

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

)	
KEVIN TRUDEAU, an individual)	
601 Del Oro)	
Ojai, CA 93023,)	
)	
Plaintiff,)	No.: _____
)	
v.)	
)	
FEDERAL TRADE COMMISSION)	
600 Pennsylvania Avenue, N.W.)	
Washington, D.C. 20580,)	
)	
Defendant.)	
)	

COMPLAINT

Kevin Trudeau, by his attorneys, brings this complaint and alleges as follows:

NATURE OF ACTION

1. This is an action for declaratory and injunctive relief by Plaintiff Kevin Trudeau ("Trudeau") against the Federal Trade Commission ("FTC") to correct a false and misleading press release designed to cause injury to Trudeau. Trudeau is an author and consumer advocate, and has been a producer of television infomercials for direct response marketing. In the broadcast media, and in his books and newsletters, Trudeau has expressed views and opinions bluntly criticizing federal agencies – in particular the FTC. Recently, Trudeau's views and opinions about the FTC have gained wide circulation via his best-selling book, Natural Cures "They" Don't Want You to Know About (the "Natural Cures book"). The Natural Cures book is marketed chiefly by an infomercial (the "Natural Cures infomercial"), which Trudeau also uses

as a vehicle to express his views regarding the relationship between the FTC and elements of the pharmaceutical industry, and which infomercial is widely distributed throughout the United States.

2. Prior to the success of the Natural Cures book, Trudeau had entered into a stipulated order ("Stipulated Order") with the FTC regarding Trudeau's marketing of an alternative health product known as coral calcium. The Stipulated Order memorializes Trudeau's offer to cease marketing products and to use infomercials to market only books and informational publications. The Stipulated Order also provides that there has been no finding or admission of wrongdoing or liability on the part of Trudeau. It was agreed in advance that the distribution of the Natural Cures book would not violate the Order.

3. In response to the apparently unexpected commercial success of the Natural Cures book and the wide dissemination of the Natural Cures infomercial, both of which contain strong criticism of the FTC, the FTC has taken action against Trudeau which, on information and belief, is animated by an interest in suppressing Trudeau's criticisms of the FTC. The FTC has, among other things, issued a press release falsely characterizing the Stipulated Order as a judicial finding of habitual wrongdoing by Trudeau. It also has subsequently facilitated media coverage of the Stipulated Order for the apparent purpose of injuring Trudeau in the marketplace and/or to publicly humiliate him.

4. Trudeau seeks a declaratory judgment that the FTC's press release is false and misleading, that the FTC has exceeded its authority in publishing and continuously posting the same, and that the FTC has wrongfully sought to retaliate for and to chill Mr. Trudeau's exercise of his First Amendment rights. Mr. Trudeau seeks an injunctive order requiring the FTC to cease its wrongful conduct and to correct the misleading statements in its press release. Mr. Trudeau

has filed a separate suit, in the Court of Claims, seeking money damages for certain of the conduct at issue in this complaint.

PARTIES AND JURISDICTION

5. Plaintiff Kevin Trudeau is an individual with a principal address at 601 Del Oro, Ojai, California 93023.

6. Defendant Federal Trade Commission is an agency of the federal government charged with, among other things, the protection of consumers against false and misleading advertising.

7. This action arises under the First Amendment to the United States Constitution; 5 U.S.C. §§ 702 and 706, which enable "a person suffering legal wrong because of [government] agency action, or adversely affected or aggrieved by agency action," to seek relief other than money damages against the government; 15 U.S.C. § 46(f), which permits the FTC within certain limits to publish information "in the public interest;" 28 U.S.C. §§ 2201-02, which permit a party to seek, and this Court to grant, "necessary or proper relief based on a declaratory judgment;" and 28 U.S.C. § 1331(a), which grants this Court original jurisdiction of all civil actions arising "under the Constitution, laws, or treaties of the United States."

FACTUAL BACKGROUND

8. Trudeau is a well-known and outspoken figure in the electronic and direct response marketing industry. In publicly expressing his views, he has long been an antagonist of the FTC.

The FTC's Prior Retaliation for Criticism of the FTC

9. As early as June 1999, Trudeau publicly commented in an interview for the magazine Brill's Content that he viewed the FTC as engaged in "extortion of an honest

businessman." He stated in the interview that he had settled a prior matter with the FTC only because of its high success rate in bringing suit. The Brill's Content article was known to the FTC and a copy of it was and is contained within its files.

