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7 Attorneys for Plaintiff  
 8 LegalZoom.com, Inc.

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

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

13 Plaintiff,

14 v.

15 ROCKET LAWYER INCORPORATED,  
 16 a Delaware corporation,

17 Defendant.

CASE NO.: CV 12-9942-GAF (AGR<sub>x</sub>)

Hon. Gary A. Feess  
 Courtroom: 740

**DECLARATION OF AARON P.  
 ALLAN IN SUPPORT OF  
 LEGALZOOM.COM, INC.'S  
 OPPOSITION TO ROCKET  
 LAWYER'S EX PARTE  
 APPLICATION TO FILE MOTION  
 TO SUPPLEMENT FACTUAL  
 RECORD**

Date: TBD  
 Time: TBD  
 Courtroom: 740

22 Complaint Filed: November 20, 2012

Glaser Weil Fink Jacobs  
 Howard Avchen & Shapiro LLP

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**DECLARATION OF AARON P. ALLAN**

I, AARON P. ALLAN, declare and state as follows:

1. I am an attorney at law duly admitted to practice before all courts of the State of California and am a Partner of the law firm of Glaser Weil Fink Howard Avchen & Shapiro LLP, attorneys of record herein for Plaintiff LegalZoom.com, Inc. (“LegalZoom”). I submit this declaration in support of the “MEMORANDUM OF POINTS AND AUTHORITIES OF LEGALZOOM.COM, INC. IN OPPOSITION TO ROCKET LAWYER’S EX PARTE APPLICATION TO FILE MOTION TO SUPPLEMENT FACTUAL RECORD” I have personal knowledge of the facts set forth herein, and if called upon to testify thereto, I could and would competently do so under oath.

2. Attached hereto as Exhibit A is a true and correct copy of an email from Rocket Lawyer’s counsel, Brian Cook, dated October 20, 2014, together with the cover page of an agreed upon set of undisputed jury instructions, along with Instruction No. 22, which provides the “ELEMENTS OF FALSE ADVERTISING (Lanham Act – Federal Law)” which has been agreed to by the parties, and which will be submitted to the Court on October 28, 2014, with the other pretrial filings.

3. Attached hereto as Exhibit B is a true and correct copy of the cover page and appropriate excerpts (pp. 19-20) from the Expert Report submitted by Dr. Larry Chiagouris for this matter, dated April 15, 2014. While this report was designated as “highly confidential” by LegalZoom, the two pages included do not contain information that LegalZoom has determined must be filed under seal. As to the remainder of Dr. Chiagouris’ report, no waiver of the confidentiality designation is intended by LegalZoom.

4. Attached hereto as Exhibit C is a true and correct copy of excerpts from the Deposition of Paul Hollerbach, who Rocket Lawyer designated to testify regarding the damages it seeks in this litigation.

5. Should the Court entertain this motion, LegalZoom proffers that Dr.

1 Goedde will provide a declaration which confirms that his analysis, which resulted in  
2 his supplemental report served on October 6, 2014, examined advertisements which  
3 included the terms “free trial” and “free legal help,” in his determination of  
4 LegalZoom’s lost profits. Dr. Goedde will confirm that each of these terms is present  
5 in either (1) Rocket Lawyer’s “free” business formation advertisements that do not  
6 mention state filing fees, or in (2) Rocket Lawyer’s advertisements using LegalZoom  
7 trademarks or similar terms as internet search terms. As such, Dr. Goedde will  
8 confirm that these terms are included in his calculation of LegalZoom’s lost profits  
9 due to the actions of Rocket Lawyer as described in paragraphs 15-34 of Dr.  
10 Goedde’s supplemental report.

11 I declare under penalty of perjury under the laws of the State of California and  
12 the United States that the foregoing is true and correct. Executed on October 22,  
13 2014, at Los Angeles, California.

  
AARON P. ALLAN

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# EXHIBIT A

## Aaron Allan

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**From:** Cook, Brian W [BCook@goodwinprocter.com]  
**Sent:** Monday, October 20, 2014 2:23 PM  
**To:** Aaron Allan  
**Cc:** Hainline, Forrest A; Jones, Michael T; Vu, Hong-An; Fred Heather  
**Subject:** RE: LZ/RLI - Undisputed and Disputed Jury Instructions  
**Attachments:** 141020 Disputed Jury Instructions.DOCX; 141020 Undisputed Jury Instructions.DOCX

Aaron,

Pursuant to your email below, attached are revised versions of the Disputed and Undisputed Jury Instructions.

**Disputed Instruction Number 1:** No change

**Disputed Instruction Number 2:** Per the agreement below, this has been deleted and moved into the Undisputed Instructions as Number 26.

