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Federal Trade Commission

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 FEDERAL TRADE
14 COMMISSION,

15 Plaintiff,

16 v.

17 COMMERCE PLANET, INC., et al,

18 Defendants.
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Case No. SACV-09-01324 CJC (RNBx)

**Notice of Motion and Motion to
Dismiss Defendant Gugliuzza's
Counterclaim**

Date: June 28, 2010
Time: 1:30 p.m.
Judge: Cormac J. Carney

21 TO: ALL DEFENDANTS AND THEIR COUNSEL

22 Please take notice that on June 28, at 1:30 p.m, before the Honorable
23 Cormac J. Carney, in Courtroom 9B of the United States Courthouse for the
24 Central District of California, Southern Division, 411 West 4th Street, Santa Ana,
25 California, Plaintiff Federal Trade Commission ("FTC") will and hereby does
26 move the Court to dismiss defendant Charles Gugliuzza's Counterclaim (Docket
27 #43) against the FTC pursuant to Federal Rule of Civil Procedure 12(b)(6).

28 Pursuant to Local Rule 7-3, on May 18, 2010 (more than five days prior to

1 the last day for filing the motion) FTC counsel Eric D. Edmondson and David M.
2 Newman discussed the Motion with Michael A. Piazza and Donald P. Bunnin,
3 counsel for defendant Charles Gugliuzza (“Gugliuzza”), but were not able to reach
4 a resolution of the matters presented in the Motion.

5 As set forth in the accompanying Memorandum of Points and Authorities,
6 there is good case for the relief requested. Gugliuzza has failed to state a claim
7 upon which relief can be granted because (1) the “unfair or deceptive” standard in
8 Section 5 of the FTC Act, 15 U.S.C. § 45, as interpreted by the Commission and
9 the courts, is not impermissibly vague; (2) Gugliuzza has failed to plead any facts
10 that, taken as true, would show that the statutory language is vague; and (3)
11 Gugliuzza has failed to plead any facts that would show that the statute has been
12 applied in an arbitrary or discriminatory manner.

13 This Motion is based on this Notice of Motion and Motion, the
14 accompanying Memorandum of Points and Authorities, the pleadings and papers
15 filed in this action; and such further argument and matters as may be offered at the
16 time of hearing of this Motion.

17 Dated: May 25, 2010

Respectfully submitted,

18 */s/ David M. Newman*

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1 CERTIFICATE OF SERVICE

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3 I hereby certify that on May 25, 2010, I electronically filed Plaintiff FTC's
4 Motion to Defendant Gugliuzza's Counterclaim with the Clerk of the United States
5 District Court for the Central District of California, using the Court's CM/ECF
6 system. The CM/ECF system will send an email notification of the foregoing
7 filing to the following parties and counsel of record who are registered with the
8 Court's CM/ECF system:

9 Michael A. Piazza
10 Wayne R. Gross
11 Donald A. Bunnin
12 Greenberg, Traurig, LLP
13 3161 Michelson Drive, Suite 1000
14 Irvine, CA 92612

15 Attorneys for Defendant Charles Gugliuzza

16 In accordance with the electronic filing procedures of this Court, service has
17 been effected on the aforesaid party, whose counsel of record are registered users
18 of CM/ECF, via electronic service through the CM/ECF system.

19 I declare under penalty of perjury that the foregoing is true and correct.
20 Executed on May 25, 2010, at San Francisco, California.

21 /s/ David M. Newman

22 David M. Newman
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