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8 Attorneys for Plaintiff  
 LegalZoom.com, Inc.

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  
 13 corporation,

14 Plaintiff,

15 v.

16 ROCKET LAWYER INCORPORATED,  
 a Delaware corporation,

17 Defendant.

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

Hon. Gary A. Feess  
 Courtroom: 740

**NOTICE OF MOTION AND  
 MOTION FOR PARTIAL  
 SUMMARY JUDGMENT  
 BROUGHT BY PLAINTIFF  
 LEGALZOOM.COM, INC.;  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES**

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

[Proposed Statement of Uncontroverted  
 Facts; Declarations of Aaron P. Allan,  
 Dorian Quispe, Travis Giggy;  
 Appendix of Exhibits; (Proposed) Order  
 filed concurrently herewith]

Complaint Filed: November 20, 2012

28

1 **TO THE DEFENDANT AND ITS ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on August 18, 2014, at 9:30 a.m. in  
3 Courtroom 740 of the above-referenced Court, located at 312 North Spring Street,  
4 Los Angeles, California 90012, Plaintiff LegalZoom.com, Inc. (“LegalZoom”) will  
5 and hereby does move for partial summary judgment. Specifically, LegalZoom  
6 moves this Court to enter partial summary judgment as follows: (1) denying Count’s  
7 IV, V and VI of the Counterclaim being asserted by Defendant Rocket Lawyer  
8 Incorporated (“Rocket Lawyer”), which asserts that LegalZoom is liable for violating  
9 the Lanham Act, 15 U.S.C. § 1125(a), as well as California Business and Professions  
10 Code sections 17200 and 17500, by virtue of LegalZoom’s alleged affiliation with a  
11 web site known as Legalspring.com; and (2) denying Rocket Lawyer’s Third  
12 Affirmative Defense for unclean hands.

13 This Motion is made pursuant to Rule 56 of the Federal Rules of Civil  
14 Procedure and is based upon this Notice of Motion, the accompanying Memorandum  
15 of Points and Authorities, the Proposed Statement of Uncontroverted Facts and  
16 Conclusions of Law, the declarations and evidence submitted with this motion, all  
17 papers and pleadings in the Court’s file, and upon such oral argument as may be made  
18 at the hearing on this Motion. This Motion is made following the conference of  
19 counsel pursuant to L.R. 7-3, which took place on June 27, 2014.

20  
21 DATED: July 14, 2014

Respectfully submitted,

22 **GLASER WEIL FINK HOWARD**  
23 **AVCHEN & SHAPIRO LLP**

24  
25 By:  /s/ Fred D. Heather  
26 **ATTORNEYS FOR PLAINTIFF**  
27 **LegalZoom.com, Inc.**  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

LegalZoom brings this motion to narrow the issues for trial by eliminating three counts of Rocket Lawyer’s counterclaim which attack LegalZoom's affiliation with a third party website that offers reviews of online providers of legal forms and solutions. LegalZoom also brings this motion to eliminate Rocket Lawyer’s affirmative defense based on alleged unclean hands. Uncontrovertible facts compel the rejection of these parts of the case, and should allow the Court and the parties to focus the trial on issues which are in genuine dispute.

Rocket Lawyer’s counterclaim alleges that LegalZoom engaged in false advertising and unfair competition based on alleged false statements made by Legalspring.com, a website developed and previously owned by Travis Giggy, a former employee of LegalZoom.<sup>1</sup> There are multiple bases for the rejection of these counts: (1) the content of the website, which purports to rank and identify “the best” online providers, is mere “puffery” and does not contain any misstatement of fact or misleading description of products and services which is actionable false advertising or unfair competition; (2) the alleged lack of neutrality by Legalspring.com and its alleged failure to disclose a business relationship with LegalZoom do not support any claim *against LegalZoom*, which does not author or select the content of the Legalspring.com website; and (3) there is no evidence (in the form of market research or consumer surveys or otherwise) that any statement on Legalspring.com is misleading the public -- but, in any event, the alleged deception that its reviews are neutral and objective does not itself cause economic harm to Rocket Lawyer, which is not mentioned at the web page.

