

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 03-C-3904
)	
v.)	
)	
KEVIN TRUDEAU,)	
)	
Defendant.)	

REPLY IN SUPPORT OF MOTION TO HOLD D

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I. INTRODUCTION

Trudeau's opposition goes to great lengths to obfuscate the issue in these contempt proceedings it is Trudeau's burden to show his complete inability to pay. In its contempt motion, the FTC established that Trudeau utterly failed to take reasonable and diligent

the only way to force Trudeau to turn over all the assets he controls along with a genuine, evidence

result in purging his contempt); SEC v. Solow, 682 F. Supp. 2d 1312, 1335 (S.D. Fla. 2010) (ordering incarceration as a civil contempt sanction despite defendant's promise to pay in the future; ³There is a difference between making reasonable sounding representations to the Court and actually making reasonable efforts.

Finally, Lane's eleventh hour letter also seemingly proposes that the FTC accept \$1 million from the \$2 million escrow fund the Court order established to protect consumers should Trudeau's deceptive practices continue.⁵ This offer, however, is contingent on the FTC agreeing to reduce the bond [the required escrow] to \$1 million[.] Opp. at 2 (citing Lane's letter). A proposal to compensate the past victims of Trudeau's deceptive infomercials by gutting the escrow fund the Court ordered to protect his future victims that actually reduces consumer protection is neither a reasonable and diligent effort to comply nor something that the FTC would ever accept.

In short, having failed to make a reasonable and diligent effort to comply, it is now Trudeau's burden to demonstrate categorically and in detail his alleged complete inability to pay.

B. Trudeau Has Not Established His Complete Inability To Pay.

Based on unsworn and, in most cases, entirely unsupported representations in his brief, Trudeau contends that he personally does not have sufficient assets to pay the judgment. Opp. at 1. Trudeau's complete lack of candor further taints his claim, and he falls far short of the heavy burden that a party asserting inability to pay must satisfy.

⁵ Trudeau's proposal (to reduce the escrow amount and apply \$1 million of the now escrowed funds toward the judgment) is notably inconsistent with his position in a purportedly arm's length transaction, GIN lent Trudeau the \$2 million currently escrowed. See Opp. at 7 (asserting that the loan was independently justified by [GIN's] self-interest). If Trudeau were to be believed (and he should not), it would mean that supposedly independent GIN has now agreed, without consideration, to donate half the value of its loan toward the judgment against Trudeau. The only plausible way to interpret the facts is that Trudeau always controlled GIN and its \$2 million, but hid that control from the Court. In fact, the purported loan from GIN to Trudeau was really a payment from Trudeau to Trudeau.

Specifically, a party defending on the ground of inability must establish (1) that they were unable to compl

Second, Trudeau fails to reconcile his lavish lifestyle with his asserted poverty. Third, Trudeau fails to refute his control over multiple corporations.

1. Trudeau's Tax Returns Are Not Credible.

Trudeau's tax returns are significant because they are the evidence Trudeau offers that possibly could bear upon his asserted complete inability to pay taxes. Trudeau's brief asserts that [t]hese tax returns were prepared by Trudeau's accountant and their accuracy has never been questioned. Opp. at 16. However, they were not prepared by Trudeau's accountant² they were prepared by Trudeau's lawyer, Marc Lane, who is not an accountant. See PX7:F at 109:20-21 (examination of Lane); PX7: (/ D Q H (re); Opp. Exs. D, F-H. The reason that their accuracy has never been questioned is that Trudeau did not disclose them until he attached them to his most recent brief. And there is every reason to question Trudeau's tax returns:

- f More than \$6 million in federal and state tax liens have been filed against Trudeau, PX7:D, which very strongly suggests that Trudeau has understated his income to authorities previously.
- f Trudeau hides wealth by creating the legal fiction that someone else nominally owns assets that he actually controls. The tax returns do not disclose assets as those disguised as Babenko's or as the property of an offshore trust.
- f Lane prepared the returns, see Opp. Exs. D, F-H, and the Court already concluded that an earlier balance sheet that Lane prepared to demonstrate Trudeau's asserted poverty was not worth the paper it is written on. Mem. Op. (ECF 157) (Aug. 7, 2008) at 9.

