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9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION

Glaser Weil Fink Jacobs
 Howard Avchen & Shapiro LLP

12 LEGALZOOM.COM, INC., a Delaware
 corporation,
 13
 Plaintiff,
 14
 v.
 15 ROCKET LAWYER INCORPORATED,
 16 a Delaware corporation,
 Defendant.
 17

CASE NO.: CV 12-9942-GAF (AGR_x)
 Hon. Gary A. Feess
 Courtroom: 740

**REPLY MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT OF MOTION FOR
 PARTIAL SUMMARY JUDGMENT
 BROUGHT BY PLAINTIFF
 LEGALZOOM.COM, INC.**

Date: August 18, 2014
 Time: 9:30 a.m.
 Courtroom: 740

[Evidentiary Objections filed
 concurrently herewith]

Complaint Filed: November 20, 2012

28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 As to Counts IV, V and VI of Rocket Lawyer’s counterclaim based on
4 Legalspring.com, Rocket Lawyer’s opposition to LegalZoom’s motion is fatally
5 flawed in the following respects:

- 6 • Rocket Lawyer has failed to identify a false statement of **fact** about
7 LegalZoom’s or Rocket Lawyer’s products at the Legalspring.com web
8 site, which is a required predicate for any false advertising claim;
- 9 • Rocket Lawyer has produced no evidence that the customer reviews
10 posted at Legalspring.com are not genuine, and in fact Rocket Lawyer
11 admits that those reviews “may or may not have” all been authored by
12 actual consumers;
- 13 • Rocket Lawyer has failed to produce any evidence, in the form of
14 consumer surveys or otherwise, showing that consumers were actually
15 deceived or misled by any statements made at Legalspring.com;
- 16 • Rocket Lawyer’s evidence which is based on consumers finding web
17 reviews “helpful” is obvious hearsay which should be rejected; and
- 18 • Rocket Lawyer’s purported evidence that LegalZoom “[REDACTED]” or
19 “[REDACTED]” Mr. Giggy to post certain content at Legalspring.com shows
20 nothing more than requests and suggestions by LegalZoom, and Rocket
21 Lawyer has produced no evidence showing that LegalZoom exercised
22 either legal or actual control over Mr. Giggy’s decision as to what
23 content was posted and in what manner.

24 In addition, Rocket Lawyer cannot have it both ways. In filing its own motion
25 for summary judgment (ECF No. 60), Rocket Lawyer argued strenuously to this
26 Court that (a) false advertising statements must be either false or misleading “as
27 evidenced by consumer surveys” (*id.* at 13); (b) that the false advertising plaintiff
28 must “demonstrate that ‘a statistically significant part’ of the intended audience ‘holds

1 the false belief allegedly communicated by the challenged advertisement” (*id.* at 16);
2 and (c) that the advertisement in question “caused diversion of sales from [the
3 plaintiff] or caused a decrease in good will associated with [the plaintiff’s] products
4 (*id.* at 20). Despite making these arguments in support of its own motion for
5 summary judgment, Rocket Lawyer has produced not a shred of evidence (survey
6 evidence or other evidence) supporting these points in its attempt to defeat
7 LegalZoom’s motion.

8 Finally, Rocket Lawyer’s argument in support of its unclean hands defense is
9 without merit but somewhat revealing. The argument fails because the alleged
10 conduct upon which it now relies (that LegalZoom advertises its services without
11 disclosing the additional cost of state fees) is not sufficiently similar to the basis upon
12 which Rocket Lawyer has been sued – based on how Rocket Lawyer falsely and
13 misleadingly uses the term “FREE” in its advertisements. But putting that defect
14 aside, Rocket Lawyer now appears to admit in a judicial filing that engaging in such
15 conduct (failing to disclose state fees) is both wrongful and actionable.

