

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA,)	Civil No. <u>1:10CV01362 EGS</u>
)	
Plaintiff,)	
)	
v.)	
)	
DANIEL CHAPTER ONE,)	
)	
and)	
)	
JAMES FEIJO,)	
)	
Defendants.)	
_____)	

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT ON LIABILITY**

This case addresses Defendants’ unsubstantiated claims that their products treat a life-threatening disease. With no competent and reliable scientific evidence, defendants hawk their products as a cancer cure. The Federal Trade Commission and the United States have worked diligently to put an end to this disgraceful sham. This Court and the Court of Appeals have issued orders endorsing this effort, yet Defendants continue to make unsubstantiated claims that they can save lives. The United States of America, by and through undersigned counsel, respectfully submits this memorandum of points and authorities why summary judgment for the United States flows from these facts.

SUMMARY OF ARGUMENT

Daniel Chapter One and James Feijo (“Defendants”) advertise and sell a variety of products, including dietary supplements. This action principally concerns four dietary supplements Defendants market: BioShark, 7 Herb Formula, GDU, and BioMixx (collectively, “the Products”).¹ Defendants have made claims that the Products can treat, cure, or prevent cancer. The Federal Trade Commission (“FTC” or “Commission”) believed the claims were unsubstantiated, and as a result, the FTC brought an administrative proceeding alleging that the marketing of the Products violated the Federal Trade Commission Act (“FTC Act”). The Commission issued an Order prohibiting Defendants from representing that the Products, or any of their products, prevent, treat, or cure any type of tumor or cancer, without possessing and relying upon competent and reliable scientific evidence that substantiates the representation.

Defendants appealed the Order to the United States Court of Appeals for the District of Columbia Circuit and later petitioned the Supreme Court for certiorari. The Order was not stayed while the appeal was pending. Despite numerous orders from the Commission, the Court of Appeals, and this Court, all directing Defendants to comply with the Order, Defendants continued to violate the Order while the appellate proceedings were ongoing and after their appeal was denied.

Defendants have violated the Order since it became effective on April 2, 2010, by promoting their products as cures for cancer and other tumors on websites, online forums, and

¹ BioShark is a capsule is primarily made of shark cartilage. 7 Herb Formula is a liquid tea concentrate containing, among other things, rhubarb root, sheep sorrel, Siberian ginseng, and cat’s claw. GDU capsules contain, among other things, bromelain, turmeric, quercetin, feverfew, and boron. BioMixx is a powder that contains goldenseal, echinacea, and ginseng.

their radio show. Additionally, Defendants ignore provisions in the Order that require that a corrective notice be sent to past purchasers. The Federal Trade Commission Act authorizes awards of monetary civil penalties, a permanent injunction, and other equitable relief for violations of final orders of the Commission. 15 U.S.C. §§ 45(l), 53(b), and 56(a). There is no genuine issue of material fact, making summary judgment on liability appropriate.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant Daniel Chapter One is incorporated as a “corporation sole” under the laws of the State of Washington, with its principal place of business in Portsmouth, Rhode Island.² Defendant James Feijo is the sole member and overseer of Daniel Chapter One.³ Daniel Chapter One advertises and sells a variety of products, including dietary supplements.⁴

The FTC believed that Defendants were making unsubstantiated claims that the Products can treat, cure, or prevent cancer. As a result, the FTC brought an administrative proceeding alleging that Defendants’ marketing of the Products violated the FTC Act.⁵ In the proceeding before the Commission, Defendants were charged with violating Sections 5(a) and 12 of the FTC

² See ¶1 of 2/23/10 Feijo Declaration, attached as Exhibit A and Defendants’ Memorandum at p.1 [doc. #26].

³ See Defendants’ Response to Plaintiff’s Request for Admissions, attached as Exhibit B, and Defendants’ Memorandum at p.1 [doc. #26].

⁴ See ¶4 of the Complaint and Defendants’ Answer, Feijo Declaration 8.31.10 ¶ 4 and 5, attached as Exhibit C, and Feijo Declaration 2.23.10 ¶ 5 and 6, attached as Exhibit A.

⁵ See Complaint, Federal Trade Commission Docket No. 9329, available at <http://www.ftc.gov/os/adjpro/d9329/080918admincomplaint.pdf>.

Act, 15 U.S.C. §§ 45(a) and 52.⁶ Following trial, an Administrative Law Judge concluded that Defendants violated the FTC Act by making unsubstantiated claims that the Products prevented, treated, or cured tumors or cancer.⁷ Defendants appealed this decision to the Commission.⁸ On December 24, 2009, the Commission upheld the decision and issued a Final Order to cease and desist certain practices.⁹ On January 25, 2010, the Commission issued a Modified Final Order (“Order”),¹⁰ which made non-substantive modifications to clarify required time periods in the Final Order. On February 1, 2010, the Order was served on Defendants.¹¹ Pursuant to Section 5(g) of the FTC Act, 15 U.S.C. § 45(g), the Order became effective on April 2, 2010.

⁶ *Id.* Section 5(a) of the FTC Act prohibits engaging in “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce. . . .” 15 U.S.C. § 45(a)(1). Section 12 provides that “[t]he dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in or affecting commerce within the meaning of [Section 5.]” 15 U.S.C. § 52(b).

⁷ FTC Docket No. 9329. The Initial Decision of the Administrative Law Judge was filed on August 5, 2009, and is available at <http://www.ftc.gov/os/adjpro/d9329/090811dcoinitialdecision.pdf>. Three elements must be established for the FTC to successfully prove a claim under Section 5(a), “(1) there was a representation; (2) the representation was likely to mislead customers acting reasonably under the circumstances, and (3) the representation was material.” *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003) (citing *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988)).

⁸ FTC Docket No. 9329, <http://www.ftc.gov/os/adjpro/d9329/index.shtm>.

⁹ FTC Docket No. 9329, <http://www.ftc.gov/os/adjpro/d9329/091224finalorder.pdf>.

¹⁰ The Modified Final Order is attached as Exhibit D.

¹¹ *See* Exhibit V, Feijo Declaration 2.23.10 ¶2, and Burton Declaration at ¶11. The Order was served on Defendants and their attorneys between January 29, 2010, and February 1, 2010. For the purposes of this Motion, Plaintiff uses the February 1, 2010, service date to calculate when the order became effective.

Among other things, the Order prohibits Defendants from representing that the Products, or any of their products, prevent, treat, or cure any type of tumor or cancer, without possessing and relying upon competent and reliable scientific evidence that substantiates the representation.¹² The Order also requires Defendants to send a letter to past purchasers of the Products informing them of the Commission's conclusion that Defendants' advertising claims were deceptive because they lacked substantiation.¹³

Defendants appealed the Order to the United States Court of Appeals for the District of Columbia Circuit.¹⁴ Defendants refused to comply with the terms of the Order while their appeal was pending, and they filed a motion with the FTC asking that the Order be stayed pending the outcome of their appeal.¹⁵ That motion was denied.¹⁶ Defendants then filed an emergency motion with the D.C. Circuit Court, asking that the Circuit Court stay the Order pending review. The Circuit Court denied this emergency motion.¹⁷ Daniel Chapter One v. FTC, No. 10-1064 (D.C. Cir. April 1, 2010).