10. Shortly after the publication of the Brill's Content article, the FTC initiated an investigation of Trudeau relating to a product to treat snoring ("Snorenz") marketed by one of Trudeau's affiliated companies. The FTC's investigation subjected Trudeau and several of his colleagues and business associates to "investigative hearings" and other burdensome discovery over the course of several months. Despite the investigation, no formal action was ever initiated against Trudeau with respect to Snorenz.

The Surprise FTC Coral Calcium Lawsuit

11. In late 2001, Trudeau appeared in and produced an infomercial for a third party (Direct Marketing Concepts, Inc., hereafter "DMC") regarding a nutritional supplement known as coral calcium (the "Coral Calcium I infomercial"). The Coral Calcium I infomercial was widely disseminated by DMC without review for regulatory compliance.

12. In April 2002, Trudeau wrote to the FTC through his counsel expressing concerns about whether the Coral Calcium I infomercial was compliant with the FTC Act. Trudeau advised the FTC that he had no control over, and was not receiving any revenue from, the distribution of the Coral Calcium I infomercial. The FTC did not respond and, on information and belief, took no action at that time with respect to the Coral Calcium I infomercial that was being distributed by DMC.

13. In or about August 2002, Trudeau taped another infomercial regarding coral calcium (the "Coral Calcium II infomercial"), this one to be distributed by one of his own

companies. The content of the Coral Calcium II infomercial was substantially similar to that of the Coral Calcium I infomercial.

14. In June 2003, despite having known of the Coral Calcium I infomercial (the DMC infomercial) for well over a year, the FTC filed a surprise complaint against Trudeau in the United States District Court for the Northern District of Illinois alleging that the Coral Calcium II infomercial (Trudeau's infomercial) violated the FTC Act. Federal Trade Commission v. Trudeau et al., No. 03 C 3904. Despite knowing exactly how to communicate with Trudeau, the FTC filed the complaint without prior warning and sought an emergency temporary restraining order and asset freeze. At the same time, armed federal marshals operating under the auspices of the Food and Drug Administration ("FDA") appeared at Trudeau's fulfillment company and seized thousands of bottles of coral calcium, despite producing no evidence that coral calcium is in any way harmful to the consuming public. Indeed, coral calcium is a beneficial nutritional supplement. On information and belief, the nearly simultaneous actions by the FTC and FDA were coordinated.

15. The district court in Illinois denied the FTC's request for an asset freeze, and the parties agreed to a stipulated preliminary injunction. Discovery, including financial discovery, ensued while the parties worked toward a permanent settlement agreement.

16. In October 2003, while discovery was proceeding, an interview of Trudeau was published in Response Magazine, a magazine designed for direct response marketers, an industry that Trudeau believes has been unfairly targeted by the FTC. In the interview, Trudeau publicly criticized the FTC's handling of his case, referring to the FTC's administrative arm as a "kangaroo court." He also opined that "[t]he FTC is not interested in protecting consumers. They do not do thorough investigations before filing complaints. They do not call the companies to

request data and they do not initiate open dialogue with companies before complaints are filed. They sabotage and ambush companies so that they can make good headlines and send out press releases justifying their existence."

17. Also during the course of discovery, Trudeau produced to the FTC a number of videocassettes containing infomercials that he had tested or intended to test. In several of those infomercials Trudeau expressed his views that the FTC had colluded with elements of the pharmaceutical industry to suppress alternative health products. One of those infomercials, the Natural Cures infomercial, was ultimately distributed on a nationwide, commercial basis.

The Settlement Agreement

18. Trudeau settled the matter with the FTC by agreeing to transfer \$2 million in assets to the FTC, which the FTC was to use for consumer redress. Although over six months have passed since the settlement, the FTC has yet to effectuate the consumer redress. The settlement ultimately took the form of a Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief ("Stipulated Order") that the court entered on September 2, 2004. (A true and correct copy of the Stipulated Order is attached as Exhibit A.) There was no adjudication on the merits. The Stipulated Order contains an express provision that there have been no findings or admissions of wrongdoing or liability by Trudeau with respect to the allegations of the complaint.

