

- a. Bio*Shark
- b. 7 Herb Formula
- c. GDU
- d. BioMixx

C. Respondents Disseminate Accurate, Substantiated Structure and Function Claims for DCO Products, Saying:

Bioshark "is pure skeletal tissue of sharks which provides a protein that inhibits angiogenesis -- the formation of new blood vessels. This can stop tumor growth and halt the progression of eye diseases ..."

7 Herb Formula "purifies the blood, promotes cell repair, fights tumor formation, and fights pathogenic bacteria"

GDU "contains natural proteolytic enzymes (from pineapple source bromelain) to help digest protein --even that of unwanted tumors and cysts. This formula also helps to relieve pain and heal inflammation. . .GDU is also used for. . .and as an adjunct to cancer therapy. GDU possesses a wide range of actions including anti-inflammatory and antispasmodic activity. . ."

BioMixx "boosts the immune system, cleanses the blood and feeds the endocrine system to allow for natural healing. It is used to assist the body in fighting cancer and in healing the destructive effects of radiation and chemotherapy treatments."

1. Respondents Make And Substantiate Structure And Function Claims That The Products In Question Assist The Body By Reinforcing Its Natural Innate Capacity To Correct Imbalance And Help The Body Diminish Disease
2. Respondents Claim That The DCO Products Can, By Strengthening The Body's Natural Healing Functions, Assist The Body In Achieving And Maintaining The Balance That Helps It Diminish The Effects Of Cancer Even For Those Taking Chemotherapy
3. Respondents Claim That The DCO Products Strengthen The Body's Natural Healing And Wellness Functions To Assist It In Maintaining Balance And Wellbeing

III. SUMMARY DECISION SHOULD NOT BE GRANTED TO COMPLAINANT WHEN, LIKE HERE, THE FACTS ARE MISREPRESENTED, BUT SHOULD BE GRANTED TO RESPONDENTS WHEN, LIKE HERE, THE ACTUAL FACTS DEMONSTRATE THAT RESPONDENTS COMPLIED WITH THE LAW AND REVEAL THAT THERE

IS NO GENUINE ISSUE FOR TRIAL

VII. CONCLUSION

INTRODUCTION

Respondent James Feijo is overseer of Respondent Daniel Chapter One (DCO), a Christian ministry organized as a Washington State Corporation Sole devoted to body, mind and spirit health. Contrary to Complaint Counsel's assertion, Respondents have controverted every point in Complaint Counsels' case. Respondents deny that they claimed that their products were effective in preventing, treating, or curing cancer. They deny that they sell products. They deny that they advertise. They deny that the FTC had legal jurisdiction over their non-profit religious activities. They deny that they lacked competent and reliable scientific evidence to support the statements they made about their product. They deny that their activities are substantially, if at all, in commerce. And they deny that their actions violated Sections 5 and 12 of the Federal Trade Commission Act.

In fact, Complaint Counsel has failed to present evidence on key elements of their case. They have provided no expert testimony on either the proper scientific evidence to support statements or claims about the effects of herbs or the standard that should be applied to evidence that supports statements about the effects of herbs. Nor have they provided any expert testimony on how the net impression of the set of statements made by Respondents should be determined, relying instead on the "common sense" of the person responsible for the Internet surf that identified 130 organizations as violating FTC laws without distinguishing among any of them.

Complaint Counsel have failed to present persuasive evidence that Respondents made the alleged claims and lacked adequate substantiation. For these reasons Complaint Counsel's motion for summary decision on its behalf should be denied. Indeed the failure of Complaint

Counsel to provide any evidence on herbal science, or the factual status of “net impression” in this case, as spelled out in Respondents’ Motion for Summary Decision should cause Respondents’ Motion for Summary Decision to be granted.

I. STATEMENT OF FACTS

A. DCO and the Feijos Have Not Advertised or Sold Products to Consumers

In 1986, James Feijo and his wife Patricia started DCO as a nonprofit ministry which among its projects began a small health food store. Ex. 1. At this time the Feijos were engaged in home church missionary work in Communist countries including Poland, East Germany and China. They took Bibles to Christian communities that met in homes of their members as part of their “home church” missionary work. As a result of the missionary travels, the Feijos were in East Germany when the Berlin wall fell on November 9, 1989 and in Tiananmen Square during the summer Democracy protests of 1989.

In 2002, James Feijo organized DCO as a corporation sole under Washington state laws. Ex. 1. DCO currently offers consumers 150 to 200 products. Ex. 1. James Feijo serves as DCO's Overseer, trustee for all DCO assets, and custodian of DCO's financial records. Ex. 1. Patricia Feijo is DCO's Secretary. Ex. 1. James Feijo was a high school science teacher and coach, including fitness coach, to high school students and amateur and professional athletes. Patricia Feijo is a trained Homeopath and worked for several years as a bench technician as part of a team doing cancer research on animals at a major

Worcester research center, working in conjunction with a major Worcester Hospital using the experimental chemotherapy on people.

Respondents' principal office and place of business is located in Portsmouth, Rhode Island, where the Feijos live. Ex. 1. Messiah Y'Shua Shalom, a second Washington Corporation Sole established by James Feijo, owns two Rhode Island buildings that house an Order Center, offices and a house (neither DCO nor Messiah Y'Shua Shalom owns a warehouse) used by DCO as offices and a residence. Ex. 1. DCO also owns a three-bedroom property in Deerfield Beach, Florida, where the Feijos and other individuals who are part of the DCO community and guests stay. DCO also owns two Cadillac cars—one used and one bought at a last-year's model sale—which together cost DCO \$56,000 or an average of \$28,000 each—which the Feijos and other persons associated with DCO use. Ex. 1. DCO pays the Feijos' expenses but does not pay them salaries. Ex. 1.

DCO has never purchased, bartered or otherwise arranged for an advertisement of the herbs or other products it provides to its followers. All its communications are on its web site, in its rarely published news letters and handbooks which it provides for free or small donations, or on its daily radio program which are all directed to individuals who are part of the DCO audience and which are outspokenly clear that they are not selling drugs but rather providing a critique of current health practices, a campaign for “health freedom” and complementary and alternative approaches to conventional attitudes about wellness—including products—as a concrete expression of their campaign for more health choice. The program for well being pursued by Daniel Chapter One is grounded in the Bible.

B. Daniel Chapter One Maintains A Non Profit Charitable Program That Allows Any User Of DCO Products To Obtain Free DCO Products And Accepts Donations From Other DCO Product Users

At its origination Daniel Chapter One offered free products to any individual who wanted them. When this turned out to be an unmanageable program DCO created a new program that informed individuals who desired and needed free nutritional products to go a church and seek the support of a minister who could inform DCO of the need and desire. The minister would then act as a reference for the individual to Daniel Chapter One. As a result of this effort a number of churches have received herbal and nutritional products for distribution to individuals both for free and for donations from the individuals able to make donations and also have shared in the monetary donations made for the herbal and nutritional products provided by DCO.

1. The Feijos Developed The Formulas For The DCO Products And Contracted With FDA Regulated Laboratories To Ensure The Quality Of Those Products And The Accuracy And Legality Of The Product Labels.

As a coach, including fitness coaching, James Feijo observed the relationship between various nutritional products, herbs and other dietary supplements and athletic performance. He also noted, as a devout Christian, that a number of Bible verses created dietary information that paralleled his observations of the athletes he coached. For example, Daniel Chapter One in the Bible tells the story of a group of individuals who resisted eating the King's prescribed diet. They talked the authorities into letting them eat a special, and they thought healthier, diet than that prescribed by the King's government.

While eating this diet, which was essentially vegetarian, the Bible reports they indeed did have improved health over the King's men.

Based on his readings of the Bible and his observations of the athletes he coached James Feijo developed, created, and arranged for the production of various DCO Products. Ex. 1. He contracted with various FDA regulated manufacturing facilities for them to ensure the safety of the products, the quality and proper amounts of ingredients to meet the dosage requirement of his formulations, and the accuracy and legal compliance of the labels on the products and to ensure that the identity and amount of each ingredient is contained on the product labels. Ex. 1. The companies provided the services to ensure that the dietary supplements met quality and labeling requirements. Universal Nutrition, a respected regulated manufacturer of dietary supplement products, is one firm that DCO contracts with to manufacture approximately 35-40 products, including Bio*Shark, GDU, and BioMixx. Ex. 1 The tea like drink 7 Herb Formula, the fourth product singled out by the FTC, is manufactured and provided to DCO in the same manner by a different company after the formulation was developed, based on a well known previously existing product, by that company's herbal consultant. Ex. 2.

Patricia Feijo, drawing on her research technician background and training as a homeopath, reviewed all DCO products' directions, recommended usages and statements made about the DCO products for the express purpose of ensuring that they contained no health claims, that they properly stated the structure and function nature of the product effects and that no statements were made for the products which were not substantiated in

the scientific literature that supports the use of dietary supplements that are herbs and nutritional products. Ex. 1.

2. Respondents Do Not Sell Products To Consumers

From time to time James Feijo establishes a recommended donation amount for the DCO products. However he does not “price” to the market as a for profit business would but rather leaves the recommended donations in place long after the market prices on similar products sold by for profit businesses have been raised by their sellers. Ex. 1.

