
technique “EVERY TIME” they have a strong urge to eat something. Ex. 12, *Weight Loss Cure* book

B. This Court’s Underlying Order Banning Trudeau From Infomercials

On September 2, 2004, the Court entered the Stipulated Final Order for Permanent Injunction (“2004 Permanent Injunction”) underlying this contempt action that resolved the Coral Calcium/Biotape case.⁶ The 2004 Permanent Injunction superceded the 1998 Permanent Injunction, and consolidated injunctive relief against Trudeau into a single order which included the following infomercial ban:

Defendants, . . . in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, program or service, in or affecting commerce, are hereby permanently enjoined and restrained from producing, disseminating, making or assisting others in making any representation in an infomercial aired or played on any

⁶ The Order also required Trudeau to pay \$2,000,000 in monetary relief.

Declaration,. at ¶¶ 4, 6 and Exs. 14(c) and 14(e).

In all three infomercials, Trudeau misrepresents that his book offers an easy weight loss plan that, upon completion, allows people to eat anything they want without regaining weight.

a. Trudeau Represents that the Weight Loss Cure Protocol in his Book is “Easy”

In his three infomercials, Trudeau repeatedly and expressly claims his book’s weight loss protocol is “easy.” For example, in the ITV infomercial, Trudeau repeatedly stresses that the protocol is easy and can be done at home. For example:

KEVIN TRUDEAU: Now, this weight loss cure protocol . . . here’s what’s different about it –

DONALD BARRETT: **Is it easy?**

KEVIN TRUDEAU: **It’s very easy to do**, and here’s what’s different. When you do the weight loss protocol -- and I did it, I went to Germany to research it at a clinic. . . . **Now, you don’t have to go to a clinic to do it. You can do it at home.** But I wanted to see firsthand.

KEVIN TRUDEAU: . . . I’ve struggled with weight my whole life. Everybody who’s seen me on TV knows. I’ve gone up and down close to 300 pounds at one point, down to 190 pounds right now.

CHLOE MARSHALL: **Nothing is restricted?**

KEVIN TRUDEAU: Oh, let's see, **I had mashed potatoes and gravy, the mashed potatoes were real mashed potatoes loaded with cream and butter, gravy loaded with fat. I had a big prime rib marbled with fat. For dessert, I had a big hot fudge sundae with real ice cream and real hot fudge and real nuts and real whipped cream.** I don't like cherries, so there was no cherry on it. The next day I had a big –

CHLOE MARSHALL: So if you're a food lover, it's still ok.

KEVIN TRUDEAU: I personally did the protocol. No hunger, no deprivation, no exercise. **I can eat whatever I want now, anything and as much as I want any time I want. No restrictions now. And the weight's not coming back. You don't gain the weight back.**

Ex. 14a, *Weight Loss Cures Tr.*, at 18, 25-26 (emphasis added); *see also* Ex. 14b at 19, 27.

In his most recent infomercial, Trudeau claims that it's been "almost a year" since he completed the protocol, and Marshall applauds "the fact that it [Trudeau's protocol] continues to work." Ex. 14d, *Weight Loss Cures 2 Tr.*, at 20, 36. Like his first infomercial, Trudeau again claims that his *Weight Loss Cure* allows users to maintain their weight loss without ever dieting:

KEVIN TRUDEAU: . . . So you lose weight faster in the easiest method known on Planet Earth and **you'll keep the weight off forever. You'll never have to diet again.**

CHLOE MARSHALL: Be a victim of the yo-yo.

KEVIN TRUDEAU: **And you will – and you will not gain the weight back. I had ice cream last night. I have hot fudge sundaes.**

CHLOE MARSHALL: No.

KEVIN TRUDEAU: I eat pizza, pasta, beer, wine.

CHLOE MARSHALL: It's not fair.

KEVIN TRUDEAU: Cheese. **No diet food at all, tons of sugar, tons of carbs, tons of delicious gravy, pot roast, mashed potatoes, no exercise at all, I can't gain the weight back.**

KEVIN TRUDEAU: . . . **And when you're finished losing all the weight you need, you won't gain the weight back. It's been almost a year for me and**

**I've lost another five pounds not even trying, eating ice cream and real food.
No diet food.**

Ex. 14d, *Weight Loss Cures 2 Tr.*, at 7, 22-23 (emphasis added).

In sum, Trudeau expressly claims in his infomercials that his book's "cure" allows dieters to maintain their weight loss without dietary restrictions even after the program ends.

2. Contrary to Trudeau's Claims, His Book's Weight Loss "Cure" is Arduous and Requires a Restrictive Diet for Life.

Trudeau claims in his infomercials to tell viewers the "facts" of what's in his book, Ex. 14d at 6, but Trudeau's infomercials never disclose the true facts of his book's severe requirements. Contrary to his infomercial claims, Trudeau's book describes a four-phase protocol that is a far cry from the infomercials' promise of "the easiest method known on planet earth." Indeed, the weight loss plan revealed in the book is hardly easy, mandating such onerous requirements as daily injections of a prescription drug. *See, e.g.*, Ex. 12, *Weight Loss Cure* book excerpts ("WLC") at 93-97; 116. Moreover, contrary to Trudeau's claims that once users finish the protocol they can "eat whatever they want," the diet never ends; rather it imposes rigorous, lifelong dietary restrictions. *Compare* quotes in Section I C(1)(b) to Ex. 12, *WLC* at 105.¹⁰

a. The Weight Loss Protocol Described in the Book is Arduous.

