IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROSENBAUM & ASSOCIATES, P.C., DAVID A. ROSENBAUM and JEFFREY M. ROSENBAUM Plaintiffs, v. MORGAN & MORGAN a/k/a MORGAN & MORGAN, PA, JOHN MORGAN, MIKE MORGAN, DANIEL MORGAN, MATT MORGAN, SCOTT WEINSTEIN and ULTIMA MORGAN Defendants.	Civil Action No. 2:17-cv-04250-MAK

ORDER

AND NOW this _____ day of _____, 2017, upon consideration of the Defendants' Motion to Dismiss and any opposition thereto, it is hereby ORDERED that Defendants' Motion to Dismiss is GRANTED and that Plaintiffs' Complaint is dismissed with prejudice.

BY THE COURT:

_____
J.

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ROSENBAUM & ASSOCIATES, P.C., DAVID A. ROSENBAUM and JEFFREY M. ROSENBAUM Plaintiffs, v. MORGAN & MORGAN a/k/a MORGAN & MORGAN, PA, JOHN MORGAN, MIKE MORGAN, DANIEL MORGAN, MATT MORGAN, SCOTT WEINSTEIN and ULTIMA MORGAN Defendants.	Civil Action No. 2:17-cv-04250-MAK

DEFENDANTS' MOTION TO DISMISS

Defendants, Morgan & Morgan a/k/a Morgan & Morgan, PA, John Morgan, Mike Morgan, Daniel Morgan, Matt Morgan, Scott Weinstein and Ultima Morgan, by and through their counsel, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, hereby move to dismiss Plaintiff's Complaint (ECF Doc. No. 1) pursuant to Federal Rule of Civil Procedure 12(b)(6) for the reasons set forth in detail in the accompanying Memorandum of Law.

WHEREFORE, Defendants respectfully request that this Court grant their Motion to Dismiss Plaintiffs' Complaint with prejudice.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

November 28, 2017

By: /s/Gaetan J. Alfano
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DEFENDANTS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION TO DISMISS

Defendants, Morgan & Morgan a/k/a Morgan & Morgan, PA, ("Morgan & Morgan") John Morgan, Mike Morgan, Daniel Morgan, Matt Morgan, Scott Weinstein and Ultima Morgan by and through their counsel, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, hereby submit their Memorandum of Law in Support of their Motion to Dismiss.

I. INTRODUCTION

Plaintiffs' Complaint consists of two claims: false advertising pursuant to the Lanham Act, 15 U.S.C. § 1051 et seq., and unfair methods of competition under Pennsylvania common law. The Complaint is grossly deficient on its face. Although allegedly a "false advertising" case, Plaintiffs omit any actual advertisements. Instead, the Complaint rests its spurious allegations on three or four lines extracted from the text of some unidentified advertisements. Instead of exercising due diligence prior to filing this Complaint, Plaintiffs have slung the proverbial mud against the wall, hoping desperately that some of it will stick. Respectfully, none of it should.

Equally as egregious, they have sued six individual defendants - John Morgan, Mike Morgan, Daniel Morgan, Matt Morgan, Scott Weinstein and Ultima Morgan ("the Individual Defendants"), see Complaint, ECF Doc. No. 1, ("Compl."), ¶¶ 5-10 (Morgan & Morgan and the Individual Defendants are collectively referred to herein as "Defendants") - without articulating a specific allegation of wrongdoing against a single one.

Filled with threadbare allegations and conclusory statements, the Complaint fails to allege sufficient facts to support any claim of false advertising or tortiously unfair method of competition. Indeed, Plaintiffs have not sufficiently pled that: (1) Defendants have made false or misleading statements, (2) the alleged deception is material, or (3) a likelihood of injury as a result of Defendants' allegedly false and misleading advertising. Plaintiffs' Complaint is, at its core, about attorney conduct concerning the solicitation of prospective clients. Such matters are governed exclusively by the Pennsylvania Rules of Professional Conduct ("PRPC"), promulgated by the Pennsylvania Supreme Court. The PRPC do not create a private cause of action cognizable before this Court. For these reasons, the Complaint should be dismissed with prejudice in its entirety.