Rocket Lawyer’s unclean hands defense is also devoid of merit. In addition to the alleged operation of Legalspring.com, Rocket Lawyer complains that LegalZoom

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<sup>1</sup> Mr. Giggy sold Legalspring.com to a third party on or about March 1, 2013.

1 engages in similar conduct which LegalZoom has complained that Rocket Lawyer  
2 engages in (bidding on keywords to place advertisements and using the term “free” in  
3 advertisements). But even if, contrary to fact, these allegations were true, they would  
4 be insufficient to demonstrate inequitable conduct by LegalZoom in respect of the  
5 claims that LegalZoom is pursuing against Rocket Lawyer. Factual similarity  
6 between the plaintiff’s alleged misconduct and the plaintiff’s allegations of defendant  
7 misconduct in the lawsuit is not sufficient to establish an unclean hands defense. The  
8 alleged plaintiff misconduct must have caused the same egregious harm to the  
9 defendant which is complained of by the plaintiff, so as to make it unfair for the  
10 plaintiff to pursue rights against the defendant based on such conduct. Here, Rocket  
11 Lawyer has failed to allege any facts, and has no evidence, which supports these  
12 required underpinnings for an unclean hands defense.

13 **II. STATEMENT OF MATERIAL FACTS NOT IN DISPUTE**

14 **A. The Affiliate Relationship Between Legalspring.com and LegalZoom**

15 Legalspring.com is a website that was formerly owned, operated and moderated  
16 by Travis Giggy. Proposed Statement of Uncontroverted Facts (“PSUF”) 1. Mr.  
17 Giggy is a former employee of LegalZoom. PSUF 2. Based on a sale which took  
18 place March 1, 2013, the website is now owned by Inenvi, Inc. PSUF 3.

19 Legalspring.com includes an “opinion” about various online providers as well  
20 as the posting of third party customer reviews. PSUF 4. This content is selected and  
21 published exclusively by Legalspring.com. *Id.* LegalZoom has not authored any of  
22 the reviews on Legalspring.com, and has no responsibility for the reviews which are  
23 actually posted. PSUF 5. The only content on Legalspring.com for which  
24 LegalZoom provided any authorship is the disclaimer which appears at the bottom of  
25 the first web page which states: “The moderator of this Site has affiliate relationships  
26 with third party sites reviewed on this Site.” PSUF 11. LegalZoom demanded the  
27 appearance of this disclaimer as a condition for having an affiliate relationship with  
28 Legalspring.com.

1 The current relationship between Legalspring.com and LegalZoom is that of  
2 affiliate and client. PSUF 6. To the extent that consumers visit LegalZoom’s web  
3 site as a result of having first visited Legalspring.com, LegalZoom has provided  
4 compensation to Legalspring.com. PSUF 7. While Mr. Giggy, at one time, received  
5 compensation from LegalZoom for any products sold by LegalZoom as a result of a  
6 consumer first visiting Legalspring.com, that relationship terminated as of March  
7 2013. PSUF 8.

8 **B. Legalspring.com’s Online Website Advertisements**

9 **1. No Actionable Statements of Fact**

10 Exhibit C to the Appendix is a true and correct copy of Legalspring.com’s web  
11 pages which were attached as Exhibit 15 to Rocket Lawyer’s counterclaim. This  
12 exhibit fails to include several pages of customer “reviews” of online providers,  
13 which are attached to the Appendix as Exhibit D. But all of the content at  
14 Legalspring.com is expressed as matters of opinion – not fact. PSUF 9. For example,  
15 on the right hand side of the first page of Exhibit C, under “satisfaction guaranteed,”  
16 the website states that “only the best online legal service providers are reviewed  
17 here,” which is clearly a statement of opinion. On the third page of Exhibit C is the  
18 content specifically regarding LegalZoom, which asks and answers the following  
19 questions: “Can I trust LegalZoom? Are they good? Are they reputable? Well, I  
20 definitely have an opinion on that!” (Emphasis added). That opinion is later stated as  
21 follows: “LegalZoom is my number one online legal choice – hands down – no  
22 competition.”

