



Trudeau v. FTC

Brief For The CATO Institute As Amicus Curiae Supporting Petitioner

by [Cato Institute](#) on 8/2/2012

There's a fine line between protecting the public from fraud and censoring unorthodox opinions - a line across which the government often stumbles. That was the case in September 2007, when the Federal Trade Commission filed a contempt motion against Kevin Trudeau, author of the best-selling book *The Weight Loss Cure "They" Don't Want You to Know About*. The FTC alleged that Trudeau had misrepresented the contents of his book in several "infomercials" by describing it as "easy" and claiming that dieters, by the end of the regimen, could eat anything they wanted without gaining weight. Despite the fact that Trudeau merely quoted the book when making these statements, the district court upheld the FTC's findings and smacked Trudeau with a staggering \$37.6 million fine. The court also imposed a rare "prior restraint" on speech, demanding that Trudeau post a \$2 million bond before running any future infomercials. The district court imposed these sanctions even though the FTC never proved that Trudeau misled a single consumer or violated any part of the FTC Act. On appeal, the Seventh Circuit affirmed the district court's decision and ruled that Trudeau's book promotion constituted misleading commercial speech and was therefore not entitled to any constitutional protection. If left unchallenged, the Seventh Circuit's ruling would have a dire chilling effect on authors trying to promote their work and could give government officials broad censorial power, in effect permitting the FTC to fine through the backdoor what it could never regulate directly. Cato has thus filed an amicus brief supporting Trudeau's request that the Supreme Court take the case and establish a constitutional standard that allows the FTC to protect consumers from fraud while respecting the First Amendment. We argue that courts should apply strict scrutiny to any government actions that restrict or punish advertisements that merely quote and summarize parts of a book (which enjoys

full constitutional protection), as Trudeau's infomercials did. We note that the Supreme Court has held that commercial speech inextricably intertwined with otherwise protected speech deserves a high degree of First Amendment protection. Moreover, it is well-established that falsity alone may not remove speech from the shelter of the First Amendment. Free speech loses its vitality when confronted with overzealous regulation; strict scrutiny of would-be government censors would give authors the necessary "breathing space" to publicize their work without the threat of exorbitant fines.

Please see full brief below for more information.

