

FOR THE NORTHERN DISTRICT OF ILLINOIS

FEDERAL TRADE COMMISSION,
Plaintiff,





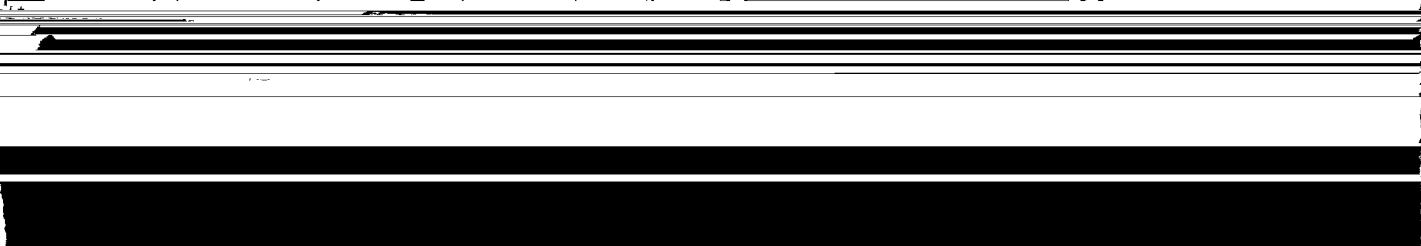
v.

KEVIN TRUDEAU,

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Civil Action No. 03-C-3904

Plaintiff, Federal Trade Commission, demonstrated in its Show Cause Brief that Defendant Kevin Trudeau violated the Court's 2004 Stipulated Permanent Injunction ("Order") by misrepresenting the content of his book, *The Weight Loss Cure 'They' Don't Want You to Know About* (WLC), in widely distributed infomercials. Trudeau's Response fails to rebut the overwhelming disparity between his infomercial claims and the explicit content of his book. Specifically, Trudeau cannot credibly deny that his infomercial claims about his weight loss plan (e.g., "easy to do," "easy to follow," "eat whatever you want") misrepresent the content of his book, which describes a difficult, complicated, and highly restrictive protocol. Nor are



content of his book from the plain language of the Order. Resp. 5-6. To the contrary, Trudeau has violated the Order because his infomercial statements plainly “misrepresent” the “content” of the book. Moreover, Trudeau’s claims are not mere puffery because Trudeau misrepresents the facts of the weight loss protocol in his book and assigns the protocol benefits it does not possess.

