

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

MORGAN & MORGAN,
FT. MYERS, PLLC,

Plaintiff,

CASE NO.: 17-CA-001782

vs.

FARAH & FARAH, P.A., and
EXCLUSIVE LEGAL
MARKETING INC.

Defendants.

_____ /

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Morgan & Morgan, Ft. Myers, PLLC (“Morgan & Morgan”), files this Amended Complaint and sues Defendants, Farah & Farah, P.A. (“Farah & Farah”) and Exclusive Legal Marketing Inc. (“ELM”) (collectively, “Defendants”), and states as follows:

INTRODUCTION

1. This action is the result of Farah & Farah’s and ELM’s misleading and deceptive advertising of legal services that were intentionally designed to confuse and mislead the public into believing they were contacting Morgan & Morgan for legal representation, when they were actually being referred to the law firm of Farah & Farah. Defendants’ actions constitute deceptive and unfair trade practices, misleading advertising, and unfair competition in violation of Florida law.

JURISDICTION, PARTIES, AND VENUE

2. This is an action for damages in excess of \$15,000.00, exclusive of costs, interest and attorneys’ fees.

3. Plaintiff, Morgan & Morgan, is a Florida professional limited liability company engaged in the practice of law. Morgan & Morgan's principal address is located in Lee County, Florida.

4. Defendant, Farah & Farah, is a Florida professional association engaged in the practice of law. Farah & Farah's principal address is located in Duval County, Florida.

5. Defendant, ELM, is a Texas corporation engaged in online advertising and lead generation.

6. This Court has jurisdiction over ELM pursuant to Section 48.193(1), Florida Statutes, because ELM was operating, conducting, engaging in, or carrying on a business or business venture in Florida, committed a tortious act within Florida, and caused injury to persons within Florida at or about the time ELM was engaging in solicitation or service activities within Florida.

7. This Court also has jurisdiction over ELM pursuant to Section 48.193(2), Florida Statutes, because ELM is engaged in substantial and not isolated activity within Florida, including sending numerous electronic and telephonic communications into Florida, promoting its business in Florida, purposefully and repeatedly dealing with Florida companies, and operating a commercial website accessible to Florida residents.

8. Jurisdiction and venue are proper in Lee County, Florida pursuant to Section 47.051, Florida Statutes, because the cause of action accrued in Lee County. As set forth below, Defendants acted in concert to publicly disseminate misleading advertisements in Lee County that confuse individuals into believing they are contacting Morgan & Morgan in Lee County for legal representation when they are actually referred to Farah & Farah. These actions have caused, and will continue to cause, injury to Morgan & Morgan in Lee County.

FACTUAL BACKGROUND

9. ELM assists law firms in obtaining clients through online advertising and lead generation. To this end, ELM utilizes Google Adwords to run internet advertisements to drive web-traffic to ELM-owned websites.

10. Google AdWords is a Google advertising service in which advertisers bid on certain keywords or search terms in order for the advertisers' "clickable" ads to appear in Google's search results.

11. Advertisers, such as ELM, pay for these terms based on a bidding system. Specifically, the advertiser bids the maximum amount of money it is willing to pay for its advertisement to appear in response to specific search terms. Google collects a fee from the bidder each time its ad is "clicked" in response to a Google search with the purchased keywords or search terms.

12. On or around mid-2016, Farah & Farah engaged ELM to provide advertising and lead generation services in order to help Farah & Farah obtain clients.

13. Upon information and belief, Farah & Farah instructed ELM to bid on specific search terms and display certain advertisements in response to those search terms.

14. At all material times, ELM acted as an agent of Farah & Farah. Specifically, Farah & Farah exercised control over the work ELM performed on its behalf and the manner in which it was performed.

15. Farah & Farah instructed ELM to use Google Adwords to bid on the search term "Morgan & Morgan" and use that search term and related advertisements to refer potential clients to Farah & Farah.¹

¹ Although it is currently legal to bid on and purchase the name of another law firm or lawyer as a Google Adword, it is not legal to engage in deceptive and misleading advertising in connection with search term advertising.

16. From approximately mid-2016 to early 2017, when a person conducted a Google search for “Morgan & Morgan,” the following advertisements frequently appeared at the top of the Google search webpage:

Florida Personal Attorney Firm - Get The Money You Deserve
Ad www.personalinjurycare.net/Florida/Attorney (877) 811-6619
Get the money you deserve today with no hassle! Hurt in a car accident? Call now
Services: Live Phone Call Transfers, PPC Marketing Services, PI Leads, WC Leads, PL Leads
Types: Car Accident Lawyer, Personal Injury Lawyer, Truck Accident Lawyer

(“Advertisement 1”);

Personal Injury Care
www.personalinjurycare.net/
Let us compare Morgan & Morgan, Ken Nugent, Alexander Shunnarah, Wayne Wright, Jacoby & Meyers and other attorneys to find the right one for you.

