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 26 **ROCKET LAWYER INCORPORATED**

27 **UNITED STATES DISTRICT COURT**  
 28 **CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**

19 LEGALZOOM.COM, INC., a Delaware  
 20 corporation,  
 21 Plaintiff,  
 22 v.  
 23 ROCKET LAWYER  
 24 INCORPORATED, a Delaware  
 25 corporation,  
 26 Defendant.

Case No. 2:12-cv-09942-GAF-AGR  
**ROCKET LAWYER  
 INCORPORATED'S REDACTED  
 REPLY IN SUPPORT OF ITS EX  
 PARTE APPLICATION TO FILE  
 MOTION TO SUPPLEMENT THE  
 FACTUAL RECORD**  
 Date: TBD  
 Time: TBD  
 Judge: Judge Gary A. Feess  
 Courtroom: 740  
 255 East Temple Street  
 Los Angeles, CA 90012  
 Action Filed: November 20, 2012

1 In its opposition to Rocket Lawyer’s ex parte application to supplement the  
2 summary judgment record, LegalZoom mischaracterizes its conduct, its evidence,  
3 and the issues before the Court on summary judgment.

4 **I. LEGALZOOM DID NOT TESTIFY ABOUT DAMAGES**

5 LegalZoom does not dispute that it refused to produce a 30(b)(6) witness to  
6 testify about damages. It does not dispute that it has withheld documents relied  
7 upon by its experts and continues to do so despite being reminded by Rocket  
8 Lawyer about this deficiency on October 1 and again with this ex parte application.

9 LegalZoom’s claim that Rocket Lawyer had the opportunity to question  
10 LegalZoom’s co-founder and chairman about damages is disingenuous. When  
11 asked about damages, LegalZoom’s counsel made clear that Mr. Liu could not speak  
12 for the company regarding damages, and instructed Mr. Liu that could answer as a  
13 percipient witness; Mr. Liu’s response was simple—he could not answer.<sup>1</sup>

14 Given Mr. Liu’s lack of preparation to testify about a number of topics for  
15 which he was designated and his lack of knowledge about others,<sup>2</sup> Rocket Lawyer  
16 had no reason to believe that he would testify further about damages after counsel’s

17 <sup>1</sup> [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 Declaration of Michael T. Jones in Support of Ex Parte Application (“Jones Ex Parte  
Decl.”) at ¶ 2, Ex. A, Liu Tr. 96:4-17.

24 <sup>2</sup> Although he was designated to testify as the 30(b)(6) witness on several topics,  
25 Mr. Liu was unable to answer questions related to those topics and admitted he did  
26 nothing to prepare to testify on a number of them. See Jones Ex Parte Decl. at ¶ 2,  
27 Ex. A, Liu Tr. 91:12-92:1 (confirming lack of preparation regarding surveys  
28 concerning Rocket Lawyer (Topic 25)), 107:8-24 (inability to testify about whether  
LegalZoom had issued a litigation hold in this case or if LegalZoom took action to  
preserve documents (Topic 27)) & 102:21-106:25 (Mr. Liu had not even seen the  
discovery requests despite being designated to testify about document collection  
procedure (Topic 28)).

1 objection and Mr. Liu’s deficient response.

2 **II. ROCKET LAWYER ARGUED THAT LEGALZOOM SUFFERED NO**  
3 **INJURY AS A RESULT OF ROCKET LAWYER’S ADS**

4 Contrary to LegalZoom’s Opposition, Rocket Lawyer did argue in its  
5 summary judgment motion and reply that LegalZoom has no evidence that it  
6 suffered any injury from Rocket Lawyer’s ads. Rocket Lawyer’s argument that  
7 LegalZoom has not been damaged is presented on pages 20-22 of the Motion, and is  
8 referenced in its reply at pages 13-14. *See* ECF Nos. 60 and 92. Rocket Lawyer  
9 specifically pointed out that LegalZoom had no damages theory relating to its  
10 intrawebsite advertisements – free trial offer, free help from local attorneys, and free  
11 legal review. ECF No. 60 at 21. Rocket Lawyer is merely requesting that the Court  
12 consider newly acquired evidence – that LegalZoom refused to present a witness to  
13 testify regarding damages and only presents damages evidence related to one  
14 category of the ads at issue – because it only received this evidence on October 3  
15 and 6, two months after the summary judgment briefing was completed.

