

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

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| FEDERAL TRADE COMMISSION, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 03-C-3904 |
| | : | |
| KEVIN TRUDEAU, | : | |
| | : | |
| Defendant. | : | |

**PLAINTIFF'S BRIEF SUPPORTING ITS MOTION FOR DEFENDANT TRUDEAU
TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CONTEMPT**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”) moves for an Order for Defendant Kevin Trudeau (“Trudeau” or “Defendant”) to show cause why he should not be held in contempt for violating the Court’s September 2004 Stipulated Permanent Injunction (“Permanent Injunction” or “Order” attached at Exhibit 1). The Permanent Injunction bans Trudeau, whom this Court previously held in contempt, from making infomercials save for a narrow exception that permits his involvement in infomercials about books *if* the infomercials do not misrepresent the contents of such books. Trudeau has flouted this exception by blatantly misrepresenting the contents of his book, *The Weight Loss Cure ‘They’ Don’t Want You to Know About* (“*Weight Loss Cure*”) in widely distributed infomercials.¹

Specifically, Trudeau claims in his infomercials that his book offers an “easy” weight loss plan that ultimately allows consumers to eat “everything they want.” But in his book, Trudeau describes a grueling regimen that requires daily injections, severe dieting, and lifelong food restrictions. Trudeau’s widely disseminated misstatements of his book’s contents squarely violate Section I of this Court’s Permanent Injunction. Accordingly, the Commission returns to this Court and seeks an Order directing Trudeau to show cause why he should not be held in contempt and ordered to redress consumers for the harm caused by his violative marketing activities.

¹ We have included these infomercials, in a DVD format, with Exhibit 13. They are best viewed in a later model DVD player (one that supports DVD-R, DVD+R, DVR+/- and DVR-RW) or a computer that has a DVD reader.

I. STATEMENT OF FACTS

A convicted felon,² and self-described “consumer advocate,” in the past decade Trudeau has used infomercials to make an array of misleading claims, including claims that various products cure cancer, baldness, and drug addiction. Trudeau’s deceptive marketing activities led to two FTC lawsuits against him in this Court, in 1998 and 2003 respectively. In addition, Trudeau’s disregard of the Court’s 1998 Permanent Injunction and 2003 Preliminary Injunction instigated two contempt actions.³ Despite those prior contempt actions, Trudeau is once again demonstrating his disregard for court orders by making blatant misrepresentations about the ease and restrictiveness of the protocol described in his weight loss book in violation of the current Permanent Injunction.

A. **Trudeau’s History of Deceptive Infomercials and Disregard for Court Orders**

In 1998, the Commission filed a complaint against Trudeau alleging that he made false or misleading claims in separate infomercials touting six products. Ex. 4, Complaint, *FTC v. Kevin Trudeau*, 98 C 0168 (N.D. Ill.). Trudeau claimed that the products sold in his infomercials caused dramatic results including significant weight loss; reversal of hair loss; and achievement of a photographic memory. *Id.* at ¶¶ 8-18; 21-61. He also claimed that certain products could cure addictions to heroin, alcohol, cigarettes, and food,⁴ as well as cure diseases like depression

² In 1991, Trudeau pleaded guilty to two counts of credit card fraud in federal district court in Boston. He was sentenced to 24 months in prison and 24 months of supervised release. Ex. 2. Previously, in 1990, Trudeau pleaded guilty to larceny in Massachusetts state court in connection with his bank deposit of \$80,000 of worthless checks. Ex. 3.

³ As discussed below, in 2003, the Commission sought contempt sanctions against Trudeau for violating the 1998 Permanent Injunction by making unsubstantiated health claims about Coral Calcium and Biotape. *See* Ex. 6, 2003 FTC Contempt Memo at 6-19. Concurrent with its contempt motion, the Commission also filed a false advertising complaint against Trudeau and other Defendants regarding their deceptive Coral Calcium claims. *See* Ex. 7, *FTC v. Kevin Trudeau, Shop America (USA), LLC et al.*, 03 C 3904 (N. D. Ill.) (“2003 Compl.”) at ¶¶16-21. During the course of these proceedings, the Court issued a preliminary injunction. Ex. 8. Trudeau’s violation of the preliminary injunction caused the second contempt proceeding. *See* Ex. 9, Contempt Order (June 29, 2004).

⁴ Trudeau touted “Dr. Callahan’s Addiction Breaking System” which he claimed could “eliminate” addictive urges in 60 seconds and would work on “any type of addictive behavior, whether it be alcohol, drugs, cigarettes, food” Ex. 7, 2003 Complaint, ¶14. Trudeau resurrects his addiction curing claims in *The Weight Loss Cure* where he describes the Callahan technique at length and urges readers to use the

and arthritis. *Id.* at ¶¶ 8-10, 14, 21-27, 40-46. As a result of the Commission action, Trudeau entered into a stipulated Permanent Injunction that prohibited him from making any unsubstantiated representation about the benefits, performance, or efficacy of any product.⁵ *See* Ex. 5, Stip. Order For Perm. Inj. (N.D. Ill Jan. 14, 1998) (“1998 Permanent Injunction”).

