

1 Andrew M. Gaggin (#034657)
2 **LERNER & ROWE PC**
3 2701 E Camelback Road, Suite 140
4 Phoenix, AZ 85016
5 Tel: 602-977-1900
6 Fax: 602-977-1901
7 andrewg@lernerandrowe.com
8 *Attorneys for Plaintiff*

9 **IN THE UNITED STATES DISTRICT COURT**
10 **DISTRICT OF ARIZONA**

11 **LERNER & ROWE, PC, an Arizona**
12 **corporation;**

13 **Plaintiff,**

14 **v.**

15 **BROWN ENGSTRAND & SHELLY**
16 **LLC, d/b/a THE ACCIDENT LAW**
17 **GROUP, an Arizona corporation;**
18 **JOSEPH L. BROWN, an individual;**
19 **and DOES 1-10, inclusive.**

20 **Defendants.**

Case No. _____

COMPLAINT

(Trademark Infringement Under 15 U.S.C. §§ 1114, 1117 and 1125(a)(1)(a); Common Law Trademark Infringement in Arizona; Unjust Enrichment)

(Jury Trial Demanded)

21 Plaintiff Lerner & Rowe, PC (“Lerner & Rowe” or Plaintiff), for its Complaint against
22 Defendants Brown Engstrand & Shelly LLC d/b/a The Accident Law Group (hereinafter
23 “ALG”), Joseph L. Brown, an individual, and Does 1 through 10 (collectively “Defendants”)
24 alleges as follows:

25 **INTRODUCTION**

26 1. This is an action for federal trademark infringement, federal unfair competition, federal false designation of origin and false description in violation of Sections 32 and 43(a) of the Federal Trademark Act (“Lanham Act”), 15 U.S.C. §§ 1114 and 1125(a); and for trademark infringement in violation of the common law of the state of Arizona, and unjust enrichment per Arizona Revised Statutes Title 44 – Trade and Commerce § 44-403 Damages.

1 as of the time of the filing of this complaint. Plaintiff, therefore, sues said DOE Defendants by
2 their fictitious names. Plaintiff is informed, believes, and thereon alleges, that each of the
3 Defendants designated herein as a DOE Defendant is involved in, entitled to, or in some manner
4 responsible as the principal, beneficiary, agent, coconspirator, joint venture, alter ego, third party
5 beneficiary, or otherwise, for the agreements, transactions, events, and/or acts hereinafter
6 described that proximately caused injuries and damages to Plaintiff, as alleged in this complaint.
7 Plaintiff will seek leave to amend this complaint to add the true names of these Defendants when
8 their identities have been ascertained.

9 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
10 mentioned herein, each Defendant was the agent, servant, and/or employee of the other
11 Defendants, and each of them, and in the acts and omissions herein mentioned, was acting
12 within the course and scope of said agency, servitude, and/or employment, or was otherwise
13 derivatively liable for each of the other Defendants' acts. At all times mentioned herein, each
14 Defendant was chargeable with and bound by the knowledge and information received by and
15 on behalf of each of the other Defendants. All the acts of Defendants, and each of them, were
16 ratified and adopted by the acts of their co-defendants, and each of them.

17 **JURISDICTION AND VENUE**

18 11. This Court has original jurisdiction under 28 U.S.C. § 1331, as this is a civil action
19 arising under 15 U.S.C. §§ 1114 and 1125(a). The Court has supplemental jurisdiction over all
20 other claims pursuant to 28 U.S.C. § 1367 insofar as all claims alleged herein form part of the
21 same case or controversy under Article III of the United States Constitution.

22 12. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 in that
23 Defendants regularly and continually advertise, solicit and/or conduct business in this District,
24 Plaintiff's claim arises in this district and a substantial part of the events or omissions giving rise
25 to the claims and the harm and damage to Plaintiff as complained of hereinafter have occurred

1 here, are occurring here and will continue to occur here if not enjoined by the Court.

