

# 4-26-2013 Letter from OGC-HHS

Food QuestTQ LLC

9-30-2013

# Summary of Issues

FDA unfairly competes with FoodQuestTQ by duplicating their products

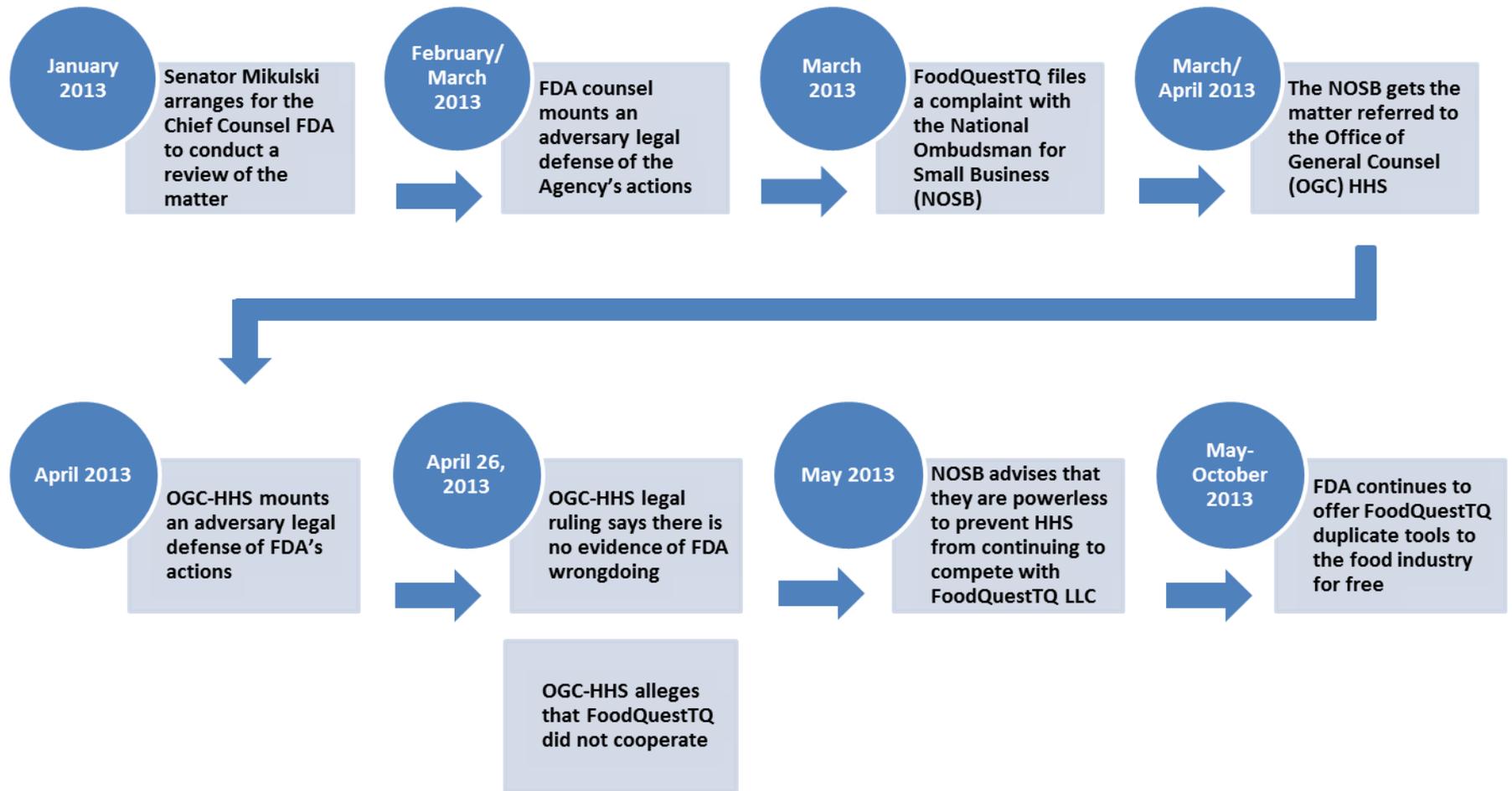
FoodQuestTQ attempts to resolve the situation with FDA/HHS

