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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**
24 **INCORPORATED**, a Delaware
corporation,

25 Defendant.

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

ROCKET LAWYER
INCORPORATED'S REDACTED
OPPOSITION TO
LEGALZOOM.COM, INC.'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT

Date: August 18, 2014
Time: 9:30 a.m.
Judge: Judge Gary A. Feess
Courtroom: 740
255 East Temple Street
Los Angeles, CA 90012
Action Filed: November 20, 2012

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1 **I. INTRODUCTION**

2 LegalZoom has misled consumers and is now trying to mislead this Court.
3 The New York Attorney General has stated that the payment and manipulation of
4 customer reviews on review websites is “worse than old-fashioned false
5 advertising.”¹ LegalZoom has engaged in such behavior for years through its
6 operation and control over a legal services review website, LegalSpring.com, and
7 should be held accountable for its conduct. And yet, LegalZoom contends that it is
8 entitled to summary judgment on Rocket Lawyer’s counterclaim based on false
9 assertions that it has no control over the LegalSpring content.² These assertions are
10 directly contradicted by evidence that:

- 11 • LegalSpring.com was created by Travis Giggy who is a LegalZoom
12 shareholder, and was a LegalZoom employee from May 2003 to June 2006
13 and January 2007 to April 2008, and a consultant from July 2006 to
14 December 2006 and May 2008 to June 2012, Rocket Lawyer’s Statement of
15 Genuine Issues in Support of Opposition to LegalZoom’s Motion for Partial
16 Summary Judgment (“SGI”) at 71;
- 17 • By agreement, [REDACTED]
18 [REDACTED], *id.* at 23;
- 19 • LegalZoom directed LegalSpring to make negative reviews [REDACTED] *id.* at
20 33, 62;
- 21 • [REDACTED]
22 [REDACTED], *id.* at 26;
- 23 • LegalZoom and LegalSpring conspired to alter the dates of remaining
24 negative reviews to “push’ em down the list”, *id.* at 41; and

25 _____
26 ¹ <http://www.nytimes.com/2013/09/23/technology/give-yourself-4-stars-online-it-might-cost-you.html>.

27 ² As used herein, “LegalZoom” means “LegalZoom.com, Inc.,” “LegalSpring”
28 means “LegalSpring.com,” and “Rocket Lawyer” means Rocket Lawyer Incorporated.

- [REDACTED] *id.* at 51-53.

The evidence demonstrates that LegalZoom’s manipulation of the balance of its negative and positive reviews was intended to ensure that it always had at least a 4 star rating on LegalSpring.com. *Id.* at 26-44. [REDACTED]

[REDACTED] *Id.* at 31, 62 ([REDACTED]). Indeed, numerous consumers have read and relied on the misleading reviews posted by LegalZoom on LegalSpring.com. *Id.* at 48-50.

LegalZoom’s admission that it authored a disclaimer identifying LegalSpring’s “affiliate” relationship with the companies listed on the website is insufficient to cure and prevent customer confusion resulting from LegalZoom’s deception. This disclaimer was only added in April 2012, years after LegalZoom began manipulating the reviews on LegalSpring.com. *Id.* at 55. Furthermore, at the time the disclaimer was added, LegalZoom was no mere affiliate, but was in fact operating LegalSpring.com. *Id.* at 56.

There is a genuine dispute of fact as to whether LegalZoom’s conduct has violated federal and state false advertising and unfair competition law. Accordingly, the Court should deny LegalZoom’s motion for partial summary judgment on Rocket Lawyer’s counterclaims and its unclean hands defense.

II. MATERIAL FACTS

LegalZoom has told this Court that LegalSpring.com’s “content is selected and published exclusively by LegalSpring.com” and that “LegalZoom has not authored and has no responsibility for the reviews which are actually posted” on LegalSpring.com. Mot. at 2:20-23; Declaration of Dorian Quispe ¶ 4. These assertions are demonstrably false.

1 **A. LegalZoom Has Control Over Content of LegalSpring By Contract**

2 LegalSpring has been reviewing online legal service providers since 2004.
3 *See* SGI at 21. LegalZoom has been a company reviewed and listed on LegalSpring
4 since at least 2005. *Id.* at 22. [REDACTED]

5 [REDACTED]
6 [REDACTED]:

7 4.7 . . . [REDACTED]
8 [REDACTED]

9 *Id.* at 23 (emphasis added). Thus, LegalZoom acknowledges that it has control over
10 any advertising referencing LegalZoom produced by LegalSpring.com.

