

IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO. 12156/05

In the matter between:

TREATMENT ACTION CAMPAIGN	First Applicant
SOUTH AFRICAN MEDICAL ASSOCIATION	Second Applicant

and

MATTHIAS RATH	First Respondent
DR RATH HEALTH FOUNDATION AFRICA	Second Respondent
SAM MHLONGO	Third Respondent
DAVID RASNICK	Fourth Respondent
ALEXANDRA NIEDWIECKI	Fifth Respondent
ANTHONY BRINK	Sixth Respondent
TREATMENT INFORMATION GROUP	Seventh Respondent
GOVERNMENT OF THE RSA	Eighth Respondent
DIRECTOR-GENERAL OF HEALTH	Ninth Respondent
CHAIRPERSON, MEDICINES CONTROL COUNCIL	Tenth Respondent
REGISTRAR OF MEDICINES	Eleventh Respondent
MEC FOR HEALTH WESTERN CAPE	Twelfth Respondent

**FIRST APPLICANT'S REPLYING AFFIDAVIT
TO THE ANSWERING AFFIDAVITS OF THE
FIRST, SECOND AND FIFTH RESPONDENTS**

I, the undersigned

NATHAN GEFFEN

do hereby affirm oath and state:-

1. I am the co-ordinator of Policy Research and Communications in the employ of the first applicant. I deposed to the founding affidavit in this matter.
2. The facts set out in this affidavit are true and correct and are within my own knowledge unless I state otherwise, or the context indicates otherwise.
3. On behalf of the first applicant, I reply to the answering affidavits filed on behalf of the first, second and fifth respondents. I have been advised that where Dr Rath contradicts what I have said in my founding affidavit, it is not necessary that I in turn repeat what I said in my founding affidavit. I stand by what I said in my founding affidavit.

INTRODUCTION

4. I have been advised that a good deal of Dr Rath's affidavit is inadmissible on the grounds that it is irrelevant and/or hearsay and/or vexatious. In accordance with the procedure laid down by the Constitutional Court, I accordingly do not deal with those parts of the affidavit, which I identify below. I do not thereby admit their correctness.
5. Dr Rath purports to give evidence on history, international politics, the pharmaceutical industry, epidemiology, bio-ethics, clinical trials and HIV. He has provided no indication that he is qualified to give evidence on these matters, and in

fact does not assert that he is a qualified expert in these areas. I have been advised that his opinions with regard to these matters, however passionately he may hold them, are hearsay and inadmissible, and should be ignored.

6. The only relevant matter on which Dr Rath does claim to have expertise is in the field of nutrition. I am not an expert in nutrition. Dr Rath's claims to expertise in this area, and his evidence in this regard, are dealt with in the attached affidavit of Professor Nigel Rollins (**NG93**), chairman of the World Health Organisation Technical Advisory Group on Nutrition and HIV/AIDS and co-author of the Cochrane Review *Micronutrient supplementation in children and Adults with HIV infection*.
7. I do however wish to address the foundation of Dr Rath's claim to be able to give evidence as an expert. I make two submissions in that regard.
8. First, I submit that Dr Rath disqualifies himself as an expert by
 - 8.1. his extravagant and ad hominem attacks on those with whom he disagrees, asserting that they are dishonest or fraudulent or corrupt;
 - 8.2. his extravagant claims on his own behalf;
 - 8.3. his misrepresentation or misunderstanding of the scientific research on which he relies in support of his claims; and
 - 8.4. his inability or unwillingness to consider in an open-minded fashion the views of those who disagree with him, simply dismissing them on the basis of those persons' alleged associations or connections.

9. In this regard, I refer to:
- 9.1. the affidavit of Professor George Ellis (pages 2600-2609 of the record) with regard to the scientific method, and how one should assess the quality of scientific claims and the reliability of the person making them; and
- 9.2. the affidavit of Professor Rollins (NG93) with regard to the reliability of the specific claims made by Dr Rath.
10. I do not repeat here what is stated in those affidavits. This matter will be addressed in argument on behalf of the applicants. I deal below with the hyperbolic and extravagant nature of Dr Rath's claims about himself.
11. Secondly, I submit that Dr Rath's evidence and conduct show that he is a person who will misrepresent or mis-state the truth when he believes that this will advance his case. He can therefore not be relied upon to speak the truth. I deal with some examples of that in the course of this replying affidavit. Here I deal with two examples.

The defamation interdict

12. During 2005 the first applicant brought an application, case no 2807/05, against Dr Rath and the Dr Rath Health Foundation for an order interdicting them from publishing defamatory statements about the applicant, pending the determination of an action for damages. On 3 March 2006 the court delivered judgment. A copy

of the judgment is annexure NG89 to my reply to the answering affidavit of the sixth respondent and is at pages 2673 to 2688 of the record.

13. As appears from the judgment, the court interdicted the respondents from publishing any statement which alleges that the applicant
 - 13.1. is a front for pharmaceutical companies or the pharmaceutical industry, or the 'Trojan horse' of that industry, or the 'running dog' of that industry;
 - 13.2. is funded by pharmaceutical companies or the pharmaceutical industry;
 - 13.3. receives funds from pharmaceutical front organizations in return for promoting antiretroviral drugs;
 - 13.4. targets poor communities as a market for the drug industry in order to promote the interests of pharmaceutical industries.
14. These were all statements which had repeatedly been made by the respondents, and which they sought to justify in the application. The court found that the evidence showed that as a matter of deliberate policy the applicant had not received money from drug companies either directly or indirectly, and had implemented mechanisms to preclude such eventuality. The court found that save for speculation and conjecture, the respondents had produced no factual material to advance a sustainable defence in respect of those defamatory allegations.
15. The applicant also sought an order interdicting the respondents from publishing statements that the applicant organises rented crowds for the drug industry; that it pays people to participate in demonstrations; that it encourages people to take

toxic medicine which is harmful to them and will kill them; that it forces the government to spend millions of rand on toxic drugs and to spread disease and death among the people of South Africa; and that it destabilizes democracy in South Africa.

16. The court was not persuaded that these statements were defamatory or that the TAC had established a prima facie right to the relief sought in respect of those statements. Having regard to the importance of free expression, the court accordingly declined to grant an interdict in respect of these statements. The court made no finding on whether the statements were true, except to say *‘The suggestion that that TAC destabilises democracy is incapable of fair-minded support.... The tactics employed by the TAC may be somewhat boisterous and, at least in one instance, abusive towards the Minister of Health. Their conduct, however, does not threaten the security of the state and few, if any, right-thinking South Africans would see it in that light’*.

17. Immediately after that judgment had been given, the second respondent published a pamphlet entitled “High Court Ruling Exposes TAC!” I attach a copy of that pamphlet (**NG94**). It states inter alia:

“The Cape High Court found that the reason why the Treatment Action Campaign (TAC) has been fighting against the Dr Rath Health Foundation and its allies, the South African National Civics Organisation (SANCO), is because they want to spread disease and death among the people of Khayelitsha and South Africa as a whole.

“In the ruling of March 3 2006, the judges have affirmed that: ‘The TAC forces the government to spread disease and death among the people of South Africa’....

“Even the court exposed the TAC for what it is. The High Court looked behind its ‘Mother Theresa’ cover and identified its true business as an organization that, among other things – is spreading disease and death among the people.”

18. This pamphlet was distributed in large numbers in Khayelitsha and other parts of Cape Town.

19. In a further pamphlet (**NG95**), which is on the second respondent’s website at http://www.dr-rath-foundation.org.za/the_truth_about_tac/pdf-files/High_Court_20060309.pdf, the following is stated under the heading *“High Court Ruling Exposes TAC!”*:

Judges affirm: ‘TAC forces the government to spread disease and death among the people of South Africa!’