II. ARGUMENT

A. Standard of Review

Federal Rule of Civil Procedure 12(b)(6) provides for the dismissal of a complaint, in whole or in part, for failure to state a claim upon which relief can be granted. When considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), the court "must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions." Fowler v. UPMC Presbyterian Shadyside, 578 F.3d 203, 210-211 (3d Cir. 2009) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009)). The court must then determine "whether the facts

alleged in the complaint are sufficient to show that the plaintiff has a 'plausible claim for relief.'" Id. at 211 (quoting Iqbal, 556 U.S. at 679). The complaint must do more than merely allege the plaintiff's entitlement to relief; it must "show such an entitlement with its facts." Id. (citing Phillips, 515 F.3d at 234-35). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct the complaint has alleged-but it has not 'show[n]'-'that the pleader is entitled to relief.'" Id. (citing Iqbal, 556 U.S. at 679). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. 662.

Moreover, "many district courts within this circuit have applied a so-called 'slightly heightened' or 'intermediate' pleading standard for false advertising claims under the Lanham Act, although the Third Circuit has not yet addressed the issue." New Jersey Physicians United Reciprocal Exch. v. Boynton & Boynton, Inc., 141 F. Supp. 3d 298, 307 (D.N.J. 2015) (citations omitted). "The slightly heightened pleading requirement is necessary in Lanham Act claims because, [i]n litigation in which one party is charged with making false statements, it is important that the party charged be provided with sufficiently detailed allegations regarding the nature of the alleged falsehoods to allow him to make a proper defense. Thus, Plaintiff must plead its Lanham Act claims with more particularity than traditional notice pleading under Rule 8 but something less than the specificity of Rule 9." Id. (citing Trans USA Prods. v. Howard Berger Co., 2008 WL 852324, at *5 (D.N.J. Mar. 28, 2008)).

B. As There Are No Specific Allegations Against The Individual Defendants, the Individual Defendants Should Be Dismissed

At the outset, the Individual Defendants - John Morgan, Mike Morgan, Daniel Morgan, Matt Morgan, Scott Weinstein and Ultima Morgan - should be dismissed as Plaintiffs have not pled the involvement of each individual with a shred of specificity. Plaintiffs' shotgun approach

of naming individual defendants but making allegations against the Defendants collectively is insufficient as a matter of law.

Under Federal Civil Procedure Rule 8(a), a "pleading that states a claim for relief must contain ... a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). While a plaintiff is not required to plead its claims with intricate detail, Rule 8 and Twombly require plaintiff to provide "some specificity" as to which defendant committed what harm, and how he or she did so. See, e.g., Twombly, 550 U.S. at 558 (insisting "upon some specificity in pleading before allowing a potentially massive factual controversy to proceed" to an "inevitably costly and protracted discovery phase"). Generic pleading of the same allegations against all Defendants is insufficient. Best Med. Int'l, Inc. v. Accuray, Inc., No. 2:10-CV-1043, 2011 WL 860423, at *6 (W.D. Pa. Mar. 9, 2011) (citing Menkowitz v. Pottstown Memorial Medical Center, 1999 WL 410362 *3 (E.D.Pa.1999) (granting motion to dismiss claims based on general allegations against a group of individuals).

The majority of Plaintiffs' allegations are made against the Defendants collectively. More importantly, the paragraphs of the Complaint that reference Individual Defendants do not include allegations against those Individual Defendants. For example, there is not a single allegation against Scott Weinstein or Ultima Morgan. Indeed, other than their inclusion in the "Parties" and "Jurisdiction and Venue" sections, neither is even mentioned in the Complaint.

The allegations against the remaining Individual Defendants - John Morgan, Matt Morgan, Dan Morgan and Mike Morgan - are also threadbare and conclusory in nature. The Complaint alleges that the unidentified advertisements "feature" John Morgan, Matt Morgan, Dan Morgan and Mike Morgan. Compl. ¶¶ 26, 56. The Complaint also speculates as to what consumers are led to believe by the advertisements. Compl. ¶¶ 39-40, 47-50, 57-59. For

example, the Complaint states: "These advertisements lead the consumers in the Philadelphia metro area to believe that John Morgan and Morgan & Morgan will be personally involved in overseeing the handling of their personal injury claim." Compl. ¶ 39. Yet, neither this conclusory allegation, nor any other allegation that mentions an Individual Defendant, articulates any allegedly improper conduct of the Individual Defendant.[1]

Plaintiffs have failed to plead the personal involvement of each (or any) Individual Defendant and have failed entirely to satisfy Rule 8. The Individual Defendants should be dismissed with prejudice.

