

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

FEDERAL TRADE COMMISSION,)	
Plaintiff,)	
)	
v.)	
)	
DIRECT MARKETING CONCEPTS, INC., ITV)	Civ. No. 07-11870-GAO
DIRECT, INC., ITV GLOBAL, INC., DONALD)	
W. BARRETT, and ROBERT MAIHOS,)	
Defendants.)	
)	

**AMENDED COMPLAINT FOR PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC or “Commission”), by its undersigned attorneys, alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure permanent injunctive relief, restitution, disgorgement, and other equitable relief against Defendants for their deceptive acts or practices in connection with the advertising, promotion, and sale of a book entitled “The Weight Loss Cure ‘They’ Don’t Want You to Know About,” in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

THE PARTIES

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by the FTC Act. 15 U.S.C. §§ 41-58. The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission, through its own attorneys, may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable relief, including rescission and restitution, as may be appropriate in each case. 15 U.S.C. § 53(b).

5. Defendant Direct Marketing Concepts, Inc. (“DMC”) is a Massachusetts corporation with its principal place of business at 55 Cherry Hill Drive, Beverly, MA, 01915. Since at least January 2007, DMC has promoted, marketed, offered for sale, sold, and/or distributed “The Weight Loss Cure ‘They’ Don’t Want You to Know About” (hereafter “the Weight Loss Cure book”) to consumers throughout the United States through the use of at least one nationally distributed infomercial. DMC transacts or has transacted business in the District of Massachusetts.

6. Defendant ITV Direct, Inc. (“ITV Direct”) is a Massachusetts corporation with its principal place of business at 20 Oakpoint Ext., Saugus, MA 01906. ITV Direct also does business at 55 Cherry Hill Drive, Beverly, MA, 01915. Since at least January 2007, ITV Direct has promoted, marketed, offered for sale, sold, and/or distributed the Weight Loss Cure book to consumers throughout the United States through the use of at least one nationally distributed infomercial. ITV Direct transacts or has transacted business in the District of Massachusetts.

7. Defendant ITV Global, Inc. (“ITV Global”) is a Nevada corporation. ITV Global is registered in the Commonwealth of Massachusetts as a Foreign Corporation with its office at 55 Cherry Hill Drive, Suite 200, Beverly, MA 01915. Since at least January 2007, ITV Global

has promoted, marketed, offered for sale, sold, and/or distributed the Weight Loss Cure book to consumers throughout the United States through the use of at least one nationally distributed infomercial and a website, www.weightlosscuresbook.com. ITV Global transacts or has transacted business in the District of Massachusetts. ITV Global's President is Christopher Wood. On June 4, 2004, Christopher Wood filed a declaration in *FTC v. Direct Marketing Concepts, Inc.*, Civ. No. 04-11136, in which he stated that he was the General Manager of DMC and ITV Direct, and that he reported directly to Donald Barrett.

8. Defendant Donald W. Barrett ("Barrett") is an officer and director of both DMC and ITV Direct, and he owns 50% of each company. Since at least January 2007, Barrett, acting individually, or in concert with others, has promoted, marketed, offered for sale, sold, and/or distributed the Weight Loss Cure book to consumers throughout the United States through the use of at least one nationally disseminated infomercial. Barrett directs, controls, formulates, or participates in the acts and practices of DMC and ITV Direct, including the acts and practices complained of below. Barrett also directs, controls, formulates, or participates in the acts and practices of ITV Global, including the acts and practices complained of below. Barrett resides and transacts or has transacted business in the District of Massachusetts. Barrett also appears in an infomercial for the Weight Loss Cure.

9. Defendant Robert Maihos ("Maihos") is an officer, director, and 50% owner of DMC and ITV Direct. Since at least January 2007, Maihos, acting individually, or in concert with others, has promoted, marketed, offered for sale, sold, and/or distributed the Weight Loss Cure book to consumers throughout the United States. Maihos directs, controls, formulates, or participates in the acts and practices of DMC and ITV Direct, including the acts and practices complained of below. Maihos resides and transacts or has transacted business in the District of

Massachusetts.

COMMERCE

10. The acts and practices of DMC, ITV Direct, ITV Global, Barrett, and Maihos (collectively, “Defendants”) alleged in this Complaint are or have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ COURSE OF CONDUCT

11. Since at least January 2007, Defendants DMC, ITV Direct, ITV Global, Barrett, and Maihos, have advertised, offered for sale, sold, and/or distributed the Weight Loss Cure book to the public throughout the United States. Through their actions, the Defendants have promoted the Weight Loss Cure book as containing a simple, easy-to-follow program that can be done at home.

12. The Defendants charge \$29.95 for the Weight Loss Cure book, plus shipping and handling.

13. The Defendants have advertised the Weight Loss Cure book by means of a nationally disseminated, 30-minute television infomercial. *See* Exhibit 1 (copy of 30-minute infomercial); Exhibit 2 (transcript of infomercial). The infomercial has aired on national cable networks, such as the Beauty & Fashion Channel. During the course of the infomercial, the Defendants supply viewers with a toll-free telephone number to call to purchase the book.

