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**ROCKET LAWYER INCORPORATED**

15  
16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**  
18 **WESTERN DIVISION**  
19

20 LEGALZOOM.COM, INC., a Delaware  
corporation,

21 Plaintiff,

22 v.

23 ROCKET LAWYER  
24 INCORPORATED, a Delaware  
corporation,

25 Defendant.  
26  
27  
28

Case No. 2:12-cv-09942-GAF-AGR

**ROCKET LAWYER  
INCORPORATED'S REDACTED  
OPPOSITION TO  
LEGALZOOM.COM, INC.'S  
MOTION FOR RULE 11  
SANCTIONS**

Date: October 27, 2014  
Time: 9:30 a.m.  
Judge: Judge Gary A. Fees  
Courtroom: 740  
Action Filed: November 20, 2012

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1 **I. INTRODUCTION**

2 The Court determined in its denial of LegalZoom’s first motion for summary  
3 judgment that LegalZoom’s claims rest on whether Rocket Lawyer’s ads, viewed in  
4 the context in which they ran, misled a substantial portion of consumers as  
5 demonstrated by a scientific survey. Following this guidance, Rocket Lawyer  
6 conducted a scientific consumer survey and then moved for summary judgment  
7 because that survey demonstrated that a substantial portion of consumers have not  
8 been misled by Rocket Lawyer’s ads. LegalZoom failed to conduct a survey testing  
9 Rocket Lawyer’s ads in context as directed, and failed to create a dispute of fact in  
10 its summary judgment briefing. Now, LegalZoom tries to cure its failure and create  
11 a dispute of fact by bringing the Motion for Rule 11 Sanctions (the “Motion”)  
12 attempting to cast doubt on the legitimacy of Rocket Lawyer’s motion for summary  
13 judgment. However, LegalZoom’s motion is not about sanctions or a Rule 11  
14 violation. It is an improper attempt to file a sur-reply and present three documents  
15 that could have been included with its opposition. LegalZoom held the Motion over  
16 Rocket Lawyer’s head, threatening to file it unless Rocket Lawyer would agree to  
17 allow LegalZoom to supplement the summary judgment record with documents that  
18 have been in its possession for months.

19 Rocket Lawyer did not violate Rule 11. These documents, which are the  
20   
21  are neither  
22 admissible nor sufficient to create a dispute of fact that a substantial portion of  
23 consumers have been misled by Rocket Lawyer’s ads. LegalZoom’s conduct in this  
24 action is once again reprehensible.

25 **II. ROCKET LAWYER’S MOTION FOR SUMMARY JUDGMENT**

26 Rocket Lawyer moved for summary judgment because the survey of over 400  
27 respondents conducted by Professor Jerry Wind demonstrated that a substantial  
28 portion of consumers were not and are not likely to be misled by Rocket Lawyer’s

1 ads. *See generally* Rocket Lawyer’s Motion for Summary Judgment, ECF No. 67  
2 (“RLI SJ Mot.”). As directed by the Court, Professor Wind tested consumers’  
3 understanding of Rocket Lawyer’s ads in the context of the disclosures on  
4 RocketLawyer.com by displaying test and control ads as they would normally  
5 appear in the typical consumer journey. *Id.* at 5-9. The test stimuli addressed  
6 LegalZoom’s allegations in this litigation and the control stimuli reflected Rocket  
7 Lawyer’s historic advertisements as they were published. *Id.* The results across  
8 dozens of metrics demonstrated that there was no statistically significant difference  
9 in consumers’ understanding of Rocket Lawyer’s services between the tests and  
10 control groups. *Id.* at 6-7. Rocket Lawyer adding “plus state fees” to its free  
11 incorporation ads would have had no effect on consumers. *Id.* at 16-17. Rocket  
12 Lawyer revising its free trial disclosures to match the formatting of LegalZoom’s  
13 free trial offers, there would have been no effect on consumers. *Id.* Thus, as  
14 Professor Wind concluded, and this Court should conclude, LegalZoom’s claims  
15 have no merit.