**Disputed Instruction Number 3:** Previously deleted.

**Disputed Instruction Number 4:** The second and third paragraphs have been deleted, as you agreed. We have supplemented our position with the argument made in our last email. Otherwise, no change.

**Disputed Instruction Number 5:** Since we are agreed on the addition of the phrase "and the defendant has the burden of proving otherwise," we have added that. We have also added our position that the instruction would be acceptable if the word "must" were replaced with "may," which we understand you dispute.

**Disputed Instruction Number 6:** No change.

**Disputed Instruction Number 7:** Per the agreement below, this has been deleted and the revised version has been inserted as Undisputed Instruction Number 34.

**Disputed Instruction Number 8:** No change.

**Disputed Instruction Number 9:** Per the agreement below, this has been deleted and the revised version has been inserted as Undisputed Instruction Number 35.

**Disputed Instruction Number 10:** No change. If we can reach agreement on disputed instruction number 5, above, then Rocket Lawyer will withdraw this instruction.

**Disputed Instruction Number 11:** No change.

**Disputed Instruction Number 12:** No change.

Thank you,  
Brian Cook

Brian W. Cook  
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T: 617-570-1081

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14 *Attorneys for Defendant*  
15 **ROCKET LAWYER INCORPORATED**

16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 **WESTERN DIVISION**

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

21 Plaintiff,

22 v.

23 **ROCKET LAWYER**  
INCORPORATED, a Delaware  
24 corporation,

25 Defendant.

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

**UNDISPUTED JURY  
INSTRUCTIONS**

Judge: Judge Gary A. Feess  
Courtroom: 740  
255 East Temple Street  
Los Angeles, CA 90012  
Action Filed: November 20, 2012

Formatted: Doc ID

1 **INSTRUCTION NO. 22**

2 **ELEMENTS OF FALSE ADVERTISING (Lanham Act — Federal Law)**

3 Both parties have asserted claims against one another for false advertising  
4 under the Lanham Act. To prove this claim, the party asserting the claim has the  
5 burden of proving each of the following elements by a preponderance of the  
6 evidence:

7 (1) the other party made a false or misleading statement of fact about its  
8 own product or another's product in commercial advertising;

9 (2) the statement actually deceived or has the tendency to deceive a  
10 substantial segment of its audience;

11 (3) the deception is material, in that it is likely to influence the purchasing  
12 decision;

13 (4) the other party caused its false or misleading statement to enter  
14 interstate commerce; and

15 (5) the party asserting the claim has been or is likely to be injured as a  
16 result of the false or misleading statement, either by direct diversion of sales from  
17 itself to the other party or by a lessening of the goodwill associated with its  
18 products.

19 I will now explain each of these elements in detail.

20  
21 *Authority: Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1139 (9th  
22 Cir. 1997); *Newcal Indus., Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1054 (9th  
23 Cir. 2008); 15 U.S.C. § 1125(a)(1)(B).

# EXHIBIT B



1 PATRICIA L. GLASER - State Bar No. 55668  
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8 Attorneys for Plaintiff  
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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 WESTERN DIVISION

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

13 Plaintiff,

14 v.

15 ROCKET LAWYER INCORPORATED,  
16 a Delaware corporation,

17 Defendants.  
18

CASE NO.: CV 12-9942-GAF (AGRx)

Hon. Gary A. Feess  
Courtroom: 740

**REPORT OF DR. LARRY  
CHIAGOURIS, APRIL 15, 2014**

Complaint Filed: November 20, 2012

- The word “free” is considered to be a power word by a wide variety of marketing practitioners and scholars.
- Use of the word free in a search ad will likely have a positive impact on a business’s search results and that impact will come at the expense of its competitors.
- Use of affiliate marketing is a commonly accepted practice in the conduct of Internet marketing programs.

I have reviewed documents provided to me that reflect complaints submitted by consumers to the Better Business Bureau.<sup>40</sup> The vast majority of these complaints pertain to the communications by Rocket Lawyer in the use of the word free.

These complaints are important given the material that I have already covered in this opinion. As already discussed, free is a very powerful word. Free is a word that can motivate people to take a positive action to adopt a product or service.

Consumers will be disappointed if they seek to adopt a product that they believe is 100% free only to find out after they begin the adoption process that the product is not 100% free. This disappointment can produce negative business results for all the businesses that compete in a category.

Consumer disappointment can lead to a loss of good will by other competitors in a category. The loss of good will would be highest for the market leader if consumers perceive that the business practices of one competitor are likely to be similar to the business practices of other competitors.

