## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Ronald D. Coleman (RC 3875) GOETZ FITZPATRICK LLP One Penn Plaza—Suite 4401 New York, NY 10119 (212) 695-8100 rcoleman@goetzfitz.com Attorneys for Defendant / Counterclaim Plaintiff

	)
MONSTER WORLDWIDE, INC., and	) Case No.
AFFINITY LABS, INC.,	)
Plaintiffs,	) 10:CV:2272 (DLC)
- <i>vs.</i> -	)
HR Guru.BIZ CORPORATION,	<ul> <li>AMENDED ANSWER,</li> <li>COUNTERCLAIMS</li> </ul>
Defendant.	) AND ) JURY DEMAND
	)
HR Guru.BIZ CORPORATION,	)
Counterclaim Plaintiff,	)
- <i>vs.</i> -	)
	)
MONSTER WORLDWIDE, INC., and	)
AFFINITY LABS, INC,	)
	)
Counterclaim Defendants.	)

# **ANSWER**

HR Guru.Biz Corporation, by and for its Answer to the Complaint in this matter, through

its undersigned attorneys, answers and defends as follows:

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1. Defendant neither admits nor denies the allegations of this paragraph of the Complaint, which as a summary description of plaintiff's characterization of "the nature of the action" is not an allegation amenable to such response.

2. Defendant lacks knowledge or information sufficient to admit or deny the allegations of this paragraph of the Complaint.

3. Defendant lacks knowledge or information sufficient to admit or deny the allegations of this paragraph of the Complaint.

4. Admitted.

5. Admitted.

6. Denied, except admitted that defendant's activities are national and from time to time may incidentally involve activities affecting persons in the State of New York.

7. Admitted.

8. Defendant lacks knowledge or information sufficient to admit or deny the allegations of this paragraph of the Complaint.

9. Defendant lacks knowledge or information sufficient to admit or deny the allegations of this paragraph of the Complaint, except denies the allegation that the purpose of Plaintiff Affinity Labs in undertaking its activities is "to improve the lives, careers, and education of its members."

10. Denied, except admitted that plaintiff Affinity Labs launched "the Site" in September 20, 2009.

11. Defendant lacks knowledge or information sufficient to admit or deny the allegations of this paragraph of the Complaint.

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12. Admitted, except defendant states that the allegation in this paragraph of the Complaint is materially misleading insofar as it does not disclose that on October 15, 2009, the PTO issued an Office Action advising plaintiff that the applied-for mark was refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 2879578 and 2997002 pursuant to Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.*, such marks being registered to defendant.

13. Admitted, except defendant states that the allegation in this paragraph of the Complaint is materially misleading insofar as it does not disclose that on October 15, 2009, the PTO issued an Office Action advising plaintiff that the applied-for mark was refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 2879578 and 2997002 pursuant to Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.*, such marks being registered to defendant.

- 14. Admitted.
- 15. Admitted.
- 16. Admitted.
- 17. Admitted.
- 18. Denied.

19. Denied, except admitted that defendant has no intention of resuming use of the design component of the mark.

20. Denied.

21. Admitted.

22. Defendant lacks knowledge or information sufficient to admit or deny the allegations of this paragraph of the Complaint.

23. Denied.

24. Denied.

25. Defendant lacks knowledge or information sufficient to admit or deny the allegations of this paragraph of the Complaint.

26. Admitted.

27. Admitted.

28. Admitted, except Defendant lacks knowledge or information sufficient to admit or deny the allegations of this paragraph of the Complaint relating to the beliefs of Plaintiffs.

29. Admitted.

30. Admitted, except Defendant lacks knowledge or information sufficient to admit or deny the allegations of this paragraph of the Complaint as to what was "feasible" for Plaintiffs and "the substantial time, effort, and resources to transition to a new name."

31. Admitted.

32. Defendant incorporates by reference its responses to the corresponding allegations of the Complaint.

33. Denied, except admitted that Defendant has asserted and continued to assert that Plaintiffs have infringed and do infringe Defendant's trademarks.

34. Admitted.

35. Denied.

36. Denied.

37. Denied.

38. Defendant incorporates by reference its responses to the corresponding allegations of the Complaint.

- 39. Denied.
- 40. Denied.
- 41. Denied.
- 42. Denied.
- 43. Denied.
- 44. Admitted.
- 45. Denied.
- 46. Denied.