... After eight months of careful deliberations the High Court ruled that the majority of exposures about the TAC’s business are correct, and they will not be interdicted.... After this thorough deliberation, the judges now affirmed the most devastating exposures of the TAC, including that it helps promote disease and death among the people of South Africa....

For the first time in the history of Democratic South Africa the High Court found the following to be truthful statements about any organisation in South Africa:

‘The TAC organises rented crowds for the drug industry’...

'The TAC pays people to participate in its demonstrations' ...

'The TAC encourages people to take medicine which is harmful to them and will kill them'...

'The TAC forces the government to spend millions of Rand on toxic drugs'...

'The TAC forces the government to spread disease and death among the people of South Africa' ...

'The applicant destabilises democracy in South Africa.'

20. In fact, the judgment makes clear that the reason why the court did not grant an interdict in respect of these statements was not because it found them to be true, but because it was not persuaded they were defamatory. The only one of those statements on which the court made a finding of fact was "The applicant destabilizes democracy in South Africa". The court found that this statement was "incapable of fair-minded support".
21. This pamphlet was distributed in large numbers in Khayelitsha and other parts of Cape Town. Materially identical or similar versions were distributed in different publications of the First and Second Respondent. It still appears on his website. A version of the third page of the pamphlet, which contains a subset of the claims above, was distributed at the International AIDS Conference in Toronto in 2006 which I attended.
22. I attach (**NG96**) a German version of this pamphlet. This was distributed by Dr Rath and his associates in Germany.

23. Dr Rath personally associated himself with the statements in these pamphlets. In NG95 he stated the following:

“By unmasking yet another organization that helps to spread disease and death across the country we have made an important contribution to the people of Africa and to the liberation of Africa from debilitating economic dependency. The courageous and historic verdict of the High Court of Cape Town encourages the people and government of South Africa to take the necessary action and rid the country of this and other undue burdens.”

24. This dishonesty is carried through into Dr Rath’s answering affidavit in this case.
25. In paragraph 42. Dr Rath says that this Court *“stated we could not – yet – conclusively prove that the ‘TAC’ operates as a front for the pharmaceutical industry.”* As I have pointed out, what the Court in fact stated was “The evidence shows that as a matter of deliberate policy the applicant has not received money from drug companies either directly or indirectly and it has implemented mechanisms to preclude any such eventuality.”
26. Dr Rath also asserts there that the court *“did not object”* to the statements about the nature of the activities of the TAC. This is a deliberately misleading and dishonest account of the judgment of the court.
27. I respectfully submit that this sustained and patent dishonesty demonstrates that a court can simply not place any reliance on what Dr Rath says. He is demonstrably not an honest person.

The condonation application

28. Dr Rath's dishonesty, including under oath, was also demonstrated in the condonation application in this matter.
29. In that application, Dr Rath made an affidavit which purported to explain why he had delayed for more than a year in filing his answering affidavit. The honesty of that explanation was placed in issue. In his judgment (**NG97**), Mr Justice Fourie found that the explanation "does not bear scrutiny".

Hyperbolic and extravagant claims about himself and his importance

30. Dr Rath's published claims about himself also throw doubt upon his reliability as a scientist, and as a person capable of giving reliable evidence about these matters. I refer to only a few.
31. In his list of publications, Dr Rath refers to a self-published book "Why Animals Don't Get Heart Attacks – But People Do!" On the outside cover of his book, Dr Rath states:

"This book documents one of the most significant medical breakthroughs ever made in human health".

32. I attach (**NG98**) pages 272 to 281 of this book. This is said to be the text of a lecture which Dr Rath gave at Stanford University in 2002. At page 272 Dr Rath says the following of his lecture:

“Now, the growing acceptance of the scurvy-heart disease connection can no longer be ignored. My lecture at Stanford University was a historic event because it broke the stranglehold of the pharmaceutical cartel on established medical institutions. The doctors who organised the event deserve some credit for opening these closely guarded gates of medicine.

“Twenty minutes of my lecture felt like an earthquake to the house of cards that is pharmaceutical cardiology.”

33. At page 281, Dr Rath quotes himself as having replied as follows, plainly referring to his own research, to a professor of cardiology who referred to studies that show little or no effect of vitamins on cardiovascular disease:

“... the greatest study ever conducted on Planet Earth has revealed that in billions of animals, cardiovascular disease is essentially unknown because they produce their own vitamin C.”

34. As I have stated, I am not an expert on nutrition and health. I ask that in assessing these claims which Dr Rath makes about himself and his work, the court have regard to the opinion of Professor Rollins, who is an internationally recognised expert and whose field of research and study, over an extended period, has been the impact of nutrition, including vitamins, on disease in infants and children. All I will say is that if it is true, as Dr Rath claims, that his work is “the greatest study ever conducted on Planet Earth”, it is quite remarkable that he has been unable to produce a single independent scientist to say so. He has to say it himself.

THE ISSUES BEFORE THE COURT

35. Notwithstanding the wide-ranging papers which have been filed, it appears from paragraph 4 of Dr Rath's affidavit that it is common cause that there are in fact only three issues which have to be determined with regard to the relief sought against the Rath respondents:

35.1. whether they distribute unregistered medicines;

35.2. whether they have conducted unauthorised clinical trials in South Africa;
and

35.3. whether they publish false or misleading advertisements concerning vitamins, multi-vitamins, and their products in respect of HIV/AIDS treatment.

36. The overwhelming bulk of the affidavit of Dr Rath, and the annexures thereto, deal with matters which are entirely irrelevant to the determination of those three issues. I have been advised that it is not necessary or appropriate for me to address this superfluous and irrelevant matter, and I do not do so.

37. Against that background, I now deal seriatim with the affidavit of Dr Rath.

AFFIDAVIT OF DR MATTHIAS WILFRED RATH

Ad Paragraph 3

38. I deny that the contents of the affidavit are true.

Ad Paragraph 7

39. This is a matter of law which will be addressed in argument.

Ad Paragraph 8

40. This is in fact an admission that the Rath respondents sell their products, within the meaning of the Act. I deny that the statutory definition of “sell” is unconstitutional.

Ad Paragraph 9

41. This is a matter of law which will be addressed in argument. Dr Rath here admits the Rath respondents distribute Vitacell ‘in large quantities’. It will be submitted that the distribution amounts to sale within the meaning of the Act.

Ad Paragraph 10

42. The applicants do not allege the Rath respondents’ products are categorised as drugs in other countries. Whether or not that is so, is not relevant to the lawfulness of their conduct in South Africa.

Ad Paragraph 11 and 12

43. I submit that the evidence shows that the first and second respondents are indeed responsible for the activities of the clinics in Khayelitsha, and they are indeed clinics. SANCO acts as distribution agent for the Rath products. The evidence also shows the direct involvement of the first and second respondents in the conducting of a clinical trial. I say this for the following reasons.

44. People with AIDS who attend these facilities are given the first and second respondents’ products. These products are donated by the first and second respondents. This is common cause.

45. Annexure FV13, attached to NG4 to my founding affidavit, is a publication of the second respondent. It is signed by Dr Rath. It says

“This new scientific approach has now been confirmed in a clinical study conducted by the Rath Foundation.” and

“We conducted a clinical pilot study in HIV-positive patients with advanced AIDS” (my emphasis) and

“The scientific responsibility of these results are shared by Alexander Niedzwiecki Ph.D (Dr Rath Health Foundation USA), David Rasnick Ph.D (Dr Rath Health Foundation South Africa), Sam Mhlongo MD, (Medunsa SA) and Matthias Rath, MD.”

46. A materially identical claim is made repeatedly in the first and second respondents' advertisements eg. in annexures NG22, NG23 and NG27 to the founding affidavit. The last of these is attached to Dr Rath's answering affidavit as MWR 123. Dr Rath states at paragraph 289 of his affidavit that MWR 123, which is an advertisement, is handed out to patients.