C. Plaintiffs' Lanham Act Claim Fails As A Matter of Law

Plaintiffs' Lanham Act claim fails as a matter of law because the facts alleged in the complaint are insufficient to show that the plaintiff has a "plausible claim for relief."

To state a claim for false advertising under the Lanham Act, a plaintiff must allege: "1) that the defendant has made false or misleading statements as to his own product [or another's]; 2) that there is actual deception or at least a tendency to deceive a substantial portion of the intended audience; 3) that the deception is material in that it is likely to influence purchasing decisions; 4) that the advertised goods traveled in interstate commerce; and 5) that there is a likelihood of injury to the plaintiff in terms of declining sales, loss of good will, etc." Pernod Ricard USA, LLC v. Bacardi U.S.A., Inc., 653 F.3d 241, 248 (3d Cir. 2011).

[1] Plaintiffs make much of the fact that the Individual Defendants features in advertisements are not barred in Pennsylvania. Yet, Plaintiffs have not cited to any authority requiring that a lawyer featured in an advertisement broadcast in a particular market must be admitted to practice law in that market. By way of example, Philadelphia advertisements may be seen in New Jersey and Delaware. That does not mean that every lawyer featured in those advertisements must be admitted to practice law in all three jurisdictions.

Although the Complaint asserts a claim for false advertising, and despite stating repeatedly that many of Defendants advertisements were and continue to be "false, misleading and deceptive," Plaintiffs:

- do not identify the allegedly false or misleading advertisements;
- do not describe the advertisements in any detail;
- do not provide copies of the advertisements;
- do not provide transcripts of the advertisements;
- do not provide screenshots or photos of the advertisements;
- do not include *any* disclaimers that are attached to television advertisements; and
- do not attempt to identify the other competitors in the market or the nature and extent of their advertising during the same time period.

Rather, the Complaint lacks any content from the allegedly false advertisements, save for the following alleged excerpts:

- "[A]t least some of the Defendants' advertisements explicitly state, in writing, that the advertisement is 'not a referral service'." Compl. ¶ 43.
- "At least one of defendants' advertisements states, 'I'm not just any lawyer, I'm your lawyer.'" Id. ¶ 44.
- "One or more of Defendants' advertisements state, 'We're all here for you.' Another advertisement states, 'Our family is here for your family.'" Id. ¶ 45.

Plaintiffs' selective use of threadbare phrases, without citing to a specific advertisement and any accompanying disclaimer, is insufficient to satisfy Rule 8. "[I]n assessing whether an advertisement is literally false, a court must analyze the message conveyed **in full context**." Castrol Inc. v. Pennzoil Co., 987 F.2d 939, 946 (3d Cir. 1993) (emphasis added). See also Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Pharm. Co., 290 F.3d 578, 586-87 (3d Cir.2002) ("A 'literally false' message may be either explicit or 'conveyed by necessary

implication when, considering the advertisement in its entirety, the audience would recognize the claim as readily as if it had been explicitly stated.'") (quoting Clorox Co. Puerto Rico v. Proctor & Gamble Commercial Co., 228 F.3d 24, 35 (1st Cir. 2000)). Because Plaintiffs have failed to provide the relevant advertisements, it is impossible to determine if the advertisements are false or misleading. The excerpted phrases included in the Complaint, stripped of context, simply cannot be used as the basis of a false advertising claim. See Castrol at 946 ("[I]n determining facial falsity the court must view the face of the statement in its entirety, rather than examining the eyes, nose, and mouth separately and in isolation from each other") (quoting Cuisinarts, Inc. v. Robot-Coupe Int'l Corp., No. 81 CIV 731 (CSH), 1982 WL 121559, *2 (S.D.N.Y. June 9, 1982). Plaintiffs' allegations certainly would not satisfy any heightened pleading standard.

Even assuming the phrases provide were sufficient, Plaintiff has not sufficiently pled how these statements are false or misleading. For instance, it is entirely unclear how the phrases "We're all here for you" or "Our family is here for you" are false or misleading. Morgan & Morgan is a family based law firm. Plaintiffs concede that Morgan & Morgan has a Philadelphia-based office, has an attorney working in the office and handles, at least "minimally," claims in Pennsylvania. Compl. ¶¶ 28-33. Plaintiffs also seem to concede that not all cases are referred to other counsel. Compl. ¶ 33 (calling Defendants representations "non-existent or minimal"). Whether Morgan & Morgan was acting as a "referral service" – a term which is defined by the Professional Rules of Conduct – is a question for the Disciplinary Board of Pennsylvania, not this Court. See *infra* at § II.E.

