

1 PATRICIA L. GLASER - State Bar No. 55668  
 pglaser@glaserweil.com  
 2 FRED D. HEATHER - State Bar No. 110650  
 fheather@glaserweil.com  
 3 AARON P. ALLAN - State Bar No. 144406  
 aallan@glaserweil.com  
 4 GLASER WEIL FINK HOWARD  
 AVCHEN & SHAPIRO LLP  
 5 10250 Constellation Boulevard, 19th Floor  
 Los Angeles, California 90067  
 6 Telephone: (310) 553-3000  
 Facsimile: (310) 556-2920

7 Attorneys for Plaintiff  
 8 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  
 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

**PROPOSED STATEMENT OF  
 UNCONTROVERTED FACTS AND  
 CONCLUSIONS OF LAW IN  
 SUPPORT OF MOTION FOR  
 PARTIAL SUMMARY JUDGMENT  
 BROUGHT BY PLAINTIFF  
 LEGALZOOM.COM, INC.  
 [L.R. 56-1]**

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

21 [Notice of Motion and Motion;  
 22 Declarations of Aaron P. Allan, Dorian  
 23 Quispe, Travis Giggy; Appendix of  
 24 Exhibits; (Proposed) Order filed  
 25 concurrently herewith]

26 Complaint Filed: November 20, 2012

1 Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule  
 2 56-1 of this Court, Plaintiff LegalZoom.com, Inc. (“LegalZoom”) hereby submits the  
 3 following proposed Statement of Uncontroverted Facts and Conclusions of Law in  
 4 support of its motion for summary judgment:  
 5

**UNCONTROVERTED FACTS**

<b>UNCONTROVERTED FACT</b>	<b>EVIDENTIARY SUPPORT</b>
8 1. Legalspring.com is a website that 9 was formerly owned, operated and 10 moderated by Travis Giggy.	Declaration of Travis Giggy (“Giggy Decl.”) ¶ 3.
11 2. Mr. Giggy is a former employee of 12 LegalZoom.	Giggy Decl. ¶ 2.
13 3. Based on a sale which took place 14 March 1, 2013, the Legalspring.com 15 website is now owned by Inenvi, Inc.	Giggy Decl. ¶ 3.
16 4. Legalspring.com includes an 17 “opinion” about various online providers 18 as well as the posting of third party 19 customer reviews, and this content is 20 selected and published exclusively by 21 Legalspring.com.	Declaration of Aaron P. Allan (“Allan Decl.”), ¶ 2, Ex. C (Exhibit 15 to Rocket Lawyer’s Answer and Amended Counterclaims, ECF No. 17) and ¶ 3, Ex. D (customer reviews of LegalZoom from Legalspring.com); Declaration of Dorian Quispe (“Quispe Decl.”) ¶ 4; Giggy Decl. ¶¶ 5-6, Ex. A (various Legalspring.com webpages).
25 5. LegalZoom has not authored any of 26 the reviews on Legalspring.com, and has 27 no responsibility for the reviews which 28 are actually posted.	Quispe Decl. ¶ 4.

1 <b>UNCONTROVERTED FACT</b>	<b>EVIDENTIARY SUPPORT</b>
2            6.        The current relationship between 3            Legalspring.com and LegalZoom is that 4            of affiliate and client.	Quispe Decl. ¶ 3.
5            7.        To the extent that consumers visit 6            LegalZoom’s web site as a result of 7            having first visited Legalspring.com, 8            LegalZoom has provided compensation to 9            Legalspring.com.	Quispe Decl. ¶ 5; Giggy Decl. ¶ 8.
10          8.        While Mr. Giggy, at one time, 11          received compensation from LegalZoom 12          for any products sold by LegalZoom as a 13          result of a consumer first visiting 14          Legalspring.com., that relationship 15          terminated as of March 2013.	Quispe Decl. ¶ 6; Giggy Decl. ¶ 8.
16          9.        All of the content at 17          Legalspring.com is expressed as matters 18          of opinion – not facts.	Allan Decl. ¶ 2, Ex. C; ¶ 3, Ex. D.
19          10.       Statements of fact provided by 20          Legalspring.com, e.g., that the reviewer 21          and his family members have used 22          LegalZoom, and that the site moderator 23          has been running the review site for many 24          years, are not being challenged by Rocket 25          Lawyer as being either false or 26          misleading.	Rocket Lawyer’s Answer and Amended Counterclaims, ECF No. 17, pp. 18-20.
27          11.       The only content on 28          Legalspring.com for which LegalZoom	Quispe Decl. ¶ 8; Giggy Decl. ¶ 9, Ex. B.

