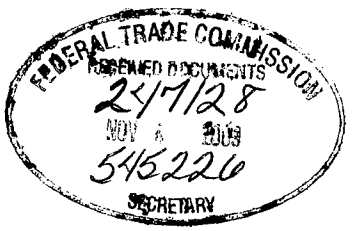
IN THE UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



Commissioners: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch

In the Matter of	)	
DANIEL CHAPTER ONE,	)	**DOCKET NO. 9329**
a corporation, and	)	
	)	
	)	**PUBLIC DOCUMENT**
JAMES FEIJO,	)	
Individually, and as an officer of	)	
Daniel Chapter One.	)	

RESPONDENTS' REPLY BRIEF

Respondents Daniel Chapter One, a corporation, and James Feijo, individually and as an officer of Daniel Chapter One, hereby submit the following Reply Brief in the above-captioned action.

Dated: November 4, 2009

Respectfully Submitted,

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INTRODUCTION

"What are they allowed to say?" At the close of oral argument the Administrative Law Judge asked the FTC Complaint Counsel this question. The question puts the fundamental issue in this case succinctly before the Commission. What ***can*** individuals in Respondents' position say? The Respondents in this case are Daniel Chapter One, a ministry organized as a Corporation Sole under the laws of Washington State, and James Feijo, its overseer and only member.

James Feijo leads Daniel Chapter One as its overseer, a position established by the Corporation Sole statute of Washington State. A Corporation Sole is, according to The Guide to Representing Religious Organizations, published by the American Bar Association in 2009, "a common 'religious' corporate form that still exists in most, if not all, states...and is controlled by one person...." Daniel Chapter One maintains a home church, conducting bible studies, christenings, and other church activities in the home of the overseer and his family.

In addition to services in the home in which they live, owned by the ministry, the Feijos conduct services in other homes across the country and abroad. As part of the work of the ministry, the Feijos have taken Bibles to people behind the Iron Curtain who, during the Cold War, conducted church services secretly in their homes. These home church activities abroad included taking Bibles to Poland, East Germany and China (during the *Tiananmen Square* demonstrations). The ministry also maintains relationships with missionaries from their ministry in The Netherlands and Israel.

The Daniel Chapter One ministry believes, based on contents from the Christian Bible and from herbal science, that the human body has the innate capacity to heal itself and that herbs

exist that assist this natural process. In accordance with this belief, Daniel Chapter One formulates and provides herbs in various combinations, based on biblical guidance and herbal science, to individuals who believe, as the Feijos do, that herbs help strengthen the human body's immune system and other innate self healing capacities. Information about the Daniel Chapter One herbs appears on its web site, in its radio broadcasts and in various ministry publications such as newsletters and handbooks.

FTC Complaint Counsel complains about and seeks to prohibit certain statements made in these information sources. Complaint counsel says "They told consumers **"How to fight cancer is your choice!"** (emphasis by Complaint Counsel). Respondents stand by their right to tell people truthful information that can help them strengthen their natural capacities for well being. Complaint Counsel argues that any deviation from statements supported by placebo controlled double blind clinical studies or their equivalent constitutes misrepresentation under the FTC Act. Complaint Counsel argues that any statement about the role of herbs in assisting the body that is not supported by double blind studies constitutes an illegal claim that the herb can treat, cure, or prevent cancer, inhibit tumors, or ameliorate the adverse effects of radiation and chemotherapy,. Such a claim, Complaint Counsel says, makes the herb for which it is made a drug requiring double blind clinical trials that prove the truth of the statement

Respondents Daniel Chapter One and Mr. Feijo do not claim that the herbs they identify do anything other than assist the natural functions of the body. They provided five expert witnesses to attest to their approach to the natural healing capacities of the body. One expert was a world renowned herbal researcher who worked for nearly thirty years for the United States Department of Agriculture, for part of that time in a joint project with the National Cancer Institute as an herbal expert. He testified that herbal science data supported Respondents' statements about their herbal formulations.

Anther expert, a naturopathic physician trained in herbal effects who reviewed the literature relied upon by Respondents to ensure that their statements about herbs were accurate, also testified that herbal literature relied upon by Respondents supported the statements they made about their formulations.

