

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

ROSENBAUM & ASSOCIATES, P.C.

Plaintiff,

v.

MORGAN & MORGAN et al.

Defendants.

Civil Action No. 2:17-cv-04250-MAK

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO COMPEL

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, hereby submit this Response to Plaintiff's Motion to Compel.

Plaintiff has filed an incomplete and misleading Motion with the Court. Contrary to its Certification of Good Faith Pursuant to 26.1(f), Plaintiff knowingly omitted Defendants' substantive response to Plaintiff's December 4, 2017 correspondence, thereby presenting the Court with an incomplete record.¹ Plaintiff has also misrepresented data provided by Defendants and made arguments based on rank speculation. For these reasons and the reasons set forth below, Plaintiff's Motion to Compel should be denied.

I. PLAINTIFF'S REQUESTS RELATING TO REFERRALS ARE OVERBROAD

Plaintiff argues that Interrogatories 1 through 5 seek information relevant to the question of whether "Defendants were, and continue to be, operating a referral service."

Hoping to establish that Morgan & Morgan refers all matters to other counsel, Plaintiff sought information related to the number of clients who signed fee agreements with Defendants in Philadelphia and the number of clients Defendants have referred to other attorneys in Philadelphia since January 2016. See Interrogatories 1 and 2.

Defendants provided the statistics sought for the period of August 1, 2017 through November 30, 2017, which represents an approximately two month period preceding, and two

¹ Defendants' response letter is attached hereto as Exhibit A.

month period following, the Complaint being filed (September 22, 2017). During that period, Morgan & Morgan signed client representation agreements with 164 Pennsylvania residents and agreed to represent an additional 30 Pennsylvania residents (those 30 agreements have yet to be finalized). Morgan & Morgan is also reviewing the matters of an additional 152 Pennsylvania residents who contacted the firm during that period. During that same period, referral counsel signed client representation agreements with 368 clients (this number may include New Jersey and Delaware residents). See Supplemental Responses to Interrogatories 1 & 2.

Displeased with the data provided, and playing to media coverage of this matter, Plaintiff claims:

Defendants refuse to admit they are operating a referral service and, instead, have revamped their business model. In order to 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, [] is not sufficient to negate the misleading advertising.

There is no support for these statements. The initial Complaint was filed on September 22, 2017. Accordingly, these numbers represent clients retained both before and after the Complaint was filed. Had Plaintiff asked for a month by month breakdown, Defendants would have provided the following: August: 31, September: 69, October: 38, November 26.

As Defendants do not deny referring cases to other attorneys, and have provided Plaintiff with statistics regarding the number of matters retained by referral counsel, the “identity of the attorneys to whom Defendants refer cases and information regarding the involved referral agreements,” as sought in Interrogatories 4 and 5, are irrelevant for present purposes.²

² Plaintiff also seeks fee agreements of individuals whom, to Defendants knowledge, are represented by other law firms. See Doc. Request No. 5. Plaintiff alleges that it now represents two of the three individuals named. Defendants are reluctant to provide information about any client’s matter without the direction of that client.

Further, Plaintiff seeks the number of cases Defendants filed in Philadelphia County for personal injury claims. See Interrogatory No. 3. Defendants are not aware of any complaints filed in Philadelphia County during the relevant period. To be clear, Plaintiff’s attempt to define Defendants’ advertising as targeting only personal injury clients in Philadelphia County is inaccurate. Defendants do not solely advertise for personal injury clients nor do they specifically advertise that they represent clients in Philadelphia County.

II. DEFENDANTS' PAST ADVERTISEMENTS ARE IRRELEVANT

This Court ordered that Defendants' current advertisements be produced, and they have been.³ Seemingly unable to argue that Defendants' current advertisements are, in and of themselves, misleading, Plaintiff argues they are misleading based upon Defendants' prior advertisements and asks that Defendants produce those advertisements as well. First, Plaintiff's "expert report," which concludes that Defendants prior advertising has a "significant impact" on current advertising, fails to meet the requirements of Federal Rule of Civil Procedure 26(a)(2)(B), as set forth in Defendants' Sur-Reply.

Second, both Highmark, Inc. v. UPMC Health Plan, Inc., 276 F.3d 160, 173 (3d Cir. 2001) and Novartis Corp. v. FTC, 223 F. 3d 783, (D.D.Cir. 2000), address the use of corrective statements as a tool to correct a public campaign of misinformation. The availability of corrective advertisements does not render Defendants' past advertisements relevant to this Court's analysis of a Motion for Preliminary Injunction. Nevertheless, to the extent Plaintiff is seeking corrective advertising, it is unclear what such advertising would state. Indeed, Defendants current disclaimer addresses Plaintiff's two "complaints": it indicates that the attorney in the advertisement is barred in Florida and that matters may be referred to outside counsel. See Exhibit B.

III. CONCLUSION

Plaintiff is on a fishing expedition, essentially seeking "full case" discovery in the guise of a Motion for Preliminary Injunction. None of the information sought is relevant to the Motion for a Preliminary Injunction. Accordingly, Defendants respectfully request that the Court deny the Motion to Compel.

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

Dated: December 14, 2017

By: /s/ Gaetan J. Alfano

³ With the exception of one advertisement titled "Baby 2017," which Defendants will produce upon receipt, Plaintiff is in possession of all advertisements that have run since September 2017.