2 **FACTUAL BACKGROUND**

3 ***Plaintiff Lerner & Rowe and the LERNER & ROWE Family of Marks***

4 13. The office of Lerner & Rowe, PC was established in 2005 by Glen Lerner and
5 Kevin Rowe, founded on the principles of quality representation and a dedication to client
6 service and satisfaction.

7 14. Lerner & Rowe has helped tens of thousands of injured persons following
8 accidental injuries and has become one of the largest, most successful personal injury law firms
9 in Arizona. Lerner & Rowe provides services to people in the greater metropolitan Phoenix area
10 and throughout the state, including Bullhead City, Yuma, Tucson, Mesa, Scottsdale, Gilbert,
11 Arrowhead, and Glendale. Lerner & Rowe has also received national recognition and offers
12 legal services in several other states including Nevada, New Mexico, Tennessee, Illinois,
13 Indiana, Washington, Oregon, California, Alabama, and Michigan.

14 15. Lerner & Rowe Gives Back Foundation, Inc. is a 501(c)(3) nonprofit organization
15 founded by Kevin Rowe, managing partner of Lerner & Rowe, P.C., dedicated to extensive and
16 various community outreach programs. Specifically, Lerner & Rowe Gives Back works to
17 advance the missions of community organizations that serve children and families struggling
18 from the aftermath of the recent economic downturn and has, to date, raised over \$2 Million in
19 secondary support for various philanthropic organizations.

20 16. As a part of Lerner & Rowe's business, it advertises nationally and operates the
21 website lernerandrowe.com.

22 17. Lerner & Rowe is the owner of all right, title and interest in and to the following
23 federally registered trademarks (hereinafter the "LERNER & ROWE Family of Marks"):

24 **a. LERNER & ROWE**, United States Trademark Registration No. 6059750;

25 **b. GLEN LERNER**, United States Trademark Registration No. 4694934 (a
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1 registration which has become incontestable according to United States
2 trademark law);

3 **c. LERNER & ROWE GIVES BACK LR**, United States Trademark
4 Registration No. 3977899 (a registration which has become incontestable
5 according to United States trademark law).

6 18. The LERNER & ROWE Family of Marks were innovated and developed at
7 significant expense to Lerner & Rowe and are the subject of extensive marketing, advertising,
8 and related efforts, by many and various commercial means, to create brand identity and educate
9 the relevant consuming public as to the unique source of Lerner & Rowe's services.

10 19. Lerner & Rowe has spent approximately \$100 million promoting and advertising
11 its LERNER & ROWE Family of Marks in Arizona and tens of millions more nationwide in a
12 variety of ways, including but not limited to, radio, television, various print publications,
13 billboards, and other marketing materials.

14 20. Lerner & Rowe has also accrued strong common law rights in the LERNER &
15 ROWE Family of Marks as a result of long, continuous, exclusive use of the LERNER &
16 ROWE Family of Marks, extensive advertising, and significant media attention.

17 21. The direct connection between the LERNER & ROWE Family of Marks and the
18 services offered by Lerner & Rowe has become firmly established in the minds of the relevant
19 consuming public.

20 22. Lerner & Rowe enjoys a tremendous amount of goodwill and name recognition as
21 a result of its use of the LERNER & ROWE Family of Marks and its extensive advertising and
22 promotion of the LERNER & ROWE Family of Marks in Arizona and throughout the United
23 States.

24 23. The LERNER & ROWE Family of Marks are distinctive, i.e., consumers and
25 members of the public recognize that goods and services marketed under the LERNER &

1 ROWE Family of Marks originate, are approved or endorsed by, or are affiliated with, Lerner &
2 Rowe.

3 24. As a result of this widespread use and recognition, the LERNER & ROWE Family
4 of Marks have become assets of substantial value and goodwill, distinguishing Lerner & Rowe
5 and the services it offers.

