material difference in the remedy that we're seeking here, because what we're seeking here is that if they're going to make claims, they have to have competent, reliable, scientific evidence to substantiate those claims.

COMMISSIONER ROSCH: Okay.

MR. GORDON: Okay.

COMMISSIONER HARBOUR: Should there be a higher duty? Because we seem to be talking about here treatments for terminally ill patients, this is not a treatment for weight loss or a treatment for warts or the like. So, let me step back, a couple of questions.

Looking at the First Amendment, I know that that's a claim, they're wrapping themselves in the First Amendment, but when you analyze these cases, would you first analyze it by saying is this speech commercial, and then if you determine whether the speech is commercial, then that would give you the hook for the Commission to then analyze whether it is deceptive. Is that how one has to look at this?

MR. GORDON: I'm sorry to cut you off. That is certainly how we proceeded and that is certainly how the
ALJ proceeded. And if you look at these ads, these are clearly pieces of commercial speech. They are advertisements. Mr. Feijo sat right there in the witness chair and admitted that DCO advertises on the Internet.

COMMISSIONER HARBOUR: And that therefore takes it out of the First Amendment in your opinion?

MR. GORDON: Not ipse dixit, but if you look at the ads, I mean, the claims are right next to buttons that say, "Buy Now." The purpose of the speech, when you look at the entirety of the advertisements, is to convince someone to buy Daniel Chapter One's products, and that trying to convince a consumer to buy is the hallmark of commercial speech.

COMMISSIONER HARBOUR: And should there be a higher standard in these cases in which one is dealing with a treatment that affects the terminally ill rather than treatment for weight loss, or is the standard the same?

MR. GORDON: Well, the nature of the product, I think, implicates several issues. It implicates the degree of substantiation that is required, but if you're talking about First Amendment issues, when you consider the interest that the state is trying to protect, clearly trying to protect sick, possibly dying, vulnerable consumers from a phony cancer cure, the
interest is higher than for wart cream. So, I mean, I think the First Amendment is flexible to some extent, in that regard.

CHAIRMAN LEIBOWITZ: And just going back to the what you believe are commercial advertisements, there's nothing on their website, and I have to go back and look at this, that relates to Daniel Chapter One, that is the book of Daniel Chapter One? There's nothing in the website, there's nothing that talks about it at all?

MR. GORDON: That is not our position. If you look at the entirety of their website.

CHAIRMAN LEIBOWITZ: Right.

MR. GORDON: There are references in places to Daniel Chapter One.

CHAIRMAN LEIBOWITZ: Well, when you go on the first screen, what does it say?

MR. GORDON: Very little, on the landing page.

But if you look at the ads, and there's ten or so of them in --

CHAIRMAN LEIBOWITZ: You know what, I just find it hard to believe that a perfectly credible religious institution can't try to sell products on a screen, a particular screen if you click down that doesn't have -- doesn't have some religious -- it might not have some religious component to it, right? Once you click down
to the sale page. Or the product page.

MR. GORDON: But if you look at what they're saying about the product, that message is not a religious message, it is a commercial message. It is comparing their product to other brands. It's talking about how it is a good value. It is not a religious message. It is a commercial message.

CHAIRMAN LEIBOWITZ: But with respect to the fact is you know it when you see it, right, as opposed to Euclidean geometry, for example.

MR. GORDON: To some extent, but if you look at the Supreme Court's opinion in Central Hudson, if you look at the opinion in Zauderer, if you look at the Supreme Court's opinion in Bolger, in all of those cases, the Court considered the argument that because there was some comment by the defendant in those cases, on matters of public interest, of matters perhaps on a public debate, that somehow the defendants argued the speech was transformed not to commercial speech, but to opinion speech, but obviously which would be more protected, and the Court ruled in those cases that just because there might be some mention of a public issue does not create this higher level of scrutiny, because if that were the case, it would be very easy for the bad guys to wrap themselves in the First Amendment and get
away with selling or in this case selling phony cancer
cures.

COMMISSIONER HARBOUR: Can I go back to the
danger theme? I am not a First Amendment expert, but I
do know that one cannot shout fire in a movie theater,
because it would present a clear and present danger.
Could one argue that these dangerous treatments, as
you've characterized them, could present a clear and
present danger and therefore would not be protected
under the First Amendment?

MR. GORDON: You could argue that, but I don't
think you have to go there, because the case law is
clear that there is no First Amendment protection for
commercial speech that is false, misleading, or
deceptive, which is what the speech in this case is, it
is commercial speech that is false, misleading, or
deceptive, under Central Hudson and its progeny, there
is no First Amendment protection for such speech. You
don't need to go to worrying about the firehouse
analogy, or fire in the movie house analogy, excuse me.

COMMISSIONER KOVACIC: Just to underscore this
again, so I have the benefit of your thoughts on this,
that if you have a manifest falsehood, or a clear lack
of substantiation for a claim, that the First Amendment
does not rescue you simply by the fact that it is speech
and speech is otherwise protected?

MR. GORDON: Correct.

COMMISSIONER KOVACIC: And that there is a long history of FTC intervention that involves the imposition of orders to correct or forbid speech of that kind?

MR. GORDON: Absolutely. Again and again defendants have tried to evade FTC jurisdiction, or FTC sanction, by wrapping themselves in the First Amendment. And again and again, this Commission and the courts have found that the First Amendment does not protect false, deceptive or misleading commercial speech.

COMMISSIONER KOVACIC: And that's a well-established principle in our jurisprudence.

MR. GORDON: Very well-established. Even an antitrust lawyer like me figured it out.