16 LegalZoom, in contrast, conducted a survey using stimuli that disregarded the  
17 Court’s order and applicable law to analyze advertisements in context. *See id.* at 7-  
18 8. LegalZoom showed some respondents Rocket Lawyer’s search engine  
19 advertisement with the competitive landscape blurred or for others just a page or  
20 two of Rocket Lawyer’s website. *See id.* LegalZoom did not test whether  
21 consumers were drawn to Rocket Lawyer’s ads or even took them to a point in the  
22 consumer journey where they could make a purchasing decision. *See id.* It chose  
23 not to test Rocket Lawyer’s free trial disclosures and tested limitations on Rocket  
24 Lawyer’s services that do not exist. *See id.*

25 Given these facts in the context of the Court’s summary judgment order,  
26 Rocket Lawyer’s assertion that there is no genuine dispute of fact that consumers  
27 were not misled by Rocket Lawyer’s ads is well-supported.

1 **III. THE USABILITY STUDIES**

2 By bringing this motion, LegalZoom acknowledges that the evidence  
3 currently on record, including its survey, is insufficient to defeat Rocket Lawyer’s  
4 motion for summary judgment. On September 29, 2014, LegalZoom sought for the  
5 first time to supplement the record with the usability studies (the “Studies”) that it  
6 claims creates a dispute of fact. *See* Vaughn Decl., ¶¶ 2-4, Exs. 1-3; Mot. at 4-6;<sup>1</sup>  
7 *see also* LegalZoom’s Motion to Supplement Factual Record.<sup>2</sup> However, these  
8 studies, [REDACTED], which were in LegalZoom’s  
9 possession when LegalZoom filed its opposition on July 21, 2014, have limited  
10 relevance to LegalZoom’s claims. Indeed, most of the information in the Studies  
11 reflect [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED] *See* Vaughn  
16 Decl., ¶¶ 2-4, Exs. 1-3. Furthermore, this belated attempt to expand the record  
17 cannot cure LegalZoom’s deficiencies as “a handful of customer statements” are not  
18 “reliable consumer survey[s] or market research.” ECF 44 at 10.

19 **IV. DISCOVERY**

20 Over the course of this litigation, Rocket Lawyer has diligently reviewed and  
21 produced documents responsive to LegalZoom’s 89 document requests. Declaration  
22 of Michael T. Jones (“Jones Decl.”), filed concurrently herewith, at ¶ 3. In total,

23 <sup>1</sup> With respect to the 2010 Ferguson usability study, Vaughn Decl. ¶ 2, Ex. 1,  
24 LegalZoom did not rely on or provide to this Court the underlying data even though  
25 it was available to them. Rocket Lawyer provides that information herewith. *See*  
Jones Decl., ¶ 2 Ex. 1 (RLI0039820).

26 <sup>2</sup> LegalZoom’s Motion to Supplement was noticed for manual filing on September  
27 29, 2014, *see* ECF No. 124, and a redacted version was attached to LegalZoom’s Ex  
28 Parte Application to shorten the time for hearing that Motion to Supplement, *see*  
ECF No. 126-1. However, LegalZoom failed to serve Rocket Lawyer with an  
unredacted copy of the motion or the documents it seeks to introduce until after  
Rocket Lawyer requested service on October 1, 2014.

1 Rocket Lawyer produced over 38,000 documents, including significant data pulls  
2 relating to millions of its advertisements. Jones Decl., ¶ 4.<sup>3</sup> Rocket Lawyer  
3 completed all productions on July 18, 2014 in advance of LegalZoom’s deadline to  
4 file its opposition to Rocket Lawyer’s summary judgment motion and the August  
5 12, 2014 discovery cut-off. Jones Decl., ¶ 3. The Studies were produced on July  
6 11, 2014. Jones Decl., ¶ 5.<sup>4</sup>

7 LegalZoom served its Motion on September 2, 2014. At that point, the  
8 summary judgment hearing had been continued pending mediation between the  
9 parties. *See* ECF No. 115.<sup>5</sup> After the conclusion of the mediation, the hearing was  
10 rescheduled for September 22, 2014. ECF Nos. 117, 118.