47. A pamphlet on the second respondent's website titled “World's first scientific and clinical evidence that micronutrients alone dramatically improve clinical conditions and immune function of HIV/AIDS patients, increasing white blood cells, lymphocytes, monocytes, T-cells and CD4 counts” (NG97), states

“We conducted a clinical pilot study in HIV-positive patients with advanced AIDS. The goal of the study was to show that vitamins and other micronutrients alone reverse the course of AIDS, even in its advanced stage.

Thus, it was essential that none of the patients had received any ARV drugs before or during this nutritional programme.” [my emphasis]

48. Claims which are materially identical to the above are made in the following:
- 48.1. A pamphlet on the second respondent's website, titled “Micronutrients Can Reverse the Course of AIDS — Vitamin Project” (**NG99**).
- 48.2. A pamphlet on the second respondent's website titled “Call to the People and Governments of the World Stop AIDS Genocide By the Drug Cartel” (**NG100**).
49. I attach (**NG101**) page 8 of a pamphlet distributed by the second respondent, in which a Celiwe Jikolo testifies that, in effect, she came to what the pamphlet terms a “vitamin distribution centre” in Gugulethu via Nobantu Mkubekeli a caregiver and counsellor with the Dr Rath Health Foundation.
50. In the advertisements and newsletters of the first and second respondents that deal with the distribution of vitamins in communities across the country and that appear in this application, the name of the first respondent, is consistently associated with material supporting the distribution of medicines in these communities. Many of these advertisements are distributed in the areas where these clinics operate.
51. In NG47 to the founding affidavit, an interview with Dr Rath on Radio 786 on 19 April 2005, he says

“All we are doing is, we are helping the people in the townships by distributing vitamins and we have been doing blood tests how the white blood cells are before they take the vitamins and then how they are after that.” (page 19 - my emphasis)

52. In NG48, an interview on P4 Radio, Dr Rath states

“And we have just completed a clinical pilot study with the nutritional programme, so we are not treating patients but we are giving them nutrients, micro-nutrients, vitamins and other essential nutrients. And we have showed results both in the blood, defence cells' level, that is the white blood cells, lymphocyte, CD cells.” (page 3 - my emphasis)

“And above all the clinical success documents that we write [sic – “that we are right”] and we've brought one of the patients, in fact the first patient, Marietta, tonight with us here.” (page 3) [This is the late Marietta Ndziba, referred to at paragraph 128 in the founding affidavit.]

53. In the interview in Die Burger attached to the founding affidavit as NG49, and referred to in paragraph 107 in the founding affidavit, Dr Rath talks in the first person plural about activities conducted in Khayelitsha.

54. Annexure MWR4 to Dr Rath's affidavit states at its 6th page

“In Khayelitsha, a suburb of Cape Town, we conducted a nutrition program in HIV-positive patients with advanced AIDS”. These patients were not taking any ARV drugs. The goal of this programme was to show that a combination of vitamins and other micronutrients could improve immune system function, even in the advanced stages of AIDS.” [my emphasis]

and

“Blood tests and health evaluations were performed on patients at the beginning and after the first and second months of the nutrient programme.”

55. An affidavit by Dr Rath placed before the Cape High Court in case 2807/05 states

*“... I would like to bring to the attention of the High Court the Public Health Notice published on May 6, 2005, in the New York Times entitled “Stop AIDS Genocide by the Drug Cartel”. This public health notice summarizes the encouraging results of a pilot nutrient programme with AIDS patients **we conducted in Khayelitsha, Cape Town.**” [my emphasis]*

56. I attach a copy the relevant pages of the affidavit (**NG102**).

57. In a second affidavit in that case (an extract of which is **NG103**), Dr Rath states

*“The ability of vitamins and other micronutrients to reverse the course of AIDS – as documented in **our** pilot nutrient programme in Khayelitsha”*
(my emphasis)

58. Annexures “NG5”, “NG6”, “NG9”, “NG10” and “NG11” to my founding affidavit, as well as the affidavit of Dora Dzena which is annexed to Dr Rath’s affidavit, clearly indicate that members of the community associate the first and second respondents with the clinics in question.

59. On the front page of the second respondent's website is a section titled "The Patients Talk". It contains video clips from a press conference held by the first and second respondents on 15 June 2005 at the second respondent's offices. In the video clips Dr Rath, one of his employees and several patients describe the programme in Khayelitsha. Dr Rath states *"Today I am not the main player of this press conference. Today is the day when the patients, the people **we** have helped, will speak."* He introduces a person named Ndibongo who the First Respondent explains "is the representative of SANCO Khayelitsha. He may from the community level add his insight into what **we** are doing and trying to accomplish **together.**" [my emphasis]
60. The patients make many references to Dr Rath at this press conference. For example, a woman named Busisiwe states "I am one of the patients one of the people who have been helped by Dr. Rath...I started to be myself again using the vitamins that I got from the Dr. Rath Foundation."
61. In the founding affidavit, I described at paragraph 128 the late Marietta Ndziba's relationship with the second respondent. Dr Rath has not disputed that Ms Ndziba was the head of a support group of the second respondent in Gugulethu. In the video clip of Ms Ndziba referred to in paragraph 128, which was removed from the second respondent's website following the lodging of this application, she explains how she was introduced to Dr Rath's vitamin products. She states "'I just thank God that he brings Dr Rath here in South Africa to help our lives."
62. I also refer to paragraphs 94, 98, 99, 100, 101, 104, 106 and 107 of the founding affidavit. These paragraphs also refer to statements by Dr Rath which admit to running what he calls a "clinical pilot study".
63. What these documents show is that up till now, Dr Rath and the second respondent have consistently claimed credit for the clinics, and have consistently

asserted that they conducted the “clinical pilot study”. Now that the legality of these activities is in issue, Dr Rath attempts to pass these activities off as those of SANCO, and to deny that he and the second respondent have conducted clinical trials – all they have done, they now say, is provide SANCO with vitamins which it has distributed. I submit that this again shows Dr Rath’s willingness to be dishonest when he believes it will further his cause.

Ad Paragraph 13

64. The Applicants do not portray themselves as anything other than what they are. The comparison of the distribution of medicines which have been approved by the regulatory body with criminal experiments by Nazi scientists is quite extraordinary, and another example of Dr Rath’s hyperbolic and extravagant statements.

Ad Paragraph 14

65. The advertisements were placed as part of a programme to provide micronutrients as an alternative treatment to antiretrovirals for people with AIDS in townships in Cape Town and elsewhere. While they do not mention the specific Rath products, these advertisements brand Matthias Rath and his activities. In the context in which they are placed they are associated with his products. In addition, specific micronutrients, such as vitamins B and C are referred to in the advertisements. I refer for example to the advertisement which is “NG27” to the founding affidavit, which also invites readers to go to the website.

Ad Paragraph 15

66. It is not true that Dr Rath’s “approach is in line with the national strategic plan to combat AIDS developed by the South African government.”

67. The HIV & AIDS and STI Strategic Plan for South Africa 2007-2011 (NSP) is the government’s national strategic plan for responding to the HIV/AIDS epidemic. It is

diametrically opposite to Dr Rath's approach. It nowhere suggests that multivitamin or micronutrient supplements are a treatment for AIDS. It consistently proposes the rollout of antiretroviral treatment. It contains concrete targets for scaling up antiretroviral treatment access as well as nutritional interventions, which the applicants support. Because the plan is voluminous I have not annexed it. I will make it available to the court and the respondents upon request.

68. I am very familiar with the NSP's contents because I provided feedback on the draft costing annexure, for which I am acknowledged in the document. I and other TAC members gave extensive input to the development of the NSP.
69. Another relevant policy document, referred to in the NSP and still government policy, is the Operational Plan for Comprehensive HIV and AIDS Care, Management and Treatment for South Africa. This is annexure A to the affidavit of Professor Househam on behalf of the twelfth respondent. It too contains targets for the scaling up of antiretroviral treatment. It too does not suggest that micronutrient or multivitamin supplements are a treatment for HIV.