6 ***Defendants and their Unlawful Use of the LERNER & ROWE Family of Marks***

7 25. Defendant ALG, is a law firm that provides legal services to injury victims and
8 competes with Lerner & Rowe.

9 26. Defendant Joseph L. Brown is an attorney with the law firm ALG, P.C., is also the
10 President/CEO and Director for ALG, as well as a Shareholder in ALG, and Defendant Joseph
11 L. Brown provides legal services to injury victims via his affiliation with Defendant ALG.

12 27. Defendants advertise their services through their website located at
13 www.accidentlawgroup.com.

14 28. In addition to other mediums, Defendants obtain clients through online advertising
15 on search engines such as Google. To this end, one of the tools Defendants utilize is Google Ads
16 (formerly known as Google Adwords) to run internet advertisements to drive web-traffic to
17 Defendants' website and intake department.

18 29. Google Ads is a Google advertising service in which advertisers bid on certain
19 keywords or search terms in order for the advertisers' "clickable" ads to appear in Google's
20 search results. The keywords or terms on which advertisers bid are also commonly known as
21 "Adwords."

22 30. Defendants pay for these terms based on a bidding system. Specifically, the
23 Defendants bid an amount of money they are willing to pay for ALG advertisement to appear in
24 response to specific search terms. Google collects a fee from the bidder each time its ad or
25 phone number is "clicked" in response to a Google search with the purchased keywords or
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1 search terms.

2 31. Upon information and belief, and as shown by the attached advertisements (the
3 “Advertisements”), Defendants have continuously bid on search terms within the LERNER &
4 ROWE Family of Marks, included but not limited to “Lerner Rowe,” “Lerner & Rowe,” and
5 “Lerner and Rowe.” True and correct copies of examples of the Advertisements are attached as
6 “Exhibit A.”

7 32. Defendants knowingly and intentionally continue to use these terms and related
8 Advertisements to misleadingly direct current and potential clients of Lerner & Rowe to
9 Defendants by causing the Advertisements to prominently appear at or near the top of the
10 Google search webpage.

11 33. Defendants have used the Infringing Marks in commerce to promote their directly
12 competing business through their various websites, including, www.accidentlawgroup.com, and
13 to attract current and potential clients of Lerner & Rowe in Arizona who intended to contact or
14 hire Lerner & Rowe.

15 34. Defendants’ use of the Infringing Marks in its keyword Advertisements results in
16 consumers immediately encountering Defendants’ website and advertisements, which has
17 caused and is likely to cause initial interest confusion among consumers specifically looking for
18 Lerner & Rowe’s services on the Internet as well as confusion as to the source of the services
19 offered by Defendants due to use of the Infringing Marks.

20 35. Upon information and belief, Defendants have represented, currently represent,
21 and will continue to represent clients in Arizona that were obtained through its Advertisements
22 utilizing the Infringing Marks.

23 36. Defendants’ continued use of the Infringing Marks in connection with directly
24 competing legal services is likely to cause, and may have already caused, confusion among
25 consumers who erroneously believe that Defendants’ services are associated, affiliated, or
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1 connected with Lerner & Rowe, or that Lerner & Rowe has sponsored, authorized, approved, or
2 endorsed Defendants' business or services.

3 37. Defendants' use of the Infringing Marks as keyword advertisements has
4 substantially harmed Plaintiff Lerner & Rowe, the LERNER & ROWE Family of Marks, and
5 the goodwill associated with the LERNER & ROWE Family of Marks.

6 ***Defendants' Unlawful Use of the LERNER & ROWE Family of Marks is Willful and***
7 ***Intention***

8 38. Lerner & Rowe has contacted Defendants multiple times via email and phone
9 since December 2021 regarding Defendants' infringing use of the LERNER & ROWE Family
10 of Marks in Defendants' keyword advertising campaign and asked Defendants to refrain from
11 any further use of the LERNER & ROWE Family of Marks.

