2016 IL App (5th) 150226-U

NO. 5-15-0226

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

HULLVERSON & HULLVERSON, L.C.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 13-L-615
	)	
THOMAS C. HULLVERSON, STEPHEN RINGKAMP, THOMAS BURKE, MARK BECKER, and THE HULLVERSON LAW FIRM, P.C.,	)	Honorable
	)	Vincent J. Lopinot,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Chapman and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The *res judicata* effect of a prior federal court proceeding that involved federal question jurisdiction is determined by federal preclusion law, not state preclusion law; under the facts of the present case, the voluntary dismissal of a prior federal court proceeding pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure had no preclusive effect in a subsequent lawsuit filed in the Illinois circuit court; the plaintiff's complaint failed to state a cause of action under the Attorney Act and the Legal Business Solicitation Act; the timeliness of the plaintiff's claims under the Lanham Act is governed by the three-year statute of limitations set forth in the Illinois Consumer Fraud and Deceptive Business Practices Act; the plaintiff's Lanham Act claims did not fall under the doctrine of continuing violation for purposes of applying the three-year statute of limitations; the plaintiff's cyberpiracy claims under section 43(d) of the Lanham Act were time-barred under the three-year statute of limitations; and the Consumer

> Fraud and Deceptive Business Practices Act does not apply to the practice of law, including claims based on attorneys' alleged false or misleading advertisements for legal services.

¶ 2 The plaintiff, Hullverson & Hullverson, L.C., filed a complaint against the defendants, Thomas C. Hullverson, Stephen Ringkamp, Thomas Burke, Mark Becker, and The Hullverson Law Firm, P.C., alleging claims stemming from the defendants' advertising of legal services. The plaintiff alleged that the defendants' advertising violated the Attorney Act (705 ILCS 205/0.01 *et seq*. (West 2012)); the Legal Business Solicitation Act (705 ILCS 210/0.01 *et seq.* (West 2012)); the Lanham Act (15 U.S.C. § 1051 *et seq.* (2012)); the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq*. (West 2012)); and the Uniform Deceptive Trade Practices Act (815 ILCS 510/1 *et seq.* (West 2012)).

¶ 3 The defendants filed a combined motion to dismiss the plaintiff's complaint under sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619 (West 2012)). They argued numerous grounds in support of dismissing the complaint, including that the entire complaint was barred under principles of *res judicata*. They also argued, alternatively, that certain claims failed to state a cause of action, were filed in an improper venue, were barred by the applicable statute of limitations, and that the plaintiff lacked standing to bring some of the claims.

¶ 4 The circuit court conducted a hearing on the motion to dismiss on August 27, 2014, and took the matter under advisement. On May 8, 2015, the circuit court entered an order dismissing the complaint. The court did not articulate any basis for its ruling other than to state that it granted the motion "for the reasons set forth in Defendants'

Motion to Dismiss Plaintiff's Complaint and Defendants' Reply to Plaintiff's Response to Motion to Dismiss Plaintiff's Complaint." The plaintiff now appeals the circuit court's judgment dismissing its complaint. For the following reasons, we affirm in part, reverse in part, and remand for further proceedings.

¶ 5 BACKGROUND

¶ 6 Defendant The Hullverson Law Firm, P.C., is a law firm that was established in 1922. Defendant Thomas C. Hullverson is a former principal of The Hullverson Law Firm. He was licensed to practice law in Missouri but went on inactive status on January 4, 2008. He currently resides in Arizona. The remaining defendants, Ringkamp, Becker, and Burke, are current principals of The Hullverson Law Firm and licensed to practice law in Missouri. Becker and Burke are also licensed to practice law in Illinois. The plaintiff, Hullverson & Hullverson, L.C., is a law firm established by James E. Hullverson Jr. in 1988. Prior to establishing Hullverson & Hullverson, L.C., James E. Hullverson Jr. was an employee of The Hullverson Law Firm from 1975 to 1998. He is the nephew of defendant Thomas C. Hullverson.

¶ 7 The plaintiff filed its complaint on December 12, 2013. It alleged that the defendants have improperly used Thomas C. Hullverson's name on signage and in advertising for legal services in Illinois after Thomas C. Hullverson became inactive and no longer qualified to practice law in Missouri. The plaintiff also alleged that the defendants improperly used the name of another attorney, John E. Hullverson, who is not a party to this lawsuit. John E. Hullverson was employed by The Hullverson Law Firm as a lawyer from 1996 until 1999 when he moved to California and began practicing law

in that state. The plaintiff alleged that the defendants improperly used John E. Hullverson's name on signage and in their telephone book advertising after he was no longer employed by The Hullverson Law Firm, was no longer practicing law in Missouri, and was living and practicing law in California. The plaintiff alleged claims against each defendant based on the Attorney Act, the Legal Business Solicitation Act, the Lanham Act, the Consumer Fraud Act, and the Uniform Deceptive Trade Practices Act.

¶ 8 On March 7, 2014, the defendants filed a combined motion to dismiss pursuant to sections 2-615, 2-619, and 2-619.1 of the Code (735 ILCS 5/2-615, 2-619, 2-619.1 (West 2012)). The defendants' primary argument raised in the motion was that the plaintiff's complaint was barred under the doctrine of *res judicata* because of an adverse ruling in a prior federal court lawsuit.

¶ 9 Prior to the filing of the complaint in the present case, the plaintiff's founder, James E. Hullverson Jr., individually, filed a lawsuit against the defendants in the United States District Court for the Eastern District of Missouri, alleging damages based on the same advertising at issue in the present case. His complaint included counts against each defendant, Thomas C. Hullverson, Ringkamp, Becker, Burke, and The Hullverson Law Firm.[1] In each count, he requested the court to "Order, Adjudge, Declare and Decree" that the defendants had violated (1) the Missouri Rules of Professional Conduct and (2)

[1]James E. Hullverson Jr.'s federal complaint also included a count against John E. Hullverson, who is a former principal of The Hullverson Law Firm. The plaintiff did not name John E. Hullverson as a defendant in the present case.

the Lanham Act. He requested the court to order each defendant to "account for and pay as damages to the plaintiff all profits and advantages gained from Rule violations and Lanham Act violations."

¶ 10 The United States District Court for the Eastern District of Missouri entered an order dismissing James E. Hullverson Jr.'s request for damages based on alleged violations of the Missouri Rules of Professional Conduct. *Hullverson v. Hullverson, et al.*, 4:12-cv-144 (E.D. Mo. Dec. 3, 2012). The court held that violations of the Missouri Rules of Professional Conduct cannot be a basis of a civil cause of action. *Id*. Therefore, the court dismissed "the allegations concerning purported violations of the Missouri Rules of Professional Conduct" and struck all references to those rules from the complaint. *Id*. The court denied the defendants' request to dismiss the claims under the Lanham Act, concluding that those claims contained enough facts to state plausible claims for false or misleading advertising under the Lanham Act. *Id*. After the federal court entered this adverse interlocutory order, James E. Hullverson Jr. filed a notice under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, dismissing the remaining Lanham Act claims without prejudice.