## 11 **V. LEGALZOOM’S IMPROPER QUID PRO QUO**

12 On September 23, 2014, after reviewing the Motion, the Studies referenced  
13 therein, related evidence, and the summary judgment motion in question, Rocket  
14 Lawyer informed LegalZoom by letter that it would not withdraw its motion for  
15 summary judgment because the Studies do not create a triable issue of fact. Jones  
16 Decl., ¶ 6, Ex. 2; *see also infra*.

17 At a meet and confer between the parties on September 24, 2014,  
18 LegalZoom’s counsel threatened that it would file its Motion unless Rocket Lawyer  
19 allowed LegalZoom to supplement the summary judgment record with the Studies,  
20 Jones Decl., ¶ 7. When Rocket Lawyer pointed out that LegalZoom’s threat  
21 violated California Rule of Professional Conduct 5-100,<sup>6</sup> LegalZoom confirmed the

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22  
23 <sup>3</sup> LegalZoom admitted the significance of Rocket Lawyer’s data pulls when it moved  
24 for ex parte relief for additional time to review Rocket Lawyer’s data in advance of  
the expert disclosure deadline. *See* ECF No. 126

25 <sup>4</sup> LegalZoom and third-party former employee Travis Giggy (also represented by  
26 Glaser Weil), by contrast, has produced just over 3,000 documents, and continued to  
produce documents through July 28, 2014, the day Rocket Lawyer’s opposition to  
its motion for summary judgment was due.

27 <sup>5</sup> The hearing was originally scheduled for August 18, 2014. ECF No. 73.

28 <sup>6</sup> “A member shall not threaten to present criminal, administrative, or disciplinary  
charges to obtain an advantage in a civil dispute.”

1 threat by letter, stating “we offered to avoid seeking sanctions if Rocket Lawyer  
2 would essentially agree to place the disputed documents before the Court.” Jones  
3 Decl., ¶ 8, Ex. 3.

4 On September 25, 2014, LegalZoom again urged Rocket Lawyer to allow  
5 LegalZoom to supplement the summary judgment record unopposed to avoid the  
6 Motion. *Id.* at ¶ 9. Rocket Lawyer refused to acquiesce to LegalZoom’s improper  
7 threat of sanctions and to waive its client’s right to oppose LegalZoom’s untimely  
8 attempt to supplement the record. *Id.* On September 26, 2014, as threatened,  
9 LegalZoom publicly filed its Motion, placing the Studies, which were marked  
10 Attorneys’ Eyes Only, in the public domain.<sup>7</sup>

## 11 **VI. ROCKET LAWYER DID NOT VIOLATE RULE 11**

### 12 **A. LegalZoom’s Argument Is Not Appropriate for Rule 11**

13 Rule 11 requires an attorney’s signature on submissions to the court,  
14 certifying that factual contentions have evidentiary support. *See* Fed. R. Civ. Proc.  
15 11. The relevant standard for a district court “is whether a ‘competent attorney  
16 would believe that the claims were well grounded in fact and warranted by law,’ and  
17 also whether there was ‘an improper purpose.’” *Stitt v. Williams*, 919 F.2d 516, 527  
18 (9th Cir. 1990). “Rule 11 motions...should not be employed...to test the sufficiency  
19 or efficacy of allegations in the pleadings; other motions are available for those  
20 purposes.” Fed. R. Civ. Proc. 11 advisory committee’s note (1993 Amendments).

21 LegalZoom does not point to any unsupported assertions of fact. Instead,  
22 LegalZoom contends that Rocket Lawyers’ argument lacks factual support. For this  
23 reason alone, LegalZoom’s Motion fails.

24 A showing that evidence is insufficient for summary judgment does not meet  
25 the Rule 11 standard. *See Stitt v. Williams*, 919 F.2d 516, 527 (9th Cir. 1990) (“That

26 \_\_\_\_\_  
27 <sup>7</sup> Rocket Lawyer has met and conferred with LegalZoom about its violation of the  
28 Protective Order and intends to file a motion for contempt, dismissal, and sanctions,  
as the evidence suggests that LegalZoom acted willfully or at least was grossly  
negligent in disclosing Rocket Lawyer’s confidential, proprietary information.