	<b>UNCONTROVERTED FACT</b>	<b>EVIDENTIARY SUPPORT</b>
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2	provided any authorship is the disclaimer	
3	which appears at the bottom of the first	
4	web page which states: “The moderator	
5	of this Site has affiliate relationships with	
6	third party sites reviewed on this Site.”	
7	12. There is no language at	Allan Decl. ¶ 2, Ex. C; ¶ 3, Ex. D.
8	Legalspring.com suggesting that	
9	Legalspring.com has no relationship with	
10	the online providers being reviewed.	
11	13. Rocket Lawyer has produced no	Allan Decl., ¶ 5.
12	market research or consumer surveys to	
13	establish that consumers are being misled	
14	by Legalspring.com into believing that	
15	“all” online providers are being reviewed	
16	by a “neutral” reviewer.	
17	14. There is no representation made at	Allan Decl. ¶ 2, Ex. C; ¶ 3, Ex. D.
18	Legalspring.com that the reviews being	
19	provided are either objective or “neutral,”	
20	as alleged by Rocket Lawyer.	
21	15. The Legalspring.com website	Allan Decl. ¶ 2, Ex. C and ¶ 3, Ex. D; ;
22	merely provides “opinions” and	Giggy Decl. ¶ 5 and ¶ 6, Ex. A.
23	“reviews” by the site moderator and by	
24	actual customers.	
25	16. While many of the reviews of	Giggy Decl. ¶ 7; Allan Decl. ¶ 3, Ex. D.
26	LegalZoom at Legalspring.com are very	
27	positive, several of them are not.	
28	17. Rocket Lawyer has made no	Rocket Lawyer’s Answer and Amended

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<b>UNCONTROVERTED FACT</b>	<b>EVIDENTIARY SUPPORT</b>
allegation, and has no evidence, that any of these posted customer reviews are not genuine.	Counterclaims, ECF No. 17, pp. 18-20.
18. There is no statement at Legalspring.com which suggests that “all” online providers are being reviewed; to the contrary, the website states “only the best online legal service providers are reviewed.”	Allan Decl. ¶ 2, Ex. C; ¶ 3, Ex. D.
19. Rocket Lawyer has its own advertisements which do not mention its competitors, but that does not make the advertisements either false or misleading.	Allan Decl., ¶ 4, Ex. E.
20. Rocket Lawyer alleges three bases for its third affirmative defense of unclean hands: (1) that LegalZoom bids on keywords to place its own advertisements in searches for Rocket Lawyer; (2) that LegalZoom uses the word “free” in a manner similar to how Rocket Lawyer uses the term in its advertisements; and (3) that LegalZoom uses Legalspring.com to falsely advertise.	Rocket Lawyer’s Answer and Amended Counterclaims, ECF No. 17, pp. 18-20.

1  
2 **CONCLUSIONS OF LAW**

3 **Summary Judgment**

4 1. Federal Rule of Civil Procedure 56 provides that a party may move for  
5 summary judgment on some or all of the claims or defenses presented in an action.  
6 Fed. R. Civ. P. 56(a)(1).