14. To induce consumers to purchase the Weight Loss Cure book, the Defendants have widely disseminated advertisements and promotional materials, including, but not limited to, Exhibits 1 and 2, containing, among others, the following statements:

A. **ON SCREEN: Weight Loss ‘Cure’**

DONALD BARRETT: Is it easy?

**ON SCREEN: Kevin Trudeau
Weight Loss ‘Cure’**

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. . . .

Exhibit 2 at p. 8, line 23 - page 9, line 8 (infomercial transcript).

- B. KEVIN TRUDEAU: And when you’re through, not only do you lose about a pound a day, you lose weight faster and easier than any other diet and it’s the only weight loss cure protocol, it’s the only thing that will burn the secure area fat reserves and completely reshape and re-sculpt the body. And, most importantly, when you’re done with it, when you’ve lost all you need to lose and you look in the mirror and you look gorgeous in your bikini or you’re in a swimsuit and you get the body you want three to six weeks later without any deprivation. When you’re through and you go back to eating normally, you are cured according to the doctors.

Exhibit 2 at p. 13, line 18 - page 14, line 4 (infomercial transcript).

- C. **ON SCREEN: Weight Loss ‘Cure’**

DONALD BARRETT: Now, you said that people can do it out of their home.

KEVIN TRUDEAU: You can do it out of your home.

DONALD BARRETT: Can anybody do it?

**ON SCREEN: Kevin Trudeau
Weight Loss ‘Cure’**

KEVIN TRUDEAU: Anybody can do it, I believe, and it’s in the book. This is the book here, and I want to tell people how to get it.

**ON SCREEN: Weight Loss Cure “They” Don’t Want You To Know About
\$29.95
800.348.0630**

KEVIN TRUDEAU: It’s called The Weight Loss Cure They Don’t Want You To Know About. It’s a brand new book. I did not invent this, I found it. It was discovered by a British medical doctor.

* * *

Hundreds of thousands of people have used this with unbelievable success. The

doctors say virtually 100 percent success. You lose about a pound a day. You don't lose muscle, you don't lose structural fat. You're not hungry, there's no deprivation, no exercise required. You completely reshape the body when you use this protocol. You can do it at home. This is the book that explains everything. It's easy to follow.

Exhibit 2 at p. 15, line 11 - page 16, line 16 (infomercial transcript)

- D. 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. They have beer, they drink wine, they drink alcohol. They have cheese, they have omelettes, they have toast, they have butter, they have peanut butter and jelly sandwiches. They have desserts. Not diet ice cream. I'm talking real ice cream.

Exhibit 2 at p. 20, line 19 - page 21, line 2 (infomercial transcript)

- E. KEVIN TRUDEAU: And when you're done with the protocol and you lose all the weight you need and you look -- and you have the body you want, you don't gain the weight back unlike every other scam diet out there.

Exhibit 2 at p. 24, line 23 - p. 25, line 1 (infomercial transcript)

- F. KEVIN TRUDEAU: The doctor -- medical doctor put her on the protocol -- again, it's easy to do, you can do it at home -- put her on the protocol and within six weeks, two things happened. Her hips, thighs and buttocks shrunk magically. Her upper body filled out beautifully. She looked 20 years younger. She didn't lose a pound. What happened was her body reshaped.

Exhibit 2 at p. 27, lines 14-20 (infomercial transcript)

- G. KEVIN TRUDEAU: . . . You're not hungry, there's no deprivation, you can do it at home. I give you all the instructions. The original manuscripts are available as well. The book's an easy read. It gives you everything to do the protocol easily.

I did it. When I went there, I researched it and I came back and I continued to do it at home, so I know it can be done.

Exhibit 2 at p. 28, lines 12-19 (infomercial transcript).

- H. KEVIN TRUDEAU: And when you're done with the protocol, eat whatever you want and you don't gain the weight back.

Exhibit 2 at p. 30, lines 8-10 (infomercial transcript)

I. DONALD BARRETT: -- you really believe this is the answer.

KEVIN TRUDEAU: I'll tell you, I believe it's the answer because I've tried everything and immediately if I lost weight, I would -- my hunger was ravenous, I couldn't stop eating and I'd gain the weight right back because my metabolism was low and my appetite was high.

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.

DONALD BARRETT: Yeah.

KEVIN TRUDEAU: You want to drink beer, wine, alcohol, you like bread, toast, butter, jam, roast beef. I love pot roast. I made mashed potatoes on Sunday, a big bowl of mashed potatoes loaded with butter and cream, real cream. Not lowfat cream, real cream, butter, mashed potatoes, real mashed potatoes. Gravy, tons of gravy, tons of fat. Delicious. Prime rib.

Exhibit 2 at p. 30, line 23 - page 31, line 24 (infomercial transcript).

