

ROSENBAUM & ASSOCIATES, P.C.

ATTORNEYS AT LAW
1818 MARKET STREET
SUITE 3200
PHILADELPHIA, PA. 19103-3611

(215) 569-0200
FAX (215) 569-6099

December 5, 2017

VIA HAND DELIVERY

Civil Clerk
United States District Court
601 Market Street
Philadelphia, PA 19106
Attn: Frank DelCampo

RE: *Rosenbaum & Associates, et al. v. Morgan and Morgan, et al.*
U.S.D.C. Ed. PA No. 2:17-cv-04250-MAK
Our File No. 42952

Dear Mr. DelCampo:

As requested, enclosed please find a copy of an original signature page of Plaintiff's Amended Complaint together with CD. Please file accordingly effective the date of the original delivery being December 4, 2017.

Thank you for your attention in this regard.

Very truly yours,



RYAN M. COHEN

RMC/bs/encls.

3. The defendant, John Morgan, is an owner, shareholder and/or partner of the defendant Morgan & Morgan a/k/a Morgan & Morgan, PA, with its principal place of business in Orlando, Florida at 20 N. Orange Ave., Ste 1600, Orlando, FL 32801.

4. The defendant, Mike Morgan, is an owner, shareholder, employee and/or partner of the defendant Morgan & Morgan a/k/a Morgan & Morgan, PA, with its principal place of business in Orlando, Florida at 20 N. Orange Ave., Ste 1600, Orlando, FL 32801.

5. The defendant, Daniel Morgan, is an owner, shareholder, employee and/or partner of the defendant Morgan & Morgan a/k/a Morgan & Morgan, PA, with its principal place of business in Orlando, Florida at 20 N. Orange Ave., Ste 1600, Orlando, FL 32801.

6. The defendant, Matt Morgan, is an owner, shareholder, employee and/or partner of the defendant Morgan & Morgan a/k/a Morgan & Morgan, PA, with its principal place of business in Orlando, Florida at 20 N. Orange Ave., Ste 1600, Orlando, FL 32801.

7. The defendant, Scott Weinstein, is an owner, shareholder, partner and/or manager of the defendant Morgan & Morgan a/k/a Morgan & Morgan, PA, with its principal place of business in Orlando, Florida at 20 N. Orange Ave., Ste 1600, Orlando, FL 32801.

8. The defendant, Ultima Morgan, is an owner, shareholder, employee and/or partner of the defendant Morgan & Morgan a/k/a Morgan & Morgan, PA, with its principal place of business in Orlando, Florida at 20 N. Orange Ave., Ste 1600, Orlando, FL 32801.

9. At all times relevant hereto, the individual Defendants were acting as the agents, servants and/or employees within the course and scope of their employment, with Morgan and Morgan, PA and the doctrine of Respondeat Superior is invoked herein.

JURISDICTION AND VENUE

10. The amount in controversy exclusive of interest and costs exceeds the sum or value of \$75,000.00.

11. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1331, in that the claims arise under the Lanham Act, 15 U.S.C. § 1051, et seq. This Court has pendent jurisdiction over the state law claims that arise under the laws of Pennsylvania, pursuant to the principles of supplemental jurisdiction set forth in 28 U.S.C. § 1367.

12. This Court has personal jurisdiction over Defendants, Morgan & Morgan a/ka Morgan & Morgan, PA, John Morgan, Mike Morgan, Daniel Morgan, Matt Morgan, Scott Weinstein and Ultima Morgan, as they conduct business in this district and have disseminated false advertising in Pennsylvania

13. Venue is proper in this district under 28 U.S.C. § 1391 (b)(1) and (c), because the Court has personal jurisdiction over Defendants. Venue is also proper in this jurisdiction pursuant to 28 U.S.C. § 1391 (b)(2) because events or omissions giving rise to these claims occurred in this district. Further, Defendants have solicited business in this district, falsely advertised in this district, and engaged in unfair competition and common law fraudulent misrepresentation in this district. Defendants have also committed the offending acts by advertising on the internet and using deceptive practices on the internet, which is used by residents of this district.