Additionally, Plaintiffs' have not sufficiently pled that the alleged deception[2] is "material in that it is likely to influence purchasing decisions." Pernod Ricard, 653 F.3d at 248. Plaintiffs'

[2] Plaintiffs also fail to sufficiently allege "actual deception or at least a tendency to deceive" by the advertisements. Defendants are not alleged to have passed off any other's goods or services as their own. Nor are

conclusory allegation that: "[c]onsumers in the Philadelphia market were in fact misled and/or deceived by the Defendants' advertisements" is nothing more than a legal conclusion. Indeed, because there is no information about how consumers are being misled, nor any reference to any consumer actually being misled, it is simply a "naked assertion" that does not meet the Twombly/Iqbal plausibility standard. See Ameritox Ltd. v. Millenium Laboratories Inc., 2012 WL 33155, at *3 (M.D. Fla. Jan. 6, 2010).

Finally, Plaintiffs have not sufficiently pled a likelihood of injury "in terms of declining sales, loss of good will." See Pernod Ricard, 653 F.3d at 248. Plaintiffs allege that "[a]s a result of Defendants' false and misleading advertising Plaintiffs have lost the opportunity to represent numerous personal injury clients" and "experienced a decline in the number of new clients that have contacted Plaintiff for legal services." Compl. ¶¶ 78-79. These allegations are the very definition of conclusory. In making these allegations, Plaintiffs do not distinguish between the clients purportedly "lost" due to any allegedly misleading advertisements as opposed to clients purportedly "lost" due to the remainder of Morgan & Morgan's advertising. In fact, Plaintiffs do not cite to any client of Morgan & Morgan who would have retained Rosenbaum & Associate if not for the allegedly false advertising. Plaintiffs would have this Court believe that there are only two law firms advertising for personal injury clients in this metropolitan area – Morgan & Morgan and Rosenbaum & Associates – and that any client who elects one firm does so necessarily at the expense of the other. Nothing could be further from the truth, given the plethora of attorneys and law firms advertising for personal injury clients in the Philadelphia

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they alleged to have engaged in any false, unfair or misleading comparison of the quality or nature of their services or abilities with those of the Rosenbaum firm. Moreover, there is no direct or implied reference whatsoever to Plaintiffs in any of Defendants' advertising, so there can be no contention that Defendants somehow directed or intended the advertising to cause Plaintiffs harm.

media market.[3] Plaintiffs fail to account for would-be clients "lost" due to other law firms or "lost" due to the effectiveness, or lack thereof, of Rosenbaum & Associates own advertising.

Because of its glaring lack of factual support, Plaintiff's Lanham Act claim fails under Iqbal and Twombly. Indeed, it is nothing more than a series of "recitals of the elements of a cause of action, supported by mere conclusory statements," which do not remotely satisfy the pleading requirements in federal court. Accordingly, Plaintiff's Lanham Act claims should be dismissed with prejudice.

D. Plaintiffs' Common Law Claim Fails As A Matter of Law

"Under Pennsylvania law, the elements necessary to prove unfair competition through false advertising parallel those elements needed to show a Lanham Act violation, absent the requirement for goods to travel in interstate commerce." Reese v. Pook & Pook, LLC., 158 F. Supp. 3d 271, 288 (E.D. Pa. 2016) (citing Leonetti's Frozen Foods, Inc. v. Am. Kitchen Delights, Inc., Civ. A. No. 11–6736, 2012 WL 1138590, at *11 (E.D.Pa. Apr. 4, 2012) (quoting KDH Elec. Sys., Inc. v. Curtis Tech. Ltd., 826 F.Supp.2d 782, 807 (E.D.Pa.2011)). Plaintiffs rely on the same inadequate factual allegations for the Lanham Act claim and the unfair competition claim. Because Plaintiffs' Lanham Act allegations fail to allege a plausible claim under federal law for a false advertising injury against the Defendants, the common law claim should also fail.[4]

[3] The Complaint also neglects to acknowledge that there are myriad available methods of lawyer advertising, including: law firm websites, social media, television, billboards, radio, newspaper, magazine, business cards, and referral networks. In addition, the Court may take judicial notice of the fact that dozens of law firms advertise for personal injury cases in the Philadelphia media market.