¹² Part II of the Modified Final Order, attached as Exhibit D.

¹³ Part V.B of the Modified Final Order, attached as Exhibit D.

¹⁴ United States Court of Appeals for the District of Columbia Circuit, Case No. 10-1064.

¹⁵ United States Court of Appeals for the District of Columbia Circuit, Case No. 10-1064.

¹⁶ The Commission stated that this relief was not warranted because, "[a]ll factors for granting a stay weigh against granting the motion. Respondents have shown neither a likelihood of success on the merits on appeal, nor that they will suffer irreparable harm absent the requested relief. Moreover, given that other parties will be harmed if the stay is granted, it is not in the public interest to grant Respondents' motion." The Commission Order denying Defendants' Motion is attached as Exhibit E.

¹⁷ The D.C. Circuit Court's Order denying Defendants' Emergency Motion to Stay is attached as Exhibit F.

The pending action was filed on August 13, 2010.¹⁸ While Defendants' appeal was still pending, the United States sought to prevent Defendants' continued violation of the Order, and filed a motion for a preliminary injunction.¹⁹ This Court denied that motion, and stayed this action.²⁰ The Federal Trade Commission then sought an Order of Enforcement Pendente Lite from the Court of Appeals, to enforce the Order while the appellate proceedings were ongoing. The Court of Appeals granted this request in a *per curiam* order on November 22, 2010, stating that "Daniel Chapter One is hereby enjoined to obey forthwith the modified final order of the Federal Trade Commission issued January 25, 2010[.]"²¹ Defendants then filed a motion asking the Court of Appeals to stay the enforcement of the section of the Order requiring them to send the letter to their customers. The Court of Appeals rejected this request on December 7, 2010.²²

Subsequently, the Court of Appeals denied Defendants' appeal.²³ Defendants' request for a rehearing *en banc* was denied, and the Court of Appeals issued the Mandate on February 28, 2011.²⁴ This matter was unstayed after the appellate proceedings concluded, and the United

¹⁸ Complaint [doc. #1].

¹⁹ Motion for Preliminary Injunction [doc. #2] and Amended Motion for Preliminary Injunction [doc. #3].

²⁰ Order [doc. #11].

²¹ The D.C. Circuit Court's Order is attached as Exhibit G.

²² The D.C. Circuit Court's denial of the Motion for Partial Stay is attached as Exhibit H.

²³ The D.C. Circuit Court's Judgment and accompanying Memorandum is attached as Exhibit I.

²⁴ The D.C. Circuit Court's Mandate is attached as Exhibit J.

States sought a preliminary injunction to enjoin Defendants' ongoing violations of the Order.²⁵ The motion was granted on June 22, 2011, and a motion seeking civil contempt sanctions for Defendants' violations of the preliminary injunction order is currently pending before the Court.²⁶

Throughout the time period detailed above, Defendants refused to comply with the terms of the Order. The Order was never stayed, and has been in effect since April 2, 2010. Despite the fact that the Order was in effect throughout this time period, Defendants have not complied with Part II or Part V.B of the Order. Part II prohibits Defendants from representing that any product marketed by Daniel Chapter One, "prevents, treats, or cures or assists in the prevention, treatment, or cure of any type of tumor or cancer . . . unless the representation is true, non-misleading, and at the time it is made, Respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation." Defendants have violated Part II of the order by making prohibited representations on their websites, on online forums, and on their radio show.²⁷ Part V.B of the Order requires Defendants to mail a corrective notice to individuals who purchased the products between January 1, 2005, and April 2, 2010, to inform consumers that the advertising claims made for the Products were found to be deceptive by the FTC because they were not substantiated by competent and reliable scientific evidence. The

²⁵ Motion for Preliminary Injunction [doc. #16].

²⁶ Order [doc. #31], Motion for Order to Show Cause Why Daniel Chapter One, James Feijo, and Patricia Feijo Should not be Held in Contempt [doc. #34].

²⁷ See ¶¶21-50 of Plaintiff's Statement of Material Facts Not in Genuine Dispute, and pages 11-30 of the Argument section below.

Order required that this notice be sent on or before May 17, 2010, and Defendants have failed to mail the notice.²⁸

STANDARD OF REVIEW & APPLICABLE LAW

I. Standard of Review

Summary judgment is appropriate when the pleadings and evidence demonstrate that “there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Kilby-Robb v. Spellings, 522 F. Supp. 2d 148, 154 (D.D.C. 2007) (quoting Fed. R. Civ. P. 56(c)). The party seeking summary judgment bears the initial responsibility of demonstrating the absence of a genuine dispute of material fact. Id. (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). That party may successfully support its summary judgment motion by identifying those portions of “the pleadings, the discovery and disclosure materials on file, and any affidavits” that it believes demonstrate the absence of a genuine issue of material fact. Id. (quoting Fed. R. Civ. P. 56(c)); see Celotex, 477 U.S. at 323.

To determine whether a genuine issue of material fact sufficient to preclude summary judgment exists, the Court regards the non-movant’s statements as true and accepts all evidence and makes all inferences in the non-movant’s favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). However, “[i]f the [non-movant’s] evidence is merely colorable . . . or is not significantly probative . . . summary judgment may be granted.” Id. at 249-50 (internal citations omitted). “Mere allegations or denials of the adverse party’s pleadings are not enough to prevent the issuance of summary judgment.” Williams v. Callaghan, 938 F. Supp. 46, 49

²⁸ See ¶51 of Plaintiff’s Statement of Material Facts Not in Genuine Dispute, and pages 30-31 of the Argument section below.

(D.D.C. 1996). “‘Conclusory allegations’ and ‘unsubstantiated speculation’ do not create genuine issues of material fact” under Rule 56. Bonieskie v. Mukasey, 540 F. Supp. 2d 190, 200 (D.D.C. 2008) (citing Fujitsu Ltd. v. Fed. Express Corp., 247 F.3d 423, 428 (2d Cir. 2001)); Harding v. Gray, 9 F.3d 150, 154 (D.C. Cir. 1993) (“[A] mere unsubstantiated allegation . . . creates no genuine issue of fact and will not withstand summary judgment.”) (internal quotation marks omitted)).

II. Adverse Inference from Invocation of Fifth Amendment

The “prevailing rule” is “that the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them[.]” Baxter v. Palmigiano, 425 U.S. 308, 318 (1976). The Fifth Amendment “does not preclude the inference where the privilege is claimed by a party to a Civil cause.” Id. (quoting 8 J. Wigmore, Evidence 439 (McNaughton rev. 1961)).

Due to an ongoing criminal investigation in the District of Rhode Island, Defendants have raised the Fifth Amendment in response to the allegations in Plaintiff’s Complaint and in response to Plaintiff’s Requests for Admission.²⁹ Defendants “are free to invoke the Fifth Amendment in civil cases, but the court is equally free to draw adverse inferences from their failure of proof.” SEC v. Colello, 139 F.3d 674, 677 (9th Cir. 1998); SEC v. Whittemore, 691 F.Supp.2d 198, 206 (D.D.C. 2010). By invoking the Fifth Amendment, Defendants have failed to present any evidence to refute the facts before the Court. An adverse inference is appropriate in this situation.