¶ 11 In the present case, the defendants argued that the plaintiff's Illinois lawsuit was barred under the doctrine of *res judicata* as a result of the federal court's adverse ruling followed by James E. Hullverson Jr.'s voluntary dismissal of the federal lawsuit. The defendants asked the circuit court to apply Illinois law in determining the preclusive effect of the federal court proceeding. Specifically, the defendants argued that, under Illinois law's prohibition against claim splitting, the plaintiff was barred from bringing

claims in the present case that could have been litigated in the federal court case. See *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467, 889 N.E.2d 210, 213 (2008).

¶ 12 In addition to the doctrine of *res judicata*, the defendants also argued in their motion to dismiss: that the Attorney Act claims should be dismissed for failure to state a cause of action, for improper venue, and because the plaintiff lacked standing; that the Consumer Fraud Act claims should be dismissed for failure to state a cause of action, as untimely pursuant to the applicable statute of limitations, because the Consumer Fraud Act is inapplicable to the practice of law, for improper venue, and because the plaintiff lacked standing; that the Legal Business Solicitation Act claims should be dismissed for failure to plead a recognized cause of action; and that the Lanham Act claims should be dismissed because they were untimely under the applicable statute of limitations. Other than their *res judicata* argument, which was directed at the entire complaint, the defendants' motion to dismiss did not articulate any specific grounds for dismissing the Uniform Deceptive Trade Practices Act claims.

¶ 13 On August 27, 2014, the circuit court conducted a hearing on the defendants' motion to dismiss and took the matter under advisement. On May 8, 2015, the circuit court entered an order granting the motion to dismiss. The circuit court's one-page order stated that it was dismissing the complaint "for the reasons set forth in Defendants' Motion to Dismiss Plaintiff's Complaint and Defendants' Reply to Plaintiff's Response to Motion to Dismiss Plaintiff's Complaint." The circuit court's order did not set out any analysis or state the specific grounds for dismissing the complaint.

¶ 14 The plaintiff now appeals the dismissal of its complaint.

¶ 15 DISCUSSION

¶ 16 This appeal requires us to determine whether the circuit court properly dismissed the plaintiff's complaint. Our task is greatly complicated by the form of the defendants' motion coupled with the circuit court's failure to articulate any basis for granting the motion.

¶ 17 The defendants' motion purports to be a combined motion to dismiss pursuant to sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2012)). Section 2-619.1 of the Code allows a combined motion to dismiss but requires the combined motion to be divided into parts, with each part limited to either section 2-615 or section 2-619 and the points or grounds relied upon under that particular section. 735 ILCS 5/2-619.1 (West 2012).

¶ 18 "[A] motion to dismiss under section 2-615 differs significantly from a motion for involuntary dismissal under section 2-619." *Becker v. Zellner*, 292 Ill. App. 3d 116, 122, 684 N.E.2d 1378, 1383 (1997). "A significant difference between the two motions is that a section 2-615 motion is based on the pleadings rather than on the underlying facts." *Cwikla v. Sheir*, 345 Ill. App. 3d 23, 29, 801 N.E.2d 1103, 1109 (2003). A section 2-615 motion is solely concerned with defects on the face of the complaint. *Becker*, 292 Ill. App. 3d at 122, 684 N.E.2d at 1383. It admits "all well-pleaded facts and attacks the legal sufficiency of the complaint." *Randle v. AmeriCash Loans, LLC*, 403 Ill. App. 3d 529, 533, 932 N.E.2d 1200, 1203 (2010). The allegations in the pleadings are the only matters that the court is to consider in ruling on a section 2-615 motion. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485, 639 N.E.2d 1282, 1289 (1994).

¶ 19 A section 2-619 motion, however, "admits the legal sufficiency of the complaint but asserts an affirmative defense or other matter that avoids or defeats the claim." (Internal quotation marks omitted.) *Becker*, 292 Ill. App. 3d at 122, 684 N.E.2d at 1383. It assumes a cause of action has been stated. *Cwikla*, 345 Ill. App. 3d at 29, 801 N.E.2d at 1109. A section 2-619 motion "raises defects, defenses or other affirmative matter which appears on the face of the complaint or is established by external submissions which act to defeat the plaintiff's claim." *Neppl v. Murphy*, 316 Ill. App. 3d 581, 584, 736 N.E.2d 1174, 1178 (2000). "[A] section 2-619 proceeding enables the court to dismiss the complaint after considering issues of law or easily proved issues of fact." *Id.* at 585, 736 N.E.2d at 1179.

¶ 20 In their motion to dismiss, the defendants raised multiple grounds for dismissing the plaintiff's complaint, some grounds applicable to only specific counts. The defendants failed to designate which parts of their 24-page motion are pursuant to section 2-615 and which parts of the motion are pursuant to section 2-619. Section 2-619.1 of the Code does not allow for this type of hybrid motion practice. *Storm & Associates, Ltd. v. Cuculich*, 298 Ill. App. 3d 1040, 1046, 700 N.E.2d 202, 206 (1998). "Meticulous practice dictates that a lawyer specifically designate whether her motion to dismiss is pursuant to section 2-615 or section 2-619." *Illinois Graphics Co.*, 159 Ill. 2d at 484, 639 N.E.2d at 1289.

¶ 21 The inadequacy of the motion is compounded by the circuit court's failure to articulate any basis for granting the motion. The court simply entered a one-page order summarily granting the motion for the reasons set forth in the motion. "Placing in the

record the reasons for the final order would benefit this court and the parties and contribute to judicial efficiency." *Powell v. Village of Mt. Zion*, 88 Ill. App. 3d 406, 407, 410 N.E.2d 525, 527 (1980). Because the court failed to specify the reasons for its dismissal of the complaint, we are now obligated to review all of the issues raised in the motion to dismiss and argued on appeal to determine what grounds, if any, justify the dismissal of the complaint. *Id*. If any ground raised by the motion is a proper basis for the dismissal, we must affirm. *Williams v. Board of Education of the City of Chicago*, 222 Ill. App. 3d 559, 565, 584 N.E.2d 257, 262 (1991). Our standard of review is *de novo* under both sections 2-615 and 2-619 of the Code. *Illinois Insurance Guaranty Fund v. Liberty Mutual Insurance Co.*, 2013 IL App (1st) 123345, ¶ 14, 1 N.E.3d 956; *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 254, 807 N.E.2d 439, 443 (2004).

¶ 22 I

¶ 23 *Res Judicata*

¶ 24 The defendants' primary ground for dismissal of the complaint is an argument based on the *res judicata* effect of the voluntary dismissal of the prior federal court proceeding. The defendants rely on Illinois state law in support of their argument. Specifically, they cite *Hudson* where the Illinois Supreme Court held that "a plaintiff who splits his claims by voluntarily dismissing and refiling part of an action after a final judgment has been entered on another part of the case subjects himself to a *res judicata* defense." *Hudson*, 228 Ill. 2d at 473, 889 N.E.2d at 217. However, before we can apply *Hudson* as a basis for affirming the circuit court's dismissal of the plaintiff's complaint,

we must first determine whether state law or federal law controls the preclusive effect of the prior federal court proceedings.

¶ 25 In the prior proceeding, the federal court exercised federal-question jurisdiction (28 U.S.C. § 1331 (2012)) over claims for damages under the Lanham Act (15 U.S.C. § 1051 *et seq.* (2012)). It exercised supplemental jurisdiction (28 U.S.C. § 1367(a) (2012)) over the state law claims for damages based on alleged violations of the Missouri Rules of Professional Conduct. The federal court dismissed the state law claims with prejudice, and James E. Hullverson Jr. subsequently voluntarily dismissed the remaining Lanham Act claims by filing a notice pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure.

