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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

LEGALZOOM.COM, INC., a Delaware
corporation,

Plaintiff,

v.

ROCKET LAWYER
INCORPORATED, a Delaware
corporation,

Defendant.

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

**REDACTED SEPARATE
STATEMENT OF UNDISPUTED
FACTS IN SUPPORT OF ROCKET
LAWYER'S REPLY IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

Date: August 18, 2014
Time: 9:30 a.m.
Judge: Judge Gary A. Feess
Courtroom: 740
Action Filed: November 20, 2012

1 Pursuant to Rule 56 of the Federal Rules of Civil Procedure and local Rule 56-1
2 of the Central District of California, Defendant Rocket Lawyer Incorporated (“Rocket
3 Lawyer”) hereby submits the following Separate Statement of Undisputed Facts
4 pursuant to Central District of California Local Rule 56-2 and the Court’s Standing
5 Order in support of Rocket Lawyer’s Reply in support of its Motion for Summary
6 Judgment.

7 LegalZoom, in its Statement of General Dispute, improperly lodged “General
8 Objections” contrary to the Court’s Standing order not to “submit blanket or
9 boilerplate objections” and that evidentiary objections should “not be argued in” the
10 separate statement, but rather addressed in a separate memorandum organized
11 according to the numbers in the separate statement. LegalZoom failed to provide a
12 separate memorandum and therefore has no support for its objections to evidence.
13 Furthermore, its blanket and boilerplate objections should be “disregarded and
14 overruled” as warned by the Court. Standing order at 7.

15 Pursuant to the Court’s Standing Order, Rocket Lawyer will address
16 LegalZoom’s general objections in its evidentiary memorandum, including
17 demonstrating that Professor Wind’s reports, properly signed/verified and exchanged
18 pursuant to Rule 26(a)(2), are admissible.

19 It should also be noted that LegalZoom improperly removed from the separate
20 statement facts that it did not dispute. Dkt. 26 at II.C.1 (“The document must be in
21 two columns; the left hand column must restate the allegedly undisputed fact, and the
22 right hand column must indicate either undisputed, or disputed”) (emphasis added). In
23 this SSUF, Rocket Lawyer has inserted the undisputed facts deleted by LegalZoom so
24 that the record will be complete. The facts deleted by LegalZoom were not
25 addressed, and are thus undisputed.

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FACTS NOT IN DISPUTE

**MOVING PARTY’S ALLEGED
UNDISPUTED FACT**

RESPONSE

1. Rocket Lawyer and LegalZoom are competitors in the online legal services market, which consists of companies offering access to legal forms, subscription plans, independent attorney consultation time, and other legal services at affordable prices.

Order Re: Plaintiff’s Motion for Summary Judgment (“Order”), ECF No. 44, at 1; Rocket Lawyer’s Amended Counterclaims, ECF No. 17, at 12:2-3.

Deleted by LegalZoom, thus undisputed.

2. Rocket Lawyer and LegalZoom, like other competitors in this market, advertise their services on search engines such as Google and Bing, and on their own websites.

Order, ECF No. 44, at 2; Mary Ann Nguyen in Support of LegalZoom’s Motion for Summary Judgment, (“Nguyen Decl. I”), ECF No. 28, ¶ 4, Ex. B (screen shots of Rocket Lawyer’s advertisements); Vu Decl. I, ECF No. 38, ¶ 4, Ex. 14.

Deleted by LegalZoom, thus undisputed.

3. Google and Bing allow businesses to advertise on search results by bidding on terms—“keywords”—that users may enter into the search field. For example, when a user searches for “incorporation,” immediately above or along the side of the search

Declaration of Hong-An Vu In Support of Rocket Lawyer Incorporated’s Motion for Summary Judgment and/or Summary Adjudication (“Vu Decl. II”), ECF No. 61, ¶ 15,¹ Ex. N; *see also* Google Instructions Regarding Keyword Advertisements (<http://www.google.com/adwords/how-it-works/target-your-ads.html>)

¹ Rocket Lawyer has inserted the ECF NO. for the Vu Decl. II throughout the statement of facts for the court’s convenience.

MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
<p>1 results are ads for businesses that 2 have bid on that term—LegalZoom, 3 Rocket Lawyer, LawDepot, 4 IncforFree, etc. 5 6 7 8 9 10 11 12 13 14</p>	<p>Bing Instructions Regarding Keyword Advertisements (http://advertise.bingads.microsoft.com/en-us/reachyournextcustomer) Google “Incorporation” Keyword Results (https://www.google.com/#q=incorporation) Bing “Incorporation” Keyword Results (http://www.bing.com/search?q=incorporation) Deleted by LegalZoom, thus undisputed.</p>
<p>15 4. Bing.com has provided the 16 search engine marketing for Yahoo 17 since August 2010. 18 19 20</p>	<p>Vu Decl. II, ECF No. 61, ¶ 6, Ex. E, at 7; <i>see also</i> http://yahoobingnetwork.com/en-apac/home. Deleted by LegalZoom, thus undisputed.</p>
<p>21 5. Following the Court’s 22 instruction in the Order, Rocket 23 Lawyer’s expert conducted a survey 24 to test the RLI Free Ads in context 25 (the “Wind Survey”). 26 27 28</p>	<p>Moving party’s evidence: Order, ECF No. 44, at 10; Vu Decl. II, ECF No. 61, ¶ 2, Ex. A (Expert Report of Professor Jerry Wind Regarding Consumer Perceptions of Rocket Lawyer’s Advertisement and Website). Disputed. It is disputed that the Wind Survey tested the</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	<p>Rocket Lawyer ads in a manner that addresses LegalZoom’s allegations or in the proper context that would be relevant for testing LegalZoom’s allegations. Declaration of Dr. Bruck Isaacson in Support of LegalZoom.com, Inc.’s Opposition (“Isaacson Decl.”), ¶¶ 58-63, 23-32</p> <p>Objections: Misleading (Fed. R. Evid. 403; Legal Conclusion (Fed. R. Civ. Proc. 56(c)(4); L.R. 7-7); Hearsay (Fed. R. Evid. 801, 802).</p>
6. Professor Jerry (Yoram) Wind is a professor at the Wharton School of Business at the University of Pennsylvania.	Vu Decl. II, ECF No. 61, ¶ 3, Ex. B, App. B (Professor Wind’s resume). Deleted by LegalZoom, thus undisputed.
7. He is one of the leading experts in marketing and has served as an expert witness in over thirty cases since 2007 alone.	Vu Decl. II, ECF No. 61, ¶ 3, Ex. B, Apps. B and C (list of cases in which Wind has testified). Deleted by LegalZoom, thus undisputed.
8. The Wind Survey took respondents through the typical consumer journey from the	Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 3, Ex. B, Apps. A (declaration of David Baga attesting to consumer journey

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
<p>advertisement to the point of purchase. Vu Decl. II, ¶ 3, Ex. B, Apps. A (declaration of David Baga attesting to consumer journey reflected in Wind’s stimuli) and E (stimuli used in Wind’s survey).</p>	<p>reflected in Wind’s stimuli) and E (stimuli used in Wind’s survey).</p> <p>Disputed.</p> <p>It is disputed that the Wind Survey took respondents through a “typical consumer journey.” Dr. Wind has no basis to believe that the “journey” that was taken was “typical” in any sense and there is no “typical” way a consumer can be said to move through the stimuli presented by Dr. Wind in his survey. Dr. Wind has testified that the path taken through the Rocket Lawyer website can vary across consumers. Also, the materials shown in the Wind Survey extend well beyond the point where a consumer would make the decision to purchase.</p> <p>Isaacson Decl., ¶¶ 36-48; Wind deposition, 33:15-37:18</p>
<p>9. According to the Wind Survey results, consumers’ understanding of Rocket Lawyer’s services would be the same whether Rocket Lawyer had continued its advertising practices or had changed them to address LegalZoom’s</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 3, Ex. A, at 62-64.</p> <p>Disputed.</p> <p>It is disputed that the Wind Survey tested or addressed LegalZoom’s allegations.</p> <p>Accordingly, the survey is not a measure of any</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
allegations.	consumer’s understanding of whether the ads in question were misleading or how the term “free” affects consumer behavior in the manner alleged by LegalZoom. Moreover, the “results” of the Wind Survey are inconclusive on account of its small survey size (comparing 15 test responses against 13 control responses) and improper methodology. Isaacson Decl., ¶¶ 36-57, 64-67; Wind Depo., 73:3-10, 76:21-77:15, 110:3-11. Objections: Irrelevant (Fed. R. Evid. 401, 402); Misleading (Fed. R. Evid. 403); Hearsay (Fed. R. Evid. 801 & 802).
10. Since October 2008, Rocket Lawyer has offered to new users free business formation (i.e., incorporation, LLC formation) with enrollment in a free trial of its Pro Legal Plan (or currently, its Complete Plan).	Moving Party’s evidence: Order, ECF No. 44, at 2-3; Declaration of Paul Hollerbach in Support of Rocket Lawyer’s Opposition to Motion for Summary Judgment (“Hollerbach Decl. I”), ECF No. 37-3, ¶ 20; Vu Decl. II, ECF No. 61, ¶ 3, Ex. B, App. A (declaration of David Baga attesting to consumer journey reflected in Wind’s stimuli). Disputed. It is disputed that Rocket Lawyer offers “free” business formation to anyone. Rocket Lawyer admits that users must pay state fees.

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	Hollerbach Decl. I, ECF No. 37-3, ¶ 20. Objections: Misleading (Fed. R. Evid. 403).
11. Users only had to pay state-mandated fees, which passed through entirely to the government.	Moving Party’s evidence: Hollerbach Decl. I, ECF No. 37-3, ¶ 20. Disputed. It is disputed that any consumers enrolled in Rocket Lawyer’s “free trials” “only” paid the state fees in connection with their enrollment. Winograd Decl., ¶ 10, Ex. I (BBB 0000053, BBB complaint activity report regarding Rocket Lawyer’s “free 7-day trial” was not free and advertisement did not disclose customer charge.) Objections: Misleading (Fed. R. Evid. 403).
12. Between October 2008 and September 2013, Rocket Lawyer published approximately [REDACTED] business formation ads that contained the word “free” on search engines, and approximately [REDACTED]	Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 7, Ex. F; ¶ 13, Ex. L; Declaration of Paul Hollerbach in Support of Rocket Lawyer’s Motion for Summary Judgment (“Hollerbach Decl. II”), ECF No. 60-1, ¶¶ 3, Disputed.

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
businesses were formed through Rocket lawyer.com.	It is disputed that between October 2008 and September 2013, Rocket Lawyer “published” only 1.2 million business formation ads. The ads were “published” or seen 250 million times. Declaration of Alan Goedde (“Goedde Decl.”) in Support of LegalZoom.com, Inc.’s Opposition to Rocket Lawyer Incorporated’s Motion for Summary Judgment and or Adjudication, ¶ 6; Vu Decl. II, ¶ 7, Ex. F; ¶ 13, Ex. L; Declaration of Paul Hollerbach in Support of Rocket Lawyer’s Motion for Summary Judgment (“Hollerbach Decl. II”) ECF No. 60-1, ¶¶ 3, 5. Objections: Irrelevant (Fed. R. Evid. 401, 402); Misleading (Fed. R. Evid. 403).
13. Each of these ads contained a link to Rocket lawyer.com where consumers are required to click through multiple disclosures of state fees before they can make a purchasing decision.	Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 3, Ex. B, Apps. A and E. Order, ECF No. 44, at 2-3; Nguyen Decl. I, ECF. No. 28, ¶ 4, Ex. B. Disputed. It is disputed that any consumer or would-be consumer of Rocket Lawyer’s products or services is “required” to see any particular content on the Rocket Lawyer website, let alone

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	ever saw a “disclosure,” as that term is understood under the applicable law before making a purchase decision. Isaacson Decl., ¶¶ 36-37, 40; Wind Depo., 33:15-37:18.
14. Of these [REDACTED] ads, only [REDACTED] — [REDACTED] — were Free Business Formation Ads that did not expressly disclose state fees.	Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 6, Ex. E, at 8; ¶ 7, Ex. F; Hollerbach Decl. II, ECF No. 60-1, ¶ 3. Disputed. It is disputed that between October 2008 and September 2013, Rocket Lawyer “published” only 1.2 million business formation ads. The ads were “published” or seen 159 million times. Goedde Deck, ¶ 6; Vu Decl. II, ¶ 7, Ex. F; ¶ 13, Ex. L; Hollerbach Decl. II, ECF No. 60-1, ¶¶ 3, 5. Objections: Irrelevant (Fed. R. Evid. 401, 402); Misleading (Fed. R. Evid. 403).
15. Rocket Lawyer received [REDACTED] conversions from these Free Business Formation Ads at a very low conversion rate of [REDACTED] %.	Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 6, Ex. E, at 8; ¶ 7, Ex. F; Hollerbach Decl. II, ECF No. 60-1, ¶ 3.