11 **B. LegalZoom Controlled Content of LegalSpring**

12 LegalZoom falsely contends that it has no control over LegalSpring.com’s
13 content claiming that the “content is selected and published exclusively by
14 LegalSpring.com” and that “LegalZoom has not authored and has no responsibility
15 for the reviews which are actually posted” on LegalSpring.com. Mot. at 2:20-23;
16 Quispe Dec. ¶ 4. These assertions made under penalty of perjury are directly
17 contradicted by the evidence.

18 On direct instruction from LegalZoom since [REDACTED],⁴ [REDACTED]
19 [REDACTED]
20 [REDACTED]. SGI at 26. This

21 ³ [REDACTED]
22 [REDACTED] wn Vision, LLC and LegalSpring prior to 2011 may exist;
23 however, LegalZoom has stated that it is unable to produce documents from before
24 April 2010 when it changed document management systems. *Id.* at 25.

25 ⁴ The documentary evidence demonstrates that the fa [REDACTED] w
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 conduct predates the disclaimer on LegalSpring.com disclosing companies' ability
2 to add/remove reviews by nearly six years. *Id.* at 29. [REDACTED]
3 [REDACTED]. *See id.* at 30. [REDACTED]
4 [REDACTED]
5 [REDACTED]), Giggy,
6 describing LegalSpring, says:

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 *Id.* at 31 (emphasis added).

15 MacDonell, in turn, replies [REDACTED]
16 [REDACTED]

17 [REDACTED] *Id.* at 32. [REDACTED]

18 [REDACTED] *Id.* at 33 (emphasis added).⁵ Giggy then asks for

19 and receives from MacDonell [REDACTED] [REDACTED]
20 [REDACTED] *Id.* at 34.

21 [REDACTED] [REDACTED] [REDACTED]
22 [REDACTED] [REDACTED]

23 _____
24 ⁵ It should be noted that, of the companies listed on LegalSpring.com, only
LegalZoom has rebutted negative reviews. *Id.* at 70.

25 ⁶ To the extent LegalZoom's liability arises due to Giggy's agency, LegalZoom's
26 Motion only conclusorily contests that fact. *See Mot.* at 9 (“[E]ven if, contrary to
27 fact, these allegations [of agency] were true, they would provide no support for a
28 false advertising claim.”). Regardless, “[t]he existence of an agency relationship is
a question of fact, and may only be resolved on summary judgment when the
essential facts are not in conflict and the evidence is susceptible to a single
inference.” *Grant v. Nat’l Football League Players Ass’n*, No. 12-56843, 2014 WL
1259398, at *1 (9th Cir. Mar. 28, 2014) (internal quotation marks omitted). In any

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[REDACTED]
[REDACTED] *Id.* at 35. [REDACTED]
[REDACTED]
[REDACTED] reviews – which were available on at least
January 20, 2009 – were posted on LegalSpring.com at various times for the
appearance of authenticity. *Id.* at 37.

11 of 16 people found the following review helpful.

★★★★★ **Perfect Patent**, 1/28/2009 11:38:44 PM
Reviewer: **Dr. Mark S.** from Des Moines, IA
I don't have a lot of time, so if you want a bigger explanation, call me. I used legalzoom for a patent and it was perfect, just what the doctor ordered (yes, I'm a doctor...haha). Brilliant from start to finish.

Was this review helpful to you? yes no

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17 of 21 people found the following review helpful.

★★★★★ **Legal Zoom saved my neck...**, 2/5/2009 9:08:44 AM
Reviewer: **Linda H.** from Scottsdale, AZ
I know I'm going to sound like they're paying me, but I love this company. They've saved my neck on more than one occasion. I got a will in 24 hours when my husband and I were about to take a trip to Barcelona and realized that if the plane were to go down my kids would be in limbo. I told my sister to use them for a divorce and it was easy as pie. My husband and I used them to set up a real estate LLC and I've copyrighted a book of poems through them. I only had one problem in 6 years of working with them and when I called to complain they discounted my order and put in a rush. Why anyone would give a negative review is beyond me.

Was this review helpful to you? yes no

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21 of 28 people found the following review helpful.

★★★★★ **My attorney brother referred me, and I'm glad he did**, 2/13/2009 12:41:10 PM
Reviewer: **Matt S.** from Chicago, IL
I came to Legalzoom after my attorney brother told me to use them. I asked him to help me with my trademark, but he's a bankruptcy attorney and said he didn't have the first clue about trademarks. Good advice. They were professional through the whole process. They were mindblowingly cheap (ok

Was this review helpful to you? yes no

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case, the evidence proves that Giggy was acting either under LegalZoom's control or with its approval.