Ad Paragraph 16

70. The applicants do not oppose all micronutrient supplement interventions. This is clear from paragraphs 44.2, 44.3, 45.13 and 45.14 of the founding affidavit. As appears from the affidavit of Professor Rollins, they are however not an alternative to antiretrovirals, and there is no evidence that they reverse the disease defining symptoms of AIDS.
71. The applicants have never asserted that antiretrovirals are a cure for AIDS. They are not a cure for AIDS. They are a chronic lifelong treatment for AIDS. This is explained at paragraph 15 of Dr Francois Venter's affidavit (NG4) and paragraphs 44.1 and 45.5 of the founding affidavit. Dr Rath gives a great deal of attention to disproving a claim the Applicants do not make.

Ad paragraph 17

72. Dr Rath's attempt to create the impression that he only runs charitable non-profit institutions, making his products freely available without concern for personal gain, should be treated with scepticism.
73. While some of his products are distributed freely for marketing or other purposes, he nevertheless sells products for money. He sells on the internet some of the products described in the record. In paragraphs 14 and 15 of NG61, it is explained that Dr Rath sold Vitacor Plus, Epican Forte and Lysin C Drink Mix on the Internet for \$29.95 (approximately R210), \$39.95 and \$26.95 respectively. This is the price per patient per month. I attach (**NG104**) the advertisements for these products.
74. These are high prices for multivitamins. A colleague and I compared the price of Vitacor Plus to similar brands available in South Africa. On 3 July 2007, the price of Centrum 30 at a pharmacy in Darling Street, Cape Town was R80.35. The price of Centrum 60 at the same pharmacy was R98.15. This is a month's supply of one of the more expensive brands in South Africa. They are considerably less expensive than Vitacor Plus, even if adjustments are made for dosage differences.
75. The final paragraph on page 3 of the officially translated judgment of the Magistrate's Court Tiergarten in Berlin, which is NG44 to my founding affidavit, states "It can be assumed that the defendant, who is very active as a scientist and entrepreneur, possesses a considerably above average income and assets and that his comprehensive activities generate a monthly income of at least 15 000.00 Euro." The defendant referred to is Dr Rath. At the current exchange rate, this amounts to a monthly income of more than R140 000.

76. I attach (**NG105**) a sworn translation of the Magistrate's notes and court order of the Hamburg Court case, as well as the original German, that Dr Rath discusses extensively in his affidavit. The order compels Dr Rath to pay a fine of 33,000 Euros. These fines are linked to income and a fine of this size indicates a substantial income.
77. I attach (**NG106**) minutes of a meeting given to me by a former employee of the Second Respondent. The minutes show the following:
- 77.1. The meeting is between the First Respondent and three other people, including the head of the Medical Research Council, Dr Anthony MBewu and a representative of a marketing company, Denovo. The meeting took place on 12/3/2004.
- 77.2. Dr Rath is recorded as stating "WE ARE ECONOMICALLY INDEPENDENT 60 MILLION EURO / 10 MILLION PROFIT".
78. Attached to the founding affidavit were full page advertisements promoting Dr Rath in newspapers across the world. Advertisements of this kind, placed in newspapers such as the New York Times and International Herald Tribune, cost an enormous amount.
79. Dr Rath does not provide any evidence that all of his businesses are non-profit. No balance sheets, income or expense statements or any type of audited statement with regard to the First Respondent appears to be publicly available. One simply can not know, because he does not disclose, what income is generated from sales of his products, However, the known facts and the pattern of conduct are consistent with an entrepreneur running a very profitable business, not a non-profit activity.

Ad paragraph 18

80. The allegations in this paragraph are absurd, and I deny them.

Ad paragraphs 19-30

81. The reference in this application to litigation in other countries, and to criticism in South Africa and other countries of Dr Rath's activities, is not a "centre piece" of any "collateral strategy". Its purpose is to show Dr Rath's consistent and persistent pattern of conduct here and in other countries, despite what authoritative bodies have said about his activities. They are dealt with in paragraph 86, which forms less than three pages of a 68-page founding affidavit.

82. Dr Rath seeks to portray what happened in Hamburg as a vindication of his activities. Nothing could be further from the truth. In fact, as demonstrated in annexure NG104, the magistrate's notes and court order in this case, Dr Rath was obliged to make a donation to a children's charity in order to settle the case against him. The amount he was required to pay was 33 000 Euro, or more than R300 000 at today's exchange rate. This does not suggest a trivial or technical offence.

83. Fourie J (NG97) found that Dr Rath's explanation (repeated in paragraph 23) of the reason for his delay in filing affidavits did not bear scrutiny.

84. The applicants have never had, and still do not have, any intention to settle the claim against Dr Rath. Our conduct in this litigation demonstrates this more clearly than words. We did hope that, in the light of the shift in the relationship between the TAC and the government, we would be able to settle the claim against the government respondents, on the basis that they would agree to take reasonable measures to enforce the law. Regrettably, this has not happened.

Ad Paragraphs 36-39

85. I have been advised that it is not necessary to reply to these paragraphs, which consist of irrelevant and inadmissible opinion evidence.
86. I do however attach an affidavit (**NG107**) by Dr Marcia Angell, on whose book Dr Rath relies in support of his opinions. Dr Angell states that she has viewed annexure NG24 to my founding affidavit, which makes claims to the effect that micronutrients are a treatment for AIDS. She states that if these substances have not been tested and approved for this purpose by a medicines regulatory body, then in her opinion this is an unethical advertisement.
87. While she remains highly critical of the pharmaceutical industry, she believes that antiretroviral medicines are of the greatest importance in treating people with HIV/AIDS and need to be made more widely available. Indeed, it is part of her criticism of the pharmaceutical industry that its pricing and marketing practices prevent such essential medicines being made more widely available. She states that she finds it objectionable that Dr Rath relies on her work to support his claims and his activities, and she does not in any way endorse or support them.

Ad Paragraph 40-42

88. I have dealt from paragraph 12 with the judgment given by this court in case no 2807/2005. The court rejected Dr Rath's claims about the TAC's alleged sponsorship by pharmaceutical companies as unsubstantiated by evidence, and contradicted by the evidence which the TAC had placed before the court. It interdicted him from publishing them. These paragraphs are simply a thinly disguised and again unsubstantiated repetition of those claims.

89. I have previously pointed out that Dr Rath's account in paragraph 42 of the court's findings is deliberately misleading and dishonest.
90. For the record, I repeat that the TAC does not have any financial connections whatsoever with the pharmaceutical industry, and we have actively campaigned against some of the practices of this industry. The Cape High Court Judgment affirmed this. This very case is also an example of how the TAC tackles unethical pharmaceutical practices. I refer to my Replying Affidavit to the Sixth to Twelfth Respondents.

Ad paragraph 43

91. The statements in this paragraph are inadmissible hearsay, inadmissible opinion evidence, and irrelevant to the matters before this court. The nature and activities of SAMA are described in the founding papers.

Ad paragraph 44

92. The statements in this paragraph are hearsay, inadmissible opinion evidence and irrelevant to the matters before this court.
93. The matters with which the ASA deals are wide-ranging. It makes rulings on the honesty of advertising in very many areas of commercial activity. I attach **(NG108)** a list of twenty recent matters on which it has ruled.
94. I further attach **(NG109)** a list of matters on which it has ruled relating to the pharmaceutical industry. As can be seen, it frequently rules against members of the pharmaceutical industry.