Trudeau's weight loss program starts with a complex, detailed, 60-step, "highly recommended" Phase 1. Ex. 12, *WLC* at 76-91. In this phase, readers are instructed to obtain 15 "colonics" from a licensed colon therapist in a 30-day period.¹¹ *WLC* at 77, 213. In addition to reporting to a colon therapist every other day for this procedure, Phase 1 dieters must walk outside for one continuous hour each day; take

¹⁰ The referenced portions of the *Weight Loss Cure* book are attached as Ex. 12. We are also providing a courtesy copy of the complete book to chambers and Trudeau's counsel.

¹¹ A colonic introduces multiple infusions of water through the rectum to cleanse the entire length of the colon. Unlike an enema, it cannot be done at home and must be performed by a licensed colon hydrotherapist using specified professional equipment. *See* Ex. 14f, American Cancer Society information on "Colon Therapy."

organic meat right before bed.¹² *WLC* at 76-77, 80, 82, 84 and 213.

The rigors of Phase 1, however, pale in comparison to the successive, mandatory phases. In particular, during Phase 2, which lasts from three to six weeks, the dieter must obtain daily injections of hCG, a prescription drug which is not approved in the United States for weight loss.¹³ Ex. 12, *WLC* at 93-96. Because the FDA has not approved hCG for weight loss, to obtain hCG, a consumer must find a U.S. physician who will write a prescription for an off-label use or go overseas (as Trudeau purportedly did). See *WLC* at 116-17, 120.

Trudeau's book makes clear that the hCG injection must be administered "deep intragluteally in the outer upper quadrant of the buttocks," ideally reaching the muscle rather than just "the superficial fat layers," and should be given first thing in the morning. Ex. 12, *WLC* at 129. The dieter must either arrange to receive the injection each morning from a health care practitioner or self-administer the intramuscular injection into their own buttocks.¹⁴ The book instructs the dieter to "[a]lways do these injections while under the care and supervision of a medical doctor." *WLC* at 129.

Phase 2 also is difficult because it involves severe dieting in the form of a 500 calorie/day diet for a 21-45-day period. Ex. 12, *WLC* at 96. By comparison, the National Institutes for

¹² Phase 1 also requires other daily activities such as eating at least two organic apples and grapefruits; taking one tablespoon raw organic apple cider vinegar; drinking up to a gallon of pure water; and drinking green tea and yerba mate tea. In addition, the book advises readers to take numerous individual supplements such as Threelac, Eloetin, a whole food supplement, Coral Calcium, Probiotics Plus, Pectasol Chelation Complex, Acetyl L-Carnitine, and krill oil. Ex. 12, *WLC* at 78-85; 213-14. Phase 1 also requires readers to eliminate trans fats; high fructose corn syrup; artificial sweeteners, msg, nitrites, farm-raised fish, fast foods, and microwaving. *WLC* at 81-83. Finally, the Phase 1 program calls for discontinuation of the use of all prescription and non-prescription drugs (supposedly to be done under physician supervision). *WLC* at 90.

¹³ In the mid-1970's, the Food and Drug Administration examined the available literature on the use of HCG in the treatment of obesity and found "[A] lack of substantial evidence in the form of adequate and well-controlled studies . . . that HCG was safe and effective [in the treatment of obesity]." Ex. 14g, 39 Fed. Reg. 42,397, 42,402 (Dec. 5, 1974). Accordingly, the FDA determined that "labeling for this drug shall explicitly state that there is no substantial evidence of effectiveness for HCG in weight reduction, appetite suppression, or reduction of the hunger and discomfort associated with calorie-restricted diets." *Id.* at 42,401.

¹⁴ Because hCG has a brief potency period, the book indicates that it will come as a powder that the user must mix with an accompanying solvent solution and should inject immediately after mixing. Ex. 12, *WLC* at 128-29.

Health describes even less restrictive diets of 800 calories a day as a “very low calorie diet” that should be physician-supervised. Ex. 14h (NIH information on Very Low-calorie Diets).

The severe Phase 2 daily menu begins with black coffee (organic preferred) or organic tea for breakfast. Ex. 12, *WLC* at 93. For lunch and dinner, the dieter is limited to 100 grams (approximately 3.5 ounces) of either grilled organic grass fed beef or veal, organic skinless chicken breast, wild Chilean sea bass, flounder, sole or halibut; and a large handful of specified organic vegetables. *WLC* at 94-95. The dieter also is allowed to consume a single snack consisting of a small organic apple or grapefruit or handful of organic strawberries. *WLC* at 94. In addition, the dieter must drink one-half gallon to one gallon of water each day, and is prohibited from adding oil, butter, or other dressings to food. *WLC* at 93-94. Significantly, Phase 2 restricts medicines as well as foods and calories. Phase 2 prohibits the use of *all* medicines including over-the-counter and prescription drugs as well as lotions, moisturizers, creams, and most cosmetics. *WLC* at 95.