~~The Plain Language of the Order Bars Trudeau From Misrepresenting the~~

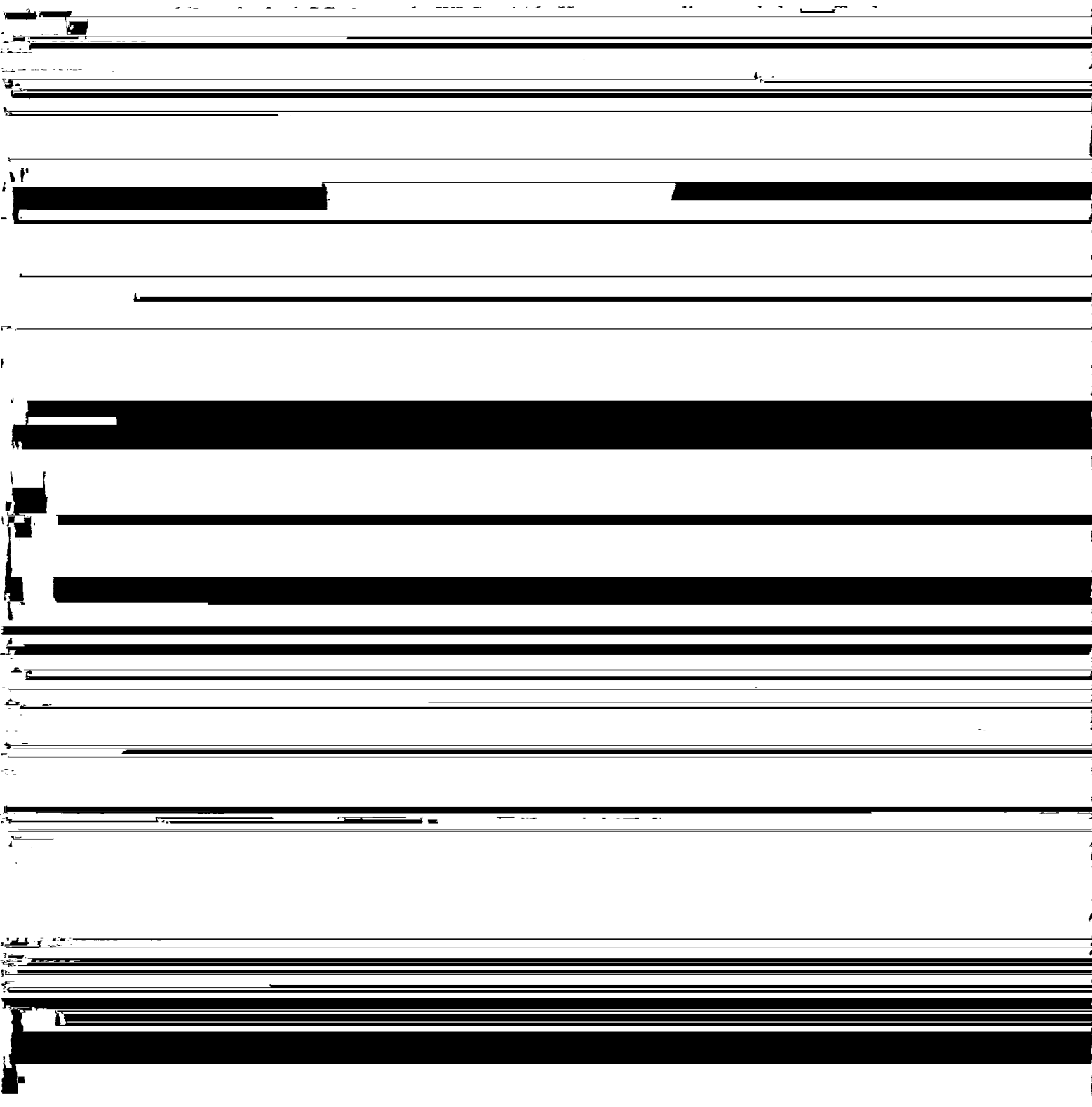
“Content” of His Book

Trudeau agreed to an Order that restricts his infomercial activity to advertising or promoting “informational publications” such as books. Ex. 1 at Part I. Significantly, when

Trudeau asserts in his response that the “content” of his book accurately reflects his infomercial claims that his protocol is “very easy to do,” “easy to follow,” and that “you can do it home.” Para. 11, 12, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

hunger higher than before. **You will not have achieved the results you want.**” *WLC* at 117. Thus it is not surprising that the content of his book establishes that Trudeau’s “miracle substance” is a central part of the weight loss protocol.⁴