The False FTC Press Release and Website

19. Within days of the entry of the Stipulated Order, on September 7, 2004, the FTC issued a press release regarding the Stipulated Order. (A true and correct copy of the press release is attached as Exhibit B.) The press release implied that the court found that Trudeau had engaged in the alleged wrongdoing that was the subject of the FTC's complaint. The press

release has been continuously posted on the FTC website and has been reported by news agencies throughout the country. The press release contains a misleading headline, "KT Banned from Infomercials." While Trudeau had agreed not to participate in many types of infomercials, he was not banned from infomercials.

20. The press release further implies that Trudeau had been found to be a "habitual false advertiser" and "had misled American Consumers for years."

21. The press release states that "[t]his ban is meant to shut down an infomercial empire that has misled American consumers for years, . . . Other false advertisers should take a lesson; mend your ways or face serious consequences."

22. A misleading disclaimer at the bottom of the press release states that the Stipulated Order "does not constitute an *admission* by defendants." (Emphasis added.) The purported disclaimer conspicuously omits the agreement that the Order was not a *finding* of wrongdoing. The "disclaimer" emphasizes that the Stipulated Order was entered by the court and has the force of law.

23. By the FTC's own standards as applied to advertising, the purported disclaimer is insufficient to negate the net impression that there has been a judicial finding of wrongdoing and that Trudeau is a "habitual false advertiser." See, e.g., FTC Publication "Dot Com Disclosures -- Information About Online Advertising" ("If a disclosure provides information that contradicts a claim, the disclosure will not be sufficient to prevent the ad from being deceptive").

24. The press release also implies that Trudeau was ordered to pay \$2 million based on a finding of wrongdoing, when he agreed to provide those funds as part of a settlement that would make consumer refunds available.

25. The FTC press release is false and misleading. The Stipulated Order expressly states that there was no finding of wrongdoing or liability on the part of Trudeau.

The Harm from the Press Release and Website

26. The FTC Press Release has been widely reported and is prominently available on the internet. As of the date of this Complaint, the FTC Press Release is still posted on the FTC website at <http://www.ftc.gov/opa/2004/09/trudeau.html>. The FTC has failed and refused to remove the Press Release, despite demands from Trudeau to do so.

27. A person searching the internet for information on Trudeau likely will find information relating to the FTC's contention that he is a "habitual false advertiser" and that he allegedly ran "an infomercial empire that has misled American consumers for years." In fact, the FTC Press Release is prominently available to anyone seeking information about Trudeau. As of the date of this Complaint, a search of the name "Kevin Trudeau" on the popular search-engine "Google" returns as the second non-sponsored link the FTC Press Release with its characterization of Trudeau as a "false advertiser."

28. A person specifically searching the internet for information relating to the claims that Trudeau is a false advertiser is not likely to have much difficulty, thanks to the FTC Press Release. A Google search of the terms "Kevin Trudeau" with the words "false" and "advertise," which are key words in the FTC Press Release, returns over 800 links to various websites. Over 100 of those links include the word "habitual," a word that first appeared in articles and messages about Trudeau only after the FTC Press Release referred to him as an "habitual false advertiser."

29. Because Trudeau is a well known personality, the press took an immediate interest in the story about his settlement with the FTC. Unfortunately, many of these media outlets appear to have relied primarily, if not entirely, on the FTC's Press Release and its

characterization of Trudeau as an "habitual false advertiser." The FTC knew and intended that this would occur.

30. Newspapers and other media across the country reported on the resolution of the FTC's case against Trudeau. Stories appeared on CNN, WTOP Radio and in the New York Times, Los Angeles Times, and the Washington Post, among others. And, several of these stories took words directly from the FTC Press Release to characterize Trudeau as an "habitual false advertiser."

31. The Associated Press ran a story about Trudeau on its newswire on September 7, 2004 in which it adopted the FTC's characterization of Mr. Trudeau as an "habitual false advertiser."

32. The Associated Press story was picked up by numerous media outlets, many of which maintain archives that are available for viewing on the internet. For example, the Pittsburgh Post-Gazette ran the AP story on September 8, 2004, and the story is still available on the Post-Gazette website at <http://www.pittsburghpost-gazette.com/pg/04252/375413.stm>.

33. The Lexington (KY) Herald Leader picked up the AP story about Trudeau on September 7, 2004 and a reader can still find the article, with the use of the term "habitual false advertiser" at <http://www.kentucky.com/mld/kentucky/9604510.htm>.