16 **II. ROCKET LAWYER HAS FAILED TO PRODUCE EVIDENCE WHICH**
17 **CREATES A GENUINE DISPUTE AS TO THE FACTS PROFFERED**
18 **BY LEGALZOOM IN SUPPORT OF ITS MOTION**

19 LegalZoom relied upon twenty (20) uncontroverted facts as support for its
20 motion. Rocket Lawyer has failed to produce any evidence that creates a genuine
21 dispute as to any of those facts. Instead, Rocket Lawyer purports to rely upon fifty-
22 one (51) “additional undisputed facts” as a means for creating a triable issue in order
23 to avoid partial summary judgment, but none of those additional facts have any legal
24 significance to the false advertising claim at hand.

25 **A. LegalZoom’s Twenty Uncontroverted Facts Are Not In Genuine**
26 **Dispute**

27 After the moving party has sustained its initial burden, the nonmoving party
28 must come forth with enough evidence to demonstrate the existence of a “genuine

1 issue” of material fact for trial. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 256
2 (1986); Fed. R. Civ. P. 56(e). The nonmoving party’s burden is such that it must do
3 more than simply show there is some metaphysical doubt as to the material facts.
4 *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). For
5 the following reasons, and as to each of LegalZoom’s twenty uncontroverted facts,
6 none of the evidence produced by Rocket Lawyer shows a genuine dispute:

7 Fact No. 1. Rocket Lawyer does not dispute that Legalspring.com is a
8 website that was formerly owned, operated and moderated by Travis Giggy, which is
9 the only fact stated.

10 Fact No. 2. Undisputed.

11 Fact No. 3. Undisputed.

12 Fact No. 4. Rocket Lawyer disputes that the “opinion” and third party
13 customer reviews posted at Legalspring.com are selected and published exclusively
14 by Legalspring.com. The evidence upon which Rocket Lawyer relies, however, does
15 nothing to support such a dispute. Thus, [REDACTED]

16 [REDACTED]
17 undermine the proffered fact, which is limited to the opinion and third party customer
18 reviews. Evidence that LegalZoom was [REDACTED]
19 [REDACTED], does nothing
20 to refute that Mr. Giggy selected and published those reviews – indeed it supports the
21 fact that LegalZoom did not control the process, and instead had to request that Mr.
22 Giggy do so. Similarly, evidence that Mr. Giggy was “[REDACTED]” LegalZoom about
23 the removal of reviews provides no indication that Mr. Giggy was not the one
24 selecting that content.

25 Fact No. 5. Rocket Lawyer disputes that LegalZoom has not authored
26 any of the reviews on Legalspring.com, and has no responsibility for the reviews
27 which are actually posted. The [REDACTED].

28 [REDACTED]

1 does not indicate in any way that LegalZoom authored those reviews. Indeed, Rocket
2 Lawyer admits elsewhere in its papers that the customer reviews “may or may not
3 have been authored by consumers” (Opp. at 3:18-20).

4 Fact No. 6. Undisputed – no opposing evidence.

5 Fact No. 7. Undisputed.

6 Fact No. 8. Rocket Lawyer disputes that while Mr. Giggy, at one time,
7 received compensation from LegalZoom for any products sold by LegalZoom as a
8 result of a consumer first visiting Legalspring.com, that relationship terminated as of
9 March 2013. The problem is that Rocket Lawyer’s evidence does not contradict
10 either that Mr. Giggy received compensation or that his relationship terminated as of
11 March 2013. [REDACTED]

12 [REDACTED], does
13 nothing to controvert the proffered facts. But in any event, none of this evidence
14 supports Rocket Lawyer’s false advertising claim.

15 Fact No. 9. Rocket Lawyer disputes that all of the content at
16 Legalspring.com is expressed as opinion rather than fact. Rocket Lawyer provides no
17 evidence, but merely identifies “dates of customer reviews” and the “overall rating of
18 LegalZoom” as statements of fact. But even if you could call those items *facts*, which
19 is debatable, they are not statements of fact about the advertiser’s product or another’s
20 product, which is a predicate for a false advertising claim. *Southland Sod Farms v.*
21 *Stover Seed Co.*, 108 F.3d 1134, 1139 (9th Cir. 1997). Moreover, any “rating”
22 assigned to LegalZoom’s products or services is by definition an evaluation, and not a
23 statement of fact.

