

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**                    **Deborah Platt Majoras, Chairman**  
   **Pamela Jones Harbour**  
   **Jon Leibowitz**  
   **William E. Kovacic**  
   **J. Thomas Rosch**

**In the Matter of**

**MIREALSOURCE, INC.,**

**a corporation.**

**Docket No. 9321**

**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. § 41, et seq.) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that MiRealSource, Inc. (hereinafter sometimes referred to as “Respondent” or “MiRealSource”), a corporation, has violated and is now violating the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

**NATURE OF THE CASE**

This matter concerns a corporation, owned by member real estate brokers in Southeastern Michigan, that operates a Multiple Listing Service, which is designed to foster real estate brokerage services by sharing and publicizing information on properties for sale by customers of real estate brokers. MiRealSource has adopted rules and policies that limit the acceptance, publication and marketing of certain properties, based on the terms of the listing contract entered into between a real estate broker and the customer who wishes to sell a property. These rules discriminate against certain kinds of lawful contracts between listing real estate brokers and their customers, and lack any pro-competitive justification. These rules constitute an anticompetitive concerted refusal to deal except on specified terms with respect to key inputs for the provision of residential real estate brokerage services, and violate the antitrust laws.

## **RESPONDENT AND ITS MEMBERS**

PARAGRAPH 1. Respondent MiRealSource, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business at 5700 Crooks Road, Suite 102, Troy, Michigan 48098. The shareholders of Respondent are real estate brokers doing business in Southeastern Michigan, and are commonly referred to as “members” of the Respondent.

PARAGRAPH 2. Respondent is organized for the purpose of serving its members’ interests, including their economic interests, by promoting, fostering, and advancing the real estate brokerage services industry in Southeastern Michigan. One of the primary functions of Respondent is the operation of the MiRealSource Multiple Listing Service. A multiple listing service (“MLS”) is a clearinghouse through which member real estate brokerage firms regularly and systematically exchange information on listings of real estate properties and share commissions with members who locate purchasers. When a property is listed on the MiRealSource MLS, it is made available to all members of the MLS for the purpose of trying to match a buyer with a seller. Information about the property, including the asking price, address and property details, are made available to members of the MLS so that a suitable buyer can be found.

PARAGRAPH 3. Respondent has more than 7,000 real estate professionals as members. The majority of MiRealSource’s members hold an active real estate license and are active in the real estate profession.

PARAGRAPH 4. The large majority of residential real estate brokerage professionals in Southeastern Michigan are members of MiRealSource. These professionals compete with one another to provide residential real estate brokerage services to consumers.

PARAGRAPH 5. MiRealSource services the territory within Southeastern Michigan, specifically Macomb, Livingston, Oakland, Genesee, Sanilac, Lapeer, Wayne, Huron, Tuscola, and St. Clair Counties. (“MiRealSource Service Area”).

## **JURISDICTION**

PARAGRAPH 6. The acts and practices of Respondent, including the acts and practices alleged herein, have been or are in or affecting commerce as “commerce” is defined in the Federal Trade Commission Act, as amended, and Respondent is subject to the jurisdiction of the Federal Trade Commission. Among other things, the aforesaid acts and practices:

- (A) Affect the purchase and sale of real estate by persons moving into and out of Southeastern Michigan; and

- (B) Affect the transmission of real estate listing information to public real estate web sites that are intended for a national audience, including Realtor.com.

### **THE CHALLENGED CONDUCT**

PARAGRAPH 7. Respondent has restrained competition in the provision of residential real estate brokerage services by combining or conspiring with its members or others, or by acting as a combination of its members or others, to hinder unreasonably the ability of real estate brokers in Southeastern Michigan to offer residential real estate brokerage services on terms other than those contained in the traditional form of listing agreement known as an Exclusive Right to Sell Listing.

PARAGRAPH 8. An Exclusive Right to Sell Listing is a listing agreement under which the property owner or principal appoints a real estate broker as his or her exclusive agent for a designated period of time, to sell the property on the owner's stated terms, and agrees to pay the broker a commission when the property is sold, whether by the listing broker, the owner or another broker. An Exclusive Right to Sell Listing is the form of listing agreement traditionally used by listing brokers to provide full-service residential real estate brokerage services.

PARAGRAPH 9. An alternative form of listing agreement to an Exclusive Right to Sell Listing is an Exclusive Agency Listing. An Exclusive Agency Listing is a listing agreement under which the listing broker acts as an exclusive agent of the property owner or principal in the sale of a property, but reserves to the property owner or principal a right to sell the property without further assistance of the listing broker, in which case the listing broker is paid a reduced or no commission when the property is sold.

