

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson
 Alvaro M. Bedoya

In the Matter of

**HOMEADVISOR, INC., a corporation,
d/b/a ANGI LEADS,
d/b/a HOMEADVISOR POWERED BY ANGI.**

DOCKET NO. 9407

**REPLY MEMORANDUM IN SUPPORT OF
COMPLAINT COUNSEL'S MOTION FOR SUMMARY DECISION**

TABLE OF CONTENTS

Table of Authorities 3

I. Introduction 5

II. There Is No Genuine Dispute About Material Facts 5

 A. Respondent Does Not Dispute It Made the Challenged Claims 6

 1. Respondent Made Deceptive Claims in Its Advertising 6

 2. Respondent Made Deceptive Claims in Scripts, Training Materials, and Sales Calls 9

 3. There Is No Genuine Dispute About the Plain Meaning of Respondent’s Deceptive
 Claims 11

 B. Undisputed Evidence Shows the Challenged Claims Were Misleading 12

 C. Respondent Has Not Rebutted the Presumption of Materiality 16

III. Respondent’s Various Defenses Fail 16

 A. Nothing About Respondent’s Services or Practices Excuses Its Deception 17

 B. Respondent Overstates the Role of Complaint Counsel’s Witnesses 19

 C. Respondent’s Procedural and Affirmative Defenses Do Not Preclude Summary Decision 21

 D. Respondent Miscasts the Proposed Order 24

IV. Conclusion 25

TABLE OF AUTHORITIES**Cases**

<i>Airquip, Inc., et al. v. HomeAdvisor, Inc., et al.</i> , Case No. 1:16cv1849 (filed July 19, 2016, D. Colo.)	20
<i>Anthony v. Yahoo! Inc.</i> , 421 F. Supp. 2d 1257 (N.D. Cal. 2006)	22
<i>Basic Books, Inc. v. FTC</i> , 276 F.2d 718 (7th Cir. 1960).....	11
<i>Branch v. FTC</i> , 141 F.2d 31 (7th Cir. 1944).....	25
<i>FTC v. Amy Travel Serv., Inc.</i> , 875 F.2d 564 (7th Cir. 1989).....	16, 17
<i>FTC v. Cement Institute</i> , 333 U.S. 683 (1948)	24
<i>FTC v. Colgate-Palmolive Co.</i> , 380 U.S. 374 (1965).....	11
<i>FTC v. Dantuma</i> , 748 F. App'x 735 (9th Cir. 2018)	22
<i>FTC v. Figgie Int'l Inc.</i> , 994 F.2d 595 (9th Cir. 1993).....	17
<i>FTC v. Freecom Commc'ns, Inc.</i> , 401 F.3d 1192 (10th Cir. 2005).....	19, 22
<i>FTC v. Kuykendall</i> , 371 F.3d 745 (10th Cir. 2004)	19
<i>FTC v. Match Grp., Inc.</i> , No. 3:19-CV-2281-K, 2022 WL 877107 (N.D. Tex. Mar. 24, 2022)..	23
<i>Guziak v. FTC</i> , 361 F.2d 700 (8th Cir. 1966).....	11
<i>Humphrey's Ex'r v. United States</i> , 295 U.S. 602 (1935).....	24
<i>In re College Football Ass'n</i> , 117 F.T.C. 971 (1994).....	21, 23
<i>In re Fedders Corp.</i> , 85 F.T.C. 38 (1975).....	11
<i>In re Nat'l Credit Mgmt. Grp., LLC</i> , 21 F. Supp. 2d 424 (D.N.J. 1998)	16
<i>In re POM Wonderful, LLC</i> , 155 F.T.C. 1 (2013)	11
<i>In re Traffic Jam Events, LLC</i> , 2021 WL 3465724 (F.T.C. July 23, 2021).....	21
<i>Kraft, Inc. v. FTC</i> , 970 F.2d 311 (7th Cir. 1992).....	11

Masters Pharm., Inc. v. DEA, 861 F.3d 206 (D.C. Cir. 2017)..... 23

Universal Commc’n Sys., Inc. v. Lycos, Inc., 478 F.3d 413 (1st Cir. 2007)..... 22

United States Code

15 U.S.C. § 45..... 17, 25

15 U.S.C. § 57b..... 24

47 U.S.C. § 230..... 22

Code of Federal Regulations

16 C.F.R. § 3.24..... 5, 6, 21

Constitutional Provisions

Article II..... 24

First Amendment 24

Fifth Amendment 24

Seventh Amendment..... 24

I. INTRODUCTION

HomeAdvisor, facing a three-count complaint only alleging deception, fails to rebut undisputed evidence that the company repeatedly, systemically, and materially misrepresented (1) the characteristics of the leads it sold to service providers, which were simply not what HomeAdvisor advertised; (2) the rate at which those leads converted into paying jobs for service providers, something HomeAdvisor itself did not know; and (3) that mHelpDesk was free for the first month when in fact it cost \$59.99. National advertisements spanning years, HomeAdvisor's own documents and testimony, and call recordings provided by Respondent demonstrate that HomeAdvisor committed these illegal practices. Thus, "there is no genuine issue as to any material fact regarding liability or relief," 16 C.F.R. § 3.24(a)(2), and the Commission should enter the Proposed Order granting the Motion for Summary Decision ("Motion").