### **AFFIRMATIVE DEFENSES**

### FAILURE TO STATE A CLAIM

Plaintiffs have failed to state a claim for which relief can be granted for the following reasons, *inter alia*:

- 1. Defendant is the senior user of the HR GURU common law trademark, having made us of and established good will in the same since 2002; and
- 2. The Defendant's Registrations issued in 2004 and 2005 respectively, at which time defendant became entitled to nationwide ownership of those marks, which included and incorporated the HR GURU word mark, which dates were according to the Complaint far prior to any alleged first use by Affinity Labs of the HR GURU mark or any mark that is confusingly similar to the Defendant's Registrations; and
- 3. Notwithstanding the allegations of the Complaint that Affinity Labs "has used" the HR GURU trademark or a confusingly similar form of it, the Complaint does not allege that Affinity Labs has built up any goodwill in the HR GURU mark

arising from such use such that it would be entitled to any trademark rights even irrespective of defendant's superior rights at law.

#### **UNCLEAN HANDS**

Plaintiffs' claims are barred by the doctrine of unclean hands, based on their filing of this meritless action and their willful infringement of the Defendant's Registrations and the HR GURU marks of defendant, *inter alia*.

### CONFUSION

To the extent plaintiffs rely on their allegation that "Plaintiffs are not aware of a single instance of actual confusion arising from their use of the HRGURU word/design mark" as tending to negate the existence of a likelihood of confusion, such "awareness" is neither legally nor factually significant in light of evidence of actual confusion in defendant's possession.

**WHEREFORE**, defendant demands that plaintiff's Complaint be dismissed, with prejudice, in its entirety, and that defendant be granted its attorneys' fees and costs of suit.

### COUNTERCLAIMS

Defendant / counterclaim plaintiff, HR Guru.biz Corporation ("HR Guru"), by and through its undersigned attorneys, for its counterclaim against counterclaim defendant Affinity Labs, Inc. ("Affinity Labs") alleges and says as follows:

#### THE PARTIES

1. HR Guru incorporates and reiterates the allegations of  $\P\P$  2-4 of the Complaint and its responses thereto.

#### JURISDICTION AND VENUE

2. HR Guru incorporates and reiterates the allegations of  $\P\P$  2-4 of the Complaint and its responses thereto.

### FACTS

3. HR Guru incorporates and reiterates its responses of the allegations of the Complaint and its responses thereto as if set fully set forth herein.

4. HR Guru was founded by Cynthia Herrera. It evolved from her experiences as a social worker for a non-profit organization called The Family Place, the largest family violence service provider in the Dallas area.

5. At The Family Place, Ms. Herrera managed volunteer programs, worked the crisis hotline, acted as an assistant to the Executive Program Director and served as Safe Home Outreach Program Recruiter.

6. Building on the skills she developed in that role as well as her demonstrated passion for and success at "finding better places for people," Herrera joined Robert Half International, a major recruiting firm, where she recruited and placed accounting, finance, tax and audit professionals.

7. Herrera founded HR Guru in 2002 to leverage her social worker roots to build a new type of highly personal, dynamic and grass-roots-oriented "headhunter" experience.

8. In early 2002, HR Guru adopted and began using the trademark HR GURU for personnel consulting and recruiting services.

9. The origin of the mark was that "HR" was a known abbreviation for "human resources," a term used to describe what personnel recruiters such as HR Guru provide to their clients, coupled with "guru," meaning a transcendentally wise expert or sage.

10. At or around that time, HR Guru launched at <u>www.hrguru.biz</u>, the home page of which utilized he HR GURU mark as set out in Figure 1 below:



11. HR Guru chose the HRGuru.biz domain name because HRGuru.com was not available, although it was not, upon information and belief, in active use as a domain name for a website.

12. Making necessity a virtue, HR Guru opted to utilize both the HR GURU and HRGURU.BIZ trademarks in its business, both incorporating as HRGURU.BIZ and obtaining the Defendant's Registrations of which HRGURU.BIZ is the main component, as set out in the Complaint.

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13. HR Guru continued, however, to use the HR GURU trademark as an alternative name for its business, as demonstrated in the above illustration.

14. HR Guru's business grew substantially over the ensuing years. As a result of its success, as well as its investments in marketing, networking and promotion, the HRGURU and HRGURU.BIZ trademarks, as well as the registered marks identified in the Complaint as are inherently distinctive to the public, and serve primarily as a designator of origin of recruiting and related services emanating from or sponsored by HR Guru.

15. As a result of the widespread use and display of the HR GURU trademark, (a) the public and the trade use it and the Defendant's Registrations to identify and refer to HR Guru's recruiting services; (b) the public and the trade recognize that such designations refer to a high quality of recruiting and human resources services emanating from a single source; and (c) said trademark and has built up secondary meaning and extensive goodwill in HR Guru only.

16. HR Guru's use of both the HR GURU and HRGURU.BIZ word trademarks and the Defendant's Registrations for the purposes set forth in the Defendant's Registrations has been continuous and ongoing since no later than 2002.

