

IN THE SUPREME COURT OF FLORIDA

In Re AMENDMENTS TO THE RULES
REGULATING THE FLORIDA BAR—
BIENNIAL REPORT

Case No.: SC20-1467

_____ /

**COMMENT IN SUPPORT OF THE FLORIDA BAR'S
PETITION TO AMEND RULE 4-7.13**

This comment is submitted by Damien Prosser, a member of the Florida Bar in good standing and a partner with the law firm of Morgan & Morgan. I have read and support the Florida Bar's Petition to Amend Rule 4-7.13. The proposed amendment would expressly prohibit online search engine advertisements that are designed to confuse and mislead legal consumers who intentionally search for one firm and are misdirected to another. The proposed amendment provides in pertinent part:

[I]mpermissible conduct is use of another lawyer or law firm name as an Internet search term that triggers the display of an advertisement that does not clearly indicate that the advertisement is for a lawyer or law firm that is not the lawyer or law firm used as the search term.

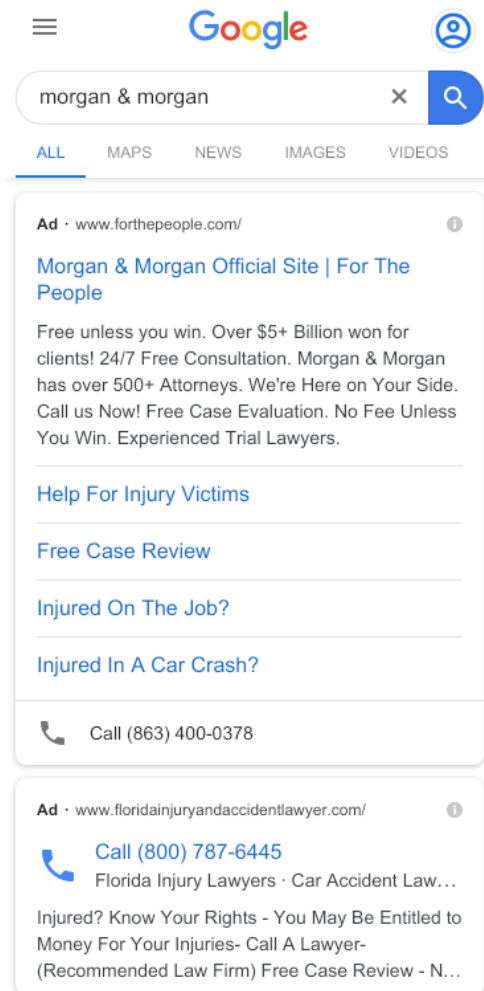
By prohibiting such conduct, the Bar is protecting legal consumer from unscrupulous lawyers and lead generators that masquerade as reputable and well-known law firms in an effort to mislead legal consumers searching for those firms.

RECEIVED, 11/05/2020 05:54:29 PM, Clerk, Supreme Court

An example of the conduct the amendment would prohibit is as follows: Unscrupulous Law Firm utilizes Google Ads (formerly known as Google Adwords) to run internet advertisements to drive web-traffic to Unscrupulous Law Firm's website, "click-to-call" phone number and intake department. Google Ads 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. The keywords or terms on which advertisers bid are commonly known as "Adwords." Advertisers, such as Unscrupulous Law Firm, pay for these terms based on a bidding system. Specifically, the Unscrupulous Law Firm 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 Unscrupulous Law Firm each time its advertisement or phone number is "clicked" in response to a Google search with the purchased keywords or search terms.

Using Google Ads, Unscrupulous Law Firm bids on the search term "morgan and morgan" and uses that search term and related advertisements to misleadingly direct legal consumers searching for Morgan & Morgan to Unscrupulous Law Firm by causing its advertisements to appear at or near the top of the Google search webpage. An example advertisement¹ is below:

¹ While the comment in support of the amendment describes the conduct perpetrated by the hypothetical Unscrupulous Law Firm, the advertisement is genuine. It is the type deceptive of "click-to-call" advertisement the amendment aims to prohibit.



The advertisements make no mention that the name of the law firm is actually the Unscrupulous Law Firm and, instead, includes a “click-to-call”² phone number which immediately connects a mobile user with the Unscrupulous Law Firm’s intake department and bypasses Unscrupulous Law Firm’s website altogether.

Not disclosing Unscrupulous Law Firm in the ad copy, coupled with the use of a “click-to-call” phone number is extremely deceptive and designed to confuse

² “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.

legal consumers who searched for Morgan & Morgan because the consumer is never even linked to Unscrupulous Law Firm's webpage. When the number is clicked and the call connected; Unscrupulous Law Firm's intake department will often answer the phone with the generic statement: "Law Firm" and does not identify that it is Unscrupulous Law Firm. The engagement agreement for Unscrupulous Law firm is texted to the legal consumer, while the consumer is on the phone, and e-signed in real time. It may not be until months later that the legal consumer realizes he or she has retained a firm other than Morgan & Morgan.

Such advertisements and intake practices are designed to deceive and mislead legal consumers that search for Morgan & Morgan or other well-known firms into believing that they are contracting Morgan & Morgan when they are, in fact, being directed to Unscrupulous Law Firm. Simply, Unscrupulous Law Firm purchases the "morgan and morgan" Adword (as well as other known firms) and then displays misleading advertisements to deceive legal consumers searching for a specific firm.

The purposed Rule seeks to eliminate this deceptive practice by simply requiring that a lawyer or law firm "clearly indicate" in its Internet advertisements that it is not the lawyer or law firm whose name it purchased to display the advertisement. Using the example above, if Unscrupulous Law Firm was required to disclose that it was the Unscrupulous Law Firm in its advertisement in response

to a legal consumer's search for "morgan and morgan," the legal consumer could then make the an informed choice when deciding to click Morgan & Morgan's advertisement or Unscrupulous Law Firm's advertisement.

The proposed amendment received unanimous approval at all committee levels and without any objection by the full Board of Governors. The amendment is necessary to protect the public, the integrity of the profession as well as the reputation of all Florida lawyers.

ORAL ARGUMENT REQUESTED

The undersigned respectfully requests oral argument regarding this matter.

Respectfully submitted,

/s/ Damien Prosser

Damien Prosser

Florida Bar No. 17455

Morgan & Morgan, P.A

20 N. Orange Ave. Fl 16

Orlando, FL 32801-4624

dprosser@forthepeople.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed through the Portal and furnished to the persons listed below, by e-mail and service, on this 5th day of November 2020 to:

Joshua E. Doyle, Florida Bar Executive Director

Dori Foster-Morales, Florida Bar President 2020-21

Michael Tanner, Florida Bar President-elect 2021-22

Elizabeth Clark Tarbert, Florida Bar Ethics Counsel

Gypsy Cowherd Bailey, Florida Bar Counsel

The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
Primary e-mail address: jdoyle@flabar.org
Secondary e-mail address: eto@flabar.org

CERTIFICATE OF TYPE SIZE AND STYLE

I HEREBY CERTIFY that this document is typed in 14-point Times New Roman Regular type.

/s/ Damien Prosser
Damien Prosser
Florida Bar No. 17455