In its Opposition, HomeAdvisor mounts a spirited defense centering on four themes, none of which concern the case at bar. First, Respondent focuses its arguments on whether its products ever provide value and various practices ancillary to the central issue—its advertising and sales practices. Second, HomeAdvisor launches specious attacks on the declarants cited in the Motion, under the flawed assumption that those third-party witnesses are necessary to the Motion. Third, the company rattles off a series of procedural defenses without explaining how they undermine the Commission's ability to enter summary decision. Finally, HomeAdvisor attacks the Proposed Order by misstating its key terms. No part of Respondent's Opposition provides any basis to forestall granting summary decision and issuing the Proposed Order now.

II. THERE IS NO GENUINE DISPUTE ABOUT MATERIAL FACTS

This is a straightforward deception case. HomeAdvisor has failed to demonstrate through evidence that there is a genuine dispute regarding the facts material to the Motion, 16 C.F.R.

§ 3.24, namely whether: (1) HomeAdvisor made the claims at issue; (2) those claims were false or misleading; and (3) those claims are material to prospective consumers. As set forth below, the Motion and accompanying evidence supply a more than sufficient basis to grant summary decision, even in the face of Respondent's bald denials unsupported by evidence and misdirected factual disputes which would not alter the outcome of this proceeding.

A. Respondent Does Not Dispute It Made the Challenged Claims

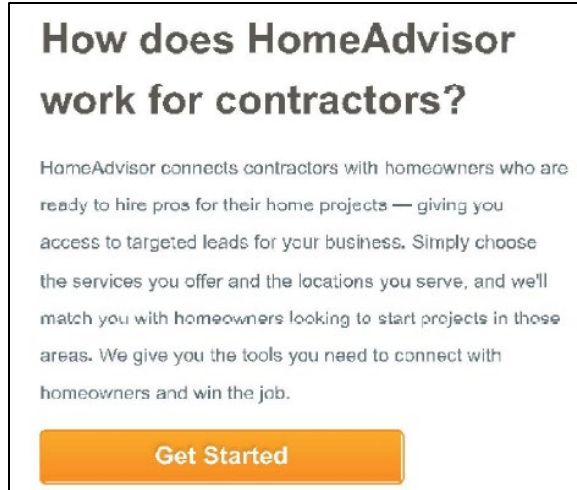
There can be no doubt that HomeAdvisor made the claims at issue. Its advertising, training materials, and sales scripts—the content of which it does not dispute—featured the challenged claims prominently. Further, recordings of its sales calls—the content of which HomeAdvisor again does not dispute—also establish that these claims were made.

1. Respondent Made Deceptive Claims in Its Advertising

Respondent does not even attempt to challenge that it made the deceptive claims in the advertising it admits to using. SMF-RESP ¶ 24.¹ These include claims that:

- HomeAdvisor's leads concerned homeowners who were "ready to hire," "project ready," and "serious." SMF-RESP ¶ 62 (admitting that "HomeAdvisor's advertising materials, at times, have used words and phrases such as 'ready to hire,' 'project ready,' 'serious,' and 'actively seeking services' to describe homeowners generally" and that the cited documents, including Figures 1 and 2 below, speak for themselves and are the best evidence of their contents).

¹ SMF-RESP refers to HomeAdvisor's responses to Complaint Counsel's Statement of Material Facts; HA-SOF refers to HomeAdvisor's Counterstatement of Material Facts.



How does HomeAdvisor work for contractors?

HomeAdvisor connects contractors with homeowners who are ready to hire pros for their home projects — giving you access to targeted leads for your business. Simply choose the services you offer and the locations you serve, and we'll match you with homeowners looking to start projects in those areas. We give you the tools you need to connect with homeowners and win the job.

[Get Started](#)

Figure 1: PX0018-0025 (website)



- HomeAdvisor’s leads would match service providers’ geographic and project type preferences. SMF-RESP ¶ 71 (admitting that the cited documents, including Figures 3 and 4 below, speak for themselves and are the best evidence of their contents).



Figure 3: PX0018-0007 (website)



Figure 4: PX0018-0055 (website)

- HomeAdvisor’s leads come from customers who seek out HomeAdvisor directly.

SMF-RESP ¶ 83 (not disputing that the cited documents, including Figures 5 and 6 below, contained the quoted language).

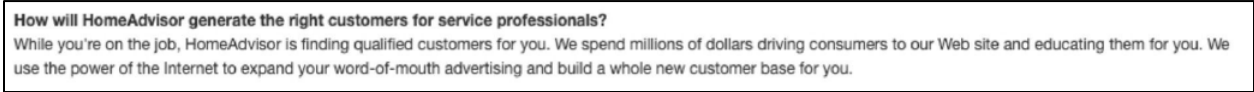


Figure 5: PX0018-0025 (website)



Figure 6: PX0018-0092 (website)

Because HomeAdvisor does not—and cannot—dispute the content of the above advertising, the Commission can find that HomeAdvisor has made the representations at issue on this basis alone.