24 Fact No. 10. Undisputed.

25 Fact No. 11. Rocket Lawyer disputes that the only content on
26 Legalspring.com for which LegalZoom provided any authorship is the disclaimer
27 which appears at the bottom of the first web page. The evidence upon which Rocket
28 Lawyer relies, however, does nothing to support such a dispute. See paragraph 4

1 above.

2 Fact No. 12. Undisputed.

3 Fact No. 13. Undisputed.

4 Fact No. 14. Undisputed.

5 Fact No. 15. Rocket Lawyer disputes that the Legalspring.com website
6 merely provides “opinions” and “reviews” by the site moderator and by actual
7 customers. [REDACTED]

8 [REDACTED]
9 indicate in any way that LegalZoom authored those reviews. Indeed, Rocket Lawyer
10 admits elsewhere in its papers that the customer reviews “may or may not have been
11 authored by consumers” (Opp. at 3:18-20).

12 Fact No. 16. Undisputed.

13 Fact No. 17. Rocket Lawyer disputes that it has no evidence that posted
14 customer reviews are not genuine. Rocket Lawyer relies upon evidence that
15 LegalZoom was “[REDACTED]
16 [REDACTED], but such a process (even assuming it were
17 true) would not indicate in any way that the posted reviews were not originally
18 authored by actual consumers. Indeed, Rocket Lawyer admits elsewhere in its papers
19 that the customer reviews “may or may not have been authored by consumers” (Opp.
20 at 3:18-20).

21 Fact No. 18. Undisputed.

22 Fact No. 19. Undisputed.

23 Fact No. 20. Rocket Lawyer disputes that it alleged three specific bases
24 for its third affirmative defense of unclean hands. But the evidence that Rocket
25 Lawyer points to in support are generalized statements from its pleading that
26 “LegalZoom engages in the conduct it complains about in the Complaint” and that
27 “LegalZoom engages in unlawful conduct that is confusing and misleading to
28 consumers and is anti-competitive.” That evidence does not refute the proffered fact

1 about Rocket Lawyer’s specific alleged bases for its defense.

2 Based on the above, Rocket Lawyer has failed to create any genuine dispute as
3 to the uncontroverted facts relied upon by LegalZoom to support its motion for partial
4 summary judgment.

5 **B. The Additional Facts Proffered By Rocket Lawyer, Even if Assumed**
6 **to be True, Would Fail to Defeat LegalZoom’s Motion**

7 The additional facts relied upon by Rocket Lawyer break down into the
8 following categories, each of which are irrelevant to a false advertising claim based
9 on the content of Legalspring.com:

10 **1. LegalZoom’s Right to Pre-Approve Ad Copy.**

11 Rocket Lawyer contends that LegalZoom had pre-approval rights over the
12 content of LegalSpring as it relates to LegalZoom. As evidence, Rocket Lawyer
13 points to [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 [REDACTED].” (Vu Declaration, ¶15, Ex. 4 at § 4.7). This
19 provision, by its terms, does not apply to the opinions or customer reviews that

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 [REDACTED]. Accordingly, this “right” has nothing to do with establishing
24 Rocket Lawyer’s false advertising claim.

25 **2. LegalZoom’s Instructions and Directions to Mr. Giggy.**

26 Rocket Lawyer argues that LegalZoom [REDACTED]
27 [REDACTED]

28 Contrary to this assertion, every piece of evidence cited by Rocket Lawyer shows

1 only “requests” and “suggestions” by LegalZoom, [REDACTED]
2 [REDACTED] Moreover, Rocket
3 Lawyer has produced no evidence showing that LegalZoom exercised either legal or
4 actual control over Mr. Giggy’s decision as to what content was actually posted and
5 in what manner. To the contrary, the evidence offered by RocketLawyer
6 demonstrates Mr. Giggy’s discretion. (Vu Declaration, ¶3, Ex. 2 ([REDACTED])
7 [REDACTED].

