

Exhibit A

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	No. 03 C 3904
vs.	)	Chicago, Illinois
	)	October 30, 2008
KEVIN TRUDEAU,	)	11:00 a.m.
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS - STATUS
BEFORE THE HONORABLE ROBERT W. GETTLEMAN

APPEARANCES:

For the Plaintiff:	FEDERAL TRADE COMMISSION 600 Pennsylvania Avenue, NW NJ-3212 Washington, DC 20580 BY: MS. LAUREEN KAPIN
	FEDERAL TRADE COMMISSION 55 West Monroe Street Chicago, Illinois 60603 BY: MR. DAVID O'TOOLE
For the Defendant:	WINSTON & STRAWN LLP 35 West Wacker Drive Chicago, Illinois 60601 BY: MR. KIMBALL R. ANDERSON

Official Reporter:	JENNIFER S. COSTALES, CRR, RMR 219 South Dearborn Street Room 1706 Chicago, Illinois 60604 (312) 427-5351
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1 (Proceedings in open court.)

2 THE CLERK: 03 C 3904, FTC versus Kevin Trudeau; status.

3 MR. ANDERSON: Good morning, Your Honor.

4 Kimball Anderson on behalf of Mr. Trudeau.

5 MS. KAPIN: Good morning, Your Honor.

6 Laureen Kapin on behalf of the Federal Trade Commission.

7 I'm here with my colleague Mr. O'Toole.

8 THE COURT: Good morning.

9 All right. I've reviewed Mr. Anderson's submission of
10 yesterday. Have you?

11 MS. KAPIN: I've had a very brief opportunity to review
12 it since it was filed after business hours. I was able to look
13 at it on the plane here. I would have preferred, of course, a
14 more meaningful opportunity. And I would say that if the Court
15 is inclined to accept any of Mr. Anderson's proposals, the FTC
16 would like a chance to respond in written form to them after it
17 has had a meaningful opportunity to digest and analyze
18 Mr. Anderson's arguments.

19 THE COURT: Well, I guess that's only fair. But I do
20 want to share some thoughts with you, and I think we can actually
21 make some progress. Mr. Anderson makes a very strong argument
22 about the measure of the award and the basis for that measure
23 based on the royalties generated, if not received by the sale of
24 the book in the stores. He's a very persuasive man,
25 Mr. Anderson. And I'm sort of leaning in that direction, in his

1 direction on that. But where does that leave me? where does it
2 leave the Court?

3 And I think that if I agree with Mr. Anderson that the
4 5,300,000 figure is not supported by the factual record in the
5 case, I then -- there is not going to be an award here of zero,
6 that is not going to happen, because the other way to look at the
7 award, the other way to try to fashion a monetary remedy for the
8 deceptive infomercial that constitutes the contempt of court here
9 is the alternative proposed by the FTC, which is the harm to the
10 consumer.

11 Mr. Anderson points out that the record is not totally
12 clear about, and I didn't go back and look at all the old briefs
13 either, you know, I'm going by my own recollection, which is
14 pretty good I think on this score, but that the \$47 million that
15 was proposed by the FTC included all sales of all the books. And
16 somebody who paid X dollars for the book based on the deceptive
17 infomercial would be damaged by that. Somebody who bought it
18 just because it's authored by Mr. Trudeau, and they want a
19 complete set of all of his books, may have never seen the
20 infomercial. Somebody who bought it in the store, we all know
21 what the arguments are there. I think some of those sales were
22 infomercial driven and some probably were not.

23 I don't really have a record on that. I don't have a
24 complete record. I'll let you talk, I'm just sharing some
25 thoughts with you. But it would seem to me though that if I

1 don't have the necessary facts to support the royalties received
2 by Mr. Trudeau because he sold this to ITV -- is that what it is?

3 MR. ANDERSON: Yeah, it's ITV Global.

4 THE COURT: ITV, right.

5 MR. ANDERSON: ITV Global, they ran the infomercials.

6 THE COURT: So if he sold it to them, he only got the 2
7 million from them, and, therefore, he hasn't gotten the 5 million
8 in royalties.

9 MS. KAPIN: well, he --

10 THE COURT: Let me finish talking.

11 MS. KAPIN: Sorry.

12 THE COURT: You'll have a chance.

13 Then I think I go to the other measure, which is the
14 actual consumer harm here, which is probably going to be a much
15 bigger figure. But I may need a better record to actually
16 determine what that figure is. It's some portion of the 47
17 million or whatever that number was. It may not be the whole
18 thing, but it's some portion of it.

19 So I'm sort of leaning towards, well, maybe we're not
20 quite done with that part of this proceeding, and we'll need to
21 have a more complete evidentiary hearing about that. So that's
22 where I am on that. So let me just stop there for a moment.
23 Then we can talk about some of these other little details, which
24 I think we should be able to solve frankly.

25 MS. KAPIN: Okay.

1 THE COURT: Okay.

2 MS. KAPIN: Let me start, Your Honor, with the royalty
3 issues and then move on to the proper measure of harm in contempt
4 proceedings and what the law establishes as presumptions and what
5 record we have factually.

6 So starting with Alliance, just to make sure there is
7 some clarity -- and I actually don't think that defendant and I
8 disagree as to the facts here, we may disagree as to certain
9 conclusions to be drawn from that. But factually speaking, Your
10 Honor, Mr. Trudeau's company Alliance has, in fact, received
11 royalties from retail sales. Now, there is no dispute about
12 that.

13 The fact that there were transactions between
14 Mr. Trudeau and ITV did not affect the fact that Alliance,
15 Mr. Trudeau's company, received that 5.3 some odd in sales
16 derived from the retail sales of the *Weight Loss Cure* book.

17 Now, there absolutely is evidence in the record to
18 support that the infomercials drove those sales, and I can point
19 you to that, Your Honor. But I think we have been over it, and
20 it's going to at the end of the day depend on how you're
21 persuaded, Your Honor. But just so I can point you to the facts,
22 the infomercial itself spurred viewers to buy the book in retail
23 sales. That's in Exhibit 14-D, pages 23 to 24.

24 As you yourself have already noted, Your Honor, the
25 book's cover has that shiny gold seal "As seen on TV."