17. The Defendant's Registrations were issued in August, 2004 and September 20,2005, respectively.

18. Specifically, HR Guru owns U.S. Trademark Registration 2997002 for the word mark HRGURU.BIZ used in connection with "Employment hiring, recruiting, placement, staffing, and career networking services; consulting services in the field of human resources; administration, management, implementation and coordination of human resources, human resources outsourcing" as well as "Educational and training services, namely conducting classes, seminars, conferences, and workshops for employees and others on employment and human

resources issues." A true copy of the registration certificate for Registration 2997002 is attached hereto as Exhibit A.

19. Additionally, HR Guru owns U.S. Trademark Registration 2879578 for the word mark HRGURU.BIZ used in connection "Employment hiring, recruiting, placement, staffing, and career networking services; consulting services in the field of human resources; administration, management, implementation and coordination of human resources, human resources outsourcing" as well as "Educational and training services, namely conducting classes, seminars, conferences, and workshops for employees and others on employment and human resources issues." A true copy of the registration certificate for Registration 2879578 is attached hereto as Exhibit B.

20. As set out in the Complaint, plaintiff Affinity Labs adopted and began using HR Guru's HR GURU trademark, or a mark that incorporated the HR GURU trademark or which was confusingly similar to the Defendant's Registrations or trademarks, no earlier than November, 2006.

21. The use by Affinity Labs of HR Guru's marks, and of marks that are confusingly similar to them, was a use in competition with HR Guru and in the same channels of trade as those in which HR Guru uses its mark or in markets regarding which HR Guru is likely to developing one or more services for sale in the market of Affinity Labs' services.

22. The HRGURU marks used by Affinity Labs are likely to be confused with HR Guru's marks, including the Defendant's Registrations.

23. On October 15, 2009, the PTO issued an Office Action advising Affinity Labs that its application to register the word mark HRGURU and a logo incorporating that word was refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 2879578

and 2997002 pursuant to Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq.

24. The trademark registrations that formed the basis of the PTO's Section 2(d) refusal, based on a likelihood of confusion, are the Defendant's Registrations.

25. On October 15, 2009, the PTO issued an Office Action advising Affinity Labs that its application to register the trademark HRGURU was refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 2879578 and 2997002 pursuant to Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq.

26. The trademark registrations that formed the basis of the PTO's Section 2(d) refusal, based on a likelihood of confusion, are the Defendant's Registrations.

27. The abandonment by Affinity Labs of, as set forth in the Complaint, "all use of the HRGURU name" and its claimed intent to "withdraw Affinity Labs' Applications" are, notwithstanding its self-serving denial of the same, a tacit acknowledgment of the superior rights of HR Guru in its trademarks as compared to those claimed by Affinity Labs.

28. Affinity Labs subsequently brought this action in bad faith as an attempt to prevent HR Guru's assertion of its right to appropriate compensation for the wrongful infringement by Affinity Labs of HR Guru's trademark rights, premised on the threat that HR Guru would be overwhelmed by the cost of litigation and would gladly accept a "walkaway."

29. The acts of Affinity Labs set forth above were willful.

30. The acts of Affinity Labs set forth above were malicious.

31. Furthermore, Affinity Labs has, notwithstanding the averments in the Complaint, continued to compete unfairly with HR Guru by exploiting its dominant position and its wrongful possession of the HRGuru.com domain name.

32. As of the date hereof, Affinity Labs has not withdrawn its trademark applications.

33. Affinity Labs continues to utilize the HR Guru's HR GURU mark to drive Internet traffic to its proprietary websites.

34. Affinity Labs still maintains benefits from its infringement of the HRGuru.com domain name.

35. As of the date hereof, Internet browser attempting to reach the URL <u>www.hruguru.com</u> are redirected to the Affinity Labs "HR People" website, indicating another URL but capturing traffic of all users inputting <u>www.hruguru.com</u> to their browsers.

36. As of the date hereof, Affinity Labs still maintains a Facebook "Group" called HRGURU which utilizes the HR GURU trademark, as illustrated below:

		Photos Discussions
Information	Basic Info	
Category: Business - Companies Description: Welcome to your connection to the human resources community. HRGaru is an online community dedicated b advancement of current and future numan resources professionals and of the inprovement of HR as a whole. Members of HRGaru tap into this community of like-minded individuals for their daily dose of business news, tools and tps, and job searches. Join today! Membership and all services are FRRF! Privacy Type: Oper: All content is public.	Name: Category: Description: Privacy Type: Contact Info Email: Webaite: Office:	HRGuru Business - Companies Welcome to your connection to the human resources community. HRGuru is an online community dedicated to advancement of current and future human resources professionals and of the improvement of HR as a whole. Members of HRGuru tap into this community of like- minced individuals for their daily cose of business news, tools and tips, and job acarches. Inin today! Membership and all services are FRFF! Open: All content is public. tessa@hrguru.com http://www.HRCuru.com Affinity Labs
Tessa Taylor (Washington) (creator)  Members 6 of 15 members See All		
William Eric V Thomas Edution		