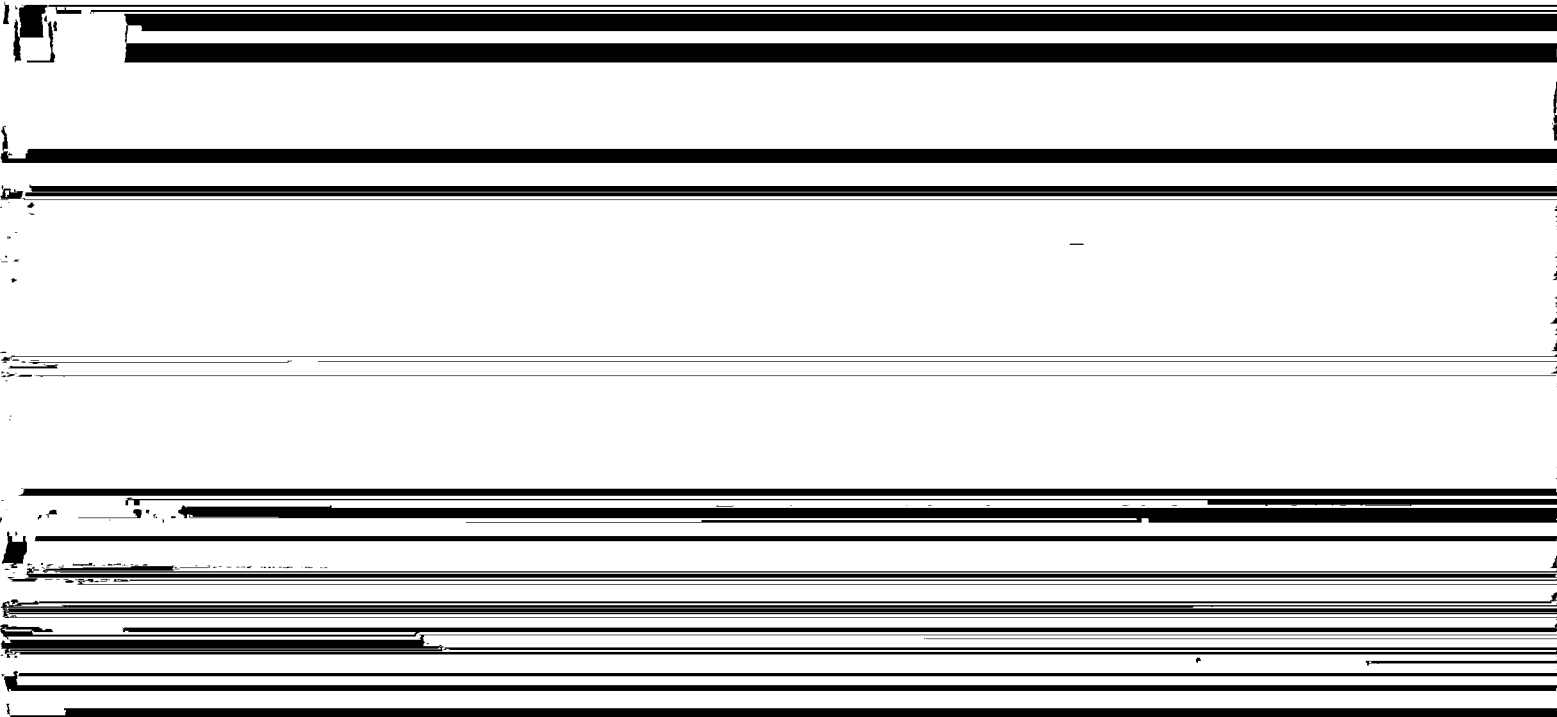
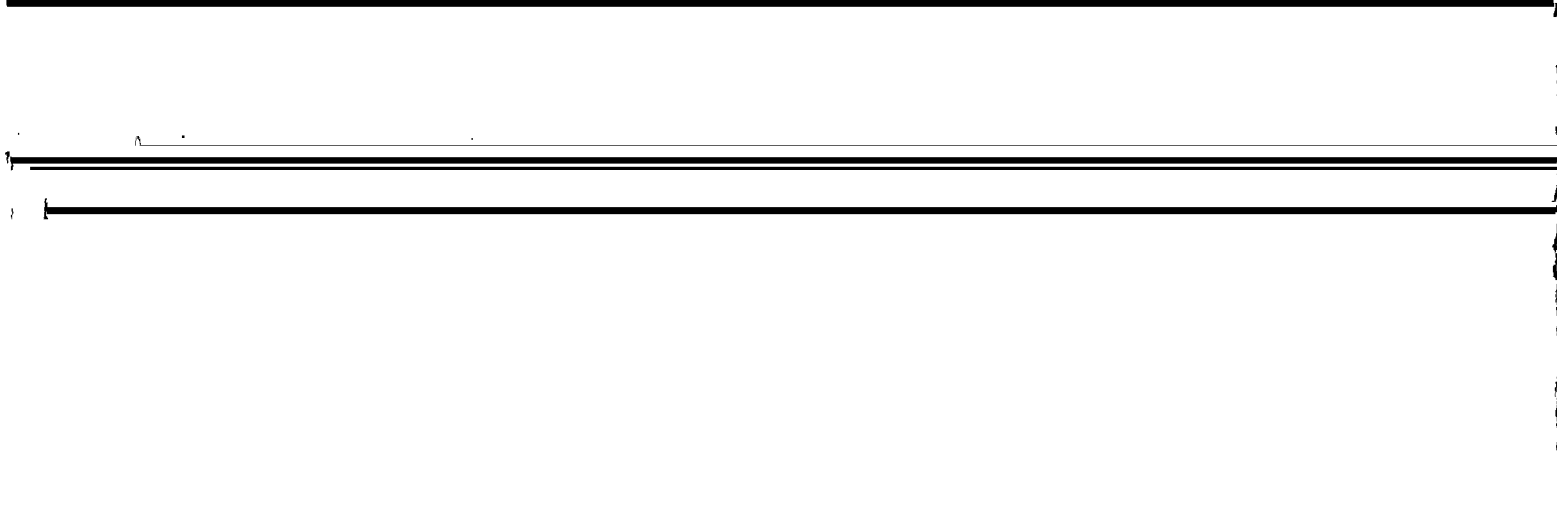
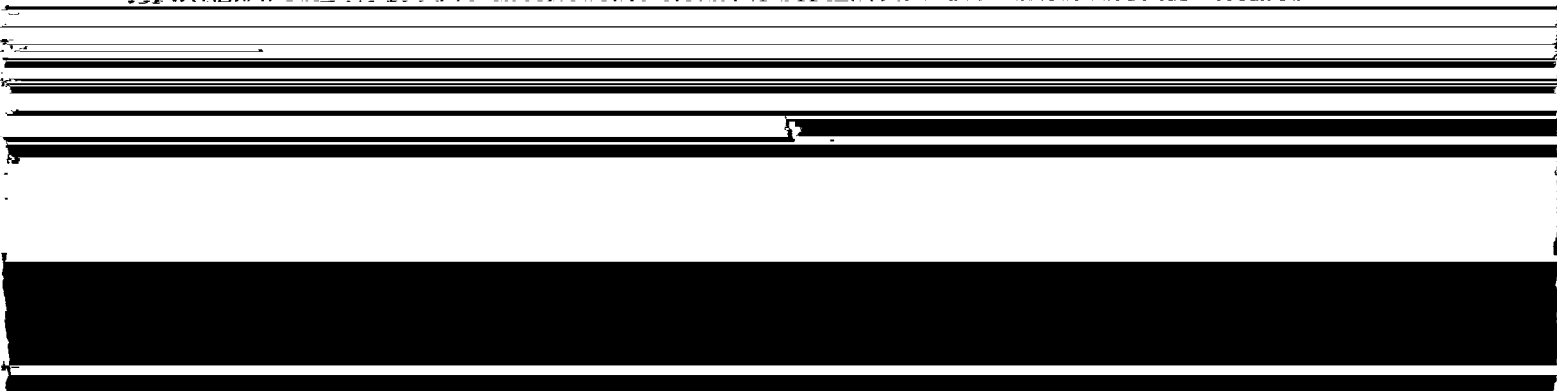
Trudeau also points to his statement in his FAQ’s indicating that following “all the steps in Phase 1 with strict adherence for 90-120 days” is an “alternative” for those who do not want