FACTUAL ALLEGATIONS

14. Morgan & Morgan PA is a law firm which holds itself out as providing legal services to individuals in need of legal representation.

15. Morgan & Morgan PA has offices in several states throughout the county and its principal office is located in Orlando, Florida.

16. Morgan & Morgan PA provides legal services to people who suffer various types of personal injuries.

17. In particular, Defendants represent individuals seeking monetary compensation for bodily injuries sustained as a result of another person and/or company's negligent/wrongful conduct.

18. Defendants run advertisements that appear in and/or on Pennsylvania, New Jersey and Delaware media outlets.

19. Through advertisements, Defendants actively solicit potential clients, secures business and collects fees from out-of-state, i.e., from clients who reside in New Jersey and Delaware.

20. The types of legal services that Defendants provide involve corporations, insurance companies and defense counsel with offices throughout the country, and national federal aid programs such as Medicare and Medicaid.

21. The business activities of Defendants that are subject of this Complaint substantially affect interstate commerce and use communications in interstate commerce including the U.S. mail.

22. At some time in 2016, Defendants began advertising their legal services in the Philadelphia, Pennsylvania metropolitan area.

23. The majority of the advertisements used by Defendants, relate to their ability to provide legal services in matters involving personal injury.

24. The aforementioned advertisements feature Defendants John Morgan, Matt Morgan, Dan Morgan, Ultima Morgan and/or Mike Morgan.

25. None of the individual Defendants are members of the Pennsylvania bar and they are not licensed to practice law in Pennsylvania.

26. Based upon information and belief, Morgan & Morgan did not have any attorneys employed by the firm regularly working in Pennsylvania when it began advertising in the Philadelphia market.

27. At some point in or around November of 2016, a period of several months after Defendants began advertising in Pennsylvania, Morgan & Morgan hired an attorney, Jake David Sternberger, as the lone attorney in its Philadelphia office.

28. According to the Morgan & Morgan website, Jake Sternberger is the only Morgan & Morgan attorney located in Pennsylvania as of August 1, 2017.

29. According to the Pennsylvania disciplinary board web site Jake Sternberger was admitted to the Pennsylvania bar on October 18, 2016.

30. Upon information and belief, as of the filing of this complaint Jake Sternberger has little or no experience in handling personal injury matters.

31. Defendants' advertising campaign did, and continues to, mislead the consumer that they actively litigate claims in Pennsylvania when in fact their representation of personal injury clients is non-existent or minimal.

32. Many, if not all, of the television advertisements run by the Defendants were and continue to be false.

33. Many of the television advertisements run by Defendants were and continue to be misleading.

34. Many of the television advertisements run by Defendants were and continue to be deceptive.

35. Defendants advertising campaign in the Philadelphia market is false in that they do not represent clients for personal injury claims in Philadelphia or the surrounding counties.

36. The advertising by defendants in the Philadelphia market has a tendency to deceive a substantial portion of their intended audience.

37. The 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.

38. The advertisements lead the consumers in the Philadelphia metro area to believe that John Morgan and Morgan & Morgan will handle their claim and they will not simply be referred to another lawyer or law firm.

39. In fact, as of the date of August 1, 2017, the defendants refer all or substantially all the cases generated from its advertising in the Philadelphia area to other attorneys and firms who do not work for the Defendants.

40. As of August 1, 2017 the advertisements did not advise the consumer that their case will be referred to another law firm.

41. In fact, at least some of the Defendants' advertisements explicitly stated, in writing, that the advertisement is "not a referral service". This statement is false.

42. At least one of defendants' advertisements stated, "I'm not just any lawyer, I'm your lawyer." This statement is false and misleading.

43. One or more of Defendants' advertisements stated, "We're all here for you." Another advertisement stated, "Our family is here for your family." These statements are false and misleading.

44. Another of Defendants' advertisements stated, "You don't pay us unless we're successful."

45. The advertisements do not advise and/or suggest that John Morgan, the attorney speaking in the advertisement, is not licensed to practice law in Pennsylvania.

