

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
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) 10 CR 886
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KEVIN TRUDEAU) Judge Ronald A. Guzman

GOVERNMENT’S MOTION TO AMEND ORDER TO SHOW CAUSE

The UNITED STATES OF AMERICA respectfully requests that the Court dismiss the original order to show cause in this case and enter an amended order to show cause against Kevin Trudeau that removes the six-month cap on the potential term of imprisonment. In support of this motion, the government states as follows.

BACKGROUND

A. Trudeau’s Litigation With the FTC

For years, Kevin Trudeau has promoted “cures” for a number of conditions, including cancer, AIDS, hair loss, poor memory, debt, and obesity. *FTC v. Trudeau*, 579 F.3d 754, 756 (7th Cir. 2009) (Attached at Exhibit A). Among the ways Trudeau markets his supposed cures is through books and infomercials. *Id.* In 1998, the Federal Trade Commission (“FTC”) sued Trudeau for deceptive practices and false advertising for products such as the “Sable Hair Farming System,” “Howard Berg’s Mega Reading,” and “Kevin Trudeau’s Mega Memory System,” which Trudeau promoted through infomercials. *Id.* at 757. Trudeau settled the case, paid \$500,000 to compensate consumers, and agreed not to make any representations about the benefits or performance of any product without competent and reliable evidence for his

claims; agreed not to misrepresent the existence or contents of any research study; and agreed to disclose that his infomercials were advertisements, not interviews. *Id.*

In 2003, the FTC sued Trudeau again, this time for marketing “Coral Calcium Supreme,” as a cure for cancer, heart disease, multiple sclerosis, and other serious conditions, and “Biotape,” as a cure for severe pain. *Id.* After the FTC moved to hold Trudeau in civil contempt for violating the 1998 injunction, Trudeau agreed to a preliminary injunction to stop marketing these products without first submitting the infomercials to the FTC. *Id.* In spite of the preliminary injunction, Trudeau continued to market Coral Calcium as a cure for cancer, and in June 2004, the district court held Trudeau in civil contempt for violating the preliminary injunction, and ordered Trudeau to stop all marketing of Coral Calcium. *Id.*

In September 2004, the Court entered a consent order, which ordered Trudeau to pay \$2 million to consumers and prohibited him from advertising any products in infomercials. *Id.* The order contained an exception allowing Trudeau to participate in infomercials for publications as long as the publication did not refer to any other product Trudeau was marketing. *Id.* at 757-58. Finally, the order provided that “the infomercial for any such book . . . must not misrepresent the content of the book.” *Id.* at 758.

B. *The Weight Loss Cure Book*

In 2007, Trudeau wrote a book called *The Weight Loss Cure “They” Don’t Want You to Know About* (“*The Weight Loss Cure*,” or “*WLC*”), which contains a four-phase program promising “the ultimate cure for obesity.” *WLC* at 98. In its own words, the

book sets forth “a very strict and specific food consumption plan,” in which “you must be very strict in following the diet exactly if you want to achieve results.” *WLC* at 96, 130. In summary, the book describes the four phases as follows:

- **Phase One** lasts 30 days, and, according to the book, is “strongly recommended, but is not required.” *WLC* at 74.¹ Among other things, the book tells dieters to eat six organic meals a day, eat 100 grams of organic meat just before bed, avoid any food cooked in a microwave, have 15 colonics (similar to an enema but performed only by specialists), and avoid all prescription and over-the-counter medications. *FTC v. Trudeau*, 579 F.3d at 758-59.
- **Phase Two** is mandatory and lasts from three to six weeks. *WLC* at 75. Among many other restrictions, during Phase Two dieters may eat only 500 calories a day of specific types of organic food, and must have daily injections of Human Chorionic Gonadotropin (“hCG”), a prescription drug that, as the book acknowledges, is not approved for weight loss in the United States, and that users may obtain only by leaving the United States or from a doctor who will prescribe it off-label. *FTC v. Trudeau*, 579 F.3d at 759 & n.3; *WLC* at 116-120.
- **Phase Three** is mandatory and lasts three weeks. *WLC* at 75. Dieters again must eat only organic food, may eat no sugars, starches, food cooked in a microwave, or food served in fast-food or chain restaurants, and must ingest dietary supplements such as digestive enzymes, krill oil, and probiotics (a type of live microorganism). *FTC v. Trudeau*, 579 F.3d at 759.
- **Phase Four** is mandatory and lasts for the rest of your life. *Id.*² Among