¶ 26 The defendants argue that, under *Hudson*, the plaintiff's complaint in the present case is an impermissible attempt at claim splitting and is barred under the *res judicata* doctrine. In *Hudson*, count I of the plaintiffs' initial complaint alleged a claim under a negligence theory, and count II alleged a claim based on willful and wanton conduct. *Hudson*, 228 Ill. 2d at 464, 889 N.E.2d at 212. The circuit court granted the defendants' motion to dismiss the negligence count on immunity grounds, and the plaintiffs subsequently voluntarily dismissed the remaining willful and wanton count. *Id.* at 465, 889 N.E.2d at 212. Later, the plaintiffs refiled their action, setting forth only one count, a willful and wanton claim. *Id*. The supreme court held that the refiled claim was barred under the doctrine of *res judicata*. The court stated that, although there was not an adjudication on the merits of the willful and wanton claim in the first lawsuit, *res judicata* barred not only every matter that was actually determined in the first suit, but also every

matter that might have been raised and determined in that suit. *Id.* at 473-74, 889 N.E.2d at 217. The court, therefore, affirmed the trial court's dismissal of the second lawsuit on *res judicata* grounds. Accordingly, under Illinois preclusion law, "when a suit is abandoned after an adverse ruling against the plaintiff, the judgment ending the suit, whether or not it is with prejudice, will generally bar bringing a new suit that arises from the same facts as the old one." *Muhammad v. Oliver*, 547 F.3d 874, 876 (7th Cir. 2008) (citing *Hudson*).

¶ 27 Unlike the facts of *Hudson*, the present case does not involve a determination of the preclusive effect of a prior Illinois circuit court proceeding. Instead, the present case involves a prior federal court proceeding that exercised federal-question jurisdiction over the Lanham Act claims and supplemental jurisdiction over claims under Missouri law. The United States Supreme Court has stated that state courts cannot give federal judgments in federal-question cases "merely whatever effect they would give their own judgments, but must accord them the effect that [the Supreme] Court prescribes." *Semtek International Inc. v. Lockheed Martin Corp*., 531 U.S. 497, 507 (2001). The preclusive effect of federal decisions is determined under the Federal Rules of Civil Procedure and federal law, not Illinois state law. *Taylor v. Sturgell*, 553 U.S. 880, 891 (2008). We also note that under Illinois's choice-of-law rules, the *res judicata* effect of a judgment is determined by the law of the jurisdiction where the judgment was rendered. *National Union Fire Insurance Co. of Pittsburg v. DiMucci*, 2015 IL App (1st) 122725, ¶¶ 30-31, 34 N.E.3d 1023. Therefore, we cannot simply apply the supreme court's holding in *Hudson* to determine the preclusive effect of the prior proceedings that were rendered in

the United States District Court for the Eastern District of Missouri. Instead, we must look to federal law, specifically cases from the United States Court of Appeals for the Eighth Circuit, to determine the preclusive effect of the prior federal court proceeding. See *id.* ¶ 30 ("We note that the bankruptcy judgment was rendered in a bankruptcy court in Delaware, which is the Third Circuit.").

¶ 28 Under federal law, *res judicata* (also known as claim preclusion) precludes a party from bringing repetitive suits involving the same cause of action. *Lundquist v. Rice Memorial Hospital*, 238 F.3d 975, 977 (8th Cir. 2001). The doctrine applies when (1) there is a prior judgment rendered by a court of competent jurisdiction; (2) the prior judgment was a final judgment on the merits; and (3) the same cause of action and the same parties or their privies were involved in both cases. *Banks v. International Union Electronic, Electrical, Technical, Salaried & Machine Workers*, 390 F.3d 1049, 1052 (8th Cir. 2004). If the three elements are met, the parties are thereafter bound "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." (Internal quotation marks omitted.) *Commissioner of Internal Revenue v. Sunnen*, 333 U.S. 591, 597 (1948).

¶ 29 In the present case, the crucial issue in determining the preclusive effect of the federal court proceeding is whether the prior federal court proceeding was resolved by a "final judgment on the merits" for purposes of federal claim preclusion. We believe that the prior federal court proceeding lacks the finality necessary for federal claim preclusion.

¶ 30 James E. Hullverson Jr. dismissed his Lanham Act claims by filing a notice under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 41(a)(1)(A)(i). Rule 41(a)(1)(A)(i) allows a plaintiff to voluntarily dismiss a federal action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(A)(i). The rule permits the dismissal as of right, and it requires only notice to the court. *Safeguard Business Systems, Inc. v. Hoeffel*, 907 F.2d 861, 863 (8th Cir. 1990). It does not require a motion or a court order. *Id*.

¶ 31 Pursuant to Rule 41(a)(1)(B), "[u]nless the notice *** states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits." Fed. R. Civ. P. 41(a)(1)(B). This provision is known as the "two-dismissal rule" and allows a plaintiff to refile the same claim following a voluntary dismissal only once before attaching prejudice to the action. See *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 394 (1990) ("If the plaintiff invokes Rule 41(a)(1) a second time for an 'action based on or including the same claim,' the action must be dismissed with prejudice.").

¶ 32 "The effect of a voluntary dismissal without prejudice is to render the proceedings a nullity and leave the parties as if the action had never been brought." *In re Piper Aircraft Distribution System Antitrust Litigation*, 551 F.2d 213, 219 (8th Cir. 1977). " '[The voluntary dismissal] carries down with it previous proceedings and orders in the

action, and all pleadings, both of plaintiff and defendant, and all issues, with respect to plaintiff's claim.' " *Id.* (quoting 27 C.J.S. *Dismissal and Nonsuit* § 39 (1959)).

¶ 33 "The purpose of Rule 41(a)(1)[(A)](i) is to fix the point at which the resources of the court and the defendant are so committed that dismissal without preclusive consequences can no longer be had as of right." *Id.* at 220. "That point is now fixed at a relatively early stage of the proceedings: the time when the defendant first answers or files a summary judgment motion." *Id.* A Rule 41(a)(1) dismissal lacks the element of finality. *Id.*

¶ 34 In the present case, the plaintiff has refiled the Lanham Act claims originally brought in the federal lawsuit, as well as several new claims under Illinois statutes which were not raised in the federal court proceeding. Under federal law, the notice of voluntary dismissal pursuant to Rule 41(a)(1)(A)(i) has no preclusive effect with respect to the plaintiff's refiled Lanham Act or its newly filed claims under Illinois statutes. The defendants have not cited, and we have not found, any authority under federal law holding that a plaintiff's first voluntary dismissal under Rule 41(a)(1)(A)(i) has any preclusive effect on undecided issues. Accordingly, we cannot apply the supreme court's analysis of Illinois preclusion law set forth in *Hudson* to affirm the circuit court's dismissal of the complaint under the doctrine of *res judicata*.

¶ 35 Having determined that *res judicata* is not a basis for dismissal of the complaint, we must now address each claim alleged in the complaint and determine whether the defendants raised any defenses that would justify the dismissal of any of the claims.