15. The protocol set forth in the Weight Loss Cure book has 4 phases, and it:

A. Requires (in Phase 2) three to six weeks of:

i. Daily injections – under the supervision of a licensed health care practitioner – of a prescription drug called human chorionic gonadotropin (“HCG”) that is not approved by FDA as safe and effective for weight loss; and

ii. Consumption of only 500 calories per day;

B. For the three weeks (Phase 3) following the three to six weeks of HCG injections:

- i. Requires that only 100% organic food be eaten;
 - ii. Prohibits consumption of any sweeteners (both natural and artificial), starches (including bread, pasta, potatoes, white rice, or white flour), trans fat, nitrates, or bottled, canned, or carton juice; and
 - iii. “Strongly suggests,” among other things, limiting exposure to air conditioning and florescent lighting, and not watching, listening to, or reading advertisements for food or restaurants;
- C. Provides that during Phase 4, which according to the Weight Loss Cure book “is for the rest of your life”:
- i. Only 100% organic food (including only organic raw dairy products) can be eaten, and that consumers must eat 6 times a day, eat organic apples each day, eat organic grapefruits often, and use only organic sweeteners; and
 - ii. Prohibits the consumption of fast food, chain restaurant food, artificial sweeteners, and highly refined sugars; and
 - iii. Requires a liver cleanse, a colon cleanse, and a parasite cleanse, colonics conducted “as necessary,” and both a “supervised fast” and a purification program within twelve months of initiating this phase;
- D. Includes an initial, 30-day phase (Phase 1) which, although not mandatory, calls for, among other things:
- i. Drinking up to a gallon of pure water with coral calcium each day,

- as well as organic raw apple cider vinegar, Wu Long tea, Yerba Mate tea, chamomile tea, and organic extra virgin coconut oil;
- ii. Taking saunas, getting a colonic every other day from a licensed colon therapist, and doing a colon cleanse;
 - iii. Eating 6 times a day, eating two organic apples each day, eating organic grapefruits, and using only organic sweeteners; and
 - iv. Taking several specified dietary supplements; and
- E. Prohibits the use of any prescription or non-prescription drugs (other than HCG) during the entirety of the program.

SECTION 5 OF THE FTC ACT

16. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. As set forth below, the Defendants have engaged in such practices in connection with the marketing and sale of the Weight Loss Cure book.

DECEPTIVE ACTS OR PRACTICES IN VIOLATION OF THE FTC ACT

COUNT I

Unlawful Claims That the Weight Loss Program Described in the Weight Loss Cure Book Is Easy to Do and Can Be Done at Home

17. Through the means described in Paragraph 13, including, but not limited to, through the statements contained in the advertisements attached as Exhibits 1 and 2, the Defendants have represented, expressly or by implication, that the weight loss cure protocol described in Trudeau's book is easy to do and can be done at home.

18. In truth and in fact, the protocol set forth in the Weight Loss Cure book is not easy to do because it requires, among other things, three to six weeks of: (a) extreme dieting

(consumption of only 500 calories per day) and (b) daily injections of a prescription drug that has not been approved by the U.S. Food and Drug Administration as safe and effective for weight loss. Moreover, the protocol cannot be done at home because the required three to six weeks of dieting and injections must be done under the supervision of a licensed health care practitioner. Therefore, the representation set forth in Paragraph 16 is false and misleading, and the making of that representation constitutes a deceptive practice, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

Unlawful Claim That After Finishing the Weight Loss Program Described in the Weight Loss Cure Book, Consumers Do Not Have to Follow Any Dietary Restrictions

19. Through the means described in Paragraph 13, including, but not limited to, through the statements contained in the advertisements attached as Exhibits 1 and 2, the Defendants have represented, expressly or by implication, that after consumers finish the weight loss cure protocol described in the Weight Loss Cure book, they can eat what they want without regaining weight.

20. In truth and in fact, consumers never actually finish the weight loss cure protocol because Phase 4 of the protocol “is for the rest of your life.” Moreover, consumers cannot eat whatever they want in Phase 4 because the Weight Loss Cure book spells out specific dietary mandates (*e.g.*, dairy products must be organic and unpasteurized) and prohibitions (*e.g.*, no fast food, chain restaurant food, artificial sweeteners, or highly refined sugars) for this Phase. Therefore, the representation set forth in Paragraph 18 is false and misleading, and the making of that representation constitutes a deceptive practice, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

21. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss and possible injury to their health because of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

22. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary or other relief, including, but not limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains caused by Defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

- (1) Enter a permanent injunction to prevent future violations of the FTC Act;
- (2) Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, temporary and preliminary injunctive relief, rescission of contracts and restitution, other forms of redress, and the disgorgement of unlawfully obtained monies from Defendants; and

- (3) Award Plaintiff the costs of bringing this action as well as such additional equitable relief as the Court may determine to be just and proper.

Dated: October 17, 2007

Respectfully submitted,

WILLIAM BLUMENTHAL
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