[REDACTED]

13. However, once again, Trudeau misses the point. Indeed, whether consumers **could** in fact

... "could" ...



F Trudeau's Infomercial Claims Are Not Mere Puffing Because They

Misrepresent the Facts of the Protocol in His Book

Trudeau attempts to brush aside his violative misrepresentations as mere "puffing."

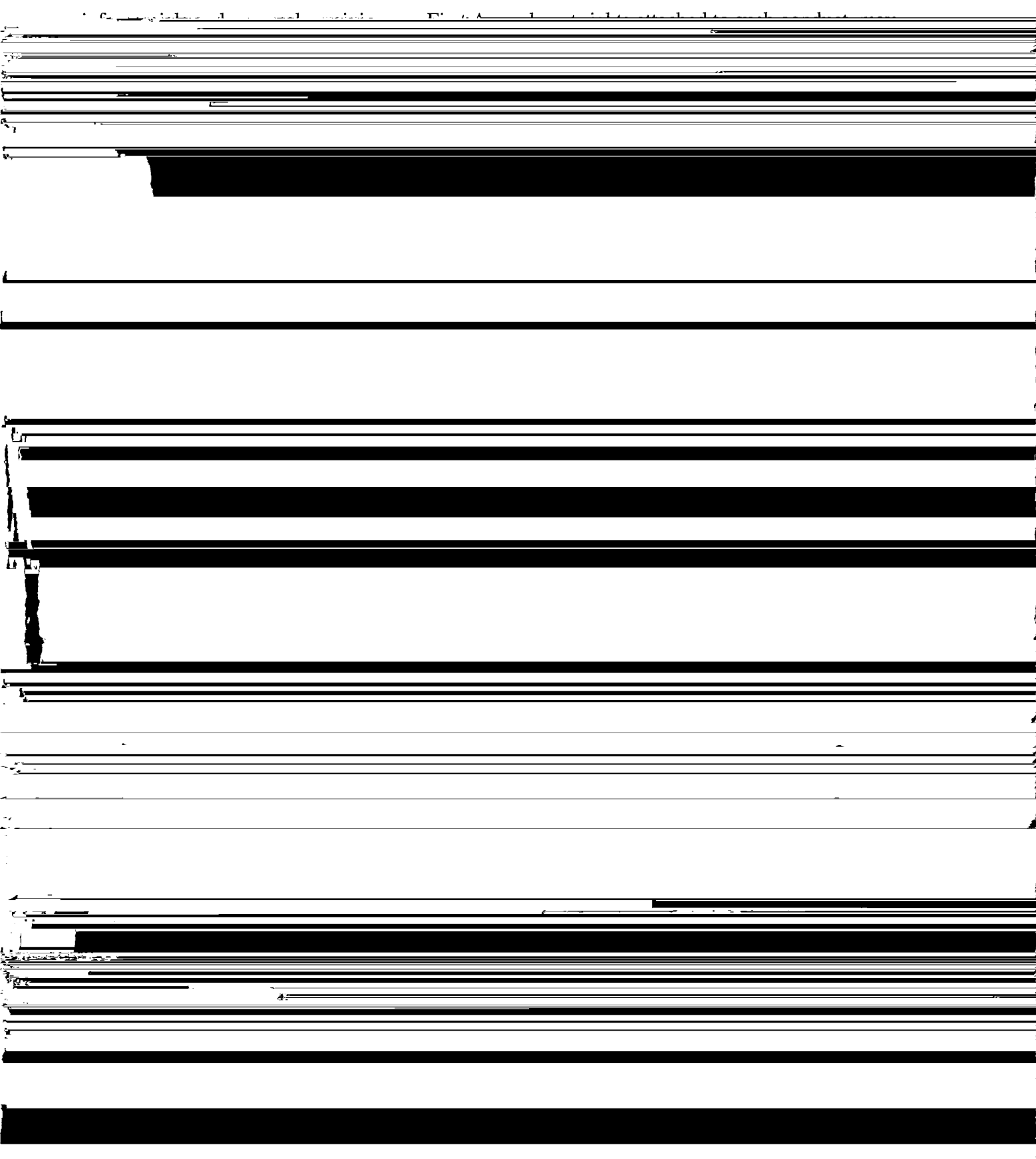
However, Trudeau's misrepresentations are not puffery because he misrepresents the facts of the weight loss protocol in his book and assigns the protocol benefits it does not possess

different facts that contradict the benefits touted in Trudeau's advertising, namely that his weight

in Petitioner's correspondence course not puffing when facts established reweaving was difficult to learn; distinguishing use of "easy" in *Carlay*).

misrepresentation when the facts contradict such a representation. See Page at 11 citing *Tashof*

Trudeau assured the Court that he had no questions or concerns about the Order and that “everything is very clear.” *Id.* at 7-8. Trudeau, having voluntarily, knowingly, and intelligently agreed to an Order containing a prohibition on misrepresenting the content of his books in