Respondents' third scientific expert, a member of the National Academy of Engineering, associated with the US National Academy of Sciences, and of the Swedish, Russian, and Japanese Academies of Science, with sixty years of scientific experience and a national reputation as a leader in understanding Complementary and Alternative Medicine modalities, testified to the growing scientific doubts about relying on placebo controlled double blind studies to separate truthful from untruthful information.

Respondents' fourth expert, with over thirty years of scientific study design, who uses one of Respondents' herbal formulations (not at issue in this case) testified, based on dozens of hours of detailed scientific conversation with Mr. Feijo, to the level of scientific competence Mr. Feijo brought to his development of herbal formulations. The fifth expert, with more than four decades of herbal formulation experience, described how he created one of the formulations at issue using sound herbal science based on the directions given to him.

Speaking of one ingredient in one of Respondents' formulations, the Administrative Law Judge pointed out to Complaint Counsel that "Your own expert said there was some promising research." It was in this context that the Administrative Law Judge asked Complaint Counsel "What can [people in Respondents' position] say?" That is the question this Commission needs to answer.

Complaint Counsel have stated repeatedly, as they did again in Complaint Counsel's Answering Brief ("CC Br."), that any claim about supporting and improving the structure and function of the body's natural systems for self defense or better wellness, that also mentioned cancer, requires double blind placebo controlled studies proving that it is effective against cancer. Complaint Counsel persisted in this mistaken argument even after their own expert witness testified that testing one single chemical entity to this level would cost 100 million dollars. Respondents' experts testified that one herbal ingredient in one of Respondents' formulations contained a minimum of 500 and possibly as many as 5000 single chemical entities.

Equally challenging to the government's case, Respondents engaged in the activities Complaint Counsel complains of for over twenty two years without a single consumer complaint. Only when the agency conducted an Internet surf seeking web sites that used both the word "cancer" and the words "dietary supplements" did Daniel Chapter One appear as a target. The agency found 130 originations that fit its criteria. It issued a press statement condemning all of them as law violators. The agency made no effort to distinguish those that, like Respondents, had sound herbal science substantiating their statements about supporting the natural systems of the body from those that were making unsubstantiated heath claims. Indeed, it appears that no one with the competence to understand structure and function claims was ever consulted by the FTC.

Respondents offered over eighty witnesses with affidavits to testify to how important Respondent's herbal formulations were to their personal well being. Complaint Counsel and the Administrative Law Judge rejected this offer out of hand, claiming that what the user of the formulations believed was irrelevant. Complaint Counsel and the Administrative Law Judge claimed that they were in a position to tell from the face of the Respondents' statements about

their herbal formulation that Respondents misled people who used the formulations. Complaint Counsel argued, again Respondents believe erroneously, that the law requires no extrinsic evidence of deception to make their case.

Complaint Counsel's Answering Brief inaccurately states that the ALJ made 425 detailed independent Findings of Fact in his Initial Decision ("Decision"). In fact, the ALJ did not make independent Findings of Fact, but rather adopted Complaint Counsel's proposed Findings of Fact almost verbatim. This act alone warrants the utmost scrutiny by the Commission, as a matter of fundamental administrative law.

Among the positions that the Commission must take in order to affirm the Initial Decision are:

- It must find, for the first time, that the FTC Act, which confers jurisdiction on for profit entities and not-for-profit trade associations made up of for profit entities, includes jurisdiction over a not-for-profit religious ministry;
- It will have to conclude that in the legislation requiring substantiation of claims Congress intended that only double blind placebo controlled studies qualify as substantiation for statements such as those made by Respondents;
- It will have to conclude that demonstrating the absence of double blind studies is all that is required of the government to find a party liable for illegal statements;
- .It will have to conclude that the Commission and only the Commission can decided exactly how an implied statement will be viewed by members of the public, and that extrinsic evidence of the effect of statements is no longer

relevant or required to find a violation of the Act.

- It must find that the Commission is absolved of the responsibility to provide extrinsic evidence that the statements at issue are false or misleading;
- It must find that the First Amendment protection of commercial speech does not apply to statements that the agency asserts imply something with which it does not agree, thus absolving the agency of the burden of proving that a statement is false or misleading;
- It will have to conclude that it need not apply the requirements of First Amendment protections that require the government to take only the least intrusive action to correct a wrong;
- It will have to conclude, paternalistically, that it, rather than the individuals engaged in the information exchanges about how to strengthen the natural protective functions of the body, is the authority to decide how people may treat their health and well being;
- It will have to conclude that it has the authority to override the individual conscience of Respondents and order them to tell people information designated by the Commission that Respondents do not believe to be true and that violates Respondents' religious beliefs.

