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INCORP SERVICES, INC.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

INCORP SERVICES, INC., a Nevada corporation,

Plaintiff,

vs.
LEGALZOOM.COM, INC., a Delaware corporation,

Defendant.

Case No. 2:09-cv-00273-RLH-LRL

**FIRST AMENDED COMPLAINT OF
INCORP SERVICES, INC. FOR:**

- (1) TRADE LIBEL (15 U.S.C. §1125(a);
- (2) DEFAMATION;
- (3) ANTI-COMPETITION (15 U.S.C. §1);
- (4) NEVADA ANTI-COMPETITION (NEV. REV. STAT. 598A.160);
- (5) INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGES

AND

DEMAND FOR JURY TRIAL

1 Plaintiff InCorp Services, Inc. (“Plaintiff” or “InCorp”), brings this Complaint against
2 LegalZoom.com, Inc., a Delaware corporation (“LegalZoom”), and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff offers national registered agent services, serving as a registered
5 agent for service of process in all 50 states and in the District of Columbia.

6 2. LegalZoom is a competitor of Plaintiff. Like Plaintiff, LegalZoom offers its
7 customers registered agent services. Additionally, LegalZoom offers its customers
8 incorporation and business registration services. Customers who use LegalZoom’s
9 incorporation services theoretically have the option of using—or not using—LegalZoom’s
10 registered agent services.

11 3. In an effort to sell its registered agent services, LegalZoom has
12 systematically made false and defamatory statements about Plaintiff to LegalZoom’s
13 customers. LegalZoom made these statements to prevent the customers from selecting
14 Plaintiff’s registered agent service, and to force them to use LegalZoom’s registered
15 agent service instead (along with LegalZoom’s incorporation services).

16 4. In effect, LegalZoom has made the purchase of its registered agent
17 services along with LegalZoom’s corporate registration services the only viable economic
18 option for its customers.

19 5. As a result of LegalZoom’s misconduct, Plaintiff has been substantially
20 harmed, and continues to suffer injury.

21 **PARTIES**

22 6. Plaintiff is a Nevada corporation, with its principal place of business in
23 Henderson, Nevada.

24 7. Defendant LegalZoom.com, Inc. is a Delaware Corporation with its principal
25 place of business in Los Angeles, California. LegalZoom is Plaintiff’s competitor. Upon
26 information and belief, LegalZoom performs registered agent services in the State of
27 Nevada.

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JURISDICTION AND VENUE

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2 8. Original subject matter jurisdiction is conferred upon this Court by the
3 Lanham Act, 15 U.S.C. §1111 *et seq*, the United States antitrust laws, 15 U.S.C. §4, and
4 28 U.S.C. §1331. Supplemental jurisdiction over claims arising under the law of the
5 State of Nevada is conferred upon this Court under 28 U.S.C. §1367.

6 9. This Court has personal jurisdiction over LegalZoom because LegalZoom
7 has purposefully availed itself of the privilege of conducting activities in this forum,
8 offering services to Nevada customers, offering registered agent services in Nevada to
9 customers in Nevada and other states, targeting Nevada businesses in its marketing,
10 transacting business in Nevada, and employing agents or partners in Nevada. Moreover,
11 as more fully set forth below, LegalZoom has committed tortious acts directed at Plaintiff,
12 a Nevada resident, and Plaintiff’s claims are directed to and/or arise out of LegalZoom’s
13 forum-related activities.

14 10. Venue is proper in the District of Nevada pursuant to LR IA 6-1 and 28
15 U.S.C §1391(b)(2) & (c), because a substantial part of the events or omissions giving rise
16 to Plaintiff’s claims occurred here, and because the Defendant is subject to personal
17 jurisdiction in this District. Among other things, Defendant serves as the registered agent
18 in Nevada for over 1800 businesses.

DEFENDANT’S UNFAIR BUSINESS PRACTICES

19
20 11. Plaintiff offers registered agent and other corporate services to businesses
21 seeking to incorporate or otherwise transact business across the various states. Plaintiff
22 was founded in 1998, and is currently the 4th largest national registered agent service
23 provider in the country, with over 55,000 active clients worldwide. Plaintiff offers its
24 registered agent services in all 50 states and in the District of Columbia.

25 12. Plaintiff’s registered agent service includes access to Plaintiff’s state-of-the
26 art client website, where, among other things, Plaintiff’s customers may check the status
27 of their business entities in multiple jurisdictions on the same webpage, download free
28 copies of filed documents, and check for mail that has been forwarded to them.

1 13. Like Plaintiff, LegalZoom offers its customers registered agent services.
2 Additionally, LegalZoom offers its customers incorporation and business registration
3 services.

4 14. Customers who use LegalZoom’s incorporation services theoretically have
5 the option of using—or not using—LegalZoom’s registered agent services.

6 15. Upon information and belief, since at least 2008, LegalZoom has
7 intentionally and systematically engaged in a false and defamatory marketing campaign
8 against Plaintiff.

9 16. On information and belief, customers of LegalZoom who are forming
10 corporations through LegalZoom often wish to select Plaintiff’s registered agent service
11 instead of using LegalZoom’s registered agent services. These LegalZoom customers
12 are thus prospective customers of Plaintiff.