46. The advertisements do not advise and/or suggest that John Morgan, the attorney speaking in the advertisement, is not able to legally represent clients in Pennsylvania.

47. In many of the advertisements John Morgan describes himself to the consumer as a trial lawyer with over thirty years of experience. The advertisements also provide other personal information about and/or characteristics of Mr. Morgan. These advertisements are meant to convey to the public that Mr. Morgan and his firm will be handling the consumer's claim.

48. Some of the Defendants' advertising feature Matt Morgan, Dan Morgan, Ultima Morgan and/or Mike Morgan. These advertisements also did not advise the consumer that the attorney appearing therein are unlicensed to practice law in Pennsylvania. Nor do they advise the consumer that they are not personally involved in handling claims in Pennsylvania.

49. All of the individual Defendants conspired together to promote a false advertising message in the Philadelphia market.

50. John Morgan, Matt Morgan, Dan Morgan, Ultima Morgan and Mike Morgan all actively participated in the making of the false television advertising. These Defendants knew the advertising was going to be placed in the Philadelphia market.

51. Based upon information and belief defendant, Scott Weinstein is the managing partner and approved and/or authorized the subject advertising campaign.

52. Based upon information and belief Defendants have aired numerous different advertisements in the Philadelphia market. Although Plaintiff does not know the exact number of different ads, Plaintiff believes there may be as many as 100 or more unique ads that have aired since 2016.

53. At the time Plaintiff filed its original complaint there was a brief disclaimer at the end of the commercial that states:

ATTORNEY ADVERTISEMENT – NOT A REFERRAL SERVICE.

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 and Morgan.

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

54. Subsequent to the filing Plaintiff's original complaint Defendants changed the disclaimer in the commercial which now states:

Attorney Advertising

Before making your choice of an attorney, you should give this matter careful thought. This election 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 and 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 John F. Kennedy Blvd.,
Philadelphia, PA 19102

55. This modification does not cure the deceptive and misleading impression created by Defendants' extensive advertising campaign.

56. Defendants have spent millions of dollars in the Philadelphia market extolling their personal services as personal injury lawyers yet they do not provide the services they advertise.

57. Plaintiff does not have in their possession all of Defendants advertisements but below is the copy for 3 of Defendants' television commercials:

“If you’ve been injured in an accident remember this, I’m not just a lawyer, I’m your lawyer. Morgan and Morgan. For the People.”

“I’m John Morgan of Morgan and Morgan and I’ve been a trial lawyer now for almost 30 years. I’ve seen a lot. If someone were to ask me what I look for in a law firm, it would be simple. Does the law firm have the financial strength to fight the insurance companies and the corporate giants? How long have they been in business? Does the firm have a history of huge verdicts, and lots of them? When you’re injured in an accident you only have one day in court. Do your homework. All firms are not the same. Morgan and Morgan. For the people.”

“If you have questions about your accident, the consultation is free. And you don’t pay us unless we’re successful. Morgan and Morgan. For the people.”

58. The purpose of Defendants' significant advertising budget is to undermine the competition by overwhelming the consumers in the Philadelphia market with false and misleading information.

59. Consumers in the Philadelphia market were in fact misled and/or deceived by the Defendants' advertisements.

60. Upon information and belief neither John Morgan nor the other attorneys appearing in the Philadelphia Market TV advertisements actually speak, or meet with the potential clients.

61. Upon information and belief, thousands of consumers in the Philadelphia area have contacted Morgan & Morgan for representation in their personal injury claims since defendants began advertising in the Philadelphia market.

62. Defendants also have a significant billboard campaign in the Philadelphia market.

63. Most of the billboards feature John Morgan's face prominently, and state the firm name "Morgan & Morgan" with the slogan "For the people".