¹ Elsewhere, the book describes a number of things dieters “MUST” do while undergoing Phase One, in contrast to other things the book describes as merely “STRONGLY RECOMMENDED.” *WLC* at 213-216; *see also FTC v. Trudeau*, 579 F.3d at 758-59 & n.2. The Seventh Circuit found that, despite Trudeau’s position that Phase One is optional, dieters could reasonably conclude that it is mandatory. *FTC v. Trudeau*, 579 F.3d at 758-59 & n.2.

² Trudeau claims that Phase 4 is optional, but the book never describes it as such, and makes clear that dieters must follow the steps in Phase 4 in order “[t]o keep the weight off permanently,” which is the entire point of *The Weight Loss Cure*. *WLC*

other restrictions, dieters must eat only 100% organic food; may not eat brand name, fast food, or food from regional and chain restaurants; may not eat highly refined sugars such as high fructose corn syrup; must eat only 100% raw (unpasteurized) dairy products; must undergo colon, liver, parasite, and heavy metal cleanses; take a whole food supplement, probiotics, Vitamin E, and krill oil daily; and walk for an hour a day. *Id.* at 759; *WLC* at 224-27.

C. Trudeau's Infomercials for *The Weight Loss Cure*

Trudeau appeared in three infomercials for *The Weight Loss Cure*, which were recorded on or about December 23, 2006, on or about January 8, 2007, and on or about July 6, 2007, and which eventually aired about 32,000 times. *FTC v. Trudeau*, 579 F.3d at 759 n.5. The infomercials urged viewers to buy the book, and announced that Trudeau had “found the weight loss cure. Not a diet, not an exercise program, not portion control, not calorie counting, not watching your carbs, not watching your fat, no crazy potions, powders, or pills, a medical doctor discovered a cure for the problem of obesity” (7/6/07 Infomercial Tr. at 4). In the infomercials Trudeau also made the following claims, among many others:

- The cure is “[t]he easiest, most effective weight loss miracle ever” (12/23/06 Tr. at 4).
- “This is the cure. It’s easy, it’s simply, it’s inexpensive. You can get this miracle substance and do the protocol. . . . You do it at home” (7/6/07 Tr. at 22).
- The cure consists of “this substance combined with a few other little things in the protocol” (7/6/07 Tr. at 12).

at 106; *see also id.* at 141. In addition, as with Phase One, in Phase Four the book describes a number of things that dieters “MUST” and “MUST NOT” do. *Id.* at 224-27. The Seventh Circuit concluded that dieters could reasonably conclude from the book that Phase Four is mandatory. *FTC v. Trudeau*, 579 F.3d at 759 n.2.

- “You can get it anywhere, it’s easy to get, it’s very inexpensive. I call it an all-natural miracle substance” (7/6/07 Tr. at 11).
- “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” (12/23/06 Tr. at 26).
- The night before the infomercial, “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 ice cream and real hot fudge and real nuts and real whipped cream” (12/23/06 Tr. at 18-19).

D. The Finding of Civil Contempt

Following the airing of these infomercials, the district court held Trudeau in civil contempt for violating the 2004 consent order by appearing in infomercials that misrepresented the content of *The Weight Loss Cure*. *FTC v. Trudeau*, 579 F.3d at 760-61. The Court awarded damages of over \$37 million to compensate consumers for their losses, and banned Trudeau from appearing in infomercials for three years. *Id.* at 762.

Trudeau appealed both the contempt finding and the remedy. The Seventh Circuit affirmed the contempt finding, concluding that Trudeau “repeatedly distorted the content of the Weight Loss Cure book in multiple infomercials,” that the infomercials made “blatant misrepresentations,” that “Trudeau did more than just quote his book; he outright lied,” and that “the infomercials are . . . loaded with . . . statements that are patently false.” *Id.* at 766-68 & n. 12. On the remedy, the Court vacated the \$37 million damages award and the three-year infomercial ban, and remanded to the district court to make further findings and to refashion an appropriate remedy. *Id.* at 768-775, 776-779.