8 **3. Manipulation of Customer Reviews at Legalspring.com.**

9 LegalZoom did not participate in or approve of the manipulation of customer
10 reviews at LegalSpring. [REDACTED]
11 [REDACTED]; but this evidence relates only to Mr. Giggy’s actions – not
12 any conduct by LegalZoom. Rocket Lawyer has produced no evidence showing that
13 LegalZoom participated in or approved such acts.

14 **4. Potential Concealment of Review Manipulation.**

15 Rocket Lawyer suggests that LegalZoom employees may have concealed the
16 manipulation of reviews, [REDACTED]
17 [REDACTED]. This evidence does not
18 adequately raise a genuine dispute for three reasons: (1) the statement does not
19 mention the Legalspring.com website; (2) it is pure speculation as to what was meant
20 by “[REDACTED]” – it could have been meant as a joke, or it could have meant
21 transmitting a customer’s review, or it could have been referring to something else;
22 and (3) there is no mention of *what* is being potentially reviewed – whether it is
23 LegalZoom, Rocket Lawyer or some other product or company. *See Anderson v.*
24 *Liberty Lobby Inc.*, 477 U.S. 242, 252 (1986) (a “scintilla of evidence” is insufficient
25 to support the non-moving party's position; “there must be evidence on which the jury
26 could reasonably find for the [non-moving party].”)

27 ///

28

1 that Mr. Giggy never sold or transferred moderation of the website to LegalZoom.
2 (Giggy Decl. ¶3.)

3 **7. How LegalZoom Benefits from Legalspring.com.**

4 Rocket Lawyer’s introduction of facts indicating that LegalZoom benefited
5 from LegalSpring activities are irrelevant to a false advertising claim. A defendant’s
6 benefit from alleged false statements is not an element of a false advertising claim
7 under the Lanham Act; rather, the plaintiff must show that it has been injured as a
8 result of a false statement of fact about a competitive product or service.

9 **III. ROCKET LAWYER HAS FAILED TO PRODUCE EVIDENCE OF ANY**
10 **ACTIONABLE STATEMENT OF FACT AT LEGALSPRING.COM IN**
11 **SUPPORT OF ITS FALSE ADVERTISING CLAIM**

12 “The purpose of the [Lanham] Act is to insure truthfulness in advertising and to
13 eliminate misrepresentations with reference to the inherent quality or characteristics
14 *of another’s product.*” *Coca-Cola Co. v. Tropicana Products, Inc.*, 690 F.2d 312, 318
15 (2d Cir. 1982) (emphasis added). Indeed, the text of the Lanham Act, 15 U.S.C. §
16 1125(a), refers specifically to a false or misleading statement of fact which
17 “misrepresents the nature, characteristics, qualities, or geographic origin *of his or her*
18 *or another person’s goods, services, or commercial activities.*” (Emphasis added).
19 Rocket Lawyer has failed to produce any evidence that satisfies such a requirement.
20 Moreover, putting aside a citation to a *New York Times* article, Rocket Lawyer has
21 cited no legal precedent for its claim that the “manipulation of customer reviews,”
22 even assuming that was done improperly here, is actionable false advertising or unfair
23 competition.

24 The only purported *facts* that Rocket Lawyer claims were misrepresented at
25 Legalspring.com are the “timestamps” of customer reviews and a manipulation of the
26 balance of negative and positive reviews. These facts, according to Rocket Lawyer,
27 misrepresent consumer satisfaction with LegalZoom’s products. But these are not
28 allegedly false or misleading facts about LegalZoom’s products or services -- these

1 are allegedly false or misleading facts *about the reviews*. There is no law requiring
2 the reviews to be posted in any particular order, either chronologically or otherwise.
3 Nor does Legalspring.com anywhere represent that this set of reviews is exhaustive,
4 or that it represents the entirety of customer opinions about LegalZoom. They are
5 provided as merely a particular set of opinions, provided by certain customers, and
6 nowhere does Rocket Lawyer produce any evidence that the posted opinions are not
7 genuine or actually held. Indeed, Rocket Lawyer admits that the customer reviews
8 “may or may not have been authored by consumers.” Opp. at 3:18-20.