2. Respondent Made Deceptive Claims in Scripts, Training Materials, and Sales Calls

Similarly, HomeAdvisor does not dispute that its sales scripts, training materials, and other internal documents contained the deceptive claims at issue, including:

- [REDACTED]
[REDACTED]
[REDACTED] SMF-RESP ¶ 63 (citing PX0050-0003 and testimony).
- [REDACTED]
[REDACTED] PX0051-0002; SMF-RESP ¶¶ 72-73 (admitting that

cited documents, including PX0051, speak for themselves and are the best evidence of their content).²

- [REDACTED]
[REDACTED] PX0051-0001; SMF-RESP ¶ 84 (not disputing contents of cited documents, including PX0051).
- [REDACTED]
[REDACTED] PX0042-0021; SMF-RESP ¶ 102 (not disputing contents of PX0042).
- [REDACTED]
[REDACTED]
[REDACTED] PX0049-0002; SMF-RESP ¶¶ 103-105 (not disputing contents of cited documents, including PX0049).
- [REDACTED]
[REDACTED]
PX0051-0003; SMF-RESP ¶ 112 (admitting scripts contained cited language).³

HomeAdvisor also does not dispute that [REDACTED]

See, e.g., SMF-RESP ¶ 65 (admitting that the “recordings speak for themselves and are the best evidence of the contents of those specific calls”). Instead, HomeAdvisor suggests the

² Respondent’s argument that the Commission should ignore HomeAdvisor’s scripts because they were not followed verbatim borders on frivolous. It is undisputed that Respondent provided “scripts” to sales agents [REDACTED]. *See, e.g.*, SMF-RESP ¶ 72.

³ HomeAdvisor argues that mHelpDesk must have been presented as optional because [REDACTED] Opp’n at 30. However, [REDACTED], *see, e.g.*, PX0022-0018:18, -0061:12, -0090:11, -0160:3, -0262:2, -0337:19, -0374:12, -0467:4, -0586:13, -0743:23, -0886:13, -0930:11, or [REDACTED], *see, e.g.*, PX0022-0997:6-8, -1373:11-18, -1873:4-8, -2758:17-25, -2889:22-25, -2935:14 to -2936:6, -3122:1-11, -3361:4-10, -3901:19-20, -4123:10-16.

Commission pretend it cannot know what happened in the company's sales calls because they have not been proven to be representative of all of HomeAdvisor's sales calls. Opp'n at 11-12.⁴ However, Respondent errs when it assumes the sales calls need to represent anything beyond their individual content. Indeed, the sales calls demonstrate that, unsurprisingly, HomeAdvisor's sales agents repeatedly made the same claims [REDACTED] that Respondent made in its national advertising and [REDACTED].⁵

3. *There Is No Genuine Dispute About the Plain Meaning of Respondent's Deceptive Claims*

Unable to dispute that it made the claims at issue, HomeAdvisor urges the Commission to ignore their plain meaning. For example, HomeAdvisor argues that its undisputed claim that its leads concern homeowners who are "ready to hire" or "project ready" does not mean its leads concern homeowners who intend to hire a service provider soon, because Complaint Counsel does not define "soon." Opp'n at 7; SMF-RESP ¶ 62. The Commission need not engage in this semantic hair-splitting over claims that are abundantly clear. Indeed, "the Commission has the common sense and expertise to determine 'what claims, including implied ones, are conveyed [. . .] so long as those claims are reasonably clear.'" *POM Wonderful*, 155 F.T.C. at 13 (quoting *Kraft, Inc. v. FTC*, 970 F.2d 311, 319 (7th Cir. 1992)); accord *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 391-92 (1965).

Similarly ineffective is HomeAdvisor's argument that service providers are sophisticated consumers who understand claims differently than the general population. Opp'n at 13-18.

⁴ Complaint Counsel has shown law violations across multiple channels and over multiple years, but "[t]he Commission has previously issued orders in cases involving no more than one or a few deceptive advertisements." *In re Fedders Corp.*, 85 F.T.C. 38, 71-72 (1975); accord *In re POM Wonderful, LLC*, 155 F.T.C. 1, 78 (2013); *Guziak v. FTC*, 361 F.2d 700, 703 (8th Cir. 1966).

⁵ That some calls may not have contained deceptive claims does not mitigate the deceptive claims that did occur. *Basic Books, Inc. v. FTC*, 276 F.2d 718, 721 (7th Cir. 1960) (that a company "may have made correct statements in one instance has no bearing on the fact that they made misrepresentations in other instances").

Although HomeAdvisor dedicates hundreds of pages to discussing this alleged sophistication, *see, e.g., id.*; RX0001; HA-SOF ¶¶ 114-119, it fails to explain how that sophistication relates to the plain meaning of the challenged claims.⁶ Indeed, Respondent cites no authority for the brazen proposition that a clear and explicit false statement about a product’s central purpose can ever be nondeceptive.