1 the district court held this evidence to be insufficient for purposes of summary  
2 judgment does not mean that appellants' claims were factually unfounded for  
3 purposes of Rule 11."); *Lucas v. Duncan*, 574 F.3d 772, 779-80 (D.C. Cir. 2009)  
4 (holding that neither Rule 56 nor Rule 11 requires a party to submit evidence  
5 contrary to its factual contentions, as long as evidentiary support for those  
6 contentions is offered).

7 Rocket Lawyer cited to evidence that there is no dispute of fact that a  
8 substantial portion of consumers have not been misled by Rocket Lawyer's ads.  
9 The Wind Survey of over 400 consumers demonstrated that consumers would not  
10 have understood Rocket Lawyer's services any better had its advertisements  
11 addressed LegalZoom's allegations. This was the type of evidence the Court  
12 requested when it denied LegalZoom's motion for summary judgment. The record  
13 demonstrates that Rocket Lawyer has satisfied Rules 11 and 56. *See Stitt*, 919 F.2d  
14 at 527 ("The plaintiffs made arguments with citations to material in the record that  
15 arguably supported their positions, even though the evidence was ultimately found  
16 wanting. The district court therefore acted within its discretion in denying Rule 11  
17 sanctions."); *Celotex*, 477 U.S. at 323-24.<sup>8</sup>

18 **B. The Studies Are Not Admissible Evidence**

19 **1. The Studies Are Inadmissible Hearsay**

20 The Studies are inadmissible hearsay – and in fact – they are hearsay *within*  
21 hearsay—not subject to any exception. See Fed. R. Evid 801, 805. LegalZoom cites  
22  .

23  
24 <sup>8</sup> There is a difference between asserting a fact without support and seeking to  
25 characterize facts as part of an argument. As a contrasting example, LegalZoom's  
26 assertion in a self-serving declaration that it had no control over LegalSpring.com  
27 was an unsupported factual assertion because the evidence demonstrates that  
28 LegalZoom had the ability to add/remove reviews, manipulate its reviews, and even  
require that LegalSpring have a misleading disclosure on its website. Such conduct  
was sanctionable. Acknowledging its misconduct, LegalZoom withdrew the  
argument in its summary judgment opposition that it had no control over  
LegalSpring.com and the offending declarations. See ECF NO. 116.

1 Mot. at 4-6. It uses these summaries for their truth regarding the interviewees'  
2 opinions, and the underlying opinions for their truth about the nature of the website.  
3 *Id.* This is classic inadmissible hearsay within hearsay.<sup>9</sup>

4 The studies are therefore inadmissible even at the summary judgment stage. ,  
5 See Fed. R. Evid. 802, 805; *Orr v. Bank of America, NT & SA*, 285 F.3d 764, 773  
6 (9th Cir.2002) (“A trial court can only consider admissible evidence in ruling on a  
7 motion for summary judgment.”); see also *Bonillas v. United Air Lines, Inc.*, C 12-  
8 6574 SBA, 2014 WL 4087906, at \*9 n.12 (N.D. Cal. Aug. 19, 2014) (finding  
9 evidence inadmissible at summary judgment in part because it was “hearsay and  
10 contain[ed] double hearsay”).

## 11 2. The Studies Are Too Small and Subjective to Be Relevant

12 The Lanham Act false advertising claim requires “proof that the advertising  
13 actually conveyed the implied message and thereby deceived a significant portion of  
14 the recipients[.]” *William H. Morris Co. v. Grp. W, Inc.*, 66 F.3d 255, 258 (9th Cir.  
15 1995). LegalZoom’s state law claims require the same. SJ Order, ECF No. 44, at  
16 11 (“In the Ninth Circuit, claims of unfair competition and false advertising under  
17 state statutory and common law are ‘substantially congruent’ to claims made under  
18 the Lanham Act.”) (citing *Cleary v. News Corp.*, 30 F.3d 1255, 1262-63 (9th Cir.  
19 1994)). The subjective, recommendations of a consultant, who interviewed only a  
20 handful of consumers, outside of a controlled, scientific setting, do not speak at all  
21 to whether anyone, let alone a significant portion of consumers, was deceived or  
22 likely to be deceived by Rocket Lawyer’s advertisements.