23 Statements of fact provided by Legalspring.com, e.g., that the reviewer and his  
24 family members have used LegalZoom, and that the site moderator has been running  
25 the review site for many years, are not being challenged by Rocket Lawyer as being  
26 either false or misleading. PSUF 10.

27 ///  
28 ///



1                   2.     **The Legalspring.com Disclaimer Reveals Affiliation with**  
2                                   **LegalZoom -- No Evidence of Consumers Being Misled**

3                   At the bottom of the first page of Legalspring.com there appears the following  
4 statement: “The moderator of this Site has affiliate relationships with third party sites  
5 reviewed on this site.” PSUF 11. There is no language at Legalspring.com  
6 suggesting the opposite, that Legalspring.com has no relationship with the online  
7 providers being reviewed, including LegalZoom. PSUF 12.

8                   While Rocket Lawyer has alleged that consumers are being misled by  
9 Legalspring.com into believing that “all” online providers are being reviewed by a  
10 “neutral” reviewer, Rocket Lawyer has produced no evidence, including market  
11 research or consumer surveys, to establish such an allegation. PSUF 13.

12                   3.     **No Statement of Neutrality and No Mention of Rocket Lawyer**  
13                                   **at Legalspring.com**

14                   There is no representation made at Legalspring.com that the reviews being  
15 provided are either objective or “neutral,” as alleged by Rocket Lawyer. PSUF 14.  
16 The site merely provides “opinions” and “reviews” by the site moderator and by  
17 actual customers. PSUF 15. The public is now very familiar with reading such  
18 reviews, at Amazon.com and Yelp and other similar sites. While many of the reviews  
19 of LegalZoom at Legalspring.com are very positive, several of them are not. PSUF  
20 16. Rocket Lawyer has made no allegation, and has no evidence, that any of these  
21 posted customer reviews are not genuine. PSUF 17.

22                   There is no statement at Legalspring.com which suggests that “all” online  
23 providers are being reviewed. PSUF 18. No mention is made of Rocket Lawyer at  
24 Legalspring.com, because “only the best online legal service providers are reviewed,”  
25 as the web site makes clear. *Id.* The exclusion of Rocket Lawyer from consideration  
26 is therefore a disclosed matter of opinion, and there is no statement of fact at the web  
27 site that implies that Rocket Lawyer is not an online provider of such services. *Id.*  
28 Rocket Lawyer has its own advertisements which do not mention its competitors, but

1 that does not make the advertisements either false or misleading. PSUF 19.

2 **C. Rocket Lawyer’s Unclean Hands Allegations**

3 Rocket Lawyer alleges three bases for its third affirmative defense of unclean  
4 hands: (1) that LegalZoom bids on keywords to place its own advertisements in  
5 searches for Rocket Lawyer; (2) that LegalZoom uses the word “free” in a manner  
6 similar to how Rocket Lawyer uses the term in its advertisements; and (3) that  
7 LegalZoom uses Legalspring.com to falsely advertise. PSUF 20. As we demonstrate  
8 below, none of these allegations, even if true, support a defense based on unclean  
9 hands because they do not adequately match the claims being pursued by LegalZoom  
10 against Rocket Lawyer, and because Rocket Lawyer does not have any evidence of  
11 the egregious harm which is necessary to establish an unclean hands defense.

12 **III. ARGUMENT**

13 **A. Legal Standard For Partial Summary Judgment**

14 Federal Rule of Civil Procedure 56 provides that a party may move for  
15 summary judgment on some or all of the claims or defenses presented in an action.  
16 Fed. R. Civ. P. 56(a)(1). Partial summary judgment is appropriate to “narrow the  
17 issues in a case, advance the progress of the litigation, and provide the parties with  
18 some guidance as to how they proceed with the case.” *United States v. Philip Morris*  
19 *USA, Inc.*, 327 F. Supp. 2d 13, 17 (D.D.C. 2004); *see also Lies v. Farrell Lines, Inc.*,  
20 641 F.2d 765, 768-69 (9th Cir. 1981) (quoting Moore's Federal Practice, stating:  
21 “partial summary judgment... was intended to avoid a useless trial of facts and issues  
22 over which there was really never any controversy”). The disposition of liability  
23 issues on summary judgment furthers both the goals of the Federal Rules of Civil  
24 Procedure by securing “the just, speedy and inexpensive determination of every  
25 action.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

26 Summary judgment shall be granted “if the movant shows that there is no  
27 genuine dispute as to any material fact and the movant is entitled to judgment as a  
28 matter of law.” Fed. R. Civ. P. 56(a); *see also Green v. Sun Life Assur. Co.*, 383 F.

