

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BF LABS, INC., *et al.*

Defendants.

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

**FTC'S REPLY SUGGESTIONS IN SUPPORT OF ITS MOTION TO STRIKE  
AFFIRMATIVE DEFENSES OF DEFENDANT NASSER GHOSEIRI**

As discussed in the FTC's Suggestions in Support of its Motion to Strike (DE 338) and in its Reply Suggestions in Support of its Motion to Strike the Affirmative Defenses of Defendants BF Labs, Darla Drake, and Sonny Vleisides (DE 349), Defendant Ghoseiri cannot prevail on any of his thirty-nine affirmative defenses. Allowing those defenses to survive into discovery would only waste resources and thereby reduce money available for consumer redress. Defendant Ghoseiri concedes that many of his defenses are not valid defenses to liability for violating Section 5. For the remainder, Defendant Ghoseiri fails to rebut the FTC's arguments that his defenses are improper – indeed, for many defenses, he offers no opposition at all. Therefore, the Court should exercise its discretion to strike these defenses because litigation regarding them would prejudice the FTC and consumers harmed by Defendants' scheme.

Defendant Ghoseiri does not offer any argument in opposition to the FTC's motion to strike. Instead, he adopts and incorporates by reference the opposition of Defendants BF Labs, Drake, and Vleisides (DE 343) without any further argument of his own. (DE 344 at 1.) But Defendant Ghoseiri has asserted thirty-nine affirmative defenses and the other Defendants have

asserted nineteen, with only eighteen common affirmative defenses between them. Defendant Ghoseiri, thus, has offered no argument at all as to why his second, third, fourth, fifth, sixth, seventh, ninth, eleventh, fourteenth, sixteenth, twenty-first, twenty-second, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, thirtieth, thirty-first, thirty-second, thirty-third, and thirty-sixth defenses should not be struck.<sup>1</sup> The Court, therefore, should strike these twenty-one defenses.

With respect to Defendant Ghoseiri’s other eighteen defenses, the FTC adopts and incorporates by reference its reply suggestions in support of its motion to strike the affirmative defenses of Defendants BF Labs, Drake, and Vleisides. (DE 349.) To aid the Court, the following table identifies Defendant Ghoseiri’s remaining defenses, the corresponding defenses of Defendants BF Labs, Drake, and Vleisides, and the location in the FTC’s Reply Suggestions.

<b>Ghoseiri Affirmative Defense</b>	<b>BF Labs, Drake, and Vleisides Affirmative Defense</b>	<b>Location in FTC Reply Suggestion</b>
1	1	Section IV, DE 349 at 3
8, 10, 18, 38	2, 3, 8, 17	Section V, DE 349 at 3-4
12, 15, 19, 20, 29, 34, 35, 37	4, 6, 9, 10, 13, 14, 15, 16	Section VI, DE 349 at 4-5
13, 15, 23, 24, 29	5, 6, 11, 12, 13	Section VII, DE 349 at 5-7
17	7	Section VIII, DE 349 at 7-8
23	11	Section IX, DE 349 at 8-10
39	19	Section X, DE 349 at 10

Accordingly, for the reasons set forth herein and in the FTC’s Suggestions in Support, the Court should strike, pursuant to Federal Rule of Civil Procedure 12(f), all thirty-nine of Defendant’s affirmative defenses.

---

<sup>1</sup> To the extent that Defendant Ghoseiri might be relying on the Suggestions in Opposition filed by Defendants in February 2015 (DE 261), the FTC adopts and incorporates by reference its Reply Suggestions filed in March 2015 (DE 271). In particular, Defendant Ghoseiri’s second, third, fourth, fifth, sixth, ninth, fourteenth, twenty-first, twenty-second, twenty-seventh, and thirtieth defenses are addressed in Section V of the FTC’s brief (DE 271 at 5-6), his seventh, twenty-fifth, twenty-eighth, thirty-first, thirty-second, thirty-third, and thirty-sixth defenses are addressed in Section IV (DE 271 at 3-5), and his eleventh, sixteenth, and twenty-sixth defenses are addressed in Section VII (DE 271 at 7).

Respectfully submitted,

JONATHAN E. NUECHTERLEIN  
General Counsel

Dated: July 27, 2015

/s/ Gregory A. Ashe  
Helen Wong, DC Bar #997800  
Leah Frazier, DC Bar #492540  
Gregory A. Ashe, VA Bar #39131  
Jason M. Adler, IL Bar #6295738  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Mail Stop CC-10232  
Washington, D.C. 20580  
202-326-3779 (Wong)  
202-326-2187 (Frazier)  
202-326-3719 (Ashe)  
202-326-3231 (Adler)  
Facsimile: 202-326-3768  
hwong@ftc.gov  
lfrazier@ftc.gov  
gashe@ftc.gov  
jadler@ftc.gov

TAMMY DICKINSON  
United States Attorney

Dated: July 27, 2015

/s/ Charles M. Thomas  
Charles M. Thomas, MO Bar #28522  
Assistant United States Attorney  
Charles Evans Whittaker Courthouse  
400 East Ninth Street, Room 5510  
Kansas City, MO 64106  
Telephone: (816) 426-3130  
Facsimile: (816) 426-3165  
E-mail: charles.thomas@usdoj.gov

Attorneys for Plaintiff  
FEDERAL TRADE COMMISSION

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on July 27, 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 Federal Trade Commission