37. As of the date hereof, Affinity Labs still maintains a Facebook "Page" called HRGURU which utilizes the HR GURU trademark, as illustrated below:

facebook 😃 💷 🛞 🛛 Search		Q
3192430	HRGuru 🕅	Like Photos Discussions
(C) HRGuru	Basic Info	2008
Add to My Page's Favorites	Detailed Info	2005
Suggest to Friends	Website: Company Overview:	http://hrguru.monster.com/ HRGuru is an online community for HR professionals and the number
Information	Mission:	one resource for anyone in the HR industry. The Resource Behind Human Resources
Founded: 2008		
Create a Page for My Business Report Page Share +		

38. As of the date hereof, a Yahoo! Internet search utilizing the HR GURU trademark as the search term returns, as the top results, websites directing users to Affinity Labs, and utilizing the title "HR GURU," as illustrated below:

YAHOO!	hr guru		
Tur			
Irch Pad	Also try: hr guru group, hr guru biz, hr guru dallas, More		
Scan - On	HR Guru professionals, and of the function of HR as a whole. The site offers HR jobs, HR news,		
sults for	professional resources and a community of like-minded individuals hrpeople.monster.com - 58k - Cached		
All	HR Guru (Human Resource Solutions) HR Guru, Human resource Consulting for on boarding and employment branding, Cynthia		
! Local	Herrera hrguru.biz - <u>Cached</u>		
r.	Posts Tagged HR Guru'		
Business Sites	Posts Tagged HR Guru' " Older Entries. WHAT ARE THE TOP 3 PRIOROTIES HR Guru HR Training Leader Leadership leadership coaching india Leadership Guru www.drshaileshthaker.co.in/blog/index.php/tag/hr-guru - Cached		
	HR Guru - LivePerson Expert - Job Hunting		
	Get live Expert Advice today! Ask HR Guru and get an immediate answer by chat or email.		
	liveperson.com/professional/?expid=416703&catid=576 - Cached		
	Hr Guru Dot Biz, Dallas, TX : Reviews and maps - Yahoo! Local		
	(972) 385-1222 - 9919 El Patio Dr, Dallas, TX 75218 Hr Guru Dot Biz, Dallas, TX : Reviews and maps - Yahoo! Local, 972.385.1222. Get		
	Ratings, Reviews, Photos and more on Yahoo! Local.		
	local.yahoo.com/info-18736375-hr-guru-dot-biz-dallas - Cached		

39. As of the date hereof, a Google Internet search utilizing the HR GURU trademark

as the search term returns, as the top results, websites directing users to Affinity Labs, and utilizing the title "HR GURU," as illustrated below:

Web       Images       Videos       Maps       News       Shopping       Gmail       more ▼         Cocce       hr guru       Search       Advanced Search         Web       Show options         HRPeople : The Resource Behind Human Resources         Harpoles, monster.com/ - Cached       Careers       News         Get into HR       Forum         Earth of the Arrow Guide       Specialties         Salary & KSA Guide       About Us         More results from monster.com :       More results from monster com :       More results from monster com :         Earth Careers - Cached         METEL HR GURU'S - Prof. Dave Ulrich ; Lynda Gratton & many more @         WORLD HRD CONGRESS 2010 - Mumbai on Linkedin Events: <td -="" colspan="2" com="" events="" guru's="" hr="" linkedin="" meet="" prof.dave<="" th=""><th>😽 hr guru - Google Search</th><th>÷</th><th></th><th></th><th></th></td>	<th>😽 hr guru - Google Search</th> <th>÷</th> <th></th> <th></th> <th></th>		😽 hr guru - Google Search	÷			
Web       Show options         HRPeople : San online community dedicated to the advancement of current and prospective HR professionals, and of the function of HR as a whole.         hrpeople is an online community dedicated to the advancement of current and prospective HR professionals, and of the function of HR as a whole.         hrpeople.monster.com/ - Cached         Careers       News         Get into HR       Forum         Employment Law Guide       Specialties         salary & KSA Guide       About Us         More results from monster.com a         Careers - HRPeople         HRPeople's job and caree section include career tips, employer tips and job listings for HR positions across the county.         hrpeople.monster.com/careers - Cached         MCET HR GURU'S - Prof. Dave Ulrich : Lynda Gratton & many more @         WORLD HRD CONGRESS 2010 - Mumbai on Linkedin Events.         events.linkedin.com/MEET-HR-GURU'S - Prof. Dave. Ulrich : Lynda Gratton & many more @         WORLD HRD CONGRESS 2010 - Mumbai on Linkedin Events.         events.linkedin.com/MEET-HR-GURUS-Prof-Dave/90877 - Cached - Similar         HGuenu to the official Facebook Page of HR Guru. Get exclusive content and interact with HR Guru ight from Facebook. Join Facebook to create your own Page         www.facebook.com/pages/HR-Guru/2725978348607w=app Cached         HC Guru Up in the Air Has coasted through awards season with its timely tale of selfs human-resource	Web Images Videos Maps News Sh	opping <u>Gmail</u> mo	<u>e</u> ▼				
HRPeople : The Resource Behind Human Resources         HRPeople is an online community dedicated to the advancement of current and prospective HR professionals, and of the function of HR as a whole.         Inpeople.monster.com/ - Cached         Careers       News         Get into HR       Forum         Employment Law Guide       Specialties         Salary & KSA Guide       About Us         More results from monster.com.x         Careers - HRPeople         MPeople's job and career section include career tips, employer tips and job listings for HR positions across the country.         Inpeople.monster.com/careers - Cached         MCR TH RQUU'S - Prof. Dave Ulrich ; Lynda Gratton & many more @         VORLD HRD CONGRESS 2010 - Mumbai on LinkedIn Events.         events.linkedin.com/MEET-HR-GURU'S - Prof. Dave Ulrich ; Lynda Gratton & many more @         VORLD HRD CONGRESS 2010 - Mumbai on LinkedIn Events.         events.linkedin.com/MEET-HR-GURU'S - Prof.Dave/90877 - Cached - Similar         HC Guru Notes   Facebook         Walcome to the official Facebook Page of HR Guru. Get exclusive content and interact with HR Guru right from Facebook. Join Facebook to create your own Page         www.facebook.com/pages/HR-Guru/272597834850?v=ap Cached         HT Guru Up in the Air has coasted through awards season with its timely tale of selfish human-resources mavens who gradually learn there are         www.movieline.com//nr	Google hr guru			Search Advan	oed Searc		
HRPeople is an online community dedicated to the advancement of current and prospective         HR professionals, and of the function of HR as a whole.         hrpeople.monster.com/ - <u>Cached</u> <u>Careers</u> News         Get into HR       Forum         Employment Law Guide       Specialties         Salary & KSA Guide       About Us         More results from monster.com.»         Careers - HRPeople         HRPeople's job and career section include career tips, employer tips and job listings for HR positions across the country.         hrpeople.monster.com/careers - <u>Cached</u> MEET HR GURU'S - Prof. Dave Ulrich ; Lynda Gratton & many more         See who's attending MEET HR GURU'S - Prof. Dave Ulrich ; Lynda Gratton & many more @         WORLD HRD CONGRESS 2010 - Mumbai on LinkedIn Events.         events.linkedin.com/MEET-HR-GURU'S - Prof.Dave/90877 - <u>Cached - Similar</u> HR Guru Notes   Facebook         Welcome to the official Facebook Page of HR Guru. Get exclusive content and interact with HR Guru right from Facebook. Join Facebook to create your own Page         www.facebook.com/pages/HR-Guru/272597834850?v=app <u>Cached</u> HR Guru: Up in the Air has coasted through awards season with its timely tale of selfish human-resources mavens who gradually learn there are         www.movieline.com//hr-guru-insists-up-in-the-air-has-heartless-transition-consultants-	Web  Show options						