²⁹ See Defendants’ Answer [doc. #21] and Exhibit 2.

III. The Modified Final Order Cannot be Attacked in this Enforcement Proceeding

The FTC Act entrusts the administration of the Act to the Commission, as “a body of experts[.]” FTC v. Morton Salt Co., 334 U.S. 37, 54 (1948). Once a Commission order becomes final, the enforcement responsibility held by the courts “is to adjudicate questions concerning the order’s violation, not questions of fact which support that valid order.” Id. “[I]t is well settled that a defendant cannot attack a final cease and desist order in a subsequent enforcement proceeding.” United States v. H.M. Prince Textiles, Inc., 262 F.Supp. 383, 388 (S.D.N.Y. 1966) (citing Morton Salt Co., 334 U.S. at 54; Parke, Austin & Lipscomb, Inc. v. FTC, 142 F.2d 437, 442 (2d Cir. 1944); United States v. Vitasafe Corp., 212 F. Supp. 397, 398 (S.D.N.Y. 1962)). Indeed, as the Sixth Circuit noted, a RFRA defense is properly raised on direct appeal of agency decision, and not as the basis for an action seeking an injunctive order prohibiting the government from seeking civil or criminal sanctions. La Voz Radio de la Comunidad v. FCC, 223 F.3d 313, 318-319 (6th Cir. 2000) (citing Radio Luz v. FCC, 88 F.Supp. 2d 372, 376 (E.D. Pa. 1999)).

The review of the Order that occurred before the United States Court of Appeals for the District of Columbia Circuit was based upon an administrative review procedure that Congress established by statute. 15 U.S.C. § 45. Where “there exists a special statutory review procedure, it is ordinarily supposed that Congress intended that procedure to be the exclusive means of obtaining judicial review in those cases to which it applies.” City of Rochester v. Bond, 603 F.2d 927, 931 (D.C. Cir. 1979); see also Defenders of Wildlife v. Adm’r, Env’tl. Prot. Agency, 882 F.2d 1294, 1299 (8th Cir. 1989); Kreschollek v. Southern Stevedoring Co., 78 F.3d 868, 870-71 (3d Cir. 1996).

Any issues that concern the validity of the Order or any facts underlying the Order were properly raised in the appellate proceeding. Indeed, the responsibility for considering these issues has been specifically delegated to the consideration of the circuit courts. As a result, this Court's review when considering this Motion is limited to consideration of only the face of the Commission's Order and the facts underlying the Order's violation, and should not include a review of the administrative record, or any arguments that were raised or could have been raised before the Commission or on appeal from the Commission's Order.

ARGUMENT

I. The Defendants Have Represented that the Products Treat and Cure Cancer

Part II of the Modified Final Order prohibits "any representation, in any manner, expressly or by implication, including through the use of product or program names or endorsements" that any product marketed by Daniel Chapter One:

prevents, treats, or cures or assists in the prevention, treatment, or cure of any type of tumor or cancer, including but not limited to representations that:

1. BioShark inhibits tumor growth;
2. BioShark is effective in the treatment of cancer;
3. 7 Herb Formula is effective in the treatment of cancer;
4. 7 Herb Formula inhibits tumor formation;
5. GDU eliminates tumors;
6. GDU is effective in the treatment of cancer;
7. BioMixx is effective in the treatment of cancer; or
8. BioMixx heals the destructive effects of radiation or chemotherapy;

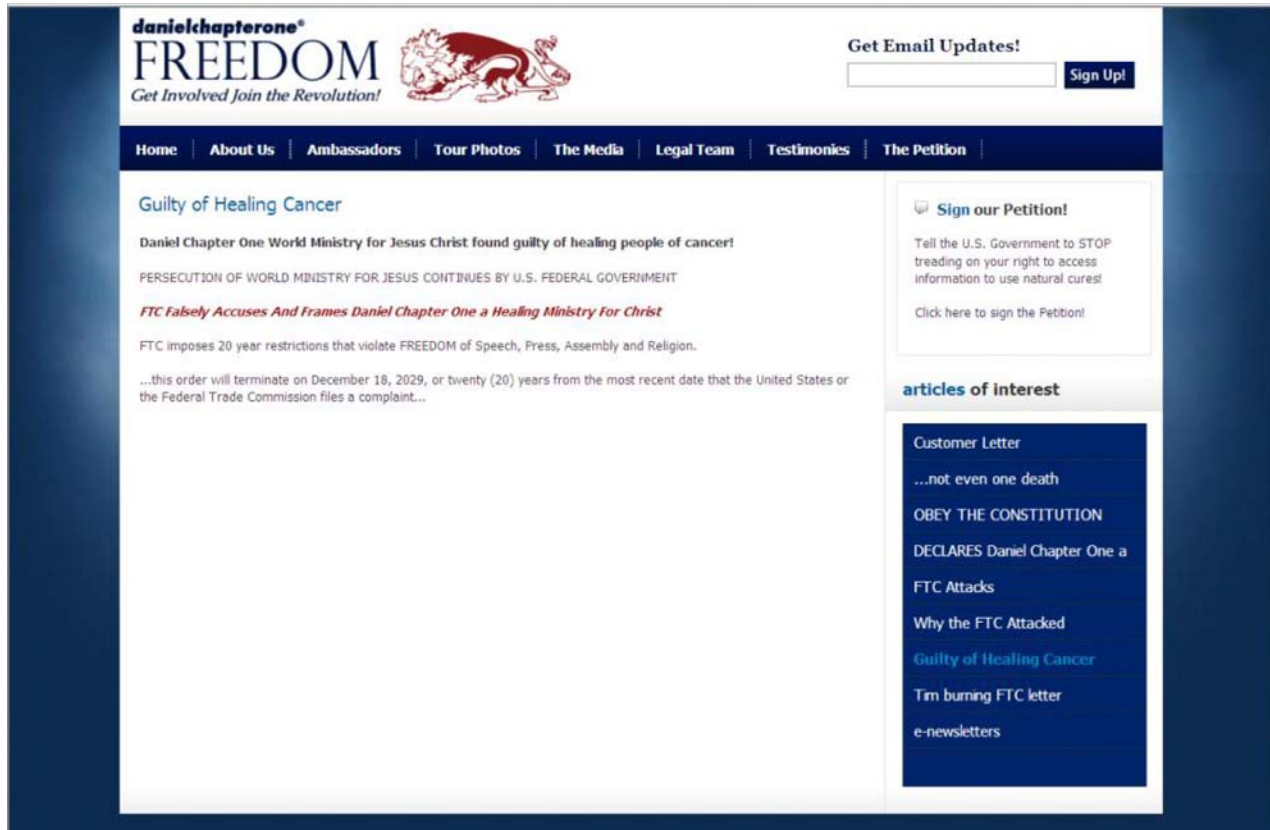
unless the representation is true, non-misleading, and at the time it is made, Respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

As a result, these representations are prohibited, and they cannot be made either by Defendants or through endorsements by others. The Modified Final Order states that the term “endorsement” is as defined in 16 C.F.R. § 255.0(b). This regulation specifically states that “an endorsement means any advertising message . . . that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.” 16 C.F.R. § 255.0(b). Count I of Plaintiff’s Complaint alleges that Defendants have violated Part II of the Order. As detailed below, summary judgment on liability is appropriate on Count I.