13 17. Since at least 2008, telephone representatives of LegalZoom, as a regular
14 business practice, have stated—and continue to state—to potential customers that
15 Plaintiff “is not in good standing” with the state of Delaware, Texas, New York, and other
16 states; that Plaintiff “cannot be used” as a registered agent; that Plaintiff is “not licensed
17 to do business in” certain states; that Plaintiff “cannot legally do business in” certain
18 states; that Plaintiff is “not legal” in certain states; or statements substantially similar
19 thereto.

20 18. These statements are false, and were false when they were made, as
21 Plaintiff is currently—and has been during all relevant times—in good standing with all
22 fifty states and the District of Columbia.

23 19. On information and belief, LegalZoom knew these statements were false at
24 the time they made them.

25 20. LegalZoom made these false statements to prevent customers from using
26 Plaintiff’s registered agent service and to pressure customers into using LegalZoom’s
27 registered agent service.

28 21. LegalZoom knew that these customers wished to establish a business

1 relationship with Plaintiff and to purchase Plaintiff's registered agent services. Thus,
2 LegalZoom made the false statements about Plaintiff with the intent to harm Plaintiff by
3 preventing customers from establishing a relationship with Plaintiff.

4 22. As a result of LegalZoom's policy of systematically making false statements
5 about Plaintiff, LegalZoom has made the purchase of its registered agent services
6 along with LegalZoom's incorporation services the only viable economic option for its
7 customers. The facts and circumstances surrounding LegalZoom's customer
8 transactions, as a practical matter, forced the customers into purchasing LegalZoom's
9 registered agent service instead of Plaintiff's registered agent service.

10 23. As a result of its false statements about Plaintiff, LegalZoom was able to
11 enter into agreements to sell its customers LegalZoom's incorporation services only if the
12 customer declined to use Plaintiff's registered agent service.

13 24. LegalZoom's misconduct has resulted in the destruction of Plaintiff's free
14 access as a competing supplier of registered agent services.

15 25. On information and belief, LegalZoom has made false statements about
16 Plaintiff to hundreds if not thousands of customers, resulting in significant damages to
17 Plaintiff.

18 26. On information and belief, LegalZoom continues to make such false
19 statements to consumers and to engage in this anti-competitive activity. As a result,
20 Plaintiff brings this action for injunctive relief and damages.

21 **FIRST CAUSE OF ACTION**

22 **Trade Libel Pursuant to 15 U.S.C. §1125(a)**

23 27. Plaintiff repeats, realleges, and incorporates each and every allegation set
24 forth in paragraphs 1 through ___ of this complaint.

25 28. LegalZoom has made, or knowingly conspired and agreed to be made,
26 false or misleading statements to Plaintiff's prospective or existing customers.

27 29. These false or misleading statements were material, in that they, for
28 example, misrepresented the business, background, quality and overall validity of

1 Plaintiff's enterprise and services.

2 30. Defendant made these false or misleading statements in interstate
3 commerce, in connection with goods or services. Defendant's false or misleading
4 statements are commercial statements of advertising or promotion.

5 31. As a proximate result of the foregoing acts, Defendant has caused actual
6 harm and is liable to Plaintiff for damages in an amount to be proved at trial.

7 32. Defendant has engaged in conduct of a malicious, oppressive, or fraudulent
8 nature, thereby entitling Plaintiff to an award of punitive damages.

9 33. As a direct and proximate result of the actions, conduct, and practices of
10 Defendant's alleged above, Plaintiff has suffered, and will continue to suffer, damages
11 and irreparable harm.

12 34. Plaintiff has no adequate remedy at law.

13 **SECOND CAUSE OF ACTION**

14 **Defamation**

15 35. Plaintiff repeats, realleges, and incorporates each and every allegation set
16 forth in paragraphs 1 through 26 of this complaint.

17 36. Defendant's actions as described above constitute defamation, in that they
18 have made, or knowingly conspired and agreed to be made, false statements regarding
19 Plaintiff.

20 37. Defendant's statements constitute defamation *per se*, in that they defame
21 Plaintiff in its trade.

22 38. Defendant has further made, or knowingly conspired and agreed to be
23 made, false statements regarding Defendant itself, in relation to Plaintiff, falsely asserting
24 non-existent qualities or attributes in comparison or contrast to Plaintiff, designed to
25 falsely credit Defendant for qualities they did or do not possess.

26 39. Defendant knew or should have known that the statements published were
27 false.

28 40. Defendant published these statements to various third parties without

1 privilege.

2 41. As a proximate result of the foregoing acts, Defendant has caused actual
3 harm and is liable to Plaintiff for damages in an amount to be proven at trial.

4 42. Defendant has engaged in conduct of a malicious, oppressive, or fraudulent
5 nature, thereby entitling Plaintiff to an award of punitive damages.

6 43. As a direct and proximate result of the actions, conduct, and practices of
7 Defendant's alleged above, Plaintiff has suffered, and will continue to suffer, damages
8 and irreparable harm.

9 44. Plaintiff has no adequate remedy at law.

