

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

ROSENBAUM & ASSOCIATES, P.C.	:	
vs.	:	No. 2:17-cv-04250-MAK
MORGAN & MORGAN a/k/a MORGAN &	:	
MORGAN, PA, et al.	:	

**PLAINTIFFS' MOTION TO COMPEL RESPONSES AND/OR
MORE SPECIFIC RESPONSES TO INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENT**

For the reasons set forth in the accompany Memorandum of Law, and as set forth in the attached Certification of Good Faith with accompanying Exhibits, Plaintiff requests that this Honorable Court enter the attached Order, thereby compelling Defendants to respond to Plaintiff's discovery requests, without objection, within seven (7) days.

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL
RESPONSES AND/OR MORE SPECIFIC RESPONSES TO INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENT**

Rule 26(b)(1) of the Federal Rules of Civil Procedure provides that any party may "obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1). It is clear that Rule 26 establishes a liberal discovery policy. Fund, Inc. v. Sanders, 437 U.S. 340, 351, 98 S. Ct. 2380, 57 L. Ed. 2d 253 (1978). "As a general rule, discovery is permitted of any information that is relevant or may lead to the discovery of relevant evidence." Collins v. Derosé, No. CIV.A.08-744, 2010 U.S. Dist. LEXIS 43948, 2010 WL 1837803, at *1 (M.D. Pa. May 5, 2010). Federal Rule of Civil Procedure 37 gives the court enforcement powers to ensure that parties cooperate in the discovery process, by allowing a party to move for an order compelling answers to interrogatories and request for production of documents. Fed. R. Civ. P. 37(a)(3)(B). For purposes of a Rule 37 motion, "an evasive or incomplete disclosure" is treated as a failure to answer. Fed. R. Civ. P. 37(a)(4).

Here, the central question as it relates to Plaintiff's Motion for a Preliminary Injunction is whether Defendants' advertising is false and/or misleading. Plaintiff argues they are misleading in two distinct ways. First, Defendants were essentially operating a referral service in Philadelphia, but advertising as though they are a full service law firm that represents claimants in personal injury matters. Second, the viewer is led to believe that the attorneys featured in the advertisements will actually be involved in the handling of their claim, when in fact they live and work in Florida.

I. Discovery on Issues Relating to Referrals

Turning to Plaintiff's discovery requests, Interrogatories 1 through 5 request information related to the number of clients who signed fee agreements with Defendants in Philadelphia, the number of clients Defendants have referred to other attorneys in Philadelphia, the number of personal injury suits Defendants have filed in Pennsylvania, the identity of the attorneys to whom Defendants refer cases and information regarding the involved referral agreements. Each of these interrogatories, as well as the corresponding Request for Production of Documents, is directly relevant to the issue of whether Defendants were, and continue to be, operating a referral office. In addition, Defendants refuse to provide fee agreements for three (3) clients whom Plaintiff identified by name in Request for Production 5. These three individuals contacted Defendants but were simply referred to other firms. Two of them are currently being represented by Plaintiff.¹

To date, Defendants have only provided information on cases/clients/referrals since August of 2017. Defendants have not produced any evidence that suit has been filed behalf of a single personal injury client in the Philadelphia market. Defendants refuse to admit they are operating a referral service and, instead, have revamped their business model. In order defend this lawsuit Defendants have increased their advertising budget and started signing fee agreements under Morgan and Morgan. The act of signing up 164 cases since inception of the subject lawsuit, however, is not sufficient to negate the misleading nature of Defendants' advertising.² Further, with respect to recent sign-ups, Defendants state that they signed up clients including ("but not limited to"): work comp matters, pharmaceutical claims, and medical device claims, in addition to

¹ It should be noted that Defendant uses a software intake system called "Litify" and they should be able to generate the reports containing this relevant information in a matter of minutes.

