

**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. 152) REGARDING
COMPUTER SOFTWARE OR PUBLICATION OF LEGAL FORMS**

Defendant LegalZoom.com, Inc. (“LegalZoom”), for its Suggestions in Opposition to Plaintiffs’ Motion in Limine Regarding Computer Software or Publications of Legal Forms (“Motion 152,” Doc. 152), states as follows:

LegalZoom should be allowed to introduce evidence or argument before the jury comparing LegalZoom’s products to other computer software and legal forms in Missouri because such evidence and argument are relevant to LegalZoom’s defense. The crux of this case is whether LegalZoom’s online self-help software program is lawful under Missouri law. Plaintiffs argue that other legal software, websites or forms are not relevant because they are different from LegalZoom’s products. LegalZoom’s purpose in presenting a comparison of legal forms and computer software is to show examples of devices that have not been considered to be in violation of Missouri’s UPL statute. *See Eisel v. Midwest BankCentre*, 230 S.W.3d 335, 339 (Mo. 2007) (“[O]ne 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* specifically contemplates the comparative analysis and evidence that LegalZoom proposes to put in front of the jury.

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). All relevant evidence is admissible. Fed. R. Evid. 402. While it is true that irrelevant evidence is inadmissible under Rule 402, the threshold for admissibility is low. *United States v. Ceballos*, 593 F. Supp. 2d 1054, 1059 (S.D. Iowa 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.” Fed. R. Evid. 401. 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 the balance should be struck in favor of admission. *Levine*, 477 F.3d at 603; *Block*, 712 F.2d at 1244.

While Plaintiffs argue that “the factual question for the jury to decide is whether LegalZoom participated in or assisted in the drawing of legal documents,” Doc. 159 at 2, this 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 UPL 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 will help the jury determine whether LegalZoom’s software and forms are lawful.

While the court may exclude evidence that confuses the issues and leads to litigation of collateral issues, Plaintiffs fail to provide any explanation of why that would be the case here. Plaintiffs cite *Firemen's Fund Insurance Co. v. Thien*, 63 F.3d 754 (8th Cir. 1995), to support their argument that confusion of the issues warrants exclusion of relevant evidence. However, the facts in *Thien* are not even remotely similar to the evidence at issue in Motion 152. In *Thien*, the court excluded evidence related to liability in an accident when the sole issue in the case was whether there was insurance coverage. *Id.* at 759. In this case, a comparison of lawful computer software and legal forms is not only directly relevant to determining liability, it is contemplated by governing case law. Therefore, LegalZoom should be permitted compare its product to other computer software and legal forms.

Plaintiffs also argue they would be unfairly prejudiced if LegalZoom is allowed to provide a comparison to other computer software and legal forms because they cannot cross-examine a computer program or a form book, and without a witness to testify about the program or form book they will be unable to explain the differences between those products and LegalZoom's. Plaintiffs' concerns will be addressed through LegalZoom's expert witness, Dean Burnele V. Powell, whom LegalZoom will call as a witness to testify about comparisons. Plaintiffs will have the opportunity to cross-examine Dean Powell.

In sum, Plaintiffs provide no plausible reasons why the comparison of legal forms or computer software to LegalZoom's products is too 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 Regarding Computer Software or Publications of Legal Forms.

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