B. Undisputed Evidence Shows the Challenged Claims Were Misleading

The record is replete with unchallenged evidence, almost all of it from Respondent’s own records and testimony, that each of the challenged claims was misleading.

HomeAdvisor’s claims regarding homeowners’ readiness to hire and that the leads will match service providers’ task and geographic preferences are disproven by HomeAdvisor’s own lead credit data, data that it admits are [REDACTED] See HA-SOF ¶ 66

([REDACTED] [REDACTED]). Indeed, the undisputed evidence shows that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SMF-RESP ¶¶ 67, 77-78 (not disputing [REDACTED]).

Similarly, while HomeAdvisor quibbles with the precise characterization of the results of HomeAdvisor’s surveys of service providers in its network, it does not dispute that [REDACTED]

[REDACTED]

[REDACTED] SMF-RESP ¶ 68, [REDACTED]

⁶ As discussed below, *infra* at Part III.A, HomeAdvisor’s refrain that service providers understand that “leads are not guaranteed jobs” is a red herring.

[REDACTED] SMF-RESP ¶ 69, [REDACTED]

[REDACTED] SMF-RESP ¶ 79, [REDACTED]

[REDACTED] SMF-RESP ¶ 80, or [REDACTED]

[REDACTED] SMF-RESP ¶ 81.

The undisputed evidence also proves that, contrary to its claims, Respondent sells leads that concern homeowners who did not seek out HomeAdvisor at all. As a preliminary matter, Respondent admits that [REDACTED]

[REDACTED] Opp'n at 25. It similarly does not dispute that its own records [REDACTED]

[REDACTED]

[REDACTED] SMF-RESP ¶¶ 88, 90 (admitting that the cited documents, including Figure 7 below, speak for themselves and are the best evidence of their contents).

[REDACTED]

[REDACTED]

Indeed, when faced with a specific affiliate website that gives the overwhelming impression that it belongs to a local service provider, Respondent can only point to the fine print on the site that “explicitly identif[ies] their association with HomeAdvisor.” *Compare Opp’n* at 26 (citing fine print), *and* HA-SOF ¶ 148 (admitting that “Powell and Sons” is an affiliate of HomeAdvisor), *with* Figures 8.1-8.2.