In a 2012 survey with 696 consumers, LegalZoom scored the highest awareness levels among the companies examined in the study.<sup>41</sup> The LegalZoom awareness levels were substantially higher than the next company’s levels (73% for LegalZoom versus 46% for Lawyers.com). LegalZoom would clearly be considered a market leader if not the market leader in its category of legal services based on this survey data.

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<sup>40</sup>BBB0000000-BBB0000255.

<sup>41</sup> uStamp 2012 Consumer Survey

LegalZoom, as the market leader, clearly is likely to have experienced the greatest loss of good will due to any consumer disappointment created by Rocket Lawyer.

Respectfully submitted,

A handwritten signature in black ink that reads "Larry Chiagouris". The signature is written in a cursive style with a horizontal line at the end.

---

Larry Chiagouris, Ph.D. President, BrandMarketing Services, Ltd.

**I reserve the right to supplement my opinions stated herein with any additional documents produced, additional pleadings, data, testing or depositions. In addition, I reserve the right to amend my opinion stated herein based on any additional material or information that is provided to me.**

# EXHIBIT C

CONFIDENTIAL DEPOSITION OF PAUL HOLLERBACH

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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

LEGALZOOM.COM, INC., A )  
DELAWARE CORPORATION, )  
 )  
PLAINTIFF, )  
 )  
VS. ) CASE NO.  
 ) CV-12-9942-GAF (AGRX)  
ROCKET LAWYER INCORPORATED, A )  
DELAWARE CORPORATION, )  
 )  
DEFENDANT. )  
\_\_\_\_\_ )

C O N F I D E N T I A L  
(THE FOLLOWING TRANSCRIPT HAS BEEN DESIGNATED  
CONFIDENTIAL, FOR ATTORNEYS' EYES ONLY)

INDIVIDUAL AND 30(B)(6) DEPOSITION

DEPOSITION OF PAUL HOLLERBACH, TAKEN ON  
BEHALF OF THE PLAINTIFF, AT THREE  
EMBARCADERO, 24TH FLOOR, SAN FRANCISCO,  
CALIFORNIA, COMMENCING AT 9:59 A.M.,  
WEDNESDAY, OCTOBER 1, 2014, BEFORE  
LANA L. LOPER, RMR, CRR, CCP, CME, CLR,  
CSR NUMBER 9667.

CONFIDENTIAL DEPOSITION OF PAUL HOLLERBACH

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Q. OKAY. HAVE YOU DONE ANY SPECIFIC FINANCIAL CALCULATIONS AS TO WHAT EFFECT ON ROCKET LAWYER'S REVENUES HAVE BEEN CAUSED BY WHAT YOU BELIEVE ARE THE ACTIONS STATED IN ROCKET LAWYER'S COUNTER-CLAIM AGAINST LEGALZOOM?

A. WE HAVEN'T DONE SPECIFIC CALCULATIONS AS IT RELATES TO THE LEGAL SPRING. IT WOULD BE SOMEWHAT SPECULATIVE.

BUT I CAN -- BUT WE DO KNOW, IT'S A MATTER OF FACT, THAT THE CLICK-THROUGH RATES AND THE TRAFFIC DRIVEN ON CERTAIN AD PLACEMENTS ON THE WEBSITE ARE HIGHER, ARE GREATER, THE HIGHER YOU



CONFIDENTIAL DEPOSITION OF PAUL HOLLERBACH

1 ARE IN THE SEARCH RESULTS PAGE.

2 SO BY THEM TAKING THE FIRST, SECOND  
3 OR THIRD PLACE, THEY'RE DIVERTING A HIGHER LEVEL  
4 OF TRAFFIC AWAY FROM ROCKET LAWYER.

5 AND ALSO, AS I SAID, IT'S A  
6 WELL-KNOWN FACT THAT IF YOU'RE BIDDING FOR THE TOP  
7 TERM, AND -- IT'S GOING TO COST YOU A LOT MORE  
8 THAN IT IS FOR OTHERS.

9 SO THEY DID CAUSE US HARM IN MAKING  
10 US BID HIGHER, BID MORE, TO GET A PREMIUM  
11 PLACEMENT ON GOOGLE.

12 Q. BUT YOU HAVEN'T PUT PEN TO PAPER TO  
13 TRY AND MAKE ANY KIND OF MATHEMATICAL CALCULATION  
14 AS TO THE VALUE OF THAT HARM THAT YOU BELIEVE  
15 OCCURRED?

16 A. NO, I HAVE NOT.

17 Q. OKAY. AND TO YOUR KNOWLEDGE, NO  
18 ONE ELSE AT ROCKET LAWYER HAS?

19 A. NO.

20 Q. I'M CORRECT ABOUT THAT; RIGHT?

21 A. TO MY KNOWLEDGE.

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