A. Websites and Online Forums

Since April 2, 2010, Defendants have made representations that their products treat or cure cancer on websites and online forums. For example, from April 2, 2010, through June 6, 2011, Defendants’ website www.dclfreedom.com/guilty-of-healing-cancer contained textual content asserting that Daniel Chapter One had healed people of cancer.³⁰ Specifically, the web page was titled “Guilty of Healing Cancer” and it stated, “Daniel Chapter One World Ministry for Jesus Christ found guilty of healing people of cancer!” This statement violates Part II of the Order, which prohibits representations that Daniel Chapter One products “prevents, treats, or cures or assists in the prevention, treatment, or cure of any type of tumor or cancer.” There is no genuine issue as to any material fact related to the representation on this website, and summary judgment is appropriate. The image on the website appeared thus:

³⁰ See Exhibit K, Exhibit W, Banks Declaration at ¶4, Burton Declaration at ¶12, and 1(a), 4(a), and 4(p) of Plaintiff’s Request for Admissions Under Rule 36 and Defendants’ Response, attached as Exhibit B.



Defendants and their associates have also established online forums and groups where treatment advice is provided. The online forum <http://dc1fellowship.com> was created by Daniel Chapter One, and, Defendants have administrative privileges to remove content published on this website.³¹ The website <http://dc1fellowship.com/forum/viewtopic.php?f=1&t=291>, contains a forum post by someone asking about treating throat cancer.³² “David” responds to that question, stating that “[t]o help in healing cancer, we believe the Lord has provided the following products,” and then “David” provided dosing information for 7 Herb Formula, Bio Shark, GDU,

³¹ See ¶4(I) of Patricia Feijo Declaration, attached as Exhibit X, and 4(q) of Plaintiff’s Request for Admissions Under Rule 36 and Defendants’ Response, attached as Exhibit B.

³² See Exhibit L.

Endo 24, 1st Kings 17:6.³³ The post by David is dated July 16, 2010, and it appeared on the website <http://dclfellowship.com/forum/viewtopic.php?f=1&t=291> from July 16, 2010, through June 6, 2011,³⁴ and is copied below:

Re: Throat Cancer – Please help ! Quote **David**

by **David** » Fri Jul 16, 2010 7:56 am Posts: 582
Joined: Thu Apr 22, 2010 8:29 am

To help in healing cancer, we believe the Lord has provided the following products:
7 Herb Formula 2 ounce twice daily minimum intake
Bio Shark 2-4 capsules 3 times daily with meals
GDU 3-6 capsules 3 times daily 1/2 hour before meals
Endo 24 or **1st Kings 17:6** 3 scoops in clean water at least twice daily, when you first get up and within 1 hour of sleep.
It would also help if **Endo 24** or **1st Kings 17:6** were taken during the day in place of meals as the body needs all the nutrients it can get to help in healing, and one can not get them quickly enough from food, even the best organic food.
Depending on how advanced your cancer is, you may want to be aggressive with these products. By aggressive, I might suggest a full bottle of **7 herb** per day for a few days, then gradually reduce the amount taken, maybe increasing the amount of **Bio Shark** and **GDU** taken. The how much part would depend on the leading of the Holy Spirit and how you feel led. Keep in mind it is the Lord that heals.
You mentioned having a cat scan, were any other drugs taken? The fluid used in a cat scan is radioactive and itself causes cancer. They may have given other drugs. There may be other products that would help, but we would need to know what others drugs if any your husband is on. We do not recommend using our products while using drugs.
When I mentioned clean water, I meant water that has been filtered to remove all the harmful chemicals. Here is a link to our water filter site: <http://waterkleenfrs.com>
Please keep in touch with us on the radio and let us know how you are progressing.
The radio program number is 1 888 222 2368 and is on the air 12:00 – 2:00PM eastern time Monday through Friday.
Did you sign up for a tentmakers site yet?
If not, here is a link to the sign up page: www.dcltentmakers.com It is free.

The statements on this online forum declare that Defendants’ products “help in healing cancer[.]” This representation is prohibited. The identity of “David” is unknown, however, the identity of the individual who posted this comment is irrelevant as the Commission’s Order applied to “Daniel Chapter One and its successors and assigns, affiliates, or subsidiaries, and its officer, James Feijo, individually and as an officer of the corporation; and each of the above’s agents, representatives, and employees.”³⁵ Additionally, even if David does not fall into those

³³ See Exhibit L.

³⁴ See Banks Declaration at ¶5, 1(b) and 4(b) of Plaintiff’s Request for Admissions Under Rule 36, Defendants’ Response, and email correspondence attached as Exhibit B.

³⁵ The term “Respondents” is defined in Part 1.E of the Modified Final Order, attached as Exhibit D.


categories, the Order provides that prohibited representations cannot be made through endorsements by others. The Modified Final Order states that the term “endorsement” is as defined in 16 C.F.R. § 255.0(b). This regulation specifically states that “an endorsement means any advertising message . . . that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.” 16 C.F.R. § 255.0(b). As a result, “David’s” message is an endorsement of Defendants’ products, and is prohibited under the Modified Final Order. As there is no genuine issue as to any material fact related to this representation the United States is entitled to judgment as a matter of law on Count I.

The website <http://healthfellowship.org/thread-313.html> contains a forum post by someone asking about treating pancreatic cancer and “David” responds to that question, stating that “[f]or cancer, we believe the Lord has provided the following products to help with healing,” and listing dosing information for 7 Herb Formula, Bio Shark, GDU, Endo 24, 1st Kings 17:6.³⁶ The representation that these Daniel Chapter One products “help with healing” cancer is prohibited by Part II of the Commission’s Order. Defendants, or those defined as “Respondents” in Part 1.E of the Modified Final Order entered by the Federal Trade Commission on January 25, 2010, controlled the content published on <http://healthfellowship.org/thread-313.html>, and had administrative privileges to remove content

³⁶ See Exhibit M.

published on this website from April 2, 2010, to June 6, 2011.³⁷ David's response is dated September 21, 2010, and is copied below:³⁸

09-21-2010, 05:53 AM
Post: #2



David
Senior Member
★★★★★

Posts: 593
Joined: Apr 2010

pancreatic cancer

For cancer we believe the Lord has provided the following products to help with healing:

7 Herb Formula 8 ounces 4 times a day for a few days, then reduce as you feel comfortable

Bio Shark 2-4 capsules 4 times daily, to start, I would recommend at least 4 for a few days

GDU 3-6 capsules 4 times daily 1/2 hour before meals and before bed

Endo 24 or **1st Kings 17:6** 3 scoops in clean water at least twice daily, early morning and within 1 hour of sleep. More often during the day would be most helpful considering the weight loss problem

By clean water I meant water that has been filtered to remove the chlorine, fluoride and other harmful chemicals making it safe to drink.