¶ 36 II

¶ 37 Claims Under the Attorney Act

¶ 38 Counts 1 through 5 of the plaintiff's complaint allege that the defendants have violated the Attorney Act (705 ILCS 205/0.01 *et seq*. (West 2012)) by incorporating Thomas C. Hullverson's name in various advertising media in Illinois when Thomas C. Hullverson was on inactive status and not authorized to practice law. The plaintiff seeks a judgment directing the defendants to pay $5,000 to the Illinois Equal Justice Foundation as a civil penalty for each violation of the statute, to pay its attorney fees and costs, and to cease and desist using the "Hullverson" name in its advertising.

¶ 39 Section 1 of the Attorney Act provides:

> "No person shall be permitted to practice as an attorney or counselor at law within this State without having previously obtained a license for that purpose from the Supreme Court of this State.
>
> No person shall receive any compensation directly or indirectly for any legal services other than a regularly licensed attorney, nor may an unlicensed person advertise or hold himself or herself out to provide legal services.
>
> ***
>
> Any person practicing, charging or receiving fees for legal services or advertising or holding himself or herself out to provide legal services within this State, either directly or indirectly, without being licensed to practice as herein required, is guilty of contempt of court and shall be punished accordingly, upon complaint being filed in any Circuit Court of this State. The remedies available

include, but are not limited to: (i) appropriate equitable relief; (ii) a civil penalty not to exceed $5,000, which shall be paid to the Illinois Equal Justice Foundation; and (iii) actual damages. Such proceedings shall be conducted in the Courts of the respective counties where the alleged contempt has been committed in the same manner as in cases of indirect contempt and with the right of review by the parties thereto.

The provisions of this Act shall be in addition to other remedies permitted by law and shall not be construed to deprive courts of this State of their inherent right to punish for contempt or to restrain the unauthorized practice of law." 705 ILCS 205/1 (West 2012).

¶ 40 "The power to regulate and define the practice of law is a prerogative of [the supreme court] under the Illinois Constitution." *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 12, 828 N.E.2d 1155, 1162 (2005). "Although the legislature may pass laws declaring the unauthorized practice of law illegal and may prescribe the punishment therefor, such statutes are merely in aid of the power of [the supreme court] to control the practice of law." *Id.* The Attorney Act does not provide for a private cause of action for damages, but provides for a contempt sanction. *Id.* at 27, 828 N.E.2d at 1170.

¶ 41 In support of the circuit court's dismissal of counts 1 through 5 of the complaint, the defendants argue (1) that the plaintiff's Attorney Act claims fail to allege a cause of action, (2) that the claims were filed in an improper venue, and (3) that the plaintiff lacks

standing to bring the claims. We agree with the defendants that counts 1 through 5 fail to allege a cause of action under the Attorney Act.

¶ 42 A section 2-615 motion to dismiss attacks the legal sufficiency of the complaint without raising affirmative defenses. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 499, 911 N.E.2d 369, 373 (2009). Therefore, we will apply section 2-615 standards in analyzing the defendants' argument that counts 1 through 5 failed to state a cause of action. Our analysis will focus on the face of the complaint, and our review is *de novo*. *Id*.

¶ 43 The Attorney Act expressly prohibits the unlicensed practice of law in the state and prohibits unlicensed persons from receiving compensation from legal services or advertising legal services. However, none of the allegations in the plaintiff's complaint allege that any of the defendants have committed any unlicensed practice of law in Illinois. In addition, the complaint does not allege that any of the defendants have improperly received compensation from legal services performed in Illinois. The plaintiff's claim is based on allegations that Thomas C. Hullverson "has advertised and/or held himself out to provide legal services" contrary to the statute's prohibition of unlicensed persons from advertising or holding himself out to provide legal services.

¶ 44 In its complaint, the plaintiff alleges that Thomas C. Hullverson has been retired and living in Arizona since 2001. The complaint also states that according to Missouri Supreme Court records Thomas C. Hullverson has been on inactive status since January 2008. The complaint alleges that John Hullverson, who is not a party to this lawsuit, was previously employed with The Hullverson Law Firm as an attorney, but he left the firm in

2000, moved to California, and began practicing law in California in 2000. The plaintiff alleges that the defendants have improperly advertised legal services using Thomas C. Hullverson and John E. Hullverson's names after they left The Hullverson Law Firm and were no longer practicing law in Missouri.

¶ 45 Specifically, the plaintiff alleges that the defendants' improper advertising included annual listings in the Martindale-Hubble Law directories. The plaintiff alleges that the Martindale-Hubble listing for The Hullverson Law Firm for the year 2000 included biographies of both Thomas C. and John E. Hullverson as attorneys practicing in the law firm and that the 2003 through 2013 editions of the directory included the biography of Thomas C. Hullverson as a member of the law firm and admitted to practice law in Missouri.

¶ 46 As another example of the defendants' alleged improper advertising, the plaintiff refers to signage on the defendants' office located in St. Louis, Missouri. According to the plaintiff's complaint, the defendants' signage on their law office improperly included John E. Hullverson's name from 2000 to 2012, a period of time in which he was no longer practicing law with the law firm and resided in California. The plaintiff alleges that the signage on the St. Louis, Missouri, office also improperly listed Thomas C. Hullverson as "of Counsel" when he was inactive and unauthorized to practice law.

¶ 47 The plaintiff's complaint also refers to white page, yellow page, and business listings in St. Louis, Missouri, telephone directories from 2000 through 2011. According to the plaintiff, these listings included Thomas C. Hullverson and/or John E. Hullverson

as attorneys with the law firm after they were no longer practicing law at the law firm or in Missouri.

¶ 48 The plaintiff's complaint also alleges that, in 2012 and 2013, the defendants maintained a website that listed Thomas C. Hullverson as an attorney in the law firm. The complaint includes a screenshot of Thomas C. Hullverson's biography on the website, which lists him as being "of counsel," admitted to practice in Missouri, and located in St. Louis, Missouri.

¶ 49 The Attorney Act prohibits "an unlicensed person" from "advertis[ing] or hold[ing] himself or herself out to provide legal services." It provides for sanctions against an individual "advertising or holding himself or herself out to provide legal services within this State." The problem with the plaintiff's allegations under the Attorney Act is that none of the advertising set forth in the complaint constitutes "advertising or holding" Thomas C. Hullverson or John E. Hullverson "out to provide legal services within this State." The Martindale-Hubble biographies included within the plaintiff's complaint state that these attorneys are licensed to practice law in Missouri, not Illinois. In addition, neither the telephone book listings nor the Internet website screenshots outlined in the plaintiff's complaint constitutes advertising on the part of the defendants in which Thomas C. Hullverson or John E. Hullverson are held out as providing legal services in Illinois. Likewise, the signage on the defendants' offices in St. Louis, Missouri, is not "advertising or holding [Thomas C. Hullverson and John E. Hullverson] out to provide legal services within this State."

¶ 50 In reviewing a trial court's dismissal of a complaint for failure to state a cause of action, we construe the allegations in the complaint in the light most favorable to the plaintiff and determine whether they are sufficient to state a cause of action upon which relief can be granted. *Turner*, 233 Ill. 2d at 499, 911 N.E.2d at 373. In the present case, the plaintiff has not alleged any facts that bring its claims within the scope of the Attorney Act. At best, the complaint alleges that the defendants advertised Thomas C. Hullverson and John E. Hullverson as being licensed to provide legal services in Missouri at a time when they were not authorized to practice law in Missouri, but such allegations are not matters that are encompassed within Illinois's statutes regarding the unlicensed practice of law in Illinois. Illinois statutes cannot regulate the unlicensed practice of law in Missouri.

