

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	No. 03 C 3904
v.)	
)	Judge Robert W. Gettleman
KEVIN TRUDEAU,)	
)	
Defendant.)	

CORRECTED SUPPLEMENTAL ORDER MODIFYING THE STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND AWARDED MONETARY RELIEF AS TO DEFENDANT KEVIN TRUDEAU

On September 2, 2004, this Court entered a Stipulated Final Order for Permanent Injunction (Doc. 56; the “Final Order”) against Defendant Kevin Trudeau (“Defendant Trudeau”) and others. Pursuant to Fed. R. Civ. P. 60(b), Plaintiff Federal Trade Commission (“FTC” or “Commission”) filed a motion seeking modification of the Final Order as to Defendant Trudeau in order to effectuate its purpose of protecting consumers. For the reasons stated in the Memorandum Opinion and Order dated April 16, 2010, which is fully incorporated herein, the court hereby orders:

PROHIBITED BUSINESS ACTIVITIES

I. (Supercedes Part I of the Final Order as to Defendant Trudeau)

product, program or service, in or affecting commerce, is hereby permanently enjoined and restrained from producing, disseminating, making or assisting others in making any representation in an infomercial aired or played on any television or radio media (including but not limited to network television, cable television, radio, and television, radio or other content that is disseminated on the Internet).

This Part I does not prohibit Defendant Trudeau from making any truthful, non-misleading representation in any television or radio media in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any book, newsletter, or other informational publication in any format *provided* that any such book, newsletter or other informational publication:

- 1) does not reference, directly or indirectly, any branded or trademarked product, program or service that Defendant is promoting;
- 2) is not, directly or indirectly, an advertisement for any product, program or service; and
- 3) is not sold, promoted or marketed, directly or indirectly, in conjunction with any product, program or service that is related to the content of the book, newsletter or informational publication or infomercial;

Provided further that, Defendant Trudeau:

- 1) does not misrepresent the content of any such book, newsletter or informational publication; and
- 2) does not misrepresent the benefits, performance, or efficacy of any product, program or service referenced in any such book, newsletter or other informational publication.

Additionally, the infomercial for any such book, newsletter or informational publication must also comply with the requirements of Part X of the Final Order, reproduced herein.

For purposes of this Part I only, Defendant Trudeau will not be deemed to be disseminating television or radio media on the Internet provided that he does not, directly or indirectly, accept, process, or refer to third parties any orders from any addresses in the United States or consumers located in the United States.

II. (Supercedes Part II of the Final Order as to Defendant Trudeau)

IT IS FURTHER ORDERED that Defendant Trudeau, directly or through any corporation, partnership, subsidiary, division, trade name, or other entity, and his officers, agents, servants, employees, and all persons and entities in active concert or participation with him who receive actual notice of this order by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, program or service, in or affecting commerce, is hereby permanently enjoined and restrained from making or assisting others in making, expressly or by implication, including through the use of endorsements or product names, any representation regarding the health benefits of such product, program or service or that such product, program or service can cure, treat, or prevent any disease.

This Part II does not prohibit Defendant Trudeau from making any truthful, non-misleading representation in any television or radio media in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any book, newsletter, or other informational publication in any format *provided* that any such book, newsletter or other informational publication:

- 1) does not reference, directly or indirectly, any branded or trademarked product, program or service that Defendant is promoting;
- 2) is not, directly or indirectly, an advertisement for any product, program or service; and

3) is not sold, promoted or marketed, directly or indirectly, in conjunction with any product, program or service that is related to the content of the book, newsletter or

sufficient for an ordinary consumer to read, within the first thirty (30) seconds of the advertisement and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

“THE PROGRAM YOU ARE WATCHING IS A PAID
ADVERTISEMENT FOR [THE PRODUCT OR
SERVICE].”

Provided that, for purposes of this provision, the oral or visual presentation of a telephone number, email address or mailing address for viewers to contact for further information or to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein; or

C. Any radio commercial or other radio advertisement five (5) minutes in length or longer that does not broadcast, clearly and audibly, within the first thirty (30) seconds of the advertisement and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

“THE PROGRAM YOU ARE LISTENING TO IS A PAID
ADVERTISEMENT FOR [THE PRODUCT OR
SERVICE].”