1 Supp. 2d 1224, 1226 (C.D. Cal. 2005). A fact is material if it “might affect the  
2 outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477  
3 U.S. 242, 248 (1986). The Court shall determine, if practicable, what material facts  
4 exist without substantial controversy. *Fleener v. Trinity Broadcasting Network*, 203  
5 F. Supp. 2d 1142, 1147 (C.D. Cal. 2001).

6 The initial burden is on the moving party to establish the absence of any  
7 genuine issues of material fact and, thereby, establishing entitlement to judgment as a  
8 matter of law. Fed. R. Civ. P. 56(c); *see also Celotex*, 477 U.S. at 323; *Anderson*, 477  
9 U.S. at 250. After the moving party has sustained its initial burden, the nonmoving  
10 party must come forth with enough evidence to demonstrate the existence of a  
11 “genuine issue” of material fact for trial. *Anderson*, 477 U.S. at 256; Fed. R. Civ. P.  
12 56(e). The nonmoving party’s burden is such that it must do more than simply show  
13 there is some metaphysical doubt as to the material facts. *Matsushita Elec. Industrial*  
14 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

15 **B. Legalspring.com’s Website Is Not Actionable as False Advertising or**  
16 **Unfair Competition**

17 “The purpose of the [Lanham] Act is to insure truthfulness in advertising and to  
18 eliminate misrepresentations with reference to the inherent quality or characteristics  
19 of another’s product.” *Coca-Cola Co. v. Tropicana Products, Inc.*, 690 F.2d 312, 318  
20 (2d Cir. 1982). To establish a false advertising claim under the Lanham Act<sup>2</sup>, a  
21 plaintiff must show: (1) false statement **of fact** by the defendant in a commercial  
22

23 \_\_\_\_\_  
24 <sup>2</sup> Section 43(a) of the Lanham Act, codified at 15 U.S.C. § 1125(a) provides in pertinent part:

25 (a) Any person who, on or in connection with any goods or services, or any container for goods,  
26 uses in commerce any... false or misleading representation of fact, which—

26 (A) ...

27 (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities,  
28 or geographic origin of his or her or another person’s goods, services, or commercial activities,  
shall be liable in a civil action by any person who believes that he or she is or is likely to be  
damaged by such act. 15 U.S.C. § 1125(a) (1988).

1 advertisement about its own or another’s product; (2) the statement actually deceived  
2 or has the tendency to deceive a substantial segment of its audience; (3) the **deception**  
3 **is material**, in that it is likely to influence the purchasing decision; (4) **the defendant**  
4 **caused its false statement to enter interstate commerce**; and (5) the **plaintiff** has  
5 been or is likely to be **injured** as a result of the false statement, either by direct  
6 diversion of sales from itself to defendant or by a lessening of the goodwill associated  
7 with its products. *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1139 (9th  
8 Cir. 1997) (emphasis added).

9 Undisputed facts demonstrate that Rocket Lawyer’s claim fails on multiple  
10 levels, and LegalZoom is therefore is entitled to partial summary judgment on this  
11 claim as a matter of law.