¶ 51 The Hullverson Law Firm includes attorneys who are licensed to practice in Illinois, including defendants Becker and Burke. The plaintiff has not alleged any advertising in Illinois by the defendants that falsely indicated that Thomas C. Hullverson or John E. Hullverson were among The Hullverson Law Firm's attorneys who were licensed to practice law in Illinois. Therefore, none of the advertising, listings, biographies, signage, or websites alleged in the complaint establish that any sanction is appropriate under Illinois's Attorney Act. Accordingly, we affirm the circuit court's dismissal of those counts.

¶ 52 Having determined that the plaintiff's complaint failed to state a cause of action under the Attorney Act, we need not address the defendants' alternative arguments with respect to venue and standing.

¶ 53 III

¶ 54 Claims Under the Legal Business Solicitation Act

¶ 55 Count 10 of the plaintiff's complaint alleges claims against all defendants under the Legal Business Solicitation Act (705 ILCS 210/0.01 *et seq.* (West 2012)). The defendants argue that count 10 fails to state a cause of action. We agree.

¶ 56 Section 1 of the Legal Business Solicitation Act states: "It shall be unlawful for any person not an attorney at law to solicit for money, fee, commission, or other remuneration directly or indirectly in any manner whatsoever, any demand or claim for personal injuries or for death for the purpose of having an action brought thereon, or for the purpose of settling the same." 705 ILCS 210/1 (West 2012). The statute provides that any person who violates section 1 is guilty of a Class B misdemeanor and that "[a]ny contract of employment of an attorney obtained or made as a result of a violation" of the statute is void and unenforceable. 705 ILCS 210/2, 3 (West 2012).

¶ 57 The statute does not provide for a civil cause of action, but, instead, provides for a criminal penalty of "a Class B misdemeanor." Accordingly, the circuit court properly dismissed count 10 with prejudice.

¶ 58 IV

¶ 59 Claims Under the Lanham Act

¶ 60 Count 11 of the plaintiff's complaint alleges that the defendants violated the Lanham Act by engaging in "unfair practices and false and or misleading deceptive advertising." The claims are based on section 43(a) of the Lanham Act and incorporate the same factual allegations outlined above.

¶ 61 Section 43(a)(1)(B) of the Lanham Act prohibits false or deceptive advertising among competitors as follows: "[a]ny person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which *** in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act." 15 U.S.C. § 1125(a)(1)(B) (2012).

¶ 62 To establish a claim under the deceptive advertising prong of the Lanham Act, a plaintiff must prove: "(1) a false statement of fact by the defendant in a commercial advertisement about its own or another's product; (2) the statement actually deceived or has the tendency to deceive a substantial segment of its audience; (3) the deception is material, in that it is likely to influence the purchasing decision; (4) the defendant caused its false statement to enter interstate commerce; and (5) the plaintiff has been or is likely to be injured as a result of the false statement, either by direct diversion of sales from itself to defendant or by a loss of goodwill associated with its products." *Hot Wax, Inc. v. Turtle Wax, Inc.*, 191 F.3d 813, 819 (7th Cir. 1999).

¶ 63 In addition to false advertising under section 43(a)(1)(B), the plaintiff also alleges unfair competition or trademark infringement under section 43(a)(1)(A) of the Lanham Act (15 U.S.C. § 1125(a)(1)(A) (2012)) and "cyberpiracy" under section 43(d) of the Lanham Act (15 U.S.C. § 1125(d) (2012)).

¶ 64 Section 43(a)(1)(A) of the Lanham Act creates a cause of action against false representations that are "likely to cause confusion *** or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person." 15 U.S.C. § 1125(a)(1)(A) (2012). To establish a claim for either trademark infringement or unfair competition, a plaintiff must generally prove ownership of a valid trademark and the likelihood that the defendants' alleged infringing mark would be confused with the valid mark. *Steak n Shake Co. v. Burger King Corp.*, 323 F. Supp. 2d 983, 991 (E.D. Mo. 2004). In the present case, the plaintiff alleged that it has registered "Hullverson & Hullverson" as a trademark and that the defendants' use of the name "The Hullverson Law Firm" creates a substantial risk of confusion.

¶ 65 With respect to the allegations of cyberpiracy, under section 43(d) of the Lanham Act, a person is liable to the owner of a protected mark if that person (1) "has a bad faith intent to profit from that mark" and (2) "registers, traffics in, or uses a domain name that *** is identical or confusingly similar to or dilutive of" a mark that is distinctive or famous. 15 U.S.C. § 1125(d) (2012). In its complaint, the plaintiff alleges that the defendants have committed cyberpiracy by linking the plaintiff's Hullverson & Hullverson, L.C., website to the defendants' website, www.hullverson.com, thereby

misappropriating its name and improperly directing cyber traffic away from its website and to the defendants'.[2]

¶ 66 With the exception of the *res judicata* doctrine, noted above, the only defense that the defendants raised in their motion to dismiss with respect to the plaintiff's Lanham Act claims was an argument that the claims are barred under the applicable statute of limitations. When a defendant makes a section 2-619 motion to dismiss the plaintiff's complaint based on the statute of limitations, all well-pleaded facts and reasonable inferences are accepted as true for the purpose of the motion. *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 85, 651 N.E.2d 1132, 1139 (1995).

¶ 67 The Lanham Act does not contain an explicit statute of limitations for false or deceptive advertising claims. *Dyson, Inc. v. Bissell Homecare, Inc.*, 951 F. Supp. 2d 1009, 1036 (N.D. Ill. 2013). However, the defendants argue that courts apply the most analogous Illinois limitations period to Lanham Act claims, which is the three-year statute of limitations found in the Consumer Fraud Act (815 ILCS 505/10a(e) (West 2012)). See *Hot Wax, Inc. v. Warsaw Chemical Co.*, 45 F. Supp. 2d 635, 647 (N.D. Ill. 1999). The defendants argue that the plaintiff's Lanham Act claims are untimely under a three-year statute of limitations. We agree in part.

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[2]In the prior federal court proceeding, the United States District Court for the Eastern District of Missouri held that James E. Hullverson Jr.'s complaint in the federal case stated plausible claims for relief under sections 43(a) and 43(d) of the Lanham Act.

¶ 68 The Supreme Court has noted that "Congress not infrequently fails to supply an express statute of limitations when it creates a federal cause of action." *Reed v. United Transportation Union*, 488 U.S. 319, 323 (1989). When that happens, the Supreme Court has "generally concluded that Congress intended that the courts apply the most closely analogous statute of limitations under state law." *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151, 158 (1983). The Supreme Court has carved out only one "narrow exception" to this rule: "when a rule from elsewhere in federal law clearly provides a closer analogy than available state statutes, and when the federal policies at stake and the practicalities of litigation make that rule a significantly more appropriate vehicle for interstitial lawmaking." *Id*. at 172; *Reed*, 488 U.S. at 324.