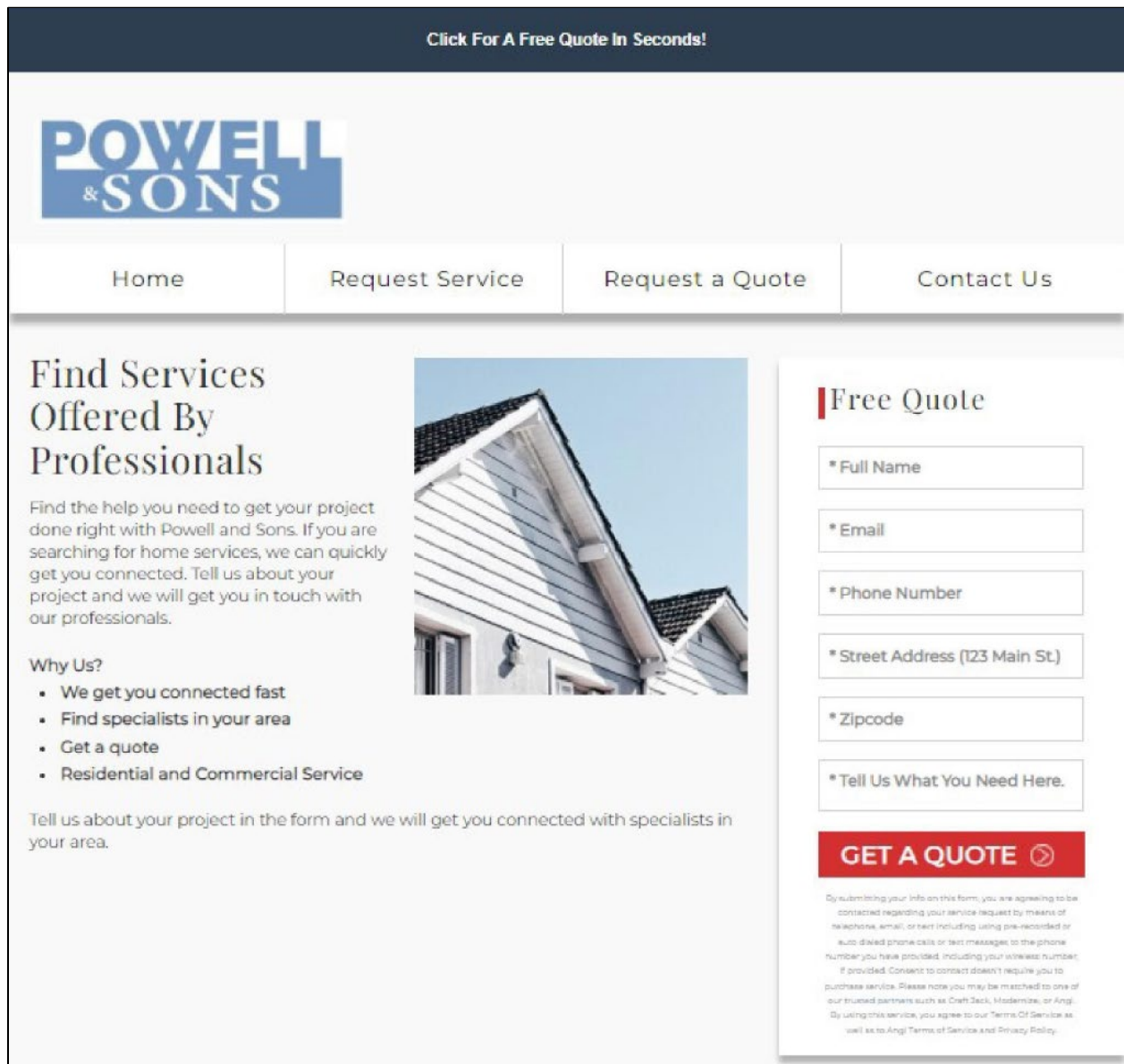


Figure 8.1: PX0137-0004

About Us



At Powell and Sons, we are proud to provide our customers with the best possible home services experience. We believe in showing up on time and getting the job done right the first time, at a good value for your hard-earned money. Our contractors cover a wide range of services and look forward to helping you improve or repair your home. Contact us today for a no obligation, free quote!

Please contact us if you have any questions at 980-880-0615.

How It Works

- 

1 Tell us about your project, service address, and how to get in touch.
- 

2 We connect you with our trained service professionals to help with your job. If we can't serve you due to market availability or capacity, we will connect you with a vetted partner.
- 

3 A trusted professional will contact you about your project.

Figure 8.2: PX0137-0004

The undisputed evidence also proves that HomeAdvisor’s win rate claims were higher than it has ever had any evidence to support, and thus false and unsubstantiated. HomeAdvisor admits that, [REDACTED]

[REDACTED] SMF-RESP ¶¶ 104-105, [REDACTED] HA-SOF

¶ 63, or impossible to calculate, SMF-RESP ¶ 96. [REDACTED]

[REDACTED]

[REDACTED] SMF-RESP ¶ 102.

Finally, [REDACTED]

[REDACTED] Opp'n at 30.

The undisputed evidence therefore shows that all of the challenged claims were deceptive when made. Unable to genuinely dispute these material facts, HomeAdvisor attempts to minimize them, arguing that the claims were only false sometimes. *See, e.g.*, Opp'n at 22, 24-25 (dismissing as “one-off” events the [REDACTED]

[REDACTED]); *see also* RX0002-AppendixA-Exhibit11 ([REDACTED]

[REDACTED]). However, a business cannot make categorical claims about its products that are only true in certain instances. *See In re Nat'l Credit Mgmt. Grp., LLC*, 21 F. Supp. 2d 424, 445 (D.N.J. 1998); *cf. FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 572 (7th Cir. 1989) (finding deception despite evidence subset of customers received promised trips). Summary decision is appropriate now.

C. Respondent Has Not Rebutted the Presumption of Materiality

HomeAdvisor's representations are presumed material because they are express or because they relate to its products' effectiveness, central characteristics, or price. *See generally* Motion at 12 (citing cases), 16, 19, 21, 24-26. HomeAdvisor has not attempted to rebut this presumption, and therefore the final element of deception is ripe for summary decision.

III. RESPONDENT'S VARIOUS DEFENSES FAIL

The bulk of HomeAdvisor's Opposition focuses not on the veracity of its advertisements and sales calls, but instead on promoting the company's products, procedures, and customer

service efforts, attacking Complaint Counsel’s declarants, and claiming its procedural defenses preclude summary decision. Each of these arguments fails.

A. Nothing About Respondent’s Services or Practices Excuses Its Deception

Attempting to distract from its numerous misrepresentations, HomeAdvisor devotes much of its Opposition to discussing why it is “a valuable and legitimate business with hundreds of thousands of satisfied members,” Opp’n at 2, pointing to several aspects of its products and business as if they somehow excuse its deceptive statements. As discussed below, even if true, these have no bearing on this case.

HomeAdvisor’s Value Generally. With respect to any purported value in HomeAdvisor’s product, Section 5’s prohibition on deception, 15 U.S.C. § 45(a)(1), contains no exception for “a valuable and legitimate business.” Opp’n at 2. Indeed, the Complaint does not allege HomeAdvisor sold an unlawful product; it alleges that the *means* used to sell the product were unlawful. It is unlawful to use deceptive practices to sell a “valuable and legitimate” product just as it is to sell junk. *See FTC v. Figgie Int’l Inc.*, 994 F.2d 595, 606 (9th Cir. 1993) (action concerned “[t]he fraud in the selling, not the value of the thing sold”); *Amy Travel*, 875 F.2d at 572 (“The existence of some satisfied customers does not constitute a defense under the FTC [Act].”). Thus, the Commission need only decide whether Respondent misrepresented the product to sell it, and the overwhelming evidence demonstrates that it did.

