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13 Attorneys for Plaintiff
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15 UNITED STATES DISTRICT COURT
 16 CENTRAL DISTRICT OF CALIFORNIA
 17 WESTERN DIVISION

Glaser Weil Fink Jacobs
 Howard Avchen & Shapiro LLP

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

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

Hon. Gary A. Feess
 Courtroom: 740

**PLAINTIFF LEGALZOOM.COM,
 INC.'S SEPARATE STATEMENT
 OF UNDISPUTED MATERIAL
 FACTS IN SUPPORT OF ITS
 MOTION FOR SUMMARY
 JUDGMENT**

[Notice of Motion and Motion for
 Summary Judgment submitted
 under separate cover]

Date: September 30, 2013
 Time: 9:30 a.m.
 Courtroom: 740

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1 Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 7.1
 2 of this Court, Plaintiff LegalZoom.com, Inc. (“LegalZoom”) hereby submits the
 3 following statement of material facts in support of its motion for summary judgment:
 4

MATERIAL FACTS

UNCONTROVERTED FACT	EVIDENTIARY SUPPORT
7 1. LegalZoom and Rocket Lawyer are 8 both providers of online legal products. 9 10	Rocket Lawyer’s Answer to Amended Complaint and Amended Counterclaims (“Rocket Lawyer’s Amended Counterclaims”), ECF No. 17, 12:2-3.
11 2. LegalZoom and Rocket Lawyer 12 compete with one another in the online 13 legal products industry.	Rocket Lawyer’s Amended Counterclaims, ECF No. 17, 12:2-3.
14 3. LegalZoom and Rocket Lawyer 15 both offer incorporation and formation 16 services and other online legal products.	Rocket Lawyer’s Amended Counterclaims, ECF No. 17, 12:2-3.
17 4. On its website, Rocket Lawyer 18 touts to provide affordable legal services 19 to individuals, families and business 20 owners.	Declaration of Mary Ann T. Nguyen (“Nguyen Decl.”), ¶ 3, Ex. A (Rocket Lawyer’s “About Us” webpage).
21 5. At least in 2011, 2012 and 2013, 22 Rocket Lawyer advertised “free” 23 incorporation and “free” limited liability 24 companies (LLCs).	Nguyen Decl., ¶ 4, Ex. B (Screen grabs of Rocket Lawyer’s Advertisements).
25 6. Rocket Lawyer has advertised 26 “Incorporate for Free... Pay No Fees \$0,” 27 “Incorporate Your Business at Rocket 28 Lawyer Free,” “Form Your LLC Free at	Nguyen Decl., ¶ 4, Ex. B (Screen grabs of Rocket Lawyer’s Advertisements).

UNCONTROVERTED FACT	EVIDENTIARY SUPPORT
Rocket Lawyer” and “Free... LLCs.”	
<p>7. Rocket Lawyer’s customers are required to pay the state fees associated with incorporation and formation.</p>	<p>Nguyen Decl., ¶¶ 2, 5, Ex. C (Screen grabs of state filing options through Rocket Lawyer’s services); Declaration of Mary Ann T. Nguyen (“Nguyen Decl.”)</p>
<p>8. Customers who access the Rocket Lawyer link to the “Incorporate for Free... Pay No Fees \$0,” “Incorporate Your Business at Rocket Lawyer Free,” “Form Your LLC Free at Rocket Lawyer” or “Free... LLCs” do not discover that they must actually pay the state filing fees until after they have accessed the Rocket Lawyer website, completed a “company setup” and filled out information relating to the “company details.”</p>	<p>Nguyen Decl., ¶ 6, Ex. D (Screen grabs of Rocket Lawyer’s “Interview” for “Company Set-Up” and “Company Details”)</p>
<p>9. Rocket Lawyer subsequently changed the language of these advertisements after LegalZoom filed its original Complaint.</p>	<p>Rocket Lawyer’s Answer and Amended Counterclaims, ECF No. 17, 2:26-3:1 (“Rocket Lawyer admits that it has produced new advertisements regarding its business and a variety of services it offers since the service of the original complaint...”).</p>
<p>10. At least in 2012, Rocket Lawyer advertised “Free help from local attorneys” and “Free legal review.”</p>	<p>Nguyen Decl., ¶ 7, Ex. E (Screen grabs of Rocket Lawyer’s Advertisements).</p>

UNCONTROVERTED FACT	EVIDENTIARY SUPPORT
11. Rocket Lawyer’s customers could access “help from local attorneys” or “legal review” for free only if they were “Eligible Members” who had either (a) purchased three consecutive months of Rocket Lawyer’s monthly Legal Plan, or (b) purchased a Rocket Lawyer annual Legal Plan.	Nguyen Decl., ¶ 8, Ex. F (Rocket Lawyer’s On Call Terms of Service, dated July 2012, as printed on November 27, 2012).
12. The paid-membership requirement for access to the purported “free help from local attorneys” and “free legal review” was not disclosed in close proximity to the advertisements on Rocket Lawyer’s website.	Nguyen Decl., ¶ 9, <i>see</i> http://www.rocketlawyer.com/on-call-terms-of -service.rl .
13. The paid-membership requirement was only disclosed in Rocket Lawyer’s “On Call Terms of Service,” which was accessible to customers on a separate link found at http://www.rocketlawyer.com/on-call-terms-of -service.rl .	Nguyen Decl., ¶ 9, <i>see</i> http://www.rocketlawyer.com/on-call-terms-of -service.rl .
14. Rocket Lawyer subsequently changed the language of its “On Call Terms of Service” to provide that “Customers who enter into a one week (seven (7) calendar days) free trial are eligible to receive one (1) free legal	Nguyen Decl., ¶ 10, Ex. G (Rocket Lawyer’s On Call Terms of Service, dated November 2012, as printed on November 29, 2012).