34. Numerous other newspapers throughout the country ran the same AP story that characterized Trudeau as an "habitual false advertiser." Stories appeared in Ft. Wayne, Indiana (*Journal Gazette*, September 7, 2004); Monterey, California (*Monterey Herald*, September 7, 2004); State College, Pennsylvania (*Centre Daily Times*, September 7, 2004); Charlotte, North Carolina (*Charlotte Observer*, September 7, 2004); Wichita, Kansas (*Wichita Eagle*, September 7, 2004); Duluth, Minnesota (*Duluth News Tribune*, September 7, 2004); Tallahassee,

Florida (*Tallahassee Democrat*, September 7, 2004) and Myrtle Beach, South Carolina (*Sun Herald*, September 7, 2004), among others. As of the date of this Complaint, copies of stories characterizing Trudeau as a "habitual false advertiser" remained viewable on the websites for each of the listed publications and many others.

35. Even outlets that did not use the AP story last September ran their own versions of stories about Trudeau after the FTC issued its press release. For example, PR Newswire posted a press release on its website that referred to the FTC's case against Trudeau (the "PR Newswire Release"). Like the AP story and others, the PR Newswire Release referenced language contained in the FTC Press Release. For example, in its headline the PR Newswire Release stated that "False health claims earn 'habitual false advertiser' Kevin Trudeau unprecedented FTC ban". As of the date of this Complaint, the PR Newswire Release is still posted on the PRWeb website at <http://www.prweb.com/releases/2004/9/prweb156557.ht>.

36. At about the same time, a website called "ConsumerAffairs.com" posted a story about Trudeau. Again, the ConsumerAffairs.com story referenced language contained in the FTC Press Release, including the following quotation:

"This ban is meant to shut down an infomercial empire that has misled American consumers for years," said Lydia Parnes, Acting Director of the FTC's Bureau of Consumer Protection. "Other habitual false advertisers should take a lesson; mend your ways or face serious consequences."

As of the date of this Complaint, the ConsumerAffairs.com story is still posted on the ConsumerAffairs.com website at http://www.consumeraffairs.com/printme.php?url=/news04/trudeau_informercials.html.

Further Efforts to Put Trudeau Out of Business

37. Despite the FTC's boast in its press release that the "ban was meant to shut down [Trudeau's] infomercial empire," the Natural Cures book and infomercial have been well received by the consuming public. To date, over a million copies of the book, with its criticism of the FTC, have been sold nationwide. The commercial success of the book has warranted the purchase of a substantial amount of media time for the Natural Cures infomercial such that the infomercial, with its criticism of the FTC, has been widely disseminated throughout the United States.

38. In addition to the unexpected success of the Natural Cures infomercial and Natural Cures book, with their strong criticism of the FTC, Trudeau has published a Natural Cures newsletter in which he has further expressed his opinions regarding what he believes to be collusion among the FTC on the one hand, and elements of the pharmaceutical industry and food industry on the other hand.

39. The FTC has retaliated against Mr. Trudeau and has sought to chill his exercise of his First Amendment rights by continuing to post the false press release and by other conduct set forth below.

40. In the Stipulated Order, there was a routine "avalanche" provision which provided a \$20 million forfeiture if Mr. Trudeau had materially misrepresented his financial status in negotiating the settlement. Although it is a routine provision, the FTC prominently featured this avalanche clause in its press release. As soon as the ink was dry on the settlement agreement, the FTC made substantial efforts to find a ground to invoke the avalanche clause. It did so with the intent to shut down Mr. Trudeau's business. The FTC questioned how Trudeau was paying for the media time and insinuated that Trudeau was funding the dissemination of the infomercial

with assets that he had not disclosed to the FTC during discovery. Mr. Trudeau demonstrated that the accusation was false.

41. The FTC nevertheless continued to look for opportunities to accuse Trudeau of having misrepresented his financial status. In November 2004, the FTC purported to question the acquisition of a piece of real property in Ojai, California in June 2004 by one of Trudeau's companies, Trucom LLC. The FTC insinuated, without first receiving an explanation or any documentation, that Trucom LLC purchased the property with undisclosed assets, and the FTC threatened to seek the court's intervention to freeze any proceeds from the sale of the property and to attempt to re-open the judgment, which could have resulted in a "liquidated" judgment against Trudeau for the \$20 million. The FTC went so far as to accuse Trudeau of lying about his assets in a deposition he gave in March 2004.