1 And this is not the only time that Giggy acted on LegalZoom’s instruction and
2 altered the reviews on LegalSpring.com to benefit LegalZoom and mislead
3 customers. In May 2010, Brian Liu asked Giggy if “a lot of negativity” on
4 LegalSpring is “something [Giggy] can help with,” receiving Giggy’s assurance that
5 “a grouping of 8 posts [] will be removed by tomorrow, end of day.” *Id.* at 38. In
6 August 2011, Giggy provided MacDonell with a list of negative reviews that had
7 been removed or would soon be removed, including two from verified LegalZoom
8 customers. *Id.* at 39. Giggy noted that he was “going through a Google review of
9 [his] site and want[ed] to maintain a feel of impartiality.” *Id.* at 40.

10 Giggy also affirmatively modified the timestamps on negative reviews to
11 “push ‘em down the list a ways” with knowledge and/or approval from LegalZoom.
12 *Id.* at 41; *see also id.* at 42 (MacDonnell: “Any way you not have the first two
13 reviews be one stars?”; Giggy: “I also moved the second poor rating down the page
14 a couple of notches”).

15 **C. LegalZoom Intended to Mislead Consumers**

16 LegalZoom intended these alterations to mislead customers regarding the
17 quality of its products services. [REDACTED]

18 [REDACTED] At
19 LegalZoom’s direct instruction, the reviews posted on LegalSpring.com were
20 falsified so as to give consumers a better impression of LegalZoom’s services than
21 was warranted. LegalZoom explicitly stated this intention of boosting the quality of
22 their reviews on LegalSpring.com, hoping to increase their rating.

23 LegalZoom’s own communications show this intent. For example, in
24 transmitting “a pretty large group of positive reviews” and asking Giggy to “throw
25 this on legalspring,” LegalZoom stated its goal of artificially inflating its rating on
26 LegalSpring.com: “[s]hould get us into the high 4 stars range.” *Id.* at 44 (emphasis
27 added) .

1 Furthermore, internal correspondence from LegalZoom also implies that
2 employees may have sought to conceal their manipulation of review sites by
3 avoiding reviews from work computers. As one employee explained to another,
4 “Don’t do any reviews from work computer” because “You have to do it from an
5 ‘unbiased’ location to avoid raising red flags.” *Id.* at 45.

6 **D. LegalZoom Did Mislead Consumers**

7 LegalZoom succeeded in misleading consumers.⁷ LegalSpring holds itself
8 out as a neutral review website. On June 23, 2004, when he was an employee of
9 LegalZoom, Giggy published an article promoting the neutrality of
10 LegalSpring.com in assisting consumers in their decision to use online legal
11 services:

12 LegalSpring.com strives to be the industry leading legal site review
13 destination. By providing unbiased comments and reviews from real
14 users of a company’s service, LegalSpring.com can help prospective
15 (*sic*) users of these services to choose a cost-effective, reputable and
reliable company to execute their legal needs.

16 *Id.* at 46. This goal of helping consumers and appearance of neutrality was also
17 stated on LegalSpring.com, at least as of January 2013:

18 **Who is the best Incorporator online?**

19 This is why LegalSpring.com was formed - to find the answer to
20 questions like this. Legalzoom is hands-down the LegalSpring.com

21 ⁷ Rocket Lawyer has not alleged that LegalZoom’s activity on Legalspring.com is
22 misleading solely because it purports itself to be a neutral review website, as
23 LegalZoom contends. *See* Mot. at 10-11. Rocket Lawyer has alleged also that
24 Legalspring.com fails to fully disclose its close relationship with LegalZoom, *see*
25 Amended Counterclaims at ¶¶ 36-40 (alleging lack of disclosure), which includes its
26 failure to disclose LegalZoom’s control over consumer reviews posted on the site,
27 and that the content on Legalspring.com is false, *id.* at ¶ 56 (“The content related to
28 LegalZoom and the online legal services market found on Legalspring.com are
misleading and/or false.”). To the extent the pleadings should have included greater
detail, the issues raised here should be considered as a motion to amend the
counterclaims to conform to the evidence, pursuant to Fed. R. Civ. Proc. 15(b).
Apache Survival Coalition v. U.S., 21 F.3d 895, 910 (9th Cir. 1994) (“[W]hen issues
are raised in opposition to a motion for summary judgment that are outside the scope
of the complaint, the district court should have construed the matter raised as a
request pursuant to rule 15(b) of the Federal Rule of Civil Procedure to amend the
pleadings out of time.”) (internal citations and alterations omitted).