On remand, and following extensive briefing, the district court made additional factual findings and ordered Trudeau to pay damages of over \$37 million to compensate consumers for losses from deceptive infomercials for *The Weight Loss Cure*. The Court also ordered Trudeau to post a \$2 million performance bond before participating in more infomercials. 03 CV 3904, R. 335.³

E. The Criminal Contempt Proceeding

The same day it announced the civil remedies, the Court issued an order pursuant to Fed. R. Crim. P. 42, directing Trudeau to show cause why he should not be held in criminal contempt for his violations of the 2004 civil consent order, and giving Trudeau notice that if convicted of criminal contempt, the Court would “consider imposing a term of imprisonment not to exceed six months. . . .” 03 CV 3904, R. 339 (Attached as Exhibit B). The order also requested that the United States Attorney’s Office prosecute the criminal contempt case. *Id.* The government has accepted the referral.

Trudeau filed a motion to dismiss the order, and a motion to recuse Judge Gettleman. 03 CV 3904, R. 353, 363, 416, 417. The district court denied both motions, R. 436-37, but exercised the Court’s prerogative as a senior judge, pursuant to 28 U.S.C. § 294(b), to transfer the criminal proceedings against Trudeau to the Executive Committee for reassignment to another judge. 03 CV 3904, R. 435. The case was assigned to this Court.

³ Trudeau has appealed this decision.

ARGUMENT

Because the term of imprisonment is limited to six months, Trudeau is currently charged with criminal contempt as a misdemeanor petty offense. Judge Gettleman announced this six-month cap before the government joined the case, and the government chose not to contest Judge Gettleman's decision. 03 CV 3904, R. 406 n.1. But this Court, unlike Judge Gettleman, has made no commitment about the sentence it might impose, and, accordingly, the government respectfully requests that the Court leave open the possibility of sentencing Trudeau to more than six months in prison.

Both the nature of the offense and the background of the defendant favor the possibility of a longer sentence. Trudeau has repeatedly violated orders of the Court, causing Judge Gettleman to describe him as a "career contemnor." *See, e.g.*, 03 CV 3904, R. 437 at 5. Trudeau's infomercials for *The Weight Loss Cure* made a mockery of the 2004 consent decree by containing, in the Seventh Circuit's words, "blatant misrepresentations," "paten[t] false[hoods]," and "outright lie[s]." *FTC v. Trudeau*, 766-68 & n. 12. *The Weight Loss Cure* book, and the infomercials in which Trudeau lied about it, amounted to a fraud scheme that hoodwinked consumers, and in Judge Gettleman's estimate, the proper measure of consumer loss exceeded \$37 million. Even if that figure is lowered on appeal, Trudeau's repeated violations of the Court's orders and deception of consumers amounts to more than a petty offense.

In addition, Trudeau's *Weight Loss Cure* infomercials are not his first fraud: in addition to peddling dubious "cures" for years, he has a 1990 conviction for bank fraud in the Commonwealth of Massachusetts, for which he was sentenced to five years in

prison, which was suspended for three years, and a 1991 conviction for credit card fraud in the District of Massachusetts, for which he was sentenced to two years in prison.

For these reasons, the government respectfully requests that the Court dismiss the original order to show cause and enter an amended order to show cause that removes the six-month cap on the potential term of imprisonment. The government has attached a proposed amended order as Exhibit C.⁴

CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court dismiss the original order to show cause (03 CV 3904, R. 339, attached as Exhibit B) and enter an amended order to show cause (attached as Exhibit C).

Dated: June 6, 2011

Respectfully submitted,

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⁴The proposed amended order alters additional content from the original order, such as omitting the requirement that Trudeau appear in Judge Gettleman's courtroom on April 28, 2010, identifying the specific dates on which Trudeau made representations in infomercials that misrepresented the content of *The Weight Loss Cure*, and citing the criminal contempt statute, 18 U.S.C. § 401(3).