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(215) 320-6200

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendants' Response to Plaintiff's Motion to Compel has been served on this date upon the individuals and in the manner indicated below:

VIA ELECTRONIC MAIL

Ryan Cohen, Esquire
Jeffrey Paul Curry, Esquire
Rosenbaum and Associates
1818 Market Street
Suite 3200
Philadelphia, Pa 19103

Attorneys for Plaintiffs

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

Dated: December 14, 2017

By: /s/ Gaetan J. Alfano
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Attorneys for Defendants

EXHIBIT A

PIETRAGALLO

PIETRAGALLO GORDON ALFANO
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December 8, 2017

VIA EMAIL

Ryan Cohen, Esquire
Rosenbaum & Associates, P.C.
1818 Market Street
Suite 3200
Philadelphia, Pa 19103

Re: Rosenbaum & Associates, P.C., et al. v. Morgan & Morgan, et al.
U.S.D.C., Eastern District of Pa, No. 2:17-cv-04250

Dear Mr. Cohen:

I write in response to your December 5, 2017 letter and our December 5, 6 and 7, 2017 email correspondence regarding Defendants' discovery response in the above matter. I appreciate the additional time you allowed me to respond to your requests.

While I disagree that Plaintiffs' discovery requests are narrowly tailored, and will not be providing all information sought, I do agree that the production of additional information that makes clear that Morgan & Morgan does not "simply refer the viewer" of Morgan & Morgan's advertisements to another firm, may assist us in bringing this matter closer to the finish line.

Initially, my position regarding the relevant time-period has not changed. Your Motion for Preliminary Injunction seeks to enjoin Morgan & Morgan's current advertising as false and misleading. Only Morgan & Morgan's current advertising, which has already been produced pursuant to the Court's Order, is relevant to the Court's determination of whether such relief is warranted. Previously run advertisements are immaterial. For the reasons set forth in our Sur-Reply to your Motion for Preliminary Injunction, I disagree with your "expert's report." Accordingly, your request for previous advertisements does not fall within in the scope of preliminary injunction discovery permitted by the Court.

To demonstrate that your contention that my client is simply "running a referral office" is false, I will supplement Defendants' discovery responses to Interrogatories 1 and 2 to provide information regarding the number of clients who have retained Morgan & Morgan, and the number of clients who have been referred to other law firms in the past 4 months. I am providing

four months of data, which represents a reasonable amount of recent information. That information is as follows:

Between August 1, 2017 and November 30, 2017:

- Morgan & Morgan signed client representation agreements with 164 Pennsylvania residents;
- Morgan & Morgan has agreed to represent an additional 30 Pennsylvania residents, but those agreements have yet to be finalized;
- Morgan & Morgan is in the process of reviewing the matters of an additional 152 potential clients, who are Pennsylvania residents; and
- Referral counsel entered into client representation agreements with 368 clients (this number may include New Jersey and Delaware residents).

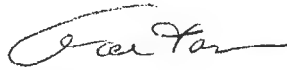
By way of providing further detail, the 164 Pennsylvania residents who entered into agreements with Morgan & Morgan in the past four months are being represented by Morgan & Morgan attorneys in a variety of matters including, but not limited to: automobile accidents, slip & fall, workers compensation, fire injuries and pharmaceutical and medical device litigation. The diversity of cases being handled reflects the fact that Morgan & Morgan is not, and does not represent itself in its advertisements, as simply a personal injury law firm. Indeed, this should be apparent based upon the advertisements that we have already provided.

I continue to disagree that the terms of any agreement between Morgan & Morgan and any other law firm regarding the referral of personal injury claims, or any other claim, is relevant to the question before the Court. Morgan & Morgan does not deny that it refers cases to other firms, just as Rosenbaum & Associated does. Morgan and Morgan acknowledges as much in its current disclaimer, which has been included in every television advertisement run in the Philadelphia metropolitan area since September 19, 2017.

I also disagree that the name of every person in the Philadelphia market who contacted Morgan & Morgan since January 1, 2016 is relevant to your Motion for Preliminary Injunction. Both Morgan & Morgan, and the individuals who contact Morgan & Morgan to discuss a possible legal matter, understand that those conversations are confidential. In fact, their identity and reason for their call may be confidential. To the extent that you believe that you may have the right to contact any such individual, to learn why they contacted Morgan & Morgan, and why they may have may not have retained Morgan & Morgan or why Morgan & Morgan declined their case, you undoubtedly will be intruding into privileged and confidential communications. See e.g., Karoly v. Mancuso, 619 Pa. 486, 507, 65 A.3d 301, 314 (2013); Com. v. Mrozek, 441 Pa. Super. 425, 432, 657 A.2d 997, 1000 (1995); Surface v. Bentz, 228 Pa. 610, 617, 77 A. 922, 923 (1910).

I hope that this additional information and explanation is satisfactory and that we can avoid any unnecessary motion practice. I remain willing to meet with you to discuss our discovery position and to attempt to resolve any issues.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Gaetan J. Alfano".

GAETAN J. ALFANO

GJA/lam

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EXHIBIT B



**MORGAN
&
MORGAN**

...For the people

VISIT 24/7
ForThePeople.com

AVAILABLE 24/7
1-800-MORGAN LAW

Attorney Advertising

Before making your choice of an attorney, you should give this matter careful thought. The selection of an attorney is an important decision. Although some advertisements indicate that no fee shall be charged in the absence of recovery, clients may be liable for certain expenses. The law firm responsible for this ad is Morgan & Morgan and the attorney in this ad is licensed in FL. Cases may be referred to and handled by another law firm as co-counsel.

Offices: 2 Penn Center, Suite 900, 1500 John F Kennedy Blvd., Philadelphia, PA. 19102