1 editors (*sic*) choice for legal services - including Incorporation and
2 LLC formation. There are however, many reputable and reliable
3 companies on the Internet that will handle your Incorporation or LLC
4 formation. Read up on them here.

4 *Id.* at 47.

5 As LegalZoom hoped, consumers have gone to LegalSpring.com and relied
6 on its reputation and promised neutrality. For example, [REDACTED] reviews [REDACTED]
7 [REDACTED] indicate that a majority of consumers
8 who responded found those reviews helpful. *See supra* at § II.B; SGI at 49.⁸ [REDACTED]
9 [REDACTED]
10 [REDACTED] *See* SGI at 50.

11 **E. LegalZoom’s Direct Operation of LegalSpring Between 2012-2013**

12 In February 2012, [REDACTED]
13 [REDACTED]
14 [REDACTED] *See id.* at 51. Accordingly,
15 LegalZoom worked with Giggy to transfer operation of LegalSpring.com to
16 LegalZoom and train LegalZoom employees to run the website. *Id.* at 52. [REDACTED]
17 [REDACTED] *Id.* at 53.

18 This conduct directly contradicts representations LegalZoom has made to this
19 Court that “LegalZoom has not authored and has no responsibility for the reviews
20 which are actually posted.” *See supra* at § II; SGI at 54.

21 **F. LegalZoom’s Disclaimer Is Itself False and Does Not Cure Its**
22 **Misrepresentations**

23 LegalZoom contends that the disclaimer identifying LegalSpring’s affiliate
24 relationship with LegalZoom and other companies listed on the website is sufficient
25 to dispel any consumer confusion. ECF 69 at 2; SGI at 11. It is not.

26
27 _____
28 ⁸ This assumes that LegalZoom, Legalspring.com, or Giggy did not also alter the
“helpful” metric on Legalspring.com.

1 First, the disclaimer was only added in April 2012 – many years after
2 LegalSpring.com was created and became affiliated with LegalZoom such that
3 LegalZoom was allowed to alter content on the website. *Id.* at 55.

4 Second, the disclaimer fails to disclose the true nature of the relationship.
5 LegalZoom is correct that this disclaimer was added at LegalZoom’s direction. *Id.*
6 at 11. However, at the time the disclaimer was added, LegalZoom was *not* merely
7 treating LegalSpring like any affiliate, but instead [REDACTED] and was operating
8 LegalSpring.com. *Id.* at 56. Indeed, in this litigation LegalZoom continues to
9 obfuscate its relationship with Giggy and LegalSpring. *Id.* at 57. For instance,
10 rather than clearly identifying LegalSpring as an affiliate, LegalZoom instead
11 maintains that LegalSpring “*acted as* an affiliate of LegalZoom to generate leads.”
12 *See id.* (emphasis added).

13 Third, the disclaimer says nothing about alteration of timestamps. *Id.* at 58.

14 Fourth, the disclaimer says nothing about the manipulation of LegalZoom’s
15 average review score. *Id.* at 59.

16 Finally, the disclaimer states only that “reviews may be added or removed at
17 third party sites’ requests,” but provides no explanation for what grounds justify
18 removal. *Id.* at 60. A reasonable consumer might expect that reviews might be
19 removed for a number of reasons—for example, because they were posted by
20 someone who had never used the product, or they used inappropriate language. But
21 there is nothing in the disclaimer to indicate that verified reviews were added and
22 removed to boost the rating of the reviewed product. *Id.*

23 **III. ARGUMENT**

24 **A. Summary Judgment Standard**

25 Summary judgment should not be granted unless the moving party
26 demonstrates the absence of a genuine issue of material fact. Fed. R. Civ. Proc.
27 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). “The evidence of
28 the non-movant is to be believed, and all justifiable inferences are to be drawn in his

1 favor.” *Id.* at 255. “The court must not weigh the evidence or determine the truth of
2 the matters asserted but only determine whether there is a genuine issue for trial.”
3 *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1138 (9th Cir. 1997).

4 **B. The Evidence Demonstrates that LegalZoom has Violated the**
5 **Lanham Act**

6 **1. The falsified reviews are literally false**

7 LegalZoom has actively utilized LegalSpring.com as a channel for
8 distributing literally false advertising for its services. Literal falsity is black and
9 white: “if a defendant’s claim is untrue, it must be deemed literally false.” *Castrol*
10 *Inc. v. Pennzoil Co.*, 987 F.2d 939, 944 (3d Cir. 1993).

