UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CIVIL DIVISION

JODY SHACKELFORD, PLAINTIFF,

v. CASE NO.: 3:24-CV-00123-JM

MORGAN & MORGAN
COMPLEX LITIGATION SERVICES, P.A., DEFENDANT.

PLAINTIFF'S BRIEF ON STANDING

Plaintiff Jody Shackelford, Attorney at Law, ("Plaintiff"), brings this brief on standing at request of the Court, and states as follows:

SECTION A - BRIEF ON PLAINTIFF'S STANDING UNDER CIVIL RICO

I. Introduction

Plaintiff Jody Shackelford submits this section of the brief to establish standing under the Civil RICO Act, 18 U.S.C. § 1964(c).

The complaint alleges that Defendant Morgan & Morgan Complex Litigation Services, P.A. ("Defendant") engaged in an anti-competitive client funneling scheme that diverted potential clients from Plaintiff's legal practice, causing direct injuries to his business. Plaintiff has sufficiently alleged an injury to business or property proximately caused by a pattern of racketeering activity, establishing standing under § 1964(c).

II. Legal Requirements for Civil RICO Standing

Under the Racketeer Influenced and Corrupt Organizations Act (RICO), racketeering generally involves engaging in a pattern of illegal activity connected to an enterprise. RICO was enacted to combat organized crime but has since been applied in civil cases beyond traditional mob-related activities.

The RICO Act has a Civil Remedies section outlining standing, to quote directly from the Civil Remedies Section of the RICO Act:

> "Any *person* injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit ... ," *Id.*, *emphasis added.*

To establish standing under 18 U.S.C. § 1964(c), a plaintiff must allege:

1. **Injury to Business or Property**: A concrete harm to business or property interests. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985).
2. **Violation of Section 1962**: Defendant's actions involved a pattern of racketeering activity or other prohibited acts under § 1962 (*H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989)).
3. **Proximate Causation**: The injury was directly caused by the defendant's racketeering activity (*Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992)).

1. Injury to Business or Property

The plaintiff must allege a direct, concrete injury to business or property interests.

Plaintiff has experienced specific economic harm in the form of lost clients and reduced revenue due to Defendant's deceptive advertising scheme. For instance, since 2019, Plaintiff through his law practice has spent over $80,000 in advertising with Google Ads alone, expenditures aimed at attracting clients in a competitive legal market. Defendant's misconduct has diminished the effectiveness of these advertising dollars by diverting clients through deceptive practices, resulting in quantifiable lost revenue and clientele. These losses represent measurable harm, sufficient to satisfy RICO's standing requirements.

In *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985), the Supreme Court clarified that RICO's injury requirement includes measurable harm such as lost revenue or clientele. Here, the plaintiff claims specific economic injuries resulting from the defendant's coordinated scheme to monopolize client acquisition through unethical advertising practices that diverted potential clients. This conduct, which systematically breached state ethics rules, was designed to disrupt the competitive market directly, injuring the plaintiff's business in a targeted and quantifiable way.

Plaintiff alleges specific injuries, including lost clients, reduced revenue, and reputational harm within the Arkansas legal market. In *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985), the Supreme Court held that injury to business or property caused by predicate acts satisfies the requirement under § 1964(c). Plaintiff suffered and properly alleged that lost revenue and clientele resulting from Defendant's fraudulent advertising constitute such injuries. This element of standing under the Civil Remedy provision of RICO is satisfied.

2. Pattern of Racketeering Activity

Defendant operates a syndicate of lawyers knowingly conspiring to use unfair business practices and false advertising, breaking state ethics rules, pouring millions into advertising to elbow out competitors like the plaintiff, raking in tens of millions in tainted fees, and abusing the wires and mail system to do it - this concert of conduct is the pattern of activity that forms the nexus of the Plaintiff's claim.

Plaintiff has standing because it was properly pleaded that the Defendant engaged in a deliberate scheme involving multiple predicate acts of mail and wire fraud, as set forth in 18 U.S.C. § 1961(1). Through this campaign of fraudulent advertising, transmitted via wire communications (including television and online ads) and mail, the Defendant purposefully misled Arkansas consumers, exploiting state ethics rules to create a facade of compliance and integrity.