Leads Are Not Guaranteed Jobs. Respondent’s claims that service providers know that “leads are opportunities—*not* guaranteed jobs,” Opp’n at 14 (emphasis in original), and its focus on “return on investment,” *id.* at 2, 15, similarly miss the point. The Complaint never alleges the company guaranteed that leads would convert to jobs. Instead, it alleges that HomeAdvisor misrepresented key aspects of the leads (Count I), and the rates at which leads convert to jobs (Count II). Respondent’s theory, for which it cites no authority, would result in the nonsensical

conclusion that, as long as service providers knew there was some chance they would not get hired, the company should be permitted to mislead consumers about how big that chance was.

Respondent’s Voice Log Process. Nothing about Respondent’s “voice log” process,⁷ Opp’n at 12-13, helps HomeAdvisor dodge liability. As an initial matter, the voice logs do not even address some of the representations at issue, such as lead source and the job conversion rate. See HA-SOF ¶¶ 1-6, 8-9. Further, the voice log prompts perpetuate several of HomeAdvisor’s misrepresentations. For example, they inform the service provider that “your success will vary depending on your abilities to follow up with potential prospects and sell your services,” HA-SOF ¶ 6, which presupposes that all of the leads sold to the service provider will concern projects that match the service provider’s task and geographic preferences. Similarly, where the voice logs refer to mHelpDesk, they reiterate the misrepresentation that the product was free for a month. RX0095, Ex. 2 ([REDACTED]

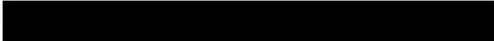
[REDACTED]
[REDACTED]).

Lead Screening Procedures. Likewise, HomeAdvisor’s lead screening methods—even if on par with “industry standards”—cannot cure its deception. It is undisputed that [REDACTED]
[REDACTED]
[REDACTED] “may not be determinative of whether a service request becomes a lead.” SMF-RESP ¶ 7 (admitting that HomeAdvisor’s witness testified as such).

⁷ Notably, the voice logs are not evidence that any service provider ever agreed to anything: the call recordings in the record reflect that sales agents repeatedly [REDACTED]
[REDACTED]



Thus, despite its claims that its leads are “ready to hire,”



and no amount of screening procedures could cure that.

Lead Credit Policy. The credit policy does not help HomeAdvisor escape liability. *See generally* Motion at 26-30. Refunds are only relevant to injury, *FTC v. Kuykendall*, 371 F.3d 745, 766-67 (10th Cir. 2004), and HomeAdvisor generally does not even offer refunds for leads—it offers credits, SMF-RESP ¶ 39. Because injury is irrelevant at this stage, *FTC v. Freecom Commc’ns, Inc.*, 401 F.3d 1192, 1203 (10th Cir. 2005), no credit policy could save Respondent from liability.⁸

B. Respondent Overstates the Role of Complaint Counsel’s Witnesses

In its exhaustive efforts to discredit Complaint Counsel’s witnesses, *see generally* HA-SOF ¶¶ 88-102, HomeAdvisor wrongly treats nonparty witnesses like representative

⁸ Similarly, that some violations were flagged by Respondent’s quality assurance process, *e.g.*, Opp’n at 30, is no defense. HomeAdvisor’s own witness testified that [REDACTED] PX0030-154:8-25; SMF-RESP ¶ 57 (“Respondent does not dispute that HomeAdvisor’s corporate witness testified as such.”). Similarly, HomeAdvisor has admitted that [REDACTED]

[REDACTED] SMF-RESP ¶ 58.

plaintiffs in a class action rather than victims of its practices who filed complaints with a regulator and subsequently responded to a regulator's request to testify. Despite Respondent's desire to probe issues perhaps more relevant to the *Airquip* class action,⁹ they are not relevant to the case at bar. The nonparty witnesses testified to discrete fact patterns that are illustrative, but they do not serve as representatives of other consumers. While the declarations provide context to understand how various individuals experienced HomeAdvisor's practices, as shown above, *supra*, Part II, every element of every count is established by documentary evidence and summary decision would still be appropriate without any service provider, sales agent, or homeowner witness.

Nonetheless, Respondent routinely miscasts the witnesses' testimony and is undermined by the very transcripts it cites. *Compare* Opp'n at 27 ([REDACTED]), with [REDACTED]), with RX0008-82:12-84:14 ([REDACTED]); *compare* HA-SOF ¶ 88 ([REDACTED]), with RX0012-195:10-196:2 ([REDACTED]); *compare* HA-SOF ¶ 151 ([REDACTED]), with RX0011-62:5-17 ([REDACTED]). Indeed, at least once, HomeAdvisor blatantly removes critical language from a witness's testimony to support *precisely the opposite meaning* evident from the transcript. *See, e.g.*, HA-SOF ¶ 164 ([REDACTED]).

