

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

<b>MORGAN &amp; MORGAN ATLANTA, PLLC,</b>	)	
	)	<b>CIVIL ACTION</b>
	)	<b>FILE NO: 2017CV292755</b>
<b>Plaintiff,</b>	)	
<b>vs.</b>	)	
	)	<b>JURY TRIAL DEMANDED</b>
<b>MONGE &amp; ASSOCIATES, P.C. and EXCLUSIVE LEGAL MARKETING, INC.</b>	)	
	)	
<b>Defendants.</b>	)	

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, Morgan & Morgan Atlanta, PLLC (“Morgan & Morgan”), files this Complaint and sues Defendants Monge & Associates, P.C. (“Monge”) and Exclusive Legal Marketing Inc. (“ELM”) (collectively, “Defendants”), and states as follows:

**INTRODUCTION**

1.

This action is the result of Monge 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 Monge & Associates. Defendants’ actions constitute deceptive and unfair trade practices, infringement of tradename, false and fraudulent advertising, infringement on trade name, and unfair competition in violation of Georgia law.

**JURISDICTION, PARTIES, AND VENUE**

2.

Plaintiff, Morgan & Morgan, is a Georgia professional limited liability company engaged in the practice of law. Morgan & Morgan’s principal address is located in Fulton County,

Georgia.

3.

Defendant Monge, is a Georgia professional corporation engaged in the practice of law. Monge's principal address is 8205 Dunwoody Place, #19, Atlanta, Fulton County, Georgia 30350 and may be served via its registered agent, Albert Caproni III, 750 Hammond Drive, Building 7, Suite 200, Atlanta, Fulton County, Georgia 30328. Monge is subject to the jurisdiction of this Court.

4.

Defendant ELM, is a Texas corporation engaged in online advertising and lead generation whose principal business office is 5681 Granite Parkway, #890, Plano, Texas 75024. ELM may be served under the Georgia Long Arm statute via its registered agent, Coety Bryant, at that same address.

5.

This Court has jurisdiction over ELM because ELM was operating, conducting, engaging in, or carrying on a business or business venture in Georgia, committed tortious acts within Georgia, and caused injury to persons within Georgia at or about the time ELM was engaging in solicitation or service activities within Georgia, including Fulton County.

6.

This Court also has jurisdiction over ELM as ELM is engaged in substantial and not isolated activity within Georgia, including sending numerous electronic and telephonic communications into Georgia, promoting its business in Georgia, purposefully and repeatedly dealing with Georgia companies, and operating a commercial website accessible to Georgia residents, including residents of Fulton County.

7.

Jurisdiction and venue are proper in Fulton County as to all Defendants.

**FACTUAL BACKGROUND**

8.

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.

9.

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.

10.

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.

11.

Upon information and belief, in the last five months, and possibly longer, Monge engaged ELM to provide advertising and lead generation services in order to help Monge obtain clients.

12.

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

13.

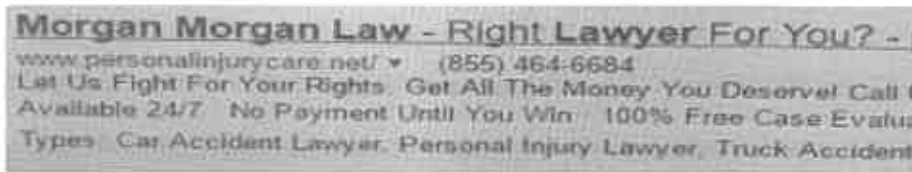
At all material times, ELM acted as an agent of Monge. Specifically, Monge exercised control over the work ELM performed on its behalf and the manner in which it was performed.

14.

Upon information and belief, Monge 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 Monge under ELM's website "www.personalinjurycare.net".<sup>1</sup>

15.

From approximately early or mid-2017, when a person conducts a Google search for "Morgan & Morgan," the following advertisements frequently appear at the top of the Google search webpage:



16.

The Advertisement is designed to deceive and mislead potential clients by including the term "Morgan Morgan" within the advertising copy.

17.

Upon information and belief, when a person clicked on the Advertisements, they were directed to a misleading website owned and controlled by ELM, www.personalinjurycare.net.

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<sup>1</sup> 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.

The website contained a “click-to-call”<sup>2</sup> button, which when clicked, immediately connected a potential client with an ELM call center.

18.

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 Monge.

19.

The Advertisements were publicly disseminated in Georgia and seen by potential clients of Morgan & Morgan in Georgia.

20.

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

21.

Monge has represented, currently represents, and will continue to represent clients in Georgia that were obtained through the deceptive Advertisements.

22.