9 In addition, even if Rocket Lawyer were correct that the alleged manipulation
10 and placement of reviews misrepresented “the overall consumer opinion of
11 LegalZoom as represented on Legalspring.com” (Opp. at 10:18-19), such a
12 misrepresentation of the “overall consumer opinion” is not actionable because it is not
13 false or misleading about the actual *product* being advertised. “[P]roduct superiority
14 claims that are vague or highly subjective often amount to nonactionable puffery.”
15 *Southland Sod Farms*, 108 F.2d at 1145. In contrast, “misdescriptions of specific or
16 absolute characteristics of a product are actionable.” *Id.* There is nothing in the
17 placement of customer reviews that either describes or misdescribes the absolute
18 characteristics of LegalZoom’s products, and Rocket Lawyer has failed to point to
19 any such misdescription. Nor does Rocket Lawyer even attempt in its opposition
20 papers to demonstrate any such misrepresentation about the products or services at
21 issue.

22 Because there is no evidence that any fact about the competing products has
23 been misrepresented at Legalspring.com, Rocket Lawyer is unable to gain any
24 presumption based on an alleged “intent to deceive” by LegalZoom. Each of the
25 cases that Rocket Lawyer cites as support for such a presumption all involved some
26 misrepresentation of fact about the product in question: *See U-Haul Int’l, Inc. v.*
27 *Jartran, Inc.*, 793 F.2d 1034, 1040-41 (9th Cir. 1986) (defendant’s nationwide
28 newspaper advertisements falsely compared defendant’s services to competitor’s

1 services); *Harper House, Inc. v. Thomas Nelson, Inc.*, 889 F.2d 197, 209 (9th Cir.
2 1989) (defendant’s advertisement depicted a product that differed from the product
3 actually available for purchase); *AMCO Ins. Co. v. Inspired Technologies, Inc.*, CIV.
4 08-5748 JRT/FLN, 2012 WL 2395179 (D. Minn. June 25, 2012) (defendant
5 manipulated photograph to depict competitor’s product in an unfavorable way). None
6 of these cases supports the unprecedented claim that Rocket Lawyer is attempting to
7 make here with respect to Legalspring.com.

8 Because the posting of opinions and reviews at Legalspring.com does not
9 comprise a false or misleading statement of fact about the products or services
10 provided by LegalZoom or Rocket Lawyer, the question of whether Mr. Giggy is
11 considered to be LegalZoom’s agent or whether LegalZoom provided requests,
12 directions, or suggestions to Mr. Giggy, is completely moot. But Rocket Lawyer also
13 fails to produce evidence showing that LegalZoom, and not Mr. Giggy, was in control
14 over what content was ultimately posted at Legalspring.com. *See* PSUF 4, 5, 11; *see*
15 *also Campagnolo S.R.L. v. Full Speed Ahead, Inc.*, 2010 WL 2079694, *8 (W.D.
16 Wash. May 20, 2010) *aff’d*, 447 F. App’x 814 (9th Cir. 2011) (supplier that benefited
17 from distributor’s advertisement of product but did not control the manner of
18 advertisement was not vicariously liable for distributor’s false advertisement). Where
19 none of the content at Legalspring.com was actually published by LegalZoom, it
20 cannot be the proximate cause of Rocket Lawyer’s alleged injury. *See Southland Sod*
21 *Farms*, 108 F.3d at 1139 (requiring as an element of a false advertising claim that
22 “the defendant caused its false statement to enter interstate commerce.”).