7 2. Partial summary judgment is appropriate to “narrow the issues in a case,  
8 advance the progress of the litigation, and provide the parties with some guidance as  
9 to how they proceed with the case.” *United States v. Philip Morris USA, Inc.*, 327 F.  
10 Supp. 2d 13, 17 (D.D.C. 2004); *see also Lies v. Farrell Lines, Inc.*, 641 F. 2d 765,  
11 768-69 (9th Cir. 1981) (quoting Moore's Federal Practice, stating: “partial summary  
12 judgment... was intended to avoid a useless trial of facts and issues over which there  
13 was really never any controversy”).

14 3. The disposition of liability issues on summary judgment furthers both the  
15 goals of the Federal Rules of Civil Procedure by securing “the just, speedy and  
16 inexpensive determination of every action.” *Celotex Corp. v. Catrett*, 477 U.S. 317,  
17 327 (1986).

18 **False Advertising Under the Lanham Act**

19 4. “The purpose of the [Lanham] Act is to insure truthfulness in advertising  
20 and to eliminate misrepresentations with reference to the inherent quality or  
21 characteristics of another’s product.” *Coca-Cola Co. v. Tropicana Products, Inc.*,  
22 690 F.2d 312, 318 (2d Cir. 1982).

23 5. To establish a false advertising claim under the Lanham Act, a plaintiff  
24 must show: (1) false statement of fact by the defendant in a commercial advertisement  
25 about its own or another’s product; (2) the statement actually deceived or has the  
26 tendency to deceive a substantial segment of its audience; (3) the deception is  
27 material, in that it is likely to influence the purchasing decision; (4) the defendant  
28 caused its false statement to enter interstate commerce; and (5) the plaintiff has been

1 or is likely to be injured as a result of the false statement, either by direct diversion of  
2 sales from itself to defendant or by a lessening of the goodwill associated with its  
3 products. *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1139 (9th Cir.  
4 1997).

5 **LegalZoom Is Not Liable for False Advertising Because the**  
6 **Legalspring.com Web Page Provides Opinions and Puffery Rather Than**  
7 **Actionable Misstatements of Fact**

8 6. An advertisement that is mere “puffery” is not actionable under the  
9 Lanham Act because it is not a “false statement of fact.” *Cook, Perkiss and Liehe,*  
10 *Inc. v. Northern California Collection Service Inc.*, 911 F.2d 242, 244-246 (9th Cir.  
11 1990); *Southland Sod Farms v. Stover Seed Co.*, 108 F.2d 1134, 1145 (9th Cir. 1997).  
12 “[P]roduct superiority claims that are vague or highly subjective often amount to  
13 nonactionable puffery.” *Southland Sod*, 108 F.3d at 1145. In contrast,  
14 “misdescriptions of specific or absolute characteristics of a product are actionable.”  
15 *Id.*

16 7. In its counterclaim, Rocket Lawyer states “Legalspring.com advertises  
17 for LegalZoom and states that it is the best legal services website...” But the  
18 Legalspring.com website contains no specific facts or allegations which could be  
19 interpreted by any reasonable juror as a false description of products or services that  
20 could operate to mislead consumers. It merely states that LegalZoom is the number  
21 one online legal choice. This is plainly (and expressly) a statement of opinion, not  
22 fact, and is therefore not actionable false advertising. *See Cook, Periss and Liehe,*  
23 *911 F.2d at 246 (quoting Metro Mobile Cts, Inc. v. Newvector Communications, Inc.,*  
24 *643 F.Supp. 1289 (D.Ariz. 1986)) (“‘Puffing’ has been described by most courts as*  
25 *involving outrageous generalized statements, not making specific claims, that are so*  
26 *exaggerated as to preclude reliance by consumers.”).*

27 **LegalZoom Is Not Liable for False Advertising Because It Does Not**  
28 **Author or Control the Content Provided by Legalspring.com**

1           8.       Rocket Lawyer alleges that Legalspring.com’s actions are attributable to  
2 LegalZoom because Legalspring.com is LegalZoom’s alleged “agent,” as the site was  
3 originally developed by Travis Giggy, a former employee of LegalZoom.  
4 Legalspring.com also receives compensation from LegalZoom for clicks on links to  
5 LegalZoom’s website and receives commission from LegalZoom for any products  
6 sold as a result of such clicks. These allegations, even if true, provide no support for  
7 a false advertising claim.

