

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.)	

SUPPLEMENTAL ORDER AND JUDGMENT

On August 7, 2008, this court entered a Memorandum Opinion and Order (the “August 2008 Order”): 1) denying defendant’s motion to reconsider its finding in Federal Trade Commission v. Trudeau, 2007 WL 5366159 (N.D. Ill. 2007), that defendant Kevin Trudeau was in contempt of the court’s September 2004 Injunction (the “2004 Injunction”), because Trudeau had misrepresented the contents of his book, The Weight Loss Cure “They” Don’t Want You to Know About (the “Weight Loss Book”), in several infomercials he originally produced in December 2006 (the “Infomercial”); 2) enjoining defendant Kevin Trudeau, or any person or entity acting in concert with him, from participating in the production or publication of any infomercial for any product, including books, in which Mr. Trudeau or any related entity has an interest, for a period of three years from the date of that order; and 3) entering judgment in favor of the Federal Trade Commission (“FTC”) and against defendant Kevin Trudeau in the sum of \$5,173,000, representing a conservative estimate of the royalties Trudeau realized from the sale of the Weight Loss Book through the offending infomercials.

Having heard and considered the briefs and arguments of the parties regarding the scope and nature of the relief granted, and to effectuate the intent and purposes of the August 2008

Order, for the reasons stated herein and on the record, the court makes the following additional findings and observations.

First, the court reiterates that it has the inherent power to enforce compliance with its orders through civil contempt proceedings, and that “the measure of the court’s power is determined by the requirements of full remedial relief.” McComb v. Jacksonville Paper Co., 336 U.S. 187, 193 (1949). Consumer redress is “a classic remedial sanction.” F.T.C. v. Kuykendall, 371 F.3d 745, 752 (10th Cir. 2004);¹ see also F.T.C. v. Febre, 128 F.3d 530, 534-35. Second, mindful of the Supreme Court’s holding in United States v. United Mine Workers of America, 330 U.S. 258, 303 (1947), that “judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes; to coerce the defendant into compliance with the court’s order, and to compensate the complainant for losses sustained,”² the court deems the present sanction appropriate as both a coercive and a compensatory measure.

Finally, as to the injunctive portion of the remedy, the court found in the August 2008 Order that Mr. Trudeau has proven himself incapable of respecting this court’s narrowly tailored injunctions. The broader ban mandated by this Supplemental Order is therefore warranted. See

¹As the court noted in Kuykendall, because “civil contempt proceedings are ‘considered to be a part of the action from which they stem,’” 371 F.3d at 753 (quoting D. Patrick, Inc., v. Ford Motor Co., 8 F.3d 455, 459 (7th Cir. 1993)), it is entirely appropriate for the FTC to seek the “full amount lost by consumers” as a remedy for contempt, just as it could do in enforcement proceedings. The Kuykendall court also notes, lest there be any doubt, that the FTC properly stands in the shoes of consumers for purposes both of enforcement and contempt actions. Id.

²That the United Mine Workers court characterized the civil sanctions intended to compensate the complainant for actual losses sustained as “fines” did not alter their remedial, as opposed to punitive, nature.

McComb, at 192 (broad decrees “are often necessary to prevent further violations where a proclivity for unlawful conduct has been shown.”)

Accordingly, the court hereby orders:

DEFINITIONS

The definitions set forth in the court’s 2004 Injunction are incorporated herein by reference, subject to the following amendments and additions:

1. “Infomercial” means any written or verbal statement, illustration or depiction that is 120 seconds or longer in duration that is designed to effect a sale or create interest in the purchasing of goods or services, which appears in radio, television (including network and cable television), video news release, or the Internet.
2. “Interest” means any direct or indirect monetary, financial, or other material benefit, including but not limited to royalty payments on the sale of any book, newsletter, or other informational publication in any format endorsed by Trudeau, or any benefit received in exchange for partial or full ownership of, or rights to, any book, newsletter, or other informational publication in any format written or created by him, but excluding payments made to Trudeau solely in exchange for his appearance as a spokesman for a book, newsletter, or other informational publication in which he does not have an interest. Trudeau is presumed to have an ongoing interest in any book, newsletter, or other informational publication in any format written or created by him unless conclusive evidence establishes otherwise.

3. “Publication” means distribution to the public via any written, electronic, television or radio media, including but not limited to network television, cable television, radio, and the Internet.