⁹ *Airquip, Inc., et al. v. HomeAdvisor, Inc., et al.*, Case No. 1:16cv1849 (filed July 19, 2016, D. Colo.). Briefing on the plaintiffs' motion to certify a class of service providers will conclude on August 8, 2022. *Id.*, Dkt. 471 (minute order setting briefing schedule) (D. Colo. Sept. 13, 2021).

[REDACTED]

[REDACTED]). Though sufficient undisputed evidence exists that the Commission need not rely on these declarants to grant summary decision, the Commission is not bound to accept HomeAdvisor's misleading assertions about them.¹⁰

Furthermore, even if Respondent had successfully called some of Complaint Counsel's declarants' credibility into question, it cannot do the same for its own service provider declarants, whose testimonies are similar. *E.g.*, RX0070 ¶ 6 ([REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]); RX0066 ¶ 5 ([REDACTED]

[REDACTED]).

C. Respondent's Procedural and Affirmative Defenses Do Not Preclude Summary Decision

HomeAdvisor asserts that the Motion is premature, but fatally ignores the plain language of the Rules of Practice and gives no explanation of what discovery it would seek if given more time. The Rules permit a motion for summary decision "at any time after 20 days following issuance of the complaint." 16 C.F.R. § 3.24(a)(1). Respondent sought and received two extensions of time to file its Opposition, quadrupling its time to respond. If Respondent believed additional time is necessary to gather evidence to oppose the Motion, it was obligated to state with particularity what additional discovery it sought and how it could defeat summary decision. *See In re College Football Ass'n*, 117 F.T.C. 971, 1006 n.28 (1994) (nonmoving party must

¹⁰ Respondent complains that Complaint Counsel [REDACTED] which merely introduces or authenticates third-party documents. Opp'n at 10-11. Respondent's position is plainly contradicted by well-established caselaw. *E.g.*, *In re Traffic Jam Events, LLC*, 2021 WL 3465724 at *2-3, 4 (F.T.C. July 23, 2021).

“specify exactly how discovery—in addition to that already conducted—would defeat the summary decision motion”) (citing federal court cases under Fed. R. Civ. P. 56). It did not do so; this matter is therefore ripe for adjudication.

Respondent’s affirmative defenses likewise fail because they are each unsupported by fact, not cognizable at law, irrelevant to this proceeding, or some combination thereof. Complaint Counsel already addressed all twenty-four defenses raised in HomeAdvisor’s Answer, Motion at 34-35, and HomeAdvisor now chooses to only elaborate on a few, Opp’n at 31-34. Those remaining defenses are addressed below.

First, HomeAdvisor’s proximate cause defense is factually and legally flawed and irrelevant at this stage because the Commission is not assessing injury. The only citation Respondent provides for the cognizability of this defense is *FTC v. Dantuma*, which considered it in the context of calculating “harm to the consumer.” 748 F. App’x 735, 738 n.1 (9th Cir. 2018). Harm is not an element of a Section 5 violation. *Freecom*, 401 F.3d at 1203. There is no such defense as “proximate cause” here, and the Commission need not reach questions about its application in a hypothetical Section 19 action.

Second, Respondent’s argument that it is immune under the Communications Decency Act (“CDA”), 47 U.S.C. § 230(c)(1), misconstrues the claims at issue and the CDA itself. The CDA only bars claims where “the information that forms the basis for the state law claim has been provided by ‘another information content provider.’” *Universal Commc’n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 419 (1st Cir. 2007); *Anthony v. Yahoo! Inc.*, 421 F. Supp. 2d 1257, 1262-63 (N.D. Cal. 2006) (denying § 230 immunity based on content created by internet service provider). Here, the claims are based on representations that Respondent made to prospective service providers—and Respondent does not dispute that it created all such content. *Compare*

supra, Section II.A, SMF-RESP ¶ 24 (not disputing that HomeAdvisor advertises its products on its websites [REDACTED]), and SMF-RESP ¶ 27 (admitting that Respondent employed sales agents with a primary expectation of reaching customers and having a conversation to sell its service), with *FTC v. Match Grp., Inc.*, No. 3:19-CV-2281-K, 2022 WL 877107, at *5 (N.D. Tex. Mar. 24, 2022) (advertisements automatically generated and included fraudulent content from third parties).

Third, Respondent’s conspiracy theory about Complaint Counsel’s “affirmative misconduct” similarly fails. HomeAdvisor does not, as it must, specify how additional discovery regarding Complaint Counsel’s communications with class counsel in the *Airquip* litigation would defeat the Motion. See *College Football Ass’n*, 117 F.T.C. at 1006 n.28. Even assuming, *arguendo*, that Complaint Counsel was somehow bound by a protective order to which it was not a party—and Respondent never articulates how Complaint Counsel was—Respondent has not alleged anything that would amount to “affirmative misconduct” that would somehow unfairly result in HomeAdvisor being found to have violated the FTC Act based on evidence of its own conduct adduced in this proceeding. See *Masters Pharm., Inc. v. DEA*, 861 F.3d 206, 225 (D.C. Cir. 2017) (“The bar for establishing ‘affirmative misconduct’ is high, requiring a showing of ‘misrepresentation or concealment, or, at least, behav[ior] . . . that . . . will cause an egregiously unfair result.’” (internal quotations omitted)).