The fact that about a thousand consumers have purchased DCO's products supports the assertion of Respondents that DCO, which has been in existence for 24 years, is something other than a business. Ex. 1. DCO generates approximately \$2 million in annual sales annually as shown by its records for 2006, 2007, and 2008. Ex. 1. This too suggests that it is something other than a business, since the products it makes available are dietary supplements which are part of a market that sell about \$24 billion worth of product a year. Daniel Chapter one is not organized or run to make, and does not make, a profit.

The recommended donation for DCO products is comparable to or lower than similar dietary supplement product prices for products available in the for profit dietary supplement market. If individuals are unable to make the recommended donation they can make a lower donation or no donation at all by contacting a minister who will inform DCO of their needs. During its twenty four years of activity DCO has received virtually no complaints, about quality, value, or nature of the information supplied. During the same

time it has received dozens if not hundreds of testimonials to the value and usefulness of both the DCO products and its various informational programs.

The testimonials received both in writing and on a daily basis from listeners to their radio program underscore the existence of a community of individuals involved with the message of “health freedom” and “health choice” that is the backbone of the DCO health ministry. The testimonials tend to be spontaneous and heart felt. For example ,one user of DCO products and believer in the DCO message created the 7Herb Formula web site and donated it to the DCO ministry.

The message that DCO is sharing with the individuals in its community create what the Supreme Court calls an Expressive Association.

3. The DCO Products

a. Bio*Shark

As a very successful high school athletic coach, Jim Feijo designed a computer program to track his athletes. He expanded to internationally competitive amateur athletes and then to professionals. He noted that the stress on an extreme athlete created nutritional and physiological effects similar to those experienced by diseased individuals. This led him to design a program for extreme athletes and ill individuals to strengthen the natural structures and functions for the body that build endurance, strength, balance and the ability to withstand disease.

He applied the term "BioMolecular Nutritional Health" to the integrated ideas based on his experience and built into his program measured nutritional factors in relation to the structure and function of the body. He used these ideas to design the products that

he had made especially for DCO. Thus he formulated Bio*Shark out of shark cartilage and several herbs. Ex. 1.

Each Bio*Shark label directs users to take 2-3 capsules three times a day or as directed by a physician or by a "BioMolecular Nutrition health care professional." Ex. 1. BioMolecular nutrition also includes and draws on the intangible—spiritual—components of performance, integrating "the spiritual and physical" aspects of Respondents' system and products. Expert report and deposition of Jay Lehr who is a scientific expert, a triathlon racer and a user of DCO products. Ex. 1. Respondents recommend a donation for one bottle of Bio*Shark, as they do for all their products, that is an amount comparable to the price paid for similar products in the dietary supplement industry. Ex. 1. Respondents estimate that approximately 50% of the mark up on all their products goes to support churches and the five health food stores and health professional offices that have asked to carry DCO products and the support of the DCO free and reduced donation programs.

Respondents' expert Dr. Lamont concluded that "There is a reasonable basis for the claims that pure skeletal tissue of sharks provides a protein that inhibits angiogenesis - the formation of new blood vessels. It is also reasonable to claim that angiogenesis has been demonstrated to inhibit tumor growth in some studies." Ex. 3.

b. 7 Herb Formula

7 Herb Formula is a tea made of four herbs that have been used for decades in herbal healing with three additional herbs added by DCO after review and evaluation by an herbal professional in conjunction with an herbal manufacturer. Ex. 2. Both Respondents' herbal experts Dr. Duke and Dr. Lamont concluded "There is a reasonable basis for the claims that the ingredients of 7 Herb Formula '..., fights tumor formation, and fights pathogenic bacteria.'" Ex. 2.

Ex. 4 and Ex. 3.

c. GDU

“There is a reasonable basis for the claims that the ingredients of GDU ‘contains natural proteolytic enzymes (from pineapple source bromelain) to help digest protein — even that of unwanted tumors and cysts. This formula also helps to relieve pain and heal inflammation. . GDU is also used for. . .and as an adjunct to cancer therapy. GDU possesses a wide range of actions including anti-inflammatory and antispasmodic activity. . .’” Ex. 4

“There is a reasonable basis to claim that the ingredients of GDU contain bromelain, a source of natural proteolytic enzymes from the pineapple, which helps digest unwanted proteins. GDU also contains turmeric, feverfew and quercetin, which help to reduce inflammation and relieve pain. Next, it is reasonable to claim that these ingredients as a whole may be used as an adjunct to cancer therapy, and that the ingredients possess a wide range of actions as anti-inflammatory agents.” Ex. 3.

d. BioMixx

“There is a reasonable basis for the claims that the ingredients of BioMixx ‘boosts the immune system,...to allow for natural healing. It is used to assist the body in fighting cancer and in healing the destructive effects of radiation and chemotherapy treatments.’” Ex. 4.

“There is a reasonable basis to claim that the ingredients of BioMixx boost the immune system, build lean body mass and support healing. It is also reasonable to claim that these ingredients assist the body in fighting cancer, cachexia and in healing the destructive effects of radiation and chemotherapy treatments.” Ex. 3.

C. Respondents Disseminate Accurate, Substantiated Structure and Functions Claims for DCO Products...

1. Respondents Say:

a. Bioshark *"is pure skeletal tissue of sharks which provides a protein that inhibits angiogenesis -- the formation of new blood vessels. This can stop tumor growth and halt the progression of eye diseases . . ."*

b. The tea 7 Herb Formula *"purifies the blood, promotes cell repair, fights tumor formation, and fights pathogenic bacteria"*

c. GDU *"contains natural proteolytic enzymes (from pineapple source bromelain) to help digest protein --even that of unwanted tumors and cysts. This formula also helps to relieve pain and heal inflammation . . . GDU is also used for . . . and as an adjunct to cancer therapy. GDU possesses a wide range of actions including anti-inflammatory and antispasmodic activity. . ."*

d. BioMixx *"boosts the immune system, cleanses the blood and feeds the endocrine system to allow for natural healing. It is used to assist the body in fighting cancer and in healing the destructive effects of radiation and chemotherapy treatments."*

e. On each product label: "These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease."

f. Each of Respondents' web sites says "The information on this website is intended to provide information, record, and testimony about God and His Creation. It is not intended to diagnose a disease. The information provided on this site is designed to support, not replace, the relationship that exists between a patient/site visitor and his/her health care provider. Caution: some herbs or supplements should not be mixed with certain medications."

2. Respondents do not say that "the DCO Products were effective in preventing, treating, or curing cancer."

Respondents not only did not say that their products are "effective" in preventing, treating or curing cancer," they do not believe it. They believe that the body has mechanisms to heal itself. They present their message, in the language set out about each of the products above, that says their products affect these mechanisms, assisting them to

perform their function or enhance their structure. Dr. Lamont and Dr. Duke explicitly said that herbal science supports the claims made by DCO. Ex. 3 and Ex. 4.

Respondents clearly and unequivocally offer a different, natural, choice to their followers. It is a choice that interested individuals can make separate from or in conjunction with standard chemotherapeutic or radiation treatments. In her deposition, Dr. Lamont described the mindset of someone who might share Respondents' view of this set of alternatives. She said:

Occasionally there will be a person who, for maybe religious purposes or they just live in a different mindset, that there is no way they're going to subject themselves to the traumas and poisoning effect of chemotherapy and radiation. And let's face it. It is poisoning.

I mean, these are cytotoxic agents and not in the sense of, you know, curcumin could kill a cancer cell, but these go in and kill all rapidly reproducing cells in the body. And you lose muscle mass and you lose multiple organ function, and it drives many people to the brink of death just from the therapy. And if they're lucky, they recuperate and can live with that five-year survival rate and be proclaimed a success. Lots don't. And I think -- what are we up to --65 percent now of people can live five years past their -- concluding their treatment. Ex. 5.

- 3.. Respondents make and substantiate structure and function claims, as set out for the products above, that the products in question assist the body by reinforcing its natural innate capacity to correct imbalance and help the body diminish disease by strengthening the body's natural healing functions,
to assist it in maintaining coherence and wellness, and assisting the body in achieving and maintaining the structural balance that helps it diminish the effects of cancer and other disease including for those taking chemotherapy.

Respondents assert that the statement or claims made about the products they provide to members of their community were intended to be in support of Normal Structure and Function Claims permitted under the *Dietary Supplement Health and Education Act of 1994* and the regulations thereunder. The Respondents further assert that

they do in fact have reasonable evidence for their claims, including, in addition to the testimony and reports of their expert witnesses which explicitly state that herbal science supports the DCO statements for each product, Traditional Use and Biblical substantiation which Respondents assert are valid and lawful substantiation for claims made particularly in an Expressive Association context.

Respondents assert that they and their communicants are engaging in Expressive Association as a private association, protected by the First Amendment to the Constitution for the United States of America. See: *Boy Scouts Of America V. Dale* (99-699) 530 U.S. 640 (2000) 160 N. J. 562, 734 A. 2d 1196. The relatively small number of users of DCO products, the high ratio of information to product use—two hours a day on the radio, several web sites, news letters and various manuals—all of which repeat the structure-function message of the statements presented for the products above, and five small stores that asked to make DCO products available to their communities all reinforce the fact that DCO is in a community of people with shared beliefs involved in an Expressive Association rather than a business organized to make a profit.

Complaint Counsel misread the nature of the dispute in this case. There is here a paradigm clash. Counsel and the FTC assert and apparently believe that the only legitimate proper evidence for a party to rely on in making claims about dietary supplements such as herbs is the classical testing of dangerous single chemical entities. As Respondents' expert Dr. Rustum Roy made clear, this is not an appropriate approach to testing natural products that pose no inherent risk, have been around for centuries—maybe as long as the Bible—and have traditional use profiles.