[4] Additionally, because Plaintiff's Lanham Act claim provides the sole basis for federal jurisdiction, dismissal of that claim warrants dismissal of Plaintiff's state law claim. See 28 U.S.C. § 1367(c)(3).

E. Alleged Violations of the Pennsylvania Rules of Professional Conduct Do Not Create Private Causes of Action and are not Cognizable Before this Court

Plaintiffs' allegations regarding Defendants' advertisements are essentially accusations that Defendants are acting in violation of the PRPC. For example, Plaintiffs' allegations that an attorney in an advertisement must state where he or she is barred, Compl. ¶¶ 47, 50; what disclosures are required when referring a matter to another attorney, Compl. ¶ 42; and whether a firm is a "referral service," Compl. ¶ 43, are all matters that require interpretation of the PRPC. See PRPC. 7.1, 7.2, 7.7. Such claims do not create a private right of action and, therefore, are not properly before this Court.

Plaintiffs' Complaint is apparently grounded on allegations that Defendants' advertisements are false and misleading because: (1) Morgan & Morgan attorneys appearing in the advertisements are not licensed to practice law in Pennsylvania, and (2) Defendants' practice in Philadelphia is actually or primarily a referral service. The focus of the Complaint is not truly about Defendants' advertising, as Plaintiffs have failed to provide the allegedly false advertising to their Complaint. Rather, Plaintiffs' allegations are directed at Defendants' conduct and whether Defendants are legally permitted to advertise and operate their law firm as Plaintiffs allege they are currently doing. This attorney conduct is regulated exclusively by the Pennsylvania Supreme Court through its Disciplinary Board.

Article V, Section 10(c) of the Pennsylvania Constitution states that "[t]he Supreme Court shall have the power to prescribe general rules ... for admission to the bar and to practice law." PA. CONST. art. V, § 10(c). "Thus, the Supreme Court is empowered by the Pennsylvania Constitution to exclusively govern the conduct of attorneys practicing law in this Commonwealth." City of Pittsburgh v. Silver, 50 A.3d 296, 299 (Pa. Commw. Ct. 2012)(citing Beyers v. Richmond, 594 Pa. 654, 665, 937 A.2d 1082, 1089 (2007); Commonwealth v. Stern,

549 Pa. 505, 510, 701 A.2d 568, 570 (1997)). "Pursuant to [its] constitutional authority, [our Supreme] Court adopted the Rules of Professional Conduct and the Rules of Disciplinary Enforcement, which govern the conduct and discipline of attorneys." Stern, 549 Pa. at 510, 701 A.2d at 571. See Pa. R.D.E. 103 ("The Supreme Court declares that it has inherent and exclusive power to supervise the conduct of attorneys who are its officers (which power is reasserted in Section 10(c) of Article V of the Constitution of Pennsylvania) and in furtherance thereof promulgates these rules....").[5]

[5] The Pennsylvania Supreme Court has promulgated rules regulating "Communications Concerning a Lawyer's Services," see PRPC 7.1, "Advertising," see PRPC 7.2, and "Referral Services," see PRPC 7.7.

Rule 7.1 "Communications Concerning a Lawyer's Services," provides: "A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading."

The "Comment" further states:

> [1] This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.
>
> [2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.
>
> [3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.
>
> [4] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

Rule 7.7(b) provides that "A 'lawyer referral service' is any person, group of persons, association, organization or entity that receives a fee or charge for referring or causing the direct or indirect referral of a potential client to a lawyer drawn from a specific group or panel of lawyers." PRCP 7.7(b).

Plaintiffs concede that the matters it brings before this Court are governed by the PRPC. Specifically, in support of their allegations regarding Defendants' alleged referral practices, Plaintiffs cite Rule 7.2, which "states, in relevant part, '[a] lawyer or law firm shall not advertise as a pretext to refer cases obtained from advertising to other lawyers." Compl. ¶ 66.

