

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 14-CV-0815-W-BCW
)	
BF LABS INC., et al.,)	
)	
Defendants.)	

**DEFENDANT/COUNTERCLAIM PLAINTIFF BF LABS INC.’S MOTION
FOR LEAVE TO FILE SUR-REPLY IN OPPOSITION
TO THE FTC’S MOTION TO DISMISS BF LABS’ COUNTERCLAIMS**

BF Labs Inc., by and through counsel, moves this Court for leave to file a brief sur-reply in opposition to the Federal Trade Commission’s Motion to Dismiss BF Labs’ Counterclaims. In support of this Motion, BF Labs states as follows:

1. On January 6, 2015, BF Labs filed its Answer and Counterclaims, seeking to recover damages, costs, and fees associated with opposing the *ex parte* temporary restraining order obtained by the FTC through material misrepresentations to this Court. *See* Doc. 227.
2. On March 10, 2015, the FTC filed its Motion to Dismiss BF Labs’ Counterclaims, arguing that BF Labs’ counterclaims are barred by sovereign immunity and that BF Labs may not proceed until it exhausts administrative remedies. *See generally* Doc. 272.
3. On March 27, 2015, BF Labs filed its Suggestions in Opposition to the FTC’s Motion. *See* Doc. 278.
4. On April 13, 2015, the FTC filed its Reply Suggestions in Support. *See* Doc. 291. In its Reply, the FTC mischaracterizes federal courts’ most recent treatment of the Equal Access to Justice Act (the “EAJA”) and relies almost exclusively on Tenth Circuit case law. *See id.*

5. BF Labs requests respectfully that this Court grant it leave to file its sur-reply, attached hereto as **Exhibit A**, which responds directly to the FTC's erroneous arguments.

6. BF Labs' proposed sur-reply analyzes the split among federal circuits pertaining to interpretation of the EAJA and attaches a hearing transcript from a recent District of Utah case, cited both by BF Labs and the FTC. The transcript shows that, contrary to the FTC's assertions, federal courts are responding to the FTC's recent practice of hastily obtaining *ex parte* TROs by reducing receivership fees significantly and holding the FTC accountable for the unnecessary costs imposed on the businesses it targets.

WHEREFORE, for the foregoing reasons, BF Labs requests respectfully that this Court grant BF Labs leave to file a sur-reply in opposition to the FTC's Motion to Dismiss BF Labs Inc.'s Counterclaims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 17th day of April 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/ Mark A. Olthoff
Attorney for Defendants BF Labs Inc.