As Respondents' herbal expert Dr. James Duke pointed out, it is estimated that there are as many as five thousand single chemical entities in turmeric, one herb used by Respondents. It is patently obvious that the classical testing of herbal ingredients in the way dangerous single chemical entities are tested is impractical, unwise and dangerous—depriving individuals of herbs useful to their health. The fact of the matter is that the herbal world has accepted scientific norms—which by the way Dr. Miller, Complaint Counsel's cancer expert, acknowledged that he was unfamiliar with--with which Respondents have complied.

The fact that Complaint Counsel has chosen to argue that the only way to comply with the law is to subject herbs to the same standard as single chemical entities means that Counsel has failed to meet the FTC's responsibility to address the nature of the herbal claims made—Counsel has not provided evidence on the net impression of the claims, the nature of the audience to which they are addressed, substantiation, the state interest being vindicated or the existence of herbal science that supports Respondents'. Their failure to address these issues means that Complaint Counsel is not entitled to a summary decision. In fact, their failure to address these issues entitles Respondents to a summary decision as set out in Respondents' Motion for Summary Decision.

Citizens Have the Right to Seek Alternatives to Standard Medicine

The Respondents assert the right of consumers to intentionally forgo standard treatment and engage in other methods to achieve and maintain a healthy status. This interest of citizens is especially significant in the context of a private association for religious dietary and nutritional expressive activities.

In the case of *State v Biggs* (46 SE Reporter 401, 1903) the North Carolina Supreme Court dealt with a person who was advising people as to diet, and administering massage, baths and physical culture. In the Biggs case, the defendant "advertised himself as a 'nonmedical physician'... [and] held himself out to the public to cure disease by 'a system of drugless healing'..." p.401.

That Court held that there could be no "state system of healing" p.402 and while "Those who wish to be treated by practitioners of medicine and surgery had the guaranty that such practitioners had been duly examined...those who had faith in treatment by methods not included in the 'practice of medicine and surgery' as usually understood, had reserved to them the right to practice their faith and be treated, if they chose, by those who openly and avowedly did not use either surgery or drugs in the treatment of diseases..." p.402. Biggs was acquitted.

"The state has not restricted the cure of the body to the practice of medicine and surgery -- allopath, as it is termed, -- nor required that, before anyone can be treated for any bodily ill, the physician must have acquired a competent knowledge of allopath and be licensed by those skilled therein. To do that would be to limit progress by establishing allopathy as the state system of healing, and forbidding all others. This would be as foreign to our system as a state church for the cure of souls. All the state has done has been to enact that, when one wished to practice medicine or surgery, he must, as a protection to the public [not to the doctor], be examined and licensed by those skilled in surgery and medicine. To restrict all healing to that one kind -- to allopath, excluding homeopathy, osteopathy, and all other treatments -- might be a protection to doctors in surgery and medicine; but that is not the object of the act, and might make it unconstitutional, because

creating a monopoly." North Carolina's Supreme Court in *State v MacKnight*, 42 S.E. 580, 1902 at p 582.

In *Hillman/Kohan Eyeglasses, Inc v New Jersey State Board*, 169 NJ Super 259, the Court observed that, absent compelling health reasons, consumers should have choices in the competitive marketplace, and further, that if the legislature had intended to create a monopoly, it would have done so by specific grant of monopoly, which it did not do in the case of optometry, nor, we assert, in the case of nutritional support for persons concerned with diagnosed diseases such as cancer.

People have the right to obtain unlicensed, private professional health care services. The Southern District of Texas case of *Andrews v. Ballard* (498 F Supp 1038, 1980) is cited as a leading authority for the propositions that (1) a decision to obtain (in this case) acupuncture needle treatments from one not licensed as a medical doctor is a constitutional right encompassed by the right of privacy (p.1048) and (2) the provisions of the medical practices act, insofar as they limit the use of acupuncture needles to licensed physicians, are unconstitutional (p.1051, et seq.).

The North Carolina Supreme Court concluded, nearly a century ago in *State v. Biggs*, supra., at p.405: "Medicine is an experimental, not an exact science. All the law can do is to regulate and safeguard the use of powerful and dangerous remedies, like the knife and drugs, but it cannot forbid dispensing with them. When the Master, who was himself called the Good Physician, was told that other than his followers were casting out devils and curing diseases, he said, 'Forbid them not.'" p.405.

Traditional Use Claims and the FTC

Based upon the FTC's own Internet postings, Complaint Counsel has ignored a significant basis for the substantiation of the nutritional claims made by the Respondents.

"Claims based on historical or traditional use should be substantiated by confirming scientific evidence, or should be presented in such a way that consumers understand that the sole basis for the claim is a history of use of the product for a particular purpose. A number of supplements, particularly botanical products, have a long history of use as traditional medicines in the United States or in other countries to treat certain conditions or symptoms. Several European countries have a separate regulatory approach to these traditional medicines, allowing manufacturers to make certain limited claims about their traditional use for treating certain health conditions. Some countries also require accompanying disclosures about the fact that the product has not been scientifically established to be effective, as well as disclosures about potential adverse effects. At this time there is no separate regulatory process for approval of claims for these traditional medicine products under DSHEA and FDA labeling rules."

<http://www.ftc.gov/bcp/online/pubs/buspubs/dietsupp.htm> FTC - Dietary Supplements: An Advertising Guide for Industry.

FTC continues - "In assessing claims based on traditional use, the FTC will look closely at consumer perceptions and specifically at whether consumers expect such claims to be backed by supporting scientific evidence. Advertising claims based solely on traditional use should be presented carefully to avoid the implication that the product has been scientifically evaluated for efficacy. The degree of qualification necessary to communicate the absence of scientific substantiation for a traditional use claim will depend in large part on consumer understanding of this category of products. As consumer

awareness of and experience with "traditional use" supplements evolve, the extent and type of qualification necessary is also likely to change.

"There are some situations, however, where traditional use evidence alone will be inadequate to substantiate a claim, even if that claim is carefully qualified to convey the limited nature of the support. In determining the level of substantiation necessary to substantiate a claim, the FTC assesses, among other things, the consequences of a false claim. Claims that, if unfounded, could present a substantial risk of injury to consumer health or safety will be held to a higher level of scientific proof. For that reason, an advertiser should not suggest, either directly or indirectly, that a supplement product will provide a disease benefit unless there is competent and reliable scientific evidence to substantiate that benefit. The FTC will closely scrutinize the scientific support for such claims, particularly where the claim could lead consumers to forego other treatments that have been validated by scientific evidence, or to self-medicate for potentially serious conditions without medical supervision.

"The advertiser should also make sure that it can document the extent and manner of historical use and be careful not to overstate such use. As part of this inquiry, the advertiser should make sure that the product it is marketing is consistent with the product as traditionally administered. If there are significant differences between the traditional use product and the marketed product, in the form of administration, the formulation of ingredients, or the dose, a "traditional use" claim may not be appropriate.

"Example 29: The advertiser of an herbal supplement makes the claim, "Ancient folklore remedy used for centuries by Native Americans to aid digestion." The statement about traditional use is accurate and the supplement product is consistent with the

formulation of the product as traditionally used. However, if, in the context of the ad, this statement suggests that there is scientific evidence demonstrating that the product is effective for aiding digestion, the advertiser would need to include a clear and prominent disclaimer about the absence of such evidence.

"Example 30: A supplement manufacturer wants to market an herbal product that has been used in the same formulation in China as a tonic for improving mental functions. The manufacturer prepares the product in a manner consistent with Chinese preparation methods. The ad claims, "Traditional Chinese Medicine — Used for Thousands of Years to Bring Mental Clarity and Improve Memory." The ad also contains language that clearly conveys that the efficacy of the product has not been confirmed by research, and that traditional use does not establish that the product will achieve the claimed results. The ad is likely to adequately convey the limited nature of support for the claim.

One can see from the above FTC analysis that RISK and BENEFIT will be weighed on a spectrum of risk – at one end are products that support natural structure and function and at the other end are products that claim to treat life-threatening diseases.

The distinction between “treat” life-threatening diseases and offering “therapies” that may benefit normal structure and function for persons facing such diseases is well founded in law. Let us therefore consider the use of the terms “therapy” and “therapeutic” with reference to alternative health practices. It compares those terms to the term-of-art, "treatment of disease." Alternative health practices can be generally defined as traditional

or other practices that are used by individuals, often for self-help, to achieve and maintain a healthy status, either on their own or complementary to standard medical care. These practices do not include the potentially dangerous use of invasive techniques and toxic drugs that are the province of licensed medicine. They do, however, include developing therapies and nonstandard approaches that are outside the scope of licensed medicine. These are sometimes referred to as "Complementary and Alternative Modalities" (CAM).

CAM health practices can be generally defined as traditional or other practices that are used by individuals, often for self-help, to achieve and maintain a healthy status, either on their own or complementary to standard medical care. These practices do not include the potentially dangerous use of invasive techniques and toxic drugs that are the sole province of licensed medicine. They do, however, include developing therapies and nonstandard approaches that are outside the scope of licensed medicine. Such approaches as Nutrition, Homeopathy, Hands-on-Healing, Magnetics, Sound Health, Energy Therapies, Biofeedback, Meditation, Breath Work, Reiki, Chi Gong, Tai Chi and Herbology are examples of complementary and alternative therapeutic practices. Traditional Chinese, Ayurvedic medicine or folk remedies and "Dr. Mom" home remedies are also examples of CAM practices.