12 **1. Legalspring.com Provides Mere “Puffery” and No Actionable**  
13 **False Statements of Fact**

14 An advertisement that is mere “puffery” is not actionable under the Lanham  
15 Act because it is not a “false statement of fact.” *Cook, Perkiss and Liehe, Inc. v.*  
16 *Northern California Collection Service Inc.*, 911 F.2d 242, 244-246 (9th Cir. 1990);  
17 *Southland Sod Farms*, 108 F.2d at 1145. “[P]roduct superiority claims that are vague  
18 or highly subjective often amount to nonactionable puffery.” *Southland Sod Farms*,  
19 108 F.2d at 1145. In contrast, “misdescriptions of specific or absolute characteristics  
20 of a product are actionable.” *Id.*

21 In its counterclaim, Rocket Lawyer states “Legalspring.com advertises for  
22 LegalZoom and states that it is the best legal services website...” The  
23 Legalspring.com web page asks “Can I trust LegalZoom? Are they good? Are they  
24 reputable? Well, I definitely have an opinion on that!” (Emphasis added). That  
25 opinion is later stated as follows: “LegalZoom is my number one online legal choice  
26 – hands down – no competition.” The web page contains no specific facts or  
27 allegations which could be interpreted as a false description of products or services  
28 that could operate to mislead consumers. It merely states that LegalZoom is the

1 number one online legal choice. This is plainly (and expressly) a statement of  
2 opinion, not fact, and is therefore not actionable false advertising. *See Cook, Periss*  
3 *and Liehe*, 911 F.2d at 246 (*quoting Metro Mobile Cts, Inc. v. Newvector*  
4 *Communications, Inc.*, 643 F. Supp. 1289 (D. Ariz. 1986)) (“‘Puffing’ has been  
5 described by most courts as involving outrageous generalized statements, not making  
6 specific claims, that are so exaggerated as to preclude reliance by consumers.”).

7           **2. Rocket Lawyer Has Produced No Evidence Demonstrating**  
8           **that Legalspring.com’s Advertisement is Materially Deceptive**  
9           **(i.e., Likely to Influence Whether Purchasers Would Choose**  
10           **LegalZoom Over Rocket Lawyer)**

11           There is nothing about the Legalspring.com web page that Rocket Lawyer  
12 could contend is “literally false,” and Rocket Lawyer has not even attempted to make  
13 such an allegation. Statements of opinion cannot be “false.” Nor does  
14 Legalspring.com make any affirmative statement that it is providing “neutral”  
15 content, or that it has no connection or affiliation with LegalZoom. Indeed, to the  
16 contrary, Legalspring.com expressly discloses that it has affiliation with the sites  
17 being reviewed.

18           While an advertisement not literally false may still be actionable as misleading  
19 or confusing, this Court previously ruled that a false advertising plaintiff “bears the  
20 ultimate burden of proving actual deception using market research or consumer  
21 surveys, showing exactly what message ordinary consumers perceived.” ECF No. 44,  
22 MSJ Ruling, at 10. Despite the production of several different marketing survey  
23 reports from its expert, Dr. Yoram Wind, Rocket Lawyer has failed to produce a  
24 single scrap of market research or consumer survey regarding the content of  
25 Legalspring.com. Nor has Rocket Lawyer produced any other evidence of consumer  
26 deception. Rocket Lawyer is therefore unable to carry its burden to show consumer  
27 deception. *Id.*

28 ///

1                   3.     LegalZoom, Which Does Not Author or Control the  
2                             Legalspring.com Website, Did Not Cause the Advertisement  
3                             and Is Not Liable for its Allegedly False Content -- Even If, as  
4                             Alleged, LegalZoom Profited From the Advertisement

5             While LegalZoom may benefit from the opinion-based advertising published  
6 on Legalspring.com, the undisputed facts show that LegalZoom did not author or  
7 control the content of that web page. PSUF 5, 11. LegalZoom therefore is not the  
8 proximate cause of Rocket Lawyer’s alleged injury. The false misrepresentations  
9 alleged by Rocket Lawyer are solely attributed to Legalspring.com, and not to  
10 LegalZoom.

11             Rocket Lawyer alleges that Legalspring.com’s actions are attributable to  
12 LegalZoom because Legalspring.com is LegalZoom’s alleged “agent,” as the site was  
13 originally developed by Travis Giggy, a former employee of LegalZoom.  
14 Legalspring.com also receives compensation from LegalZoom for clicks on links to  
15 LegalZoom’s website and receives commission from LegalZoom for any products  
16 sold as a result of such clicks. But even if, contrary to fact, these allegations were  
17 true, they would provide no support for a false advertising claim.