Despite the Court’s 1998 Permanent Injunction, Trudeau claimed in subsequent infomercials that Coral Calcium Supreme cured terminally ill cancer patients and caused multiple sclerosis patients to rise out of their wheelchairs. *See* Ex. 6, 2003 FTC Contempt Memorandum, at 8-9. Trudeau also claimed that research published by the American Medical Association found that calcium supplements “reverse” cancer. *Id.* at 9. In a separate infomercial, Trudeau heralded Biotape, an adhesive pain-relief product that “permanently” eliminated pain from arthritis, migraines and sciatica. Ex. 6, 2003 FTC Contempt Memorandum, at 6. As a result of these unsubstantiated claims, the Commission returned to this Court in 2003 to enforce the Court’s 1998 Order and seek contempt sanctions and injunctive relief against Trudeau.

Following the filing of the Commission Contempt Motion, Trudeau entered into a stipulated Preliminary Injunction that prohibited him from representing that Coral Calcium was an effective treatment or cure for any form of cancer, multiple sclerosis or other autoimmune diseases and prohibited Trudeau from representing that published scientific research proves that calcium supplements reverse and/or cure cancer. Ex. 8, 2003 Preliminary Injunction at 4-5. Notwithstanding that Order, Trudeau disseminated a letter and infomercial claiming that Coral Calcium cured cancer. Ex. 9, Contempt Order.

On July 1, 2004, the Court held Trudeau in contempt of the Preliminary Injunction. *Id.* The Court described Trudeau’s claim that calcium is an effective treatment or cure for any form of cancer as a “lie” and “clearly violative, not just of the order, but of any standard of truthfulness.” Ex. 10, Hrg. Tr. at 6-7 (March 31, 2004).

technique “EVERY TIME” they have a strong urge to eat something. Ex. 12, *Weight Loss Cure* book (excerpts), at 168-175.

⁵ The 1998 Permanent Injunction also required Trudeau to pay \$500,000 for consumer redress and post a \$500,000 performance bond or fund an escrow account in connection with any future infomercials. Ex. 5 at 12-16.

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 television or radio media (including but not limited to network television, cable television, radio, and television or radio content that is disseminated on the Internet).

Ex. 1, 2004 Permanent Injunction, *FTC v. Trudeau*, Civ. No. 03-C-3904, Civ. No. 98 C 0168 at §1 (N.D. Ill. Sept. 3, 2004) (emphasis added).

This broad infomercial ban contains only a narrow exception that allows Trudeau to make infomercials in connection with the advertising or promotion of “informational publications” such as books. *Id.* Significantly, however, even when marketing books, Trudeau “**must not misrepresent the content of the book.**” *Id.* (emphasis added).

The parties confirmed the terms of the Permanent Injunction at a hearing held prior to its entry. Ex. 11, Hrg. Tr. (Sept. 2, 2004). Regarding Trudeau’s prior contempt, the Court reminded Trudeau that he “was very unhappy, as you know, the last time that this was brought to me, and I don’t want to have that happen again.” *Id.* at 14. The Court also confirmed directly with Trudeau that he “had a personal hand in the provisions of this agreement” and took care to inquire whether Trudeau had “any questions, concerns, anything unclear to you.” *Id.* at 7-8. In response, Trudeau personally assured the Court that “everything is very clear” regarding his understanding of the Order. *Id.* at 8. The Court also advised Trudeau to seek legal counsel if he was unsure about the Order’s “obligations and the restrictions.” *Id.* at 14.

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

Notwithstanding the Court's counsel and Trudeau's own assurances, he has once again disregarded a court order. As shown below, Trudeau has violated Section I of the Permanent Injunction by misrepresenting the contents of his *Weight Loss Cure* book in his infomercials.

C. Trudeau's Violative Infomercials

Trudeau promotes his *Weight Loss Cure* book in three widely disseminated infomercials. In each of these infomercials Trudeau misrepresents that his protocol is easy and once completed, users can eat everything they want yet still maintain their weight loss. Contrary to these claims, his book's weight loss program is arduous and requires severe food restrictions.