The terms "therapy" and "therapeutic" do not occur, for example, in the context of the Dietary Supplement Health and Education Act of 1994 (DSHEA). Rather, that statute, passed unanimously by Congress, tells us that Dietary Supplements may not "diagnose, treat, cure or prevent" any disease. It does not specifically forbid the use of the word "therapy" (or "therapeutic"). Under the Supreme Court's rule in the *Thompson v Western*

Medical 535 U. S. 357 (2002) 238 F.3d 1090, affirmed. case, we should expect that these words would not be forbidden by the Courts.

Further, the Code of Medical Ethics of the American Medical Association has also begun to acknowledge an independent use of the term "therapy." The original Hippocratic Oath, with its injunction to "Do no harm." has been replaced by a complex Code detailing the relationship between physician and patient and alternative practitioner. Changes made during the early 1990's were inspired by anti-trust lawsuits brought during the 1980's by chiropractors and others. These changes are just now becoming recognized by regulators and courts.

While "treatment which has no scientific basis" remains condemned (Opinion 3.01), under Opinion 3.04, physicians are free to "refer" a patient "for therapeutic or diagnostic services to another physician, limited practitioner or any other provider of health care services permitted by law to furnish such services, whenever he or she believes that this may benefit the patient." Thus, unscientific "treatment" is distinguished from "health care services permitted by law."

"Treatment" -- which means the use of standard medicine and surgery to "cure" disease -- is distinguished from other health care services (therapies) which need only meet the lesser "may benefit" standard. While physicians "prescribe" treatments for disease, therapies that may benefit may be subject to "referral" thereby further indicating the distinction. Thus, for example, Dietary Supplements that support normal structure and function to support therapeutic outcomes can be seen to complement licensed medicine, but not to be held to its strictures, nor limited in its practice to licensed physicians. Since

such therapies are not prescription services, members of the public may choose such services without the permission of their physician.

The claims made for Therapeutic Nutritionals must, of course, be allowed Structure and Function Claims. Thus, for example, one cannot claim that a nutrient (except for plant sterols) lowers cholesterol levels – since there is now a “disease” of hypercholesterolemia – but can claim that a nutrient maintains normal cholesterol levels for persons with normal cholesterol. A purveyor may say that a certain combination of multivitamins was designed to maintain normal structure and function for a person with diabetes, but not that the combination treats diabetes or affects the blood sugar level. Similarly, any claim made for any alternative practice must meet the FTC standard of "truthful and not misleading" and must be based on reasonable substantiation. Telling people what an alternative practitioner does NOT do is as important as telling what is done. It is therefore important to include the proper Disclaimers for any use of alternative practices.

As the High Court said in *Thompson*, "We have previously rejected the notion that the Government has an interest in preventing the dissemination of truthful commercial information in order to prevent members of the public from making bad decisions with the information. * * * Even if the Government did argue that it had an interest in preventing misleading advertisements, this interest could be satisfied by the far less restrictive alternative of requiring ... a warning..."

What is the proper level of substantiation for alternative practice claims? It is not the "significant scientific agreement" required of drug claims, but rather, the general "competent scientific evidence" standard that applies to all commercial claims. That does not necessarily mean that purveyors need to have multiple double-blind experiments (as

may be required for drug approval). Such substantiation just needs to be competent and scientific.

This means research studies (which is when scientists review the work of others and apply it to specific questions) and clinical trials (which can be as formal as double-blind, placebo controlled investigations) as well as traditional knowledge and clinical experience all have a role to play, but ultimately, such substantiation must rest on the informed professional opinion of some credentialed person who can (in the case of Dietary Supplements, for example) sign onto the Structure and Function Claims Notice to the FDA, attesting that "the notifying firm has substantiation that the Statement to which this Notice applies is truthful and not misleading." (Regulations under 21 U.S.C. 403(r) (6)).

Many times people seek to make claims based on Traditional Uses. This is what the FTC says, "Claims based on historical or traditional use should be substantiated by confirming scientific evidence, or should be presented in such a way that consumers understand that the sole basis for the claim is a history of use of the product for a particular purpose. A number of supplements, particularly botanical products, have a long history of use as traditional medicines in the United States or in other countries to treat certain conditions or symptoms. Several European countries have a separate regulatory approach to these traditional medicines, allowing manufacturers to make certain limited claims about their traditional use for treating certain health conditions. Some countries also require accompanying disclosures about the fact that the product has not been scientifically established to be effective, as well as disclosures about potential adverse effects. At this time there is no separate regulatory process for approval of claims for these traditional medicine products under DSHEA and FDA labeling rules. * * * The advertiser

should also make sure that it can document the extent and manner of historical use and be careful not to overstate such use. As part of this inquiry, the advertiser should make sure that the product it is marketing is consistent with the product as traditionally administered. If there are significant differences between the traditional use product and the marketed product, in the form of administration, the formulation of ingredients, or the dose, a "traditional use" claim may not be appropriate."

Throughout the world today people are looking to traditional methodologies and leading-edge CAM techniques because they offer alternatives to toxic, expensive drugs with their dangerous side effects, un-manageable and unreasonable costs and other invasive technologies of modern medicine. This search for alternatives is protected by the fundamental right of individuals to communicate and learn; to heal and be healed.

This has been settled law for over a hundred years.

"The state has not restricted the cure of the body to the practice of medicine and surgery -- allopathy, as it is termed, -- nor required that, before anyone can be treated for any bodily ill, the physician must have acquired a competent knowledge of allopathy and be licensed by those skilled therein. To do that would be to limit progress by establishing allopathy as the state system of healing, and forbidding all others. This would be as foreign to our system as a state church for the cure of souls. All the state has done has been to enact that, when one wished to practice medicine or surgery, he must, as a protection to the public [not to the doctor], be examined and licensed by those skilled in surgery and medicine. To restrict all healing to that one kind -- to allopathy, excluding homeopathy, osteopathy, and all other treatments -- might be a protection to doctors in surgery and

medicine; but that is not the object of the act, and might make it unconstitutional, because creating a monopoly." North Carolina's Supreme Court in *State v MacKnight*, 42 S.E. 580, 1902 at p 582.

The problem raised by these examples and the issues they address is not how they should be resolved. The problem is that Complaint Counsel has comely ignored they existence and ;owe ahead arguing the only answer the atsupplied by their cancer expert as appropriate for single entity inherently dangerous chemicals that might have some benefit that outweighs there harm. Cjompnat

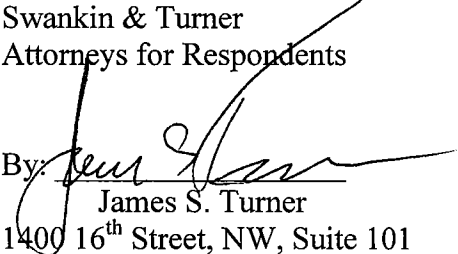
Counsel filed to address the issues that are at the heart of the case. Respondent has presented evidence that they complied with the standards that govern herbal claims. Complaint counsel has presented no evidence they have not.

CONCLUSION

Complaint Counsel's motion for Summary Decision should be denied.

Dated this 10th day of March, 2009.

Swankin & Turner
Attorneys for Respondents

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Exhibit

1

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

In the Matter of)	
)	
DANIEL CHAPTER ONE,)	
a corporation, and)	Docket No. 9329
)	
JAMES FEIJO,)	Public Document
individually, and as an officer of)	
Daniel Chapter One)	
)	
)	

**COMPLAINT COUNSEL’S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE**

Pursuant to Commission Rule of Practice 3.24, 16 C.F.R. § 3.24, and in support of their motion for summary decision, Complaint Counsel submit this Statement of Material Facts as to Which There is No Genuine Issue.

A. DANIEL CHAPTER ONE AND THE FEIJOS

1. Respondent Daniel Chapter One (“DCO”) is a corporation sole organized in 2002 under the laws of the state of Washington. Respondents’ Answer to FTC’s Compl., dated Oct. 14, 2008 (hereinafter referred to as the “Answer”) at ¶ 1; *see also* Complaint Counsel’s Summary Decision Exhibit (hereinafter referred to as S.D. Ex. ___) 3 (Declaration of FTC Investigator Michael Marino, dated Feb. 23, 2009, (hereinafter referred to as “Marino Dec.”) at ¶ 23, Exhibit L).
2. Respondent James Feijo is responsible for the activities of Respondent DCO as its Overseer. Answer ¶ 2.
3. Patricia Feijo, Respondent James Feijo’s wife, is the secretary for DCO. Deposition of Patricia Feijo, January 14, 2009, (hereinafter referred to as *P. Feijo Dep. Tr.*) at 10, l. 17-21; 52, l. 3-16.
4. Respondent James Feijo and his wife, Patricia, originally started DCO as a health food store in 1986. *P. Feijo Dep. Tr.* at 39, l. 14-25 - 40, l. 1-20.