18             In *Dominick v. Collectors Universe Inc.*, 2012 WL 6618616 (C.D. Cal. Dec.  
19 18, 2012), this court held that the plaintiff lacked standing under the Lanham Act  
20 because the alleged false statements were attributable to corporations owned by the  
21 defendant, rather than by the defendant himself. The fact that the defendant owned  
22 and operated the corporations did not mean that he made the false statements, as the  
23 corporations are entities entirely separate from himself. *Id.* at \*8. The same is true  
24 here. All of the statements made at Legalspring.com are made by the web page  
25 moderator, and there is no evidence that such statements were either authored or  
26 controlled by LegalZoom. The fact that LegalZoom benefits from the advertisement  
27 and/or pays a commission to Legalspring.com for business which is generated by the  
28 advertisement does not create or support false advertising liability for LegalZoom.

1 *See Campagnolo S.R.L. v. Full Speed Ahead, Inc.*, 2010 WL 2079694, \*8 (W.D.  
2 Wash. May 20, 2010) *aff'd*, 447 F. App'x 814 (9th Cir. 2011) (supplier that benefited  
3 from distributor's advertisement of product but did not control the manner of  
4 advertisement was not vicariously liable for distributor's false advertisement). This is  
5 especially true given that LegalZoom does not own or operate Legalspring.com.

6 **4. The Alleged Deception by Legalspring.com, Failing to Provide**  
7 **Neutral Reviews of All Online Providers, Does Not Injure**  
8 **Rocket Lawyer, Which is Not Mentioned at the Website**

9 In order for a plaintiff to have statutory standing generally, the plaintiff's  
10 interests must "fall within the zone of interests protected by the law invoked", and the  
11 plaintiff's injuries must be "proximately caused by violations of the statute."  
12 *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1388-90  
13 (2014). The court elaborated: "to come within the zone of interests in a suit for false  
14 advertising under § 1125(a), a plaintiff must allege an injury to a commercial interest  
15 in reputation or sales." *Id.* at 1390. To show proximate cause, "a plaintiff suing  
16 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.

20 Here, the only alleged deception of consumers is that Legalspring.com  
21 represented that it was providing "neutral" reviews of "all" online providers. The  
22 uncontroverted evidence demonstrates that Legalspring.com made no such  
23 representations, and that no such deception was possible. However, even assuming  
24 that consumers were confused or misled by the web page into believing that the  
25 reviews were all "neutral," as to "all" available online providers, there is no evidence  
26 that Rocket Lawyer has in any way been harmed by such a deception. Rocket Lawyer  
27 has produced no evidence, including but not limited to market research or consumer  
28 surveys, that would demonstrate such confusion, or that consumers were less likely to

1 pursue Rocket Lawyer’s services as a result of having viewed Legalspring.com.  
2 Based on the lack of such evidence, Rocket Lawyer is unable to prevail upon this  
3 claim.

4           **5. Rocket Lawyer’s Unfair Competition Claims (Counts V and**  
5           **VI) Based on California Business and Professions Code**  
6           **Similarly Fail**

7           Rocket Lawyer’s counterclaim counts V and VI against LegalZoom are based  
8 on the same false advertising grounds concerning Legalspring.com that are alleged  
9 with respect to its Lanham Act claim in count IV. *See* Counterclaim, ECF No. 17 at  
10 18-20. Accordingly, these claims are entirely derivative of the Lanham Act  
11 counterclaim, and are “substantially congruent” to such claims. *Cleary v. News*  
12 *Corp.*, 30 F.3d 1255, 1262-63 (9th Cir. 1994). Because the uncontroverted facts  
13 compel a finding that Rocket Lawyer’s Lanham Act claim based on Legalspring.com  
14 must fail, that same result should be obtained with respect to Rocket Lawyer’s state  
15 statutory and common law claims which are brought based on the same factual and  
16 legal theory.