ORDER

- I. The court denies defendant’s motion to reconsider its finding that he is in contempt of the 2004 Injunction.
- II. The court enters judgment in favor of the FTC and against defendant Kevin Trudeau in the amount of \$37,616,161, representing a reasonable approximation of the loss consumers suffered as a result of defendant’s deceptive informercials.
- III. The 2004 Injunction remains in full force and effect.
- IV. In addition, defendant Trudeau is further enjoined as follows:
 - A. Infomercial Ban on Books, Newsletters, or Other Informational Publications. For a period of three (3) years from the date of entry of this Supplemental Order and Judgment, Kevin Trudeau, directly or through any corporation, partnership, subsidiary, division, trade name, or other entity under his direct or indirect control, and Trudeau’s officers, agents, servants, employees, and all persons and entities in active concert or participating with Trudeau or with any entity under his direct or indirect control, who receive actual notice of this Supplemental Order and Judgment by personal service or otherwise, are hereby enjoined and restrained from disseminating, or assisting others in disseminating, any infomercial for publication 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, in or affecting commerce, in which Trudeau has any interest.

- B. Compliance Monitoring. To ensure compliance with this Supplemental Order and Judgment, the provisions of Part XVI of the 2004 Injunction shall continue in effect as set forth therein, except that Part XVI, Compliance Monitoring, will apply to any Supplemental Orders and Judgments as well as to the 2004 Injunction.
- C. Compliance Reporting. To ensure compliance with this Supplemental Order and Judgment, the provisions of Part XVII of the 2004 Injunction shall continue in effect as set forth therein, except that the term of those provisions is extended for a period of three (3) years from the date of entry of this Supplemental Order and Judgment. In addition, for a period of three (3) years from the date of entry of this Supplemental Order and Judgment, defendant Trudeau shall, prior to publication, provide the FTC with copies of any currently unpublished infomercial that has been or will be produced 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, in or affecting commerce, in which Trudeau has any interest, regardless of the date of production. In addition, during said three year period, Trudeau will also provide the FTC with copies of any book, newsletter, or other informational publication mentioned in the infomercial prior to the publication of the infomercial.

For the purposes of the 2004 Injunction and any Supplemental Orders and Judgments, defendant Trudeau shall, unless otherwise directed by the FTC's authorized representatives, mail all written notifications to the FTC to:

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

D. Distribution of Order. To ensure compliance with this Supplemental Order and Judgment, the provisions of Part XV of the 2004 Injunction shall, as of the date of entry of this Supplemental Order and Judgment, be modified to read as follows: For a period of three (3) years from the date of entry of this Supplemental Order and Judgment, defendant Trudeau shall deliver copies of the 2004 Injunction and this Supplemental Order and Judgment as directed below:

1. Defendant Trudeau as Control Person: For any business that Trudeau controls, directly or indirectly, or in which Trudeau has a majority ownership interest, Trudeau must deliver a copy of the 2004 Injunction and this Supplemental Order and Judgment to all principals, officers, directors, and managers of that business. Trudeau must also deliver copies of the 2004 Injunction and this Supplemental Order and Judgment to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the 2004 Injunction or this Supplemental Order and Judgment. For current personnel, delivery shall

be within five (5) days of service of this Supplemental Order and Judgment upon Trudeau. For new personnel, delivery shall occur prior to the assumption of their responsibilities.

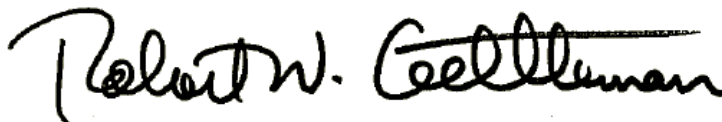
2. Defendant Trudeau as employee or non-control person: For any business in which Trudeau is not a controlling person of a business but otherwise engages in conduct related to the subject matter of the 2004 Injunction and this Supplemental Order and Judgment, Trudeau must deliver a copy of the 2004 Injunction and this Supplemental Order and Judgment to all principals and managers of such business before engaging in such conduct.

3. Defendant Trudeau must secure a signed and dated statement acknowledging receipt of the 2004 Injunction and this Supplemental Order and Judgment within thirty (30) days of delivery, from all persons receiving a copy of the 2004 Injunction and this Supplemental Order and Judgment.

E. Acknowledgment of Receipt. Defendant Trudeau, within five (5) business days of receipt of this Supplemental Order and Judgment as entered by the court, must submit to the FTC a truthful sworn statement acknowledging receipt of this Supplemental Order and Judgment.

- F. Retention of Jurisdiction. This court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Supplemental Order and Judgment.

IT IS SO ORDERED: November 4, 2008

A handwritten signature in black ink that reads "Robert W. Gettleman". The signature is written in a cursive style with a horizontal line through the middle of the name.

Robert W. Gettleman
United States District Judge