64. These billboards are meant to convey to the consumers that Morgan & Morgan and John Morgan will be their attorneys.

65. The billboards do not advise the consumers that John Morgan is not licensed to practice law in Pennsylvania.

66. The billboards do not advise the consumers that John Morgan cannot legally represent them in Pennsylvania.

67. The billboards do not advise the consumers that Defendants will refer their case to another lawyer and/or law firm.

68. Defendants also have targeted the Philadelphia metro area with internet/online marketing.

69. Defendants pay for online "keyword advertising" intended to reach people searching personal injury lawyers in Philadelphia and the surrounding area.

70. The Defendants' online advertising, in conjunction with their other marketing campaigns in the Philadelphia market, are intended to mislead and/or deceive the people of Pennsylvania that Defendants actively litigate personal injury matters in Philadelphia.

71. Defendants have spent several million dollars in advertising in the Philadelphia market through August of 2017.

72. During the twelve-month period preceding August of 2017, Defendants have spent more money advertising in the Philadelphia market than any other personal injury firm.

73. Defendants have engaged in improper and/or illegal conduct by propagating false and misleading statements in their advertisements.

74. Defendants advertising has deprived and continues to deprive Plaintiff, and other personal injury firms, the opportunity to obtain prospective clients.

75. Plaintiff, Rosenbaum & Associates, P.C. is a law firm that handles almost exclusively personal injury related matters.

76. Plaintiff has been advertising their legal services related to personal injury claims in the Philadelphia market for over 15 years.

77. Plaintiff and Defendants are in direct competition with each other as it relates to providing legal services for clients pursuing personal injury related claims.

78. Plaintiff and Defendants are in direct competition with each other as it relates advertising for their legal services for clients pursuing personal injury related claims.

79. Numerous prospective personal injury clients contact law firms and/or lawyers based on advertising.

80. Plaintiff has obtained clients through television advertising for over 15 years in the Philadelphia, and the surrounding area.

81. All attorneys who practice law at Rosenbaum & Associates are licensed to practice law in Pennsylvania.

82. As a result of Defendants' false and misleading advertising Plaintiff has lost the opportunity to represent numerous personal injury claimants.

83. As a result of Defendants' extensive false and misleading advertising Plaintiff has experienced a decline in the number of new clients that have contacted Plaintiff for legal services.

84. As a result of the Defendants' false and misleading advertising Plaintiff will continue to lose the opportunity to represent future personal injury claimants.

85. As a result of the Defendants' false and misleading advertising Plaintiff has and will continue to lose its ability to expand its client base.

86. Plaintiff also receives a significant portion of new clients through both current and former clients.

87. As a result of the Defendants' false and misleading advertising has and will continue to suffer economic loss and loss of good will.

88. Defendants have willfully and intentionally misrepresented the nature of their practice and their involvement with potential personal injury claims in an effort to deceive the consumers in the Philadelphia market.

89. As a direct and proximate result of Defendants' actions, Plaintiff has suffered significant damages including, but not limited to: (1) actual damages to their goodwill and brand; (2) actual damages for past lost profits it would have made from potential clients that were confused by Defendants' advertisements and/or false and misleading statements; (3) actual damages for future lost profits it would have made from clients who intended to hire Plaintiff; (4) actual damages for future lost profits it would have made from future referrals of clients; (5) actual damages related to an inability to expand its client base; (6) actual damages related to advertising expenses to correct Defendants' misleading and deceptive advertisements; and (7) actual damages related to expense to repair the diminished value of its own brand.

COUNT I

VIOLATION OF THE LANHAM ACT
(15 U.S.C. § 1051 ET SEQ.)
FALSE ADVERTISING
(Against All Defendants)

90. The plaintiff, hereby incorporates the preceding paragraphs by reference as though same were fully set forth at length herein.

91. Defendants' advertisements included false and misleading statements of fact regarding its services and were distributed in interstate commerce and in this District. These advertisements contain actual misstatements and/or misleading statements and/or failures to disclose.

92. Defendants' statements actually deceive and/or have a tendency to deceive a substantial segment of Plaintiff's customers and potential customers. The deceptions are material in that they concern the quality and/or characteristics of Defendants' services and are likely to influence the decisions of consumers.

93. Defendants' advertisements lead the viewer to believe that the attorney appearing in the ad will be involved in the handling of their personal injury claim.