Even after Phase 2, however, the program remains difficult. Phase 3 – also mandatory – permits only 100 percent organic food. Phase 3 prohibits all starches (bread, pasta, potatoes, white flour, etc), sweeteners (both natural and artificial), trans fat and nitrates. Ex. 12, *WLC* at 99-101, 220. In addition, the book “strongly” recommends that during Phase 3, consumers should limit their exposure to air conditioning and florescent lighting, take homeopathic human growth hormone, get massages and take frequent saunas. *WLC* at 221-223, 99-101.

Trudeau’s weight loss “cure” mandates daily injections of a prescription drug that has not been approved for weight loss, restricts caloric intake to a fraction of the normal daily intake, and bans medicines, sweeteners and starches. In short, Trudeau’s protocol is not “easy.”

b. Trudeau’s Weight Loss “Cure” Requires Lifelong Dietary Restrictions.

Contrary to Trudeau’s infomercial claims, followers of the diet plan described in his book cannot eat anything they want “once the protocol ends,” enjoying an indulgent life of hot fudge sundaes and prime rib in which “nothing is restricted.” Ex. 14a, *Weight Loss Cures Tr.*, at 18. Rather, the protocol *never* ends because Phase 4, the mandatory final phase, is to be followed for the rest of one’s life. Ex. 12, *WLC* at 105.

Pursuant to Phase 4, dieters face lifelong restrictions on what they eat, where they eat,

(1988); *Beauchem v. Rockford Products Corp.*, No. 01 C 50134, 2003 WL 22344550 (N.D. Ill.) (setting forth elements necessary to establish a prima facie case of contempt).

Once the FTC makes this prima facie showing, the burden then shifts to the defendant to demonstrate why he was unable to comply with the court's order. *See FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1029, 1034 (N.D. Ind. 2001), *aff'd in part*, 312 F.3d 259 (7th Cir. 2002); *see also United States v. Rylander*, 460 U.S. 752, 757 (1983). The court need not find that the defendant willfully violated the order, only that he has not been "reasonably diligent and energetic in attempting to accomplish what was ordered." *Goluba v. School Dist. of Ripon*, 45 F.2d 1035, 1037 (7th Cir. 1995).

If the court finds the defendant in contempt, the court may impose civil sanctions to coerce compliance with the order and to compensate parties for harm suffered due to defendant's non-compliance. *United States v. United Mine Workers of America*, 330 U.S. 258, 303-4 (1947).

B. Trudeau Is In Contempt.

Trudeau is in contempt of this Court's Permanent Injunction because a valid court order existed, Trudeau had knowledge of that Order, and he has violated its terms.

1. A Valid Court Order Existed.

This Court entered a valid Stipulated Permanent Injunction against Trudeau on September 3, 2004. This order is clear and unambiguous and meets the Fed. R. Civ. P. 65(d) requirement that injunctions describe in reasonable detail the acts sought to be restrained. *See D. Patrick, Inc. v. Ford Motor Co.*, 8 F.3d 455, 461 (7th Cir. 1993); *Stotler*, 870 F.2d at 1163. The Order details with particularity the precise nature of Trudeau's prohibited business activities. *See Ex. 1 at § I.* Moreover, in entering into a stipulated consent decree with the advice of counsel, Trudeau had a duty to ascertain the meaning of any terms employed therein. "Consent decrees are entered into by parties to a case after careful negotiation has produced agreement on their precise terms." *United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971). Whether they now choose to disagree with the terms and their meaning, they may not attack the validity of the underlying order in a contempt proceeding. *See Maggio v. Zeitz*, 333 U.S. 56, 69 (1948) (noting the "long-standing rule that a contempt proceeding does not open to reconsideration the legal or factual basis of the order . . .").

2. Trudeau had Knowledge of the Order.

of lifelong dietary restrictions.

III. CONCLUSION

Trudeau has once again contravened an express Order of this Court. Trudeau's prior deceptive conduct warranted an Order banning him from infomercials, except if Trudeau was marketing "informational publications" such as books. However, the Court expressly prohibited Trudeau from using infomercials to misrepresent the contents of such books. Now, the FTC returns to this Court for the third time because Trudeau has violated even this clear restriction. Trudeau's gross misrepresentations of the contents of his book regarding the ease and restrictiveness of his weight loss "cure" violate the Court's Order and justify issuance of a show cause order, a finding of contempt, and other appropriate relief, including an order to redress consumers for the harm caused by his violative marketing activities.

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¹⁵ Applications for Leave to Appear Pro Hac Vice are being submitted for Ms. Kapin, Ms. Tucci, and Ms. Prabhu concurrently with this submission.