5. Respondents' principal office and place of business is located at 1028 East Main Road, Portsmouth, Rhode Island 02871. Answer ¶ 1; Deposition of James D. Feijo, January 13, 2009, (hereinafter referred to as *J. Feijo Dep. Tr.*) at 99, l. 10-18.
6. James Feijo sold DCO products prior to registering as a corporation sole. *J. Feijo Dep. Tr.* at 224, l. 4-6.
7. DCO offers 150 to 200 products today. *J. Feijo Dep. Tr.* at 37, l. 11-13.
8. Respondent James Feijo is responsible for the development, creation, and production of Bio*Shark, 7 Herb Formula, GDU, and BioMixx (collectively, the "DCO Products"). S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 2*); *J. Feijo Dep. Tr.* at 116, l. 17-21.
9. Respondent James Feijo is the trustee for all Daniel Chapter One assets, including all funds which are held in trust. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 9*).
10. Daniel Chapter One has a bank account with Citizens Bank. Deposition of Jill Susan Feijo, January 22, 2009, (hereinafter referred to as *Jill Feijo Dep. Tr.*) at 33, l. 19-23.
11. Patricia Feijo is a signatory to DCO's bank account and writes checks on behalf of the DCO account. *P. Feijo Dep. Tr.* at 54, l. 8-19.
12. Jill Feijo, James Feijo's daughter and Respondents' corporate representative, also has authority to write checks on behalf of the DCO account. *Jill Feijo Dep. Tr.* at 34, l. 15-17.
13. Respondent James Feijo receives all the bank statements for the DCO account. *Jill Feijo Dep. Tr.* at 34, l. 10-11.
14. Respondent James Feijo maintains the financial records for DCO. *Jill Feijo Dep. Tr.* at 47, l. 6-8.
15. Respondent DCO defrays James Feijo's expenses as Overseer and provides for his support. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 3*).
16. Respondent James Feijo pays his daughter Jill \$700 per week cash for her work at Daniel Chapter One. *Jill Feijo Dep. Tr.* at 13, l. 3-9.
17. DCO has two buildings in Portsmouth, Rhode Island – one contains the office with the Order Center and the other contains the products that DCO offers to the public. *Jill Feijo Dep. Tr.* at 20, l. 9-24.

18. DCO is not registered with the Internal Revenue Service as a charity. *J. Feijo Dep. Tr.* at 45, l. 11-13.
19. Messiah Y'Shua Shalom, a Washington corporation sole, owns the property that Respondents use in Rhode Island. *J. Feijo Dep. Tr.* at 72, l. 7-25 - 73, l. 1-3; *see generally* S.D. Ex. 3 (Marino Dec. at ¶ 23, Exhibit M).
20. Respondent James Feijo is the overseer for Messiah Y'Shua Shalom. *J. Feijo Dep. Tr.* at 72, l. 7-25 - 73, l. 1-3; *see also* S.D. Ex. 3 (Marino Dec. at ¶ 23, Exhibit M).
21. Messiah Y'Shua Shalom houses the buildings where Respondents perform their ministry of Daniel Chapter One. *J. Feijo Dep. Tr.* at 72, l. 7-25 - 73, l. 1-3.
22. Daniel Chapter One owns a three-bedroom property in Deerfield Beach, Florida. *J. Feijo Dep. Tr.* at 70, l. 22-25 - 71, l. 1-15.
23. James and Patricia Feijo live in the properties owned by Messiah Y'Shua Shalom and DCO. *J. Feijo Dep. Tr.* at 70, l. 25 - 71, l. 1-2; 78, l. 20-25 - 79, l. 1.
24. Daniel Chapter One owns two cars - a 2003 Cadillac and a 2004 Cadillac. DCO purchased one Cadillac new and the other Cadillac used. *J. Feijo Dep. Tr.* at 71, l. 16-23.
25. Respondent James Feijo uses the two Cadillacs owned by DCO. *J. Feijo Dep. Tr.* at 96, l. 9-10, 14-16; 97, l. 7-13.
26. Respondents practice a science they call BioMolecular Nutrition. S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0307).
27. According to Respondents, “[t]here are two aspects of BioMolecular Nutrition, the spiritual and the physical.” S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0307).
28. “The principles of BioMolecular Nutrition were those missing principles needed to bind together those of the nutritionists and the biochemists.” S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0309).
29. According to Respondents, “[b]ecause of BioMolecular nutritional products developed at that time, we’ve been able to support other naturopathic disciplines – chiropractic, acupuncture, herbology, and homeopathy – and using the principles of BioMolecular Nutrition has allowed many natural health practitioners to be complete.” S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0308).

B. RESPONDENTS DISTRIBUTE THEIR PRODUCTS IN COMMERCE TO CONSUMERS

30. Respondents distribute the DCO Products in commerce. Answer ¶ 4; *J. Feijo Dep. Tr.* at 102, l. 13-16.
31. Respondent DCO has an 800 number and a call center for consumers to purchase the DCO Products. *P. Feijo Dep. Tr.* at 67, l. 7-13; *Jill Feijo Dep. Tr.* at 15, l. 5-14.
32. Respondent James Feijo created, managed, and maintained the toll-free telephone number, designed so that consumers can order the DCO Products. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 33*).
33. On the front page of their BioMolecular Nutrition Product Catalog, Respondents inform consumers to "Call Toll FREE 1-800-504-5511 or shop online at www.danielchapterone.com." S.D. Ex. 6 (*J. Feijo Dep. Ex. 6 - BioMolecular Nutrition Product Catalog at FTC-DCO 0060*).
34. Respondents operate the website www.danielchapterone.com. Answer ¶ 5; *J. Feijo Dep. Tr.* at 62, l. 10-13.
35. DCO also operates the Web sites dclpages.com and dcstore.com. *J. Feijo Dep. Tr.* at 232, l. 21-25 - 233, l. 1-19.
36. Consumers learn of DCO's 800 number from the DCO Web site, the BioGuide, and the radio program. *Jill Feijo Dep. Tr.* at 15, l. 15-25.
37. Respondent James Feijo established the price of the DCO Products. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 25*); *P. Feijo Dep. Tr.* at 77, l. 13-16.
38. Jill Feijo has supervised Respondent DCO's Order Center for the past nine years and has taken telephone orders. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 30*).
39. DCO employs Kevin Vandeburg, Axel Busche, and Jay Butler to work in the building that contains the DCO Products and to ship the DCO Products ordered by consumers. *Jill Feijo Dep. Tr.* at 21, l. 7-22.
40. DCO's Order Center is open Monday through Friday from 9:00 a.m. to 8:00 p.m. *Jill Feijo Dep. Tr.* at 16, l. 5-10.
41. DCO receives payments through its Order Center through credit card and COD. *Jill Feijo Dep. Tr.* at 18, l. 6-10.

42. DCO also accepts consumers' orders on the Internet. *Jill Feijo Dep. Tr.* at 18, l. 11-13.
43. DCO's Web site contains a tab inviting consumers to shop at DCO's "On-Line Store." S.D. Ex. 7 (*J. Feijo Dep. Ex. 4 - Exhibits A - D to Administrative Complaint* at FTC-DCO 0011); S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility ¶ 1*).
44. DCO's Web site contains an icon inviting consumers to "Buy Now." S.D. Ex. 7 (*J. Feijo Dep. Ex. 4 - Exhibits A - D to Administrative Complaint* at FTC-DCO 0011); S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility ¶ 1*).
45. Respondents' acquisition costs for the products they sell is 30 percent of the price Respondents charge to consumers for products such as 7 Herb Formula. *J. Feijo Dep. Tr.* at 232, l. 3-8.
46. Over a thousand consumers have purchased DCO's products. *P. Feijo Dep. Tr.* at 57, l. 13-18.
47. Respondents have generated approximately \$2 million in annual sales for the years 2006, 2007, and 2008 for all of DCO's two-hundred products. *J. Feijo Dep. Tr.* at 206, l. 18-20; 212, l. 14-24; S.D. Ex. 9 (*J. Feijo Dep. Ex. 9 - Daniel Chapter One Monthly Gross Sales*).
48. There is no indication in the BioMolecular Nutrition Product Catalog that the price listed is for a donation. *J. Feijo Dep. Tr.* at 158, l. 11-17; *P. Feijo Dep. Tr.* at 76, l. 11-17; 77, l. 5-12.
49. There is no mention of the DCO ministry in the BioMolecular Nutrition Product Catalog. *J. Feijo Dep. Tr.* at 161, l. 4-10.
50. Jill Feijo does not recall whether there is anything in writing regarding any alleged "donation policy." *Jill Feijo Dep. Tr.* at 22, l. 25 - 23, l. 1-3.
51. Most consumers pay DCO's alleged "suggested donation" price and "not many" people per day ask Jill Feijo to pay a lowered amount. *Jill Feijo Dep. Tr.* at 23, l. 14-21.
52. On January 3, 2008, FTC investigator Michael Marino ("Marino") purchased the DCO Products from Respondents' Web site. S.D. Ex. 3 (Marino Dec. at ¶ 9-10, Exhibit C).
53. Prior to making the purchase, Marino created an undercover e-mail account to confirm and monitor the progress of the purchase and received four emails from Respondents

relating to the purchase of the DCO Products. S.D. Ex. 3 (Marino Dec. at ¶ 11, Exhibit D).