¶ 69 In cases addressing the timeliness of Lanham Act claims filed in Illinois, the courts have referred to the three-year statute of limitations period applicable to claims under the state's Consumer Fraud Act. *Dyson, Inc.*, 951 F. Supp. 2d at 1037; *Johnson Controls, Inc. v. Exide Corp.*, 152 F. Supp. 2d 1075, 1079 (N.D. Ill. 2001) (noting that several courts have held that the Consumer Fraud Act "is most closely analogous to the Lanham Act and have therefore applied its three year statute of limitations to bar Lanham Act claims"). As a result, we believe that the applicable limitations period for the plaintiff's Lanham Act claims is found in section 10a(e) of the Consumer Fraud Act, which provides, in pertinent part, that "[a]ny action for damages under this Section shall be forever barred unless commenced within 3 years after the cause of action accrued." 815 ILCS 505/10a(e) (West 2012). Illinois courts have held that a limitations period generally begins to run "when facts exist which authorize one party to maintain an action

against another." (Internal quotation marks omitted.) *Sundance Homes, Inc. v. County of DuPage*, 195 Ill. 2d 257, 266, 746 N.E.2d 254, 260 (2001).

¶ 70 In the present case, the plaintiff filed its complaint on December 12, 2013. The plaintiff's claims under section 43(a) of the Lanham Act include alleged false and/or deceptive advertising by the defendants dating back to the year 2000. Application of the three-year statute of limitations would bar the plaintiff from pursuing claims based on advertisements the defendants published before December 12, 2010. Accordingly, we affirm the circuit court's order dismissing the plaintiff's claims under section 43(a) of the Lanham Act that accrued before December 12, 2010. However, we must reverse the circuit court's dismissal of the plaintiff's section 43(a) Lanham Act claims that accrued after December 12, 2010.[3]

¶ 71 The plaintiff argues that its Lanham Act claims are not time-barred under the "continuing tort" or "continuing violation" rule. In support of this assertion, the plaintiff maintains that each new advertisement the defendants published constitutes a continuing or repeated injury. Therefore, the plaintiff continues, the statute of limitations does not begin to run on any of its Lanham Act claims until the date of the last injury or the date the tortious acts cease. We disagree. Under the facts of the present case, we do not

[3]We note that the defendants did not raise, and the trial court did not address, any defense to the plaintiff's Lanham Act claims based on the equitable doctrine of *laches*. See *Hot Wax, Inc.*, 191 F.3d 813. Accordingly, we offer no opinion of whether the plaintiff's claims are time-barred under the *laches* doctrine.

believe that the "continuing violation" rule operates to extend the time for the plaintiff to file its claims under the Lanham Act.

¶ 72 Under the doctrine of continuing violation, the limitations period does not begin to run until the date of the last injury or the date the tortious acts cease. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 278, 798 N.E.2d 75, 85 (2003). However, "the continuing violation rule does not apply to a series of discrete acts, each of which is independently actionable, even if those acts form an overall pattern of wrongdoing." *Rodrigue v. Olin Employees Credit Union*, 406 F.3d 434, 443 (7th Cir. 2005).

¶ 73 For example, in *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 347-48, 770 N.E.2d 177, 191 (2002), the court refused to find a continuing violation in repeated violations of the Illinois Motor Vehicle Franchise Act. The violations occurred two to four times per month. The court held that each of the defendants' automobile allocations was a separate violation of the statute, with each violation supporting a separate cause of action. *Id*. at 348, 770 N.E.2d at 191. Likewise, in *CSC Holdings, Inc. v. Redisi*, 309 F.3d 988, 992 (7th Cir. 2002), the court found that each sale of an illegal cable decoder was an independent violation of the Cable Communications Policy Act and not a continuing violation.

¶ 74 In the present case, the defendants' biographical listings in the Martindale-Hubble directory and its St. Louis, Missouri, telephone book listings and advertisements each year were the result of separate and discrete decisions and constitute separate alleged violations of the Lanham Act. Therefore, the plaintiff's claims do not involve facts to which the doctrine of continuing violation would apply. None of the listings and

advertisements alleged in the plaintiff's complaint was dependent on any other listings or advertisements. See *Kidney Cancer Ass'n v. North Shore Community Bank & Trust Co.*, 373 Ill. App. 3d 396, 404-05, 869 N.E.2d 186, 193-94 (2007). Nothing about the repeated or ongoing nature of the defendants' alleged conduct affects the nature or validity of the plaintiff's suit. *Id*. at 405, 869 N.E.2d at 194 (citing *Rodrigue* and *Belleville Toyota*).

¶ 75 With respect to the plaintiff's "cyberpiracy" claims under section 43(d) of the Lanham Act, the plaintiff relies on an affidavit dated May 30, 2008, which sets forth the evidentiary basis for this claim. The affidavit states that, in July and August of 2007, searches in Google's business finder produced a false listing for John E. Hullverson as working in Clayton, Missouri. Other Google searches improperly showed the location of the plaintiff as being the location of defendant The Hullverson Law Firm. The affiant stated that when he clicked on the link for the plaintiff's website produced in a Google search, his browser was directed to the website of defendant The Hullverson Law Firm, instead of the plaintiff's website. The affiant concludes that "[t]he name Hullverson & Hullverson L.C. appeared to have been deliberately 'pirated' to link into The Hullverson Law Firm."

¶ 76 The affidavit attached to the complaint also states that listings on the website, findlaw.com, improperly listed James E. Hullverson as being an attorney with defendant The Hullverson Law Firm and that the link embedded with James E. Hullverson on that website was improperly connected to The Hullverson Law Firm's website instead of the plaintiff's website. According to the affidavit, the findlaw.com website required "a

person to deliberately enter the information regarding listings of people *** along with deliberate link creation." The affiant stated that "someone had last made changes to The Hullverson Law Firm account in August 2006."

¶ 77 In the body of the complaint, the plaintiff cites the affidavit as well as computer "screen shots" taken in July 2007 as the factual basis for its claims against the defendants for "cyberpiracy." The plaintiff does not allege any actions on the part of the defendants on or after December 12, 2010, that would support a cyberpiracy claim under section 43(d) of the Lanham Act. Accordingly, on the face of the complaint, these claims are time-barred under the applicable statute of limitations as noted above.

¶ 78 In addition, the continuing violation rule does not apply to keep this claim alive. With respect to the continuing violation rule, the supreme court has stated that "where there is a single overt act from which subsequent damages may flow, the statute begins to run on the date the defendant invaded the plaintiff's interest and inflicted injury, and this is so despite the continuing nature of the injury." *Feltmeier,* 207 Ill. 2d at 279, 798 N.E.2d at 85. For example, in *Bank of Ravenswood v. City of Chicago,* 307 Ill. App. 3d 161, 167-68, 717 N.E.2d 478, 484 (1999), the court held that a city's construction of a subway tunnel under the plaintiff's property was not a continuing violation. Instead, the plaintiffs' cause of action arose at the time its interest was invaded, and the fact that the subway was present below ground would be a continual effect from the initial violation. *Id.* at 168, 717 N.E.2d at 484.