UNCONTROVERTED FACT	EVIDENTIARY SUPPORT
<p>1 matter consultation...” after LegalZoom</p> <p>2 filed its original Complaint.</p>	
<p>4 15. The access to “free help from local</p> <p>5 attorneys” and “free legal review” during</p> <p>6 a “free trial” was not available before</p> <p>7 LegalZoom’s filing of the original</p> <p>8 Complaint.</p>	<p>Nguyen Decl., ¶ 10, Exs. F and G</p> <p>(Rocket Lawyer’s On Call Terms of</p> <p>Service, dated July 2012, as printed on</p> <p>November 27, 2012; Rocket Lawyer’s</p> <p>On Call Terms of Service, dated</p> <p>November 2012, as printed on November</p> <p>29, 2012).</p>
<p>11 16. Access to the advertised “free help</p> <p>12 from local attorneys” and the “free legal</p> <p>13 review” was still conditioned upon</p> <p>14 customers actively enrolling in Rocket</p> <p>15 Lawyer’s trial membership and providing</p> <p>16 Rocket Lawyer with their credit card</p> <p>17 information.</p>	<p>Nguyen Decl., ¶ 11, Ex. G (Rocket</p> <p>Lawyer’s On Call Terms of Service,</p> <p>dated November 2012, as printed on</p> <p>November 29, 2012).</p>
<p>18 17. At least in 2012 and 2013, Rocket</p> <p>19 Lawyer advertised on its website “free”</p> <p>20 trials of its “Basic Legal Plan” and “Pro</p> <p>21 Legal Plan.”</p>	<p>Nguyen Decl., ¶ 12, Ex. H (Rocket</p> <p>Lawyer “Try It Free” Advertisement).</p>
<p>22 18. Customers who sign up for a one-</p> <p>23 week free trial membership under the</p> <p>24 “Basic Legal Plan” or “Pro Legal Plan”</p> <p>25 must first provide Rocket Lawyer with</p> <p>26 their credit card information and enroll in</p> <p>27 Rocket Lawyer’s “negative option”</p> <p>28 program – <i>i.e.</i>, a program in which</p>	<p>Nguyen Decl., ¶ 13, Ex. I (Rocket</p> <p>Lawyer’s “Free” Trial Enrollment Page).</p>

UNCONTROVERTED FACT	EVIDENTIARY SUPPORT
<p>with Rocket Lawyer’s ads, which promised “Set up a Free LLC... Totally Free,” and “100% Free,” since state filing fees must always be paid when setting up an LLC through Rocket Lawyer.</p>	
<p>24. Brian Liu also asked Charley Moore to read and follow the Federal Trade Commission’s guidelines regarding the use of the word “free” in advertising, which requires, among other things, that “all terms, conditions and obligations upon which receipt and retention of the “Free” item are contingent should be set forth clearly and conspicuously <i>at the outset of the offer</i> so as to leave no reasonable probability that the terms of the offer might be misunderstood.”</p>	<p>Nguyen Decl., ¶ 15, Ex. K (E-Mail from Brian Liu to Charley Moore, dated October 14, 2011).</p>
<p>25. Brian Liu requested that Rocket Lawyer immediately take down these and other misleading advertisements.</p>	<p>Nguyen Decl., ¶ 15, Ex. K (E-Mail from Brian Liu to Charley Moore, dated October 14, 2011).</p>
<p>26. In November 2011, Rocket Lawyer’s advertising regarding “free” trials and services still had not been changed or removed.</p>	<p>Nguyen Decl., ¶ 16, Ex. L (Liu’s November E-mails to Rocket Lawyer).</p>
<p>27. Beginning November 15, 2011, in a series of emails, Brian Liu repeatedly requested that Rocket Lawyer discontinue</p>	<p>Nguyen Decl., ¶ 16, Ex. L (Liu’s November E-mails to Rocket Lawyer).</p>

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UNCONTROVERTED FACT

EVIDENTIARY SUPPORT

its false advertising and unfair
competition practices.

DATED: August 23, 2013

Respectfully submitted,

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

By: /s/ Fred Heather
PATRICIA L. GLASER
FRED D. HEATHER
MARY ANN T. NGUYEN
Attorneys for Plaintiff
LegalZoom.com, Inc.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 10250 Constellation Boulevard, 19th Floor, Los Angeles, California 90067.

On August 23, 2013, I electronically filed the following document(s) using the CM/ECF system.

**PLAINTIFF LEGALZOOM.COM, INC.'S SEPARATE STATEMENT
OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS MOTION
FOR SUMMARY JUDGMENT**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the above is true and correct.

Executed on August 23, 2013 at Los Angeles, California.

/s/ Fred Heather
Fred Heather