11 LegalZoom has falsified its reputation on LegalSpring.com by manipulating
12 the balance of positive and negative reviews. LegalZoom attempts to distract from
13 this point by portraying LegalSpring.com’s content as “mere puffery” and
14 statements of opinion. But opinion and puffery are not the only content on that site.
15 The consumer reviews as a whole represent an assertion about consumer satisfaction
16 with LegalZoom’s products. These reviews also support LegalZoom’s four star
17 rating on LegalSpring.com, a recognizable metric corresponding with quality. This
18 likewise has been falsified: the overall consumer opinion of LegalZoom as
19 represented on LegalSpring.com is untrue, and thus is false.

20 In addition, each consumer review contains a statement of fact regarding the
21 date and time it is posted. These have been directly altered, specifically to push
22 negative reviews further down and for the appearance of realism. The dates listed
23 for at least some of the consumer reviews on LegalSpring.com are untrue, and thus
24 are literally false.

25 **2. LegalZoom’s Intent to Mislead Consumers Triggers**
26 **Presumption of Customer Confusion and Harm**

27 Where a party intended to deceive, courts presume that the party succeeded in
28 that intent. *See e.g. U-Haul Int’l, Inc. v. Jartran, Inc.*, 793 F.2d 1034, 1040-41 (9th

1 Cir. 1986) (“[p]ublication of deliberately false comparative claims gives rise to a
2 presumption of actual deception and reliance”); *Resource Developers Inc. v. Statue*
3 *of Liberty-Ellis Island Found.*, 926 F.2d 134, 139-40 (2d Cir. 1991); (summarizing
4 law that party’s intent to mislead tantamount to actual deception eliminating need
5 for survey); *see also* UNFAIRCOMP § 6:6. This presumption of deception based
6 on intent to deceive even applies in cases involving non-comparative advertising.
7 *See, e.g., Harper House, Inc. v. Thomas Nelson, Inc.*, 889 F.2d 197, 209-10 (9th Cir.
8 1989) (upholding application of a presumption of harm where defendant had
9 expended funds on a deceptive advertising campaign, even though the ad had little
10 to no overt reference to plaintiff or plaintiff’s products); *see also Western Sugar*
11 *Coop. v. Archer-Damiels-Midland Co.*, No. 11-CV-3473 CBM(MANx), 2011 U.S.
12 Dist. LEXIS 158250 (C.D. Cal. Oct. 21, 2011) (deliberately false ad warrants
13 presumption of deception).

14 In *AMCO Ins. Co. v. Inspired Techs., Inc.*, Civil No. 08–5748 (JRT/FLN),
15 2012 WL 2395179 (D. Minn. June 25, 2012), the court found that defendant had
16 knowingly violating the Lanham Act in underlying lawsuit by manipulating photos
17 used in advertising. *Id.* at *5. Such manipulation could only have been done with
18 the knowledge of the photos’ falsity and with the intent to deceive. *Id.*

19 Similarly, LegalZoom’s instructions to manipulate its star rating and balance
20 of positive and negative customer reviews could only have been done with
21 knowledge of their falsity and intent to deceive.

- 22 • Giggy, while still an employee of LegalZoom, expressly intended that
23 consumers rely on LegalSpring as a resource in deciding which online legal
24 services company to use. SGI at 61.
- 25 • LegalSpring’s own FAQ states that LegalSpring was created to answer for
26 consumers, “who is the best incorporator.” *Id.* at 47.

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- And yet, the evidence demonstrates that LegalZoom had the ability to remove negative reviews and [REDACTED]

[REDACTED] *Id.* at 26-35.

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at 26-35. [REDACTED]

[REDACTED] *Id.* at 63.

- In October 2011, [REDACTED] [REDACTED]
[REDACTED] (*Id.* at 64) which led LegalZoom to direct Giggy to manipulate the number of positive and negative reviews to ensure that LegalZoom would have a four star rating. *Id.*

- [REDACTED]
[REDACTED]
[REDACTED] *Id.* at 65.

[REDACTED]
[REDACTED]
[REDACTED] Thus,

LegalZoom’s knowing manipulation of the balance of positive and negative reviews on LegalSpring and acting to place LegalSpring on search engine results demonstrates an intent to deceive consumers.

Furthermore, there is no dispute that over the course of their relationship, LegalZoom has paid LegalSpring commissions for the clicks to LegalZoom.com from LegalSpring. *Id.* at 7. Thus, like the governing cases, LegalZoom has

1 expended funds to publish false advertising in an effort to steer potential customers
2 toward its website, further warranting application of the presumption that consumers
3 have been misled, and by extension, Rocket Lawyer has been harmed. *U-Haul*, 793
4 F.2d at 1040-41.