¶ 79 In the present case, the plaintiff alleged in its complaint that the defendants improperly directed Internet traffic away from its website to The Hullverson Law Firm's

website. According to the complaint and the attached affidavit, the last of those actions took place in August 2006. At the latest, the plaintiff discovered the last of these alleged actions by the date of the affidavit, which was May 30, 2008. Therefore, at the latest, the statute of limitations began to run on the plaintiff's cyberpiracy claim at that time "despite the continuing nature of the injury." *Feltmeier*, 207 Ill. 2d at 279, 798 N.E.2d at 85. Accordingly, we affirm the circuit court's dismissal of the plaintiff's cyberpiracy claims under section 43(d) of the Lanham Act because the claims were untimely.

¶ 80 V

¶ 81 Counts Under the Consumer Fraud Act and the Uniform Deceptive Trade Practices Act

¶ 82 Counts 7 through 9 of the plaintiff's complaint allege claims under the Consumer Fraud Act as well as the Uniform Trade Practices Act against defendants Ringkamp, Becker, Burke, and The Hullverson Law Firm.[4] In each count, the plaintiff alleges that the defendants' advertising violates both statutes by "advertising or holding Thomas Hullverson out to provide legal services within this State, either directly or indirectly, without being licensed to practice herein." The plaintiff requested that each defendant be "enjoined from advertising in any way as a lawyer or attorney" and be ordered "to remove all references to him as an attorney wherever they exist." The plaintiff also requested, among other relief, that the defendants be ordered to stop using any

[4]The complaint does not include a count numbered 6 but includes two counts numbered 9.

"Hullverson" name in commerce and "be barred forever from any practice of law in Illinois, or advertising as a lawyer, in Illinois."

¶ 83 Section 2 of the Consumer Fraud Act provides a remedy to consumers for "[u]nfair methods of competition and unfair or deceptive acts or practices" in specified "commercial transactions." 815 ILCS 505/2 (West 2012). When the legislature initially enacted the Consumer Fraud Act in 1961, it did not expressly provide for a private cause of action for violations of section 2. *Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134, 148, 776 N.E.2d 151, 160 (2002). Instead, unlawful business practices were generally prosecuted by the Attorney General. *Id.* In 1973, the legislature added section 10a(a), which authorizes private causes of action for deceptive business practices proscribed by the Consumer Fraud Act, which may be brought by any person who suffers "actual damages" caused by a violation of the statute. *Id.* To prove a private cause of action under the Consumer Fraud Act, the plaintiff must establish "(1) a deceptive act or practice by the defendant, (2) the defendant's intent that the plaintiff rely on the deception, (3) the occurrence of the deception in the course of conduct involving trade or commerce, and (4) actual damage to the plaintiff (5) proximately caused by the deception." *Id.* at 149, 776 N.E.2d at 160.

¶ 84 In their motion to dismiss, the defendants challenged counts 7 through 9 by arguing that the claims were barred under the applicable statute of limitations, that the Consumer Fraud Act was inapplicable to the practice of law, that the plaintiff failed to properly plead a cause of action, that the plaintiff filed its complaint in an improper venue, and that the plaintiff lacked standing to bring the Consumer Fraud Act claims.

¶ 85 The plaintiff's allegations in the present case concern the defendants' advertisements for legal services. The defendants assert that the plaintiff's Consumer Fraud Act claims fail to state a cause of action under the statute because the regulation of the practice of law, including advertising for legal services, does not fall within the ambit of Illinois's consumer protection laws. We agree.

¶ 86 In *Cripe v. Leiter*, 184 Ill. 2d 185, 703 N.E.2d 100 (1998), the supreme court addressed the issue of the viability of a Consumer Fraud Act claim with respect to an attorney's alleged unreasonable legal fees. The court held that the Consumer Fraud Act does not apply to claims arising out of the practice of law, including an attorney's billing for legal services. *Id*. at 194, 703 N.E.2d at 105. The court stated, "We find no indication that the legislature intended the Consumer Fraud Act to apply to regulate attorneys' billing practices." *Id*. at 195, 703 N.E.2d at 105.

¶ 87 The court in *Cripe* noted that, historically, the regulation of attorney conduct in Illinois was the prerogative of the supreme court. *Id*. In the exercise of that power, the supreme court has adopted rules setting forth numerous requirements "to which attorneys in this state must adhere." *Id*. The Rules of Professional Conduct include rules regulating the reasonableness of attorney fees and "discipline of an attorney who engages in conduct involving fraud, dishonesty, deceit or misrepresentation." *Id*. at 196-97, 703 N.E.2d at 106. The court also noted that, since 1983, the appellate court had consistently held that the Consumer Fraud Act was inapplicable to claims arising out of the attorney-client relationship, and the legislature had not amended the statute to add language to

include in it the conduct of attorneys in relation to their clients. *Id*. at 198, 703 N.E.2d at 107.

¶ 88 The plaintiff in *Cripe* argued that the legislature intended for attorney fees to be included within the scope of the Consumer Fraud Act because an attorney's billing was simply a business aspect of the practice of law. *Id*. The court declined to carve out this exception with respect to attorney fees, noting that an attorney's fees are tied to the attorney's fiduciary obligation and are subject to scrutiny and regulation not applicable to the fees for most commercial services. *Id*. at 198-99, 703 N.E.2d at 107. The court concluded, "The Consumer Fraud Act therefore was not intended to apply to an attorney's billing of a client for legal services." *Id*. at 199, 703 N.E.2d at 107.

¶ 89 The supreme court's decision in *Cripe* could be interpreted as holding that the Consumer Fraud Act cannot regulate any aspect of an attorney's practice but can regulate the business aspects of the legal profession that fall outside of the attorney-client relationship, such as the advertising for legal services. However, in *Bova v. U.S. Bank, N.A.*, 446 F. Supp. 2d 926, 938 (S.D. Ill. 2006), the court correctly noted that the supreme court's analysis in *Cripe* was not solely focused on the attorney-client relationship. Instead, the court's analysis in *Cripe* also focused on the historical regulation of law as a business by the Illinois Supreme Court, not the legislature. *Id*.; *Cripe*, 184 Ill. 2d at 195, 703 N.E.2d at 105.

¶ 90 In *Kosydor v. American Express Centurion Services Corp.*, 2012 IL App (5th) 120110, ¶ 38, 979 N.E.2d 123, the court expanded the holding in *Cripe* to apply to third-party actions against an attorney based on the attorney's actions while representing a

client. The court held that the supreme "court's regulatory scheme reaches beyond the attorney-client relationship itself to regulate the conduct of an attorney with a nonclient and a potential or actual adversary." *Id.* The court concluded that, under *Cripe*'s reasoning, "claims against an attorney for misconduct in representing another client while engaged in the practice of law are not allowed under the [Consumer Fraud] Act." *Id.*

¶ 91 We believe that, under the supreme court's reasoning in *Cripe*, the plaintiff's contentions in the present case are not viable under the Consumer Fraud Act. The plaintiff's claims concern allegations that attorneys engaged in false or deceptive advertising for legal services in Martindale-Hubble listings; in St. Louis, Missouri, telephone books; on signage on office space located in Missouri; and on their website. We believe that, under *Cripe*, these allegations fall outside the purview of Illinois's Consumer Fraud Act.