95. According to its website, the following organisations are members of the ASA: Association for Communication and Advertising, Association of Collective Investments (ACI), Cinemark (Pty) Ltd, Cosmetic Toiletry & Fragrance Association of South Africa, Furniture Traders' Association of South Africa, Health Products Association of Southern Africa, Hospital Association of South Africa, Industry Association for Responsible Alcohol Use, National Association of Broadcasters of South Africa, Out of Home Media, Pet Food Institute of Southern Africa, The Pharmaceutical Manufacturers' Association of South Africa, Print Media SA, Printing Industries Federation of South Africa, Retail Motor Industry Organisation, South African Optometric Association, Timeshare Institute of Southern Africa.
96. The Health Products Association of Southern Africa, which is one of the members of the ASA, is an umbrella organisation for the types of products such as those sold by the second respondent. This does not make the ASA a front for organisations producing products such as those the second respondent sells.
97. The ASA also has statutory duties. Advertising on electronic broadcast media is subject to the Independent Broadcasting Authority Act (Act 194 of 1993). In terms of that Act, all electronic broadcasters must adhere to the ASA Code as determined and administered by the ASA.

Ad paragraph 45

98. The contents of this paragraph are again inadmissible hearsay and opinion evidence. Instead of criticising on scientific grounds the scientific quality of Dr Venter's evidence, Dr Rath launches an extravagant ad hominem attack. For the reasons explained by Professor Ellis, this shows that Dr Rath is not in a position to give reliable expert evidence on scientific matters.

Ad paragraph 46

99. Again, this paragraph is indicative of a lack of balance on the part of Dr Rath. It is entirely irrelevant to the issue. Professor Dorrington has not been the chair of the UCT Retirement Fund for a number of years, and in any event it is unclear how his unpaid chairmanship of a fund that had shares in (amongst others) pharmaceutical companies among many others negates the quality of his evidence.
100. I refer in this regard to Professor Dorrington's affidavit in response to Anthony Brink's affidavit, which is annexure NG84 to my replying affidavit to the sixth to twelfth respondents.

Ad paragraphs 47-57

101. These paragraphs are tendentious and inadmissible opinion evidence, and irrelevant to the matters before the court.

Ad paragraph 58-59

102. The package inserts shows that the FDA has approved these antiretroviral medicines for treatment for HIV-1 infection, and that they are not a cure for the infection. That is and always has been the position of the applicants. The applicants have never asserted that antiretrovirals are a cure for AIDS. They are not a cure for AIDS. They are a chronic lifelong treatment for AIDS. They have been scientifically proved to be effective for that purpose.
103. Dr Rath, on the other hand, claims that his products “reverse the course of AIDS”, even though that has never been shown in any scientific test. No regulatory body has ever approved his products for either treating or reversing the course of AIDS.

104. It is clear from paragraph 59 that Dr Rath either does not understand or wilfully attempts to obscure the difference between curing AIDS – which antiretrovirals can not do – and treating AIDS, which they do, and which is borne out by the FDA-approved package inserts.

Ad paragraph 60-66

105. Again, Dr Rath presents no scientific evidence to show that the medicines should not have been registered for these purposes by the regulatory body. He does not show why the package insert claims are deceptive, and produces no scientific evidence to support his claims. The package inserts have to be approved, and plainly have been approved, by the regulatory body as accurate and reliable.

Ad paragraphs 67-85

106. The contents of these paragraphs are hearsay, inadmissible opinion evidence, and irrelevant to the issues before this court.

Ad paragraphs 85-109

107. To the extent that the contents of these paragraphs are relevant, they are dealt with in the affidavit of Professor Rollins. Professor Rollins deals directly with the position of the WHO, to which he is an expert adviser.
108. Even here, however, Dr Rath does not attempt to justify the claim in his promotional material that micronutrients reverse the course of AIDS. The most ambitious claim he makes (unsupported by evidence) is that micronutrients are a means “to halt progression and even reverse the symptoms of the AIDS disease”.
109. I do not know on what basis Dr Rath asserts that the applicants seek to prevent the people of South Africa from taking advantage of the benefits of NAC. What we

do, is insist that the distribution of NAC should be within the law. Dr Rath appears to take the view that because in his opinion this is an excellent medicine, he is entitled to distribute it contrary to the law as laid down in the Medicines Act.

Ad paragraphs 110-233

110. As I have pointed out above, it is common cause that there are in fact only three issues which have to be determined with regard to the relief sought against the Rath respondents:

110.1. whether they distribute unregistered medicines;

110.2. whether they have conducted unauthorised clinical trials in South Africa;
and

110.3. whether they publish false or misleading advertisements concerning vitamins, multi-vitamins, and their products in respect of HIV/AIDS treatment.

111. In other words, the question is whether the Rath respondents have done what the applicants allege, and if so, whether those activities are unlawful.

112. These paragraphs of Dr Rath's affidavit purport to deal with the following matters:

112.1. The history of the pharmaceutical industry (para 115-137)

- 112.2. The pharmaceutical industry behind the medical experiments in Nazi concentration camps (para 138-256)
- 112.3. The Nazi concentration camps as testing grounds for the precursor drugs of ARV's (para 157-168)
- 112.4. The influence of the pharmaceutical industry in South Africa (para 169-180)
- 112.5. Apartheid legislation protecting the pharmaceutical industry in South Africa (para 181-203)
- 112.6. The application uncovers the stakeholders of some of the pharmaceutical interests in South Africa (para 204-209)
- 112.7. The missing link: the historical parallels of the TAC (para 210-227)
- 112.8. The political roles pursued by the applicants with this application (para 228-229)
113. None of this has any bearing whatsoever on whether the Rath respondents have carried on the activities alleged by the applicants, and if so, whether those activities are unlawful.
114. I have been advised and respectfully submit that these sections of Dr Rath's affidavit are irrelevant and hearsay. Parts of them are vexatious in the extreme. They demonstrate that Dr Rath is convinced that there is an enormous

international conspiracy, with the pharmaceutical companies at its centre. Whether that is so is irrelevant to the matters to be decided in this case, which concerns the lawfulness of the activities of the Rath respondents. I do not admit what Dr Rath says, but have been advised that it is neither necessary nor appropriate that I respond to these sections of the affidavit.

115. There is however one matter which I wish to raise, because it demonstrates Dr Rath's cavalier approach to what he says under oath, in his attempt to discredit those whom he identifies as his opponents. Dr Rath says under oath that Mr Berger, Dr Boule, Professor Hussey and Professor Ehrlich are "foreign nationals". I know all of them. They are all South Africans. And I do not live in Tamboerskloof, although the relevance of where I live escapes me.

Ad paragraphs 230-233

116. Paragraph 232 is again generalised inadmissible opinion evidence which is irrelevant to the matters before the court. There is indeed a need for non-profit organisations, of which the TAC is one. I have already dealt with the claim that Dr Rath's activities are non-profit.

Ad paragraphs 234-247

117. Professor Rollins deals in his affidavit with Dr Rath's claim to scientific expertise, and with the relevance of vitamins to health. The other matters dealt with in these paragraphs are not relevant to the issues before the court. I do not admit the correctness of what Dr Rath says, but have been advised that it is not necessary or appropriate for me to traverse these matters.

Ad paragraph 248-260

118. I have dealt above with the financial aspects of Dr Rath's enterprises.

119. Annexure MWR 121 does not confirm the non-profit nature of Dr Rath's work. He provides no information about his personal remuneration, or details about the structure of his business enterprises, income or expenses.
120. I have been advised that it is not necessary for me to respond to the abusive statements about the TAC, which are Dr Rath's opinions unsupported by any proper evidence placed before this court. The nature of the TAC was described in my founding affidavit.
121. I note that Dr Rath again repeats the claims about the TAC which he persistently and dishonestly asserts were "affirmed" by this court.

Ad paragraphs 261-271

122. The contents of these paragraphs are not relevant to the matters in issue in this case, except with regard to claims made about micronutrients. In that regard I refer to the affidavit of Professor Rollins.