17           **C. Rocket Lawyer’s Unclean Hands Defense Fails Because There is No**  
18           **Linkage Between the Alleged Inequitable Conduct and the Claims**  
19           **Being Pursued By LegalZoom**

20           To establish an unclean hands defense, Rocket Lawyer must establish the  
21 following two elements: (1) that LegalZoom’s conduct is inequitable; and (2) that  
22 LegalZoom’s conduct relates to the subject matter of LegalZoom’s claims against  
23 Rocket Lawyer. *Emco, Inc. v. Obst*, 2004 WL 1737355 at \*4 (C.D. Cal. May 7,  
24 2004) (citing *Fuddruckers, Inc. v. Doc's B.R. Others, Inc.*, 826 F.2d 837, 847 (9th Cir.  
25 1987)).

26           With respect to the second element, this federal district court has explained:

27                     Although “precise” similarity is not required--the bad faith must be  
28                     ‘relative to the matter in which [the plaintiff] seeks relief, . . . . In  
                           applying the unclean hands doctrine, the relevant inquiry is not [whether]



1 the plaintiff's hands are dirty, but [whether] he dirtied them in acquiring  
2 the right he now asserts, or [whether] the manner of dirtying renders  
3 inequitable the assertion of such rights against the defendants. . . .  
4 Factual similarity between the misconduct that forms the basis for an  
unclean hands defense and the plaintiff's allegations in the lawsuit is not  
sufficient. . . . Rather, ***the misconduct that forms the basis for the  
unclean hands defense [must be] directly related to plaintiff's use or  
acquisition of the right in suit.***

5 *Pom Wonderful, LLC v. Welch Foods, Inc.*, 737 F. Supp. 2d 1105, 1110 (C.D. Cal.  
6 Aug. 25, 2010) (internal citations omitted) (emphasis added). Thus, conduct that is  
7 factually similar, or involves the same type of legal claims, is not the standard for  
8 unclean hands. See *Specialty Minerals v. Pluess-Staufner AG*, 395 F. Supp. 2d 109,  
9 112-13 (S.D. N.Y. 2005) (rejecting unclean hands defense because “factually similar  
10 misconduct alone is [not] sufficient to create the necessary link”). Instead, the  
11 conduct must be directly related to the plaintiff’s claim. *Pom Wonderful*, 737 F.  
12 Supp. 2d at 1110.

13 Here, Rocket Lawyer alleges three types of misconduct to support an unclean  
14 hands defense: (1) bidding on keywords to place advertisements in searches for  
15 Rocket Lawyer; (2) using the term “free” in advertisements; and (3) misleading  
16 consumers through advertisements on Legalspring.com. Answer, ECF No. 17 at 7.  
17 But these allegations, while allegedly describing “factually similar” misconduct, fail  
18 to set forth sufficient facts which, if true, would demonstrate that LegalZoom engaged  
19 in misconduct which directly relates to the same rights that LegalZoom is asserting  
20 against Rocket Lawyer.

21 First, bidding on keywords to place advertisements, standing alone, is not an  
22 actionable violation of the false advertising or unfair competition laws – and  
23 LegalZoom does not make such an allegation in its complaint against Rocket Lawyer.  
24 Instead, LegalZoom alleges that Rocket Lawyer uses keyword bidding to facilitate the  
25 placement of false and misleading advertisements which use the term “free” to  
26 unfairly compete with LegalZoom. For this reason, Rocket Lawyer’s first ground for  
27 unclean hands does not satisfy the requirements of *Pom Wonderful, LLC*, 737 F.  
28 Supp. 2d at 1110.