As clarified in *H.J. Inc.*, 492 U.S. at 239–40, a "pattern" of racketeering requires both continuity and relatedness. Plaintiff's allegations detail a sustained, open-ended scheme with a high likelihood of continuation, systematically leveraging diverse media channels through predicate acts of wire and mail fraud. This coordinated, ongoing effort is carefully designed to establish and maintain an unfair competitive advantage, systematically undermining consumer trust and ethics regulations in Arkansas, thereby causing measurable harm to the Plaintiff's business.

3. Proximate Causation

Under *Holmes*, 503 U.S. at 268, "proximate cause" requires some direct relation between the injury asserted and the injurious conduct alleged. Here, Plaintiff properly pleaded that Defendant's unfair competition scheme was aimed at diverting Arkansas clients from direct competitors like Plaintiff, resulting in a direct loss of business. The defendant's RICO activities are in the direct causal chain which establishes proximate causation. But for the Defendant's scheme, Plaintiff would not be forced to unfairly compete for customers with diluted ad spending, a direct relation between the injury asserted and the injurious conduct.

The defendant operated its scheme in the Arkansas legal market, and because Plaintiff is a direct business competitor, competing for the very same clients, there is a direct link to the loss of legal market share. *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 657–58 (2008), confirms that a plaintiff need not be the sole target of the fraud if the injury was a foreseeable result of the scheme. The element of proximate cause was properly pleaded and standing is proper.

IV. Conclusion -RICO Act Standing

Plaintiff has established standing under Civil RICO by alleging an injury to business interests, a pattern of racketeering activity involving multiple predicate acts of mail and wire fraud, and proximate causation directly linking Defendant's scheme to Plaintiff's economic harm. Further, in line with the 8th Circuit cases, the direct cause link is met because Plaintiff is a direct market competitor, directly affected by Defendant's scheme. These elements satisfy the standing requirements of § 1964(c).

Plaintiff respectfully requests that the Court find standing under Civil RICO and allow the case to proceed.

SECTION B - MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S STANDING UNDER THE LANHAM ACT

I. Introduction

The Plaintiff submits this section to establish standing under the Lanham Act, 15 U.S.C. § 1125(a), to pursue claims against Defendant Morgan & Morgan Complex Litigation Services, P.A. The Plaintiff contends that Morgan & Morgan has orchestrated an unfair and anti-competitive scheme, deliberately deploying unethical and false advertising to sideline competitors and monopolize the Arkansas legal market. Plaintiff alleges that Defendant's conduct misled consumers, created an unfair market advantage, and directly diverted clients from Plaintiff, violating the Lanham Act.

II. Legal Framework for Standing Under the Lanham Act

Under *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014), standing under the Lanham Act requires:

1. **Zone of Interests**: The plaintiff's harm must fall within the zone of interests protected by the Lanham Act, including protecting commercial interests against unfair competition.
2. **Proximate Cause**: A causal connection between the defendant's deceptive practices and the plaintiff's harm; specifically, that "deception of consumers causes them to withhold trade from the plaintiff" (*Lexmark*, 572 U.S. at 133).

III. Application of Legal Standards

A. Plaintiff is prima facie within the Zone of Interests

The Plaintiff, a practicing attorney in Arkansas, competes directly with the Defendant in the same market and suffers diminished advertising effectiveness as a direct result of the Defendant's deceptive scheme. The Defendant's tactics dilute the impact of each advertising dollar Plaintiff has ever spent, undermining fair competition and amplifying Defendant's unfair market advantage.

The Defendant has engaged in a deceptive advertising scheme, intentionally misleading consumers through intentional repeated violations of Arkansas Rules of Professional Conduct Rule 7.2, which prohibits client testimonials and dramatizations. By systematically employing these unethical tactics, the Defendant seeks to gain an unfair advantage in the market, distorting fair competition and undermining consumer trust.