Here is a link to our water filter site: [and sign up, it is free](http://healthfellowship.org/%22http://www.waterkleenfrs.com/%22>http://www.waterkleenfrs.com</p>
<p>Keep in mind that we do not recommend the use of our products while using prescription drugs, chemo or radiation as they counter act each other. The chemo and radiation will not help your mother and instead will cause other cancers to develop, chemo and radiation are deadly to the body.</p>
<p>It would be good for you to call the radio show and share this with Jim and Trish so they can ask some questions to better understand the need and perhaps modify these recommendations. There are other products that may help, but will not recommend until you call.</p>
<p>The radio program number is 1 866 222 2368 and is on the air 12:00 - 2:00PM eastern time Monday through Friday</p>
<p>Do you have a tentmakers site yet?</p>
<p>If not, go to <a href=)

Find
Reply

As detailed above, the identity of “David” is irrelevant, as the statement is an endorsement. This forum post violates Part II of the Order, and summary judgment on liability is appropriate.

³⁷ See 4(r) of Plaintiff's Request for Admissions Under Rule 36 and Defendants' Response, attached as Exhibit B.

³⁸ See Exhibit M, Banks Declaration at ¶6, and 1(c) and 4(c) of Plaintiff's Request for Admissions Under Rule 36, Defendants' Response, and email correspondence at Exhibit B.

The Yahoo Groups page for a group named “danielchapterone” contains several files that can be downloaded at <http://health.groups.yahoo.com/group/danielchapterone/files/>.³⁹ The Yahoo Groups page is promoted on the radio show.⁴⁰ Defendants, or those defined as “Respondents” in Part 1.E of the Modified Final Order entered by the Federal Trade Commission on January 25, 2010, controlled the content published on the website <http://health.groups.yahoo.com/group/danielchapterone/files/> and had administrative privileges to remove content published on this website from April 2, 2010, through June 6, 2011.⁴¹

Defendants’ publication titled “the most simple guide to the most difficult diseases” and subtitled “the doctors’ how-to quick reference guide” was available on the danielchapterone Yahoo Group website <http://health.groups.yahoo.com/group/danielchapterone/files/> from January 2, 2011, to June 6, 2011.⁴² The “Introduction” to this publication states that the publication contains “protocols we used successfully,” and that “[m]any have testified that these basic protocols are effective, when adhered to as part of an overall health plan.”⁴³ The page titled “CANCER” within this publication lists 7 Herb Formula, Bio Shark, BioMixx and GDU Caps as

³⁹ Exhibit N.


⁴⁰ Exhibit U at 22:25.

⁴¹ 4(s) of Plaintiff’s Request for Admissions Under Rule 36 and Defendants’ Response, attached at Exhibit B

⁴² See Exhibit N, Banks Declaration at ¶¶7-9 and 4(d) of Plaintiff’s Request for Admissions Under Rule 36 and Defendants’ Response, attached at Exhibit B.

⁴³ See Banks Declaration at ¶8 and Exhibit O.

“the most essential products” for treating cancer.⁴⁴ The “CANCER” page of this Daniel Chapter One publication is copied below:



“What a help you are to the weak! How you have saved the arm without strength!”
(Job 26:2)

CANCER

All types of Cancer

7*Herb Formula™
2 ounces in juice or water
(minimum intake)
2 times daily

Bio*Shark™**(for tumors only)**
2 - 4 capsules
3 times daily with meals

BioMix™(Boosts immune system)
4 - 5 scoops in soy milk
2 times daily

GDU Caps™
3 - 6 capsules
3 times daily; 1/2 hr.
BEFORE meals

Notes:
Notes:
Notes:
Notes:
Notes:
Notes:
Notes:

Skin Cancer
Also apply Ezekiel Oil
topically
4 times daily

**** DO NOT TAKE IF PREGNANT,
OR IMMEDIATELY AFTER HEART
SURGERY.

danielchapterone
founder of bio-molecular nutrition

www.danielchapterone.com 1-800-504-5511

This sun placed before a product indicates the most essential products for the above condition.

⁴⁴ See Banks Declaration at ¶9 and Exhibit P. The sun image before these product names “indicates the most essential products for the above condition.”

The representation that these products treat cancer is prohibited by the Modified Final Order. Irrespective of who posted this document on this webpage, Defendants' failure to remove this document from the danielchapterone Yahoo Groups page violates the Order. There is no genuine issue as to any material fact and summary judgment is appropriate on Count I as a result of this prohibited representation.

The Daniel Chapter One publication titled "how to fight cancer is your choice!!" and subtitled "Cancer Newsletter, Millennium Edition, 2002" was available as a file on the danielchapterone Yahoo Group website, <http://health.groups.yahoo.com/group/danielchapterone/files/> from January 10, 2011, through June 6, 2011.⁴⁵ This publication contains information about using Defendants' products to treat and cure cancer, and stories about individuals who have allegedly used Daniel Chapter One products successfully to treat cancer.⁴⁶ This document is replete with representations about how the products can be used to successfully treat cancer. For example, this document states, "Daniel Chapter One GDU Caps contains proteolytic enzymes that metabolize protein and can aid the body in breaking down a tumor[,] "7 Herb Formula helps battle cancer[,] "[Bio*Mixx] is used to assist the body in fighting cancer and in healing the destructive effects of radiation and chemotherapy treatments."⁴⁷ One of the articles from this publication is copied below:

⁴⁵ See Exhibit Q, Banks Declaration at ¶10 and 2(c) and 4(e) of Plaintiff's Request for Admissions Under Rule 36 and Defendants' Response, attached at Exhibit B.

⁴⁶ Exhibit Q.

⁴⁷ Exhibit Q.

Doctors gave up on Michigan man

When Jim Feijo greeted Richard Nelson, a talk show caller from East Grand Rapids, MI, with "How are you doing Richard," he received this short reply: "Lots better now." There was more.

The caller went on to explain his situation. He is living proof that doctors may be wrong in surrendering to defeat in life and death situations.

Richard went into the hospital for treatment of a hernia and doctors broke the shocking news to him ~ melanoma. The outcome prediction was grim.

It was in August of 1997 when Richard's cancer was discovered and he was soon undergoing chemotherapy.

Even with treatment, he was told he would only have nine months to live.

An angel he says, in the form of his brother-in-law, told him he had heard Daniel Chapter One HealthWatch and listened to Jim and Tricia Feijo talk about the success of 7 Herb Formula in helping people with cancer.

"My brother-in-law asked me if he bought me the 7 Herb, would I take it and I assured him I would," Richard said on the coast-to-coast broadcast that was originating from Las Vegas, NV.

Richard reveals: "I had lost my faith. After my fourth treatment with chemo, the cancer masses stayed constant. I started taking the 7 Herb and that tumor was shrinking. At the last treatment, I was told the tumors had liquid centers and were on the verge of drying up. Then I had a CAT scan and it was found that there has been massive tumor shrinkage."