23 **IV. ROCKET LAWYER HAS FAILED TO PRODUCE EVIDENCE THAT**
24 **THE ALLEGED DECEPTION OF CONSUMERS WAS MATERIAL**

25 Another required element of a false advertising claim is “materiality” – that the
26 alleged deception “is likely to influence the purchasing decision.” *Southland Sod*
27 *Farms*, 108 F.2d at 1139. This Court previously ruled that a false advertising plaintiff
28 “bears the ultimate burden of proving actual deception using market research or

1 consumer surveys, showing exactly what message ordinary consumers perceived.”
2 ECF No. 44, MSJ Ruling, at 10. Moreover, Rocket Lawyer has conceded in its own
3 motion for summary judgment that (a) false advertising statements must be either
4 false or misleading “as evidenced by consumer surveys” (*id.* at 13); (b) that the false
5 advertising plaintiff must “demonstrate that ‘a statistically significant part’ of the
6 intended audience ‘holds the false belief allegedly communicated by the challenged
7 advertisement’” (*id.* at 16); and (c) that the advertisement in question “caused
8 diversion of sales from [the plaintiff] or caused a decrease in good will associated
9 with [the plaintiff’s] products (*id.* at 20). But Rocket Lawyer has failed to produce a
10 single shred of evidence supporting these elements.

11 First, Rocket Lawyer has presented no survey evidence whatsoever. Despite
12 numerous reports presenting market surveys related to LegalZoom’s claims from a
13 retained marketing expert Dr. Wind, Rocket Lawyer never even attempted to support
14 its claim about Legalspring.com with survey evidence from Dr. Wind or anyone else.

15 Second, Rocket Lawyer has not even attempted to establish who the “intended
16 audience” is for Legalspring.com, or that any statistically significant portion of that
17 audience holds a “false belief” as a result of the alleged manipulation of customer
18 reviews. Nothing in Rocket Lawyer’s papers attempts to identify who was affected
19 by the placement of ads, and/or to quantify how many members of that audience were
20 confused or misled by that placement. Instead, Rocket Lawyer relies exclusively
21 upon the notion that many customers indicated at Legalspring.com that they found the
22 reviews “helpful.” But these indications are not only obvious hearsay because they
23 are offered to prove the truth of the matter asserted (that the reviews are helpful to
24 consumers), but they also fail entirely to demonstrate that consumers were actually
25 influenced to purchase or not purchase products from either Rocket Lawyer or
26 LegalZoom, or that those consumers formed a false belief about those products. We
27 would have to speculate as to what belief such consumers held after reading a
28 “helpful” review.

1 Third, Rocket Lawyer has presented zero evidence that there has been any
2 “diversion” of sales from Rocket Lawyer as a result of the placement of reviews at
3 Legalspring.com. While Rocket Lawyer hints about visitors to Legalspring.com
4 being converted into purchasers of LegalZoom products, Rocket Lawyer fails to
5 produce any evidence that those same consumers would have otherwise purchased
6 Rocket Lawyer products.

7 Finally, Rocket Lawyer has not even attempted to show any other injury to its
8 commercial interests resulting from Legalspring.com. Nor has Rocket Lawyer
9 addressed the argument in LegalZoom’s moving papers that there is no standing here
10 because the plaintiff’s interests must “fall within the zone of interests protected by the
11 law invoked”, and the plaintiff’s injuries must be “proximately caused by violations
12 of the statute.” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 134 S. Ct.
13 1377, 1388-90 (2014). Under *Lexmark*, “to come within the zone of interests in a suit
14 for false advertising under § 1125(a), a plaintiff must allege an injury to a commercial
15 interest in reputation or sales.” *Id.* at 1390. To show proximate cause, “a plaintiff
16 suing under § 1125(a) ordinarily must show economic or reputational injury flowing
17 directly from the deception wrought by the defendant’s advertising; and that occurs
18 when deception of consumers causes them to withhold trade from the plaintiff.” *Id.* at
19 1391. Again, Rocket Lawyer has failed to present any evidence that consumers
20 visiting Legalspring.com would otherwise have purchased Rocket Lawyer products,
21 or evidence that otherwise satisfies this requirement.