54. On or about January 24, 2008, Marino received the DCO Products. S.D. Ex. 3 (Marino Dec. at ¶ 12).
55. Included in the shipment of the DCO Products ordered by Marino were the following: (a) BioGuide 3: The BioMolecular Nutrition Guide to Natural Health 3; (b) “BioMolecular Nutrition Product Catalog;” (c) a blank purchase order form; and (d) an invoice form. S.D. Ex. 3 (Marino Dec. at ¶ 12, Exhibits E-H).
56. According to the UPS Ground shipping label attached to the package containing the DCO Products and the DCO materials, the shipment originated from Daniel Chapter One, 822 Anthony Road, Portsmouth Rhode Island 02871-5604 and was sent to an FTC undercover address in a state other than Rhode Island in the United States. S.D. Ex. 3 (Marino Dec. at ¶ 12).
57. Marino inspected the contents of the shipment of the DCO Products and did not observe a separate document indicating that the purchase was a “donation” or thanking the purchaser for making a “donation” to Daniel Chapter One. S.D. Ex. 3 (Marino Dec. at ¶ 13).
58. According to Commission records, the amount charged to the undercover credit card used for the purchase of the DCO Products was \$175.75. These records also indicate that this charged was made by “DANIEL CHAPTER ONE.” S.D. Ex. 3 (Marino Dec. at ¶ 14).
59. DCO’s shipping and handling fees for its products are \$20.95. *J. Feijo Dep. Tr.* at 152, l. 22-25 - 153, l. 1-3.
60. DCO offers coupons to consumers for their next online store order. *J. Feijo Dep. Tr.* at 154, l. 2-7.
61. Respondents run promotions from time to time to “give [consumers] more of an opportunity to . . . get things at a lower rate.” *J. Feijo Dep. Tr.* at 154, l. 8-24.
62. For example, consumers can buy multiple bottles and get a bottle free. *J. Feijo Dep. Tr.* at 232, l. 16-20.
63. A number of stores nationally sell DCO’s products, including stores in Georgia and a store in Pennsylvania. *P. Feijo Dep. Tr.* at 72, l. 16-24.
64. Doctors and stores that carry DCO’s product line get the product at a lesser price because they are going to be selling it. *P. Feijo Dep. Tr.* at 71, l. 3-9.

65. Respondents' Cancer Newsletter, entitled How to Fight Cancer is Your Choice!!!, costs \$5.95. S.D. Ex. 10 (*DCO's Cancer Newsletter, Millenium [sic] Edition, 2002 - "How to Fight Cancer is Your Choice!!!"* at FTC-DCO 0405).
66. In their Cancer Newsletter, Respondents instruct consumers to call "1-800-504-5511" to order their products. S.D. Ex. 10 (*DCO's Cancer Newsletter, Millenium [sic] Edition, 2002 - "How to Fight Cancer is Your Choice!!!"* at FTC-DCO 0405).
67. In their Cancer Newsletter, entitled How to Fight Cancer is Your Choice!!!, Respondents state that their "[l]atest Bioguide" is "[o]nly \$9.95." S.D. Ex. 10 (*DCO's Cancer Newsletter, Millenium [sic] Edition, 2002 - "How to Fight Cancer is Your Choice!!!"* at FTC-DCO 0397).
68. Respondents' publication entitled The Most Simple Guide to the Most Difficult Diseases: The Doctors' How-To Quick Reference Guide costs \$12.95. S.D. Ex. 3 (Marino Dec. at ¶ 24, Exhibit N at FTC-DCO 2825).
69. On their Web site dc1store.com, Respondents state: "For Information on Special offers for ***purchasing*** multiple bottles of 7-Herb call 1-800-504-5511 between 9-6 EST Mon-Fri." S.D. Ex. 11 (*Pages from Respondents' Web site dc1store.com listing contact information, dated Mar. 31, 2008, at FTC-DCO 0084*) (emphasis added) .
70. On their Web site dc1store.com, Respondents state the following regarding their affiliate program: "**Welcome to the DC1 Affiliate Program!** Our program is free to join, it's easy to sign-up and requires no technical knowledge. Affiliate programs are common throughout the Internet *and offer website owners a means of profiting from their websites. Affiliates generate sales for commercial websites* and in return receive a percentage of the value of those sales. **How Does It Work?** When you join the DC1 Affiliate Program, you will be supplied with a range of banners and textual links that you place within your site. When a user clicks on one of your links to the DC1 Affiliate Program, their activity will be tracked by our affiliate software. You will earn a commission based on your commission type. **Real-Time Statistics and Reporting!** Login 24 hours a day to check your sales, traffic, account balance and see how your banners are performing. You can even test conversion performance by creating your own custom links! Affiliate Program Details. Pay-Per-Sale: 10% of all sales you deliver. \$100.00 USD - Minimum balance required Payments are made on the 1st of each month, for the previous month." S.D. Ex. 12 (*Pages from Respondents' Web site dc1store.com discussing "DC1 Affiliate Program," dated Dec. 12, 2007 at FTC-DCO 0461 - 0462*) (emphasis in bold in original; emphasis in italics supplied) .
71. When discussing the cost of DCO's products generally, Terry Brotherton, a consumer whose testimonial was provided by Respondents in discovery, stated "***[i]t wasn't cheap but it was the best money I ever spent.***" S.D. Ex. 13 (*Terry Brotherton Statement produced by Respondents as DCO 0156*) (emphasis added).

72. When discussing the cost of 7 Herb Formula specifically, Charlotte Rice, a consumer whose testimonial was provided by Respondents in discovery, stated, “I then proceeded to reduce my 7 Herb Formula to a maintenance dosage. Tricia & Jim Feijo did not agree with my decision. They felt I should stay on the maximum dosage to be safe, **but I was having financial problems, and could not afford the cost.**” S.D. Ex. 14 (*Charlotte Rice Statement produced by Respondents as DCO 0170 - 0171* at DCO 0170) (emphasis added).
73. When discussing the cost of 7 Herb Formula, GDU, Bio*Shark, and other DCO products, Earl Davis, a consumer whose testimonial was provided by Respondents in discovery, stated, “[t]he only drawback that we’ve experienced is the pricing of the products. There should be discounts for customers who have referred lots of people and for those customers who consume lots of product monthly because alternative therapy is expensive. . . .” S.D. Ex. 15 (*Earl Davis Statement produced by Respondents as DCO 0187*) (emphasis added).
74. When discussing the cost of 7 Herb Formula, Ernie Jensen, a consumer whose testimonial was provided by Respondents in discovery, stated “I could not afford the 7 Herb [Formula].” S.D. Ex. 16 (*Ernie Jensen Statement produced by Respondents as DCO 0189 - 0193* at DCO 0189).
75. The trademark symbol appears next to Respondents’ term “BioMolecular Nutrition” and Respondents’ products 7 Herb Formula, GDU, and BioMixx. S.D. Ex. 6 (*J. Feijo Dep. Ex. 6 - BioMolecular Nutrition Product Catalog* at FTC-DCO 0060 - 0061).

BioShark

76. Bio*Shark is a product that contains, among other ingredients, Shark Cartilage. Answer ¶ 6.
77. Respondents offer one bottle of Bio*Shark for \$65.95 (300 of the 800 mg capsules) and \$30.95 (100 of the 800 mg capsules). Answer ¶ 6.
78. Respondents pay Universal Nutrition \$3.15 per unit for the 100 capsule bottle of Bio*Shark and \$8.75 per unit for the 300 capsule bottle of Bio*Shark. Deposition of Claudia Petra Bauhoffer-Kinney, January 15, 2009, (hereinafter referred to as *Kinney Dep. Tr.*) at 44, l. 15-19.
79. During 2008, Respondents paid Universal Nutrition approximately \$1,437 to manufacture 479 units of the 100 capsule bottle of Bio*Shark and approximately \$6,256 to manufacture 782 units of the 300 capsule bottle of Bio*Shark. *Kinney Dep. Tr.* at 45, l. 3-10.
80. Universal Nutrition does two things - it has its own brand of products, and it also is a private label manufacturer. *Kinney Dep. Tr.* at 17, l. 10-23.

81. DCO falls under the private label part of Universal Nutrition. *Kinney Dep. Tr.* at 17, 1. 24-25.
82. Universal Nutrition makes approximately 35-40 products for DCO, including Bio*Shark, GDU, and BioMixx. *Kinney Dep. Tr.* at 21, 1. 1-19.
83. Universal Nutrition started manufacturing Bio*Shark for Respondents approximately eight to ten years ago. *Kinney Dep. Tr.* at 42, 1. 23-25 - 43, 1. 1.

7 Herb Formula

84. 7 Herb Formula is a liquid tea concentrate product that contains, among other ingredients, distilled water, Cat's Claw, Burdock Root, Siberian Ginseng, Sheep Sorrel, Slippery Elm, Watercress, and Turkey Rhubarb Root. Answer ¶ 8.
85. Respondents offer one 32-ounce bottle of 7 Herb Formula for \$70.95. Answer ¶ 8.
86. On their Web sites danielchapterone.com and dc1pages.com, Respondents state the following regarding 7 Herb Formula: "I think it costs too much: Essiac formulas normally retail for \$45 to \$69 per bottle. If you compare that to the cost of a hospital stay and drug treatment, this is cheap! ***Daniel Chapter One's 7 Herb Formula is equally priced with most other brands but with ours you get a great deal more.*** Remember you are not only getting 32 ounces per bottle, when some of the other brands are only 16 ounces; you are also getting 2 more expensive herbs (Cat's Claw and Siberian Ginseng). We use 3 times the herbs and prepare each individually using a double water filtering process. If that is the case you must at least double the price they are asking to get equal price comparison." S.D. Ex. 17 (*Pages from Respondents' Web sites dc1pages.com, dated April 2, 2008, at FTC-DCO 0159 - 0160, and danielchapterone.com, dated November 7, 2008, at FTC-DCO 0495, stating "I think it costs too much"*) (emphasis added).