Ad paragraph 272-284

123. These paragraphs too are irrelevant. They are simply part of Dr Rath's conspiracy theories, and are unsupported by any evidence. The claim that pharmaceutical interests control the European Union is typical of Dr Rath's extravagant conspiracy theories.

Ad paragraphs 285

124. I deny that these activities are educational. They are in fact promotional.

Ad paragraph 286-288

125. Having regard to the content of products concerned and the claims which are made for them, these paragraphs prove that the second respondent contravened the Medicines Act.

Ad paragraph 289

126. This paragraph is an admission of the role of the second respondent in operating clinics in the Republic. I have previously dealt with the attempt by Dr Rath to disclaim his role in these facilities.

127. MWR 123 is an advertisement by the first and second respondents that appears to be identical to NG27. Dr Rath's admission that this pamphlet is handed to patients participating in the programme is unequivocal evidence of the medical claims that are made to patients at the Rath facilities where his micronutrient products are handed out. This advertisement makes several medical claims including:

"World's first scientific and clinical evidence that micronutrients alone dramatically improve clinical conditions and immune function of HIV/AIDS patients, increasing white blood cells, lymphocytes, monocytes, T-cells and CD4 counts."

and

"We conducted a clinical pilot study in HIV-positive patients with advanced AIDS. The goal of the study was to show that vitamins and other micronutrients alone reverse the course of AIDS, even in its advanced stage."

128. Those medical claims are underpinned by detailed descriptions, blood result statistics and photos purporting to show patients' health improving on the Rath programme.

129. Annexure MWR 124 is dated May 2005, i.e. after a press conference held on 19 April 2005 had been held by the applicants exposing the activities of the first and second respondents, and after the events referred to in the affidavits of Ntsholo (NG5), Ngqase (NG6), Ngubo (NG7), Velem (NG8) and Sigebenga (NG9). This appears to be an inadequate post hoc attempt to correct the unlawfulness of these activities.

Ad paragraph 290-291

130. Dr Rath's account of what was done, and by whom, is on his own version hearsay. However, the contents of this paragraph and Figure 7 in MWR 6 are further proof that a clinical trial was carried out.

131. Unauthorised clinical trials cannot conceivably be "highly ethical".

Ad paragraph 292

132. I deny the contents of this paragraph. Dr Rath offers no evidence to support these allegations. He merely asserts them.

133. The TAC has campaigned for an end to the activities of Dr Rath and his agents that are described in the Notice of Motion of this application because we believe they are unlawful. In so doing we have used the instruments of South Africa's Constitution and democracy at our disposal, as is our right.

134. We have distributed pamphlets, held demonstrations, held meetings and released statements discouraging people from participating in Dr Rath's programme because his programme is a danger to public health.

135. We have lodged complaints against Dr Rath and his agents with various authorities *inter alia* the Health Professions Council of South Africa, the National Department of Health, the Medicines Control Council, the Western Cape Provincial Department of Health.
136. We have not spread rumours that vitamins kill. We have warned about the possible deleterious, even fatal, health consequences of taking untested vitamins in high doses or taking micronutrients as a substitute for antiretroviral treatment. We have produced fact sheets and articles for newspapers and our magazines that explain, based on science, aspects of nutrition and HIV. We have frequently stated that we support the government's distribution of multivitamin supplements in the public health system to people with HIV.
137. I do not know what Dr Rath means when he accuses us of trying to seize his vitamins. I believe his unregistered medicines should be seized, by the appropriate authorities using the appropriate legal mechanisms. But neither I nor TAC have tried to seize his vitamins.

Ad paragraph 293

138. This paragraph is defamatory and vexatious. I deny its contents. Dr Rath's cavalier attitude as to what he says under oath is illustrated by the fact that he does not even attempt to justify the claim that the TAC's activities are violent.

Ad paragraphs 294-298

139. This is further proof that a clinical trial was conducted. The affidavit of Professor Rollins addresses the claims which are made about the effect of micronutrients.

Ad paragraphs 299-300

140. These paragraphs are irrelevant and simply abusive.

Ad paragraph 301

141. I have previously dealt with Dr Rath's failure to appreciate that whether the consumers receive his products for free or for remuneration, the distribution constitutes sale within the meaning of the Act. I have also dealt with the role of the first and second respondents in the clinics and clinical trials, for which they have repeatedly claimed responsibility (and credit), but from which they now seek to distance themselves.

142. Annexure MWR124 is dated after the events described in the affidavits of Ntsholo (NG5), Ngqase (NG6), Ngubo (NG7), Velem (NG8) and Sigebenga (NG9). It could hardly have been attached to those affidavits. Dr Rath is mistaken if he believes the inclusion of this form in the record assists his case. To the contrary, it is evidence that he distributed unregistered medicines in Khayelitsha.

Ad paragraphs 302-303

143. I deny the contents of these paragraphs, which are in any event irrelevant.

Ad paragraphs 304-318

144. I have dealt with the relationship between the Foodstuffs Act and the Medicines Act in my reply to the answering affidavits of the sixth to twelfth respondents. This matter will be addressed in argument. I am advised that Dr Rath's opinions are simply wrong as a matter of law.

145. Whether these products are available in Europe, and if so on what conditions, is irrelevant to the questions which the court is required to decide.

146. Similarly, the question whether NAC has beneficial effects, and if so under what circumstances, is irrelevant to the question whether Dr Rath and second respondent have been distributing it in accordance with the limitations laid down by the Medicines Act.
147. It is not true that the applicants seek to prevent the implementation of a safe, affordable community health programme. We seek to ensure that health programmes are conducted in accordance with the laws which have been enacted to protect the health of members of the public.

Ad paragraphs 319-329

148. This application was not brought to obtain the “legal seal of approval for ARV medicines”. That approval has already been given by the Medicines Control Council, the body created by Parliament for that purpose. The MCC has given the approval for the purposes which it has certified. This application has been brought to stop the illegal activities of Dr Rath and his associates.
149. The issue in the case is not whether ARVs are good or bad. It is whether in distributing their products, making claims, and conducting clinical trials, the Rath respondents have acted within the law.
150. The contents of these paragraphs are thus irrelevant. They are also simply Dr Rath’s inadmissible opinions, and inadmissible hearsay.

Ad paragraphs 330-359

151. This section consists entirely of Dr Rath’s account of and attack on what he terms “pharmaceutical colonialism”. It is entirely irrelevant to any of the issues which the

court is required to determine. Further, this section consists simply of Dr Rath's inadmissible opinions, and inadmissible hearsay.

152. The claim in paragraph 359 that "the liberation of mankind from the yoke of the pharmaceutical 'business with disease' is the largest liberation movement of all time" speaks for itself as an example of Dr Rath's hyperbolic and extravagant claims, which are fundamentally inconsistent with his claim that he can give objective expert opinion evidence on scientific matters.

Ad paragraphs 360-363

153. I do not claim to give expert evidence on scientific matters. Where I refer to scientific matters, I rely on and refer to the evidence of acknowledged experts.

Ad paragraph 365

154. I attach (**NG110**) a resolution authorising me to bring this application on behalf of the TAC, and ratifying by conduct in doing so.

Ad paragraph 368

155. This application has been brought because the illegal activities of the Respondents cause vulnerable people to make poorly informed health choices that endanger their lives, and thus limit their access to HIV treatment.

Ad paragraph 369-379

156. The bringing of this application is wholly consistent with the achievement of the objectives of the TAC. The affidavits of Professor Venter and Professor Rollins, which deal with the science of HIV, ARVs and micronutrients show why this is so.

157. Dr Rath's claims in this regard are without substance. If necessary, they will be addressed in argument.
158. If Dr Rath believes that the TAC has acted unlawfully, he is free to take the appropriate steps to attempt to prove this and prevent it.
159. The affidavits of Kukusi, Siyoni, Nyaba and Dzena, actually confirm the applicants' case in a number of respects. This will be addressed in argument.