Adding to the need for the Commission to take a fresh and considered look at the ALJ's ruling here is the continued insistence by Complaint Counsel, underlying each of their efforts to overreach the law set out above, that presumptions are good enough, that they need not provide evidence for the assertions they make, and that the burden of proof rests with the Respondents.

Complaint Counsel's Answering Brief continues to perpetuate serious Constitutional flaws in the process afforded Respondents in this case. Respondents believe that the law does not permit the Commission to take any, let alone all, of these positions and therefore asks that the Commission reject the Initial Decision and dismiss the Complaint against Respondents.

I. JURISDICTION

A. The ALJ determined that Respondent DCO is a religious ministry.

By finding, appropriately, that Respondent DCO is a religious ministry, and asserting that FTC has jurisdiction over it nonetheless, the ALJ takes FTC jurisdiction into unprecedented territory. Complaint Counsel's Answering Brief superficially recites the recipe for FTC jurisdiction over non-profit trade associations, but fails to answer the question that the Commission must consider: how far does FTC jurisdiction extend beyond a trade association and over religious ministries?

As a religious ministry, Respondent DCO meets the Internal Revenue Service (IRS) criteria for a non-profit organization subject to the exception of §508 of the IRS code. Complaint Counsel's Answering Brief dodges this point, and its implications.

Complaint Counsel's Answering Brief did not address or challenge the evidence of Respondent DCO's ministry. To reiterate, DCO begin in 1983 as an unincorporated religious association. DCO principals traveled on missions to Poland, East Germany, and China. They established worshiping communities in Holland and Israel. They worked with individuals in nursing homes and with handicapped (and high performance) athletes since 1983.

It is equally unchallenged that Respondents addressed the health concerns of their followers as part of their missionary work. They worked with people as diverse as the elderly in

nursing homes, and with the physically and mentally challenged. As they worked with these individuals, guided by their Biblical studies and herbal science they began creating dietary guidelines drawn from the Bible. This work ultimately led to their developing the DCO products, as an expression of their ministry.

B. Religious ministries are protected by the law.

The FTC's "only charitable purposes" standard (stated at CC Br. p. 7) upon which its jurisdiction arguments is based, does not comport to US exempt organization law. A religious purpose, under the concept of Expressive Association, does not have to be "only charitable." Congress recognizes several grounds for exemption, listing "charitable" and "religious" as separate, but equal, grounds. By asserting an "only charitable purposes" standard FTC is attempting to impose a burden on religious organizations To do this it must comply with the Religious Freedom Restoration Act of 1993 (P.L.103-141) – RFRA, which neither its argument nor its remedy does.

In adopting RFRA, Congress determined that "governments should not substantially burden religious exercise without compelling justification..." and that "laws 'neutral' toward religion may burden religious exercise..." Therefore Congress determined to protect the free exercise of religion as follows:

> "Sect. 3. Free Exercise of Religion Protected. (a) In General. -- Government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, except as provided in subsection (b). (b) Exception. -- Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person -- (1) is in the furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. (c) Judicial Relief. -- A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government..."

The Supreme Court has both limited this law (doesn't apply to the States) and reaffirmed it: "Restoration Act of 1993 (RFRA), 107 Stat. 1488, as amended, 42 U.S.C. §2000bb et seq., ... adopts a statutory rule .... Under RFRA, the Federal Government may not, as a statutory matter, substantially burden a person's exercise of religion..." *Gonzales v. O Centro*, No. 04–1084 - February 21, 2006. The FTC's secular "only charitable" requirement on Daniel Chapter One burdens its religious expression unnecessarily. This burden is in opposition to the requirements of the act and improperly limits the ministry's exercise of its religious rights.

Likewise, Daniel Chapter One does not exist for the "profit" of its members, but rather as an expressive association effort, in the words of the Universal Declaration of Human Rights, Article 18, "to manifest ...religion or belief in teaching, practice, worship and observance." Without the expressive association right to teach about traditional herbal remedies, and to practice their beliefs with the use of such herbs, that fundamental religious right is burdened in violation of RFRA.