Maritime Lawyers Maritime law governs matters that involve ships, shipping ...	Workers Comp Each state has its own workers' comp laws. If you were injured ...
What Can I Expect? What can I expect. If you were injured in a car accident, a truck ...	Oklahoma Attorneys It's quick & easy to. Talk to an Attorney. 888-824-1151 Click to ...
Morgan & Morgan Morgan & Morgan. Did you know the insurance training manual ...	Medical Malpractice If you were injured by medical malpractice, let us find you a ...

[More results from personalinjurycare.net >](#)

(“Advertisement 2”);

Morgan Morgan Law - Right Lawyer For You? -
www.personalinjurycare.net/ (855) 464-6684
Let Us Fight For Your Rights. Get All The Money You Deserve! Call (855) 464-6684
Available 24/7 · No Payment Until You Win · 100% Free Case Evaluation
Types: Car Accident Lawyer, Personal Injury Lawyer, Truck Accident Lawyer

(“Advertisement 3”).²

² Advertisement 1, Advertisement 2 and Advertisement 3 are collectively referred to as “the Advertisements.”

17. Advertisement 1 makes no mention of an attorney's name or law firm name, and is clearly designed to deceive and mislead potential clients into believing that they are contracting with Morgan & Morgan.

18. Advertisement 2 and 3 are blatantly designed to deceive and mislead potential clients by including the term "Morgan & Morgan" within the advertising copy.

19. Upon information and belief, when a person clicked on the Advertisements, they were directed to a misleading website owned and controlled by ELM. The website contained a "click-to-call"³ button, which when clicked, immediately connected a potential client with an ELM call center.

20. Upon information and belief, ELM did not inform callers that they had called a legal referral service and misled callers to believe that they had called a law firm. After taking a caller's relevant information, ELM then live-transferred the potential client to Farah & Farah.

21. The Advertisements were publicly disseminated in Lee County and seen by potential clients of Morgan & Morgan in Lee County.

22. The Defendants intended the Advertisements to attract potential clients of Morgan & Morgan in Lee County and who intended to hire Morgan & Morgan in Lee County.

23. Farah & Farah has represented, currently represents, and will continue to represent clients in Lee County that were obtained through the deceptive Advertisements.

24. In early 2017, potential clients began contacting Morgan & Morgan about ELM's Advertisements and related webpage. These potential clients complained that the Advertisements led them to believe they were contacting Morgan & Morgan, and they were confused upon learning they had actually been referred to Farah & Farah. At the time of the

³ "Click-to-call" is a form of web-based communication in which a person clicks an object (e.g., button, image or text) to request an immediate connection with another person in real-time either by phone call, voice-over-internet-protocol or text.

referral from ELM to Farah & Farah, Farah & Farah never disclosed to potential clients that it was not Morgan & Morgan.

25. This confusion was compounded for the potential clients that resided in Ft. Myers when the clients learned Farah & Farah is a Jacksonville based firm that does not maintain any office in Ft. Myers.

26. Most troubling, several of these potential Ft. Myers-based clients informed Morgan & Morgan that they viewed and were misled by an Advertisement, retained Farah & Farah, and were dissatisfied with Farah & Farah's representation. These potential clients intended to hire Morgan & Morgan in Lee County.

27. Other Ft. Myers-based clients informed Morgan & Morgan that they viewed and were misled by an Advertisement, were deceived into retaining Farah & Farah, and terminated their representation with Farah & Farah when they learned they had not hired Morgan & Morgan. These clients ultimately hired Morgan & Morgan in Lee County.

28. After receiving numerous calls from confused and dissatisfied potential clients, Morgan & Morgan discovered the misleading and deceptive Advertisements disseminated by Defendants.

29. Farah & Farah is vicariously liable for the negligent acts and omissions of its agents acting within the course and scope of such relationship and in furtherance of Farah & Farah's business pursuits, including ELM.

30. At all relevant times Farah & Farah had knowledge of ELM's deceptive advertising practices and Farah & Farah was aware that it was contracting to represent clients that intended to hire Morgan & Morgan and not Farah & Farah.

31. Defendants' actions resulted in customer confusion to potential clients of Morgan & Morgan in Lee County.

32. As a direct and proximate result of Defendants' actions, Morgan & Morgan has suffered significant damages. Morgan & Morgan's damages include, but are not limited to: (i) actual damages to its business reputation, goodwill, and brand, (ii) actual damages for past lost profits it would have made from potential clients that were confused by the Advertisements and hired Farah & Farah, and (iii) actual damages for significant advertising expenses to "correct" Defendants' misleading and deceptive advertisements and to recover the diminished value of its brand.

33. All conditions precedent to the maintenance of this action have been performed, excused, or waived.

COUNT I
VIOLATION OF FDUTPA
(ACTUAL DAMAGES)

34. Morgan & Morgan realleges the allegations set forth above in Paragraphs 1 through 33 as if fully set forth herein.

35. The Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") renders unlawful unfair methods of competition and unconscionable acts or practices in the conduct of any trade or commerce.

36. At all material times, Defendants engaged in deceptive and unfair advertising which was likely to confuse, mislead and injure consumers acting reasonably under the circumstances.

37. As a direct and proximate result of Defendants' deceptive and unfair advertising, consumers have suffered and will continue to suffer an injury or a detriment.