FoodQuestTQ attempts to resolve the situation are rebuffed by FDA/HHS

The HHS-OGC investigation attempts to cover-up the situation

HHS refuses to meet with Congressional staff to explain their actions

# Timeline



# Some Examples of HHS-OGC False and Defamatory Allegations Against FoodQuestTQ LLC

HHS-OGC Allegation in 4-26-2013 Letter	FoodQuestTQ Response
<p>1. “Despite our best efforts to undertake a thorough investigation of your claims, you have refused to provide us with copies of the works that you allege the Agency has infringed.”</p>	<p><b><u>This HHS-OGC statement is untrue.</u></b> OGC-HHS repeatedly rebuffed our offers to provide additional information.</p>
<p>2. “Ms. Seeley stated that “in order for us to evaluate these claims, we would need to compare your products to ours. Accordingly, please provide us with copies of your Food DefenseTQ tool and the FREE and FEAST software tools, in whatever form you think would be convenient for this purpose.”</p>	<p><b><u>Any HHS-OGC allegations that we refused to provide this information are untrue.</u></b> We invited FDA counsel to visit our public web portal at <a href="http://nfpcportal.com">http://nfpcportal.com</a> where on-line demonstrations of our tools appear.</p>
<p>3. Furthermore, after insisting that you could not provide us with copies of the works that we allegedly infringed without a non-disclosure agreement, you rejected the latest version of the revised non-disclosure agreement apparently because you were unhappy with a statement of its “purpose.”</p>	<p><b><u>This HHS-OGC statement is untrue. (See 2., above.)</u></b> The proposed non-disclosure agreement did not address the alleged theft of FoodQuestTQ trade secrets by the FDA and the issue of direct government competition with small business.</p>
<p>4. Attorneys in the Office of General Counsel had repeatedly explained that we needed access to your tools to evaluate whether FDA’s tools in fact have any similarity to them, but you refused to provide access to those tools without receiving a contractual commitment to an unspecified disclosure of FDA information.</p>	<p><b><u>This HHS-OGC statement is untrue. (See 2. and 3. above.)</u></b> We suggested to counsel that she visit our public web portal at <a href="http://nfpcportal.com">http://nfpcportal.com</a> where on-line demonstrations of our tools appear. FoodQuestTQ made no request for a contractual commitment to “an unspecified disclosure of FDA information.”</p>
<p>5. “There is no evidence that any analysis of the kind described in the slides or in U.S. Patent No. 8,103,601 was used to develop the FDA products like FDA’s FDPB.”</p>	<p><b><u>This HHS-OGC statement is untrue.</u></b> See detailed analysis at <a href="http://nfpcportal.com/NewsAlerts/FDATQMemorandum/tabid/328/Default.aspx">http://nfpcportal.com/NewsAlerts/FDATQMemorandum/tabid/328/Default.aspx</a></p>

# Some Examples of HHS-OGC False and Defamatory Allegations Against FoodQuestTQ LLC

HHS-OGC Allegation in 4-26-2013 Letter	FoodQuestTQ Response
<p>6. “You have provided no evidence that FDA or its contractors had access to any of the works allegedly infringed. Because you have refused to provide us with copies of the allegedly infringed work, there is no way for us to determine whether the agency’s works are substantially similar to yours.”</p>	<p><b><u>This HHS-OGC statement is untrue.</u></b> Our attempts to provide this information were rebuffed by both FDA and HHS counsels.</p>
<p>7. “There is no evidence that FDA personnel or their contractors practiced even one of these steps [as appearing U.S. Patent No. 8,103,601], let alone all of them, as would be required for a claim of patent infringement.”</p>	<p><b><u>This HHS-OGC statement is untrue.</u></b> See detailed analysis at <a href="http://nfpcportal.com/NewsAlerts/FDATQMemorandum/tabid/328/Default.aspx">http://nfpcportal.com/NewsAlerts/FDATQMemorandum/tabid/328/Default.aspx</a></p>
<p>8. “Third, you allege that ‘the government is precluded under the FAIR Act from competing with the private sector whenever the same or better products can be procured from industry.’”</p>	<p><b><u>HHS-OGC improperly portrays the intent of Federal Acquisition Regulations, OMB Circular A-76 and the Federal Acquisition Inventory (FAIR) Act.</u></b> See detailed analysis at: <a href="http://nfpcportal.com/Portals/1/Technical%20Paper%20No%20208%20-%205-9-2013.pdf">http://nfpcportal.com/Portals/1/Technical%20Paper%20No%20208%20-%205-9-2013.pdf</a></p>
<p>9. “In spite of your unwillingness to cooperate, and your insistence on sending additional letters to different recipients rather than working with the counsel assigned to evaluate your claims, we have done our best to investigate your allegations, as much as we can understand them.”</p>	<p><b><u>This HHS-OGC statement is untrue.</u></b> FoodQuestTQ attempts to work with the FDA and HHS-OGC were rebuffed. This is what forced FoodQuestTQ to file a complaint with the National Ombudsman for Small Business (NOSB).</p>
<p>10. The HHS-OGC legal brief of 4-26-2013 contains numerous other errors, omission of fact and false and defamatory statements regarding FoodQuestTQ LLC that are not addressed herein.</p>	<p><b><u>This document provides only a summary of examples of the untrue and misleading nature of the HHS-OGC legal brief of 4-26-2013.</u></b> For additional information please see: <a href="http://nfpcportal.com/Portals/1/Technical%20Paper%20No%20208%20-%205-9-2013.pdf">http://nfpcportal.com/Portals/1/Technical%20Paper%20No%20208%20-%205-9-2013.pdf</a></p>