Ad paragraph 380

160. I submit that this attack on the SA Medical Association, the representative body for medical doctors in South Africa, is both unfounded and irrelevant. Its only relevance is that it again demonstrates Dr Rath's blind hostility to anyone who disagrees with him. I have already referred to the affidavit of Dr Angell, on whom Dr Rath relies. She dissociates herself from him, his opinions, and his activities.

Ad paragraph 381

161. I have already dealt with these claims which are repetitious.

Ad paragraphs 382

162. I do not dispute that the second respondent is incorporated under sec 21 of the Companies Act.
163. The second respondent plainly promotes products of Dr Rath and the other companies with which he is associated. I have already dealt with his claim that all of his activities are not for profit.

Ad paragraph 384

164. The claim that Professor Mhlongo is nowhere identified as a participant in the Foundation's activities is simply not true. MWR 123 is quite clear in this regard.

Ad paragraph 385-387

165. The attorneys firm of Christine Qunta filed a notice of opposition on behalf of the first to seventh respondents. The third respondent, Professor Mhlongo, has since passed away. The fourth and fifth respondents, although represented in these proceedings, have not filed any affidavits. Dr Rath does not suggest that they have authorized him to do so on their behalf.

166. I did not claim that Dr Niedwiecki was employed by the second respondent. I claimed that she was employed by the first respondent. Neither Dr Rath nor Dr Niedwiecki deny this.

Ad paragraph 388

167. It is striking that whereas Dr Rath accepts that the HIV/AIDS epidemic is a major public health crisis in South Africa, Mr Brink (whose opinions he frequently endorses) clearly does not even believe in the existence of HIV. This demonstrates the incoherence to which Professor Venter pointed in paragraph 37 of his affidavit.

Ad paragraph 389

168. This is dealt with by Professor Rollins.

169. It is striking that Dr Rath's views are inconsistent with Dr Jariwalla, on whom he relies as an expert. Dr Jariwalla admits that ARVs have value, albeit limited, at paragraph 32 of his affidavit. Dr Jariwalla also discusses the use of ARVs in

conjunction with micronutrients in paragraphs 31 to 33 of his affidavit, something that Dr Rath is obviously opposed to.

Ad paragraphs 390-393

170. I have previously dealt with these allegations, in this affidavit and in my affidavit in reply to the sixth to twelfth respondents. Dr Rath misunderstands the meaning and requirements of the Medicines Act. This matter will be addressed in argument.

Ad paragraph 394

171. Whatever Dr Rath's views on the benefits or risks of N-acetylcysteine may be, and whatever its actual benefits or risks may be, it is a schedule 2 product and may only be distributed in accordance with the requirements of the Medicines Act.

172. I note that Dr Rath here admits having distributed the products in question, to continuing to distribute VitaCell, and to his intention to continue to do so. Whether or not the recipients were required to pay for them, those products were and are "sold" within the meaning of the Act.

Ad paragraph 395

173. It will be submitted that the admissions made here by Dr Rath are fatal to his case in so far as NAC is concerned. He admits that all of his products in issue except one contain NAC, and that it is listed in schedule 2 of the Act. The products in question are manufactured and distributed precisely because they are alleged to have a medicinal purpose. That is the very essence of Dr Rath's claims in the previous paragraph. That being so, the exemption can not conceivably apply.

Ad paragraph 396-400

174. The affidavit of Andrew Gray (NG14) deals with the labeling of VitaCell. He has explained that VitaCell is liable to be registered. Mr Gray is an expert on the regulation of pharmacology in South Africa. Dr Rath is not.
175. The distribution of the first and second respondents' products takes place in the context of an extensive marketing campaign. While the advertisements do not mention the brand names of the products, as a result of the manner in which the marketing campaign has been conducted, the advertisements and products are inextricably linked to each other. The suggestion that the activities of advertisement and distribution are to be regarded as separate is entirely disingenuous.
176. Even if the advertisement and distribution were to be artificially separated in this artificial manner, the making of these false claims is in contravention of the Act.

Ad paragraphs 401-408

177. I have dealt above with the attempt which Dr Rath now makes to distance himself from these clinical trials, which he has repeatedly stated "we" conducted.

Ad paragraphs 409-413

178. I have already dealt with the allegations made in these paragraphs in so far as they are relevant.

Ad paragraphs 418-419

179. I stand by my reply to the sixth respondent's answering affidavit, with which Dr Rath associates himself. Most of the sixth respondent's answer was and remains irrelevant, hearsay and inadmissible.

Ad paragraph 420-422

180. I have dealt with the averments by the sixth respondent in my replying affidavit. It is striking that Dr Rath agrees with the sixth respondent on these largely irrelevant issues, but that the sixth respondent's views are fundamentally incompatible with those of Dr Rath and Dr Jariwalla with regard to the existence of HIV and AIDS.
181. The only thing these paragraphs prove is Dr Rath's conspiratorial cast of mind.

Ad paragraphs 423-6

182. It is hardly surprising that Professor Venter advocates the use of antiretrovirals. That is because the scientific evidence and his clinical experience support this. The fact that he acts in accordance with that evidence and experience can not show a lack of objectivity. If anything, it shows the opposite.

Ad paragraphs 429-430

183. I have dealt above with the contents of these paragraphs, which are merely repetitive. The first applicant has not attempted to intimidate or confuse anyone, and Dr Rath produces no evidence to support that claim.

Ad paragraph 431

184. The applicants will ask that the Court exercise its discretion to admit these affidavits notwithstanding the technical failure by the members of the SAPS to comply fully with the regulations of the Justices of the Peace and Commissioners of Oaths Act. The respondents do not suffer any prejudice through that non-compliance.
185. Dr Rath's affidavit in his application for condonation was not commissioned properly. This was pointed out but we did not take an objection on that basis.

Ad paragraphs 432-434

186. I have already dealt with Dr Rath's attempts to distance himself from the activities which he has previously claimed as his own, and which are his own.

Ad paragraph 435

187. Before launching this application the Legal Resources Centre wrote to the attorneys for the first to seventh respondents calling upon their clients to cease the sale of Vitacor Plus, Epican Forte and Lysin C Drink Mix. A copy of the letter is annexed (**NG111**). The respondents failed to respond to that letter. I invite Dr Rath and the other Rath respondents to tender an undertaking, to be made an order of court, that they will not distribute those products in South Africa.

188. Dr Rath makes clear in paragraph 394, however, that they intend to continue distributing Vitacell.

Ad paragraph 436

189. I stand by what is in my founding affidavit. As Dr Rath states in terms that he has been distributing Vitacell and intends to continue to do so, this dispute appears to be of no material significance.

Ad paragraph 438

190. Ntsholo (NG5), Ngqaase (NG6), Ngubo (NG7) and Velem (NG8) all associated the activities at the Rath health facilities with Dr Rath, as did Dr Rath's deponents Kukusi, Siyoni, Nyaba and Dzena.

191. In any event, Dr Rath admits in his affidavit that his organisation distributed VitaCell and other products to SANCO. This too would be the unlawful distribution of unregistered medicines.
192. The claims made about these products go well beyond that they helped or boosted the immune system. But even these claims render these products medicines.

Ad paragraphs 442-458

193. I have dealt with this in this affidavit, and in my reply to the answering affidavits of the sixth to twelfth respondents.
194. The claims about multivitamins are claims in contravention of the Act, whether or not they refer to a particular product. In any event, the claims are a promotional campaign which can not be separated from the distribution of the Rath products.

Ad paragraphs 459-462

195. The ASASA determination speaks for itself.

Ad paragraph 463

196. Professor Rollins in his affidavit deals with these self-promoting and grandiose claims.

Ad paragraph 470-471

197. I submit that these averments are admissible. These are all matters of public record. I accept of course that this does not prove the truth of what these various bodies said, but it can not be denied (and has not been denied) that they were in fact said.

