

**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 COMPUTER SOFTWARE OR PUBLICATIONS OF LEGAL FORMS

Come now, Plaintiffs, by and through counsel, and for their Motion in Limine to exclude any evidence of other Computer Software or Publications of Legal Forms, state as follows:

I. Introduction

Plaintiffs have reason to believe that Legalzoom.com (hereinafter “Legalzoom”) will attempt to introduce evidence of various computer software programs and other legal form books or websites and compare those to what Legalzoom does. These computer programs or form books do not do anything similar to what Legalzoom does. Further, even if they did provide similar services to what Legalzoom offers, such evidence does make what Legalzoom does legal. The defense Legalzoom wishes to assert either implicitly or explicitly is that everyone else is doing it, so it must be fine. These other software programs or form providers do not provide any competent evidence in this case about what Legalzoom does. In addition, pursuant to Rule 403 the introduction of such evidence will only serve to confuse and mislead the jury and inject collateral issues which will take up significant amounts of trial time. Accordingly, Plaintiffs

respectfully request that the Court enter an Order prohibiting Legalzoom from attempting to introduce or make any arguments comparing their service to other computer programs or publications.

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 that has a undue tendency to suggest decision on an improper basis. *Pro batter Sports, LLC v. Joyner Technologies, Inc.*, 2007 WL 3285799 (N.D.Iowa, October 18, 2007).

There is no question that Legalzoom wishes to compare what it does through its website to other computer programs or publications. For example, in Legalzoom’s Motion for Summary Judgment it attached various computer software programs that individuals could buy to make their own will and a variety of other form documents and websites. See, Legalzoom’s Motion

for Summary Judgment, paragraphs 67, 68, 69, 70, 71, 72, 73, 74, and 75. Other legal software or websites or forms are simply not relevant in this case. Those services are different than what Legalzoom does and would not assist the jury in deciding the issues in this case. Furthermore, what other websites or publications do may well violate Missouri law regarding the unauthorized practice of law. However, those programs or publications are not at issue here and they have no place being discussed in this case.

In addition, introduction of other computer programs or publications into evidence will only lead the jury and the parties down a path that will call for the exploration of the various differences between the computer programs and/or form books that Legalzoom might wish to introduce. None of these various software programs, web sites or forms are it issue in this case and comparing what Legalzoom does to what they do is improper, since there is no way for the Plaintiffs to cross examine a computer program or a form book to explain the various differences. For example, Legalzoom has a human being examine every legal document that it prepares and sends out. No other website or form book does this. However, unless there was a witness to testify about that website or form book there will be no way for Plaintiffs to explain this significant difference to the jury; among others. Because no witness is competent to testify regarding the foundational requirements of these other programs or form providers has been disclosed, they will not be admissible in evidence.

Further, Federal Rule of Evidence 403 allows relevant evidence to be excluded if the probative value of the evidence is greatly outweighed by the prejudicial impact of the evidence. To the extent there is some evidentiary value with what other websites or publications do, it is greatly outweighed by its prejudicial impact in this case. For every comparison that Legalzoom wishes to make to other computer programs or form books, the Plaintiffs will have to find a way

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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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_____/s/ Timothy VanRonzelen