Get into HR       Forum         Employment Law Guide       Specialties         Salary & KSA Guide       About Us         More results from monster.com.»       More results from monster.com.»         Careers - HRPeople       HRPeople's job and career section include career tips, employer tips and job listings for HR positions across the country.         hrpeople.monster.com/careers - Cached       MEET HR GURU'S - Prof. Dave Ulrich ; Lynda Gratton & many more         See who's attending MEET HR GURU'S - Prof. Dave Ulrich ; Lynda Gratton & many more @       WORLD HRD CONGRESS 2010 - Mumbai on LinkedIn Events.         events.linkedin.com/MEET-HR-GURUS-Prof-Dave/90877 - Cached - Similar       HR Guru Notes   Facebook         HR Guru Notes   Facebook       Your Facebook to create your own Page         www.facebook.com/pages/HR-Guru/272597834850?v=app Cached       HR Guru: Up in the Air Has Heartless 'Transition Consultants' All         Jan 13, 2010 So far, Up in the Air has coasted through awards season with its timely tale of selfish human-resources mavens who gradually learn there are       www.movieline.com//hr-guru-insists-up-in-the-air-has-heartless-transition-consultants-	HRPeople is an online community dedic HR professionals, and of the function of hrpeople.monster.com/ - <u>Cached</u>	cated to the advance HR as a whole.		ospective			
HRPeople's job and career section include career tips, employer tips and job listings for HR         positions across the country.         hrpeople.monster.com/careers - <u>Cached</u> MEET HR GURU'S - Prof. Dave Ulrich ; Lynda Gratton & many more         See who's attending MEET HR GURU'S - Prof. Dave Ulrich ; Lynda Gratton & many more @         WORLD HRD CONGRESS 2010 - Mumbai on LinkedIn Events.         events.linkedin.com/MEET-HR-GURUS-Prof-Dave/90877 - <u>Cached - Similar</u> HR Guru Notes   Facebook         Welcome to the official Facebook Page of HR Guru. Get exclusive content and interact with HR Guru right from Facebook. Join Facebook to create your own Page         www.facebook.com/pages/HR-Guru/272597834850?v=app <u>Cached</u> HR Guru: Up in the Air Has Heartless 'Transition Consultants' All         Jan 13, 2010 So far, Up in the Air has coasted through awards season with its timely tale of selfish human-resources mavens who gradually learn there are         www.movieline.com//hr-guru-insists-up-in-the-air-has-heartless-transition-consultants-	Get into HR         Foru           Employment Law Guide         Spec           Salary & KSA Guide         Abor	<u>um</u> <u>cialties</u> <u>ut Us</u>					
See who's attending MEET HR GURU'S - Prof. Dave Ulrich ; Lynda Gratton & many more @ WORLD HRD CONGRESS 2010 - Mumbai on LinkedIn Events. events.linkedin.com/MEET-HR-GURUS-Prof-Dave/90877 - <u>Cached - Similar</u> <u>HR Guru Notes   Facebook</u> Welcome to the official Facebook Page of HR Guru. Get exclusive content and interact with HR Guru right from Facebook. Join Facebook to create your own Page www.facebook.com/pages/HR-Guru/272597834850?v=app <u>Cached</u> <u>HR Guru: Up in the Air Has Heartless 'Transition Consultants' All</u> Jan 13, 2010 So far, Up in the Air has coasted through awards season with its timely tale of selfish human-resources mavens who gradually learn there are www.movieline.com//hr-guru-insists-up-in-the-air-has-heartless-transition-consultants-	HRPeople's job and career section inclu positions across the country.	-	loyer tips and job listir	igs for HR			
Welcome to the official Facebook Page of HR Guru. Get exclusive content and interact with HR Guru right from Facebook. Join Facebook to create your own Page www.facebook.com/pages/HR-Guru/272597834850?v=app <u>Cached</u> <u>HR Guru: Up in the Air Has Heartless 'Transition Consultants' All</u> Jan 13, 2010 So far, Up in the Air has coasted through awards season with its timely tale of selfish human-resources mavens who gradually learn there are www.movieline.com//hr-guru-insists-up-in-the-air-has-heartless-transition-consultants-	See who's attending MEET HR GURU'S WORLD HRD CONGRESS 2010 - Mum	S - Prof. Dave Ulrich nbai on LinkedIn Eve	; Lynda Gratton & mai nts.				
Jan 13, 2010 So far, Up in the Air has coasted through awards season with its timely tale of selfish human-resources mavens who gradually learn there are www.movieline.com//hr-guru-insists-up-in-the-air-has-heartless-transition-consultants-	Welcome to the official Facebook Page HR Guru right from Facebook. Join Fac	cebook to create you	r own Page	teract with			
	Jan 13, 2010 So far, Up in the Air has selfish human-resources mavens who www.movieline.com//hr-guru-insists-u	s coasted through a gradually learn ther	wards season with its are				
HR Guru - Dallas, TX (Texas)   (214) 766-5254 HR Guru specializes in designing Employment Brands for Fortune Companies. Our sister division, Guru Recruits provides niche direct hire and staffing. www.manta.com/coms2/dnbcompany_gt4zd8 - <u>Cached</u>	HR Guru specializes in designing Empl division, Guru Recruits provides niche d	loyment Brands for lirect hire and staffin		ur sister			

