

**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. 162) TO EXCLUDE EVIDENCE OR ARGUMENT
THAT LEGALZOOM DOES NOT PROVIDE LEGAL ADVICE TO CUSTOMERS**

Defendant LegalZoom.com, Inc. ("LegalZoom"), for its Suggestions in Opposition to Plaintiffs' Motion in Limine to Exclude Evidence or Argument That LegalZoom Does Not Provide Legal Advice to Customers ("Motion 162," Doc. 162), states as follows:

In Motion 162, plaintiffs contend that LegalZoom should not be permitted to introduce evidence or argument that it does not give its customers legal advice because, plaintiffs argue, the giving of legal advice was not an issue in recent Missouri document preparation fee cases. Plaintiffs argue that such evidence is therefore irrelevant and inadmissible. In fact, however, such evidence is plainly admissible, both because plaintiffs themselves have put in issue whether LegalZoom gives customers legal advice, and because the evidence is relevant to whether LegalZoom is entitled to the protections under *In re Thompson* for sellers of legal documents that customers prepare themselves.

Plaintiffs themselves placed in issue whether LegalZoom gives customers legal advice. In responding to Statement of Uncontroverted Fact No. 35 in LegalZoom's Motion for Summary Judgment, plaintiffs stated:

Plaintiffs state that in practice, *LegalZoom does give legal advice* because LegalZoom selects the legal documents purchased by its customers Further, LegalZoom selects the form or template, the provisions of the document, the legal language of the documents, and fills-in a customer's specific information LegalZoom also suggests the answers to be given by customers on its questionnaires

Doc. 113 (sealed) at 16 (emphasis added; citations omitted). Plaintiffs clearly intend to introduce at trial evidence that LegalZoom selects customers' documents, the form or template, and the provisions and language of the document, suggests answers to be given on questionnaires, and fills in customers' information. Evidence that LegalZoom does not provide legal advice by performing these actions (if it in fact does perform these actions), and that class representatives themselves did not believe they received legal advice from LegalZoom on account of these actions, is therefore relevant and admissible.

Moreover, evidence that LegalZoom does not give customers legal advice is relevant to whether LegalZoom or its customers prepare their documents. In denying LegalZoom summary judgment, the Court held that Missouri law distinguishes between selling legal forms that others prepare and preparing legal forms for them. Doc. 145 at 18-19. As the Court noted, a seller of legal forms that others prepare falls within the safe harbor of *In re Thompson*, which held that the sale of legal forms and instructions for filling them out "does not constitute the unauthorized practice of law *so long as the respondents and other similarly situated refrain from giving personal advice as to legal remedies or the consequences flowing therefrom.*" 574 S.W.2d 365, 369 (Mo. banc 1978) (emphasis added).

Although the Court held that a reasonable juror could conclude that LegalZoom prepares documents for customers, LegalZoom is entitled to and intends to present evidence at trial and argue to the jury that it does not prepare legal documents, but rather that customers prepare their documents themselves using LegalZoom's software.¹ If LegalZoom does not prepare documents for customers, it is entitled to safe harbor under *In re Thompson* so long as it did not give class representatives "personal advice as to legal remedies or the consequences flowing therefrom."

Whether LegalZoom gives customers personal advice is relevant to that inquiry and therefore admissible. While plaintiffs argue, inappositely, that "[a] defendant has no right to offer and a jury has no right to hear inadmissible evidence," Motion 157 at 2 (*citing* the criminal case of *United States v. Ceballos*, 593 F. Supp. 2d 1054, 1059 (S.D. Iowa 2009)), the fact of the matter is that, under Rule 402, "[a]ll relevant evidence is admissible."

Moreover, the standard for relevance is not a particularly high one. Under Rule 401, relevant evidence is "evidence having 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. Plaintiffs have placed whether LegalZoom gives customers legal advice in issue, and thus whether LegalZoom *actually did* give any class representative legal advice is clearly a fact of consequence to the determination of the action.

¹ Despite the Court's holding as to what a reasonable juror could find, precedent supports the view that software such as LegalZoom's, which "pose[s] questions to the user . . . without the direct participation of an employee" *via* "decision-tree software," allows customers to create documents themselves. Oregon Ethics Opinion No. 1994-137, 1994 WL 455098 (Or. State Bar Ass'n 1994) ("The use of self-help legal software, whether achieved by running a program on one's own computer or by remotely using the online service's program, is simply a high-tech way to access text contained in a database. Such database information in electronic form is essentially no different than the information contained in a self-help legal book or divorce kit In a sense, the customer who operates the legal software, whether on a personal computer or online using an information service, is the one doing the customizing, much as does the reader of a legal self-help text or one completing a do-it-yourself legal kit.").

Because the jury can find that LegalZoom does not prepare documents for customers, but rather that customers prepare them themselves, evidence that LegalZoom does not provide customers legal advice is a fact of consequence to the determination of whether LegalZoom is entitled to the protections of *In re Thompson*.

Finally, while plaintiffs argue that the Court “has broad discretion in determining the admissibility of evidence,” *see* Motion 162 at 3 (*citing Fortune Funding, L.L.C. v. Ceridian Corp.*, 368 F.3d 985, 990 (8th Cir. 2004)), they fail to mention that the Federal Rules of Evidence favor admissibility and that the balance under Rule 403 should generally be struck in favor of admission. *United States v. Levine*, 477 F.3d 596, 603 (8th Cir. 2007); *Block v. R.H. Macy & Co., Inc.*, 712 F.2d 1241, 1244 (8th Cir. 1983). Any question as to the admissibility of evidence that LegalZoom does not give customers legal advice should be resolved in favor of admission. Whether LegalZoom gives customers legal advice is relevant to counter plaintiffs’ express contention that it does so, as well as to whether LegalZoom’s customers prepare their own documents. Plaintiffs’ Motion 162 should be denied.

CONCLUSION

For the reasons set forth above, LegalZoom respectfully requests that the Court deny Plaintiffs’ Motion in Limine to Exclude Evidence or Argument That LegalZoom Does Not Provide Legal Advice to Customers.

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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