5 3. LegalZoom Actually Deceived Consumers

6 Although LegalZoom's intent to deceive warrants a presumption that
7 consumers have been misled, the evidence also demonstrates that consumers have
8 relied on these misleading reviews. At LegalSpring.com, consumers viewing the
9 reviews can indicate whether they are "helpful" or not. *Id.* at 48. The three reviews
10 [REDACTED] indicate that a majority of
11 consumers who responded found those reviews helpful. *See id.* at 49 (21 of 28
12 people have found Matt S.'s review helpful, 17 of 21 people have found Linda H.'s
13 review helpful, and 11 of 16 people have found Dr. Mark S.'s review helpful).⁹

14 LegalSpring.com, as LegalZoom knows, is "[REDACTED]
15 [REDACTED]" *Id.* at 28.¹⁰ [REDACTED]
16 [REDACTED] In [REDACTED]
17 [REDACTED]
18 [REDACTED] *Id.* at
19 68. Thus LegalZoom knew that consumers value review sites like LegalSpring.com,
20 and misled consumers about the timing and overall mix of reviews posted by other
21 consumers and its star rating to obtain more business.

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23
24 ⁹ This assumes that LegalZoom, Legalspring.com, or Giggy did not also alter the
25 "helpful" metric on Legalspring.com.

26 ¹⁰ This evidence also demonstrates the effect of customer reviews to consumers'
27 purchasing decision making, thus establishing materiality. *Rice v. Fox Broad. Co.*,
28 330 F.3d 1170, 1180 (9th Cir. 2003) (materiality means "it is likely to influence the
purchasing decision"); ECF NO. 61, Vu Decl. II ¶2, Ex. A at 71 (Wind Report
demonstrating customer reviews among top three most important factors in
purchasing decision).

1 **4. LegalZoom Cannot Hide Behind LegalSpring.com**

2 LegalZoom is responsible for this false advertising. LegalZoom contests the
3 classification of Giggy and LegalSpring.com as its agents. As an initial matter,
4 “[t]he existence of an agency is a factual question within the province of the trier of
5 fact,” *L. Byron Culver & Associates v. Jaoudi Industrial & Trading Corp.*, 1
6 Cal.App.4th 300, 305 (1991) (internal citation omitted), and thus cannot be resolved
7 at summary judgment. More importantly, however, this situation is distinguishable
8 from the case of a corporate subsidiary relied on by LegalZoom. *See* Mot. at 9-10.
9 *Dominick v. Collectors Universe Inc.*, 2012 WL 6618616 (C.D. Cal. Dec. 18, 2012)
10 is inapposite. There, the Court determined that a defendant could not be held
11 responsible where corporations owned by him made false statements on third party
12 websites. *Id.* at *8. This case is not analogous: Rocket Lawyer is alleging direct
13 liability, not derivative liability, between a bad actor and an individual acting at its
14 direction. In *Dominick*, there was no evidence that the defendant had actually
15 directed the misconduct. *Id.* Here, by contrast, LegalZoom acted directly to cause
16 the false statements to be posted on LegalSpring.com. If *Dominick* applied, then no
17 company could be responsible for any false advertising posted on a third party
18 website, such as on Google.com or Bing.com. That is not, and cannot be the case.

19 **5. LegalSpring.com’s Disclaimer is Unavailing**

20 LegalZoom points to the disclaimer at the bottom of each of
21 LegalSpring.com’s pages to show “no evidence of consumers being misled.” Mot.
22 at 8; ECF 69 at 2; SGI at 11. It provides no such proof. As stated above, the
23 disclaimer was added in April 2012, [REDACTED] years after the earliest evidence
24 produced that LegalZoom was removing negative ads and controlling content on
25 LegalSpring. *See* SGI at 55 (LegalZoom’s MacDonell requesting the disclaimer be
26 added on April 4, 2012). Consumers have been misled for years before the
27 disclaimer was added.

1 In addition, Consumers continue to be misled because the disclaimer is
2 literally false. At the time the disclaimer was added to LegalSpring.com,
3 LegalZoom [REDACTED] and was operating LegalSpring.com. *Id.* at 56.

