

**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. 161) TO EXCLUDE EVIDENCE OR ARGUMENT THAT
PLAINTIFFS' CLAIMS ARE BROUGHT TO PROTECT THE LEGAL PROFESSION**

Defendant LegalZoom.com, Inc. ("LegalZoom"), for its Suggestions in Opposition to Plaintiffs' Motion in Limine to Exclude Evidence or Argument That Plaintiffs' Claims Are Brought to Protect the Legal Profession ("Motion 161," Doc. 161), states as follows:

In Motion 161, Plaintiffs seek to exclude from this case evidence or argument that their claims are brought to protect the legal profession. In Motion 161, one of its avalanche of motions in limine, Plaintiffs ask the Court for a sweeping ruling that LegalZoom can neither put on evidence nor argue that "the claims asserted by plaintiffs in this lawsuit are brought to protect the legal profession from competition." Motion 161 at 1. Plaintiffs argue that such evidence is not relevant and also argue that it "would mislead and confuse the jury." *Id.*

In support of their motion, Plaintiffs do nothing more than cite Rules 401 and 402 and cases that recite the uncontroversial principles that irrelevant evidence should not be offered or heard and that this Court has broad discretion in determining the admissibility of evidence.

Plaintiffs' unsupported motion asks for too much; the Court should deny it and take up the issue of the propriety of this evidence and argument as the trial progresses.

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).

Here, Plaintiffs ask the Court to prevent LegalZoom both from putting on evidence that their claims are motivated by a desire to protect the economic interests of the legal profession *and* to forbid LegalZoom from arguing that motivation. Plaintiffs assert that this evidence would be presented through LegalZoom’s expert, Dean Powell. To that extent, LegalZoom respectively refers the Court to its Suggestions in Opposition to Plaintiffs’ Motion in Limine (Doc. No. 149) Regarding the History of the Regulation of the Practice of Law. Doc. 182. As explained there, Plaintiffs have shown no reason to exclude Dean Powell from testifying on the background and development of the regulation of the legal profession, including the economic interests and forces involved, thereby giving the jury necessary context for understanding and deciding issues in this case.

Furthermore, the Court need not decide now whether it would be permissible for LegalZoom to argue to the jury that Plaintiffs' claims were motivated by a desire to protect the legal profession. If Plaintiffs' motivations are at issue in the case, then argument on those motivations — and other alternative motivations that might be at work — would plainly be permissible. The fact that plaintiffs do not question the legality or validity of the documents they created on LegalZoom's website, and the fact that two of the three named plaintiffs apparently will not even attend the trial, makes it fair to question motivations. The Court cannot decide definitively now whether those motivations will be in the case.

CONCLUSION

For the reasons set forth above, LegalZoom respectfully requests that the Court deny Plaintiffs' Motion in Limine to Exclude Evidence or Argument that Plaintiffs' Claims are Brought to Protect the Legal Profession.

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