

Exhibit B

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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
)	July 25, 2008
KEVIN TRUDEAU,)	10:30 a.m.
)	
Defendant.)	

TRANSCRIPT OF PROCEEDINGS - HEARING
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 MS. SANDYA PRABHU
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For the Defendant:	JENNER & BLOCK One IBM Plaza Chicago, Illinois 60611 BY: MR. DAVID J. BRADFORD MR. DANIEL J. HURTADO
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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: FTC versus Kevin Trudeau; 03 C 3904.

3 MR. BRADFORD: Good morning, Your Honor.

4 David Bradford together with Daniel Hurtado, our project
5 assistant Michael Hughes, and Mr. Kevin Trudeau.

6 MS. KAPIN: Your Honor, Laureen Kapin for the Federal
7 Trade Commission. My colleague, Ms. Bergquist, and Ms. Prabhu
8 will be joining me shortly.

9 THE COURT: Are you going to be presenting a witness?

10 MS. KAPIN: No, Your Honor. After further consideration
11 and review of the record and the evidence in the record, we have
12 decided not to call Ms. Hipsley.

13 I would like to, just for purposes of clarification,
14 Your Honor, there was some attorney argument in response to your
15 question about whether Mr. Trudeau or his attorneys had in mind
16 the mirror image doctrine. And in the context of that answer
17 regarding whether the mirror image doctrine was discussed during
18 negotiations, Mr. Bradford had indicated that that was something
19 that was on the FTC's mind.

20 And I would just like to clarify that that is not going
21 to be considered testimony by you, Your Honor, but that is just
22 attorney argument.

23 THE COURT: That's all it was.

24 MS. KAPIN: With that caveat --

25 THE COURT: I mean, if there is evidence either side

1 if everybody here has had the pleasure. I went to school in
2 Boston. He brought Durgin Park up, and I can't think of anything
3 more unhealthy than a meal at Durgin Park. Even the waiters
4 throw the food at you as I recall.

5 But seriously, I was trying to find where in the book
6 over the lunch hour as I was eating my organic salad -- I don't
7 know if the turkey they serve downstairs is organic or not.

8 MS. KAPIN: Nitrates, Your Honor.

9 THE COURT: I hope it is. Well, it looks good.

10 Anyway as I was reading it, I was looking at the book.

11 MR. BRADFORD: I can find it for you.

12 THE COURT: I've got it.

13 MR. BRADFORD: He says it in the book.

14 THE COURT: Pardon me?

15 MR. BRADFORD: He does say it in the book.

16 THE COURT: Well, he says what?

17 MR. BRADFORD: As much as you want.

18 THE COURT: Well, no. Let me read you page 106, "The
19 simplest rule to follow is to eat anything you want, as much as
20 you want, as often as you want."

21 So from what you've told me just recently about the
22 mirror image doctrine, if that were being applied strictly,
23 perhaps that would pass muster under the mirror image doctrine,
24 because he says exactly that in the book.

25 But that was not the intent that I had in issuing that

1 order and using the language that is in the order, because
2 according to your interpretation, Mr. Bradford, of the mirror
3 image doctrine and your witnesses, he could have put as the next
4 sentence, "Only kidding. You really can't eat anything that you
5 want. You can't eat more than 500 calories a day. What I just
6 said is just a joke."

7 And yet maybe under the mirror image doctrine he could
8 get away with that in an ad for the book, but not under this
9 order, because he goes right on after that to say, and this is
10 just one example, there is others in the book, "The only caveat
11 is, the only caveat is only eat 100 percent organic food." He
12 then goes on to expound on that, and then he says, "Oh, and you
13 can't eat brand-name food either. And you can't eat fast food."

14 So what he said in that sentence and in the infomercial,
15 "you can eat anything you want, as much as you want" is just not
16 true. The book doesn't say that at all.

17 He also says, and these are just a couple of examples
18 that come to my mind -- and I'm going to write on this, so, you
19 know, when you write something, sometimes you may change your
20 mind, sometimes you refine your conclusions -- he also says no
21 exercise. Well, what's walking an hour a day if not exercise?
22 And you've pointed out some other examples.