16 LegalZoom had notice of Rocket Lawyer’s position regarding injury and  
17 damages, and that the non-business formation ads are not related to search engine  
18 marketing, before serving its third damages report. The failure to produce evidence  
19 of damages relating to three of the four ads at issue cannot be excused.

20 **III. THE GOEDDE REPORT NEVER REFERENCES FREE TRIAL, FREE**  
21 **LEGAL REVIEW, OR FREE HELP FROM LOCAL ATTORNEYS**

22 LegalZoom’s claim that Mr. Goedde addresses the three intrawebsite ads is  
23 untrue. Nowhere in his new report does Mr. Goedde reference Rocket Lawyer’s  
24 free trial, free help from local attorneys, or free legal review ads. *See* Jones Decl.,  
25 ECF No. 166-3, Ex. 1 (Goedde Report). Instead, his report expressly focuses on  
26 search engine marketing: “I calculated LegalZoom’s lost profits due to the actions of  
27 Rocket Lawyer by first reviewing Rocket Lawyer spreadsheets for **two types of**  
28 **offending search engine ads**: those for free business formation document solutions

1 that do not mention state filing fees; and, those ads using LegalZoom’s trademark  
2 (“LEGALZOOM”) or similar terms such as “Legal Zoom” as internet search terms.”  
3 ECF No. 166-3 at Ex. 1, ¶ 15 (emphasis added).

4 As stated in Rocket Lawyer’s summary judgment motion and undisputed by  
5 LegalZoom, Rocket Lawyer did not advertise “free legal review” or “free help from  
6 local attorneys” in search engine advertising. *See* ECF No. 60 at 11, SUF 77.

7 Rocket Lawyer gained zero conversions on free trial ads placed on LegalZoom’s  
8 brand terms. ECF No, 60 at 9; SUF 55. Furthermore, LegalZoom’s claims regarding  
9 these ads relate solely to the adequacy of the disclosures on Rocket Lawyer’s  
10 website regarding these offerings. *See* FAC, Ex C, at pages 45 and 46 of 50, Ex. D;  
11 Order re Summary Judgment ECF No. 44 (“Plaintiff adamantly disputes the  
12 adequacy and conspicuousness of these disclosures”). After three opportunities, the  
13 Court should not consider LegalZoom’s promise that it will again provide additional  
14 information at a later time.

15 **IV. THE CHIAGOURIS REPORT IS NOT PART OF THE SUMMARY**  
16 **JUDGMENT RECORD FOR DAMAGES AND IS INADMISSIBLE**

17 The expert report of Larry Chiagouris is of no assistance to LegalZoom. As  
18 an initial matter, the Chiagouris report, which was disclosed on April 15, 2014, is  
19 not part of the summary judgment record. *See* ECF No. 74-2 (Declaration of  
20 Patricia J. Winograd) (making no reference to the Chiagouris Report).<sup>3</sup> LegalZoom  
21 chose not to use Mr. Chiagouris’ report to support its argument that it has been  
22 harmed. The Court should not consider the two pages of this report belatedly  
23 submitted with LegalZoom’s ex parte Opposition.<sup>4</sup>

24  
25 <sup>3</sup> LegalZoom makes passing reference to the Chiagouris report in its argument  
26 regarding materiality, but does not submit the report as part of its opposition. *See*  
ECF No. 74 at 18.

27 <sup>4</sup> *See* Local Rule 56-3 (“In determining any motion for summary judgment or partial  
28 summary judgment, the Court may assume that the material facts as claimed and  
adequately supported by the moving party are admitted to exist without controversy  
except to the extent that such material facts are (a) included in the “Statement of

1           Second, the Chiagouris opinion is inadmissible as he purports to opine about  
2 consumer behavior – i.e., disappointment stemming from Rocket Lawyer’s free ads  
3 would project onto other competitors including LegalZoom – without conducting a  
4 survey. *See* ECF No. 168-1. It is well established that expert opinion about  
5 consumer behavior must be supported by consumer research. *See, e.g., Ortho*  
6 *Pharm. Corp. v. Cosprophar, Inc.*, 32 F.3d 690, 695 (2d Cir. 1994) (affirming  
7 dismissal of claims following bench trial because proof was insufficient to show  
8 likely injury and observing that district court judge “was puzzled. . . as to why  
9 [plaintiff had] not a single survey of consumers”); *Sandoz Pharm. Corp. v.*  
10 *Richardson-Vicks, Inc.*, 902 F.2d 222, 229 (3d Cir. 1990) (explaining that consumer  
11 behavior cannot be presumed; a survey to prove consumer expectation and behavior  
12 must be conducted); *Schwab v. Philip Morris USA, Inc.*, No. CV 04-1945(JBW),  
13 2005 WL 2401647, at \*4 (E.D. N.Y. Sept. 29, 2005) (expert opinion on consumer  
14 behavior not supported by survey or acceptable data was inadmissible); *Diamond*  
15 *Triumph Auto Glass, Inc. v. Safelite Glass Corp.*, 441 F. Supp. 2d 695, 711 (M.D.  
16 Pa. 2006) (concluding expert opinion formed without a survey on what consumer  
17 was “likely to do” was insufficient). Mr. Chiagouris conducted no such research.<sup>5</sup>