23 Unlike a scientific consumer survey, the Studies had very few participants.  
24 Two involved only [REDACTED] interviews each, Vaughn Decl., ¶ 2, Ex. 1 at RLI0040581  
25 (“[REDACTED]”); *id.* at ¶ 3, Ex. 2 at RLI0040687 (“[REDACTED]

26  
27 <sup>9</sup> In at least one case, LegalZoom cites *triple* hearsay. See Mot. at 5 (quoting for its  
28 truth [REDACTED] statement about [REDACTED] statements about [REDACTED]  
statements [REDACTED]).

1 [REDACTED]), while the third included only [REDACTED], *id.* at ¶ 4, Ex. 3 at  
2 RLI0040738 (“[REDACTED]”). Also, unlike a  
3 consumer survey like Professor Wind’s, *see* Rocket Lawyer’s Motion for SJ at 9-10,  
4 the Studies do not [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED] *E.g.*, Jones Decl.,  
8 ¶ 2, Ex. 1.

9       Such scant and methodologically unsound evidence is not probative of  
10 whether “a statistically significant part” of the intended audience “holds the false  
11 belief allegedly communicated by the challenged advertisement.” *See SJ Order*  
12 (ECF No. 44) at 10 (“[A] handful of customer statements . . . is not sufficient to  
13 demonstrate that a “significant portion” of customers were deceived and is not  
14 necessarily a reliable consumer survey or market research.”); *see also, e.g., Johnson*  
15 *& Johnson \* Merck Consumer Pharm. Co. v. Smithkline Beecham Corp.*, 960 F.2d  
16 294, 297-98 (2d Cir. 1992); *William H. Morris*, 66 F.3d at 258 (plaintiff must show  
17 that the ads “deceived a significant portion of the recipients”). It is therefore  
18 irrelevant not admissible. *See* Fed. R. Evid. 401, 402.

### 19       **C. The Studies Cannot Create A Dispute of Fact**

20       Even if the Studies were admissible evidence – they are not – and were  
21 considered as part of the summary judgment record, they cannot make up for the  
22 dearth of competent evidence in support of LegalZoom’s position. LegalZoom, in  
23 pursuing this motion, misleadingly presents evidence to this Court. In addition to  
24 being inadmissible and concerning insignificant sample sizes, the Studies do not  
25 accurately reflect the research conducted.

26       For example, the 2010 Ferguson study inaccurately reports what the [REDACTED]  
27 [REDACTED], as shown by  
28 Dr. Ferguson’s own notes. Those notes, which are in LegalZoom’s possession and

1 could have been presented to the Court just as easily as Dr. Ferguson’s summary  
2 (despite being hearsay within hearsay themselves), Jones Decl., ¶ 2, Ex. 1,  
3 demonstrate the purpose behind the hearsay rule. Contrary to the summary in  
4 LegalZoom’s Exhibit 1, the [REDACTED] interviewees were not misled by Rocket Lawyer.  
5 In fact, [REDACTED].  
6 Jones Decl., ¶ 2, Ex. 1. The rest [REDACTED]  
7 [REDACTED]  
8 [REDACTED]. *See id.* But frustration with free trials is not the same thing as being  
9 deceived by them.

10 The other two studies are no better for LegalZoom. The single quote  
11 excerpted from the [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]. *See Mot.* at 5. Likewise, LegalZoom cites two hearsay consumer  
15 comments from the Google study to suggest that consumers are confused by the free  
16 trial. *See Mot.* at 6. But these quotes actually show that consumers do not like the  
17 fact that the free trial ends with a paid membership—not that they are deceived by  
18 the free trial. If anything, these excerpts demonstrate that consumers understand  
19 (and dislike) the terms of the free trial. Furthermore, as this Court has already said,  
20 “[t]he fact that a customer will be charged if she fails to cancel her membership after  
21 seven days does not negate the fact that the trial period itself is unconditionally  
22 free.” SJ Order at 8. None of this raises a genuine material issue of fact; it is pure  
23 distraction from the issues in this litigation.