Jim Feijo called the Richard Nelson story a great example of how people can come to the rescue of others.

The statements in this Daniel Chapter One publication violate Part II of the Order, and Defendants are in violation of this provision of the Order as they have failed to remove this content from the danielchapterone Yahoo Groups page. The evidence demonstrates that there is no genuine issue as to any material fact and summary judgment should be granted as to liability on Count I of the Complaint.

B. Radio Show

Defendants provide information about using their products to treat and cure cancer on their radio show. On the radio show, Defendants themselves frequently make prohibited representations. Moreover, Defendants solicit endorsements from others by asking their listeners to call the show to answer health questions.

The recording attached as Exhibit R was broadcast on May 27, 2010, and the audio content was subsequently published online as “Daniel Chapter One CENSORED 20100527b” on the Daniel Chapter One Healthwatch feed <http://feeds.thepodzone.com/dc1hw>.⁴⁸ On this radio show, Defendants broadcast a call from Phil:⁴⁹

PHIL: I have a question for you.

JAMES FEIJO: Yes.

PATRICIA FEIJO: Yeah.

PHIL: I’ve been diagnosed with Stage 4 lung cancer with lymph node involvement and I had a brain tumor, which they did gamma knife surgery on and that resolved that.

JAMES FEIJO: Yeah.

PHIL: But it’s gotten into the central lymph nodes. I have a reoccurring tumor in the left lung and two smaller tumors in the right lung. What would be -- what would be -- you know, what would work for that? Is there anything that you have that would (inaudible)?

JAMES FEIJO: Well, did they tell you they’ve never had a successful -- they’ve never had a person survive lung cancer with their treatments?

PHIL: Pretty much. Pretty much that’s what the doctor said.

JAMES FEIJO: Yeah.

PATRICIA FEIJO: Yeah.

PHIL: He suggested chemo starting next week.

⁴⁸ See Banks Declaration at ¶11, 4(f) of Plaintiff’s Request for Admissions Under Rule 36 and Defendants’ Response, attached at Exhibit B.

⁴⁹ Exhibit R at 14:25. A certified transcript of this recording was attached as Exhibit G to the Motion for Preliminary Injunction filed on August 25, 2011. The phone call from “Phil” begins on page 59.

JAMES FEIJO: Yeah, that's a waste of time.

PATRICIA FEIJO: Well, yeah, the most recent studies that we have looked at, they actually had come to the conclusion that the chemotherapy and radiation for lung cancer doesn't extend life, it does the opposite.

JAMES FEIJO: We really need to have somebody call in right now. This is --

PATRICIA FEIJO: Yeah, we can't tell you, Phil --

JAMES FEIJO: -- very important.

PATRICIA FEIJO: -- what we would do only because we're under a cease and desist order right now from the FTC. It's quite an evil order. But it's prohibiting us from free speech right now.

Later, with "Phil" still on the line, Defendants accepted a call from "Bob," who discussed what Defendants' products had done for his family, and then stated:⁵⁰

BOB: Since you're in advanced stage -- that's what it sounds like.

PHIL: Stage 4.

BOB: Yep.

JAMES FEIJO: Yeah.

BOB: Okay, yeah, that's advanced. All right. Right now, first thing, 7 Herb Formula. You want to do a half to three-quarters of a bottle for the first three to four days.

PHIL: One-half to three-quarters --

JAMES FEIJO: Yeah, don't worry about writing it down, Phil. The producer's going to be writing it down and give it to you later. So, we'll just let Bob share it with you, okay?

PHIL: Oh, okay. Okay, all right.

JAMES FEIJO: Yeah.

BOB: Okay. And then after this, Phil, do about four ounces four times a day for about two weeks.

PHIL: Uh-huh.

BOB: After that four ounces a day, until -- until you're cured.

PHIL: Okay.

BOB: The second item would be GDU. That's for inflammation and pain you might be having. I'd do three to six capsules three times a day. But you have to do them a half-hour before meals.

PHIL: Mm-hmm, okay.

BOB: One other thing, since, like I said, it's in your lungs and your lymph nodes and you have tumors, I'd get on the BioShark. I'd do at least four -- four capsules three times a day with meals. And one other thing, it's very important, what they

⁵⁰ See Exhibit R at 18:20.

told my cousin, Bob, also, was to do -- get the BioMix and do about four to five scoops, like I say, in soy milk, two times a day.

JAMES FEIJO: Are you losing weight there, Phil, at all or --

PHIL: I've probably lost seven or eight, maybe ten pounds.

JAMES FEIJO: And how about the energy level here?

PHIL: It's decreased.

JAMES FEIJO: Okay. If there's no BioMix because of the government, 1st Kings would be great and you can do four or five scoops of that, two to three times a day in place of meals, you know.

Later in the broadcast, James Feijo stated:⁵¹

JAMES FEIJO: Phil, what Bob's saying is what we see quite often. People will start doing the guidelines that Bob just mentioned. They'll be doing great, they'll be doing terrific. We've seen it I can't tell you how many times, Phil. Well, we don't know if God's going to use this to heal you or not. We don't know God's will, you know?

PHIL: Exactly.

JAMES FEIJO: We know -- we know that as soon as you -- see, let me share one thing. The suggestions Bob just gave you, Phil, everybody listening, are suggestions to boost God's order that he has given us, our immune system, to fight the disease state of any situation. Okay?

Subsequently, the radio show took another call, and caller "Doug" provided information about 7

Herb Formula, BioShark, BioMixx, GDU, Endo-24, and 1st Kings 17:6. In response to caller

Doug's comments about BioShark, defendant James Feijo stated:⁵²

JAMES FEIJO: I'll share an interesting thing with you all concerning the issue of the BioShark. We had a gentleman come in. He had Gulf War -- not Gulf War, he was Agent Orange exposed. They gave him -- they put him on Hospice. Four years ago, he was supposed to die and his tumor starting shrinking using the advice that you've been given here or are being given, too. And then he came in and he said, oh, I went back and they said -- they showed a little enlargement. So, I asked him what was going on. He said, well, I -- I was doing so well, I cut back on the BioShark. So, it's interesting that he had that kind of response. But it is about blood supply, you see?

⁵¹ Exhibit R at 22:50.

⁵² Exhibit R at 29:15.

PHIL: Right.

JAMES FEIJO: And, so -- my wife's worried that -- you know, this is --

PATRICIA FEIJO: Well, I want to --

JAMES FEIJO: See, this is the problem with the Nazis that we're -- yes, Trish?

DOUG: Well, that's what I would have told him. I mean, I didn't know about the Gulf War guy, but shutting the blood supply off to the tumor is really a very important thing.