22 Based on the above, and based on Rocket Lawyer’s own views of the law
23 which it relied upon in seeking summary judgment, Rocket Lawyer is unable to carry
24 its burden to show actionable false advertising based on Legalspring.com.

25 **V. ROCKET LAWYER CONCEDES THAT ITS UNFAIR COMPETITION**
26 **CLAIMS RISE OR FALL ALONG WITH ITS LANHAM ACT CLAIM**

27 See Opp. pp. 15-16. Because Rocket Lawyer has failed to provide evidentiary
28 support for a claim under the Lanham Act, it must necessarily concede that its unfair

1 competition claims also fail.

2 **VI. ROCKET LAWYER HAS FAILED TO DEMONSTRATE ANY**
3 **LINKAGE BETWEEN LEGALZOOM’S CONDUCT AND ITS CLAIMS**
4 **AGAINST ROCKET LAWYER TO SUPPORT AN UNCLEAN HANDS**
5 **DEFENSE**

6 Rocket Lawyer’s unclean hands defense is properly disposable on a motion for
7 summary judgment based on uncontroverted facts. *Coca-Cola Co. v. Overland, Inc.*,
8 692 F.2d 1250, 1258 (9th Cir. 1982) (approving district court's grant of summary
9 judgment on unclean-hands defense). Rocket Lawyer cites to a California Court of
10 Appeal decision, *Mattco Forge, Inc. v. Arthur Young & Co.*, 5 Cal. App. 4th 392
11 (1992), which states that as a “general rule,” application of the unclean hands doctrine
12 remains “primarily” a question of fact. *Mattco* is distinguishable not only because it
13 is examining California and not federal procedure, but also because LegalZoom is
14 arguing that Rocket Lawyer should *not* be able to avail itself of the unclean hands
15 defense (rather than arguing for the application of the doctrine).

16 Here, Rocket Lawyer is unable to establish a required element of the defense:
17 that LegalZoom’s conduct relates to the subject matter of LegalZoom’s claims against
18 Rocket Lawyer. *Emco, Inc. v. Obst*, 2004 WL 1737355 at *4 (C.D. Cal. May 7,
19 2004) (citing *Fuddruckers, Inc. v. Doc’s B.R. Others, Inc.*, 826 F.2d 837, 847 (9th
20 Cir. 1987)). In opposition to LegalZoom’s motion, Rocket Lawyer has pointed
21 exclusively to the following conduct as being similar to what LegalZoom attacks:
22 “LegalZoom advertises the price of its services without disclosing the additional cost
23 of state fees.” Opp. at pp. 17-18. But there is nothing false or misleading about
24 advertising the price of LegalZoom services without disclosure of state fees when the
25 word “FREE” is not being used in the advertisement to describe those services.
26 Moreover, one may ask whether Rocket Lawyer is conceding that the simple failure
27 to disclose state fees, without more, is false advertising or in any way unethical or
28 “unclean.”

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In attempting to support its unclean hands defense, Rocket Lawyer is forced to engage in legal gymnastics to avoid the very heart of LegalZoom’s complaint in this lawsuit. Rocket Lawyer concedes that the unclean hands defense applies only where the plaintiff acted “in the same manner” for which it seeks relief, citing *Diamond Triumph Auto Glass, Inc. v. Safelite Glass Corporation*, 441 F. Supp. 2d 695, 709 n.10 (M.D. Pa. 2006). But plainly LegalZoom has not used the word “FREE” in the “same manner” that it alleges Rocket Lawyer has used that word in its advertising, and there is no evidence before the Court stating otherwise. Rocket Lawyer’s unclean hands defense should fall together with its false advertising claim – no evidence supports either legal position in this case.

VII. CONCLUSION

LegalZoom respectfully requests that this Court grant LegalZoom partial summary judgment.

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Respectfully submitted,
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