10 **THIRD CAUSE OF ACTION**

11 **Violation of United States Unfair Competition Laws (15 U.S.C. §1)**

12 45. Plaintiff repeats, realleges, and incorporates each and every allegation set
13 forth in paragraphs 1 through 26 of this complaint.

14 46. LegalZoom has tied the sale of its corporate registration services to the sale
15 of its registered agent services by preventing customers from using the registered agent
16 service of a competitor.

17 47. Given LegalZoom's large and growing presence, a substantial amount of
18 interstate commerce has been involved in LegalZoom's misconduct, and LegalZoom
19 occupies a not insignificant portion of the registered agent service market.

20 48. LegalZoom has sufficient market power with respect to its corporate
21 registration services to appreciably restrain free competition in the market for registered
22 agent services. LegalZoom's misconduct, if continued unchecked, will substantially
23 lessen competition and/or create a monopoly with respect to registered agent services

24 49. As a proximate result of LegalZoom's misconduct, Plaintiff's has been
25 substantially injured.

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1 **FOURTH CAUSE OF ACTION**

2 **Violation of Nevada Unfair Competition Laws (NEV. REV. STAT. 598A.060 &**
3 **598A.160)**

4 1. Plaintiff repeats, realleges, and incorporates each and every allegation set
5 forth in paragraphs 1 through 26 of this complaint.

6 2. LegalZoom has tied the sale of its corporate registration services to the sale
7 of its registered agent services by effectively preventing customers from using the
8 registered agent service of a competitor.

9 3. Given LegalZoom's large and growing presence in Nevada, a substantial
10 amount of intrastate commerce has been involved in LegalZoom's misconduct.

11 4. LegalZoom has sufficient market power with respect to its corporate
12 registration services to appreciably restrain free competition in the market for registered
13 agent services. LegalZoom's misconduct, if continued unchecked, will substantially
14 lessen competition and/or create a monopoly with respect to registered agent services.

15 5. As a proximate result of LegalZoom's misconduct, Plaintiff's has been
16 substantially injured.

17 **FIFTH CAUSE OF ACTION**

18 **Interference with Prospective Economic Advantage**

19 6. Plaintiff repeats, realleges, and incorporates each and every allegation set
20 forth in paragraphs 1 through 26 of this complaint.

21 7. Prospective contractual relationships existed between Plaintiff and
22 numerous customers regarding Plaintiff's registered agent services.

23 8. LegalZoom knew about these prospective relationships because the
24 potential customers asked LegalZoom about Plaintiff's service.

25 9. LegalZoom intended to harm Plaintiff by preventing the relationship from
26 forming by making false statements about Plaintiff.

27 10. No privilege or justification existed for LegalZoom's false statements.

28 11. Plaintiff has suffered actual harm as a result of LegalZoom's misconduct.

PRAYER

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That the Court enter a judgment against the Defendant that it has:
 - a. Committed and is committing acts of trade libel in violation of 15 U.S.C. §1125(a);
 - b. Committed and is committing acts of defamation in violation of Nevada common law;
 - c. Committed and is committing acts of unfair competition under 15 U.S.C. §§1, 15;
 - d. Committed and is committing acts of unfair competition under NEV. REV. STAT. 598A.060 & 598A.160;
 - e. Committed and is committing acts of interference with prospective economic advantage in violation of Nevada common law;
2. That the Court issue injunctive relief against Defendant, enjoining Defendant from:
 - a. Engaging in anti-competitive practices in violation of the laws of the United States and the State of Nevada.
3. That the Court order Defendant to pay Plaintiff's damages as follows:
 - a. Plaintiff's damages (composed of Plaintiff's actual damages and Defendant's profits) in an amount to be determined according to proof pursuant to 15 U.S.C. §1117(a) for Defendant's willful false statements and trade libel;
 - b. Plaintiff's treble damages under 15 U.S.C. §15 and NEV. REV. STAT. 598A.160 for Defendants' violation of the United States and Nevada anti-competition laws;
 - c. Plaintiff's general and specific compensatory damages and punitive damages for Defendants' willful, wanton and extreme defamation of Plaintiff and Defendants' willful, wanton and extreme interference with Plaintiffs' prospective economic advantages under Nevada common law;

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- d. Plaintiffs' costs and fees under 15 U.S.C. §15 and 15 U.S.C. §1117(a) and NEV. REV. STAT. 598A.160 for Defendants' willful violation of the United States and Nevada anti-competition and the federal Lanham Acts;
 - e. Such other damages as the Court shall deem appropriate;
 - f. Interest, including prejudgment interest, on the foregoing sums;
4. That the Court grant to Plaintiff such additional relief as is just and proper.

DATED: April 6, 2009

KRONENBERGER BURGOYNE, LLP

By: /s/ Karl S. Kronenberger
Karl S. Kronenberger

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REQUEST FOR JURY TRIAL

Plaintiff hereby demands a trial of this action by jury.

DATED: April 6, 2009

KRONENBERGER BURGOYNE, LLP

By: /s/ Karl S. Kronenberger
Karl S. Kronenberger

Attorneys for Plaintiff
Incorp Services, Inc.