By saturating Arkansas media with advertisements that intentionally disregard ethical rules, the Defendant has orchestrated an anti-competitive scheme that falls squarely within the Lanham Act's zone of interests. Plaintiff's harm arises directly from this concerted effort to distort the market through unfair competition, leveraging these violations as tools to engage in broader Lanham Act violations, ultimately sidelining competitors in the Arkansas legal landscape. Plaintiff meets this element of standing.

B. The Proximate Cause Element is Satisfied

It's not a violation of the state ethics rules that serves as the root of the cause, it is the use of the violation as a tool of deception, in a pattern of conduct, over time and above and beyond the violation itself, manifested as a scheme, and that scheme, which continues to this day right out in the open, it is that which is the direct and proximate cause of Plaintiff's damages. Defendant's scheme led consumers to believe its services were ethically compliant when in fact Defendant knew, over a pattern of years, the advertised facade of ethical compliance was false, influencing consumers' choice of legal representation. Defendant's scheme caused consumers to withhold trade from Plaintiff, satisfying the proximate cause requirement under *Lexmark*, 572 U.S. at 133. Plaintiff's lost clients, reputational damage, and reduced revenue flow directly from Defendant's false advertising and unfair competition. Each dollar the plaintiff spends on advertising is diluted, as has been the case with past expenditures.

IV. Relevance of Rule 7.2 Violations (FRE 401)

Defendant's violations of Rule 7.2 are relevant under FRE 401, as they increase the likelihood that Defendant engaged in the alleged RICO scheme and Lanham Act violations. These violations evidence a broader pattern of conduct supporting Plaintiff's Lanham Act claim by illustrating Defendant's intent and method of unfair competition.

SECTION C - STANDING FOR PLAINTIFF'S STATE LAW CLAIMS

I. Introduction

Plaintiff asserts state law claims for common law fraud, misrepresentation, and negligence arising from Defendant's misleading advertising and unfair competitive practices. Plaintiff has standing to pursue these claims based on direct economic harm caused by Defendant’s conduct.

II. Standing Requirements Under Arkansas Law

A. Common Law Fraud. Defendant's years long act of using their scheme of mail and wire fraud underpinned by their unfair competitive conduct and deceptive advertising misled consumers into believing its services were ethically compliant while claiming to be superior to other attorneys like Plaintiff, causing them to choose Defendant over Plaintiff. The economic harm—loss of clients and revenue—is directly traceable to Defendant's fraudulent practices.

B. Misrepresentation. Defendant’s advertising conveyed false information about its compliance with ethical standards, and Federal laws like Lanham and RICO, while influencing consumer choice and directly harming Plaintiff’s business. This satisfies the standing requirements for misrepresentation.

C. Negligence. Defendant’s disregard for honest advertising practices constitutes negligence, causing foreseeable harm to Plaintiff's business and reputation. Plaintiff’s economic and reputational injuries are directly linked to Defendant’s negligent conduct.

IV. Redressability

Plaintiff's injuries—economic losses and reputational harm— flowing from the scheme are recognized under Arkansas law and can be redressed through the state law claims asserted. Upholding these claims serves Arkansas's interest in fair competition and provides a remedy against deceptive practices.

V. Conclusion

Plaintiff satisfies Arkansas's standing requirements for his state law claims. The harms alleged are concrete, directly caused by Defendant's conduct, and redressable by this Court. Plaintiff respectfully requests that the Court uphold standing for these claims and allow them to proceed under *Ashcroft v. Iqbal* and *Bell Atlantic Corp. v. Twombly*.

Wherefore, Plaintiff respectfully requests that this Court find standing is satisfied on all claims in this case, and for all other relief deemed proper.

Dated: 11/14/24
Respectfully submitted,
Jody Shackelford,
Plaintiff

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CERTIFICATE OF SERVICE

I, Jody L. Shackelford, I hereby certify that on this 14th day of November, 2024, filed a true and correct copy of the foregoing using the CM/ECF electronic filing system, which shall send electronic notification of such filing to all counsel of record:

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BY: _/s/ Jody Shackelford
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