Given Trudeau's dishonest track record, Trudeau's extensive asset concealment efforts, the fact that Lane prepared the returns, and the fact that multiple state and federal tax liens have been filed against Trudeau, there is no reason to credit these returns.

Furthermore, even if one suspended disbelief and credited Trudeau's returns, Trudeau offers no theory (and there is none) as to how tax returns that do not disclose Trudeau's assets could establish that Trudeau has no assets. Trudeau almost certainly owns significant assets.

⁸ In fact, Lane helped facilitate Trudeau's asset concealment efforts by arranging to form GIN and various other Trudeau-affiliated entities. See PX2:D at 1 (Babenko's 'GIN Set Up' check to Lane); PX2:A.

⁹ Form 1040 shows the filer's taxable income and deductions, not assets the filer owns (or controls). See Opp. Exs. F-H. Trudeau also submits one 2010 corporate tax return for Trudeau

directly in addition to those that he controls indirectly through corporate entities and his offshore trust. For instance, earlier this year, Trudeau stated that he invested ² and, in fact, Trudeau has shown guests a container of gold bars he stored in his Illinois home PX8 ¶ 12. Although

at the same time (as Trudeau reported to the FTC) ~~was~~ not employed by any entity during much of that period. ~~X4~~.B. Cf. *Womack v. United States*, 673 A.2d 603, 614 (D.C. 1996) (Black robes are not supposed to eviscerate our common sense).

Network (KTRN) rented the home, Opp. at 10, where various KTRN employed domestic workers (including two personal chefs and a butler) served Trudeau at 11.¹³ The costs of the Oak Brook home, the chefs, and the butler are Trudeau's living expenses, not the business expenses of his radio network. Trudeau paid them through KTRN to hide his assets from the Court, the FTC, and ultimately from the more than 800,000 consumers he misled.

3. Trudeau Fails To Refute His Control Over Multiple Corporations and an Offshore Trust.

Trudeau argues that the FTC has provided no proof that Trudeau controls GIN or the GIN-related entities, including KTRN and WSU. Opp. at 4. But Trudeau grossly misconstrues his burden, which he can only satisfy by coming forward with evidence in support of his complete inability to pay. In re Kademoglu, 199 B.R. 35, 36 (N.D. Ill. 1996) (quoting Rylander, 460 U.S. at 761); see also Custale, 1999 U.S. Dist. LEXIS 177, at *7 ([T]he defendant must produce evidence of poverty or insolvency that prevent compliance (citations omitted). However, Trudeau offers no such evidence. Rather, he asserts (and the FTC cites no valid evidence, offers no evidence, or has presented no evidence that Trudeau controls the GIN-related entities Opp. 46. In fact, a close reading of Trudeau's argument discussing the GIN-related entities reveals that he never actually states that he does not control these entities See Opp. 36.

headquarters: it is where GIN, WSU, KTRN, and various other Trudeau affiliated entities all

asset tracing as difficult as possible¹⁶ FTC Br. at 910. Fifth, Trudeau uses sophisticated
‘asset protection’ devices designed to defeat the jurisdiction of American courts, including an
offshore trust with a ‘address clause’¹⁷ PX4:G at 44, and a Belize IBSC¹⁸ see supra at 3 n.3

III. CONCLUSION

Notwithstanding the complexity of Trudeau's web of offshore trusts, foreign entities, and other asset protection devices, this motion is extremely straightforward. Trudeau is in contempt of this Court's Order to pay \$37 million and has not produced any evidence demonstrating his alleged complete inability to pay. Therefore, incarceration is the only way to coerce his full compliance with this Court's order.

Dated: October 15, 2012

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Michael P. Mora, hereby certify that on October 15, 2012, I caused to be served true copies of the foregoing by electronic means, by filing such documents through the Court's Electronic Case Filing System, which will send notification of such filing to:

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