Provided that, for purposes of this provision, the presentation of a telephone number, email address or mailing address for listeners to contact for further information or to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the announcement of the disclosure provided herein.

III. PERFORMANCE BOND

IT IS FURTHER ORDERED that Defendant Trudeau shall, in connection with producing, disseminating, making or assisting others in making any representation in an infomercial for any book, newsletter, or other informational publication, about the benefits, performance, or efficacy of any product, program or service referenced in any such book, newsletter or other informational publication, obtain and maintain in force a performance bond in the principal sum of two million dollars (\$2,000,000). Said bond shall be conditioned upon

compliance by Defendant Trudeau with the requirements of Part I of this Corrected Supplemental Order. The bond shall be deemed continuous and remain in full force and effect so long as, and for at least five (5) years after: (a) Defendant Trudeau produces, disseminates, makes or assists others in making any such representation in an infomercial for any book, newsletter, or other informational publication; or (b) any infomercial containing any such representation is aired or played on any television or radio media (including but limited to network television, cable television, radio, and television or radio content that is disseminated on

in an infomercial for any book, newsletter, or other informational publication, about the benefits, performance, or efficacy of any product, program or service referenced in any such book, newsletter or other informational publication; or (b) any infomercial containing any such representation is aired or played on any television or radio media (including but limited to network television, cable television, radio, and television or radio content that is disseminated on the Internet). The escrow agreement shall cite this Corrected Supplemental Order as the subject matter of the escrow agreement and direct the escrow agent to pay the Commission from funds in the escrow account in the event of Defendant Trudeau's failure to pay any judgment that may be ordered: (a) in consequence of a court finding of a violation of Part I of this Corrected Supplemental Order or (b) in settlement of an action by the FTC alleging a violation of Part I of this Corrected Supplemental Order. Defendant Trudeau shall pay all costs associated with the creation, funding, operation, and administration of the escrow account. The Commission shall, in its sole discretion, select the escrow agent. The escrow agreement shall be in substantially the form attached to this Corrected Supplemental Order as Attachment A.

The performance bond or escrow agreement shall provide that the surety company or escrow agent, within thirty (30) days following receipt of notice that a judgment has been entered either in consequence of a court finding of a violation of Part I of this Corrected Supplemental Order or in settlement of an action by the FTC alleging a violation of Part I of this Corrected Supplemental Order, shall pay the Commission so much of the performance bond or funds of the escrow account as is equal to the lesser of: (a) the amount of judgment ordered and which remains unsatisfied at the time notice is provided to the surety company or escrow agent, or (b) the amount of the bond or escrow fund. A copy of the notice provided for herein shall be mailed to Defendant Trudeau at his last known address.

3. Any changes in Defendant Trudeau's name or use of any aliases or fictitious names; and

4. Any changes in corporate structure of any business entity that Defendant Trudeau directly or indirectly control(s), or has an ownership interest in, that may affect compliance obligations arising under the Final Order or this Corrected Supplemental Order, including but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to the Final Order or this Corrected Supplemental Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, provided that, with respect to any such change in a business entity about which the Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Corrected Supplemental Order, and on the same date each year thereafter for a period of ten (10) years from the date of entry of this Corrected Supplemental Order, Defendant Trudeau shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with the Final Order and this Corrected Supplemental Order. This report shall include, but not be limited to:

1. Defendant Trudeau's then-current residence address, mailing addresses, and telephone numbers;

2. Defendant Trudeau's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that Defendant Trudeau is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of Defendant Trudeau's duties and responsibilities in connection with the business or employment;

3. A copy of each acknowledgment of receipt of the Final Order and this Corrected Supplemental Order, obtained pursuant to Part VI;

4. A copy of any Performance Bond obtained pursuant to Part III of this Corrected Supplemental Order;

5. Copies of all then-current advertisements, promotional materials, sales scripts, training materials, or other marketing materials utilized by Defendant Trudeau in the advertising, marketing, promotion, offering for sale, distribution, or sale of any book, newsletter, or other informational publication in any format; and

6. Any other changes required to be reported under subpart A of this Part.

C. For the purposes of this Order, Defendant Trudeau shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all written notifications to the Commission to:

Associate Director for Enforcement
Federal Trade Commission
601 New Jersey Ave., N.W.
Suite NJ-2122
Washington, D.C. 20001
Re: FTC v. Kevin Trudeau, Civil Action No. 03-3904.

