

**IN UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

TODD JANSON, et al., on behalf of)	
themselves and on behalf of all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2:10-cv-04018-NKL
)	
LEGALZOOM.COM, INC.)	
)	
)	
Defendant.)	

**PLAINTIFFS’ MOTION IN LIMINE REGARDING ANY EVIDENCE OF
LEGALZOOM.COM’S DISCLAIMER AND/OR WAIVER THAT IS ON ITS WEBSITE**

Come now, Plaintiffs, by and through counsel, and for their Motion in Limine to exclude any evidence or argument of Legalzoom.com’s (hereinafter “LegalZoom”) disclaimer and/or waiver that is contained on its website and/or in its terms and conditions, and states as follows:

I. Introduction

Throughout this litigation, Legalzoom has argued in various motions that it should be excused from compliance with Missouri law, venue in Missouri, or allegations related to the violation of Missouri law due to a lengthy disclaimer and/or waiver that can be found on its website. Legalzoom recited various portions of this disclaimer and wavier in its Motion for Summary Judgment. See, paragraphs 39 and 40 of Legalzoom’s Motion for Summary Judgment. In addition, Legalzoom’s purported expert on the law of the unauthorized practice of law references the disclaimer and discusses it at length in his report. See, p. 18 of the written opinion of Powell attached as Exhibit 11 to Legalzoom’s Motion for Summary Judgment.

Legalzoom clearly intends to argue to the jury that the class of plaintiffs in this case have

waived any right to bring this action, and that the disclaimer wherein it recites that nothing it is doing is the unauthorized practice of law, means that they are not violating the law. The waiver and/or disclaimer simply has no application or impact on this case and the introduction of such evidence would be extremely confusing to the jury. As such, Legalzoom's disclaimer and/or waiver contained on its website or in its terms and conditions should be excluded from the trial in this matter.

II. Argument

“Federal Rule of Evidence 402 provides that irrelevant evidence is inadmissible.” *Wright v. Ark. & Mo. R.R. Co.*, 2009 U.S. App. LEXIS 16719, *12 (8th Cir. July 29, 2009). “Evidence is relevant if it has ‘any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.’” *Id.* at *12-13 (quoting Fed. R. Evid. 401). “A district court is given broad discretion to determine the relevance of evidentiary matters.” *Id.* at 13.

Rule 403 of the Federal Rules of Evidence provides “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Fed.R.Evid. 403. “Confusion of the issues warrants exclusion of relevant evidence if admission of the evidence would lead to litigation of collateral issues.” *Firemen's Fund Ins. Co. v. Thien*, 63 F.3d 754 (8th Cir. 1995). Rule 403 is concerned with unfair prejudice which is evidence that has an undue tendency to suggest decision on an improper basis. *Probatter Sports, LLC v. Joyner Technologies, Inc.*, 2007 WL 3285799 (N.D.Iowa, October 18, 2007).

Missouri law on this issue is well established and forecloses Legalzoom from arguing consent or waiver. As noted by the Missouri Supreme Court in *Carpenter v. Countrywide Home Loans, Inc.*, 250 S.W.3d 697, 703 (Mo. 2008), the activities prohibited by the Missouri statutes on the unauthorized practice of law are “not subject to waiver, consent, or lack of objection by the victim.” *Id. citing Eisel v. Midwest BankCentre*, 230 S.W.3d 335 (Mo. 2007). Since the defenses that are found in the various portions of Legalzoom’s disclaimer and/or waiver are not recognized in Missouri based on the plaintiffs’ theory of this case, they have no place in this trial and should be barred from being presented in any fashion to jury. Accordingly, Plaintiffs respectfully request the Court enter an Order prohibiting Legalzoom from introducing any evidence or making any arguments related to any waiver and/or disclaimer.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 2, 2011, I served this paper upon the following via this Court's ECF system:

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