GDU

87. GDU is a product that contains, among other ingredients, Bromelain, Turmeric, Quercetin, Feverfew, and Boron. Answer ¶ 10.
88. Respondents offer GDU for \$45.95 (300 capsules) and \$29.95 (120 capsules). Answer ¶ 10.
89. Respondents pay Universal Nutrition \$3.28 per unit for the 120 tablet [sic] bottle of GDU and \$7.07 per unit for the 300 tablet [sic] bottle of GDU. *Kinney Dep. Tr.* at 34, 1. 21-25 - 35, 1. 1-4.

90. During 2008, Respondents paid Universal Nutrition approximately \$5,127 to manufacture 1,709 units of the 120 tablet [sic] bottle of GDU and approximately \$52,661 to manufacture 7,523 units of the 300 tablet [sic] bottle of GDU. *Kinney Dep. Tr.* at 34, l. 5-25 - 35, l. 1-4.

BioMixx

91. BioMixx is a product that contains, among other ingredients, Goldenseal, Echinacea, and Ginseng. Answer ¶ 12.
92. Respondents offer BioMixx for \$40.95 (3 lb. powder) and \$22.95 (1 lb. powder). Answer ¶ 12.
93. Respondents pay Universal Nutrition \$11.50 per unit for the 3 pound bottle of BioMixx. *Kinney Dep. Tr.* at 46, l. 8-16.
94. During 2008, Respondents paid Universal Nutrition approximately \$8,778 to manufacture 798 units of the 3 pound bottle of BioMixx. *Kinney Dep. Tr.* at 46, l. 8-16.

C. RESPONDENTS DIRECT CONSUMERS ON HOW TO TAKE THEIR PRODUCTS

95. Respondent James Feijo and his wife, Patricia Feijo, have been solely responsible for creating, drafting, and approving the directions for usage and the recommended usages of the DCO Products. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 16*).
96. There only has been one version of each of the DCO Products, and the information relating to the identity of each ingredient and the amount of each ingredient is contained on the labels for the DCO Products. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 17*).
97. Each Bio*Shark product label directs users to take 2-3 capsules three times a day or as directed by a physician or by a BioMolecular Nutrition health care professional. Answer ¶ 6; S.D. Ex. 18 (*P. Feijo Dep. Ex. 14 - Bio*Shark Labels at FTC-DCO 0065 - 0066, 0122 - 0123*).
98. Respondent James Feijo and his wife developed the suggested dosage for Bio*Shark, and the suggested dosage was based on their "reading and from experience." *P. Feijo Dep. Tr.* at 166, l. 19-25 - 167, l. 1-4.
99. Respondents' product label directs users to take 1-2 ounces of 7 Herb Formula with 2-4 ounces of hot or cold filtered or distilled water. The label further directs users to take 7 Herb Formula twice daily or as directed by a BioMolecular Nutrition Health care

professional. Answer ¶ 8; S.D. Ex. 19 (*P. Feijo Dep. Ex. 15 - 7 Herb Formula Labels at FTC-DCO 0064, 0124*).

100. Respondent James Feijo and his wife developed the suggested dosage for 7 Herb Formula. *P. Feijo Dep. Tr.* at 175, l. 13-16.
101. Respondents' GDU product label directs users to take 3-6 capsules 2 to 4 times per day or as directed by a physician or by a BioMolecular Nutrition health care professional. Answer ¶ 10; S.D. Ex. 20 (*P. Feijo Dep. Ex. 16 - GDU Caps Labels at FTC-DCO 0125 - 0126, 0067 - 0068*).
102. Respondent James Feijo and his wife developed the suggested dosage for GDU. *P. Feijo Dep. Tr.* at 192, l. 20-23.
103. Respondents' product label for BioMixx directs users to take five scoops daily. Answer ¶ 12; S.D. Ex. 21 (*P. Feijo Dep. Ex. 17 - BioMixx Labels at FTC-DCO 0127 - 0128*).

D. RESPONDENTS CLAIM THAT THEIR PRODUCTS CURE, MITIGATE, TREAT, OR PREVENT CANCER OR TUMORS.

104. DCO's Web site depicts pictures of the DCO Products next to the statement "Daniel Chapter One's Cancer Solutions." *P. Feijo Dep. Tr.* at 176, l. 20-25 - 177, l. 1-19; S.D. Ex. 7 (*J. Feijo Dep. Ex. 4 - Exhibits A - D to Administrative Complaint at FTC-DCO 0014*); S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility* ¶ 2).
105. On their Web site dc1pages.com, Respondents publish information about the DCO Products, including, but not limited to, the following:

Supporting Products

To enhance 7 Herb Formula's healing quantities Daniel Chapter One advises [sic] to get familiar with the supporting products below:

**CANCER
TREATMENT:**

**7Herb Formula
Bio*Shark
BioMixx
GDU Caps**

also

Ezekiel Oil
topically

S.D. Ex. 22 (*Pages from Respondents' Web site dclpages.com regarding "Supporting Products," dated April 2, 2008 at FTC-DCO 0190*).

106. In DCO's The Most Simple Guide to the Most Difficult Diseases: The Doctors' How-To Quick Reference Guide, DCO recommends the following products for cancer:

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

BioMixx™ (Boosts immune system)

4 - 5 scoops in soy milk
2 times daily

GDU Caps™

3 - 6 capsules
3 times daily; ½ hr.
BEFORE meals

S.D. Ex. 3 (M. Marino Dec. at ¶ 24, Exhibit N at FTC-DCO 2739).

107. Through the "Testimonies" tab on the danielchapterone.com Web site, Respondents provide the following titles for testimonials from their customers, who claim that DCO's Products were effective in the cure, mitigation, treatment, or prevention of cancer or tumors:

Cancer, Bladder (Drew Dellinger)
Cancer, Breast Mass (Deloris Winter)
Cancer, Cancerous Lung Tumor (Douglas Meeks)
Cancer, Cancerous Tumor (Joe Rocha)
Cancer, Leukemia, Brain Tumor (Tracey Kulikowski)
Cancer, Prostate (Jim Givens)
Cancer, Prostate Cancer (Joe)
Special Forces Officer Overcomes Prostate Cancer

Cancer, Prostate (Sherman “Red” Smith)
Cancer, Renal Cell (Jim Hatfield)
Cancer, Skin (Pastor Wayne Harms)
Cancer, Stage 4 (Joseph Jungles)

S.D. Ex. 23 (*Testimonials from Respondents’ Web site at FTC-DCO 0100 - 0119*).

108. In Respondents’ BioGuide: The BioMolecular Nutrition Guide to Natural Health 3, Respondents published the following testimonial from Tracey Kulikowski that states: “I had contracted leukemia and had three inoperable tumors. When I decided not to do chemotherapy or radiation, my father sent me **BIOMIXX** and **7 HERB FORMULA**. Each day as I took it and got it into my system more and more, the better I felt. Then I added Garlic, Siberian Ginseng, and **Bio*Shark**. I am now in complete remission. The cancer cell count has dropped, the doctors tell me. I had a tumor just above the brain stem in my brain that has completely disappeared. The tumor on my liver is shrinking and the tumor behind my heart has shrunk over 50%. . . . There are alternatives besides chemo and radiation!” S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3 at FTC-DCO 0353*)(emphasis in bold added).
109. Respondent James Feijo was responsible for putting together BioGuide 3. *J. Feijo Dep. Tr.* at 243, l. 12-21.
110. Patricia Feijo was responsible for writing the BioGuide. *P. Feijo Dep. Tr.* at 20, l. 15-25.
111. Bio*Shark, 7 Herb Formula, GDU, and BioMixx all appear in Respondents’ Cancer Newsletter, entitled How to Fight Cancer is Your Choice!!!. S.D. Ex. 10 (*DCO’s Cancer Newsletter, Millenium [sic] Edition, 2002 - “How to Fight Cancer is Your Choice!!! at FTC-DCO 0390 - 405*).
112. The Cancer Newsletter is “strictly all about the products for cancer.” *J. Feijo Dep. Tr.* at 143, l. 17-22.
113. Patricia Feijo was responsible for writing the Cancer Newsletter. *P. Feijo Dep. Tr.* at 26, l. 23-25 - 27, l. 1-19; 28, l. 5-10.
114. James and Patricia Feijo are not doctors. *P. Feijo Dep. Tr.* at 114, l. 15-16.
115. James Feijo never held a position where he had to use any skills involving medicine. *J. Feijo Dep. Tr.* at 47, l. 12-17.
116. James and Patricia Feijo are not research scientists. *P. Feijo Dep. Tr.* at 114, l. 16.
117. During the July 8, 2008 DCO Healthwatch radio program, James Feijo stated that “the FTC, the FDA, the Canadian Government don’t like the fact that we’ve told people about

what to do about natural methods of health and healing, especially cancer.” S.D. Ex. 3 (Marino Dec. at ¶ 22, Exhibit J at 7, l. 16-19 (FTC-DCO 0506)).

118. During the July 14, 2008 DCO Healthwatch radio program, Patricia Feijo stated the following: “And while the FTC does not want us saying that anything natural can be used to treat cancer and that nothing certainly can cure cancer, we know that the truth is different than what they want us to say. The truth is God has given us herbs in His creation and nutrients that can heal cancer, even cure cancer.” S.D. Ex. 3 (Marino Dec. at ¶ 22, Exhibit K at 4, l. 17-23 (FTC-DCO 0612)).