Contrary to Complaint Counsel's assertion (CC Br. p. 4): The Feijo's did not receive personal enrichment, but rather, properly benefited from a Designated Parsonage Allowance, excluded from Gross Income under Section 107 of the IRS Code. They provided services to the religious entity and were compensated by reimbursement of their expenses, but that form of compensation is excluded from Gross Income under federal law.

In the financial records relied upon by Complaint Counsel to establish Mr. Feijo's "for-profit" use of the money contained in the accounts examined, the amount of money used for purposes Complaint Counsel deemed inappropriate accounted for 3% of the total. This amount is well within the range of money permitted a religious organization to pay for the expenses of its

staff. Neither Mr. nor Mrs. Feijo takes a salary for the work they do for Daniel Chapter One. Both are reimbursed for expenses.

C. The *Community Blood Bank* and *California Dental* cases establish boundaries to FTC jurisdiction beyond which Complaint Counsel and the ALJ would urge the Commission to reach with no accountability.

As the Commission knows, in *Community Blood Bank of the Kansas City Area, Inc. v. FTC*[1], the court rejected FTC jurisdiction over "any corporation engaged in business only for charitable purposes and which is forbidden by law to carry on business for profit ...." *Id.* at 1016. As the 8th Circuit said, Congress "did not intend to bring within the reach of the Commission any and all nonprofit corporations regardless of their purposes and activities." *Id.* at 1018.

Next as the Commission knows, the U.S. Supreme Court further delineated the boundary of FTC jurisdiction over non-profit trade associations in *California Dental Association v. Federal Trade Commission*[2]. The U.S. Supreme did so cautiously and discretely, with an analysis that was expressly limited to the work of non-profit trade associations. Furthermore, the Court required as a touchstone for FTC jurisdiction that the Commission provide evidence that the trade association provided **substantial** economic benefits to their for-profit members' businesses.

But the Supreme Court did not stop there. It laid down another element of the limits to FTC jurisdiction over non-profit organizations:

> [A]n organization devoted solely to professional education may lie outside the FTC Act's jurisdictional reach, even though the quality of professional services ultimately affects the profits of those who deliver them.

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[1] 405 F.2d 1011 (8th Cir. 1969).

[2] 526 U.S. 756 (1999).

The Commission must consider and address two comments within this quote from *California Dental Board*, because Complaint Counsel certainly did not. First, the Supreme Court expresses a presumption that the professional education work of a trade association probably lies outside FTC jurisdiction. How then does the FTC make the leap that religious ministries educating their followers about the uses of herbs are not situated similarly with the educational activities of trade associations, if not even more immune from FTC jurisdiction, considering the express Constitutional protections afforded religion?

Only by proving that the statements being challenged are false and misleading does the Commission have any chance of extending its jurisdiction over a non profit organization, particularly a religious ministry. In this case Complaint Counsel does not even attempt to prove Respondents' statements are false (Respondents' experts said the statements were true), or even try to prove that they implied a falsehood. Rather Complaint Counsel relied on the argument that Respondents failed to conduct placebo controlled double blind studies on the single chemical ingredients in the herbal formulations they prepared and therefore violated the law.

Second, the Supreme Court states that the work of the non-profit may inure to the benefit of those who deliver its services. Notwithstanding the evidence that neither DCO or James Feijo profited from Respondents' ministry, Complaint Counsel ignores this statement wholesale. Again, the ALJ finding that Respondents are a religious ministry requires more than the presumptive treatment afforded these issues by the evidence and Complaint Counsel's argument.

The ALJ acknowledged during the hearing that the U.S. Supreme Court has not yet established a clear boundary between non-profit organizations over which the FTC has jurisdiction and those over which it does not have jurisdiction. Nevertheless, Complaint

Counsel and the ALJ attempt to extend FTC jurisdiction over a religious ministry with disregard for the latent boundaries that the Supreme Court has established.

D. *Ohio Christian College* should prompt the Commission to decline jurisdiction.

Setting aside Complaint Counsel's incorrect sophistry about *California Dental Board*, Complaint Counsel's jurisdictional analysis is based almost exclusively on *In re Ohio Christian College*.[3] Complaint Counsel's reliance on *Ohio Christian* is misinformed.