24 Thus, even if considered notwithstanding the numerous evidentiary bars, the  
25 [REDACTED] provided by LegalZoom  
26 demonstrate no triable issue of fact.  
27  
28

1           **D.     LegalZoom Seeks To Gain By Disregarding Proper Procedure and**  
2           **the Rules of Professional Conduct**

3           LegalZoom tries to cast Rocket Lawyer and its counsel in a negative light,  
4           contending that the evidence it has now put before the Court rebuts Rocket  
5           Lawyer’s assertion of “a record of undisputed facts demonstrating that Rocket  
6           Lawyer’s advertisements are truthful and have no tendency to deceive.” Mot. at 1  
7           (quoting Rocket Lawyer’s Motion for Summary Judgment at 14 n. 8).<sup>10</sup> However, it  
8           ignores that (1) it should have introduced this evidence in opposition to Rocket  
9           Lawyer’s summary judgment motion, (2) it could have sought leave at an earlier  
10          time to supplement the summary judgment record instead of disguising its summary  
11          judgment sur-reply as a Rule 11 motion, and (3) it should not have filed this motion  
12          without first seeking leave to amend the scheduling order to permit it, *see Connect*  
13          *Insured Tel., Inc. v. Qwest Long Distance, Inc.*, 3:10-CV-1897-D, 2012 WL  
14          3150957 (N.D. Tex. Aug. 3, 2012) (denying leave to amend a scheduling order to  
15          permit a Rule 11 motion); *see also* ECF No. 115 (Order Granting Joint Stipulation  
16          to Continue Summary Judgment Hearing and Case Deadlines for Mediation, listing  
17          August 18, 2014, as “Last day for hearing motions [e]xcept for hearing on the  
18          parties’ already submitted cross-motion for summary judgment.”).

19          LegalZoom’s excuse that its failure was due to late production of documents  
20          is unavailing. LegalZoom ignores that under the schedule LegalZoom proposed and  
21          received, the parties were required to begin briefing for summary judgment even  
22          before the discovery cut-off. ECF No. 56 (granting LegalZoom’s proposed schedule  
23          with minor changes setting hearing cut-off one week after discovery cut-off) ; *see*  
24          also ECF 26 (original scheduling order reflecting discovery cut off just three weeks  
25          before motion *hearing* cut-off). The Court’s standing order also encourages early

26          <sup>10</sup> Rocket Lawyer notes that LegalZoom again neglects to view statements in  
27          context. For example, as used in Rocket Lawyer’s motion, the statement that “the  
28          population of deceived consumers is zero” cites to the opinion of Professor Wind,  
        Rocket Lawyer’s Expert, which is in turn based on the results of his survey. *See*  
        RLI Mot. at 19-20.

1 motions for summary judgment, even if discovery is not yet complete. *See* ECF No.  
2 26 (“Parties need not wait until the motion cutoff to bring motions for summary  
3 judgment or partial summary judgment. Early completion of non–expert discovery  
4 and filing of motions for summary judgment may eliminate or reduce the need for  
5 expensive expert depositions which are normally conducted in the last stages of  
6 discover”).

7 Furthermore, any delay in discovery does not excuse LegalZoom’s failure to  
8 seek leave to supplement the record over the last two months. And it certainly does  
9 not excuse LegalZoom’s threat to file this sanctions motion unless Rocket Lawyer  
10 allow LegalZoom to supplement the summary judgment record unopposed. The  
11 Court should deny this motion and prevent LegalZoom from benefiting from its  
12 inexcusable delay, negligence, and unethical conduct.

### 13 **VII. CONCLUSION**

14 The Supreme Court has said that “the central purpose of Rule 11 is to deter  
15 baseless filings in district court and thus . . . streamline the administration and  
16 procedure of the federal courts.” *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,  
17 393 (1990). LegalZoom’s Motion does the opposite. It is baseless and a  
18 procedurally improper attempt to make this Court consider an untimely and  
19 unwarranted summary judgment sur-reply.

20 The Court should deny LegalZoom’s Motion and grant Rocket Lawyer  
21 attorneys’ fees for having to defend itself against this frivolous motion.

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Dated: October 1, 2014

Respectfully submitted,

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