Provided that, in lieu of overnight courier, Defendant Trudeau may send such reports or notifications by first-class mail, but only if Defendant Trudeau contemporaneously sends an electronic version of such report or notification to the Commission at: DEBrief@ftc.gov

D. For the purpose of the compliance reporting required by the Final Order and this Corrected Supplemental Order, Defendant Trudeau shall provide the Commission with his counsel's name and address for the purpose of communications regarding this Corrected Supplemental Order and shall notify the Commission of any change in his counsel for the purpose of this Corrected Supplemental Order.

V. RECORD KEEPING PROVISIONS

(Supercedes Part XVIII of the Final Order as to Defendant Trudeau)

IT IS FURTHER ORDERED that, for a period of thirteen (13) years from the date of entry of this Corrected Supplemental Order, Defendant Trudeau and any business for which he is a majority owner, officer, or director, or which he directly or indirectly manages or controls, are hereby restrained and enjoined from failing to create and retain the following records:

D. Complaints and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests;

E. Copies of all advertisements, promotional materials, sales scripts, training materials, or other marketing materials utilized by Defendant Trudeau in the advertising, marketing, promotion, offering for sale, distribution, or sale of any book, newsletter, or other informational publication in any format;

F. All records and documents necessary to demonstrate full compliance with each provision of the Final Order and this Corrected Supplemental Order, including but not limited to, copies of acknowledgments of receipt of the Final Order and this Corrected Supplemental Order required by Part VI of this Corrected Supplemental Order, and all reports submitted to the FTC pursuant to Part IV of this Order; and

G. All materials that were relied upon in making any representations contained in the materials identified in Subpart E, including all documents evidencing or referring to the accuracy of any claim therein, as well as all evidence that confirms, contradicts, qualifies, or calls into question the accuracy of such claims.

Defendant Trudeau must deliver a copy of the Final Order and this Corrected Supplemental Order to all: (1) principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Final Order and this Corrected Supplemental Order; and (3) any business entity resulting from any change in structure set forth in Subsection IV.A.4 of this Corrected Supplemental Order. For current personnel, delivery shall be within (5) days of service of this Corrected Supplemental Order upon Defendant Trudeau. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection IV.A.4 of this Corrected Supplemental Order, delivery shall be at least ten (10) days prior to the change in structure.

B. Defendant Trudeau as employee or non-control person: For any business where Defendant Trudeau is not a controlling person of a business but otherwise engages in conduct related to the subject matter of the Final Order and this Corrected Supplemental Order, Defendant Trudeau must deliver a copy of the Final Order and this Corrected Supplemental Order to all principals and managers of such business before engaging in such conduct.

C. Defendant Trudeau must secure a signed and dated statement acknowledging receipt of the Final Order and this Corrected Supplemental Order, within thirty days of delivery, from all persons receiving a copy of the Final Order and this Corrected Supplemental Order pursuant to this Part VI.

VII. AWARD OF MONETARY SANCTION

As a sanction for Trudeau's contempt of the Final Order as found by this court (FTC v. Trudeau, 572 F. Supp.2d 919 (N.D. Ill. 2008)), and affirmed by the United States Court of Appeals for the Seventh Circuit (FTC v. Trudeau, 579 F.3d 754 (7th cir. 2009)), Trudeau is

ordered to pay forthwith to plaintiff the sum of \$37,616,161, representing the consumer loss resulting from Trudeau's contumacious and deceptive infomercial marketing of the Weight Loss Cure book. The FTC shall use its best efforts to use this fund to reimburse all consumers who bought the Weight Loss Cure book over the 800 telephone number displayed in the infomercials for the cost of the book along with shipping and handling charges associated with that book. Any funds remaining after such reimbursement to consumers, less taxable costs and other costs of disbursement approved by the court, shall be returned to Trudeau within 30 days of final court approval.