40. As of the date hereof, a Twitter page utilizing a user name incorporating the HR

GURU mark was maintained, on information and belief, by Affinity Labs, as illustrated below:

	Login Join Twitter
Hey there! HRGuru1 is using Twitter. Twitter is a free service that lets you keep in touch with people through the exchange of quick, frequent answers to one simple question: What's happening? Join today to start receiving HRGuru1's tweets.	Join today!
HRGuru1	Name HR Guru Location San Francisco Web http://hrguru.mon Bio HRGuru is an online community dedicated to the advancement of current and
some major RT love today, thx everyone! @KatrinaKibben @UCCDC @ErinInBA @iZCoelho @mllyssa	prospective <b>IR</b> professionals, and of the function of <b>IR</b> as a whole. <b>1,160 1,962 94</b> following followers listed
@Vivalucky @Charityldeas @MLeadership 31 minutes ago via web	Tweets 1,379 Favorites Lists @HRGuru1/communities
Suicide at work? Any advice on this situation would be appreciated: http://bit.ly/9gqlyW #hr 43 minutes ago via CoTweet	@HRGuru1/rockstar-hr-people View all Following
Everything you need to know about #networking to get a job: http://bit.ly/aihl4t about 2 hours ago via CoTweet	
How well do you know women's history? http://bit.ly/d7Nffp about 3 hours ago via CoTweet	
"Combat Barbie" changes the beauty pageant system across the	

41. The foregoing illustration is of a "cached" search engine page showing that the Twitter user profile page was active as of "31 minutes ago" as of early in the morning of April 27, 2010.

42. Prior to the time of the filing of this Amended Answer, Counterclaims and Jury Demand, but after the Electronic Case Filing submission of the original Answer, Counterclaims and Jury Demand late on April 26, 2010, the referenced Twitter user profile page was deleted by the user which is, on information and belief, Affinity Labs or one of its employees acting with the knowledge or approval of Affinity Labs.

43. On information and belief, this deletion was an attempt to destroy evidence of the extent, nature and recency of the continued use of the HR GURU trademarks notwithstanding, or more likely as a result of, the pendency of this litigation.

44. As demonstrated by the foregoing, even as of the date of this filing Affinity Labs continues to infringe the HR GURU trademarks; maintain its applications to register trademarks that the PTO has already deemed infringing of those belong to HR Guru; compete unfairly with HR Guru on the Internet and, presumably, elsewhere despite its claims to the contrary; and conduct itself dishonestly and unethically with respect to its candor about the extent of its activities.

### FIRST CAUSE OF ACTION Trademark Infringement

45. HR Guru repeats and realleges each and every allegation of the foregoing as though fully set forth herein.

46. The acts of Affinity Labs as alleged constitute trademark infringement in violation of the Lanham Act, Section 32, 15 U.S.C. § 1114, all to the substantial and irreparable injury of the public and of HR Guru's business reputation and goodwill.

47. HR Guru has been damaged by the acts of Affinity Labs.

48. HR Guru has no adequate remedy at law.

### **SECOND CAUSE OF ACTION** *False Designation of Origin*

49. HR Guru repeats and realleges each and every allegation of the foregoing as though fully set forth herein.

50. The acts of Affinity Labs as alleged constitute trademark infringement in violation of the Lanham Act, Section 43(a), 15 U.S.C. § 1125(a), all to the substantial and irreparable injury of the public and of HR Guru's business reputation and goodwill.

- 51. HR Guru has been damaged by the acts of Affinity Labs.
- 52. HR Guru has no adequate remedy at law.

# THIRD CAUSE OF ACTION

Common Law Unfair Competition

53. HR Guru repeats and realleges each and every allegation of the foregoing as though fully set forth herein.

54. The aforementioned acts of Affinity Labs constitute unfair competition and in violation of the common law of New York State.

55. HR Guru has been damaged by the acts of Affinity Labs.

56. HR Guru has no adequate remedy at law.

# FOURTH CAUSE OF ACTION

Statutory Unfair Competition

57. HR Guru repeats and realleges each and every allegation of the foregoing as though fully set forth herein.

58. The aforementioned acts of Affinity Labs constitute unfair competition and unfair deceptive acts or practices in violation of New York General Business Law § 349.

59. HR Guru has been damaged by the acts of Affinity Labs.

60. HR Guru has no adequate remedy at law.

## FIFTH CAUSE OF ACTION Cybersquatting

61. HR Guru repeats and realleges each and every allegation of the foregoing as though fully set forth herein.

62. The aforementioned acts of Affinity Labs constitute a violation of the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

63. HR Guru has been damaged by the acts of Affinity Labs.

64. HR Guru has no adequate remedy at law.

# **PRAYER FOR RELIEF**

WHEREFORE, HR Guru.biz Corporation prays for judgment against plaintiff / counterclaim defendant Affinity Labs, Inc. as follows:

I. That the Court enter an injunction enjoining the Affinity Labs, its agents, servants, employees, and all other persons in privity or acting in concert with it from:

- a) using any reproduction, counterfeit, copy, or colorable imitation of the HR
   GURU trademark or the Defendant's Registrations to identify any services
   not authorized by HR Guru;
- engaging in any course of conduct likely to cause confusion, deception or mistake, or injure HR Guru's business reputation or dilute the distinctive quality of HR Guru's name and marks; and
- c) using a false description or representation including words or other symbols tending to falsely describe or represent Affinity Labs'

unauthorized services as being those of HR Guru or sponsored by or associated with HR Guru and from offering such services in commerce.