BioShark

119. Respondents publish information about Bio*Shark, including, but not limited to, the following:

PRODUCTS

Bio*Shark: Tumors & Cysts

Pure skeletal tissue of sharks which provides a protein that inhibits angiogenesis - the formation of new blood vessels. This can stop tumor growth, and halt the progression of eye diseases such as diabetic retinopathy and macular degeneration. . .

Answer ¶ 7; S.D. Ex. 8 (*Respondents’ Responses and Objections to Complaint Counsel’s Request for Admissions, Respondents’ Answer to Complaint Counsel’s Req. for Admis. Regarding Authenticity and Admissibility ¶ 1*); see also *J. Feijo Dep. Tr.* at 61, l. 11-14; 100, l. 24-25 - 101, l. 1; 107, l. 15-18; *P. Feijo Dep. Tr.* at 156, l. 14-25 - 157, l. 1-7.

120. Respondents publish information about Bio*Shark, including, but not limited to the following:

If you suffer from any type of cancer, Daniel Chapter One suggests taking this products [sic], to fight it: [emphasis added]

7*Herb Formula™ . . .

Bio*Shark™ . . . [emphasis added]

BioMixx™ . . .

GDU Caps™ . . .

[depiction of bottles of BioMixx, 7 Herb Formula, Bio*Shark, and GDU]

Daniel Chapter One’s Cancer solutions

To Buy the products click here

How to fight cancer is your choice! . . . [emphasis added]

Answer ¶ 9; S.D. Ex. 8 (*Respondents’ Responses and Objections to Complaint Counsel’s Request for Admissions, Respondents’ Answer to Complaint Counsel’s Req. for Admis. Regarding Authenticity and Admissibility ¶ 2*); see also *J. Feijo Dep. Tr.* at 61, l. 11-14; 100, l. 24-25 - 101, l.1; 110, l. 23-25 - 111, l. 13-20.

121. In their BioMolecular Nutrition Product Catalog, next to the pictures of the BioShark bottles, Respondents state that “Shark Cartilage protein inhibits angiogenesis, stops tumor growth, and halts eye disease.” S.D. Ex. 6 (*J. Feijo Dep. Ex. 6 - BioMolecular Nutrition Product Catalog* at FTC-DCO 0061).
122. On a prior Daniel Chapter One Web site, Respondents stated “**Bio*Shark Shark Cartilage** Stops tumor growth in its tracks.” S.D. Ex. 24 (*Respondents’ “Web Pages from prior Daniel Chapter One Web sites”* at FTC-DCO 2032) (emphasis in original).

7 Herb Formula

123. 7 Herb Formula is a product that can be used by a person who is suffering from cancer. *P. Feijo Dep. Tr.* at 171, l. 4-8.
124. Respondents publish information about 7 Herb Formula, including, but not limited to, the following:

INFO CENTER

Cancer News.

7 Herb Formula

- purifies the blood
- promotes cell repair
- **fights tumor formation** [emphasis in original]
- fights pathogenic bacteria

...

If you suffer from any type of cancer, Daniel Chapter One suggests taking this products [sic], to fight it: [emphasis added]

7*Herb Formula TM... [emphasis added]

Bio*Shark TM...

BioMixx TM...

GDU Caps TM...

[depiction of bottles of BioMixx, 7 Herb Formula, Bio*Shark, and GDU]

Daniel Chapter One’s Cancer solutions

To Buy the products click here

How to fight cancer is your choice!... [emphasis added]

Answer ¶ 9; S.D. Ex. 8 (*Respondents’ Responses and Objections to Complaint Counsel’s Request for Admissions, Respondents’ Answer to Complaint Counsel’s Req. for Admis. Regarding Authenticity and Admissibility* ¶ 2); see also *J. Feijo Dep. Tr.* at 60, l. 17-22; 101, l. 2-6; 110, l. 23-25; 111, l. 13-20.

125. Respondents publish information about 7 Herb Formula, including, but not limited to, the following:

7 Herb Formula battles cancer.

Tracey was given no hope!

The doctors had pretty much given up on Tracey. She had leukemia and tumors on the brain, behind the heart and on her liver. . .

This is Tracey's story in her own words as told in 1997: 'I had contracted leukemia and had three inoperable tumors. When I decided not to do chemotherapy or radiation, my father sent me Bio*Mixx and 7 Herb Formula. Each day as I took it and got it into my system more and more, the better I felt. Then I added Garlic Pur, Siberian Ginseng and BioShark.'" "I am now in complete remission. . .'

Answer ¶ 9; S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility* ¶ 2); see also *J. Feijo Dep. Tr.* at 60, l. 17-22; 101, l. 2-6; 110, l. 23-25; 111, l. 13-20.

126. In their BioMolecular Nutrition Product Catalog, next to the picture of the 7 Herb Formula bottle, Respondents state that the herbs in 7 Herb Formula "purify the blood and promote cell repair, clear skin, cleanse the liver, decrease cell mutation, fight pathogenic bacteria and **tumor formation.**" S.D. Ex. 6 (*J. Feijo Dep. Ex. 6 - BioMolecular Nutrition Product Catalog* at FTC-DCO 0061) (emphasis added).
127. In Respondents' BioGuide: The BioMolecular Nutrition Guide to Natural Health 3, Respondents published the following testimonial from Buzz McKay: "I had beam radiation for **prostate cancer**. I also took 7 Herb Formula, 6 ounces a day, and BioMixx; I never had a bad day, never felt sick. When my PSA went from 7.6 to 0.5 in the month after I finished radiation, my doctor was surprised. Several months later, it was down to 0.16! 7 Herb Formula is extremely well done - fantastic. I still take 2 ounces of **7 Herb Formula** every morning; I plan to stay on that forever! **I figure 6 ounces (2 morning, 2 afternoon, 2 evening) did such a good job fighting cancer**, 2 ounces is a good prophylaxis!" S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0330) (emphasis added).
128. On their Web sites danielchapterone.com and dc1pages.com, Respondents publish information about 7 Herb Formula, including, but not limited to, the following: "With Jim Feijo's addition to the [7 Herb] formula, we now have the most effective and potent formula available in the battle against tumors." S.D. Ex. 25 (*Pages from Respondents' Web sites dc1pages.com, dated April 2, 2008, at FTC-DCO 0142, and danielchapterone.com, dated November 7, 2008, at FTC-DCO 0493, regarding "I want the Original Essiac Formula, not some knock off brand"*).
129. On their Web site dc1pages.com, Respondents publish information about 7 Herb Formula, including, but not limited to, the following: "The 7 Herb Formula has been used by patients involved in clinical studies in cancer clinics and sold in doctor's offices around the country." S.D. Ex. 26 (*Pages from Respondents' Web site dc1pages.com regarding "I use Brand X," dated April 2, 2008, at FTC-DCO 0157*).

130. During the July 8, 2008 DCO Healthwatch radio program, James Feijo stated the following: “Here’s a testimony from Pastor Wayne Hamm, Henderson, Nevada. He had the Gulf War illness. He was told that he needed surgery and radiation treatment for his cancer, that he developed skin cancer because of the Gulf War, he was exposed out there. He didn’t take it. He decided to use Daniel Chapter One 7 Herb Formula, internally and topically. He also used Ezekiel Oil topically, BioShark and GDU. My skin cleared up after a few months in the late 1980s, early ‘99, I was told there was no trace of cancer. The FDA does not want us to let you know about this.” S.D. Ex. 3 (Marino Dec. at ¶ 22, Exhibit J at 104, l. 13-24 (FTC-DCO 0603)).
131. During the July 14, 2008 DCO Healthwatch radio program, Patricia Feijo stated that 7 Herb Formula is “great for cancer.” S.D. Ex. 3 (Marino Dec. at ¶ 22, Exhibit K at 83, l. 8-13 (FTC-DCO 0691)).

GDU

132. Respondents publish information about GDU, including, but not limited to, the following:

PRODUCTS

...

Contains natural proteolytic enzymes (from pineapple source bromelain) to help digest protein - even that of unwanted **tumors** and cysts. This formula also helps to relieve pain and heal inflammation. . . .and as an adjunct to **cancer** therapy. [emphasis added]

Answer ¶ 11; S.D. Ex. 8 (*Respondents’ Responses and Objections to Complaint Counsel’s Request for Admissions, Respondents’ Answer to Complaint Counsel’s Req. for Admis. Regarding Authenticity and Admissibility ¶ 3*); see also *J. Feijo Dep. Tr.* at 101, l. 7-9; 138 l. 22-25 - 139, l. 1-2; *P. Feijo Dep. Tr.* at 185, l. 24-25 - 186, l. 1-16.

133. Respondents publish information about GDU, including, but not limited to, the following:

If you suffer from any type of cancer, Daniel Chapter One suggests taking this products [sic], to fight it: [emphasis added]

7*Herb Formula™ . . .

Bio*Shark™ . . .

BioMixx™ . . .

GDU Caps™ . . . [emphasis added]

[depiction of bottles of BioMixx, 7 Herb Formula, Bio*Shark, and GDU]

Daniel Chapter One’s Cancer solutions

To Buy the products click here

How to fight cancer is your choice! . . . [emphasis added]