PARAGRAPH 10. Exclusive Agency Listings are a means by which listing brokers can offer lower-cost, Unbundled Real Estate Brokerage Services to home sellers. Unbundled Real Estate Brokerage Services are lawful arrangements pursuant to which a listing broker will cause the property offered for sale to be listed on the MLS, but the listing broker will not provide some or all of the additional services offered by traditional real estate brokers, or will only offer such additional services as may be chosen from a menu of services for a fee.

PARAGRAPH 11. Brokers offering Unbundled Real Estate Brokerage Services often provide home sellers with exposure of their listing through the MLS for a flat fee or reduced commission that is small compared to the full commission prices commonly charged by traditional brokers, often by entering into Exclusive Agency Listings that reserve to the home seller the right to sell the property without owing more to the listing broker.

PARAGRAPH 12. To be listed in the MLS, a home seller must enter into a listing agreement with a listing real estate broker that is a member of the MLS. The compensation paid by the home seller to the listing broker is determined by negotiation between the home seller and the listing broker. Whatever type of listing agreement is entered into between the home seller and the listing real estate broker, the MLS rules require that the home seller must offer to pay a commission to a cooperating real estate broker, known as a selling broker, who successfully secures a buyer for the property. If the home seller fails to pay a commission to a selling broker who secures a buyer for the property, the selling broker may recover the commission due from the listing agent, under rules and procedures established by the MLS.

PARAGRAPH 13. Beginning in 2003, Respondent adopted a series of rules designed to thwart competition by firms using alternative business models for real estate brokerage services in Southeastern Michigan. During this time frame, Respondent was well aware that these alternative business models used Exclusive Agency Listings to offer a menu of services that a home seller could choose from at a significantly lower price. Respondent believed that these alternative business models were gaining ground with home sellers and home buyers during this time period and adopted rules in response to this additional competition.

PARAGRAPH 14. In or about August 2003, Respondent adopted a rule that precludes the acceptance of any listings into the MiRealSource MLS other than Exclusive Right to Sell Listings (the “Exclusion Policy”). The Exclusion Policy became effective on or about August 8, 2003. The Exclusion Policy was aimed at precluding Exclusive Agency Listings from the MiRealSource MLS.

PARAGRAPH 15. In or about the summer of 2003, MiRealSource adopted a “Co-Mingling Policy.” The Co-Mingling Policy precluded MiRealSource members that operated public web sites from permitting MiRealSource listing information on such sites from being searched by users of the sites together with listing information from other sources. The Co-Mingling Policy was adopted by MiRealSource to prevent information concerning Exclusive Agency Listings from being mixed in with MiRealSource listings on public web sites. In or about the summer of 2005, MiRealSource eliminated the Co-Mingling Policy because full service broker members complained about the rule.

PARAGRAPH 16. In or about early 2004, Respondent adopted a rule specifying the minimum set of real estate brokerage services that a listing broker was required to offer in order to have a listing on the MiRealSource MLS (the “Listing Broker Policy”). MiRealSource adopted the Listing Broker Policy because Unbundled Service Providers were using listing agreements that allow home sellers to choose from a menu of services for a fee. At or about the time that the Listing Broker Policy was adopted, MiRealSource believed that these alternative pricing models were gaining ground with home sellers and home buyers.

PARAGRAPH 17. In or about August 2004, MiRealSource amended its Rules and Regulations to contain the following language: “Each Shareholder requesting MLS service must maintain a physical office.” In 2006, MiRealSource amended this language to the following: “Each Shareholder requesting MLS service must maintain a physical office in the state of Michigan.” MiRealSource adopted these rule changes in order to make sure that listing brokers carried out the minimum set of real estate brokerage services required under the Listing Broker Policy.

PARAGRAPH 18. In or about the summer of 2004, Respondent adopted a rule that prevents certain lawful residential property listings provided to MiRealSource, including Exclusive Agency Listings, from being transmitted to real estate web sites: “Information which can be downloaded and/or otherwise displayed, is limited to properties listed on an exclusive right to sell basis” (the “Web Site Policy”). The Web Site Policy specifically prevents information concerning Exclusive Agency Listings from being published on web sites approved by MiRealSource to receive information concerning properties listed on the MiRealSource MLS, including (1) the NAR-operated “Realtor.com” web site; (2) the MiRealSource-owned “Mirealsource.com” web site; and (3) MiRealSource-member web sites (collectively, “Approved Web Sites”).