In early to mid-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 Monge. At the time of the referral from ELM to Monge, Monge never disclosed to potential clients that it was not Morgan & Morgan until the potential client affirmatively asked if it was Morgan & Morgan. Even then, at least one client

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<sup>2</sup> “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.

stated that she was pressured to sign with them and believed that Monge was somehow affiliated with Morgan & Morgan. It was not until she received a copy of Monge's fee agreement that she realized there was no affiliation, and subsequently terminated Monge's representation.

23.

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

24.

Monge 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 Monge's business pursuits, including ELM.

25.

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

26.

Defendants' actions resulted in customer confusion to potential clients of Morgan & Morgan in Georgia.

27.

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 Monge, (iii) actual damages for future lost profits it would have made from clients who intended to hire Morgan & Morgan but were deceptively led to hiring Monge, and (iv) actual damages for

significant advertising expenses to “correct” Defendants’ misleading and deceptive advertisements and to recover the diminished value of its brand.

28.

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

**COUNT I**  
**VIOLATION OF GEORGIA UNIFORM DECEPTIVE TRADE PRACTICES ACT**  
**(COSTS AND FEES)**

29.

Morgan & Morgan re-alleges the allegations set forth above in Paragraphs 1 through 28 as if fully set forth herein.

30.

The Georgia Uniform Deceptive Trade Practices Act (“UDTPA”), O.C.G.A. §§ 10-1-370 et seq., renders unlawful deceptive trade practices when a person or entity causes confusion or misunderstanding as to the origin or affiliation of services.

31.

At all material times, Defendants willfully engaged in deceptive trade practices and unfair advertising which was likely to confuse, mislead and injure consumers as to the source sponsorship, approval, certification, affiliation, connection, or association of legal services.

32.

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

33.

Defendants have willfully engaged in trade practices knowing them to be deceptive.

34.

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 27.

35.

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

WHEREFORE, Morgan & Morgan demands interest, costs, attorneys' fees pursuant to O.C.G.A. § 10-1-373, and such other relief that this Court deems just and proper.

**COUNT II**  
**VIOLATION OF GEORGIA UNIFORM DECEPTIVE TRADE PRACTICES ACT**  
**(INJUNCTIVE RELIEF)**

36.

Morgan & Morgan re-alleges the allegations set forth above in Paragraphs 1 through 35 as if fully set forth herein.

37.

UDTPA renders unlawful deceptive trade practices when a person or entity causes confusion or misunderstanding as to the origin or affiliation of services.

38.

At all material times, Defendants willfully engaged deceptive trade practices and unfair advertising which was likely to confuse, mislead and injure consumers as to the source sponsorship, approval, certification, affiliation, connection, or association of legal services.



39.

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

40.

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

41.

Pursuant to UDPTA, Morgan & Morgan is an aggrieved party entitled to injunctive relief to enjoin Defendants, who have violated, are violating, or are otherwise likely to violate UDPTA through its deceptive trade practices and unfair advertising.

42.

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

WHEREFORE, Morgan & Morgan demands an injunction against Defendants enjoining present and future violations of UDTPA, costs, attorneys' fees pursuant to O.C.G.A. § 10-1-373, and such other relief that this Court deems just and proper.

**COUNT III**  
**VIOLATION OF GEORGIA'S FALSE ADVERTISING LAW**

43.

Morgan & Morgan re-alleges the allegations set forth above in Paragraphs 1 through 42 as if fully set forth herein.

44.

At all times relevant herein, Defendants engaged in False or Fraudulent Statements in Advertising as defined by O.C.G.A. § 10-1-421.

45.

Defendants made and publicly disseminated advertisements, with the intent to induce the public to enter into an agreement with Defendants to perform legal services.

46.

Defendants disseminated, or caused to be disseminated, said advertisements to the public.

47.

Said advertisements contained statements of fact relating to proposed performance of services which were untrue and/ or fraudulent.

49.

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.

49.

As a direct and proximate result of Defendants' violations of Georgia's False Advertising Law, Morgan & Morgan has suffered significant actual damages, as more specifically described in paragraph 27.

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

**COUNT IV**  
**COMMON LAW INFRINGEMENT ON TRADE NAME**

50.

Morgan & Morgan re-alleges the allegations set forth above in Paragraphs 1 through 49 as if fully set forth herein.

51.

This is an action against Defendants for unfair competition under Georgia Common Law.

52.

Defendants' actions set forth herein constitute infringement on the Morgan & Morgan trade name.

53.

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

54.

Defendants' Advertisements created a likelihood of customer confusion.

55.

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 27.

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.

[SIGNATURES ON NEXT PAGE]

Dated this 13<sup>th</sup> day of July, 2017.

*/ s/ James E. Douglas, Jr.*

James E. Douglas, Jr.  
Georgia Bar No.: 124908

*/ s/ Andrew L. Hagenbush*

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