12 39. Despite Defendants' claims in response that Defendants are not infringing on the
13 LERNER & ROWE Family of Marks, Defendants' Advertisements continuously and
14 prominently appear at or near the top of the Google search webpage when users search for
15 combinations of, for example, "Lerner Rowe," "Lerner & Rowe," and "Lerner and Rowe." See
16 Exhibit A.

17 40. By letter dated August 10, 2021, Lerner & Rowe demanded that Defendants cease
18 using the Infringing Marks, and any confusingly similar version of the LERNER & ROWE
19 Family of Marks, in connection with Defendants' search listings and advertisements related for
20 Defendants' website.

21 41. To date, Defendants have failed or refused to respond to Lerner & Rowe's August
22 10, 2021 letter.

23 42. Defendants have intentionally and knowingly continued to use the Infringing
24 Marks as a paid search keyword on one or more Internet search engines, including Google.

25 43. Defendants' unauthorized commercial use of the LERNER & ROWE Family of
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1 Marks in the United States, and in Arizona, to Defendants’ benefit and to the detriment of
2 Plaintiff Lerner & Rowe and the public, has necessitated this suit for damages and injunctive
3 relief, among other remedies.

4 **FIRST CLAIM FOR RELIEF**

5 *(Trademark Infringement, Federal Unfair Competition, Federal False Designation of Origin*
6 *and False Description Under Lanham Act, 15 U.S.C. §§ 1114, 1117 and 1125(a)(1)(A))*

7 44. Lerner & Rowe incorporates by reference the preceding paragraphs of this
8 complaint as though fully set forth herein.

9 45. Lerner & Rowe is the owner of all right, title and interest in and to the LERNER &
10 ROWE Family of Marks. Through Lerner & Rowe’s continued use and marketing efforts, the
11 LERNER & ROWE Family of Marks and variations thereof, including but not limited to
12 “Lerner Rowe,” “Lerner & Rowe,” and “Lerner and Rowe,” have become associated with
13 Lerner & Rowe.

14 46. Both Lerner & Rowe and Defendants provide legal services to injury victims in
15 Arizona and are direct competitors.

16 47. Both Lerner & Rowe and Defendants offer their services through the same channel
17 of trade, i.e., the Internet.

18 48. Defendants have used the Infringing Marks as a paid keyword in their advertising
19 campaign on various search engines including Google.

20 49. Defendants’ use of the Infringing Marks in connection with the sale, offering for
21 sale, distribution, and advertising of services is of a manner likely to cause confusion, mistake,
22 and deception among consumers as to the approval, origin, or sponsorship by Lerner & Rowe of
23 products and services provided by Defendants, and which accordingly constitutes unfair
24 competition and infringement of the LERNER & ROWE Family of Marks.

1 50. The instantaneous nature of Internet navigation, the speed at which people
2 navigate and are presented with advertisements, images and/or data on the Internet, and the
3 speed at which consumers perform transactions on the Internet, all tend to increase the risk of
4 confusion or mistake about the source of a product or service. This risk is compounded by
5 Defendants' use of the Infringing Marks.

6 51. On information and belief, Defendants have used the Infringing Marks with
7 knowledge of, and the intent to call to mind, create a likelihood of confusion with regard to,
8 and/or trade off the recognition and goodwill of Lerner & Rowe and the LERNER & ROWE
9 Family of Marks.

10 52. Lerner & Rowe has no control over the nature and quality of the services offered
11 by Defendants, and Lerner & Rowe's reputation and goodwill will be damaged, and the value of
12 the LERNER & ROWE Family of Marks jeopardized by Defendants' continued use of the
13 Infringing Marks. Because of the likelihood of confusion resulting from Defendants' continued
14 use of the Infringing Marks, faults found with Defendants' services could negatively reflect
15 upon and injure the reputation that Lerner & Rowe has established for the high quality of
16 services it offers in connection with the LERNER & ROWE Family of Marks.