PARAGRAPH 19. In or about March 2005, Respondent adopted a rule that restricts how and where home sellers can advertise and market their homes (the “FSBO Policy”). The FSBO Policy states: “A Broker-Owner can not have an Exclusive Right to Sell (ERS) Listing in the MiRealSource system while appearing as an Exclusive Agency (EA) Listing in another MLS service, on any ‘For Sale By Owner’ (FSBO) site, or display a ‘For Sale By Owner’ sign on the property - effective May 1, 2005.” The FSBO Policy was also aimed at keeping Exclusive Agency Listings out of the MiRealSource MLS.

PARAGRAPH 20. MiRealSource actively enforces the Exclusion Policy, Listing Broker Policy, Web Site Policy, and FSBO Policy through violation letters and fines. As of September 2006, the fine for submitting an Exclusive Agency Listing as an Exclusive Right to Sell Listing is: 1<sup>st</sup> offense - \$1,000; 2<sup>nd</sup> offense - \$2,000; 3<sup>rd</sup> offense - \$5,000; 4<sup>th</sup> offense - Office Member removed from MLS.

### **MIREALSOURCE HAS MARKET POWER**

PARAGRAPH 21. The provision of residential real estate brokerage services to sellers and buyers of real property in Southeastern Michigan and/or the MiRealSource Service Area is a relevant market.

PARAGRAPH 22. The publication and sharing of information relating to residential real estate listings for the purpose of brokering residential real estate transactions is a key input to the provision of real estate brokerage services, and represents a relevant input market. Publication of listings through the MiRealSource MLS is generally considered by sellers, buyers and their brokers to be the fastest and most effective means of obtaining the broadest market exposure for property in the MiRealSource Service Area.

PARAGRAPH 23. Participation in MiRealSource is a service that is necessary for the provision of effective residential real estate brokerage services to sellers and buyers of real property in the MiRealSource Service Area. Participation significantly increases the opportunities of brokerage firms to enter into listing agreements with residential property owners and to assist prospective buyers in obtaining properties that fit their needs, and significantly reduces the costs of obtaining up-to-date and comprehensive information on listings and sales. The realization of these opportunities and efficiencies is important for brokers to compete effectively in the provision of residential real estate brokerage services in the MiRealSource Service Area.

PARAGRAPH 24. Access to the Approved Web Sites is a service that is necessary for the provision of effective residential real estate brokerage services in the MiRealSource Service Area. Home buyers regularly use the Approved Web Sites to assist in their search for homes. The Approved Web Sites are the web sites most commonly used by home buyers in their home search. Many home buyers find the home that they ultimately purchase by searching on one or more Approved Web Sites.

PARAGRAPH 25. The most efficient and, at least in some cases, the only means for MiRealSource members to have their listed properties visible to the public on the Approved Web Sites is by having MiRealSource transmit those listings.

PARAGRAPH 26. By virtue of industry-wide participation and control over the ability of real estate brokers to participate in the MiRealSource MLS and the ability of home sellers to publicize their homes for sale on Approved Web Sites, MiRealSource has market power in the MiRealSource Service Area.

### **THE MIREALSOURCE POLICIES HAVE NO EFFICIENCY BENEFIT**

PARAGRAPH 27. There are no cognizable and plausible efficiency justifications for the conduct that constitutes the violation alleged in this Complaint. Such conduct is not reasonably ancillary to the legitimate and beneficial objectives of the MLS.

## **VIOLATION**

PARAGRAPH 28. In adopting the policies and engaging in the acts and practices described herein, MiRealSource has combined or conspired with its members or others, or acted as a combination or conspiracy of its members or others, to restrain trade in the provision of residential real estate brokerage services within Southeastern Michigan and/or the MiRealSource Service Area.

PARAGRAPH 29. The acts and practices of MiRealSource described herein constitute an agreement that only listings based exclusively on traditional contract terms as dictated by MiRealSource will be placed in the MiRealSource MLS, and thereby eliminate certain forms of competition. The acts and practices have no cognizable and plausible efficiency justifications and are inherently suspect restraints of trade.

PARAGRAPH 30. The acts and practices of MiRealSource described herein constitute a concerted refusal to deal by competitors, except on specified terms, with respect to services that are necessary for the provision of effective residential real estate brokerage services. As such, the acts and practices are inherently suspect restraints of trade that have no cognizable and plausible efficiency justifications.

PARAGRAPH 31. The purposes, capacities, tendencies, or effects of the policies, acts, or practices of MiRealSource and its members as described herein have been and are unreasonably to restrain competition among brokers, and to injure consumers, in the market for provision of residential real estate brokerage services within Southeastern Michigan and/or the MiRealSource Service Area.

