

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDERSON NEWS, L.L.C. and ANDERSON	:	
SERVICES, L.L.C.,	:	09 CIV. 2227 (PAC)
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
AMERICAN MEDIA, INC., BAUER	:	
PUBLISHING CO., LP, CURTIS CIRCULATION	:	
COMPANY, DISTRIBUTION SERVICES, INC.,	:	NOTICE OF MOTION
HACHETTE FILIPACCHI MEDIA, U.S.,	:	<u>TO DISMISS</u>
HUDSON NEWS COMPANY, KABLE	:	
DISTRIBUTION SERVICES, INC., RODALE,	:	
INC., THE NEWS GROUP, LP, TIME INC. and	:	
TIME/WARNER RETAIL SALES &	:	
MARKETING, INC.,	:	
	:	
Defendants.	:	
-----X	:	

PLEASE TAKE NOTICE that upon the supporting Memorandum of Law and Declaration of Daniel N. Anziska, Esq., defendants American Media, Inc., Bauer Publishing Co., LP, Rodale, Inc., Curtis Circulation Company and Kable Distribution Services, Inc., will move this Court at the United States Courthouse, 500 Pearl Street, New York, New York, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for an Order to dismiss with prejudice the Complaint of Anderson News, L.L.C. and Anderson Services, L.L.C. (collectively “Anderson”) for failure to state a claim upon which relief may be granted.

The Sherman Act Section 1 claim does not meet the pleading requirements of *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), in that: (i) Anderson fails to allege facts that negate independent reasons for the conduct from which Anderson proposes to infer a conspiracy; (ii) the conduct alleged is not only as consistent with

unilateral business conduct as with conspiracy, it is in all respects conduct that one would expect rational businesses to engage in absent an agreement; (iii) a conspiracy by publishers and distributors to drive the two largest wholesalers out of business and cut down their choice of wholesalers from four to two and render Anderson unable to pay its huge debts does not make economic sense; (iv.) Anderson has not alleged the necessary specifics of the “conspiracy,” such as when it formed, who were the participants, how it functioned and when it ended; (v.) the allegations that Anderson and Source were the dominant wholesalers until they announced the exorbitant price increase in January, and the different responses by each defendant to the announcements, does not move the Complaint “over the line” of plausibility; and (vi.) Anderson’s imposition of the surcharge and its decision not to accept magazines absent signed consent to the surcharge precludes an inference of conspiracy.

Anderson’s common law claims should be dismissed because: (i) the civil conspiracy and tortious interference claims are premised on the same implausible and sketchy “boycott” as is the Section 1 claim; (ii) under New York law, there is no civil conspiracy claim absent a separate tort, which has not here been alleged; and (iii) Anderson’s defamation claim contains no specific factual allegations of defamation or allegations that support any conspiracy to defame.

PLEASE TAKE FURTHER NOTICE that, pursuant to the November 3, 2009 Court hearing, answering papers, if any, are required to be served by on or before January 19, 2010.