Absent further questions, thank you.

CHAIRMAN LEIBOWITZ: Any further questions?

(No response.)

CHAIRMAN LEIBOWITZ: Thank you, Mr. Gordon.

Mr. Turner, you may begin your rebuttal. And Mr. Turner, by the way, has at least five minutes. You have five minutes.

MR. TURNER: Let me first address the net impression question that you raised. We were asked specifically whether we think net impression was the
standard, and, in fact, we argued vigorously initially that it was, and continue to, and we are talking about the net impression of the entire website and the radio program and the presentation that's being made. Our argument is that the Respondents in this case are engaged in a social debate about how to approach health, and that debate expresses itself in various ways in the law, and we're saying -- COMMISSIONER ROSCH: Let me just understand, with respect to whether or not that is a legal standard, but whether or not you looked at the overall net impression of all of the advertising, that was something that you didn't contest as a matter of law? Is that correct?

MR. TURNER: We urged as a matter of law, and we are arguing that the ALJ did not consider the net impression. He picked out specific words and specific aspects of one or two pages in a huge mass presentation. There is a presentation about a view of life, a view of being, that is involved in the Daniel Chapter One presence. Their presence is to be involved in a national debate, and all of the things that they do are a part of that, and our argument was that had to be a part of the net impression.

CHAIRMAN LEIBOWITZ: Mr. Turner, are all of the
MR. TURNER: There are a thousand people that buy.

CHAIRMAN LEIBOWITZ: A thousand?

MR. TURNER: There are a thousand. They are people who we don't -- we can't say that all of them are or aren't, but they travel around from -- they go to -- they go to motels and meeting places and people come and meet them and it is their experience that they would say all, but virtually all of the sales that they get are from people who have heard their radio program or come to their tent show type activity.

CHAIRMAN LEIBOWITZ: So, I just want to understand this, the thousand or thousand ultimate consumer purchasers or a thousand sort of affiliates who sell the product?

MR. TURNER: There are a thousand people who have gone on that website and bought things.

CHAIRMAN LEIBOWITZ: What's the church membership? Does it have --

MR. TURNER: It's a home church, it's a church that holds meetings in private homes, and it doesn't have a discrete membership.

CHAIRMAN LEIBOWITZ: What's the ballpark figure
of membership?

MR. TURNER: It would probably be four or five times that from the standpoint of people who come to the tent meetings and all of the things, all of the things that they do, or the baptisms I'm supposed to call it, baptisms. Those people are --

I want to now, I would like to go back to the closing argument that you made, regarding Mr. Feijo's relationship with higher authority. I can assure you that Mr. Feijo is deeply religious and very committed to moving forward in his life in a way that helps people. And the issue that you raise is one side of a national debate, a huge national debate.

You can get a flavor of that by reading the first case that is presented in the materials that the complaint counsel handed to you. This is a -- this is a person who was terminally ill, said she only would have a few months to a year to live, and that was about 14 years ago. She is telling her story about how Daniel Chapter One's involvement with her, after she got that involvement, her case went in a positive way. She was identified in the complaint, she came here to testify, there were 82 people that said they would come and testify that Daniel Chapter One had helped them. There could have been more. We negotiated it down to ten, and
then they weren't allowed to testify on their experience, because it was considered to be irrelevant.

But the argument that needs to be made back is the people who are using chemotherapy, radiation and surgery also have to answer to that same authority. And if the argument is going to be everyone is forced to use those particular approaches and no one is allowed to hear information about the different ways of approaching cancer, the answer that they are going to have to have with their maker might be a lot tougher than the one that the Feijos are going to have.

COMMISSIONER HARBOUR: But you're saying that the treatments cure cancer.

MR. TURNER: I can't hear you.

COMMISSIONER HARBOUR: Patients, terminally ill patients, when they read your advertisements, they believe that your products will cure cancer. That is the difference.

MR. TURNER: Once again, the point is that if you take these products, the part of your body that works to cure your cancer will be strengthened. The immune system. The internal -- the main intelligence will be strengthened. That will allow you to cure your cancer.

COMMISSIONER HARBOUR: That is not what your ads
say. That is not what your ads say.

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

COMMISSIONER HARBOUR: If I were a terminally
ill patient, those two words would jump out at me and I
would grab onto them like a life preserver.

MR. TURNER: And would you not talk to your
doctor?

COMMISSIONER HARBOUR: But your ad is saying you
need not do that.

MR. TURNER: Those words are about the same size
as the disclaimer. And if you were going to read the
small words, you could read the disclaimer and you could
read those words. This is a national debate, and I will
tell you that it's a huge debate, and the 130 groups
signed consent orders, 129 out of 130 signed consent
orders on this, and the customers, the customers are the
issue here. The customers are angry about having been
interfered with in their own treatments. There is a --
people are getting money back from the FTC and signing
the checks over back to the companies. You're stepping
into a major social debate, and the speech that you made
at the end, that speech, that argument, is one half of
that debate. And it does not -- the people who control
that half of the debate do not have the right under the
First Amendment to close the other people out of that
debate. That's the argument here.

COMMISSIONER HARBOUR: Thank you, sir.

MR. TURNER: Thank you very much.

(Whereupon, at 2:09 p.m., the proceedings were
adjourned.)
CERTIFICATION OF REPORTER

DOCKET NUMBER: 9329

CASE TITLE: DANIEL CHAPTER ONE/JAMES FEIJO

DATE: DECEMBER 3, 2009

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

DATED: 12/4/09

SALLY JO QUADE

CERTIFICATION OF PROOFREADER

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

SARA J. VANCE