17 53. Defendants' use of the Infringing Marks has injured and will continue to injure
18 Lerner & Rowe and the public by causing the public to be confused or mistaken into believing
19 that the services provided by Defendants are associated, affiliated, or connected with Lerner &
20 Rowe's services, or that Lerner & Rowe has sponsored, authorized, approved, or endorsed
21 Defendants' business or services.

22 54. As a result of Defendants' use of the Infringing Marks, Lerner & Rowe has
23 incurred damages in an amount to be proven at trial consisting of, among other things, lost
24 revenue and diminution in the value of and goodwill associated with the LERNER & ROWE
25 Family of Marks.

1 55. As demonstrated by Defendants' refusal to cease use of the Infringing Marks in
2 their advertising campaigns, Defendants' acts as alleged above will continue if not enjoined.
3 Lerner & Rowe has no adequate remedy at law.

4 56. Plaintiff is entitled to an injunction restraining Defendants, its officers, agents and
5 employees, and all persons acting in concert with it, from engaging in any further acts in
6 violation of 15 U.S.C. §1114 and 1125.

7 57. Defendants willfully, deliberately, and knowingly continue to infringe on the
8 LERNER & ROWE Family of Marks despite Lerner & Rowe's express objection thereto.
9 Lerner & Rowe is therefore entitled to recover three times the amount of its actual damages and
10 the attorneys' fees and costs incurred in this action, and prejudgment interest.

11 **SECOND CLAIM FOR RELIEF**

12 ***(Common Law Trademark Infringement and Unfair Competition Under Arizona Law)***

13 58. Lerner & Rowe incorporates by reference the preceding paragraphs of this
14 complaint as though fully set forth herein.

15 59. Lerner & Rowe has used the LERNER & ROWE Family of Marks in connection
16 with legal services provided in the State of Arizona since long before Defendants began using
17 the Infringing Marks. As a result of Lerner & Rowe's long, continuous, prominent use of the
18 LERNER & ROWE Family of Marks within the State of Arizona, Lerner & Rowe has
19 established strong common law trademark rights under Arizona common law.

20 60. Defendants' acts alleged herein infringe Lerner & Rowe's exclusive common law
21 trademark rights in the LERNER & ROWE Family of Marks in the State of Arizona.

22 61. Defendants' practice of purchasing the Infringing Marks as keywords with various
23 Internet search engines constitutes an attempt to trade on the goodwill associated with the
24 LERNER & ROWE Family of Marks by directing Internet traffic away from Lerner & Rowe's
25 website to Defendants' website for commercial gain, and by causing initial interest confusion.

1 70. Defendants' acts, as alleged herein constitute unjust enrichment in violation of
2 Arizona law.

3 71. Defendants' acts, as alleged herein, have caused irreparable injury and damage to
4 Plaintiff and, unless restrained, will continue to do so.

5 72. As a result, Plaintiff has suffered damages with interest.

6 73. Plaintiff has no adequate, complete remedy at law.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Lerner & Rowe demands judgment against Defendants on all of the
9 above Claims, and on each and every claim for relief set forth above and award Lerner & Rowe
10 full relief including, but not limited to, the following:

11 a. a preliminary and permanent injunction enjoining and restraining Defendants and
12 their officers, directors, principals, agents, servants, employees, successors,
13 assigns, attorneys, and all those persons in active concert or participation
14 therewith who received actual notice of this Court's orders:

15 i. from causing likelihood of confusion, or causing mistake, or to deceive
16 as to the affiliation, connection, or association of Defendants with
17 Lerner & Rowe or the LERNER & ROWE Family of Marks, or as to
18 the origin, sponsorship, or approval of his services, or commercial
19 activities, or causing injury to his business reputation, or dilution of the
20 distinctiveness of the LERNER & ROWE Family of Marks, or Lerner
21 & Rowe's forms of advertisement;

22 ii. from directly or indirectly falsely designating or representing that
23 services are authorized, approved, associated with, or originating from,
24 Lerner & Rowe;