94. Defendants' advertisements lead the viewer to believe that the law firm of Morgan & Morgan will handle their claim.

95. The ads are misleading in that they do not properly advise that the consumers personal injury claim will be referred to another law firm.

96. Defendants' false and misleading advertising statements and omissions injure both consumers and Plaintiff.

97. Many potential clients would not have contacted Defendant if they knew the individual Defendants lived in Florida and are not licensed to practice law in Pennsylvania.

98. Defendants' false and misleading advertising statements and omissions violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)

99. Defendants' false and misleading advertising statements and omissions are likely to continue to injure Plaintiff by causing a decline in revenue, loss of good will, and other harm in an amount to be determined at trial, as a result of Defendants false and misleading statements.

100. Pursuant to 15 U.S.C. § 1117, Plaintiff is further entitled to recover from Defendants the damages sustained by Plaintiff as a result of Defendants' acts in violation of 15 U.S.C. § 1125(a). Plaintiff is at present unable to ascertain the full extent of monetary damages it has sustain by reason of Defendants' acts.

101. Pursuant to 15 U.S.C. § 1117, Plaintiff is further entitled to recover from Defendants the gains, profits and advantages that Defendants obtained as a result of Defendants' acts in violation of 15 U.S.C. § 1125(a). Plaintiff is at present unable to ascertain the full extent of the gains, profits and advantages Defendants have obtained by reason of Defendants' acts.

102. Pursuant to 15 U.S.C. § 1117, Plaintiff is further entitled to recover from Defendants the costs of this action. Moreover, Plaintiff is informed and believes, and on that basis alleges, that Defendants conduct was undertaken willfully and with the intention of causing confusion, mistake or deception.

COUNT II

PENNSYLVANIA COMMON LAW- UNFAIR METHODS OF COMPETITION (Against All Defendants)

103. The plaintiff, hereby incorporates by reference herein the allegations contained in the preceding paragraphs of this Complaint as though same were fully set forth at length herein.

104. Defendants, as set forth above, engaged in conduct, which is contrary to honest industrial and commercial practice and, thus, has engaged in unfair methods of competition, in violation of the common law of the Commonwealth of Pennsylvania.

105. Defendants' acts are calculated to procure an unfair competitive advantage through false, misleading and deceptive advertising.

DEMAND FOR RELIEF


Based upon the foregoing, Plaintiff requests the following relief:

- i) That this Court enter preliminary injunctive relief enjoining the Defendants from any further publication of advertising in the Philadelphia market;
- ii) That the preliminary injunction remain in effect until a trial on the merits can be held, at which time Plaintiff requests this Court to enter permanent injunctive relief;
- iii) That Defendants account for and pay to Plaintiff any and all gross revenues derived by the Defendants from the publication of the advertising in the Philadelphia market;
- iv) This Court award monetary damages sustained by Plaintiff to include any and all economic loss caused by Defendants' violation of the Lanham Act and pursuant to Pennsylvania common law.
- v) That this Court prohibit Defendants from advertising its services for personal injury related legal claims in Pennsylvania;
- vi) That this Court enter a judgment awarding Plaintiff all damages it is entitled pursuant to common law and 15 U.S.C. § 1117, as a result of Defendants' acts in violation of 15 U.S.C. § 1125(a) and Pennsylvania law.
- vii) That in light of the willful and intentional nature of Defendants' conduct, this Court enter judgment awarding Plaintiff its reasonable attorneys' fees, treble damages, and

the costs of this action pursuant to 15 U.S.C. § 1117(a), Pennsylvania law, and this Court's equitable discretion.

- viii) That in light of the willful, malicious and intentional nature of Defendants' conduct, this Court award Plaintiff punitive damages in an amount to be determined at trial;
and
- ix) That this Court grant such other and further relief as it shall deem just and proper.

ROSENBAUM AND ASSOCIATES, P.C.

By: 
RYAN M. COHEN, ESQ.
Attorney for Plaintiff

DATE: 12/1/17