The FTC is directed to file with the court a written report on the status of reimbursement efforts on or before July 23, 2010. This matter is set for a status hearing on July 29, 2010, at 10:00 a.m.

VIII. ACKNOWLEDGMENT OF RECEIPT OF CORRECTED SUPPLEMENTAL ORDER

IT IS FURTHER ORDERED that Defendant Trudeau, within five (5) business days of receipt of this Corrected Supplemental Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Corrected Supplemental Order.

IX. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for



ATTACHMENT A

THIS ESCROW AGREEMENT, made and entered into this ___ day of _____, _____, by and between Kevin Trudeau (hereinafter "Trudeau"); and Federal Trade Commission, an agency of the Government of the United States of America, by and through _____ (hereinafter "FTC"); and _____ (hereinafter "Escrow Agent");

WITNESSETH:

WHEREAS, the District Court for Northern District of Illinois entered a Corrected Supplemental Order Modifying the Stipulated Final Order For Permanent Injunction (hereinafter "Corrected Supplemental Order") (attached hereto); and

WHEREAS, the Corrected Supplemental Order requires that Trudeau, in connection with producing, disseminating, making, or assisting others in making any representation in an infomercial for any book, newsletter, or other informational publication, about the benefits, performance, or efficacy of any product, program or service referenced in any such book, newsletter, or other informational publication, establish and fund an escrow account, under the terms and conditions specified in the Corrected Supplemental Order;

NOW, WHEREFORE, in accordance with the terms of the Corrected Supplemental Order, which are incorporated herein by reference, the parties covenant and agree as follows:

1. By _____, 20___, or by the date of entry of the Corrected Supplemental Order, whichever occurs later, Trudeau shall establish an interest-bearing Escrow Account at _____, to be styled Trudeau Escrow Account, _____, Escrow Agent. Trudeau shall deposit into the Trudeau Escrow Account the amount required by Part III of the Corrected Supplemental Order.

2. The Escrow Agent shall be the sole signatory on the Escrow Account and access to the funds held in that account shall be solely through the Escrow Agent. It is understood by the parties to this Escrow Agreement that upon signing this Agreement, Trudeau relinquishes to the Escrow Agent, all legal title to the escrow funds, except as to such amounts in the Escrow Account that are in excess of two million dollars (\$2,000,000.00). Until and unless the Escrow Account is terminated as provided for herein, Trudeau agrees to make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

3. The Escrow Agent and the parties hereto agree that the escrow funds shall be held only in accordance with the terms of the Corrected Supplemental Order and the Escrow Agreement. Trudeau shall pay all costs associated with the creation, funding, operation, and administration of the Escrow Account as they become due. In the event that Trudeau fails to pay such costs as they become due, the Escrow Agent shall pay the costs from the interest earned on the escrow funds.

4. The escrow funds may be invested from time to time, to the extent possible, in United States Treasury Bills having a remaining maturity of 90 days or less or repurchase

obligations secured by such United States Treasury Bills with any remainder being deposited and maintained in a money market deposit account with Escrow Agent. Escrow Agent is authorized to liquidate in accordance with its customary procedures any portion of the escrowed funds consisting of investments to provide for payments required to be made under this Agreement.

5. The Escrow Agent, within thirty (30) days following receipt of notice that a judgment has been entered either in consequence of a court finding of a violation of Part I of the Corrected Supplemental Order or in settlement of an action by the FTC alleging a violation of Part I of the Corrected Supplemental Order, shall pay the Commission so much of the funds of the Escrow Account as is equal to the lesser of: (a) the amount of judgment ordered and which remains unsatisfied at the time notice is provided to the Escrow Agent, or (b) the amount of escrow funds. The Escrow Agent shall have the power to convert to cash so much of the Escrow Account assets as are necessary to satisfy the obligation of the judgement.

6. The Escrow Account shall continue until at least five years after Defendant Trudeau produces, disseminates, makes, or assists others in making any representations in an