Fourth, HomeAdvisor gestures at challenges to administrative processes, ignoring binding Supreme Court precedent whenever it inconveniences its position. The Commission need not independently research both sides of constitutional issues that Respondent raises only in passing:

- The for-cause removal protections for Commissioners do not violate Article II. *Humphrey's Ex'r v. United States*, 295 U.S. 602, 630 (1935).
- The partisan membership limitation on Commissioners does not violate Article II or the First Amendment, and Respondent, raising two new arguments for the first time in one sentence with no citations, gives no explanation of how it does so.
- In a proceeding to determine if Respondent should be ordered to cease and desist from unlawful conduct, the Commission is a neutral decisionmaker as required by the Fifth Amendment. *See, e.g., FTC v. Cement Institute*, 333 U.S. 683, 703 (1948).¹¹
- Of the articulated remedies in Section 19, 15 U.S.C. § 57b(b), HomeAdvisor cites only damages as a legal remedy to which Seventh Amendment rights apply. Respondent's hypothetical problem could be more precisely addressed by a tribunal considering the actual remedy sought and may never need to be addressed at all.

D. Respondent Miscasts the Proposed Order

Respondent chose to “not attempt here a comprehensive analysis of the proposed order’s terms,” Opp’n at 34, and waives the opportunity to do so. In its haste, HomeAdvisor misstates the key term of the order. Contrary to its assertions, *id.* at 35, the Proposed Order would not prohibit all representations about the products, but rather would require HomeAdvisor not to misrepresent aspects of its products. *See Proposed Order at 2.*

Moreover, and contrary to Respondent’s citationless statements, *see Opp’n at 35*, the Commission need not prospectively decree which statements would or would not violate the

¹¹ Respondent mentions an equal protection issue, but never says what it is. *See Answer at 50; Opp’n at 33.*

Order. HomeAdvisor has two options to come into compliance: (1) change its products such that its claims are no longer misleading; or (2) simply change its claims about its products.¹²

IV. CONCLUSION

Despite Respondent's efforts to focus on just about anything else, this is a simple case about deceptive sales tactics. The overwhelming evidence supports only one reasonable conclusion: HomeAdvisor's deception violated Section 5. If, as it repeatedly asserts, Respondent operates a "a valuable and legitimate business," the company should have no problem selling its products without misrepresenting them to consumers. Given that is the only thing the Proposed Order would require HomeAdvisor to do, compliance should be easy. Setting aside Respondent's bald denials and irrelevant distractions, there is no *genuine* dispute as to any *material* fact. The Commission should reach the only conclusions the record supports: HomeAdvisor deceived its consumers in violation of Section 5, the Proposed Order is justified, and summary decision is appropriate.

¹² HomeAdvisor, a U.S. company, incorrectly argues it can violate U.S. law from the United States so long as its targets are foreign. Where Respondent's unlawful conduct is designed or carried out in the United States, the FTC Act applies regardless of where its effects are felt. 15 U.S.C. § 45(a)(4)(ii); see *Branch v. FTC*, 141 F.2d 31, 34-35 (7th Cir. 1944).

Respectfully submitted,

Dated: June 14, 2022

s/ *Sophia H. Calderón*

Sophia H. Calderón
Colin D. A. MacDonald
Breena M. Roos
M. Elizabeth Howe

Federal Trade Commission
Northwest Region
915 Second Ave., Suite 2896
Seattle, WA 98174
Tel.: (206) 220-6350
Fax: (206) 220-6366
Email: scalderon@ftc.gov
cmacdonald@ftc.gov
broos@ftc.gov
mhowe@ftc.gov

Counsel Supporting the Complaint

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2022, I filed the foregoing document electronically using the FTC's E-Filing system, which will send notification of such filing to:

April Tabor
Office of the Secretary
Federal Trade Commission
Constitution Center
400 Seventh Street, SW, Suite 5610
Washington, D.C. 20024
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that on June 14, 2022, I caused the foregoing document to be served via email to:

William A. Burck
Dawn Y. Yamane Hewett
Kyra R. Simon
Quinn Emanuel Urquhart & Sullivan, LLP
1300 I Street NW, 9th Floor
Washington, DC 20005
(202) 538-8000
williamburck@quinnemanuel.com
dawnhewett@quinnemanuel.com
kyrasimon@quinnemanuel.com

Stephen R. Neuwirth
Jennifer J. Barrett
Neil T. Phillips
George T. Phillips
Jared Ruocco
Kathryn D. Bonacorsi
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
(212) 849-7000
stephenneuwirth@quinnemanuel.com
jenniferbarrett@quinnemanuel.com
neilphillips@quinnemanuel.com
georgephillips@quinnemanuel.com
jaredruocco@quinnemanuel.com
kathrynbonacorsi@quinnemanuel.com

Counsel for Respondent HomeAdvisor, Inc.

Dated: June 14, 2022

By: s/ Sophia H. Calderón
Sophia H. Calderón

Counsel Supporting the Complaint