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	<p>Disputed.</p> <p>It is disputed that 5,647 “conversions” is a “very low” conversion rate. The data supplied by Rocket Lawyer indicates that the conversion rate suggests a 50% rate of success and is an appreciably higher conversion rate than that for the ads that did not contain the word “free.”</p> <p>Goedde Decl., ¶ 4.</p> <p>Objections: irrelevant (Fed. R. Evid. 401, 402); Misleading (Fed. R. Evid. 403).</p>
16. “Conversion” as used herein means that a consumer clicked on a Free Business Formation Ad and thereafter, reached the account registration page, credit card billing page and/or successfully formed a business entity by completing the credit card billing page.	<p>Vu Decl. II, ECF No. 61, ¶ 6, Ex. E, at 8; ¶ 7, Ex. F; Hollerbach Decl. II, ECF No. 60-1, ¶ 3.</p> <p>Deleted by LegalZoom, thus undisputed.</p>
17. “Click(s)” means the number of clicks on the ad (i.e. number of visits to RL.com from that ad). Conversion rate is the number of conversions per clicks.	<p>See Vu Decl. II, ECF No. 61, ¶ 7, Ex. F; ¶ 12, Ex. K; Hollerbach Decl. II, ECF No. 60-1, ¶¶ 3-4.</p> <p>Deleted by LegalZoom, thus undisputed.</p>
18. A “conversion” used in this	<p>See Vu Decl. II, ECF No. 61, ¶ 6, Ex. E, at 8; ¶</p>

MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
<p>respect may not actually mean a business was formed or that a customer paid any fees to Rocket Lawyer or a governmental entity.</p>	<p>7, Ex. F; Hollerbach Decl. II, ECF No. 60-1, ¶ 3.</p> <p>Deleted by LegalZoom, thus undisputed.</p>
<p>19. Thus, even if all of Rocket Lawyer’s Free Business Formation Ads were false and/or misleading, less than █% of consumers who encountered these ads could have arguably been misled and decided to do business with Rocket Lawyer.</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 6, Ex. E, at 8; ¶ 7, Ex. F; Hollerbach Decl. II, ECF No. 60-1, ¶ 3.</p> <p>Disputed.</p> <p>Consumers are still “misled” even when ultimate sale is not consummated. The Isaacson survey demonstrates that the ads are likely to mislead a substantial segment of the population. Winograd Decl., ¶ 11, Ex. J (Isaacson Report.).</p> <p>Objections: Irrelevant (Fed. R. Evid. 401, 402); Misleading (Fed. R. Evid. 403).</p>
<p>20. In addition, less than █% of Rocket Lawyer’s Free Business Formation Ads were placed on LegalZoom keywords—meaning that Rocket Lawyer’s ad would likely appear when a consumer searched for a combination of “legal” and “zoom” (“Free LZ Triggered Business Formation Ads”).</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 6, Ex. E, at 11; ¶ 7, Ex. F; Hollerbach Decl. II, ECF No. 60-1, ¶ 3.</p> <p>Disputed.</p> <p>Rocket Lawyer’s own information shows that when the Free Business formation ads were placed on LegalZoom keywords, (“Free LZ Triggered Business Formation ads”), the ads have a conversion rate of 1.74%. The</p>

MOVING PARTY'S ALLEGED UNDISPUTED FACT	RESPONSE
	<p>conversion rate of all 1.2 million ads is 1.33%. Therefore, the presence of “legal” and “zoom” in a consumer search is 31% more effective in generating conversions compared to the average conversion rate of all 1.2 million Free Business Formation ads.</p> <p>Goedde Decl., ¶ 4.</p> <p>Objections: Irrelevant (Fed. R. Evid. 401, 402); Misleading (Fed. R. Evid. 403).</p>
<p>21. There were only [REDACTED] conversions on these ads with a similarly low [REDACTED] % conversion rate.</p>	<p>Moving Party's evidence: Vu Decl. II, ECF No. 61, ¶ 6, Ex. E, at 15; ¶ 7, Ex. F; Hollerbach Decl. II, ECF No. 60-1, ¶ 3</p> <p>Disputed.</p> <p>It is disputed that 48 “conversions,” or 3.0% is a “low” conversion rate. Rocket Lawyer’s own information shows that when the Free Business formation ads were placed on LegalZoom keywords, (“Free LZ Triggered Business Formation ads”), the ads have a conversion rate of 1.74%. The conversion rate of all 1.2 million ads is 1.33%. Therefore, the presence of “legal” and “zoom” in a consumer search is 31% more</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	effective in generating conversions compared to the average conversion rate of all 1.2 million Free Business Formation ads. Goedde Decl., ¶ 4. Objections: Irrelevant (Fed. R. Evid. 401, 402); Misleading (Fed. R. Evid. 403).
22. In the Wind Survey, a test group of 104 actual and potential consumers of legal services viewed a Free Business Formation Ad that disclosed state fees, and a control group of 103 similar consumers viewed an ad that did not disclose state fees.	Moving party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 17. Disputed. It is disputed that the Wind Survey included 104 or 103 “actual and potential consumers.” No respondents in the Wind Survey were qualified as actual consumers or users of online legal services. Only 22.7% of respondents to the Wind Survey were actual purchasers of online legal services; none of these purchasers were qualified as using online legal services. Nearly 30% of survey respondents “may or may not” have “looked for” online legal services, and should not have been included in the group. Isaacson Decl., ¶¶ 39, 66; Wind Depo., 38-39. 61:19-65:6. Objections: Misleading (Fed. R. Evid. 403);

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	Hearsay (Fed. R. Evid. 801 & 802).
23. The test and control ads were placed in the same place, in the same position amongst other ads that appeared in a real search for “incorporation.”	Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 10; ¶ 3, Ex. B, App. E (Wind Survey stimuli). Deleted by LegalZoom, thus <i>undisputed</i>.

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
24. Respondents then followed the same path consumers follow on Rocket lawyer.com (the “consumer journey”).	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, ¶ 3; Ex. B, App. E</p> <p>Disputed.</p> <p>It is disputed that consumers follow a “path” on Rocket Lawyer.com. There is no typical path that consumers follow, and there is no evidence that consumers follow a specific path other than a path they choose based on their interests and the materials they view. Consumer movements on the internet do not necessarily follow a predictable path, and movement about a website is not constrained in any fashion. Isaacson Decl., ¶ 36-48; Wind Depo., 33:22-37:18.</p> <p>Objections: Misleading (Fed. R. Evid. 403); Hearsay (Fed. R. Evid. 801 & 802); Improper Expert Opinion Testimony (Fed. R. Evid. 702).</p>
25. Stimuli showed respondents images from the search engine ad through successive webpages on Rocket lawyer.com to the point of purchase.	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 3, Ex. B, App. E.</p> <p>Disputed.</p> <p>It is disputed that these webpage images were “successive” or were shown to the “point of</p>

MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	<p>purchase.” The Wind Survey included website pages that would be seen well after the point where a purchase decision would be made. The Rocket Lawyer website has many pages, and it is possible that a consumer could see a very different set of pages on their way to make a purchase.</p> <p>Isaacson Decl., ¶¶ 38, 43; Wind Depo., 34:17-36:21.</p> <p>Objections: Misleading (Fed. R. Evid. 403); Hearsay (Fed. R. Evid. 801 & 802); Improper Expert Opinion Testimony (Fed. R. Evid. 702).</p>
<p>26. The Wind Survey was designed to determine whether (i) more consumers in the control group were drawn to Rocket Lawyer’s website than in the test group, and (ii) consumers in the test group were more likely to understand that they must pay state fees even if Rocket Lawyer’s services were free than in the control group.</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 2.</p> <p>Disputed.</p> <p>It is disputed that the Wind Survey used a “design” that could measure any differences between test and control vis-a-vis the allegations concerning Rocket Lawyer’s use of “free” as alleged by LegalZoom. Both test and control groups were shown ads containing the word “free.” The overly complex stimuli used in the Wind Survey masked the differences between test and control. No respondents in the</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	<p>Wind Survey were qualified as actual consumers or users of online legal services. Only 22.7% of respondents to the Wind Survey were actual purchasers of online legal services; none of these purchasers were qualified as using online legal services. Nearly 30% of survey respondents “may or may not” have looked for online legal services, and should not have been included in the group.</p> <p>Isaacson Decl., ¶ 8, 36-48, 58-59; Wind Depo., 74:11-79:10.</p> <p>Objections: Misleading (Fed. R. Evid. 403); Hearsay (Fed. R. Evid. 801 & 802).</p>
27. After viewing the search engine results and ads, respondents were asked which of the companies advertised did the user want to explore further.	<p>Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 19; ¶ 3, Ex. B, App. G (Wind Survey questionnaire).</p> <p>Deleted by LegalZoom, thus undisputed.</p>
28. Respondents in the control group did not choose Rocket Lawyer more than in the test group: the survey established that there is no statistically significant difference between the test and control groups with respect to choosing Rocket	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 3-4; 25-26.</p> <p>Disputed.</p> <p>The Wind Survey did not “establish” that there is no statistically significant difference between the test and control groups with respect to</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
Lawyer or LegalZoom among the many competitors in the market at the search engine stage.	“choosing” Rocket Lawyer or Legal Zoom among the many competitors in the market at the search engine stage. The Wind Survey included those who were “willing to explore” the Rocket Lawyer website. Isaacson Decl., ¶ 60; Wind Depo., 81:25–82:5. Objections: Irrelevant (Fed. R. Evid. 401, 402); Misleading (Fed. R. Evid. 403); Hearsay (Fed. R. Evid. 801 & 802).
29. In fact, slightly more respondents chose LegalZoom in the control group (where the Rocket Lawyer advertisement did not disclose state fees in its text).	Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 25. Disputed. The Wind Survey does not establish whether respondents “chose” LegalZoom. Question 2 in the Wind Survey asked respondents which “... companies would be interested in exploring further based on what you see?” Professor Wind testified that this question asked respondents to select websites to explore, and agreed that using the word “chose” is overstated. Wind Report, Ex. E, Survey Simuli; Wind Report, Ex. G., p. 8; Wind Depo., 82:6-12.

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	<p>Objections: Irrelevant (Fed. R. Evid. 401, 402); Misleading (Fed. R. Evid. 403); Hearsay (Fed. R. Evid. 801 & 802).</p>
<p>30. The Wind Survey also found that there is a portion of the relevant population that is skeptical about free offers and that such ads decrease the likelihood that these consumers would chose to explore Rocket Lawyer and/or actually provide business to Rocket Lawyer.</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A at 66; see also ¶ 4, Ex. C, at 7 (acknowledging skeptical population in the Isaacson survey and significant research supporting increase in skeptical consumers).</p> <p>Disputed.</p> <p>The Wind Survey did not make any findings concerning skepticism concerning “free” offers. Whether the “relevant population” is “skeptical” about free offers has not been tested. Moreover, there is no conclusive evidence that the ads “decrease” the likelihood that consumers would choose to explore Rocket Lawyer and the Isaacson survey finds otherwise.</p> <p>Isaacson Decl., ¶ 31; Wind Deposition, 140:20-148:19.</p> <p>Objections: Irrelevant (Fed. R. Evid. 401, 402); Misleading (Fed. R. Evid. 403); Hearsay (Fed. R. Evid. 801 & 802).</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
<p>31. Note that although the Wind Survey analyzed whether there was any difference between the test and control groups in their decision to choose Rocket Lawyer or LegalZoom, many respondents chose other competitors whose ads appeared on the search engine results, as would occur in the real world.</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 3, Ex. B, App. L (Table 6, Question 2, Online Legal Services Companies Chosen Initially).</p> <p>Disputed.</p> <p>The Wind Survey did not test whether respondents “chose” another competitor in connection with Rocket Lawyer or LegalZoom. Question 2 in the Wind Survey asked respondents which “. companies would be interested in exploring further based on what you see?” Professor Wind testified that this question asked respondents to select websites to explore, and agreed that using the word “chose” is overstated.</p> <p>Isaacson Decl., ¶¶ 59, 60; Wind Report, Ex. G., p. 8; Wind Dep., 82:6-12.</p> <p>Objections: Irrelevant (Fed. R. Evid. 401, 402); Misleading (Fed. R. Evid. 403); Hearsay (Fed. R. Evid. 801 & 802).</p>
<p>32. In addition, test respondents did not exhibit any better understanding that they must pay state fees even if Rocket Lawyer’s</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 31, 62-63.</p> <p>Disputed.</p>

<p>1 MOVING PARTY’S ALLEGED</p> <p>2 UNDISPUTED FACT</p>	<p>RESPONSE</p>
<p>3 services were free than in the</p> <p>4 control group: the test and control</p> <p>5 groups were equally likely to</p> <p>6 understand the state fees issue at the</p> <p>7 decision-making point.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p>	<p>Page 31 provides the responses to Q.B10a, which asked, “... do you recall if you had to pay state fees to the state for Incorporation with the free offer?” The question is vague, and does not specify whether it asks (a) if respondents remembered whether or not they had to pay fees, or (b) whether respondents thought state fees were in fact required. Isaacson Decl., ¶ 62; Wind Report, p. 31, 62 and Ex. G p. 10; Wind Depo., 153:19-156:12.</p> <p>Objections: Misleading (Fed. R. Evid. 403); Hearsay (Fed. R. Evid. 801 & 802).</p>
<p>16 33. Nearly 70% of all test</p> <p>17 subjects understood that they were</p> <p>18 required to pay state fees regardless</p> <p>19 of whether they were in the test or</p> <p>20 control group.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 31.</p> <p>Disputed.</p> <p>Page 31 provides the responses to Q.B10a, which asked, “... do you recall if you had to pay state fees to the state for Incorporation with the free offer?” The question is vague, and does not specify whether it asks (a) if respondents remembered whether or not they had to pay fees, or (b) if respondents thought state fees were in fact required. Also “test subjects” are</p>

MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	<p>separate from those in the “control group.” Isaacson Decl., ¶ 62; Wind Report, p. 31, 62, and Ex. G p. 10.</p> <p>Objections: Misleading (Fed. R. Evid. 403); Hearsay (Fed. R. Evid. 801 & 802).</p>
<p>34. Furthermore, there was no significant difference between the test and control respondents in deciding to do business with Rocket Lawyer.</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 37</p> <p>Disputed.</p> <p>Page 37 of the Wind Report provides the results from Q.14a, which asks what the respondent is “likely to do” after having seen the ad and the website. One of the options was “decide not to buy an online legal service.” No option referenced Rocket Lawyer directly, or indicated a decision not to do business with Rocket Lawyer. Also, the long and complex stimuli in the Wind Survey masked the difference between test and control groups.</p> <p>Isaacson Decl., ¶¶ 8, 36-48, 59, 62; Wind Report, page 37 and Ex. G page 11; Isaacson Suppl., ¶ 41-48.</p> <p>Objections: Irrelevant (Fed. R. Evid. 401 & 402); Misleading (Fed. R. Evid. 403); Hearsay</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	(Fed. R. Evid. 801 & 802).
35. However, slightly more respondents in the control group, who did not receive the state fees disclosure in the search engine ad, were more likely to continue searching for other online legal services.	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A at 36-37.</p> <p>Disputed.</p> <p>The long and complex stimuli in the Wind Survey masked the difference between test and control groups, and make the results unreliable. Also, the Wind Survey presented the search engine ad on a page with 20 other ads and 8 suggested searches, making it unlikely that respondents would notice minor differences between the test and control ads. Additional error was likely induced into the Wind Survey because, in addition to the state fees disclosure, there were other differences between the test and control ads that make comparisons between the test and control group suspect.</p> <p>Isaacson Decl., ¶ 8, 36-48, 82.</p> <p>Objections: Irrelevant (Fed. R. Evid. 401 & 402); Misleading (Fed. R. Evid. 403); Hearsay (Fed. R. Evid. 801 & 802).</p>
36. Thus, adding state fee disclosures to the ad copy itself, to address LegalZoom’s allegations,	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 36, 62-63.</p> <p>Disputed.</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
would have no effect on consumers’ decision to provide Rocket Lawyer with business or benefit to Rocket Lawyer.	<p>The Wind Survey does not provide a basis for this statement. The long and complex stimuli in the Wind Survey masked the difference between test and control groups, and make the results unreliable. Also, the Wind Survey presented the search engine ad on a page with 20 other ads and 8 suggested searches, making it unlikely that respondents would notice minor differences between the test and control ads. Additional error was likely induced into the Wind Survey because, in addition to the state fees disclosure, there were other differences between the test and control ads that make comparisons between the test and control group suspect.</p> <p>Isaacson Decl., ¶¶ 8, 36-48.</p> <p>Objections: Misleading (Fed. R. Evid. 403); Hearsay (Fed. R. Evid. 801 & 802); Improper Expert Opinion Testimony (Fed. R. Evid. 702).</p>
37. Moreover, respondents in the Wind Survey also identified the advertisement as the least important factor in their decision making.	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 4, 40, 57.</p> <p>Disputed.</p> <p>Pages 40 and 57 are based on Q.14e, which</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	<p>asks respondents to indicate the three most important factors in deciding whether to use an online legal services company. The Wind Survey did not measure how messages received from ads may create impressions relating to important reasons such as price, brand name, opportunity to try the service for free, or customer reviews.</p> <p>Wind Report, p. 40, 57, Exh. G., p. 12.</p> <p>Objections: Misleading (Fed. R. Evid. 403); Hearsay (Fed. R. Evid. 801 & 802); Improper Expert Opinion Testimony (Fed. R. Evid. 702).</p>
<p>38. Rather, other customers’ reviews and price of the service provider were among the top factors affecting purchasing decisions in both experiments.</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 4, 40, 57.</p> <p>Disputed.</p> <p>The Wind Survey did not measure how messages received from ads may create impressions relating to important reasons such as price, brand name, opportunity to try the service for free, or customer reviews.</p> <p>Wind Report, p. 40, 57, Exh. G., p. 12.</p> <p>Objections: Misleading (Fed. R. Evid. 403); Hearsay (Fed. R. Evid. 801 & 802); Improper Expert Opinion Testimony</p>

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	(Fed. R. Evid. 702).
<p>39. LegalZoom’s survey, or the “Isaacson Survey,” did not test whether consumers were diverted from LegalZoom to Rocket Lawyer. Instead of allowing respondents to view the ads in the context of a search engine result page and choose Rocket Lawyer or LegalZoom, the Isaacson Survey’s stimuli failed to replicate market conditions and merely directed respondents to focus only on an isolated Rocket Lawyer advertisement, blurring out all other ads and circling Rocket Lawyer’s.</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 4, Ex. C, at 7, 29; ¶ 5, Ex. D at Exs. 2 and 3 (Isaacson stimuli).</p> <p>Disputed.</p> <p>The Isaacson survey used a format consistent with past precedents and with the manner in which consumers encounter Rocket Lawyer materials in the marketplace. The purpose of a false advertising survey is to measure the messages that respondents receive from an ad, not whether they notice the ad. The Isaacson survey appropriately focused respondent attention on the Rocket Lawyer ad. By contrast, the approach used in the Wind Survey implicitly assumes that text which is not noticed is not misleading, not matter how deceptive.</p> <p>Isaacson Decl., ¶¶ 84, 85.</p> <p>Objections: Misleading (Fed. R. Evid. 403).</p>
<p>40. The Isaacson Survey did not provide any context.</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 4, Ex. C, at 6, 29; ¶ 5, Ex. D, at Exs. 2 and 3 (Isaacson stimuli).</p> <p>Disputed.</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	<p>The Isaacson survey used a format consistent with past precedents and with the manner in which consumers encounter Rocket Lawyer materials in the marketplace. The Isaacson survey provided the entire Rocket Lawyer ad or website pages, without masking any Rocket Lawyer content. The purpose of a false advertising survey is to measure the messages that respondents receive from an ad, not whether they notice the ad. The Isaacson survey appropriately focused respondent attention on the Rocket Lawyer ad. By contrast, the approach used in the Wind Survey implicitly assumes that text which is not noticed is not misleading, no matter how deceptive.</p> <p>Isaacson Decl., ¶¶ 84, 85.</p> <p>Objections: Misleading (Fed. R. Evid. 403).</p>
<p>41. The Isaacson Survey did not allow respondents to view the competitor ads that any real world consumer would encounter.</p>	<p>Vu Decl. II, ECF No. 61, ¶ 4, Ex. C, at 7; ¶ 5, Ex. D, at Exs. 2 and 3 (Isaacson stimuli).</p> <p>Deleted by LegalZoom, thus undisputed.</p>
<p>42. The Isaacson Survey also did not provide respondents with access</p>	<p>Moving Party’s evidence: Order, ECF No. 44, at 7; Declaration of Hong-An Vu in Support of</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
to the information and disclosures on Rocket lawyer.com regarding state fees, which every consumer must view before making a purchasing decision, contrary to this Court’s instruction.	Rocket Lawyer’s Opposition to Motion for Summary Judgment, (“Vu Decl. I”), ECF No. 38, ¶ 3(d)-(j), Exs. 5-11; Vu Decl. II, ECF No. 61, ¶ 4, Ex. C, at 6; ¶ 5, Ex. D, at Exs. 2 and 3 (Isaacson stimuli). Disputed. There is no typical consumer journey from which to draw the conclusion that “every consumer must view before making a purchasing decision.” There is no typical path that consumers follow, and there is no evidence that consumers follow a specific path other than what they choose based on their interests and the materials they view. Moreover, this Court did not provide any instruction as to whether market surveys should provide respondents access to the information and disclosures on Rocket lawyer.com. Isaacson Decl., ¶¶ 36-48; Wind Depo. 36:8-21. Objections: Misleading (Fed. R. Evid. 403).
43. The Isaacson Survey did not test respondents’ understanding. The Isaacson Survey was a reading test that did not test consumers’	Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 4, Ex. C, at 9-10; ¶ 5, Ex. D, at 19, ¶ 50 Disputed.

MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
<p>comprehension and perceptions of the advertisements because respondents had access to the advertisements at all times, thus rendering the survey an open book test where respondents could merely copy the advertisements in response to open ended questions.</p>	<p>The reading test format is consistent with how consumers encounter Rocket Lawyer’s ads and website pages in the marketplace. Consumers form opinions while these materials are in view, and can refer back to them again if they wish. Also, the reading test format is conservative from Rocket Lawyer’s point of view. If the Rocket Lawyer ads and websites are not misleading, then any attempt to reference these materials should provide responses that are not misled. The alternative format, a “memory test,” assumes that material that is not remembered is acceptable, no matter how deceptive. Also the reading test format has been accepted by courts and recommended for products similar to online legal services. Isaacson Decl., ¶¶ 69-78; <i>Novartis Consumer Health v. Johnson & Johnson-Merck Consumer Pharmaceuticals Co.</i>, (U.S.D.C., D. NJ) 129 F.Supp.2d 351 (2000). “... the Court finds that leaving the products for the respondents to examine rather than taking the products away replicates market conditions.” <i>Starter Corp, v. Converse, Inc.</i> 170 F.3d 286, 297 (2d Cir, 1999).</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
<p>44. The Isaacson Survey did not test LegalZoom’s allegations in the FAC. The Isaacson Survey stimuli entirely removed “free” from the control ad instead of testing “free” with additional disclosure of state fees.</p>	<p>Moving Party’s evidence: LegalZoom’s First Amended Complaint (“FAC”), ECF No. 14; Vu Decl. II, ECF No. 61, ¶ 4, Ex. C, at 18-19; ¶ 5, Ex. D at Ex. 3 (Isaacson control stimuli).</p> <p>Disputed.</p> <p>LegalZoom objects to how Rocket Lawyer’s uses the word “free” in its ads. The best way to test the effect associated with the word “free” is to remove “free” from the control cell stimulus. Testing the word “free” with additional disclosures would confound the effect of those disclosures with the effect of the word “free.”</p> <p>FAC, ECF No. 14, pages 1, 5, 6, 8, 9, 10, 11, 12, and 13.</p>
<p>45. Further disclosure of state fees in Rocket Lawyer’s Free Business Formation Ads would not affect consumer understanding or decision to provide Rocket Lawyer with business, and would have no effect on LegalZoom.</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 25, 37, Ex. C, at 12.</p> <p>Disputed.</p> <p>The Wind Survey does not provide measures sufficiently reliable for this assertion. Differences between test and control stimuli in the Wind Survey are masked by the survey’s long and complex stimuli, improper qualification methods, flawed questions, and other problems. Q.3 in the Isaacson survey</p>

MOVING PARTY'S ALLEGED UNDISPUTED FACT	RESPONSE
	<p>shows that 86.2% of respondents who saw the ad run by Rocket Lawyer believe it communicates or implies that you can incorporate a business without paying any fees, compared with 67.3% of those who saw a modified version of the ads. Isaacson Decl., ¶¶ 8, 36-48, 59.</p>
<p>46. In Rocket Lawyer's survey, there is no significant difference between the test and control groups with respect to those who: (i) chose Rocket Lawyer after seeing just the search engine advertisements, (ii) recalled the free offer, (iii) perceived the free offer as valuable (iv) exhibited or demonstrated some confusion as to the free offer, and (v) accepted the free trial or bought other products from Rocket Lawyer.</p>	<p>Moving Party's evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 42-43, 59-60.</p> <p>Disputed.</p> <p>Differences between test and control stimuli are masked by the Wind Survey's long and complex stimuli, extraneous differences between the test and control ads, and by the inordinately minor differences between test and control website pages. Also, the Wind Survey, which tested 15 test cell respondents against 13 control respondents, did not have sufficient sample size to test the difference between test and control groups.</p> <p>Wind Report, Figure 1, page 42, 59; Isaacson Decl., ¶¶ 8, 36-48, 64-67.</p>
<p>47. There were slightly more confused respondents who would have given Rocket Lawyer business</p>	<p>Moving Party's evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 36; 42-43, 59-60.</p> <p>Disputed.</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
in the test groups that viewed the ads as LegalZoom demands.	The Wind Survey did not test the ads in a manner consistent with the demands made in LegalZoom’s First Amended Complaint. FAC, ECF No. 14, ¶¶ 13, 14; Isaacson Decl., ¶¶ 58-63, 23-32.