1           Second, Rocket Lawyer alleges that LegalZoom uses the word “free” in a  
2 manner “similar” to that complained of, but there is no evidence supporting such an  
3 allegation. In fact, the example pled by Rocket Lawyer “Free to Get Started,”  
4 demonstrates that LegalZoom’s use of the term “Free” is markedly different from the  
5 allegations made by LegalZoom against Rocket Lawyer. LegalZoom claims that  
6 Rocket Lawyer misleads customers into falsely believing they can: (1) incorporate for  
7 free and “pay no fees (\$0),” when in fact they must pay state incorporation fees; (2)  
8 access “free legal review,” when in fact they must first become paid members of a  
9 Rocket Lawyer plan; and (3) get a “free” trial of Rocket Lawyer’s “Pro Legal Plan,”  
10 when in fact they must first enroll in a trial of the “Basic Legal Plan” which is a  
11 “negative option” program. Thus to prove unclean hands, Rocket Lawyer must  
12 demonstrate that LegalZoom misleads customers into believing they may obtain free  
13 incorporation, free legal review, or trial of a LegalZoom plan without any purchase,  
14 when in fact such services require a financial commitment from the customer. The  
15 phrase “Free to Get Started” does not in any way represent that a customer can  
16 complete an incorporation, obtain legal review, or try out a comprehensive legal plan  
17 without the need for a financial commitment – indeed it suggests just the opposite.

18           Third, for all of the reasons set forth in section III.B. above, there is nothing  
19 about the relationship between LegalZoom and Legalspring.com which is either  
20 inequitable or actionable as false advertising. Additionally, LegalZoom’s alleged  
21 affiliation with Legalspring.com is irrelevant to Rocket Lawyer’s unclean hands  
22 defense because it does not relate to any of LegalZoom’s claims in this litigation –  
23 LegalZoom has not alleged in its complaint that Rocket Lawyer has an improper  
24 relationship with a review website. *See Pom Wonderful*, 737 F. Supp. 2d at 1110-  
25 1111 (defendant’s unclean hands claims regarding plaintiff’s misleading advertising  
26 of juice processing not sufficiently related to plaintiff’s claims regarding defendant’s  
27 misleading advertising of content of its juice blend).

28           Fourth, to establish unclean hands, Rocket Lawyer must establish that

1 LegalZoom’s inequitable conduct was egregious. “We have stated that only a  
2 showing of wrongfulness, willfulness, bad faith, or gross negligence, proved by clear  
3 and convincing evidence, will establish sufficient culpability for invocation of the  
4 doctrine of unclean hands.” *Pfizer, Inc. v. Int’l Rectifier Corp.*, 685 F.2d 357, 359  
5 (9th Cir. 1982). The extent of actual harm caused by the conduct in question is a  
6 highly relevant consideration in analyzing the defense, and where such evidence is  
7 lacking, the defense is properly rejected. *See Republic Molding Corp. v. B. W. Photo*  
8 *Utilities*, 319 F.2d 347, 349-350 (9th Cir. 1963); *accord Citizens Financial Group,*  
9 *Inc. v. Citizens Nat. Bank of Evans City*, 383 F.3d 110, 129 (3rd Cir. 2004). But here,  
10 Rocket Lawyer has produced no evidence whatsoever, e.g. market research, consumer  
11 surveys or other evidence, that any consumer was injured by LegalZoom’s alleged  
12 bidding on keywords, its use of the term “free,” or its alleged affiliation with the  
13 Legalspring.com website. Absent such evidence, Rocket Lawyer’s unclean hands  
14 defense must fail.

15 It is important to note that although unclean hands could be a defense to a claim  
16 of false advertising under the Lanham Act, unclean hands is never an available  
17 defense to a claim under California Business and Professions Code Sections 17200 or  
18 17500, when those claims are premised, as here, on a violation of another statute. As  
19 one California appellate court recently explained:

20 Courts have long held that the equitable defense of unclean hands is not a  
21 defense to an unfair trade or business practices claim based on violation  
22 of a statute. To allow such a defense would be to judicially sanction the  
defendant for engaging in an act declared by statute to be void or against  
public policy.

23 *Ticconi v. Blue Shield of California Life & Health Ins. Co.*, 160 Cal. App. 4th 528,  
24 543 (2008).

25 **IV. CONCLUSION**

26 Rocket Lawyer has no evidence supporting its false advertising counterclaims  
27 against LegalZoom, or supporting its unclean hands defense. Therefore, LegalZoom  
28 respectfully requests that this Court grant LegalZoom partial summary judgment with

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respect to such issues, so that the parties can focus their attention at trial on matters in genuine dispute.

DATED: July 14, 2014

Respectfully submitted,

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