8           9.       All of the statements made at Legalspring.com are made by the web page  
9 moderator, and there is no evidence that such statements were either authored or  
10 controlled by LegalZoom. The fact that LegalZoom benefits from the advertisement  
11 and/or pays a commission to Legalspring.com for business which is generated by the  
12 advertisement does not create or support false advertising liability for LegalZoom.  
13 *See Dominick v. Collectors Universe Inc.*, 2012 WL 6618616 (C.D. Cal. Dec. 18,  
14 2012) (defendant not liable for alleged false statements attributable to corporations  
15 owned by the defendant); *see Campagnolo S.R.L. v. Full Speed Ahead, Inc.*, 2010 WL  
16 2079694, \*8 (W.D. Wash. May 20, 2010) aff’d, 447 F. App’x 814 (9th Cir. 2011)  
17 (supplier that benefited from distributor’s advertisement of product but did not control  
18 the manner of advertisement was not vicariously liable for distributor’s false  
19 advertisement).

20                   **LegalZoom Is Not Liable For False Advertising Because The Alleged**  
21                   **Deception of Consumers by Legalspring.com Does Not Impact Rocket**  
22                   **Lawyer**

23           10.       Rocket Lawyer lacks standing to pursue a false advertising claim unless  
24 it can demonstrate that its interests “fall within the zone of interests protected by the  
25 law invoked”, and the injuries must be “proximately caused by violations of the  
26 statute.” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 134 S.Ct. 1377,  
27 1388-90 (2014). To show proximate cause, Rocket Lawyer “must show economic or  
28 reputational injury flowing directly from the deception wrought by the defendant’s



1 advertising; and that occurs when deception of consumers causes them to withhold  
2 trade from the plaintiff.” *Id.* at 1391.

3 11. While Rocket Lawyer alleges deception of consumers by  
4 Legalspring.com that it was providing “neutral” reviews of “all” online providers, the  
5 uncontroverted evidence demonstrates that Legalspring.com made no such  
6 representations, and that no such deception was possible. In addition, even assuming  
7 such deception occurred, Rocket Lawyer has produced no evidence that Rocket  
8 Lawyer has in any way been harmed by such a deception. Rocket Lawyer has  
9 produced no evidence, including but not limited to market research or consumer  
10 surveys, that would demonstrate such confusion, or that consumers were less likely to  
11 pursue Rocket Lawyer’s services as a result of having viewed Legalspring.com.  
12 Based on the lack of such evidence, Rocket Lawyer is unable to prevail upon this  
13 claim. *Willam H. Morris Co. v. Group W. Inc.*, 66 F.3d 255, 258 (9th Cir. 1995).

14 **LegalZoom Is Not Liable Under the California Unfair Competition Laws,**  
15 **Business and Profession Code Section 17200 and 17500**

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

26 **No Evidence Supports Rocket Lawyer’s Affirmative Defense for Unclean**  
27 **Hands**

1           13. To establish an unclean hands defense, Rocket Lawyer must establish the  
2 following two elements: (1) that LegalZoom’s conduct is inequitable; and (2) that  
3 LegalZoom’s conduct relates to the subject matter of LegalZoom’s claims against  
4 Rocket Lawyer. *Emco, Inc. v. Obst*, 2004 WL 1737355 at \*4 (C.D. Cal. May 7,  
5 2004) (citing *Fuddruckers, Inc. v. Doc's B.R. Others, Inc.*, 826 F.2d 837, 847 (9th Cir.  
6 1987)). With respect to the second element, LegalZoom’s bad faith must relate  
7 directly to its use or acquisition of the right in suit. *Pom Wonderful, LLC v. Welch*  
8 *Foods, Inc.*, 737 F. Supp. 2d 1105, 1110 (C.D. Cal. Aug. 25, 2010). Thus conduct  
9 that is factually similar, or involves the same type of legal claims, is not the standard  
10 for unclean hands. *See Specialty Minerals v. Pluess-Staufer AG*, 395 F. Supp. 2d 109,  
11 112-13 (S.D. N.Y.) (rejecting unclean hands defense because “factually similar  
12 misconduct alone is [not] sufficient to create the necessary link”).