PARAGRAPH 32. The policies, acts, practices, and combinations or conspiracies described herein constitute unfair methods of competition in or affecting interstate commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

## **NOTICE**

Notice is hereby given to the Respondent that the eighth day of January, 2007, at 10:00a.m., or such later date as determined by an Administrative Law Judge of the Federal Trade Commission, is hereby fixed as the time and Federal Trade Commission offices, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the FTC Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded to you to file with the Commission an answer to this complaint on or before the twentieth (20<sup>th</sup>) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Administrative Law Judge shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings and the right to appeal the initial decision to the Commission under Rule 3.52.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the Administrative Law Judge, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and order.

The ALJ will schedule an initial prehearing scheduling conference to be held not later than 14 days after the last answer is filed by any party named as a Respondent in the complaint. Unless otherwise directed by the ALJ, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within 5 days of receiving a Respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

### **NOTICE OF CONTEMPLATED RELIEF**

The following is the form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint. If, however, the Commission should conclude from record facts developed in any adjudicative proceedings in this matter that the proposed order provisions might be inadequate to fully remedy the violation of the FTC Act, the Commission may order such other or further relief as it finds necessary or appropriate.

## DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

- A. “Respondent” or “MiRealSource” means MiRealSource, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business as of September 2006 at 5700 Crooks Road, Suite 102, Troy, Michigan 48098. The term also means the MiRealSource Board of Directors, its predecessors, divisions and wholly or partially owned subsidiaries, affiliates, licensees of affiliates, partnerships, and joint ventures; and all the directors, officers, Shareholders, participants, employees, consultants, agents, and representatives of the foregoing. The terms “subsidiary,” “affiliate” and “joint venture” refer to any person in which there is partial or total ownership or control by MiRealSource, and is specifically meant to include MiRealSource MLS and/or each of the MiRealSource Websites.
- B. “MiRealSource Shareholder” means a member of MiRealSource, including licensees of the shareholder, affiliates, and licensees of the affiliates.
- C. “Multiple Listing Service” or “MLS” means a cooperative venture by which real estate brokers serving a common market area submit their listings to a central service which, in turn, distributes the information for the purpose of fostering cooperation in and facilitating real estate transactions.
- D. “MiRealSource MLS” means any MLS owned, operated or controlled, in whole or in part, directly or indirectly, by MiRealSource, and any of its predecessors, divisions and wholly or partially owned subsidiaries, affiliates, licensees of the affiliates, partnerships, and joint ventures, and all the directors, officers, Shareholders, participants, employees, consultants, agents, and representatives of the foregoing.
- E. “IDX” means the internet data exchange process that provides a means or mechanism for MLS listings to be integrated within a Website.
- F. “IDX Website” means a Website that is capable of integrating the IDX listing information within the Website.

- G. “Mirealsource.com” means the Website operated by MiRealSource that allows the general public to search information concerning real estate listings from MiRealSource.
- H. “Realtor.com” means the Website operated by the National Association of Realtors that allows the general public to search information concerning real estate listings downloaded from a variety of MLSs representing different geographic areas of the country, including but not limited to real estate listings from MiRealSource.
- I. “Approved Website” means a Website to which MiRealSource or MiRealSource MLS provides information concerning listings for publication including, but not limited to, MiRealSource Shareholder IDX Websites, Mirealsource.com, and Realtor.com.
- J. “Exclusive Right to Sell Listing” means a listing agreement under which the property owner or principal appoints a real estate broker as his or her exclusive agent for a designated period of time, to sell the property on the owner’s stated terms, and agrees to pay the broker a commission when the property is sold, whether by the broker, the owner or another broker, or any other definition that MiRealSource ascribes to the term “Exclusive Right to Sell Listing.”
- K. “Exclusive Agency Listing” means a listing agreement that authorizes the listing broker, as an exclusive agent, to offer cooperation and compensation on a blanket unilateral basis, but also reserves to the seller a general right to sell the property on an unlimited or restrictive basis, or any other definition that MiRealSource ascribes to the term “Exclusive Agency Listing.”
- L. “Services of the MLS” means the benefits and services provided by the MLS to assist MiRealSource Shareholders in selling, leasing and valuing property and/or brokering real estate transactions. With respect to real estate brokers or agents representing home sellers, Services of the MLS shall include, but are not limited to:
1. having the property included among the listings in the MLS in a manner so that information concerning the listing is easily accessible by cooperating brokers; and
  2. having the property publicized through means available to the MLS, including, but not limited to, information concerning the

listing being made available on Mirealsource.com, Realtor.com and IDX Websites.