At the end of his conversation with caller Phil, James Feijo instructed Phil to join the online fellowship, and told him that "if you want to just order product, you can do that at the 800 number or online."⁵³ Patricia Feijo then provided the full phone number for individuals to call "and you can get 7 Herb Formula. You can get GDU or BioShark for yourself or a loved one. You can also get any one of our biomolecular nutritional powders like Endo-24 or 1st Kings."⁵⁴

The numerous representations that were made in the radio show broadcast on May 27, 2010, violate the Order. The statements made by Doug and Bob were endorsements, as individuals who listen to the radio show were "likely to believe" that the information they provided "reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser." 16 C.F.R. § 255.0(b). Defendant James Feijo's statements affirming the information provided by Doug and Bob also violate the FTC's Modified Final Order. These facts are not in dispute, and summary judgment is appropriate.

In the radio show broadcast on May 28, 2010, which was subsequently published online as "Daniel Chapter One CENSORED 20100528b" on the Daniel Chapter One Healthwatch feed

⁵³ Exhibit R at 40:00.

⁵⁴ Exhibit R at 40:00.

<http://feeds.thepodzone.com/dc1hw>, James Feijo and his wife, Patricia Feijo, receive and broadcast phone calls from individuals who identified themselves as “Marcia” and

“Troy.”⁵⁵ During this broadcast, the following discussion took place:⁵⁶

MARCIA: Hi, how are you?

PATRICIA FEIJO: Good, thank you.

JAMES FEIJO: Good. Welcome.

PATRICIA FEIJO: How can we help you?

MARCIA: Well, my mom was just diagnosed with cancer.

PATRICIA FEIJO: Yeah.

JAMES FEIJO: Yeah. What type, honey?

MARCIA: Huh?

JAMES FEIJO: What type of cancer?

MARCIA: Pancreatic.

JAMES FEIJO: Oh, my. And what did they say? What did the doctors tell her?

MARCIA: Well, they --

JAMES FEIJO: Pretty advanced or what did they say?

MARCIA: Well, right now, I’m supposed to find out Tuesday --

JAMES FEIJO: Mm-hmm.

MARCIA: -- of what stage it’s at --

JAMES FEIJO: Mm-hmm.

MARCIA: -- and if it’s operable or, you know, what kind of tumor it is and, if she can, to get chemo or radiation.

JAMES FEIJO: Yeah. Well, let me tell you right off the bat, chemo’s a lie, radiation’s a lie. They’ve never cured anybody of pancreatic cancer with their chemo and radiation.

PATRICIA FEIJO: No, there was a Dr. Kelley. I have his little book in my office. And he healed his own pancreatic cancer. Now, Jim --

JAMES FEIJO: So, there are options out there.

PATRICIA FEIJO: He healed himself naturally. And he begins his little book with, it was a blessing in disguise that I didn’t have health insurance and couldn’t go for chemo or radiation.

MARCIA: Mm-hmm.

⁵⁵ See Exhibit S, Banks Declaration at ¶12, 4(h) and 4(I) of Plaintiff’s Request for Admissions Under Rule 36 and Defendants’ Response, attached at Exhibit B.

⁵⁶ Exhibit S at 19:15. A certified transcript of this recording was attached as Exhibit H to the Motion for Preliminary Injunction filed on August 25, 2011. The phone call from “Marcia” begins on page 55.

PATRICIA FEIJO: But I just wanted to explain to you, Marcia, that we're under a cease and desist order. So, Jim and Trish at Daniel Chapter One and the other people here --

MARCIA: Mm-hmm.

PATRICIA FEIJO: -- can't tell you what Dr. Kelly did or what we have done over the years.

MARCIA: Uh-huh.

PATRICIA FEIJO: But, hopefully, someone will call in and -- because they've heard you now and will call in and help you out with the kind of things naturally that your mom could do. And the other thing is you can join our fellowship and get -- or your mom can directly and get fellowship that way, get ministry rather.

MARCIA: Mm-hmm.

PATRICIA FEIJO: Some health ministry.

JAMES FEIJO: So, we're going to ask someone to give us a call right now. The other thing is, Marcia, you can go to DanielChapterOneFreedom.com.

MARCIA: Mm-hmm.

JAMES FEIJO: And you can join the DC1 fellowship and people from all over the country are helping each other, okay?

With "Marcia" still on the line, the radio show then accepted a call from "Troy:"⁵⁷

JAMES FEIJO: Can you share with Marcia what she can try to start for her dad?

PATRICIA FEIJO: Mom.

MARCIA: Mom.

JAMES FEIJO: Mom, rather.

TROY: (Inaudible).

JAMES FEIJO: And, Marcia, by the way, the producer will be writing it down, okay?

MARCIA: Okay, thank you.

TROY: Okay, Marcia, here it goes, I'll give you two.

MARCIA: Mm-hmm.

TROY: Two of their prize products are BioShark and the ever-present 7-Herb Formula.

MARCIA: 7-Herb Formula and BioShark, okay.

TROY: That's two of them right there.

MARCIA: Okay. And I believe my husband went in to Daniel Chapter One this morning, as a matter of fact.

JAMES FEIJO: Oh, yeah?

PATRICIA FEIJO: Oh.

MARCIA: And --

⁵⁷ Exhibit S at 11:45.

JAMES FEIJO: Oh, yes.

MARCIA: Mm-hmm. And (inaudible) and he went and bought some.

JAMES FEIJO: Oh, so you got -- you got the 7-Herb?

MARCIA: Yep.

JAMES FEIJO: Oh, okay, all right. And then did he get anything else, too? Did he get the BioShark that Troy mentioned?

MARCIA: I believe -- yes, I believe he got the BioShark and he got some kind of a -- it used to be the AM and PM drink.

JAMES FEIJO: Yes, it's 1st Kings now or ENDO-24.

MARCIA: Mm-hmm.

PATRICIA FEIJO: Yeah. Is your mom having a hard time eating, Marcia?

MARCIA: Yes, she is.

PATRICIA FEIJO: Okay, yeah, that's great that he got that then.

TROY: And another one is TPB.

MARCIA: Okay. What is that?

TROY: TPB.

MARCIA: BPB?

TROY: No, Trish's Special Blend -- Perfect Blend. Trish's Perfect Blend, the one we call TPB.

MARCIA: TPB?

PATRICIA FEIJO: Yeah, the TPB. But what was it your husband got, the ENDO or the 1st Kings?

MARCIA: He got the -- I think he got the one that has more protein and vitamins and the whole (inaudible).

PATRICIA FEIJO: Okay, yeah.

JAMES FEIJO: Okay (inaudible).

PATRICIA FEIJO: Just so you know, that's interchangeable for the most part.

MARCIA: Okay.

PATRICIA FEIJO: So, that's good if he got the ENDO-24.

MARCIA: Mm-hmm.

PATRICIA FEIJO: That's awesome then.

JAMES FEIJO: Well, that's awesome.

PATRICIA FEIJO: She can get started and, again, you can join the fellowship for more ministry. She can join the fellowship directly if she'd like. Thanks so much, Troy.

JAMES FEIJO: And by the way, that ENDO-24, three heaping scoops three, four times a day is better than food for her right now.

MARCIA: Yeah, exactly.

JAMES FEIJO: And please don't hesitate -- now, Marcia, if you go and join the fellowship, then more people can offer you more help. This way, Troy, who just called in, was a big help.