13           14. Here, Rocket Lawyer alleges three types of misconduct to support an  
14 unclean hands defense: (1) bidding on keywords to place advertisements in searches  
15 for 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           15. First, bidding on keywords to place advertisements is not separately  
22 alleged as a violation of the false advertising or unfair competition laws by  
23 LegalZoom, and therefore Rocket Lawyer’s first ground for unclean hands does not  
24 directly relate to any claim at issue so as to meet the requirements of *Pom Wonderful,*  
25 *LLC v. Welch Foods, Inc.*, 737 F. Supp. 2d at 1110.

26           16. Second, Rocket Lawyer alleges that LegalZoom uses the word “free” in  
27 a manner “similar” to that complained of, but there is no evidence supporting such an  
28 allegation. LegalZoom’s alleged use of the term “Free” is markedly different from

1 the allegations made by LegalZoom against Rocket Lawyer. To prove unclean hands,  
2 RocketLawyer must demonstrate that LegalZoom misleads customers into believing  
3 they may obtain free incorporation, free legal review or a free trial of a LegalZoom  
4 plan, when in fact such services require a financial commitment from the customer.  
5 The phrase “Free to Get Started,” alleged by Rocket Lawyer, does not in any way  
6 represent that a customer can complete an incorporation, obtain legal review or try out  
7 a comprehensive legal plan with no financial commitment.

8 17. Third, as established above, there is nothing about the relationship  
9 between LegalZoom and Legalspring.com which is either inequitable or actionable as  
10 false advertising. In addition, LegalZoom’s alleged affiliation with Legalspring.com  
11 is irrelevant to RocketLawyer’s unclean hands defense because it does not relate to  
12 any of LegalZoom’s claims in this litigation – LegalZoom has not alleged in its  
13 complaint that RocketLawyer has an improper relationship with a review website.  
14 *See Pom Wonderful*, 737 F. Supp. 2d at 1110-1111 (defendant’s unclean hands claims  
15 regarding plaintiff’s misleading advertising of juice processing not sufficiently related  
16 to plaintiff’s claims regarding defendant’s misleading advertising of content of its  
17 juice blend).

18 18. Fourth, RocketLawyer has failed to establish that LegalZoom’s  
19 inequitable conduct was egregious. “We have stated that only a showing of  
20 wrongfulness, willfulness, bad faith, or gross negligence, proved by clear and  
21 convincing evidence, will establish sufficient culpability for invocation of the  
22 doctrine of unclean hands.” *Pfizer, Inc. v. Int’l Rectifier Corp.*, 685 F.2d 357, 359  
23 (9th Cir. 1982). The extent of actual harm caused by the conduct in question is a  
24 highly relevant consideration in analyzing the defense, and where such evidence is  
25 lacking, the defense is properly rejected. *See Republic Molding Corp. v. B. W. Photo*  
26 *Utilities*, 319 F.2d 347, 349-350 (9th Cir. 1963); *accord Citizens Financial Group,*  
27 *Inc. v. Citizens Nat. Bank of Evans City*, 383 F.3d 110, 129 (3rd Cir. 2004). But here,  
28 Rocket Lawyer has produced no evidence whatsoever, e.g. market research, consumer



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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 September 4, 2013, I electronically filed the following document(s) using the CM/ECF system.

**PROPOSED STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT BROUGHT BY PLAINTIFF LEGALZOOM.COM, INC. [L.R. 56-1]**

Participants in the case are registered CM/ECF users and 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 July 14, 2014 at Los Angeles, California.

\_\_\_\_\_  
/s/ Fred Heather  
Fred Heather