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
48. In the control groups—those who viewed Rocket Lawyer’s ads as they were published—less than 5% of respondents exhibited some confusion about Rocket Lawyer’s services.	Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 42-43, 59-60. Disputed. If this item refers to Level 4 of the decision tree in the Wind Report, Professor Wind testified that 60% of respondents in the test group, and 80% of respondents in the control group, exhibited some degree of confusion. If this item refers to Level 5 of the decision tree, it is inappropriate to assume that only respondents in Level 5 who accepted the free trial offer or bought products from Rocket Lawyer could be confused, when in fact respondents could be confused at prior levels of the decision tree. The decision tree in the Wind Report has no basis in past precedent and does not measure confusion or whether any type of deceptive message is communicated, as would be appropriate for a false advertising survey. Wind Report, p. 42, 59; Wind Depo., 104:18-105:4; Isaacson Decl., ¶¶ 8-10, 63; <i>McCarthy on Trademarks and Unfair Competition</i> , 32:192.
49. The Wind Survey demonstrates that after reviewing	Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 37 (incorporation

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
<p>Rocket Lawyer’s advertisements and websites, most consumers continue to search for other online legal services providers.</p>	<p>service), 54 (other legal services).</p> <p>Disputed.</p> <p>The Wind Survey shows that less than half of consumers continue to search for other online legal services providers. Dr. Wind confirmed this finding in deposition testimony. Wind Report, Table 12, p. 37; Wind Depo., 158:8-12.</p>
<p>50. There is no significant difference between the test and control groups with respect to this decision.</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 37 (incorporation service)</p> <p>Disputed.</p> <p>Differences between test and control are masked by the survey’s long and complex stimuli, and by the inordinately minor differences between test and control materials. Also, the Wind Survey, which tested 15 test cell respondents against 13 control cell respondents, did not have sufficient sample size to test the difference between test and control groups.</p> <p>Isaacson Decl., ¶ 8, 36-48, 64-67.</p>
<p>51. Only 5.5% of all respondents</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF</p>

MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
<p>1 stated that they were not going to</p> <p>2 buy online legal services at all—</p> <p>3 meaning that 94.5% of all</p> <p>4 respondents were open to using</p> <p>5 online legal services after their</p> <p>6 experience with Rocket lawyer.com</p>	<p>No. 61, ¶ 2, Ex. A, at 37 (incorporation service), 54 (other legal services).</p> <p>Disputed.</p> <p>This conclusion is not provided by the text on pages 37 or 54 of Ex A (the Wind Report). Q.14a in the Wind Survey asks what the respondent is “likely to do” after having seen the Rocket Lawyer ad and website pages. One of the options was “decide not to buy an online legal service.” No response option referenced “using online legal services.” Also, respondents could only choose one response to this question, so other respondents may have wanted to select “decide not to buy an online legal service” but did not do so because they could only select a single option.</p> <p>Wind Report, p. 37, 54, and Exh. G, p. 11.</p>
<p>52. Rocket Lawyer utilizes a</p> <p>“freemium” business model and has</p> <p>offered a free trial of its</p> <p>subscription plans since inception.</p>	<p>Hollerbach Decl. I, ECF No. 37-3, ¶ 4.</p> <p>Deleted by LegalZoom, thus undisputed.</p>
<p>53. Over 90% of Rocket</p> <p>Lawyer’s registered users have not</p> <p>paid Rocket Lawyer (or a</p> <p>government entity) for use of its</p>	<p>Hollerbach Decl. I, ECF No. 37-3, ¶ 8.</p> <p>Deleted by LegalZoom, thus undisputed.</p>

MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
services.	
<p>54. Most of Rocket Lawyer’s free trial advertisements are “intrawebsite,” meaning that the free trial is advertised and offered primarily on Rocket lawyer.com.</p>	<p>Moving Party’s evidence: Hollerbach Decl. I, ECF No. 37-3, ¶ 13-17, Ex. C; Vu Decl. II ECF No. 61, ¶ 12, Ex. K; Hollerbach Decl. II, ECF No. 60-1, ¶ 4; FAC, ECF No. 14, Ex. C and D.</p> <p>Disputed.</p> <p>Rocket Lawyer produced tens of thousands of ads, none of which were on its website, relating to its free trial. Winograd Decl., ¶ 13.</p> <p>Objection: Relevance (Fed. R. Evid. 402).</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
55. Between November 2008 and September 2013, Rocket Lawyer published a total of [REDACTED] free trial advertisements on LegalZoom keywords, but Rocket Lawyer did [REDACTED] conversion on these advertisements.	Vu Decl. II, ECF No. 61, ¶ 12, Ex. K; Hollerbach Decl. II, ECF No. 60-1, ¶ 4. Deleted by LegalZoom, thus undisputed.
56. A typical user would encounter a Rocket Lawyer Free Trial Offer by first searching for a document on Google or Bing.	Hollerbach Decl. I, ECF No. 37-3, ¶ 13. Deleted by LegalZoom, thus undisputed.
57. After clicking on a link in the ad, the user would be taken to RocketLawyer.com and responding to an interactive interview that enabled the user to complete the searched-for document.	Hollerbach Decl. I, ECF No. 37-3, ¶ 14. Deleted by LegalZoom, thus undisputed.
58. At the end of the interview, the user could enroll in a free trial, a monthly plan, or an annual plan.	Hollerbach Decl. I, ECF No. 37-3, ¶ 15. Deleted by LegalZoom, thus undisputed.
59. If the user elected to accept the Free Trial Offer, the user would then be taken to a page presenting the terms of the free trial and	Hollerbach Decl. I, ECF No. 37-3, ¶¶ 16-18; Vu Decl. I, ECF No. 38, ¶ 3. Deleted by LegalZoom, thus undisputed.

MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
<p>various other terms of use, where he or she could enter credit card information and accept the terms — or not.</p>	
<p>60. On the right-hand side of the credit card form, Rocket Lawyer provided information relating to the free trial, including cost, length of the free trial period, and the need to cancel:</p> <p>Your free trial entitles you to the Pro [or Basic] Legal plan for one-week. After your free trial ends, a Rocket Lawyer Monthly plan with unlimited free documents, e-signatures, sharing and other premium features will start and this credit card will be charged \$39.95 [or \$19.95 for Basic Legal Plan]/month. . . If you decide that you don’t want to keep your membership, simply downgrade the service to a free membership to discontinue the Legal Plan and \$39.95 [or \$19.95 for basic Legal</p>	<p>Order, ECF No. 44, at 2; Vu Decl. I, ECF No. 38, ¶¶ 3(d)-(e), Exs. 5, 6.</p> <p>Deleted by LegalZoom, thus <i>undisputed</i>.</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
Plan]/month billing. The legal documents created and saved during your trial are free, which means they are yours to keep, and you can access them at any time.	
61. The toll free phone number to cancel a free trial was, and still is, at the top of every registration page.	Order, ECF No. 44, at 2; Vu Decl. I, ECF No. 38, ¶¶ 3(d)-(e), Exs. 5, 6. Deleted by LegalZoom, thus undisputed.
62. In addition, to ensure that customers have answers to questions about the free trial, Rocket Lawyer has an FAQ section which details the different ways a customer can cancel any plan.	Order, ECF No. 44, at 2; Vu Decl. I, ECF No. 38, ¶¶ 3(d)-(e) at Exs. 5, 6. Deleted by LegalZoom, thus undisputed.
63. LegalZoom only challenges the format of Rocket Lawyer’s disclosures and not their substance.	Moving Party’s evidence: FAC, ECF No. 14, at 18-40. Disputed. LegalZoom challenges both the format and the substance of the disclosures. FAC, ECF No. 14, ¶¶ 13, 14.
64. Rocket Lawyer conducted a	Moving Party’s evidence: Vu Decl. II, ECF

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
survey where one group received the disclosures as Rocket Lawyer has disclosed them (control group) and a second group received the disclosures as LegalZoom displays its own free trial information (test group), to determine if either the test or control group better understood the nature of a free trial.	No. 61, ¶ 2, Ex. A, at 7, 13-15; ¶ 14, Ex. M. Disputed. The test and control stimuli each have 14 images, which only differ in that text near the top of Image 13 (“\$19.95 per month after trial ends. No obligation.”) is replaced with a single sentence in small font near the bottom of the image (“After the 7-day trial period, benefits of the Monthly Legal Plan will continue automatically for \$19.95 per month.”), and a block of text on Image 14 is put in color. LegalZoom’s disclosures are displayed more prominently, and are shown in conjunction with the offer rather than buried deep in a series of website pages. Also, the vast majority of the other images shown to respondents relating to the free trial offer were unrelated to the free trial offer and did not provide any disclosures. Wind Report, Ex. E, Survey Stimuli; Wind Depo., 79:1-10; FAC, ECF No. 14, ¶ 14, Ex. D.
65. The test stimuli mirrored LegalZoom’s formatting for its free trial offer and disclosures on LegalZoom.com.	Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 13-15; ¶ 3, Ex. B, App. E (Wind Survey stimuli); ¶ 14, Ex. M. Disputed.

MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
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	<p>The test and control stimuli each have 14 images, which only differ in that text near the top of Image 13 (“\$19.95 per months after trail ends. No obligation.”) is replaced with a single sentence in small font near the bottom of the image (“After the 7-day trial period, benefits of the Monthly Legal Plan will continue automatically for \$19.95 per month.”), and a block of text on Image 14 is put in color. LegalZoom’s disclosures are displayed more prominently, and are shown in conjunction with the offer rather than buried deep in a series of website pages. Also, the vast majority of the other images shown to respondents relating to the free trial offer were unrelated to the free trial offer and did not provide any disclosures. Wind Report, Ex. E, Survey Simuli; FAC, ¶ 14, Ex. D.</p>
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<p>66. The survey results demonstrate that there is no significant difference in consumer understanding of the free trial between the test and control groups.</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 50-51.</p> <p>Disputed.</p> <p>The survey did not have sufficient sample size to test the difference between test and control groups, given the analysis methods used in the</p>
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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	survey. The differences between test and control are masked by the long and complex stimuli used in the survey, and by the inordinately minor differences between test and control materials. Isaacson Decl., ¶¶ 64-67.
67. 66.3% of the control respondents knew that the free trial had a time limit compared to 67.3% in the test group.	Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 50. Disputed. Q.12a in the Wind Survey asked, “Do you recall if the free trial offer has a time limit?” The question is vague, and does not specify whether it asks (a) if respondents remembered whether or not the offer has a time limit, or (b) if respondents thought the offer had a time limit. Also, differences between test and control are masked by the survey’s long and complex stimuli, and by the inordinately minor differences between test and control materials. Wind Report, p. 50 and Exh. G, p. 11; Isaacson Decl., ¶¶ 8, 36-48.
68. 52 of 70 test respondents understood that they would be charged after the free trial period ended compared to 54 of 67 control	Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 51. Disputed.

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<p>MOVING PARTY’S ALLEGED UNDISPUTED FACT</p>	<p>RESPONSE</p>
<p>respondents.</p>	<p>These percentages are based on verbatim responses to Questions 12b and 12c. Professor Wind did not personally develop the codes, provide instructions for the coder, conduct the coding, or review the coding of the comments from these questions, and has not indicated how each verbatim comment was coded, so the calculations behind these numbers cannot be confirmed. Also, differences between test and control are masked by the survey’s long and complex stimuli, and by the inordinately minor differences between test and control materials. Isaacson Decl., ¶¶ 8, 36-48; Wind Depo., 52:8-25, 53:1-23, 117:3-8.</p>
<p>69. There was also no significant difference in respondents’ decision to do business with Rocket Lawyer between the test and control groups (compare 41.7% test with 38.3% control).</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A, at 54. Disputed. Differences between test and control are masked by the survey’s long and complex stimuli, and by the inordinately minor differences between test and control materials. The Wind Survey does not provide a reliable test of respondent decision-making. Isaacson Decl., ¶¶ 8, 36-48.</p>
<p>70. Revising Rocket Lawyer’s</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
free trial disclosure format, even to directly conform with LegalZoom’s own practices, would not affect consumer understanding or decision making.	No. 61, ¶ 2, Ex. A, at 63-64. Disputed. Differences between test and control are masked by the survey’s long and complex stimuli, and by the inordinately minor differences between test and control stimuli. The Wind Survey was not designed in a way that would test the claims asserted by LegalZoom in this matter. Isaacson Decl., ¶¶ 8, 36-48.
71. LegalZoom has no evidence sufficient to dispute the Wind Survey results and conclusions because it did not test the Free Trial Ads in the Isaacson Survey.	Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 4, Ex. C, at 19; ¶ 5, Ex. D Disputed. LegalZoom has evidence more than sufficient to dispute the Wind Survey. The Isaacson survey tested Rocket Lawyer website pages that offer a free trial. Of respondents who saw the website pages as displayed by Rocket Lawyer online, only 37.8% responded to Q.7 that a member has to pay for a legal plan before they can get free help from a local attorney, compared with 56.7% of those who saw modified materials with additional disclaimers. The Isaacson survey also tested the free

MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	<p>incorporation ad run by Rocket Lawyer. In response to Q.3, 86.2% of respondents who saw the free incorporation ad run by Rocket Lawyer answered that it does communicate or imply that you can incorporate a business without paying any fees, compared with 67.3% of those who saw materials modified to add additional disclaimers. Also, as described in the Isaacson Declaration, the Wind Survey does not provide reliable measures of false advertising. Isaacson Decl., ¶¶ 8, 58-63.</p>
<p>72. Rocket Lawyer’s subscription plans include access to Rocket Lawyer’s On Call attorneys who can provide legal advice or live consultations, answer written questions, and/or review legal documents.</p>	<p>Order, ECF No. 44, at 3; Vu Decl. I, ECF No. 38, ¶ 3(k)-(l), Exs. 12-13; Hollerbach Decl. I, ECF No. 37-3, ¶ 22.</p> <p>Deleted by LegalZoom, thus undisputed.</p>
<p>73. LegalZoom alleges that consumers have been misled because Rocket Lawyer does not adequately disclose that not all members have access to these On Call services.</p>	<p>Moving Party’s evidence: FAC, ECF 14, ¶ 20-21, 28-31.</p> <p>Disputed.</p> <p>LegalZoom alleges that consumers have been misled by how and where Rocket Lawyer uses the term “free” in the Rocket Lawyer advertisements.</p>