II. That Affinity Labs be required to account to HR Guru for all profits resulting from Affinity Labs' infringing activities.

IV. That HR Guru have a recovery from Affinity Labs of the costs and disbursements of this action and HR Guru's reasonable counsel fees and other costs.

VI. That HR Guru be awarded punitive damages for Affinity Labs' willful and malicious acts of trademark infringement, false designation of origin common law, statutory unfair competition and spoliation of evidence.

VII. That Affinity Labs turn over to HR Guru the HRGuru.com domain name and any other domain names incorporated the HR GURU trademark.

VII. That HR Guru have all other and further relief as the Court may deem just and proper under the circumstances.

# JURY DEMAND

HR Guru hereby demands a jury trial on all the issues raised in this action so triable.

Respectfully submitted,

GOETZ FITZPATRICK LLP

By: \_\_\_\_\_

Ronald D. Coleman (RC 3875)

One Penn Plaza—Suite 4401 New York, NY 10119 (212) 695-8100 rcoleman@goetzfitz.com Attorneys for Defendants

/s/

EXHIBASE 1:10-cv-02272-DLC Document 12-2 Filed 04/27/2010 Page 1 of 1

Int. Cls.: 35 and 41

Prior U.S. Cls.: 100, 101, 102 and 107

United States Patent and Trademark Office Reg. No. 2,879,578 Registered Aug. 31, 2004

# SERVICE MARK PRINCIPAL REGISTER

# HRGURU.BIZ

HRGURU.BIZ CORPORATION (TEXAS COR-PORATION) ONE GALLERIA TOWER 13355 NOEL ROAD, SUITE 1802 DALLAS, TX 75240

FOR: EMPLOYMENT HIRING, RECRUITING, PLACEMENT, STAFFING, AND CAREER NET-WORKING SERVICES; CONSULTING SERVICES IN THE FIELD OF HUMAN RESOURCES; ADMIN-ISTRATION, MANAGEMENT, IMPLEMENTATION AND COORDINATION OF HUMAN RESOURCES, HUMAN RESOURCES OUTSOURCING, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-7-2002; IN COMMERCE 10-7-2002.

FOR: EDUCATIONAL AND TRAINING SERVI-CES, NAMELY CONDUCTING CLASSES, SEMI-NARS, CONFERENCES, AND WORKSHIPS FOR EMPLOYEES AND OTHERS ON EMPLOYMENT AND HUMAN RESOURCES ISSUES, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 10-7-2002; IN COMMERCE 10-7-2002.

SER. NO. 78-297,423, FILED 9-8-2003.

PRISCILLA MILTON, EXAMINING ATTORNEY

Int. Cls.: 35 and 41

Prior U.S. Cls.: 100, 101, 102 and 107

United States Patent and Trademark Office Registered Sep. 20, 2005

# SERVICE MARK PRINCIPAL REGISTER



HRGURU.BIZ CORPORATION (TEXAS COR-PORATION) ONE GALLERIA TOWER 13355 NOEL ROAD, SUITE 1802 DALLAS, TX 75240

FOR: EMPLOYMENT HIRING, RECRUITING, PLACEMENT, STAFFING, AND CAREER NET-WORKING SERVICES; CONSULTING SERVICES IN THE FIELD OF HUMAN RESOURCES; ADMIN-ISTRATION, MANAGEMENT, IMPLEMENTATION AND COORDINATION OF HUMAN RESOURCES, HUMAN RESOURCES OUTSOURCING, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-7-2002; IN COMMERCE 10-7-2002.

FOR: EDUCATIONAL AND TRAINING SERVI-CES, NAMELY CONDUCTING CLASSES, SEMI-NARS, CONFERENCES, AND WORKSHOPS FOR EMPLOYEES AND OTHERS ON EMPLOYMENT AND HUMAN RESOURCES ISSUES, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

Reg. No. 2,997,002

FIRST USE 10-7-2002; IN COMMERCE 10-7-2002.

SER. NO. 78-297,668, FILED 9-9-2003.

PRISCILLA MILTON, EXAMINING ATTORNEY