38. As a direct and proximate result of Defendants' deceptive and unfair advertising, Morgan & Morgan has suffered and will continue to suffer significant actual damages, as more specifically described in paragraph 32.

39. Pursuant to FDUTPA, Morgan & Morgan is entitled to recover from Defendants' all attorneys' fees and costs incurred in connection with this action.

WHEREFORE, Morgan & Morgan demands damages, interest, costs, attorneys' fees pursuant to § 501.2105, and such other relief that this Court deems just and proper.

COUNT II
VIOLATION OF FDUTPA
(INJUNCTIVE RELIEF)

40. Morgan & Morgan realleges the allegations set forth above in Paragraphs 1 through 33 as if fully set forth herein.

41. FDUTPA renders unlawful unfair methods of competition and unconscionable acts or practices in the conduct of any trade or commerce.

42. At all material times, Defendants engaged in deceptive and unfair advertising which was likely to confuse, mislead and injure consumers acting reasonably under the circumstances.

43. As a direct and proximate result of Defendants' deceptive and unfair advertising, consumers have suffered and will continue to suffer an injury or a detriment.

44. As a direct and proximate result of Defendants' deceptive and unfair advertising, Morgan & Morgan has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law

45. Pursuant to § 501.211(1) of FDUPTA, Morgan & Morgan is an aggrieved party entitled to injunctive relief to enjoin Defendants, who have violated, are violating, or are otherwise likely to violate FDUPTA through its deceptive and unfair advertising.

46. Upon information and belief, Defendants' deceptive and unfair advertising will continue in the future unless enjoined by this Court.

47. Pursuant to FDUTPA, Morgan & Morgan is entitled to recover from Defendants' all attorneys' fees and costs incurred in connection with this action.

WHEREFORE, Morgan & Morgan demands an injunction against Defendants enjoining present and future violations of FDUTPA, costs, attorneys' fees pursuant to § 501.2105, and such other relief that this Court deems just and proper.

COUNT III
VIOLATION OF FLORIDA'S MISLEADING ADVERTISING LAW

48. Morgan & Morgan realleges the allegations set forth above in Paragraphs 1 through 33 as if fully set forth herein.

49. This is an action against Defendants for misleading advertising under § 817.41, Florida Statutes.

50. The Advertisements constitute misleading advertising as defined in § 817.40(5), Florida Statutes and prohibited under § 817.41, Florida Statutes.

51. Defendants made and publicly disseminated the Advertisements, which misled potential clients to believe they would be contacting Morgan & Morgan, when they were actually referred to Defendants.

52. Defendants made or publicly disseminated the Advertisements with the intent or purpose, either directly or indirectly, of selling legal services, or to induce the public into entering into an obligation relating to legal services.

53. Defendants' Advertisements were misrepresentations of material fact that Defendants knew, or in the exercise of reasonable care should have known, would mislead the public into believing they were contacting Morgan & Morgan.

54. Defendants intended for the public to rely and act upon the Advertisements for the purpose of generating clients that were seeking legal services.

55. Morgan & Morgan is a competitor of Defendants.

56. As a direct and proximate result of Defendants' violations of Florida's Misleading Advertising Law, Morgan & Morgan has suffered significant actual damages, as more specifically described in paragraph 32.

WHEREFORE, Morgan & Morgan demands judgement against Defendants for damages, interest, costs, attorneys' fees pursuant to § 817.41(6), and such other relief that this Court deems just and proper.

COUNT IV
COMMON LAW UNFAIR COMPETITION

57. Morgan & Morgan realleges the allegations set forth above in Paragraphs 1 through 33 as if fully set forth herein.

58. This is an action against Defendants for unfair competition.

59. Defendants' actions set forth herein constitute an unfair, unlawful, or deceptive business practice.

60. Morgan & Morgan competes with Defendants for a common pool of customers.

61. Defendants' Advertisements created a likelihood of customer confusion.

62. As a direct and proximate result of Defendants' unfair competition, Morgan & Morgan has suffered significant damages, including but not limited to, those described in paragraph 32.

WHEREFORE, Morgan & Morgan demands judgement against Defendants for damages, interest, costs, and such other relief that this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Morgan & Morgan demands trial by jury on all issues so triable.

MORGAN & MORGAN, P.A.
Business Trial Group
20 N. Orange Ave.
Suite 1600
Orlando, FL 32801
Telephone: 407.236.5974
Facsimile: 407.245-3349
Attorney for Plaintiff

By: /s/ Damien H. Prosser
Damien H. Prosser
Florida Bar No.: 0017455
dprosser@forthepeople.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of June 2017, a true and correct copy of the foregoing was filed with the Clerk of Courts by using the E-Portal Filing system which will send electronic notification to: Douglas B. Szabo, Esq. (douglas.szabo@henlaw.com; Beverly.slager@henlaw.com) Rutledge R. Liles, Esq. (rliles@lilesgavin.com; spisarek@lilesgavin.com) John A. Carlisle, Esq. (jcarlisle@lilesgavin.com; jostwald@lilesgavin.com).

/s/ Damien H. Prosser
Damien H. Prosser