MOVING PARTY'S ALLEGED UNDISPUTED FACT	RESPONSE
	FAC, ¶ 14.
<p>74. Between October 2008 and November 2012, “legal review,” having an attorney review a document drafted on Rocket Lawyer.com, was provided only to annual plan members immediately and to monthly plan members after 90 days.</p>	<p>Moving Party’s evidence: <i>See</i> Vu Decl. I, ECF No. 38, ¶¶ 3(k)-(l), Exs. 12-13; Hollerbach Decl. I, ECF No. 37-3, ¶ 15, Ex. C. and ¶ 22.</p> <p>Disputed.</p> <p>Pursuant to Rocket Lawyer’s own On Call Terms of Service, 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.</p> <p>Nguyen Decl., ¶ 8, Ex. F (Rocket Lawyer’s On Call Terms of Service, dated July 2012, as printed on November 27, 2012).</p>
<p>75. Rocket Lawyer now allows all members access to Legal Review.</p>	<p>Order, ECF 44, at 3; Vu Decl. I, ECF No. 38, ¶¶ 3(k)-(l), Exs. 12 and 13.</p> <p>Deleted by LegalZoom, thus undisputed.</p>
<p>76. By contrast, as disclosed in Rocket Lawyer’s opposition to LegalZoom’s summary judgment motion, free help from local</p>	<p>Moving Party’s evidence: Hollerbach Decl. I, ECF No. 37-3, ¶ 23.</p> <p>Disputed.</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
attorneys is and has been available to all registered users, even free trial members, in the form of consultations with Rocket Lawyer’s On Call attorneys.	Pursuant to Rocket Lawyer’s own On Call Terms of Service, 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. Declaration of Mary Ann T. Nguyen (“Nguyen Decl.”) in Support of LegalZoom’s Motion for Summary Judgment, ECF No. 31, ¶ 8, Ex. F (Rocket Lawyer’s On Call Terms of Service, dated July 2012, as printed on November 27, 2012).
77. Rocket Lawyer does not advertise “free help from local attorneys” or “free legal review” on Google or Bing.	Vu Decl. II, ECF No. 61, ¶¶ 8-11, Exs. G-J; Hollerbach Decl. II, ECF No. 60-1, ¶ 5. Deleted by LegalZoom, thus undisputed.
78. Instead, consumers typically encounter information relating to Free Legal Review at the end of the consumer journey that results from searching for and completing a form.	Moving Party’s evidence: Hollerbach Decl. I, ECF No. 37-3, ¶ 15, Ex. C. Disputed. There is no typical path, or path that consumers follow and there is no evidence that consumers follow a specific path other than what they

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	choose based on their interests and the materials they view. Consumer movements on the internet do not necessarily follow a predictable path and movement about a website is not constrained in any fashion. To avoid having a misleading advertisement, Rocket Lawyer should provide information about “free legal review” in the context of the advertisement and not “at the end of the consumer journey.” Isaacson Decl., bbv36-48; Wind Depo., 36:8-21.

MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
<p>79. On the same screen as the Free Trial Offer, Rocket Lawyer disclosed that free document review was available immediately in the annual plan, after 90 days for the monthly plan, and not included in the free trial.</p>	<p>Hollerbach Decl. I, ECF No. 37-3, ¶ 15, Ex. C.</p> <p>Deleted by LegalZoom, thus undisputed.</p>
<p>80. No additional disclosures were provided for “free help from local attorneys” because all Rocket Lawyer registered users, whether on a free trial or a paid legal plan, can contact an attorney for a free consultation at any time.</p>	<p>Moving Party’s evidence: Hollerbach Decl. I, ECF No. 37-3, ¶ 22-23.</p> <p>Disputed.</p> <p>Pursuant to Rocket Lawyer’s own On Call Terms of Service, 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.</p> <p>Declaration of Mary Ann T. Nguyen (“Nguyen Decl.”) in Support of LegalZoom’s Motion for Summary Judgment, ECF No. 31, ¶ 8, Ex. F (Rocket Lawyer’s On Call Terms of Service, dated July 2012, as printed on November 27, 2012).</p>
<p>81. Despite knowledge that free</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
help from local attorneys is available to all registered users, the Isaacson Survey tested “limitations” on Free Help Ads instead of Free Legal Review.	No. 61, ¶ 4, Ex. C, at 17-19; ¶ 5, Ex. D at 20, 28, at Exs. 2 and 3 (Isaacson Stimuli). Disputed. The Isaacson survey tested consumer understanding of Rocket Lawyer website pages that offer “Free help from local attorneys.” Winograd Decl., ¶ 11, Ex. J (Isaacson Report, ¶¶ 3, 4.).
82. LegalZoom designed the Isaacson Survey stimuli to test whether consumers understood when they could get “free help from a local attorney.”	Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 4, Ex. C, at 17-19; ¶ 5, Ex. D at 20, 28, at Exs. 2 and 3 (Isaacson Stimuli). Disputed. Dr. Isaacson, not LegalZoom, designed the Isaacson survey. Among other topics, the Isaacson survey tested consumer understanding of who could get “free help from a local attorney.” Winograd Decl., ¶ 11, Ex. J (Isaacson Report, ¶ 27.).
83. But the limitations that LegalZoom tested do not apply to help from local attorneys, and thus, LegalZoom’s survey does not test Rocket Lawyer’s actual practices.	Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 4, Ex. C, at 18-19. Disputed. Dr. Isaacson, not LegalZoom, conducted the

MOVING PARTY'S ALLEGED UNDISPUTED FACT	RESPONSE
	<p>testing. The terms and conditions for the offers tested in the Isaacson survey were taken directly from Rocket Lawyer's Terms of Service page.</p> <p>Winograd Decl., ¶ 11, Ex. J (Isaacson Report, ¶ 27.).</p>
<p>84. In addition, LegalZoom's survey reveals that a high majority of both test and control respondents understood that they were required to be on some kind of Rocket Lawyer plan to receive free help from local attorneys.</p>	<p>Moving Party's evidence: Vu Decl. II, ECF No. 61, ¶ 4, Ex. C, at 24-25; ¶ 5, Ex. D, at 28.</p> <p>Disputed.</p> <p>The survey was designed, conducted, analyzed, and reported by Dr. Isaacson, not LegalZoom. The Isaacson report shows that only 37.8% of respondents believe that a member has to pay for a Basic or Pro Legal Plan before they can get free help from a local attorney. Winograd Decl., ¶ 11, Ex. J (Isaacson Report, ¶ 27.).</p>
<p>85. Furthermore, LegalZoom chose not to test Free Legal Review Ads in the Isaacson Survey, and therefore, has no evidence to suggest that Rocket Lawyer's disclosures are inadequate.</p>	<p>Moving Party's evidence: Vu Decl. II, ECF No. 61, ¶ 4, Ex. C, at 30-31; ¶ 5, Ex. D at 28, at Exs. 2 and 3 (Isaacson Stimuli).</p> <p>Disputed.</p> <p>The Isaacson survey tested consumer understanding of offers for free help from local attorneys as presented on the Rocket Lawyer website. The terms and conditions for these</p>

MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
	offers were taken directly from Rocket Lawyer’s Terms of Service page. Winograd Decl., ¶ 11, Ex. J (Isaacson Report, ¶ 32.).
86. LegalZoom complains of only one comparative ad—”Zoom costs \$99, We’re Free.”	<p>Moving Party’s evidence: Nguyen Decl. I, ¶ 4, Ex. B, ECF No. 28-2.</p> <p>Disputed.</p> <p>LegalZoom uses the comparative ad as representative. Rocket Lawyer has referred to its services as “business formation ads or “free trial” or “free help” ads. FAC, ECF No. 14, ¶ 13.</p>
87. However, LegalZoom does charge \$99 plus state fees, whereas Rocket Lawyer’s service is \$0 plus state fees.	<p>Vu Decl. I, ECF No. 38, ¶ 7, Ex. 22 and 23; Order at 8 (“it is true that a customer can save the \$99 charged by [LegalZoom] for its processing and filing fee by enrolling in the free trial offered by [Rocket Lawyer]”).</p> <p>Deleted by LegalZoom, thus undisputed.</p>
88. LegalZoom also alleged that Rocket Lawyer advertised that it offered a Basic and Pro Legal plan, but that only a free trial of the Basic Plan was available to users.	<p>FAC, ECF No. 14, at ¶ 14.</p> <p>Deleted by LegalZoom, thus undisputed.</p>

MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
<p>89. Rocket Lawyer offered free trials of its Basic and Pro Legal Plans.</p>	<p>Vu Decl. I, ECF No. 38, ¶¶ 3(d)-(e), Exs. 4-5.</p> <p>Deleted by LegalZoom, thus <i>undisputed</i>.</p>
<p>90. LegalZoom alleges that Rocket Lawyer’s registration of two domain names— www.legalzoomer.com and www.legalzoomgadget.com—but does not allege a cause of action based on registration of these names.</p>	<p>See FAC, ECF No. 14, at 7-13.</p> <p>Deleted by LegalZoom, thus <i>undisputed</i>.</p>
<p>91. Rocket Lawyer has not used these domain names as they have been and continue to be error webpages with no content.</p>	<p>Answer to First Amended Complaint and Counterclaim, ECF No. 17, Ex. 6.</p> <p>Deleted by LegalZoom, thus <i>undisputed</i>.</p>
<p>92. The discovery cut-off date is August 12, 2014.</p>	<p>Order Granting Ex Parte Application to Continue Trial and Related Dates Set in the Court’s January 22, 2014 Order for Good Cause, ECF No. 56, at 3.</p> <p>Deleted by LegalZoom, thus <i>undisputed</i>.</p>
<p>93. As of the date of Rocket</p>	<p>Vu Decl. II, ECF No. 61, ¶ 17.</p>

MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p> <p>Lawyer’s motion for summary judgment, Rocket Lawyer has produced over 22,000 documents in response to LegalZoom’s discovery requests, including at least 10 spreadsheets of generated advertisement and conversion data.</p>	<p>Deleted by LegalZoom, thus <i>undisputed</i>.</p>
<p>94. LegalZoom should have tested consumer reaction to ads that said “Free Incorporation — Pay only state fees” or similar language instead of removing the word “free” entirely.</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 4, Ex. C, at 8-9.</p> <p>Disputed.</p> <p>The survey was conducted by Dr. Isaacson, not LegalZoom. LegalZoom objects to Rocket Lawyer’s use of the word “free.” The best way to measure the amount of deception, if any, associated with the “free” is to remove this word from the control cell stimulus. By retaining this word in both test and control, the Wind Survey is unable to determine the effect associated with Rocket Lawyer’s used of the “free.” Winograd Decl., ¶ 11, Ex. J (Isaacson Report, ¶ 27.).</p>
<p>95. By removing “free” entirely from the control stimuli, LegalZoom made it far less likely that a consumer would actually type</p>	<p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 4, Ex. C, at 9.</p> <p>Disputed.</p>

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MOVING PARTY’S ALLEGED UNDISPUTED FACT	RESPONSE
<p>“free” when answering an open ended question about what they saw from the ad, especially where the ad was available at all times.</p>	<p>The survey was conducted by Dr. Isaacson, not LegalZoom. LegalZoom objects to Rocket Lawyer’s use of the word “free.” The best way to measure the amount of deception, if any, associated with the “free” is to remove this word from the control cell stimulus. By retaining this word in both test and control, the Wind Survey is unable to determine the effect associated with Rocket Lawyer’s used of the “free.” Isaacson Decl., ¶¶ 58-63.</p>

LEGALZOOM’S ALLEGATIONS

LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
<p>96. The gravamen of LegalZoom’s suit is that Rocket Lawyer’s advertisements surrounding its business formation and other products are literally false <i>and</i> misleading because the ads boast that consumers can incorporate for “free” and receive other services allegedly for “free.”</p>	<p>LegalZoom’s Evidence (“LZ Evidence”): FAC, ECF No. 14, ¶ 13. Disputed to the extent that LegalZoom implies that the “gravamen” of its claims is the use of “free” generally instead of “free” without sufficient disclosure. Moving Party’s Evidence: <i>See</i></p>

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	<p><i>generally</i>, Order, ECF No. 44.</p> <p>Objections to LZ Evidence: Misleading (Fed. R. Evid. 403); Irrelevant (Fed. R. Evid. 401, 402) to the extent that the Court has already determined this fact. <i>Galen v. Mobil Oil Corp.</i>, 922 F. Supp. 318, 320 (C.D. Cal. 1996) (“Previous findings of fact and conclusions of law in this case govern the evaluation” of remaining claims).</p>
<p>97. LegalZoom alleges that Rocket Lawyer’s advertisements for “free” incorporation and organization are false and misleading because consumers are ultimately required to pay a state filing fee and/or fees to Rocket Lawyer itself in order to avail themselves of the purportedly “free” services.</p>	<p>LZ Evidence: FAC, ECF No. 14, ¶¶ 13, 14.</p> <p>Disputed to the extent that LegalZoom implies that its claims concern the use of “free” generally instead of “free” without sufficient disclosure.</p> <p>Moving Party’s Evidence: <i>See generally</i> Order, ECF NO. 44.</p> <p>Objections to LZ Evidence: Misleading (Fed. R. Evid. 403); Irrelevant (Fed. R. Evid. 401, 402) to the extent that the Court has already determined this fact. <i>Galen v. Mobil Oil Corp.</i>, 922 F. Supp. 318, 320 (C.D. Cal. 1996) (“Previous</p>

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
legal review.”	<p>Disputed to the extent that this implies that Rocket Lawyer does not actually provide “free help from local attorneys” and “free legal review.”</p> <p>Moving Party’s Evidence: Hollerbach Decl. I, ECF No. 37-3, ¶ 15, Ex. C.</p> <p>Objections to LZ Evidence: Best Evidence (Fed. R. Evid. 1001, 1002); Misleading (Fed. R. Evid. 403)</p>
100. The paid membership requirement for access to the purported “free help from local attorneys” and “free legal review” is not disclosed in close proximity to the ads on Rocket Lawyer’s website.	<p>LZ Evidence: FAC, ECF No. 14, ¶¶ 13, 14, Ex. C; Nguyen Decl., ¶¶ 7, 8, Exs. E, F (Screen grabs of Rocket Lawyer’s Advertisements; Rocket Lawyer’s On Call Terms of Service, dated July 2012, as printed on November 27, 2012).</p> <p>Disputed. Rocket Lawyer does provide free help from local attorneys in the form of free consultations and free legal review as disclosed immediately before consumers make a purchasing decision.</p> <p>Moving Party’s Evidence: Hollerbach Decl. I, ECF No. 37-3, Ex. C</p> <p>Objections to LZ Evidence: Legal</p>