Notwithstanding the fact that *Ohio Christian* is almost forty (40) years old, and is not an expression of the judicial branch, it is interesting nonetheless. There, the principals of the putative non-profit organization had been enjoined in a state court proceeding, and had their property and files seized by a state attorney general. The Federal Trade Commission's decision noted that there were "a number of very suspicious circumstances" in regard to the operation of the Ohio Christian Church (OCC). *Id.* The Commission noted that the operation of the Church "was completely dominated by [the individual respondent]." *Id.* And the Commission noted that the testimony of the individual respondents' was "inherently incredible." *Id.*

Nevertheless, the Commission rejected FTC jurisdiction over the primary OCC religious institution against whom Complaint Counsel had brought charges. The Commission rejected jurisdiction based on *Community Blood Bank*. Indeed, *Ohio Christian* has been described – very recently and since *California Dental Board* - as holding that non-profit organizations are subject to FTC jurisdiction only when those organizations are found to be shams, and alter-egos of their

[3] 80 F.T.C. 815 (1972).

principals.[4]

Here, there is no evidence that any of the Respondents have been subject to state court proceedings based on an alter-ego theory, unlike in *Ohio Christian*. The ALJ made no findings that the Feijos lacked credibility, unlike in *Ohio Christian*. The ALJ made no findings or conclusions that Respondent DCO is a sham or an alter-ego of the Feijos, unlike in *Ohio Christian*. To the contrary, the ALJ found Respondent DCO to be a religious ministry.

In fact, the only support Complaint Counsel cites for its argument that Respondent DCO is somehow inauthentic is a recent amendment to Washington State's legislation concerning corporations sole, which requires Respondent DCO to submit annually its address, state of incorporation and the names of its overseers and bishops to the Washington Secretary of State.[5] This hardly constitutes "alter-ego" evidence.

Nevertheless, Complaint Counsel and the ALJ claim FTC jurisdiction over this religious ministry. They fail to explain how *California Dental Board* changes, much less addresses, the FTC's own rejection of jurisdiction in *Ohio Christian*. In fact, *California Dental Board* did nothing to extend FTC jurisdiction over religious ministries. But the Initial Decision glosses over that important point.

E. Complaint Counsel perpetuates unconstitutional adjudication by presumption and burden shifting.

It is noteworthy that Complaint Counsel is concerned with, and even stymied by, Respondents' citation to the IRS regulations concerning treatment of church-related income that may flow to religious workers. This is telling for three reasons.

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[4] *FTC v. Gill*, 183 F. Supp. 2d 1171, 1184 (U.S.D.C. Cent. CA, 2001).

[5] See RCW 24.12, et. seq.

First, Complaint Counsel's concern reveals a lack of understanding about the fundamental elements of ministry-related income that bear on the FTC's lack of jurisdiction. This points out just how unprecedented, and improper, the FTC's assertion of jurisdiction would be here.

Second, Complaint Counsel's concern also reveals their presumption-based approach to the evidence. Since Complaint Counsel presumed that the fundamental elements of ministry-related income were immaterial, and therefore they need not consider the evidence or the law, they provided neither evidence nor law on the matter.

Third, Complaint Counsel expresses concern that Respondents should have explained why their evidence was relevant. This is another of Complaint Counsel's efforts to shift their own burden of proof onto Respondents. It was incumbent on Complaint Counsel to make their case, which they failed to do.

F. Complaint Counsel ignores that religious ministries may engage in commerce without destroying their character or subjecting themselves to FTC jurisdiction.

It is also noteworthy that Complaint Counsel altogether ignores the authority that holds that religious ministries like Respondent DCO may engage in commerce to further their charitable purpose.[6]

The posture of this case calls for the Commission to close the significant loopholes left open by Complaint Counsel's evidence, and by the Initial Decision. To close those loopholes in favor of FTC jurisdiction over the Respondents here will take the FTC in an unprecedented

[6] See, e.g., O'Hara, *The Modern Corporate Sole*, 93 Dickinson Law Rev. 23 (1988); and *In re Catholic Bishop of Spokane*, 329 Bank. Rptr. 304 (E.D. WA 2005).

direction, and a direction that is contrary to an integrated reading of the holdings of *Community Blood Bank*, *Ohio Christian College* and *California Dental Board*.

II. FACTUAL CLARIFICATIONS

A. Complaint Counsel distorts the Record by selectively presenting supposed "facts."

According to Complaint Counsel, "the **undisputed facts** here demonstrate that DCO is a business organized to sell its expensive products to the public that uses the profits it makes from such sales to fund the Feijo's personal living and entertainment expenses." CC Br. p. 8. (emphasis added). In fact every single one of these supposed "facts" is vigorously disputed by Respondents.