198. I submit that Dr Rath's failure to deal with this speaks volumes as to his lack of frankness with the court. Dr Rath deals only with the two German matters, as these are plainly the only ones in which he can produce an explanation which he believes supports his case. In fact, for the reasons which I have stated previously, it does not.

Ad paragraphs 472-485

199. It is clear that on Dr Rath's own version, he was found to have made false or unjustified claims for his products ("marketing by deception"), and required to pay a substantial fine of 45 000 Euros. At current exchange rates, this amounts to more than R400 000.

200. Dr Rath does not explain either why he made those claims, or why (if he thought they were justified) he did not persist in his defence of them.

201. Whether or not a product is classified as a medicine or a "nutritional supplement" is a matter for the law of each country. Whatever finding may have been made in that regard in Germany, is not relevant to these proceedings.

Ad paragraphs 486-493

202. I accept that I misunderstood Item 3 of the order in question.

203. However, I stand by the averment in paragraph 86.12 of the founding affidavit. I quote from the judgment:

“The Defendant is prohibited under penalty of a pecuniary fine up to 25,000.00 Euro to be determined by the Court for each case of future infringements, as an alternative imprisonment, or an imprisonment of up to six months from advertising in business dealings with the statement ‘The renowned Doctor ...’ and/or ‘The renowned scientist ...’ ...”

204. In paragraph 491, Dr Rath refers to MWR 7 as a court judgment. It is not. It is an affidavit by his attorney. The obvious question is why Dr Rath has not produced the judgment which he claims has exonerated him in this regard.

Ad paragraph 495

205. As Professor Mhlongo has regrettably passed away, he is no longer able to pursue the intended clinical trial.

206. Dr Rath speculates about what the intended clinical trial may have been. In this regard I refer to the letter of 26 September 2005 from Prof WJ du Plooy, chairperson of the MEDUNSA Research Ethics Committee, to Dr Andrew Boule (the third page of NG71). Professor Du Plooy states

“We responded (letter dated 16 May 2005) to the same advert that you attached whereby the review of the protocol was suspended until all the issues were resolved.”

207. I attach (**NG112**) a transcript of a radio interview of Professor Du Plooy with Health-e on 13 October 2005. As appears from this interview:

- 207.1. The MEDUNSA ethics committee received a request for approval of a clinical trial titled “Clinical Pilot study in Immunocompromised Patients Including HIV Positive Individuals with Dr Rath Cellular Programme”.

207.2. The trial was not approved at the time of the interview. I believe it has never been approved.

207.3. Professor Du Plooy states “The main purpose of a research ethics committee is to make sure that the rights and the welfare of the participants are protected. If they do not have approval it means that there is no way that we can at least try and protect that dignity, welfare, and rights of the participants... I can just give you an example and this does not mean that what I’ve said now is specific for this Rath protocol, as we call it now. Issues that we look at are, for example, if a clinical trial is done: What harms are there? Are there benefits to the patients? What will happen once they have conducted the study? We look at things like the informed consent. Will the patients understand what they are consenting to? Is it in the proper language? We must ensure that the patients understand that they are taking part in research (1) and (2) that there might not be even any benefits for them in it.”

207.4. Professor Du Plooy states further “Researchers are not allowed to start, even with a pilot study, without research ethics approval. They are not allowed to start. There are quite a number of regulations that we have to follow.”

208. Even if Dr Rath’s assertions here are true, his position is fundamentally inconsistent. He argues that his products do not need clinical trial approval because they are foodstuffs; yet application was made by one of his collaborators for approval of a clinical trial to test those products.

Ad paragraph 502

209. What Ms Mqambeli's statement shows is the haphazard and uncontrolled manner in which the trial was conducted. It is precisely this sort of inconsistency which has to be prevented by conducting clinical trials in a proper and professionally approved and controlled manner, to ensure that the results are scientifically reliable. What Ms Mqambeli's statement also shows is that if the condition of some of the patients did improve, one could not conclude that this was the result of their taking micronutrients alone.

Ad paragraphs 513-522

210. This is a typically ad hominem attack on an independent expert. All it shows is that Dr Rath is not qualified or competent to provide expert scientific evidence in this case. I refer in this regard to the evidence of Professor Ellis, which Dr Rath has not challenged, even though it was filed long before he signed his affidavit.

Ad paragraphs 523-596

211. The affidavit of Professor Rollins deals comprehensively with the claims which Dr Rath makes with regard to vitamins. Professor Rollins is internationally acknowledged as a leading expert on this subject. I therefore deal here with only limited aspects of this part of Dr Rath's affidavit.

212. I note that at paragraphs 532 and 581 Dr Rath repeats the claim made in his advertisements, that vitamins or micronutrients reverse the course of AIDS. As Professor Rollins points out:

212.1. even if one accepts at face value all of the studies on which Dr Rath relies;

212.2. and even if one accepts the validity of all of the implications which he seeks to draw from them

there is no evidence whatsoever which justifies this claim.

213. Not a single one of the authors on whom he relies makes that claim. Not even Dr Jariwalla makes that claim in the same way that it is meant in Dr Rath's advertisements.
214. I respectfully draw attention to Dr Rath's statements at paragraphs 536 and 538 that he associates himself with the views of the sixth respondent (Mr Brink) "to the extent of their consistency of my own views that have been stated in this affidavit". This is a meaningless and self-serving statement.
215. Dr Rath is obliged to admit that the authors of the Fawzi study – on which he heavily relies - have condemned his misuse of their study. Remarkably, instead of acknowledging error, his conclusion (at paragraphs 545 to 546) is that they do not understand their own study.
216. In relation to paragraphs 547-555, which deal with *in vitro* studies, I refer to the affidavit of Professor Rollins. He points out at paragraph 69.2 of his affidavit that *in vitro* studies do not provide a basis for making conclusions about the effect of a medicine in the human body. This is so because, Professor Rollins explains, before one can draw any conclusion from *in vitro* studies, one needs to know if the same substance can be absorbed by the human body and effectively act upon the target cells, how much of the substance must be ingested for it to achieve its objective of destroying a pathogen in sufficient quantities and if ingesting it in an effective dose be safe.
217. At paragraph 570, Dr Rath admits there was no intention of publishing the results of the Khayelitsha study in a peer-reviewed journal and that they constituted

merely an “initial observation”. This means that he accepts that these “observations” can not and do not meet the accepted standard and method for demonstrating a scientific theory and result. It follows that they have no evidential value for establishing that multivitamins reverse the course of AIDS.

218. At paragraph 575, Dr Rath states that he has been trying to obtain approval for a larger clinical trial of micronutrients. This is fundamentally inconsistent with his repeated assertion that his products (which contain the very micronutrients which are to be tested) are foodstuffs and not medicines. There would be no purpose to a clinical trial unless a medical claim were made – which by definition makes the substance in question a medicine.

Ad paragraph 602

219. I note that Dr Rath concedes that Government Notice of 2002 was a call-up notice. I have been advised that this is correct. The necessary implication is that the medicines listed in the notice may not be distributed unless they have been registered.

DEPONENT

I CERTIFY THAT THE DEPONENT ACKNOWLEDGED TO ME THAT HE KNOWS AND UNDERSTANDS THE CONTENT OF THIS DECLARATION, THAT HE HAS CONSCIENTIOUS OBJECTIONS TO TAKING THE PRESCRIBED OATH AND CONSIDERS THIS AFFIRMATION BINDING ON HIS CONSCIENCE. SIGNED AND AFFIRMED TO BEFORE ME AT CAPE TOWN ON THIS 3rd DAY OF AUGUST 2007.

COMMISSIONER OF OATHS