23 And I can't help but conclude that the whole purpose of
24 this infomercial is to represent to consumers that they're going
25 to buy a book, the content of which discloses a protocol that's

1 easy, that allows you to eat anything you want, as much as you
2 want the rest of your life, including hot fudge sundaes and
3 creamy mashed potatoes, and to avoid exercise, when, in fact, the
4 book says you can't do those things. You can't eat anything you
5 want. You can't go without exercise. You've got to take
6 injections of hormones.

7 Now, I know a lot of that language is couched in terms
8 that say, well, maybe it's not mandatory, because it's only
9 mentioned as mandatory in the first phase, which is not itself
10 mandatory. But even under phase four it says "Take as directed."
11 So you're still supposed to take this growth hormone, which is,
12 of course, anything but easy. And it also, it also it may be
13 dangerous. It's certainly not approved by the FDA.

14 And colonics and all the rest of it, how you do that at
15 home, I don't know, but maybe some people can do that. "Do
16 colonics as necessary," what does that mean? I don't know what
17 that means. But "do colonics" certainly is there. You're
18 supposed to get colonics.

19 MS. KAPIN: And, Your Honor --

20 THE COURT: How you do that at home, I don't really
21 know.

22 These are just some examples. Unless I change my mind
23 about the way I read this order, I think that I'm going to pretty
24 much stick with my original conclusion.

25 I am troubled though about remedy here, because maybe we

1 have to get back together after I put all my thoughts together on
2 this, you've given me a lot to think about, but I am troubled
3 about remedy, because the remedy that you are suggesting is
4 rather Draconian. I think that it could be totally overdoing it,
5 because I think the FTC should have been more on the ball on
6 this.

7 I realize Mr. Trudeau could have given you this to look
8 at. But I think when you talk about consumer protection, I don't
9 mean to be too hard on the FTC here, I know they're a busy
10 agency, but there was no reluctance in having a dialogue with
11 Mr. Trudeau and his counsel when other problems arose in
12 connection with these other books. And to say that everybody who
13 bought this book should be given a refund strikes me as a bit
14 overdoing it.

15 As far as the retail sales are concerned, I told you I
16 think a long time ago I had a problem with that, because even if
17 you listen to the infomercial and walked in to Borders and saw
18 the book, just flipping through the book would tell you that the
19 infomercial was inaccurate for the very reasons we've been
20 talking about.

21 All you have to do is go to the back of the book and
22 look at these protocols. If you go to the Atkins diet or anybody
23 who looks, I don't look at diet books, but I think it's fair to
24 say that when you go to a diet book, you usually go to the diet
25 and see what -- you know, you don't read the fine print. You

1 read what the diet is. And if you go to the ones in this book,
2 you see pretty much there is nothing easy, or any of the other
3 things Mr. Trudeau says on the infomercials just are contradicted
4 by the book itself. So I'm not sure I would include the retail
5 sales at all in a remedy. I know what the argument is to the
6 contrary, but I don't think I'd be inclined to do that at this
7 point.

8 So I'm just sharing some thoughts with you, because I
9 don't know whether they will be finalized in an order that I
10 issue. But as you know, I like to share my thoughts with lawyers
11 that are as well prepared and as thoughtful as you guys are.
12 That's pretty much where I'm at at this moment. But you've given
13 me an awful lot to talk about.

14 If there is anything that I just said that you may want
15 to respond to? I'm happy to hear from you.

16 MR. BRADFORD: May I approach, Your Honor?

17 THE COURT: Sure.

18 MR. BRADFORD: With respect to the mirror image
19 doctrine, I want to be clear. I am not arguing that the FTC's
20 counsel or Mr. Trudeau's counsel said to each other, "Let's put
21 the mirror image doctrine in this order, and we'll do it by this
22 sentence."

23 What I am asking Your Honor to credit is that both
24 counsel would be familiar with that doctrine, that that is a well
25 known doctrine in the field of book advertising. It is the FTC's