## II.

**IT IS ORDERED** that Respondent MiRealSource, its successors and assigns, and its Board of Directors, officers, committees, agents, representatives, and employees, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the operation of a Multiple Listing Service or Approved Websites in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, shall forthwith cease and desist from adopting or enforcing any policy, rule, practice or agreement of MiRealSource to deny, restrict or interfere with the ability of MiRealSource Shareholders to enter into Exclusive Agency Listings or other lawful listing agreements with the sellers of properties, including but not limited to any policy, rule, practice or agreement to:

1. prevent MiRealSource Shareholders from offering or accepting Exclusive Agency Listings;
2. prevent MiRealSource Shareholders from cooperating with listing brokers or agents that offer or accept Exclusive Agency Listings;
3. prevent MiRealSource Shareholders, or the sellers of properties who have entered into lawful listing agreements with MiRealSource Shareholders, from publishing information concerning listings offered pursuant to Exclusive Agency Listings on the MiRealSource MLS and Approved Websites;
4. prevent MiRealSource Shareholders, or the sellers of properties who have entered into lawful listing agreements with MiRealSource Shareholders, from publishing information concerning listings on public real estate web sites, including but not limited to [www.FSBO.com](http://www.FSBO.com);
5. prevent MiRealSource Shareholders from using the MiRealSource MLS unless they maintain a physical office;
6. prevent MiRealSource Shareholders from offering unbundled real estate brokerage services, including but not limited to requiring MiRealSource Shareholders to provide a minimum set of real estate brokerage services;

7. deny or restrict the Services of the MLS to Exclusive Agency Listings or other lawful listings in any way that such Services of the MLS are not denied or restricted to Exclusive Right to Sell Listings; and
8. treat Exclusive Agency Listings, or any other lawful listings, in a less advantageous manner than Exclusive Right to Sell Listings, including but not limited to, any policy, rule or practice pertaining to the searching, sorting, ordering, transmission, downloading, or displaying of information pertaining to such listings.

**Provided, however, that** nothing herein shall prohibit the Respondent from adopting or enforcing any policy, rule, practice or agreement regarding subscription or participation requirements, payment of dues, administrative matters, or any other policy, rule, practice or agreement, that it can show is reasonably ancillary to the legitimate and beneficial objectives of the MLS.

### **III.**

**IT IS FURTHER ORDERED** that Respondent shall, no later than thirty (30) days after the date this Order becomes final, amend its rules and regulations to conform to the provisions of this Order.

### **IV.**

**IT IS FURTHER ORDERED** that, within ninety (90) days after the date this Order becomes final, Respondent shall (1) inform each MiRealSource Shareholder of the amendments to its rules and regulations to conform to the provisions of this Order; and (2) provide each MiRealSource Shareholder with a copy of this Order. Respondent shall transmit the rule change and Order by the means it uses to communicate with its members in the ordinary course of MiRealSource's business, which shall include, but not be limited to: (A) sending one or more emails with one or more statements that there has been a change to the rule and an Order, along with a link to the amended rule and the Order, to each MiRealSource Shareholder; and (B) placing on the publicly accessible MiRealSource Website ([www.MiRealSource.com](http://www.MiRealSource.com)) a statement that there has been a change to the rule and an Order, along with a link to the amended rule and the Order. Respondent shall modify its Website as described above no later than five (5) business days after the date the Order becomes final, and shall display such modifications for no less than ninety (90) days from the date this Order becomes final. The Order shall remain accessible through common search terms and archives on the Website for five (5) years from the date it becomes final.

**V.**

**IT IS FURTHER ORDERED** that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in Respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation or any other proposed changes in the corporation which may affect compliance obligations arising out of the Order.

**VI.**

**IT IS FURTHER ORDERED** that Respondent shall file a written report within six (6) months of the date this Order becomes final, and annually on the anniversary date of the original report for each of the five (5) years thereafter, and at such other times as the Commission may require by written notice to Respondent, setting forth in detail the manner and form in which it has complied with this Order.

**VII.**

**IT IS FURTHER ORDERED** that this Order shall terminate ten (10) years from the date the Order is issued.

**WHEREFORE, THE PREMISES CONSIDERED,** the Federal Trade Commission on this tenth day of October, 2006, issues its Complaint against Respondent MiRealSource, Inc.

By the Commission.

Donald S. Clark  
Secretary