

**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. 159) TO EXCLUDE EVIDENCE OR ARGUMENT OF
AVAILABILITY OF LEGAL FORMS OR COMPUTER SOFTWARE IN MISSOURI**

Defendant LegalZoom.com, Inc. ("LegalZoom"), for its Suggestions in Opposition to Plaintiffs' Motion in Limine to Exclude Evidence or Argument of Availability of Legal Forms or Computer Software in Missouri ("Motion 159," Doc. 159), states as follows:

In its Order certifying a class in this lawsuit, the Court described "the central issue of the case" as "what type of online interaction between buyer and seller of legal forms constitutes 'assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to secular rights'" under § 484.010. Doc. 61 at 10. In its defense that LegalZoom's online fill-in-the-blank software does not cross the line into the unauthorized practice of law, LegalZoom should be allowed to introduce evidence regarding the availability of other similar computer software and legal forms in Missouri. Indeed, "one who may be in violation of the text of section 484.020 may defend a claim under the statute by showing a conflict between the text and activities that this Court has determined to be the authorized practice of law." *Eisel v. Midwest BankCentre*, 230 S.W.3d 335, 339 (Mo. 2007). LegalZoom

therefore seeks to compare its online software to other examples of software and forms that have not been held to be the unauthorized practice of law. Plaintiffs fail to demonstrate that this information is not relevant to the issues in the case.

While it is true that a “defendant has no right to offer and a jury has no right to hear inadmissible evidence,” the threshold for relevance and admissibility is a low one. *United States v. Ceballos*, 593 F. Supp. 2d 1054, 1059 (S.D. Iowa 2009). All relevant evidence is admissible. Fed. R. Evid. 402. 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.” Fed. R. Evid. 401.

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); *Fortune Funding, LLC v. Ceridian Corp.*, 368 F.3d 985, 990 (8th Cir. 2004); *Block v. R.H. Macy & Co.*, 712 F.2d 1241, 1245 (8th Cir. 1983). To support the court’s broad discretion, Plaintiffs cite *Fortune Funding, LLC*, in which the court found the offered evidence to be so remote to the issues in the case that it was inadmissible. 368 F.3d at 990 (finding a property’s condition in 1997-2000 was not relevant to the property’s condition in 1985). In this case, the availability of computer software and legal forms is not so remote to the issues of this case as to make such evidence irrelevant. Furthermore, Rule 403 favors admissibility. *See Levine*, 477 F.3d at 603; *Block*, 712 F.2d at 1244. In fact, the general rule under Rule 403 is that balance should be struck in favor of admission. *Levine*, 477 F.3d at 603; *Block*, 712 F.2d at 1244.

Plaintiffs’ argument that “the factual question for the jury to decide is whether LegalZoom participated in or assisted in the drawing of legal documents,” Motion 159 at 2, is an oversimplification that fails to go beyond the literal text of the statute. “Such statutes are merely

in aid of, and do not supersede or detract from, the power of the judiciary to define and control the practice of law.” *Eisel*, 230 S.W.3d at 338-39. In fact, one accused of violating the state’s unauthorized practice of law statute may defend by comparing its activities to activities that have not been held to be the unauthorized practiced of law. *Id.* at 339. Therefore, a comparison of LegalZoom’s online software to other forms and software that has not been challenged could help the jury determine whether LegalZoom’s software and forms are lawful. While Plaintiffs argue that admitting this type of evidence would mislead the jury, they fail to describe with any specificity how the jury would be misled. Plaintiffs seem to express concern that LegalZoom would offer this evidence without utilizing a witness to testify about the software or legal forms. However, LegalZoom’s expert, Dean Burnele V. Powell, will be called as a witness to testify to these issues. Dean Powell will be available for plaintiffs to cross-examine. Under *Eisel*, the jury should be permitted to consider evidence that allows a comparative analysis of approved conduct with challenged conduct.

In sum, Plaintiffs provide no specific reasons why the availability of legal forms or computer software is so remote to the issues in this case or is without any probative value. Therefore, the court must find in favor of admitting this evidence and deny Plaintiffs’ motion in limine.

CONCLUSION

For the reasons set forth above, LegalZoom respectfully requests that the Court deny Plaintiffs’ Motion in Limine to Exclude Evidence or Argument of Availability of Legal Forms or Computer Software.

Respectfully submitted,

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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