The issue, accurately stated, is whether DCO was organized and operated for such a business purpose, and whether the sales funded only the Feijo's personal living and entertainment expenses. This remains not only a factual issue inn controversy, but more important, an issue where the substantial evidence weighs against the government.

Completely missing from Complaint Counsel's "history" of DCO (CC Br. pp. 4, 9) is the period from 1983 to the present in which DCO was first organized as an unincorporated religious association engaged in a world-wide religious ministry into which was folded its ministry of dietary supplements and then reorganized as a church utilizing the nonprofit corporate sole organizational structure under Washington State law. See Respondent's Br. ("Resp. Br.") pp. 30-31 and F. 11, 16 and 18.

Instead of acknowledging DCO's religious ministry history as the Administrative Law Judge found it to be, Complaint Counsel attacks the bona fides of DCO as a corporate sole.

Complaint Counsel critiques DCO's Articles of Incorporation (CC Br. p. 10) as insufficient to establish DCO as a nonprofit corporation dedicated to charitable purposes even tough the law of Washington state specifically and corporate sole law in general establish the nature of DCO as Respondents testified and completely the opposite of what Complaint Counsel claims.. Complaint Counsel fails to acknowledge that the Washington law and the Articles taken together establish DCO as a charitable trust, saying that the funds it receives may only be used for charitable purposes. Resp. Br. pp. 33-35, 37-38.

Instead of acknowledging the testimony of the Feijos that their personal lifestyle and activities are intimately related to DCO and comparable to that of the lifestyle and activities of a church pastor (See Resp. Br. 38-41), Complaint Counsel presumed that the living expenses of the Feijos were totally disconnected from the DCO ministry and beyond reasonableness. CC Br. pp 14, 15-16. For example, on page 14 of Complaint Counsel's Answering Brief, Complaint Counsel contrasts "the rental value of parsonages" with the presumed rental value of "Florida vacation homes," as if the DCO Florida residence is a "vacation" home rather than a modest home dedicated to the religious ministry of DCO. There is no evidence that the DCO Florida residence is a vacation home. See F. 55. Indeed Complaint Counsel present no evidence on the nature of the Florida building.

B. Respondents urge the Commission to give no weight to Complaint Counsel's factual distortions of the record.

Complaint Counsel's "factual" picture was infected by pejorative and disparaging adjectives that were unsupported by the record, and designed solely to present a distorted picture of the Feijos as religious hypocrites and charlatans.

"DCO is a multi-million dollar commercial operation run by James Feijo, who treats

DCO's assets as his own to **completely support himself and his family**." CC Br. p. 4 (emphasis added). Complaint Counsel provides no citation to the record showing that government established that DCO assets are totally used for personal purposes.

To the contrary, the ALJ found that the Feijos have been actively engaged in the DCO ministry, including two hours per day on the radio (F. 109). The Feijos have given away DCO products (F. 21). The Respondent Feijo holds all DCO assets in trust (F. 40). Respondents have donated significant funds to "Creation Science" ministries (F. 73 and 74).

Complaint Counsel also abuses the record with this statement: "[T]here are certain circumstances under which legitimate church-related income [is] excluded from gross income, nothing suggests that the provisions cited to by Respondents were intended to exempt ... **expensive** restaurant meals from the tax laws." CC Br. p. 14 (emphasis added). There is nothing in the record to indicate that the restaurant meals purchased by the Feijos were expensive, that is, costing more than the cost of a restaurant meal that ordinary people might pay. Rather, the only evidence of the cost of restaurant meals was an aggregate figure of $14,024 during a period from December 2005 through March 2009. F. 68. Broken down, that would mean that the Feijos spent approximately $350.60 per month over a forty (40) month period for two people to eat out — the equivalent of $11.68 per day for two people. That is hardly "expensive" under any circumstances, but especially in light of the undisputed fact that both Fiejos are involved full-time in the DCO ministry, including significant travel. See, e.g., F. 38, 39, 48, 65, 85, 109, and 110.

Another of Complaint Counsel's misrepresentations come in regard to the challenged products: "The DCO products are **expensive**." CC Br. p. 5 (emphasis added). See also p. 8,