Moreover, individuals "have the full panoply of protections available to [their] direct comments on public issues, so there is no reason for providing them similar constitutional

protection when such statements are made in the context of commercial transactions." *Id.* 771

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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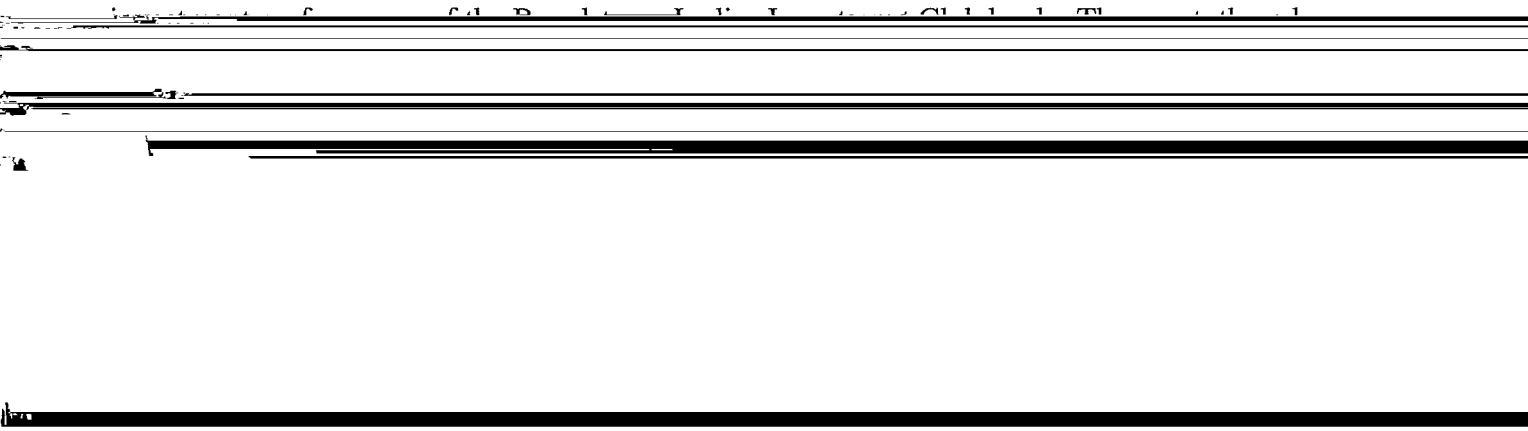
[REDACTED]

Random House, Inc., 61 F.3d 1045, 1051-52 (2d Cir. 1995).¹² Similarly, the *Lacoff* court emphasized that the “the complaint here does not allege that plaintiffs were misled as to the contents of the product or service being offered.” *Lacoff v. Buena Vista Pub. Inc.*, 705 N.Y.S. 2d 183, 192 (N.Y. Sup. Ct. 2000). By contrast, Trudeau’s claims explicitly misrepresent the content of his book.

In *Keimer*, which concerned the same facts as *Lacoff*, an appellate court rejected the very argument raised by Trudeau that the First Amendment protects misleading book advertisements. The court concluded that the First Amendment does not protect misleading commercial speech ~~even if that speech occurs on a book jacket and (unlike Trudeau’s statements about his book)~~



accurately reflects the content of the book. *Keimer*, 89 Cal. Rptr. 2d at 788-89. As discussed, *supra*, *Keimer* involved a challenge to investment claims made on the cover of a book about the



(1991) (challenging advertising that book consists primarily of information on how average

consumers can easily obtain grants from the government to start virtually any kind of small business, which, in truth, it did not); *Del Dotto Enters., Inc.* 117 F.T.C. 446, 450-51 (1994) (challenging ads that books and audiotapes would show consumers how to pocket portions of \$17,500 government home improvement loan and get over \$100,000 of unsecured credit through

Loss Cure infomercials, to discuss order compliance or otherwise. Even more importantly, the Order's mandate was not that Trudeau's attorneys "run ideas by the FTC," but that he not misrepresent the content of his book in an infomercial. Trudeau cannot dilute the order's