Whether or not Morgan & Morgan's Philadelphia presence is a "referral service" as defined by Rule 7.7 and whether Morgan & Morgan is advertising "as a pretext to refer cases obtained from advertising to other lawyers," allegedly in violation of Rule 7.2, are questions of attorney conduct that in the normal course would be reviewed by the Office of Disciplinary Counsel for the Disciplinary Board of the Pennsylvania Supreme Court. Indeed, the Disciplinary Board and Supreme Court are best positioned to engage in the interpretation of the PRPC necessary to answer the questions posited by Plaintiffs' Complaint.

The Third Circuit Court of Appeals has previously held that the Lanham Act does not create a private right of action for an alleged violation of a regulation where one does not otherwise exist. In Sandoz Pharmaceuticals Corp. v. Richardson-Vicks, Inc., 902 F.2d 222 (3d Cir. 1990), the Third Circuit affirmed the District Court's denial of a motion for preliminary injunction where the plaintiff had claimed that a competitor had mislabeled its drug, thereby violating Food and Drug Administration and Federal Trade Commission mandates. Id. at 224. The Court found that jurisdiction for enforcement of such regulations was vested "jointly and exhaustively in the FDA and the FTC." Id. at 231. The Third Circuit held that the statutes arguably violated by the defendant, including the Lanham Act, provided no private cause of action, holding that "what the FD&C Act and the FTC Act did not create directly, the Lanham Act does not create indirectly, at least not in cases requiring original interpretation of these Acts or their accompanying regulations." Id.; See also Dial A Car, Inc. v. Transportation Inc., 82F.3d

484 (D.C. Cir. 1996)(affirming the district court's dismissal of Lanham Act claims, finding the plaintiff was "simply using the Lanham Act to try to enforce its preferred interpretation of [a local taxi regulation] instead of adjudicating the issue before the [local regulatory agency]. We reject such a gambit because we see no reason to reach out and apply federal law to the quintessentially local dispute").[6]

Likewise, in Checker CAB Philadelphia, Inc. v. Uber Techs., Inc., No. CV 14-7265, 2016 WL 950934 (E.D. Pa. Mar. 7, 2016), aff'd, 689 F. App'x 707 (3d Cir. 2017), the District Court recently addressed allegations that the Uber rideshare service "gained an unfair competitive advantage over traditional taxicab dispatch services and locally licensed/authorized taxicab drivers (such as Plaintiffs) because they avoid the cost and burdens of complying with various state laws and local regulations that apply to taxi services in Philadelphia." Id. at *3. Relying on the reasoning in Sandoz and similar cases, the Court concluded that "Plaintiffs' claims for unfair competition, Lanham Act and RICO violations, premised on the alleged unlawful or unauthorized provision of taxi services in Philadelphia, . . . are barred." Id. at *6. Thus, courts in this Circuit have refused to allow plaintiffs to use the Lanham Act as a vehicle to litigate violations of federal, state or local regulations.

Similarly here, the Court should dismiss Plaintiffs' Lanham Act and unfair competition claims as the underlying conduct is premised on Defendants' alleged violations of the PRPC. Like the plaintiffs in Dial A Car, Inc., they are "simply using the Lanham Act to try to enforce [a] preferred interpretation" of a regulation, specifically, the PCPC, a "gambit" that should be rejected.

[6] Conspicuously omitted from Plaintiffs' Complaint is any citation where law firm advertising was at issue under the Lanham Act. That omission derives at least in part from the fact that the practice of law is a self-regulating profession and the consequence of a material departure from a governing disciplinary rule regarding lawyer advertising is determined by a disciplinary proceeding conducted pursuant to the Pennsylvania Rules of Disciplinary Enforcement and the Rules of the Disciplinary Board.

III. CONCLUSION

Plaintiffs' Complaint is nothing more than a theory in search of facts and law. Their Lanham Act claim and state law claim for unfair competition are woefully inadequate as Plaintiffs have not remotely pled them with the specificity required by Rule 8. In addition, Plaintiffs' claims, which appear to be premised on alleged violations of the PRPC, are not cognizable before this Court as the PRPC does not create private causes of action and the underlying attorney conduct is exclusively regulated by the Pennsylvania Supreme Court. For the foregoing reasons, Defendants respectfully requests that Plaintiffs' Complaint be dismissed with prejudice.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

Date: November 28, 2017

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendants' Motion to Dismiss has been served this day upon the following individual and in the manner indicated below:

VIA COURT'S ECF SYSTEM

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