18           Third, Chiagouris’ opinion does not rebut any material facts asserted in  
19 Rocket Lawyer’s motion. The Wind survey, which specifically asked consumers  
20 what they would do after reviewing Rocket Lawyer’s offerings, demonstrates that  
21 there is no significant loss of good will resulting from Rocket Lawyer’s ads.<sup>6</sup> Mr.

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22 Genuine Disputes” and (b) controverted by declaration or other written evidence  
23 filed in opposition to the motion.”).

24 <sup>5</sup> Mr. Chiagouris purports to draw his conclusions from various books, blog  
25 postings, and various studies (not produced by LegalZoom) that allegedly examined  
26 consumer awareness of online legal service providers. There is no indication that  
27 these materials tested or even addressed consumers’ reaction to “free”  
28 advertisements.

<sup>6</sup> Only an average of 5.4% of respondents across both experiments would decide not  
to purchase online legal services at all. *See* ECF No. 61-1 at 41, 57. And on  
average across both experiments, about 32.4% would continue searching for other  
legal services sites, giving competitors, like LegalZoom, a second chance at getting  
consumer’s business. *See* ECF No. 61-1 at pp. 41, 57. Moreover, there is no

1 Chiagouris's unsupported opinion cannot create a genuine dispute in the face of  
2 such survey evidence.

3 **V. ROCKET LAWYER'S APPLICATION IS NOT UNTIMELY**

4 Rocket Lawyer filed this motion as soon as reasonably practicable. Between  
5 September 24 and October 9, 2014, the parties prepared for and took or defended ten  
6 depositions. The parties are also currently preparing for multiple upcoming pretrial  
7 submission deadlines. In addition, Rocket Lawyer is currently preparing its  
8 supplemental expert disclosure in response to Mr. Goedde new report as well as to  
9 address facts learned in the recently-completed depositions.<sup>7</sup> It is true that both  
10 sides of this litigation are extremely busy; however, taking twelve days after the  
11 completion of depositions to consider the evidence and file this application is not  
12 unreasonable, and any assertion that Rocket Lawyer filed this motion to prejudice  
13 LegalZoom is unfounded.

14 **VI. CONCLUSION**

15 LegalZoom disclosed that it intended to rely on solely its experts to prove its  
16 damages after summary judgment briefing was completed. It disclosed even later  
17 that it does not have evidence of damages relating to three of the four ads at issue. It  
18 has withheld documents from Rocket Lawyer relied upon by its experts.  
19 LegalZoom's damages evidence as produced is insufficient to support claims for  
20 three of the four ads at issue and its conduct in discovery has been inexcusable.  
21 Rocket Lawyer will be prejudiced if the Court does not grant this ex parte and

22 significant difference between the test and control groups in deciding whether to do  
23 business with Rocket Lawyer. *See id.*

24 <sup>7</sup> LegalZoom only recently revealed sufficient information for Rocket Lawyer to  
25 calculate its damages. Deposition testimony for the first time revealed that

26 [REDACTED]  
27 (Giggy Tr. 79:19-80:12; 81:9-82:7) & Ex. C (Quispe Tr. 74:23-75:5; 80:14-83:11;  
28 110:9-17; 112:15-18). LegalZoom had not previously admitted this aspect of the  
relationship. *See* ECF No. 83-1, Exs. 34 and 35 (LegalZoom's interrogatory  
responses explaining its relationship to LegalSpring.com and Travis Giggy, owner  
of LegalSpring.com).

1 consider whether to add to the summary judgment record, this recently acquired  
2 evidence of LegalZoom's lack of damages.

3  
4 Dated: October 23, 2014

Respectfully submitted,

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