

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff – Counterclaim Defendant,

v.

BF LABS INC., *et al.*

Defendant – Counterclaim Plaintiff.

CASE NO. 4:14-cv-00815-BCW

FTC’S MOTION TO DISMISS COUNTERCLAIMS

Plaintiff – Counterclaim Defendant, the Federal Trade Commission (“FTC”), pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, moves the Court to dismiss, with prejudice, both counterclaims filed by Defendant-Counterclaim Plaintiff BF Labs Inc.

In support of its motion, the FTC respectfully refers the Court to its Suggestions in Support of its Motion to Dismiss Counterclaims. As explained in the Suggestions, there are three independent bases for dismissing the counterclaims. First, the FTC cannot be sued in tort in its own name under the Federal Tort Claims Act. Second, both counterclaims fall squarely within the Federal Tort Claims Act’s exceptions to the waiver of sovereign immunity. Third, BF Labs has not satisfied the Federal Tort Claims Act’s jurisdictional prerequisite of exhaustion of administrative remedies. For each of these reasons, this Court lacks subject matter jurisdiction to hear BF Labs’ counterclaims, which thus must be dismissed under Fed. R. Civ. P. 12(b)(1). Similarly, the counterclaims fail to state a claim upon which relief may be granted and thus must be dismissed under Fed. R. Civ. P. 12(b)(6).

Respectfully submitted,

JONATHAN E. NUECHTERLEIN
General Counsel

Dated: March 10, 2015

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Dated: March 10, 2015

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Attorneys for Plaintiff – Counterclaim Defendant
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 10, 2015, a true and correct copy of the foregoing was filed electronically with the United States District Court for the Western District of Missouri using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

/s/ Gregory A. Ashe _____
Attorney for Plaintiff – Counterclaim Defendant
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