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	conclusion; Best Evidence (Fed. R. Evid. 1001, 1002); Misleading (Fed. R. Evid. 403)
101. Pursuant to Rocket Lawyer’s own On Call Terms of Service, 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.	<p>LZ Evidence: FAC, ECF No. 14, ¶ 13, 14, Ex. C; Nguyen Decl., ¶ 8, Ex. F (Rocket Lawyer’s On Call Terms of Service, dated July 2012, as printed on November 27, 2012); Winograd Decl., ¶ 10, Ex. I (BBB 0000021, Better Business Bureau (BBB) complaint activity report regarding Rocket Lawyer’s “free advice” advertisement as “false advertising” because “no where [sic] on the [Rocket Lawyer] site is an e-mail address requested or registration requested.”)</p> <p>Disputed. Rocket Lawyer does provide free help from local attorneys in the form of free consultations and free legal review as disclosed immediately before consumers make a purchasing decision.</p> <p>Moving Party’s Evidence: Hollerbach Decl. I, ECF No. 37-3, ¶¶ 22-23, and ¶</p>

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	15, Ex. C. Objections to LZ Evidence: Legal Conclusion (Fed. R. Civ. Proc. 56(c)(4); L.R. 7-7); Best Evidence (Fed. R. Evid. 1001, 1002); Misleading (Fed. R. Evid. 403)
102. FAC alleges that Rocket Lawyer’s advertisements violate directives of the Federal Trade Commission governing the use of the word “free” and the California unfair competition statutes and, thus, constitute unfair competition.	LZ Evidence: FAC, ECF No. 14, ¶¶ 15, 16. Undisputed to the extent that LegalZoom has merely alleged that Rocket Lawyer has violated the Federal Trade Commissions’ guidelines. Disputed to the extent that LegalZoom implies that Rocket Lawyer has actually violated the FTC guidelines on use of free. Disputed to the extent that LegalZoom implies that it has evidence to support this allegation. Objections to LZ Evidence: Legal Conclusion (Fed. R. Civ. Proc. 56(c)(4); L.R. 7-7); Misleading (Fed. R. Evid. 403); Irrelevant (Fed. R. Evid. 401, 402)

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
<p>103. FAC alleges that Rocket Lawyer’s use of advertising containing the word “free,” has not only misled the public to LegalZoom’s detriment but has allowed Rocket Lawyer to compete unfairly and has caused LegalZoom other harm, including the potential decline in sales and market share, loss of goodwill and additional losses and damages.</p>	<p>LZ Evidence: FAC, ECF No. 14, ¶¶ 17, 25.</p> <p>Undisputed to the extent that LegalZoom has merely alleged that Rocket Lawyer has misled the public and harmed LegalZoom. Disputed to the extent that LegalZoom implies that Rocket Lawyer has actually misled the public and harmed LegalZoom.</p> <p>Disputed to the extent that LegalZoom implies that it has evidence to support this allegation.</p> <p>Objections to LZ Evidence: Legal Conclusion (Fed. R. Civ. Proc. 56(c)(4); L.R. 7-7); Misleading (Fed. R. Evid. 403); Irrelevant (Fed. R. Evid. 401, 402)</p>
<p>104. The FAC seeks injunctive relief.</p>	<p>LZ Evidence: FAC, ECF No. 14, ¶¶ 25, 33, 40.</p> <p>Disputed to the extent that LegalZoom implies that it does not also seek damages.</p> <p>Moving Party’s Evidence: FAC, ECF No, 14, Prayer.</p>

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	Objections to LZ Evidence: Misleading (Fed. R. Evid. 403)
105. Rocket Lawyer largely ignores these allegations, and instead focuses the Court’s attention on whether consumers who are led through a “typical consumer journey from the advertisement to the point of purchase” are deceived into buying Rocket Lawyer’s products based on a belief that no fees are associated with incorporating or starting a free trial.	LZ Evidence: Rocket Lawyer’s Motion for Summary Judgment and/or Adjudication (“RL’s MSJ”), ECF No. 60, 1:24-2:7; Vu Decl. II, ¶ 3, Ex. B, Apps. A (declaration of David Baga attesting to consumer journey reflected in Wind’s stimuli) and E (stimuli used in Wind’s survey). Disputed. Rocket Lawyer tested consumers’ perceptions and purchasing decisions of the advertisements at issue in context as directed by the Court. Moving Party’s Evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A (Wind report); ¶ 3, Ex. B (stimuli); Order, ECF No. 44 at 9. Objections to LZ Evidence: Misleading (Fed. R. Evid. 403); Irrelevant (Fed. R. Evid. 401, 402) to the extent that the

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	Court has already determined the scope of the case. SJ Order; <i>Galen v. Mobil Oil Corp.</i> , 922 F. Supp. 318, 320 (C.D. Cal. 1996) (“Previous findings of fact and conclusions of law in this case govern the evaluation” of remaining claims).
106. LegalZoom’s complaint is focused squarely upon Rocket Lawyer’s use of the term “free” in the subject advertising.	LZ Evidence: FAC, ECF. No. 14, ¶¶ 13, 14. Disputed to the extent that LegalZoom implies that its claims concern the use of “free” generally instead of “free” without sufficient disclosure. Moving Party’s Evidence: <i>See generally, Order, ECF No. 44.</i> Objections to LZ Evidence: Misleading (Fed. R. Evid. 403); Irrelevant (Fed. R. Evid. 401, 402) to the extent that the Court has already determined this fact; <i>Galen v. Mobil Oil Corp.</i> , 922 F. Supp. 318, 320 (C.D. Cal. 1996) (“Previous findings of fact and conclusions of law in this case govern the evaluation” of

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	remaining claims).
107. LegalZoom has provided two expert opinions which describe the misleading and unfair impact of the word “free” in that advertising.	LZ Evidence: Winograd Decl., ¶¶ 11, 12, Exs. J, K. Undisputed to the extent that LegalZoom has submitted two expert reports. Disputed to the extent that these opinions are admissible to demonstrate the impact of the word “free.” Objections to LZ Evidence: Misleading (Fed. R. Evid. 403); Irrelevant (Fed. R. Evid. 401, 402); Inadmissible (Fed. R. Evid. 702).
108. Dr. Wind’s survey is based on a “control” advertisement which is the original Rocket Lawyer ad containing the phrase “Incorporate for free,” together with a “test” advertisement (the modified ad) which also contains the phrase “Incorporate for free.”	LZ Evidence: Wind Report, Ex. E, Survey Simuli. Disputed to the extent that LegalZoom ignores that the test stimuli includes “Pay only state fees.” Moving Party’s Evidence: Vu Decl. II, ECF No. 61, Ex. A, (Wind Report, Background); Ex. B (Stimuli) Objections to LZ Evidence: Misleading and Incomplete (Fed. R. Evid. 403); Best

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	Evidence (Fed. R. Evid. 1001, 1002).
109. Only by comparing the consumer responses to these separate ad stimuli does Dr. Wind purport to offer opinions that there is no significant difference in response to original Rocket Lawyer ad (the control ad) and the ad which was modified to supposedly address LegalZoom’s allegations (the test ad).	<p>LZ Evidence: Wind Report, Ex. E, Survey Simuli (The test and control stimuli each have 14 images, which only differ in that text near the top of Image 13 (“\$19.95 per moths after trail ends. No obligation.) is replaced with a single sentence in small font near the bottom of the image (“After the 7-day trial period, benefits of the Monthly Legal Plan will continue automatically for \$19.95 per month.”), and a block of text on Image 14 is put in color.); FAC, ECF No. 14, ¶ 14, Ex. D.</p> <p>Undisputed to the extent that the Wind Survey tested Rocket Lawyer’s free trial disclosures compared to LegalZoom’s free trial disclosures and was conducted under recognized principles of analyzing whether there are differences between the test and control groups.</p> <p>Moving Party’s Evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A (Wind Report).</p>

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<p style="text-align: center;">LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION</p>	<p style="text-align: center;">EVIDENTIARY SUPPORT</p>
	<p>Objections to LZ Evidence: Evidence cited does not support proposition; Misleading as used by LegalZoom (Fed. R. Evid. 403)</p>
<p>110. Dr. Wind purports to have designed a survey in which it took respondents through the “typical consumer journey” from the advertisement to the point of purchase,” but there is no basis for Dr. Wind to believe that the journey taken was “typical” in any sense, and Dr. Wind admitted as such in his deposition.</p>	<p>LZ Evidence: Wind deposition, p. 36, lines 8-21.</p> <p>Disputed.</p> <p>Moving Party’s Evidence: Hollerbach Decl. I, ECF No. 37-3, ¶¶ 13-16 (identifying typical consumer journey); Vu Decl. II, ECF No. 61, ¶ 3, Ex. B (Baga Declaration) (regarding Rocket Lawyer website and screenshots used in stimuli); Vu Decl. III, ¶ 14 (Wind Dep. at 39:23 – 40:13).</p> <p>Objections to LZ Evidence: Misleading (Fed. R. Evid. 403); Best Evidence (Fed. R. Evid. 1001, 1002).</p>
<p>111. There is no “typical” way a consumer can be said to move through the 13 or 14 web pages that Dr. Wind takes the survey respondents through before he</p>	<p>Wind Depo., p. 36, lines 8-21.</p> <p>Disputed.</p> <p>Moving Party’s Evidence: Hollerbach</p>

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
asks them questions.	Decl. I, ECF No. 37-3, ¶¶ 13-16 (identifying typical consumer journey); Vu Decl. II, ECF No. 61, ¶ 3, Ex. B (Baga Declaration) (regarding Rocket Lawyer website and screenshots used in stimuli); Vu Decl., III, ¶ 15, Ex. C (Wind Dep. at 39:23 – 40:13). Objections to LZ Evidence: Misleading (Fed. R. Evid. 403); Best Evidence (Fed. R. Evid. 1001, 1002).
112. LegalZoom’s claims are not related to the purchase process.	LZ Evidence: FAC, ECF No. 14, ¶ 13, 14. Undisputed.

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
113. The claims address consumer impressions formed at the point of reviewing an advertisement, before the point of purchase, not once the consumer has embarked on the purchase journey.	LZ Evidence: FAC, ECF No. 14, ¶ 13, 14. Undisputed. Objections to LZ Evidence: Only to the extent that LegalZoom implies ads need not be viewed in context. Order, ECF No. 44 at 9.
114. The majority of Wind’s complicated stimuli do not even involve information on the website that allegedly a consumer sees before making the consumer decision.	LZ Evidence: Wind Report, Ex. E, Survey Stimuli. Disputed. In order for a consumer to incorporate a business, consumers must complete all the webpages used in Professor Wind’s incorporation stimuli. As stated by Rocket Lawyer, for the free trial, most consumers search for a free form, and then proceed to complete the form, at the end which they receive the free trial offer and credit card page. Free trial respondents were shown a stimulus for the form that they were most likely to search for in the near future to replicate the context in which the free trial offer is made.

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	Moving party’s evidence: www.rocketlawyer.com; Hollerbach Decl. I, ECF No. 37-3, ¶¶ 13-16 and ¶ 15, Ex. C; Vu Decl. II, ECF No. 61, ¶ 3, Ex. B (Baga Declaration); <i>see also</i> Nguyen Decl., ECF No. 31, Exs C and D.
115. Of the 12 pages of stimuli shown to respondents, only 2 pertain to information that even relates to price and terms and conditions.	LZ Evidence: Wind Report, Ex. E, Survey Stimuli. Disputed. Disputed. In order for a consumer to incorporate a business, consumers must complete all the webpages used in Professor Wind’s incorporation stimuli. This includes at least <i>three locations</i> where state fees are disclosed. As stated by Rocket Lawyer, for the free trial, most consumers search for a free form, and then proceed to complete the form, at the end which they receive the free trial offer and credit card page. Free trial respondents were shown a stimulus for the form that they were most likely to search for in the near future to replicate the context in which the free trial offer is made.

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	<p>Moving party’s evidence: Hollerbach Decl. I, ECF No. 37-3, ¶¶ 13-16 and ¶ 15, Ex. C; Vu Decl. II, ECF No. 61, ¶ 3, Ex. B (Baga Declaration); <i>see also</i> Nguyen Decl., ECF No. 31, Exs C and D.</p>
<p>116. The majority of the pages of the website shown to respondents are pages that a consumer would only see after making a purchasing decision.</p>	<p>LZ Evidence: Wind Report, Ex. E, Survey Stimuli; Isaacson Decl., ¶ 43.</p> <p>Disputed. Consumers make a purchasing decision at the credit card page where they can chose to enroll in a free trial, a paying plan, or pay for incorporation or a specific form individually. This typically occurs at the end of a document interview for incorporation or a legal form.</p> <p>Moving party’s evidence: Hollerbach Decl. I, ECF No. 37-3, ¶ 15-16 and ¶ 15, Ex. C; Vu Decl., II, ¶ 3, Ex. B (Baga Declaration); <i>see also</i> Nguyen Decl., ECF No. 31, Exs C and D.</p>

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
117. Dr. Wind’s survey is based on a decision tree which includes five separate levels.	<p>LZ Evidence: Wind Report, p. 42, 59; Wind Depo., 97:8-10.</p> <p>Disputed. The survey is not based on the tree diagram; rather the tree diagram is based on the survey results. In addition, Professor Wind’s survey is based on the answers provided by the test and control groups in each experiment based on the stimuli presented to them. The Wind Report contains over two dozen tables comparing the responses of each group to find that there was no statistically significant difference between the two groups across many tests. The decision tree is only one of the tables used to support Professor Wind’s findings. Each level pertains to a factor necessary to be a member of the potentially harmed population. This is an important fact, but the majority of Professor Wind’s opinion is based on the many other tables and responses provided as part of his report.</p> <p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, ¶ 2, Ex. A (Wind Report) at pp. 26-60.</p>

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	Objection to LZ’s evidence: Incomplete (Fed. R. Evid. 106) and Misleading (Fed. R. Evid. 403) as presented by LegalZoom.