¶ 92 As the supreme court noted in *Cripe*, the Consumer Fraud Act "contains no language expressly excluding or including the legal profession within its ambit." *Cripe*, 184 Ill. 2d at 195, 703 N.E.2d at 105. The supreme court has historically regulated attorney conduct in this state by administering the Illinois Rules of Professional Conduct, and "[v]iolation of these rules is grounds for discipline." *Id.* The supreme court's regulatory scheme includes the rules applicable to attorneys' advertisements for legal services. Rule 7.1 of the Rules of Professional Conduct provides:

> "A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to

make the statement considered as a whole not materially misleading." Ill. R. Prof. Conduct (2010) R. 7.1 (eff. Jan. 1, 2010).

¶ 93 Rule 7.5 of the Rules of Professional Conduct concerns firm names and letterheads and provides:

"A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1." Ill. R. Prof. Conduct (2010) R. 7.5(a) (eff. Jan. 1, 2010).

¶ 94 In addition, Rule 8.4 of the Rules of Professional Conduct further provides for discipline of an attorney who engages in conduct involving fraud, dishonesty, deceit, or misrepresentation. Ill. R. Prof. Conduct (2010) R. 8.4(c) (eff. Jan. 1, 2010). The supreme court has appointed an Attorney Registration and Disciplinary Commission to supervise the "registration of, and disciplinary proceedings affecting, members of the Illinois bar." (Internal quotation marks omitted.) *Cripe*, 184 Ill. 2d at 195-96, 703 N.E.2d at 105. Together, these provisions constitute the supreme court's regulation of the conduct alleged in the plaintiff's complaint. An attorney who engages in false or deceptive advertising for legal services in violation of the supreme court's rules may be subject to discipline. The supreme court designed this regulatory scheme to protect the public and maintain the integrity of the legal profession. *Id.* at 196, 703 N.E.2d at 105.

¶ 95 Accordingly, similar to the regulations pertaining to attorney fees described by the supreme court in *Cripe*, advertisements for legal services are "already subject to

extensive regulation" by the supreme court. *Id*. at 197, 703 N.E.2d at 106. Therefore, "[a]bsent a clear indication by the legislature, we will not conclude that the legislature intended to regulate [attorney advertisement for legal services] through the Consumer Fraud Act." *Id*. Based on the supreme court's analysis in *Cripe*, we believe that the circuit court correctly dismissed the plaintiff's Consumer Fraud Act claims.

¶ 96 Because we affirm the circuit court's dismissal of the Consumer Fraud Act claims based on the supreme court's analysis in *Cripe*, we need not address the defendants' alternative arguments that the complaint failed to state a cause of action under the statute, that the Consumer Fraud Act claims are barred by the applicable statute of limitations, that the plaintiff filed its complaint in an improper venue, and that the plaintiff lacks standing to bring the claims under the statute.

¶ 97 Counts 7 through 9 of the plaintiff's complaint also include claims based on the Uniform Deceptive Trade Practices Act. The Uniform Deceptive Trade Practices Act provides injunctive relief for a plaintiff who can demonstrate that a defendant engaged in any of the 12 enumerated types of conduct listed in section 2(a) of the statute. 815 ILCS 510/2(a) (West 2012). The purpose of the Uniform Deceptive Trade Practices Act is "the enjoining of trade practices which confuse or deceive the consumer, or which unjustly injure the honest businessman and prevent him from receiving his just rewards from effective advertising and consumer satisfaction." (Internal quotation marks omitted.) *Popp v. Cash Station, Inc.*, 244 Ill. App. 3d 87, 98, 613 N.E.2d 1150, 1156 (1992).

¶ 98 With the exception of the *res judicata* argument, which we have already rejected, the defendants' motion to dismiss did not include any arguments directed specifically at

the plaintiff's Uniform Deceptive Trade Practices Act claims. In specifically challenging counts 7 through 9, the defendants raised issues only with respect to the Consumer Fraud Act claims. Therefore, we must reverse the circuit court's dismissal of the plaintiff's Uniform Deceptive Trade Practices Act claims as alleged in counts 7 through 9 of its complaint and remand for further proceedings on those claims.

¶ 99 VI

¶ 100 Order Sealing Declaration of Andrew M. Perlman

¶ 101 The plaintiff's last argument on appeal concerns the circuit court's order sealing a document it filed entitled "Declaration of Andrew M. Perlman." In its response to the defendants' motion to dismiss the complaint, the plaintiff filed the document, which purports to be an expert opinion asserting that the defendants violated the Missouri Rules of Professional Conduct. The caption on the document is for James E. Hullverson Jr.'s prior federal lawsuit. The defendants moved to place the document under seal, arguing that the same document was filed in the federal court proceeding and that the federal court determined that the declaration was irrelevant and placed it under seal.

¶ 102 Under the common law, judicial records and documents are presumptively open to the public. *Coy v. Washington County Hospital District*, 372 Ill. App. 3d 1077, 1079, 866 N.E.2d 651, 654 (2007). "To overcome the presumption of access, the moving party bears the burden of establishing both that there is a compelling interest for restricting access and that the resulting restriction furthering that interest is tailored as narrowly as possible." *Id*. at 1080, 866 N.E.2d at 655. "[A] court, in its sound discretion, may impound records if it is shown that the interests asserted for restricting access outweigh

those in support of access." *Doe v. Carlson*, 250 Ill. App. 3d 570, 574, 619 N.E.2d 906, 909 (1993). In the present case, we agree with the defendants that the circuit court did not abuse its discretion in sealing the document.

¶ 103 As noted by the defendants, the declaration includes correspondence sent to the Missouri Office of Chief Disciplinary Counsel pursuant to proceedings before the counsel, which are confidential proceedings. Mo. S. Ct. R. 5.31 (eff. July 1, 2012). The United States District Court for the Eastern District of Missouri placed the same document under seal because matters contained within the document were not public matters. In the present case, the circuit court did not abuse its discretion in also determining that the confidential information contained within the document should be sealed from public disclosure. Therefore, we affirm the circuit court's order sealing the document entitled "Declaration of Andrew M. Perlman."

¶ 104 The plaintiff argues that it was denied due process because it did not receive "notice that the court was undertaking any consideration of the matter of 'sealing' Prof. Permann's [*sic*] sworn declaration." Due process requires notice and an opportunity to be heard. *East St. Louis Federation of Teachers, Local 1220 v. East St. Louis School District No. 189 Financial Oversight Panel*, 178 Ill. 2d 399, 419-20, 687 N.E.2d 1050, 1062 (1997). The defendants filed their motion on September 5, 2014, and the record shows that the plaintiff received proper notice of the filing of the motion. The circuit court did not rule on the motion until eight months later when it entered an order on all pending motions, including the motion to dismiss discussed above. Under these facts, the plaintiff received adequate notice of the motion and an adequate opportunity to file a

written response that could have been considered by the circuit court had the plaintiff chosen to file one. The plaintiff, therefore, received the process to which it was due.

¶ 105 CONCLUSION

¶ 106 For the foregoing reasons, we reverse the circuit court's dismissal of the plaintiff's claims under section 43(a) of the Lanham Act that accrued after December 12, 2010; reverse the circuit court's dismissal of the plaintiff's Uniform Deceptive Trade Practices Act claims; and remand for further proceedings on those claims. We affirm the remainder of the circuit court's dismissal order and the circuit court's order sealing the document entitled "Declaration of Andrew M. Perlman."

¶ 107 Affirmed in part and reversed in part; cause remanded.