4 Finally, the disclaimer is ineffective and incomplete. “[G]enerally, a
5 disclaimer is ineffective to cure a literally false statement.” *JR Tobacco of Am., Inc.*
6 *v. Davidoff of Geneva (CT), Inc.*, 957 F. Supp. 426, 437 (S.D.N.Y. 1997). In
7 addition, “a disclaimer, modification or qualifier is appropriate only if it effectively
8 turns an otherwise false advertising claim into a true one, in such a manner that the
9 consumers are not misled.” *Tambrands, Inc. v. Warner-Lambert Co.*, 673 F. Supp.
10 1190, 1195 (S.D.N.Y. 1987). LegalZoom’s disclaimer on LegalSpring does not
11 replace the deleted negative reviews, remove the added positive reviews, correct the
12 inflated better-than-four-star rating, or correct the falsified date stamps. It does not
13 prevent consumers from being misled and does not correct the LegalZoom’s false
14 statements, and therefore is not effective. Furthermore, the disclaimer also does not
15 provide sufficient explanation for when reviews will be added or removed, or that
16 *verified* negative customer reviews will be deleted by LegalZoom.

17 LegalZoom is not entitled to summary judgment based on its ineffective and
18 false disclaimer.

19 **C. LegalZoom’s Has Violated California False Advertising Law**

20 The determination of whether statements in an advertisement under the FAL
21 are untrue is the same as the analysis of falsity under the Lanham Act claim. *See*
22 *Kwan Software Eng’G v. Foray Techs., LLC*, 2013 U.S. Dist. LEXIS 14708 at *7
23 (N.D. Cal. Jan. 22, 2013) (“[t]he parties agree that false advertising under California
24 law requires the same showing of falsity as the Lanham Act”); *Cytosport, Inc. v.*
25 *Vital Pharms., Inc.*, 894 F. Supp. 2d 1285, 1295 (E.D. Cal. 2012) (consolidating
26 analysis of Lanham Act, FAL and UCL claims finding that “[i]n the Ninth Circuit,
27 claims of unfair competition and false advertising under [the FAL and UCL] are
28 substantially congruent to claims made under the Lanham Act”). As such, the Court

1 should deny summary judgment as to Rocket Lawyer’ section 17500 California
2 false advertising counterclaim for the same reasons stated above.

3 **D. LegalZoom has Competed Unfairly**

4 **1. Rocket Lawyer’s UCL Claims Survive with its False**
5 **Advertising Claims**

6 As discussed above, LegalZoom has falsely advertised on LegalSpring.com
7 and at least some genuine disputes of fact remain on that issue. Thus LegalZoom’s
8 contention that Rocket Lawyer’s UCL claim must fail is unsupported. Just as
9 LegalZoom “failed to dispose of all genuine issues of material fact in regard to its
10 [own] . . . UCL claim[.]” SJ Order at 11, it has now failed to dispose of all genuine
11 issues of material fact in regard to Rocket Lawyer’s UCL claim, and its motion must
12 be likewise denied with respect to this claim.

13 **2. LegalZoom’s Conduct Rises to the Level of a UCL Violation**

14 LegalZoom’s manipulation of customer reviews on LegalSpring.com violated
15 California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 (“UCL”). As
16 discussed above, LegalZoom knows that consumers rely on reviews, and in
17 particular the mix of reviews posted by other consumers. This constitutes a material
18 misrepresentation, and is therefore actionable under the UCL. *See Hinojos v. Kohl’s*
19 *Corp.*, 718 F.3d 1098, 1107 (9th Cir. 2013).

20 In addition, LegalZoom cannot justify its misconduct. The UCL requires “an
21 examination of [the practice's] impact on its alleged victim, balanced against the
22 reasons, justifications and motives of the alleged wrongdoer.” *Podolsky v. First*
23 *Healthcare Corp.*, 50 Cal. App. 4th 632, 647 (1996). Here the practice materially
24 misleads consumers and LegalZoom’s only motive is to inflate the public perception
25 of its services. Such conduct constitutes an unfair business practice. *Id.*

1 **E. LegalZoom has Unclean Hands**

2 **1. Disposition of Rocket Lawyer’s Unclean Hands Defense is**
3 **Premature**

4 Disposition of Rocket Lawyer’s equitable defense of unclean hands is
5 premature. Application of the unclean hands doctrine primarily raises a factual
6 issue. *Dollar Sys., Inc. v. Avcar Leasing Sys., Inc.*, 890 F.2d 165, 173 (9th Cir.
7 1989). “As such it is not properly determined . . . on a summary judgment
8 motion[.]” *Mattco Forge, Inc. v. Arthur Young & Co.*, 5 Cal. App. 4th 392, 407-08
9 (1992).

10 LegalZoom provides nothing more than conclusory assertions in support of
11 summary judgment on this issue. In the more than three pages spent on unclean
12 hands, *see* Mot. at 11-14, LegalZoom fails to provide a single citation to its separate
13 statement of undisputed facts or otherwise identify undisputed facts. Such total
14 failure to provide factual support cannot suffice to defeat the assertion of a doctrine
15 that primarily raises factual issues.