42. It was subsequently documented to the FTC that the property was purchased with assets that were disclosed to the FTC in April 2004. The accusation that Trudeau had given false testimony was itself shown to be false. The FTC retreated from its accusations, but not before it imposed substantial costs on Trudeau in responding to the accusations.

43. On information and belief, the FTC further responded to the success of the Natural Cures infomercial and the Natural Cures book by facilitating, if not orchestrating, the news media's use of the FTC press release in a manner that is unfairly harming Trudeau in the marketplace and that has as its purpose to embarrass and humiliate him. For example, the FTC cooperated with a major network news program to send a camera crew to Ojai, California to film a house and a luxury automobile that Trudeau had turned over to the FTC as part of the settlement.

44. On February 16, 2005, Trudeau's counsel requested that the FTC remove the misleading press release from its website and issue and disseminate a corrective retraction. A copy of that request is attached hereto and incorporated herein as Exhibit C.

45. On February 22, 2004, the Federal Trade Commission responded. It stated in part that "nothing in the press release refers to any 'findings' of fact or law" and disputed such an inference could reasonably be drawn from the press release. It refused to take any of the requested actions. A copy of that response is attached hereto and incorporated herein as Exhibit D.

46. Trudeau's livelihood depends on his ability to market books, newsletters and informational publications about health issues. The FTC's negative publicity campaign in retaliation for Trudeau's criticism of the government has adversely affected Trudeau's ability to purchase media time and to market his books and informational publications. It has thereby caused, and threatens to continue to cause Trudeau substantial financial as well as non-financial injury. On information and belief, that is exactly what the FTC wants.

COUNT I

47. Trudeau realleges the allegations of paragraphs 1-46 above as though fully set forth herein.

48. On information and belief, the FTC has violated the First Amendment by retaliating against Trudeau for expressing his negative opinions about the FTC, and has attempted to suppress the expression of those opinions, by, among other things, issuing a press release that falsely characterizes the Stipulated Order as containing a finding of wrongdoing or liability on the part of Trudeau, and, on information and belief, by facilitating, if not

orchestrating, harassment by the news media in an attempt to defame, embarrass and humiliate Trudeau.

49. The FTC has intentionally and deliberately misrepresented the nature of the Stipulated Order in its press release and has facilitated or orchestrated the use by the media of those misrepresentations with the purpose of injuring Trudeau in his business and reputation.

50. With the foregoing conduct, the FTC has exceeded its authority under 15 U.S.C. § 46(f), and has violated Trudeau's rights under the First Amendment.

51. The FTC's unlawful conduct has caused, and will continue to cause, substantial economic and reputational injury to Trudeau. Trudeau has no adequate remedy at law with respect to the FTC's continuing wrongful conduct.

PRAYER FOR RELIEF

WHEREFORE, Trudeau respectfully requests that the court enter judgment in his favor and against the FTC granting the following relief:

(a) Declaratory judgment that the FTC's press release regarding the Stipulated Order intentionally misrepresents the Stipulated Order with the purpose of harming Trudeau and therefore exceeds the FTC's authority under 15 U.S.C. § 46(f);

(b) Declaratory judgment that the FTC's conduct as alleged herein is improper under the First Amendment;

(c) An injunctive order requiring the FTC to refrain from continuing its unlawful conduct and to undertake appropriate corrective measures to repair the injury to Trudeau; and

(d) Award Trudeau such other relief as the Court deems just and proper.

Respectfully submitted,

KEVIN TRUDEAU

By: _____
One of His Attorneys

Daniel Mach
JENNER & BLOCK LLP
601 Thirteenth Street, N.W.
Suite 1200 South
Washington, D.C. 20005-3823
Telephone: (202) 639-6000
Facsimile: (202) 639-6066

David J. Bradford
Daniel J. Hurtado
John B. Thornton
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
Telephone: (312) 222-9350
Facsimile: (312) 840-7375

Kimball R. Anderson
Ronald Rothstein
Lisa K. Seilheimer
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, Illinois 60601
Telephone: (312) 558-5600
Facsimile: (312) 558-5700