25 iii. from directly or indirectly using the Infringing Marks or any
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1 confusingly similar variants, iterations, or forms thereof, in any
2 language, which is likely to cause confusion or further irreparable harm
3 to Lerner & Rowe’s business reputation or goodwill;

4 iv. from utilizing the Infringing Marks or any confusingly similar variants
5 in any shape or manner;

6 v. from publishing, assembling, marketing, distributing, or otherwise
7 utilizing any visual displays, literature, business forms, advertisements,
8 signs, or any other representations, regardless of the medium, which
9 bear the Infringing Marks or any confusingly similar variants, and from
10 otherwise unfairly competing in any way with Lerner & Rowe;

11 vi. to deliver up to Lerner & Rowe for destruction, at its option, all
12 literature, advertisements, business forms, billboards, displays, signs,
13 and any other representations, regardless of form, which are in, or
14 come to be in, Defendants’ possession, custody, or control and which
15 bear the Infringing Marks or any confusingly similar variants;

16 vii. to notify their clients, prospective clients, agents, and representatives
17 that the Infringing Marks or any confusingly similar variants are not
18 connected with Lerner & Rowe;

19 viii. to implement negative adwords and negative Keywords “Lerner &
20 Rowe”, “Lerner and Rowe”, and “Lerner Rowe” in correlation with
21 ALG’s website(s) and advertisement campaigns on Google, Bing,
22 Yahoo, and any and all other search engines on which ALG advertises;

23 ix. to immediately institute full compliance with any order entered by this
24 Court, and, within thirty days following the date of entry of any
25 preliminary or permanent injunctive relief issued by this Court,
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1 propound and file a statement, under oath and penalty of perjury, that
2 each and every injunctive provision has been fully and completely
3 complied with;

- 4 b. judgment in favor of Lerner & Rowe on each of its claims for relief;
- 5 c. an accounting and payment of all profits gained by Defendants while engaging in
6 the acts complained of herein, including without limitation wrongfully gained
7 licensing fees, royalties, payments, and the like;
- 8 d. disgorgement of any proceeds obtained from Defendants' use of the Infringing
9 Marks (including similar variations thereof including but not limited to "Lerner
10 Rowe" and "Lerner & Rowe" and "Lerner and Rowe");
- 11 e. all monetary damages suffered by Lerner & Rowe, in an amount to be
12 determined, including statutory, enhanced or treble damages;
- 13 f. all costs and reasonable attorneys' fees incurred in connection with this action,
14 plus appropriate interest thereon, pursuant to 15 U.S.C. § 1117(a), and any other
15 applicable law;
- 16 g. any punitive or enhanced damages available due to Defendants' willful and
17 deliberate infringement, pursuant to 15 U.S.C. § 1117(a), and any other
18 applicable law;
- 19 h. an Order requiring Defendants to disseminate pre-approved corrective advertising
20 to all clients, prospective clients, agents and representatives to address the
21 likelihood of confusion caused by Defendants' acts;
- 22 i. an Order directing the cancellation, removal, forfeiture and/or transfer of any and
23 all claimed rights to the Infringing Marks; and
- 24 j. such other relief as this Court may deem just and proper.
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1 **DATED** 8th day of September 2021.

2 **LERNER & ROWE, PC**

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4 By: /s/ Andrew M. Gaggin
5 Andrew M. Gaggin, Esq.
agaggin@lernerandrowe.com
6 *Attorneys for Plaintiff*
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DEMAND FOR JURY TRIAL

Plaintiff Lerner & Rowe demands a jury trial in this case pursuant to Fed. R. Civ. P. 38(a).

Respectfully Submitted,

LERNER & ROWE, PC

DATED 8th day of September 2021

By: /s/ Andrew M. Gaggin
Andrew M. Gaggin, Esq.
agaggin@lernerandrowe.com
Attorneys for Plaintiff

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