² Plaintiff has requested the deposition of the lone attorney in Defendants' so-called Philadelphia office, Jake Sternberger. The deposition should shed light on issues surrounding Defendants' involvement in the claims of these new clients, Defendants' handling of claims since entering the market in 2016 and Defendants' referral practices.

personal injury claims. Your Honor recognized during the recent telephone conference that Plaintiff's lawsuit relates to personal injury claims rather than unrelated claims such as mass torts. Defendant should provide information relating to personal injury claims, for which they specifically advertise.

II. Discovery Related to Defendants Involvement in Handling Claims and Past Advertisements

Defendants refuse to provide copies of its past advertisements. The relevancy of the past advertisement was addressed in more detail in Plaintiff's Sur Reply in support of the Motion for a Preliminary Injunction. In short, Plaintiff has retained the services of a marketing and consumer survey expert who opines unequivocally that previous advertisements have a significant impact of current advertising. See Exhibit "E". This concept is also supported by federal case law. See Highmark, Inc. v. Upmc Health Plan, 276 F.3d 160, 2001 U.S. App. LEXIS 27010; See Novartis Corp. v. FTC, 223 F.3d 783, 2000 U.S. App. LEXIS 20940.

In Novartis the Second Circuit stated,

If a deceptive advertisement has played a substantial role in creating or reinforcing in the public's mind a false and material belief which lives on after the false advertising ceases, there is clear and continuing injury to competition and to the consuming public as consumers continue to make purchasing decisions based on the false belief. Since this injury cannot be averted by merely requiring respondent to cease disseminating the advertisement, we may appropriately order respondent to take affirmative action designed to terminate the otherwise continuing ill effects of the advertisement.

Id. The continued effect of past advertisements is a reason that the federal courts often require corrective advertising when a campaign is found to be misleading, assuming the Defendant is going to continue to market their product/services.

Defendants' advertisements suggest they will be involved with the handling of the claim and are running a full service, experienced law firm in the market. In reality, Defendant has a shell

office staffed by one inexperienced associate. When hiring an attorney, a client relies upon the advice of counsel and certainly would want to trust their attorney. Suppose a surgeon spent millions of dollars convincing consumers that he has an experienced and well trained orthopedic staff in Philadelphia, but his practice is in California and he only has a first-year doctor with no surgical experience in Philadelphia. Would that not be important information for the consumer to know? The information sought by way of Plaintiff's discovery requests is directly relevant to the involved issues and speaks to harm to the public, which is an important factor to be evaluated for purposes of the Motion for Preliminary Injunction.

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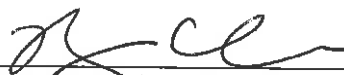
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CERTIFICATION OF GOOD FAITH PURSUANT TO 26.1(f)

I, Ryan Cohen, esquire have communicated on several occasions with defense counsel Gaetan J. Alfano, Esq in an effort to resolve the subject discovery dispute. On November 15, 2017, Plaintiff served Interrogatories and Request for Production of Documents pursuant to this Honorable Court's Order. The discovery requests were limited to a total of eight (8) interrogatories and seven (7) requests for production of documents, all of which relate to whether defendant is running a referral practice rather than a law firm and/or the misleading information contained in Defendant's advertisements. See Exhibit "A". On December 1, 2014, I received Defendants' initial discovery responses, which were mostly filled with objections. See Exhibit "B". On December 4, 2017, I wrote to counsel advising that I thought the responses were deficient. Pursuant to Defense counsel's request, I provided a detailed explanation as to why I believed the requests were relevant and the responses were deficient. See Exhibit "C". Defense counsel requested, and was granted, additional time until December 8, 2017 to provide supplemental responses. Limited supplemental responses were produced on December 8, 2017. See Exhibit "D". Defendant has continued to refuse to provide the requested relevant information. I do not believe the issue of whether the request are relevant can be resolved without court intervention.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the below date a true and correct copy of the foregoing document was served to the following by ECF filing and/or otherwise indicated:

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Dated: 12/12/17