The information provided by Troy is an endorsement of the Daniel Chapter One products as products that can treat cancer, and they violate the Order. The representations and contributions made by James and Patricia Feijo, also violate the Order as they indicate that Daniel Chapter One products would help treat pancreatic cancer. These statements violate Part II of the order, and as a result, summary judgment is appropriate on Count I of the Complaint.

The radio show broadcast on February 14, 2011, which was subsequently published online as “Daniel Chapter One CENSORED 20110214b” on the Daniel Chapter One Healthwatch feed <http://feeds.thepodzone.com/dc1hw>, was co-hosted by James Feijo.⁵⁸ In this show, Defendant James Feijo states, “[y]ou know, our voice has been hindered by the evil of our government. We can’t even give true testimony, signed affidavits of people who’ve cured or healed of cancer. Satan is alive and well in the FDA and the FTC and in Washington.”⁵⁹ The representation that Daniel Chapter One possesses affidavits of individuals whose cancer has been cured by the Defendants is prohibited under Part II of the Order.

Additionally, in the radio show broadcast on February 14, 2011, Defendants accepted and broadcast a call from “Greg.” Greg informed listeners about how to find and join the danielchapterone Yahoo Group.⁶⁰ James Feijo told Greg to “[t]ell them what the publications are on there - awesome list, man[.]” and Greg responded by listing several available publications, including “we’ve got the BioGuide, we’ve got the Most Simple Guide[.]” James Feijo then told

⁵⁸ See Exhibit T, Banks Declaration at ¶13, 4(j) of Plaintiff’s Request for Admissions Under Rule 36 and Defendants’ Response, attached at Exhibit B.

⁵⁹ Exhibit T at 14:10.

⁶⁰ Exhibit T at 24:10.

listeners that “there’s another site too, besides the Yahoo Group” and Greg responded, “yeah and that’s, health, health, let’s see, healthfellowship.org[.]”⁶¹ As detailed on pages 15-20 above, statements that violate the Order are present on these websites. There are no genuine issues of material fact related to the representations made within this broadcast, and summary judgment should be granted.

Finally, in the radio show broadcast on February 22, 2011, and subsequently published as “Daniel Chapter One CENSORED 20110222b” on the Daniel Chapter One Healthwatch feed <http://feeds.thepodzone.com/dc1hw>, Defendants accept a call from “Patricia,” in the broadcast, who stated that her doctor had found a mass on her breast.⁶² Daniel Chapter One hosts Patricia Feijo and Defendant James Feijo instructed the caller not to get a biopsy, and Patricia Feijo stated that “if it is cancer, it can stir up the cells and can get them to spread[.]”⁶³ Patricia Feijo told the caller that she should take products “to treat it worst case scenario.”⁶⁴ Defendants then asked someone to call in to help answer the caller’s questions, and accepted a call from “Greg,” who said that in addition to the products she was already taking, for “cancer . . . one thing I would add is BioShark to that.”⁶⁵ Patricia Feijo confirmed this suggestion, stating, “yeah, definitely.” Greg then directed the caller to go to a Yahoo Group page for a group named “danielchapterone”

⁶¹ Exhibit T at 25:40.

⁶² See Exhibit U at 8:30, Banks Declaration at ¶14, 4(l) of Plaintiff’s Request for Admissions Under Rule 36 and Defendants’ Response, attached at Exhibit B.

⁶³ Exhibit U at 8:30.

⁶⁴ Exhibit U at 8:30.

⁶⁵ Exhibit U at 22:25.

where she could “download the most simple guide” and stated that if she emailed him, he would send it to her.

Similar to the other radio shows discussed above, the statements made by “Greg” are endorsements as they have an “advertising message . . . that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.” 16 C.F.R. § 255.0(b). This endorsement violates Part II of the Order. Additionally, the confirming statements by Patricia Feijo are representations that violate Part II of the Order, as Patricia Feijo herself is bound by the terms of the Order as she is an agent, representative, or employee of Daniel Chapter One.⁶⁶ As there is no genuine issue as to any material fact related to the representations made during this broadcast, summary judgment should be granted.

There is no competent and reliable scientific evidence that these products cure cancer. The FTC found that these claims were unsupported, and the FTC’s Order was affirmed by the United States Court of Appeals for the District of Columbia Circuit. Defendants do not possess competent and reliable scientific evidence for the claims made in Exhibits K-M, O-U, and W, and the facts related to these representations are not in dispute.⁶⁷ As detailed above, the representations on these websites, online forums, and radio shows violate Part II of the Modified

⁶⁶ See ¶1 of Patricia Feijo Declaration, attached as Exhibit X, stating that she “work[s] as part of a husband-and-wife ministry team with my husband, James Feijo, who is Overseer of DCO.”

⁶⁷ 4(t) of Plaintiff’s Request for Admissions Under Rule 36 and Defendants’ Response, attached at Exhibit B.

Final Order. These violations are clear, and summary judgment on liability is appropriate for Count I of the Complaint.

II. The Defendants Have Failed to Mail the Required Notice

Count II of Plaintiff's Complaint alleges that Defendants have violated Part V.B of the Order. Part V.B of the Order states:

B. Within forty-five (45) days after the final and effective date of this order, Respondents shall send by first class mail, postage prepaid, an exact copy of the notice . . . to all persons [who purchased the Products between January 1, 2005 and April 2, 2010.]

This notice will inform consumers that the advertising claims made for the Products were found to be deceptive by the FTC because they were not substantiated by competent and reliable scientific evidence, and states that the FTC is requiring that this notice be sent. The notice should have been sent on or before May 17, 2010. Defendants have failed to send this notice. In response to the Request for Admission concerning this notice, Defendants stated, "[w]ithout waiving Defendants' rights, including the right against self-incrimination in this or any other proceeding, Defendants, in response to Request 4(u), admit the matter stated."⁶⁸

The Federal Trade Commission made an undercover purchase during the course of its investigation of Defendants, and will receive a copy of the notice whenever it is sent by Defendants. As detailed in the Colbert Declaration, the investigator who monitors the undercover mailbox has verified that the notice has not been received.⁶⁹ Defendants have failed

⁶⁸ 4(u) of Plaintiff's Request for Admissions Under Rule 36 and Defendants' Response, attached at Exhibit B.

⁶⁹ See Colbert Declaration and 4(u) of Plaintiff's Request for Admissions Under Rule 36 and Defendants' Response, attached at Exhibit B.

to send the notice as required by Part V.B of the Order. As a result, summary judgment is also appropriate on Count II of Plaintiff's Complaint.

CONCLUSION

Plaintiff is entitled to summary judgment on liability as the undisputed evidence demonstrates that Defendants have violated the Modified Final Order entered by the Federal Trade Commission on January 25, 2010. The Order was never stayed, and has been in effect since April 2, 2010. Despite the fact that the Order was in effect throughout this time period, Defendants have not complied with Part II or Part V.B of the Order. The United States respectfully requests that the Motion be granted, and that summary judgment be entered on liability on all counts of the Complaint.

Respectfully submitted this 30th day of September, 2011.

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