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
118. At each level, survey respondents are eliminated from consideration by Dr. Wind because they are deemed not to be candidates for potential deception by Rocket Lawyer ads.	<p>LZ Evidence: Wind Depo., 99:10-100:20.</p> <p>Disputed to the extent that LegalZoom implies that Professor Wind did not consider the responses of respondents who were eliminated from the decision tree. Each respondent was considered by Professor Wind in the more than two dozen tables comparing the test and control groups. Undisputed that respondents were eliminated from the potentially harmed population if they did not meet the criteria for harm: chose Rocket Lawyer, noticed the free offer, saw value in the free offer, demonstrated <i>any</i> amount of misunderstanding about the offer, and provided Rocket Lawyer with business.</p> <p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, Ex. A (Wind Report) at pp. 26-60.</p> <p>Objection to LZ’s evidence: Incomplete (Fed. R. Evid. 106) and Misleading (Fed. R. Evid. 403) as presented by LegalZoom.</p>

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
<p>119. By the time Dr. Wind reaches the bottom level of the decision tree, in which he purports to test whether the ads actually have an impact in causing confused or misled respondents to choose Rocket Lawyer products for purchase, there are only 15 respondents in the test group as compared against 13 in the control group.</p>	<p>LZ Evidence: Wind Depo., 105:16-22. Disputed to the extent that LegalZoom implies that the decision tree is the only metric Professor Wind relied on to determine whether consumers were misled. Professor Wind compared the entire test and control groups, over 400 individuals in the two experiments, across over two dozen questions to demonstrate both at the individual question level and holistically, there was no difference between the responses of test and control groups. Undisputed that respondents were eliminated from the potentially harmed population if they did not meet the criteria for harm: chose Rocket Lawyer, noticed the free offer, saw value in the free offer, and demonstrated <i>any</i> amount of misunderstanding about the offer, such that 15 and 13 respondents remained in the <i>incorporation</i> experiment when asked whether these respondents would provide Rocket Lawyer with business. This narrowing is the purpose of the</p>

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	<p>decision tree – to identify the potentially harmed population.</p> <p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, Ex. A (Wind Report) at pp. 26-60.</p> <p>Objections to LZ evidence: Incomplete (Fed. R. Evid. 106) and Misleading (Fed. R. Evid. 403) as presented by LegalZoom.</p>
<p>120. Dr. Wind’s reading of 46.7% at the bottom of Figure 1 of his Original Report is based on 15 interviews.</p>	<p>LZ Evidence: Wind Report, p.42.</p> <p>Disputed to the extent that LegalZoom implies that Professor Wind did not take the sample size into account in ultimately determining that 46.7% in the test group vs. 30.8% in the control group was not a statistically significant difference.</p> <p>Moving Party’s evidence: Vu Decl. II, ECF No. 61, Ex. A (Wind Report) at pp. 42.</p> <p>Objections to LZ evidence: Incomplete (Fed. R. Evid. 106) and Misleading (Fed. R. Evid. 403) as presented by LegalZoom.</p>

<p style="text-align: center;">LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION</p>	<p style="text-align: center;">EVIDENTIARY SUPPORT</p>
<p>121. At the 95% level of confidence, Dr. Wind’s reading of 46.7% at the bottom of Figure 1 of his Original Report has a margin of error of +/- 25%, meaning that the true number could be as low as 21.5%, or as high as 71.9%.</p>	<p>LZ Evidence: Wind Report, p.42; Isaacson Decl., ¶ 67.</p> <p>Disputed to the extent that LegalZoom implies that Professor Wind did not take the sample size into account in ultimately determining that 46.7% in the test group vs. 30.8% in the control group was not a statistically significant difference. Further disputed to the extent that LegalZoom implies that the decision tree is the only comparison of the test and control groups used to support Professor Wind’s opinion.</p> <p>Objections to LZ evidence: Incomplete (Fed. R. Evid. 106) and Misleading (Fed. R. Evid. 403) as presented by LegalZoom.</p>
<p>122. At step 1 of his decision tree, Dr. Wind eliminates respondents based on them answering that they are not interested in Rocket Lawyer or in exploring Rocket Lawyer’s website.</p>	<p>LZ Evidence: Wind Depo., 81:25-82:5, 83:7-12.</p> <p>Undisputed, but clarified that respondents were eliminated from the decision tree, but not the survey.</p>
<p>123. Wind says that he disqualifies them</p>	<p>LZ Evidence: Wind Depo., 82:6-83:6.</p>

<p>1 LEGALZOOM’S UNDISPUTED</p> <p>2 FACTS IN SUPPORT OF ITS</p> <p>3 OPPOSITION</p>	<p>EVIDENTIARY SUPPORT</p>
<p>4 from the survey because they are not</p> <p>5 within a group that has a potential to be</p> <p>6 deceived (i.e., tricked into buying an</p> <p>7 Rocket Lawyer product).</p> <p>8</p>	<p>Undisputed, but clarified that</p> <p>Respondents were eliminated from the</p> <p>decision tree, not the entire survey.</p>
<p>9 124. Dr. Wind qualifies respondents by</p> <p>10 asking if they “looked for” online legal</p> <p>11 products.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p>	<p>LZ Evidence: Wind Depo., 61:19-62:8.</p> <p>Disputed only to the extent that</p> <p>LegalZoom implies that this is not the</p> <p>proper universe.</p> <p>Moving Party’s evidence: Vu Decl. II,</p> <p>ECF No. 61, ¶ 16, Ex. O (Wind Rebuttal</p> <p>to Isaacson Report).</p>
<p>16 125. Dr. Wind fails to ever ask whether</p> <p>17 respondents are really “consumers” of</p> <p>18 online legal products, in the sense that</p> <p>19 they have used or would use such</p> <p>20 products.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p>	<p>LZ Evidence: Wind Report, Ex. E,</p> <p>Survey Stimuli.</p> <p>Disputed.</p> <p>Moving Party’s evidence: Vu Decl. II,</p> <p>ECF No. 61, Ex. B, App. G (stimuli), at</p> <p>359 (S10c) (“Did you actually purchase</p> <p>online legal services for [insert</p> <p>service/form from S10a] from one of</p> <p>these online legal companies you were</p> <p>looking at?”).</p>
<p>27 126. A survey conducted by</p> <p>28 LegalZoom’s expert, Dr. Bruce Isaacson,</p>	<p>LZ Evidence: Winograd Decl. ¶ 11, Ex. J (Isaacson Report, ¶ 68, Table B.).</p>

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
<p>determined that 41% of respondents shown the subject business formation ads believed that they could incorporate or form an LLC for free— that is, without paying any fees to any entity or organization (including a state or Rocket Lawyer)—as opposed to 0.3% of consumers in the control group who were shown an advertisement that removed the word “free,” and otherwise made it clear that state fees or only services fees would need to be paid for the incorporation.</p>	<p>Disputed. Moving Party’s Evidence: Vu Decl. II, ECF No. 61, ¶ 16, Ex. O (Wind Rebuttal to Isaacson Report). Objection to LZ evidence: Inadmissible as unreliable and unsound (Fed. R. Evid. 702).</p>
<p>127. Dr. Isaacson similarly found that an overwhelming majority of respondents indicated that the amount of fees paid would influence their decision regarding which service provider to select—thereby establishing materiality.</p>	<p>LZ Evidence: Winograd Decl. ¶ 11, Ex. J (Isaacson Report, ¶ 98.). Undisputed to the extent that LegalZoom only asked whether the “amount of fees” would affect respondents’ decision which service provider to select and not whether “state fees” would affect consumers decision. LegalZoom later interprets these responses to mean that “price” is material to consumers. Disputed to the extent that this data can be interpreted as meaning that payment of state fees is</p>

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	material to consumers. Moving Party’s Evidence: Opposition, ECF No. 74 at 13 n5; Winograd Decl., ¶ 11, Ex. J (Isaacson Report, ¶ Table C.); Vu Decl. II, ECF No. 61, ¶ 16, Ex. O (Wind Rebuttal to Isaacson Report). Objection to LZ evidence: Inadmissible as unreliable and unsound (Fed. R. Evid. 702).
128. In one case, more than 82% of respondents indicated that the cost would affect their purchase decision; in the other, 88.9% so indicated.	LZ Evidence: Winograd Decl., ¶ 11, Ex. J (Isaacson Report, 1 78, Table C.). Undisputed to the extent that LegalZoom only asked whether the “amount of fees” would affect respondents’ decision which service provider to select and not whether “state fees” would affect consumers decision. Undisputed also to the extent that “cost” affects consumer purchase decisions. Disputed to the extent that this data can be interpreted as meaning that payment of state fees is material to consumers. Moving Party’s Evidence: Opposition, ECF No. 74 at 13 n5; Winograd Decl., ¶ 11, Ex. J (Isaacson Report, ¶ Table C.);

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	Vu Decl. II, ECF No. 61, ¶ 16, Ex. O (Wind Rebuttal to Isaacson Report). Objection to LZ evidence: Inadmissible as unreliable and unsound (Fed. R. Evid. 702).
129. Dr. Isaacson tests the impressions a consumer has in viewing the ads complained of, which include the term “free,” as compared to a modified ad which removes that term.	LZ Evidence: Winograd Decl., ¶ 11, Ex. J (Isaacson Report). Undisputed that Dr. Isaacson tested the use of “free” generally instead of whether Rocket Lawyer’s use of “free” needed additional disclosure. Objection to LZ evidence: Inadmissible as unreliable and unsound (Fed. R. Evid. 702); irrelevant (Fed. R. Evid, 401, 402).
130. Dr. Wind admits that his survey was not designed to test literal falsity.	LZ Evidence: Wind Depo., 73:14-20. Undisputed.

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
131. Rocket Lawyer has changed the language of its “free” advertisements after LegalZoom filed its original Complaint.	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....”). Undisputed. Objections to LZ evidence: Irrelevant (Fed. R. Evid. 401, 402); Subsequent Remedial Conduct (Fed. R. Evid. 407); Misleading (Fed. R. Evid. 403).
132. Other evidence shows that Rocket Lawyer appears to have changed its terms and conditions.	LZ Evidence: Nguyen Decl., ¶ 10, Exs. F, G (Rocket Lawyer’s On Call Terms of Service, dated July 2012, as printed on November 27, 2012; Rocket Lawyer’s On Call Terms of Service, dated November 2012, as printed on November 29, 2012). Undisputed. Objections to LZ evidence: Irrelevant (Fed. R. Evid. 401, 402); Subsequent Remedial Conduct (Fed. R. Evid. 407); Misleading (Fed. R. Evid. 403).

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
133. LegalZoom has complaints from consumers demonstrating that they were deceived by Rocket Lawyer’s ads.	LZ Evidence: Winograd Decl., ¶ 10, Ex. I. Disputed only to the extent that LegalZoom relies on individual customer complaints to try to dispute Rocket Lawyer’s survey. Objections to LZ evidence: Irrelevant (Fed. R. Evid. 401, 402; Order ECF No. 44 at 10); Misleading (Fed. R. Evid. 403).
134. Rocket Lawyer’s own data shows that there is a substantially higher conversion rate among those consumers who view Rocket Lawyers’ “free” ads without a disclosure of state fees, compared with those consumers who view such ads with the disclosure of state fees.	LZ Evidence: Goedde Decl., ¶ 4. Disputed. Mr. Goedde performed no statistical analysis on the difference between the conversion rates of 0.63% and 1.41% and is not qualified to do so given that he is not a statistics expert. Objections to LZ evidence: Misleading (Fed. R. Evid. 403); inadmissible (Fed. R. Evid 702).

