

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

TODD JANSON, GERALD T. ARDREY, CHAD M.
FERRELL, and C & J REMODELING LLC, on behalf of
themselves and on behalf of all others similarly situated,

Plaintiffs,

v.

LEGALZOOM.COM, INC.,

Defendant.

Case No. 2:10-cv-04018-NKL

**SUGGESTIONS IN OPPOSITION TO PLAINTIFFS'
MOTION IN LIMINE (DOC. NO. 146) REGARDING
STATEMENTS OR ARGUMENTS THAT LEGALZOOM.COM'S BUSINESS
OPERATES IN OR IS APPROVED IN OTHER STATES**

Defendant LegalZoom.com, Inc. ("LegalZoom"), for its Suggestions in Opposition to Plaintiffs' Motion in Limine Regarding Statements or Arguments That LegalZoom.com's Business Operates in or is Approved in Other States ("Motion 146," Doc. 146), states as follows:

Plaintiffs' broad accusation that other states' laws and regulatory approvals are not relevant is simply untrue. Missouri courts have frequently examined and weighed the opinions and practices of other states in deciding whether a party is engaged in the unauthorized practice of law. *See e.g., In re Mid-America Living Trust Assocs., Inc.*, 927 S.W.2d 855, 860-64 (Mo. banc 1996) (analyzing numerous decisions of other states); *In re Thompson*, 574 S.W.2d 365, 367-69 (Mo. banc 1978) (same). The fact that other states have reviewed and approved the practices of LegalZoom is therefore relevant to whether LegalZoom engages in the unauthorized practice of law.

As Plaintiffs acknowledge, the court has broad discretion in determining the admissibility of evidence. *See United States v. Levine*, 477 F.3d 596, 603 (8th Cir. 2007). However, the Federal Rules of Evidence favor admissibility. *Id.* The general rule under Rule 403 is that the balance should be struck in favor of admission. *Id.*; *Block v. R.H. Macy & Co.*, 712 F.2d 1241, 1244 (8th Cir. 1983).

Furthermore, as noted by the Court in *Luce v. United States*, 469 U.S. 38, 41 (1984), “[a] reviewing court is handicapped in any effort to rule on subtle evidentiary questions outside a factual context.” For this reason, while motions in limine are widely used, many courts have expressed skepticism when faced with broadly drawn motions in limine. *See Sperberg v. Goodyear Tire & Rubber Co.*, 519 F.2d 708, 712 (6th Cir.) (“Orders *in limine* which exclude broad categories of evidence should rarely be employed. A better practice is to deal with questions of admissibility . . . as they arise.”), *cert. denied*, 423 U.S. 987 (1975); *Insignia Sys. Inc. v. News Am. Mktg. In-Store, Inc.*, No. 04-4213, 2011 U.S. Dist. LEXIS 10740, at *12 (D. Minn. Feb. 3, 2011) (same); *Landers v. Nat’l R.R. Passenger Corp.*, No. 00-2233, 2002 U.S. Dist. LEXIS 7851, at *7-8 (D. Minn. April 26, 2002) (same); *EEOC v. Fargo Assembly Co.*, 142 F. Supp. 2d 1160, 1161 (D.N.D. 2000) (same).

While it is true that the court may exclude evidence that confuses the issues and leads to litigation of collateral issues, *Firemen’s Fund Insurance Co. v. Thien*, 63 F.3d 754, 758 (8th Cir. 1995), Plaintiffs provide no explanation why evidence that other states have determined that LegalZoom is not engaged in the unauthorized practice of law would be litigation of collateral issues. In *Thien*, the court did not allow a party to submit evidence related to liability in the accident when the sole issue in the case was whether there was insurance coverage. *Id.* at 759. In this case, whether LegalZoom engaged in the unauthorized practice of law is the primary issue

in this case. Therefore, the jury should be allowed to receive evidence related to the view of other states that have considered this issue.

While Rule 403 is concerned with unfair prejudice, “[e]vidence that is prejudicial for the same reason it is probative is not unfairly prejudicial.” *Pro batter Sports, LLC v. Joyner Techs., Inc.*, No. 05-CV-2045-LRR, 2007 WL 3285799, at *5 (N.D. Iowa Oct. 18, 2007). Plaintiffs must describe with sufficient particularity why the court should exclude evidence that other states have determined that LegalZoom is not engaged in the unauthorized practice of law. *See id.* at *5, *9. In this case, Plaintiffs fail to describe with sufficient particularity why admitting this evidence would be unfairly prejudicial.

Indeed, far from describing the prejudice with particularity, Plaintiffs make a broad, unsubstantiated claim that “those states *all* have different statutes” (Motion 146 at 2) (emphasis added). The Supreme Court of Missouri has stated otherwise, noting that “[m]ost other states have similar, if not identical, rules of conduct.” *Mid-America*, 927 S.W.2d at 863. Indeed, the Missouri Supreme Court Rules of Professional Conduct are based on the American Bar Association Model Rules of Professional Conduct. *State v. Wilson*, 195 S.W.3d 23, 24 (Mo. App. 2006) (“the Missouri Supreme Court adopted the ABA Model Rules of Professional Conduct [(“Model Rules”)] as its own rules to govern the ethics and professional responsibility of Missouri attorneys”) (citation omitted). The Model Rules have been adopted by numerous other jurisdictions. *In re Coleman*, 295 S.W.3d 857, 864 n. 5 (Mo. banc 2009). Plaintiffs have not identified any specific state rule regarding the unauthorized practice of law that they allege differs from the Missouri rule in any material way. Plaintiffs have not identified any actual prejudice to admitting this evidence.

Finally — and dispositively — plaintiffs’ own Petition refers to an inquiry into LegalZoom by the North Carolina State Bar. *See* Doc. 1-1 at 11 of 40. By addressing LegalZoom’s operations in other states in their very pleadings, plaintiffs have opened the door on the issue of LegalZoom’s business in other states and its approval in those states. Moreover, in denying LegalZoom summary judgment, the Court read into Missouri law the requirements of the Florida decision of *Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla. 1978), in which the Florida Supreme Court restricted the legal activities of scriveners to secretarial and notary activities and prohibited “personal legal assistance.” Doc. 145 at 12-13, 19, 21. If plaintiffs are able to argue that LegalZoom has been the subject of an inquiry by the North Carolina Bar, and if the Court intends to instruct the jury on a legal standard derived from a state in which LegalZoom legally operates, it would be manifestly unfair to deny LegalZoom the opportunity to present evidence regarding its activities — and approval — in states other than Missouri. Plaintiffs’ motion should therefore be denied.

CONCLUSION

For the reasons set forth above, LegalZoom respectfully requests that the Court deny Plaintiffs’ Motion in Limine Regarding Statements or Arguments That Legalzoom.com’s Business Operates in or is Approved in Other States.

Respectfully submitted,

BRYAN CAVE LLP

By: s/ James T. Wicks

Robert M. Thompson MO #38156

James T. Wicks MO #60409

Christopher C. Grenz MO #62914

One Kansas City Place

1200 Main Street, Suite 3500

Kansas City, MO 64105

Tel.: (816) 374-3200

Fax: (816) 374-3300

John Michael Clear MO #25834

Michael G. Biggers MO #24694

One Metropolitan Square – Suite 3600

211 North Broadway

St. Louis, MO 63102

Tel.: (314) 259-2000

Fax: (314) 259-2020

Attorneys for LegalZoom.com, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2011, I electronically filed the above and foregoing with the clerk of court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

s/ James T. Wicks