1. Trudeau's Widely Disseminated Infomercial "Interviews" Touting His *Weight Loss Cure* Book

Trudeau's infomercials, which began airing no later than December 23, 2006, tout his *Weight Loss Cure* book in interview-style programs. In an infomercial for the Shop America cable program, Trudeau discusses his *Weight Loss Cure* book with host Chloe Marshall. *See* Ex. 13a ("Weight Loss Cures" infomercial on DVD). A second infomercial, hosted by Donald Barrett, features Trudeau discussing the book during Barrett's ITV cable program. Ex. 13d ("Weight Loss Cures - ITV" infomercial on DVD). A third infomercial features Trudeau purportedly updating Marshall on the continuing results of his book's weight loss "cure." Ex. 13 at ¶7 and Ex. 13h ("Weight Loss Cures" 2 infomercial on DVD).⁷

Trudeau's infomercials promoting his weight loss book are widely disseminated. The Infomercial Monitoring Service (IMS) ranked the ITV program as one of the top ten most frequently broadcast infomercials in February and March 2007. Ex. 13 at ¶ 6.⁸ Similarly, the Weight Loss Cures 2 program ranked among the ten most frequently broadcast infomercials during July 2007. Ex. 13 at ¶7. In addition to broadcast television, consumers can also view the ITV and the Weight Loss Cures 2 infomercials via the internet. Ex. 14, Investigator

⁷ The Infomercial Monitoring Service (IMS), a business that electronically records and monitors more than 40 television networks 24 hours a day, detected Trudeau's first infomercial promoting *Weight Loss Cure* on December 23, 2006, his second infomercial on January 8, 2007 and his third infomercial on June 17, 2007. Ex. 13, IMS Decl. ¶¶ 3-7.

⁸ IMS issues National Cable Infomercial Ranking-Frequency Reports, which rank infomercials based upon the frequency with which they are aired on networks monitored by IMS. Ex. 13 at ¶4.

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. **It was the easiest, fast[est], most effective thing I’ve ever done.**

KEVIN TRUDEAU: The doctor -- medical doctor put her on the protocol -- **again, it’s easy to do, you can do it at home**

Ex. 14b, Weight Loss Cures-ITV Tr., at 8-9, 16, 27- 28 (emphasis added); *see also* Ex. 14a at 13.

Trudeau similarly praises the ease of his “cure” to Chloe Marshall:

KEVIN TRUDEAU: When you do the weight loss cure protocol, **its easy to do. You can do it at home.**

KEVIN TRUDEAU: This is called the Weight Loss Cure They Don’t Want You To Know About. It’s been suppressed for 45, almost 50 years. I did it myself. **I can attest, it was the easiest, simplest, most effective thing I’ve ever done.**

Ex. 14a, Weight Loss Cures Tr., at 10, 14 (emphasis added); *see also* Ex. 14b at 4.

Indeed, in Trudeau’s most recent infomercial, he proclaims that the weight loss protocol described in his book allows users to lose weight faster in “**the easiest method known on planet**

earth.” Ex. 14d, Weight Loss Cures 2 Tr., at 7 (emphasis added).⁹

b. Trudeau Represents That Once The Protocol Ends, Consumers Will Not Regain Weight And Diet Is Unrestricted.

Trudeau also claims in all three infomercials that once consumers finish his book’s diet protocol, they are “cured” and therefore can eat whatever they want without regaining weight.

For example:

KEVIN TRUDEAU: . . . – [A]ccording to the doctors, **85 percent of the people that have gone through the protocol, a year later don’t gain the weight back. Even though they’re eating everything they want, any time they want and they’re not on a diet.**

KEVIN TRUDEAU: . . . You’re losing weight without deprivation, no exercise. **And when you’re done with the protocol, eat whatever you want and you don’t gain the weight back.**

KEVIN TRUDEAU: **When I finished this protocol**, Don, my appetite is now normal, which is here. When I eat a little food, I get full. It’s normal. **I’m eating anything I want. I had ice cream last night, a big hot fudge sundae**, but guess what? I couldn’t eat it all.

DONALD BARRETT: You can’t eat it all, but you don’t have to worry about gaining the weight back.

KEVIN TRUDEAU: **There’s no -- there’s no deprivation, okay? I went to my mother’s house, we had big pasta. So, what can you eat? How about pizza, pasta, fettuccine alfredo. Real stuff, not diet crap. I’m talking real food.**

Ex. 14b, Weight Loss Cures-ITV Tr., at 20, 30-31 (emphasis added).

KEVIN TRUDEAU: . . . Here’s the best part, **I’ve been off the program now –**

CHLOE MARSHALL: Um-hum.

KEVIN TRUDEAU: – **guess what I can eat. Anything.**

⁹ Trudeau makes additional claims about the ease of the protocol throughout the infomercial. See Ex. 14c at 6, 22, 26, and 33.