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
135. Rocket Lawyer watched LegalZoom like a hawk to try to find ways of undercutting them competitively and to attempt to lure its customers to them.	LZ Evidence: Winograd Decl., Exs. B, C (RLI 0004047, Rocket Lawyer’s “LegalZoom Comparison Review - July” PowerPoint; RLI 0004072-0004074, Email chain with Charley Moore, Rocket Lawyer’s founder, stating “We think about LegalZoom every day and I know they think about the disruption our free legal documents have caused every day.”). Undisputed. Objections to LZ evidence: Irrelevant (Fed. R. Evid. 401, 402); Misleading (Fed. R. Evid. 403).
136. Rocket Lawyer intended to exploit the use of the word “free” in its advertising, in part, as a way of distinguishing itself from LegalZoom.	LZ Evidence: Exs. B, D, E (RLI 0004047, Rocket Lawyer’s “LegalZoom Comparison Review” PowerPoint Presentation, referencing Rocket Lawyer’s “free acquisition strategy; RLI 0004075, Rocket Lawyer’s “Investor Update -March 2011” PowerPoint Presentation, referencing “exploit the power of free”; RLI 0004151-0004165,

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	<p>Rocket Lawyer presentation to Lawyers.com, stating that more “free” content “attracts more traffic and potential revenue.).</p> <p>Disputed as to the term “exploited.”</p> <p>Undisputed that Rocket Lawyer offers free products and services as a way of distinguishing itself from LegalZoom and other competitors.</p> <p>Moving Party’s evidence: Order, ECF No. 44 at 9; Hollerbach Decl. I, ECF No. 37-3, ¶ 4 (Rocket Lawyer’s “freemium model”).</p> <p>Objections to LZ evidence: Misleading (Fed. R. Evid. 403).</p>
137. Rocket Lawyer did intend to “convert” customers and tracked its “conversions.”	<p>LZ Evidence: Exs. F, G (RLI 0003249, Rocket Lawyer Board of Directors Meeting, February 17, 2011, PowerPoint Presentation, referencing information on customer conversions; RLI 0003376 - Rocket Lawyer Investor Update, February 2011, referencing information concerning customer conversions).</p> <p>Undisputed.</p>

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	Objections to LZ evidence: Irrelevant (Fed. R. Evid. 401, 402); Misleading (Fed. R. Evid. 403).
138. Rocket Lawyer was on notice that its use of the term “free” was confusing to its consumers and dedicated time—to the tune of hundreds of hours—and attention to answering its customers’ complaints.	LZ Evidence: Winograd Decl., ¶ 9, Ex. H (RLI0003225, Rocket Lawyer spreadsheet showing customer “complaints about free and “questions about free.”); Winograd Decl., ¶ 10, Ex. I (BBB 0000086, BBB complaint activity report regarding Rocket Lawyer’s advertisement for “free” contract as not actually “free”; BBB 0000076, BBB complaint activity report regarding Rocket Lawyer’s “free” advertisement as “very misleading”; BBB 0000053, BBB complaint activity report regarding Rocket Lawyer’s “free 7-day trial” advertisement with no disclosure of customer charge as “deceptive business practices”; BBB 0000021, BBB complaint activity report regarding Rocket Lawyer’s “free advice” advertisement as “false advertising” because “no where [sic] on the [Rocket

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	<p>Lawyer] site is an e-mail address requested or registration requested”; BBB 00000001 00201, BBB complaint activity report regarding Rocket Lawyer’s “free” document advertisement as “false advertising/ information” because requirements that customer accept a “free trial period” and “enter credit card information” is not stated “upfront and prominently”; BBB 00000001 00191, BBB customer complaint report regarding Rocket Lawyer’s “receive a free document no gimmicks, no credit required, no obligation” advertisement as “false advertisement” because Rocket Lawyer requires giving credit card and starting a membership).</p> <p>Disputed. RLI0003225, a spreadsheet relating to customer service calls, demonstrates 1,781/638,816 calls related to questions or complaints about “free” and does not provide any additional information relating to the question or complaint. Given the small percentage</p>

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
	<p>of issues relating to “free” (less than 1%) in this file, the evidence submitted does not support LegalZoom’s implication that Rocket Lawyer spent even a significant amount of time addressing complaints about free. The BBB complaints submitted demonstrate no customer confusion regarding the need to pay state fees or free legal advice or legal review. Most of the complaints provided relate to “free documents,” a category of advertising that LegalZoom has not alleged as misleading in its FAC as Rocket Lawyer does provide free documents. A handful of complaints, which all companies have, is not market research or equivalent to a survey.</p> <p>Moving party’s evidence: Vu Decl. II, ECF No. 61, Ex. A (Wind Survey).</p> <p>Objections to LZ evidence: Irrelevant (Fed. R. Evid. 401, 402; Order ECF No. 44 at 10); Misleading (Fed. R. Evid. 403)</p>
139. Rocket Lawyer continued to use its misleading advertising even after receipt	LZ Evidence: FAC, ECF No. 14, Exs. A-2, A-3, A-4.

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
of these complaints.	Disputed. Rocket Lawyer’s ads are not misleading. Moving party’s evidence: Vu Decl. II, ECF No. 61, Ex. A (Wind Survey); Vu Decl. III, ¶ 19. Objections to LZ evidence: Irrelevant (Fed. R. Evid. 401, 402; Order ECF No. 44 at 10); Misleading (Fed. R. Evid. 403).
140. Rocket Lawyer continued its use of its misleading advertising even after LegalZoom warned that it believed it violative of the law.	LZ Evidence: FAC, ECF No. 14, Exs. A-2, A-3, A-4. Disputed. Rocket Lawyer’s ads are not misleading. Moving party’s evidence: Vu Decl. II, ECF No. 61, Ex. A (Wind Survey). Objections to LZ evidence: Irrelevant (Fed. R. Evid. 401, 402; Order ECF No. 44 at 10); Misleading (Fed. R. Evid. 403).
141. Rocket Lawyer has changed not only its advertisements but its website, too.	LZ Evidence: Rocket Lawyer’s Answer and Amended Counterclaims, ECF No. 17, 2:26-3:1 (“Rocket Lawyer admits

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LEGALZOOM’S UNDISPUTED FACTS IN SUPPORT OF ITS OPPOSITION	EVIDENTIARY SUPPORT
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	<p>that it has produced new advertisements regarding its business and a variety of services it offers since the service of the original complaint....”); Nguyen Decl., ¶ 10, Exs. F, G (Rocket Lawyer’s On Call Terms of Service, dated July 2012, as printed on November 27, 2012; Rocket Lawyer’s On Call Terms of Service, dated November 2012, as printed on November 29, 2012).</p> <p>Disputed to the extent that changes to Rocket Lawyer’s ads and website imply culpable conduct.</p> <p>Objections to LZ evidence: Irrelevant (Fed. R. Evid. 401, 402); Subsequent Remedial Conduct (Fed. R. Evid. 407); Misleading (Fed. R. Evid. 403).</p>
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ROCKET LAWYER’S ADDITIONAL UNDISPUTED FACTS	
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MOVING PARTY’S UNDISPUTED FACTS	EVIDENTIARY SUPPORT
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142. There are many free trials offered in the internet marketplace, including	Vu Decl. II, ECF No. 61, Ex. A p. 41; Hollerbach Decl. I, ECF No. 37-3, ¶ 11,
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<p>1 offers from Microsoft, Amazon, Turbo 2 Tax, Netflix, Sirius XM, and many 3 others identified by respondents in the 4 Wind Survey.</p>	<p>Ex. B.</p>
<p>5 143. Professor Wind testified that he 6 reviewed the Hollerbach deposition 7 and had communicated with Rocket 8 Lawyer in designing his stimuli.</p>	<p>Declaration of Hong-An Vu III (Vu Decl. III), ¶ 14, Ex. C (Wind Dep. at 14:22- 15:8; 31:20-17; 39:23-40:13).</p>
<p>9 144. As explained by Professor Wind, 10 the survey was designed to see if there 11 was any difference in the perceptions 12 of individuals who viewed the control 13 stimuli (Rocket Lawyer’s actual ads) 14 vs. those who viewed the test stimuli 15 (modified as LegalZoom would 16 prefer).</p>	<p>Vu Decl. III, ¶ 14, Ex. C (Wind Dep. 137:14-139:24).</p>
<p>17 145. As explained by Professor Wind, 18 the <i>absence</i> of deception <i>and</i> 19 diversion of consumers is 20 demonstrated by the fact that there is 21 <i>no difference</i> between the test and 22 control groups—whether Rocket 23 Lawyer disclosed state fees in the 24 search engine ads had no effect on 25 consumers choice of Rocket Lawyer, 26 LegalZoom, or other competitors.</p>	<p>Vu Decl. III, ¶ 14, Ex. C (Wind Dep. at 84:13-6; 86:25-88:12).</p>
<p>27 146. LegalZoom’s criticism of Professor 28 Wind’s inclusion of individuals who</p>	<p>Vu Decl. II, ECF No. 61, Ex. O at 2228, Vu Decl. III, ¶ 14, Ex. C (Wind Dep. at</p>

<p>1 “may or may not” look for legal 2 services in the near future ignores that 3 (i) the surveys deal with intended 4 behavior and thus, the “may or may 5 not” group were properly included 6 because there is a likelihood that many 7 of these individuals will indeed look 8 for and purchase online legal services 9 and (ii) that inclusion of this group 10 made no difference in the survey 11 results.</p>	<p>65:7-71:11).</p>
<p>12 147. Professor Wind was able to 13 substantively answer the questions 14 posed by counsel, even though counsel 15 refused to provide Professor Wind 16 with his complete report.</p>	<p>Vu Decl. III. ¶14, Ex. C (Wind Dep. 14:10-14;107:21-108:25).</p>
<p>17 148. Professor Wind also testified about 18 how he oversaw and was involved in 19 each aspect of the survey.</p>	<p>Vu Decl. III. ¶14, Ex. C (Wind Dep. 21:17-22:18; 31:20-33:8; 41:21-48:11; 20 51:12-53:16).</p>
<p>21 149. In Professor Wind’s over 40 years 22 of experience as a marketing professor 23 and marketing expert for legal matters, 24 he has never seen the competitive 25 landscape entirely removed as Dr. 26 Isaacson did in this case.</p>	<p>Vu Decl. III. ¶14, Ex. C (Wind Dep. at 110:19-111:19).</p>
<p>27 150. On RocketLawyer.com, in order to 28 incorporate, consumers must complete the current incorporation pages used in</p>	<p>Vu Decl. II, ECF No. 61, ¶3, Ex. B, App. A (Baga Declaration) and E (Stimuli).</p>

1	Professor Wind's survey.	
2	151. Professor Wind has submitted bills	Vu Decl. III, ¶16, Ex. E (Wind Invoices).
3	relating to over 130 hours he	
4	personally spent on the survey and	
5	reports	
6	152. Dr. Isaacson decided not to analyze	Vu Decl. II, ECF No. 61, ¶4, Ex. C at
7	over 60% of the responses he received	2042.
8	merely because they were not helpful	
9	to LegalZoom's position.	
10	153. Based on a comprehensive report	Vu Decl. III, ¶17, Ex. F (IBISWorld
11	on the online legal services industry,	report on online legal services in the
12	there are 16,692 businesses in this	U.S.).
13	market and that LegalZoom has 5.8%	
14	of the market share.	
15	154. According to LegalZoom's	Vu Decl. III, ¶15, Ex. D (LZ007420).
16	tracking conventions, "affinity" is a	
17	numeric score assigned to websites	
18	that appear on searches for specific	
19	keywords.	
20	155. The affinity score shows the	Vu Decl. III, ¶15, Ex. D (LZ007420).
21	relationship between two websites by	
22	seeing how many more times the	
23	audiences of the two websites are	
24	going to choose the other for specific	
25	keywords.	
26	156. In comparing Rocket Lawyer and	Vu Decl. III, ¶15, Ex. D (LZ007420).
27	LegalZoom, LegalZoom has found	
28	that for the target audience for	

<p>1 LegalZoom, Rocket Lawyer is ranked 2 #6, which means that more often, 3 those searching LegalZoom are 4 interested in companies other than 5 Rocket Lawyer to also explore.</p>	
<p>6 157. This same document demonstrates 7 that LegalZoom is not even in the top 8 10 of sites visited from a search 9 related to Rocket Lawyer.</p>	<p>Vu Decl. III, ¶15, Ex. D (LZ007420).</p>
<p>10 158. LegalZoom’s the Senior Director, 11 Online Media & Marketing, stated 12 that given the affinity numbers, for 13 LegalZoom “it will be difficult to 14 sway users looking for ‘free’ toward a 15 quality product that has a price tag.”</p>	<p>Vu Decl. III, ¶15, Ex. D (LZ007420).</p>
<p>16 159. LegalZoom’s key evidence 17 regarding customer complaints, a 18 spreadsheet relating to customer 19 service calls, demonstrates that 20 1281/638.816 service calls involved 21 “questions” or “complaints” about 22 “free” (less than 1%).</p>	<p>Winograd Decl., ¶ 9, Ex. H (RLI0003225, Rocket Lawyer spreadsheet showing customer “complaints about free and “questions about free.”); Vu Decl. III at ¶19</p>
<p>23 160. LegalZoom has relatively far more 24 complaints than Rocket Lawyer: 25 LegalZoom: 133 complaints on the 26 BBB in 1 year and 4 months—8.3 27 complaints/month, compared to 28 Rocket Lawyer 181 complaints over 3</p>	<p>Vu Decl. III, ¶20.</p>

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years-5 complaints/month).	
161. Rocket Lawyer has completed its productions, ² totaling over 85,000 pages of documents (excluding native electronic files and data pulls produced in native format) in response to LegalZoom’s broad discovery requests.	Vu Decl. III, ¶12.
162. Despite prompting by Rocket Lawyer, LegalZoom has been inactive in discovery. LegalZoom has produced less than 10,000 pages between itself and nonparty, Travis Giggy, who is represented by the same counsel as LegalZoom.	Vu Decl. III, ¶13.
163. LegalZoom chose not to notice depositions for 19 months since they filed this action and 10 months since the discovery stay was lifted.	Vu Decl. III, ¶18.

² The only subsequent productions Rocket Lawyer anticipates may occur is if it declassifies documents marked as privileged.

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164. Rocket Lawyer has always disclosed state fees multiple times along the consumer journey for incorporation and that journey has not changed substantively since it was first offered

Vu Decl. II, ECF No. 61, Ex. B, App. A (Baga Declaration).

Dated: August 4, 2014

Respectfully submitted,

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