16 **2. Unclean Hands is an Applicable Defense at Trial**

17 Unclean hands is a defense to Lanham Act false advertising claims. *See*
18 *Japan Telecom, Inc. v. Japan Telecom America Inc.*, 287 F.3d 866, 870 (9th
19 Cir.2002); *accord Highmark, Inc. v. UPMC Health Plan, Inc.*, 276 F.3d 160, 174
20 (3rd Cir.2001) (unclean hands applicable to false advertising claim). “In order to
21 prevail on an unclean hands defense, ‘the defendant must demonstrate that the
22 plaintiff’s conduct is inequitable and that the conduct relates to the subject matter of
23 its claims.’” *FLIR Sys., Inc. v. Sierra Media, Inc.*, 965 F. Supp. 2d 1184, 1193 (D.
24 Or. 2013) (quoting *Fuddruckers, Inc. v. Doc's B.R. Others, Inc.*, 826 F.2d 837, 847
25 (9th Cir.1987)).

26 The facts support Rocket Lawyer’s assertion of unclean hands. LegalZoom’s
27 unclean hands directly relate to its own false advertising allegations; LegalZoom’s
28 conduct is more than “factually similar” to what it attacks. As previously described

1 to the Court, *see* ECF No. 37 at 8-10, LegalZoom advertises the price of its services
2 without disclosing the additional cost of state fees. Like Rocket Lawyer,
3 LegalZoom merely provides a link to its website, where such fees are disclosed and
4 which at least one review website has found to be unclear. *See also* SGI at 69
5 (including numerous other examples of LegalZoom’s advertising without state fees).
6 This conduct is sufficiently similar to defeat LegalZoom’s false advertising claims.
7 *See FLIR Sys., Inc. v. Sierra Media, Inc.*, 965 F. Supp. 2d 1184, 1194-96 (D. Or.
8 2013) (applying unclean hands to deny damages to plaintiff “in light of its false
9 advertising related to the same subject matter”); *Pom Wonderful LLC v. Welch*
10 *Foods, Inc.*, 737 F. Supp. 2d 1105, 1111 (C.D. Cal. 2010) (“[T]he crux of
11 [plaintiff’s] Lanham Act claim is that [defendant] misleads consumers to believe that
12 its [white grape pomegranate] product contains more pomegranate juice than it
13 actually does, and that the [white grape pomegranate] product in fact contains very
14 little pomegranate juice. Thus, to prove unclean hands, [Defendant] must
15 demonstrate that [plaintiff] misleads consumers into believing its juice products
16 contain more pomegranate juice than they actually do, or that its products
17 misrepresent the amount of juice(s) in them.”), *aff’d* 468 Fed.Appx. 688 (9th
18 Cir.2012); *Emco, Inc. v. Obst*, No. CV03–6432–R (RZX), 2004 WL 1737355 (C.D.
19 Cal. July 29, 2004) (manufacturer who advertised using American symbols for
20 product not manufactured in United States could not assert competitor misled
21 customers as to the geographic origin of its products); *Stokely–Van Camp, Inc. v.*
22 *Coca–Cola Co.*, 646 F.Supp.2d 510 (S.D.N.Y.2009) (drink manufacturer could not
23 disavow claims it had previously made and require competitor to do the same);
24 *Diamond Triumph Auto Glass, Inc. v. Safelite Glass Corporation*, 441 F.Supp.2d
25 695, 709 n.10 (M.D. Pa. 2006) (finding the unclean hands doctrine barred a Lanham
26 Act claim where plaintiff “used the same greetings in the same manner for which it
27 seeks relief”).¹¹

28 ¹¹ The conduct is also sufficiently egregious. *Accord Pfizer, Inc. v. Int’l Rectifier*

1 Accordingly, LegalZoom’s motion should be denied as it concerns Rocket
2 Lawyer’s unclean hands defense.

3 **IV. CONCLUSION**

4 For the foregoing reasons, LegalZoom’s Motion for Partial Summary
5 Judgment should be denied in full.

6 Dated: July 28, 2014

Respectfully submitted,

7
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27 *Corp.*, 685 F.2d 357, 359 (9th Cir. 1982) (requiring a showing of wrongfulness,
28 willfulness, bad faith, or gross negligence” to invoke unclean hands). LegalZoom acted at least willfully in not disclosing state fees, and, in order for invocation of this defense to arise, the conduct in question must first be found to be wrongful.