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 saunas (preferably 20-minute infrared saunas) as often as possible; eat six times a day; eat only organic meat and dairy; and eat 100 grams of

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,

and how they prepare their food. Phase 4 requirements include the following mandates:

- Eat only 100 percent organic food.
- No “brand name” food (e.g. no food “produced by large publicly traded corporations.”)
- No fast food, regional or national chain restaurants.
- No super highly refined sugars (i.e., high fructose corn syrup, corn syrup, fructose and dextrose).
- No artificial sweeteners.
- No trans fats (hydronated or partially hydronated oils).
- No monosodium glutamate.
- No food with nitrites.
- No meat poultry or dairy that is not 100 percent organic.
- No farm raised fish.
- No food cooked in a microwave.

Ex. 12, *WLC* at 106-111. Indeed, Trudeau counsels readers to repeat the most restrictive phase of the protocol, Phase 2, to lose any regained weight. *WLC* at 142.

II. ARGUMENT

Trudeau has violated the Court’s Permanent Injunction by blatantly misrepresenting the contents of his *Weight Loss Cure* book in widely disseminated infomercials. Trudeau expressly and repeatedly claims in his infomercials that his book’s protocol is “easy” and involves “no deprivation” or restrictions to maintain dramatic weight loss. However, the weight loss protocol described in Trudeau’s book is arduous and requires significant, lifelong deprivations. Because these misrepresentations violate Section I of the Injunction, the Court should order Trudeau to show cause why he should not be held in contempt and ordered to redress consumers for the harm caused by his violative conduct.

A. Legal Standard for Civil Contempt

District courts have the inherent power to enforce their orders. *Shillitani v. United States*, 384 U.S. 364, 370 (1966); *Jones v. Lincoln Elec. Co.*, 188 F.3d 709, 737 (7th Cir. 1999). As a party to the original action, the FTC may invoke the court’s power by initiating a proceeding for civil contempt. *See Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 444-45 (1911). In order to establish liability for civil contempt, the FTC must show by clear and convincing evidence that: 1) a valid court order existed; 2) the defendant had knowledge of the order; and 3) the defendant failed to comply with the order. *Stotler & Co. v. Able*, 870 F.2d 1158, 1163 (7th Cir. 1989) (“clear and convincing” standard). *See also Hicks v. Feiock*, 485 U.S. 624, 628

(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.

Trudeau had knowledge of the Order. Trudeau demonstrated his knowledge by negotiating the Order, agreeing to its terms, and signing it. Indeed, as noted above, this Court even counseled Trudeau about the importance of complying with the Order, and Trudeau specifically averred to the Court that he understood its terms. Ex. 11, Sept. 2, 2004 Hearing Tr., at 7-8.

3. Trudeau Violated the Permanent Injunction Order.

Trudeau has violated the specific prohibition that he “must not misrepresent the content of [a] book . . .” in an infomercial. Ex. 1, 2004 Perm. Inj., § I. As detailed in the Statement of Facts above, Trudeau has violated this proscription in three infomercials that grossly misrepresent the contents of *The Weight Loss Cure*.

First, Trudeau misrepresents in his infomercials that the book’s weight loss protocol is “the easiest method known on planet earth.” Ex. 14d, Weight Loss Cures 2 Tr., at 7. He repeatedly and expressly claims that his book’s protocol is easy – so easy it can be done at home. *See supra* at § II, C(1)(a). In fact, the protocol in Trudeau’s book is arduous and requires medical supervision. *See supra* at § I, C(2)(a). As described above, Trudeau’s weight loss “cure” includes daily, intramuscular injections of a prescription drug that is not approved for weight loss; repeated intestinal-cleaning procedures that can only be performed by a licensed colon therapist; a severely restricted 500-calorie-a-day, organic-only diet; and prohibits all prescription and non-prescription medications. Thus, Trudeau’s infomercials violate Section I of the Order because they misrepresent the contents of his book by claiming that the weight loss protocol is easy.

Second, Trudeau’s infomercials misrepresent that after consumers “complete” the protocol, they will be free from dietary restrictions and able to eat whatever they want without regaining weight. *See supra* at § II, C(1)(b). In fact, consumers never complete Trudeau’s protocol because the final phase of the book’s protocol, Phase 4, is “for the rest of your life.” Ex. 12, *WLC* at 105. This means that consumers will never actually complete the protocol. Far from being free of dietary restrictions, Phase 4 includes a list of 50 lifetime requirements, including eating only 100 percent organic food and avoiding all microwave-heated food, chain-restaurant food, trans-fats, nitrates, and artificial sweeteners. *See supra* at § II, C (2)(b) and *WLC* at 105-12. Thus, Trudeau has further violated Section I of the Order by misrepresenting his book’s mandate

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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Respectfully submitted,
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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.

CERTIFICATE OF SERVICE

I, David O'Toole, an attorney, hereby certify that on September 13, 2007, I caused to be served true copies of the Plaintiff's Brief Supporting Its Motion for Defendant Kevin Trudeau to Show Cause Why He Should Not Be Held in Contempt for Violating the 2004 Permanent Injunction 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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