

**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)	
)	
NORTHERN NEW ENGLAND REAL)	Docket No. C-4175
ESTATE NETWORK, INC.,)	
a corporation.)	
)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Northern New England Real Estate Network, Inc. (“Respondent” or “NNEREN”), a corporation, also trading and doing business as the NNEREN Multiple Listing Service, has violated and is violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, 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 case involves a local corporation that operates a Multiple Listing Service (“MLS”), which is a joint venture among its participants designed to foster real estate brokerage services. NNEREN adopted a rule that limited the publication of certain listing agreements on popular internet real estate web sites, in a manner that injured real estate brokers that use such listing agreements to offer lesser services at a lower price compared to the full service package. This rule deprived such brokers and the home sellers they represent of a significant benefit afforded by the MLS. The rule discriminated on the basis of lawful contractual terms between the listing real estate broker and the seller of the property, and lacked any justification that such a rule improved competitive efficiency. Consumers would be harmed by this rule because it denies a lower cost option to sellers and increases search costs to buyers. As such, this rule constituted a concerted refusal to deal except on specified terms with respect to a key input for the provision of real estate services.

RESPONDENT AND ITS PARTICIPANTS

1. Respondent Northern New England Real Estate Network, Inc. (“NNEREN”) is a for profit corporation organized, existing and doing business under and by virtue of the laws of the State of New Hampshire. Respondent’s principal place of business is at 5 Chenell Drive, P.O. Box 1748, Concord, New Hampshire 03302. NNEREN operates for the benefit of its participants.
2. NNEREN has several thousand real estate professionals as participants, and is affiliated with the National Association of Realtors (“NAR”). The majority of NNEREN’s participants hold an active real estate license and are active in the real estate profession.
3. The large majority of residential real estate brokerage professionals in New Hampshire are participants in NNEREN. These professionals compete with one another to provide residential real estate brokerage services to consumers.
4. NNEREN provides an MLS for participants doing business in New Hampshire and surrounding areas. An MLS is a clearinghouse through which participant real estate brokerage firms regularly and systematically exchange information on listings of real estate properties and share commissions with participants who locate purchasers.
5. The NNEREN MLS is owned by NNEREN and is titled the NNEREN Multiple Listing Service. The NNEREN Multiple Listing Service’s rules and policies, and any amendments thereto, must be approved by the NNEREN Board of Directors.
6. When a property is listed on the NNEREN Multiple Listing Service, it is made available to all participants 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 participants of the MLS so that a suitable buyer can be found.
7. The NNEREN Multiple Listing Service services the territory within the State of New Hampshire and surrounding areas (“NNEREN Multiple Listing Service Area”).
8. The NNEREN Multiple Listing Service is the dominant MLS in the State of New Hampshire.

JURISDICTION

9. NNEREN is and has been at all times relevant to this complaint a corporation organized for its own profit or for the profit of its shareholders or participants within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.
10. The acts and practices of NNEREN, including the acts and practices alleged herein, have been or are in or affecting commerce within the meaning of Section 4 of the Federal Trade Commission Act.

NNEREN CONDUCT

11. In April 2005, NNEREN's Board of Directors adopted a rule, which was then implemented in May 2005, that stated: "Exclusive Agency listings will not be included in NNEREN datafeeds to any website accessed by the general public such as nneren.com, REALTOR.com, third party feeds, IDX, etc." (the "Web Site Policy"). This rule was rescinded by the Board of Directors on November 9, 2005 and participants were notified of the change on November 10, 2005 by posting in the "Bulletin" on the NNEREN web site, on November 13, 2005 by posting the NNEREN "Board of Directors' Talking Points" on the NNEREN web site, and on November 21, 2005 by e-mail to participants of "NNEREN Nuggets," an e-mail newsletter service.

12. The Web Site Policy prevented certain lawful residential property listings provided to NNEREN, called "Exclusive Agency Listings," from being transmitted to real estate web sites, based on the contractual relationship between the home seller and the real estate agent the seller employs to promote the property.

13. 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 assistance of a broker, in which case the listing broker is paid a reduced or no commission when the property is sold.

14. Exclusive Agency Listings are used by participants of NNEREN to offer lower-cost real estate services to consumers, including lawful arrangements pursuant to which a real estate broker or agent provides that a property offered for sale shall be listed on the MLS, but the listing broker or agent will not provide some or all of the services offered by other real estate brokers or will only offer such additional services on an à la carte basis.

15. Brokers offering real estate brokerage services pursuant to Exclusive Agency Listings, are able to provide home sellers with exposure of their listing through the MLS for a flat fee that is very small compared to the commission prices traditionally charged. Exclusive Agency Listings often reserve to the home seller the right to sell the property without owing more to the listing broker.

16. The Web Site Policy specifically prevented Exclusive Agency Listings from being published on web sites approved by NNEREN and the NNEREN Multiple Listing Service, including (1) NNEREN-participant web sites; (2) the NNEREN-owned "NNEREN.com" web site; and (3) the NAR-operated "Realtor.com" web site (collectively, "Approved Web Sites").

17. The Web Site Policy had the effect of discouraging participants of NNEREN and participants in the NNEREN Multiple Listing Service from accepting Exclusive Agency Listings.

NNEREN MARKET POWER

18. The provision of residential real estate brokerage services to sellers and buyers of real property in the State of New Hampshire and/or the NNEREN Multiple Listing Service Area is a relevant service market.

19. 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 NNEREN Multiple Listing Service 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 State of New Hampshire.

20. By virtue of industry-wide participation and control over a key input, NNEREN and the NNEREN Multiple Listing Service, have market power in the State of New Hampshire.

21. Participation in the NNEREN Multiple Listing Service is necessary to a broker providing effective residential real estate brokerage services to sellers and buyers of real property in the NNEREN Multiple Listing Service Area. Participation significantly increases the opportunities of brokerage firms to enter into listing agreements with residential property owners, 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 State of New Hampshire.

APPROVED WEB SITES ARE KEY INPUTS

22. Access to the Approved Web Sites is a key input in the brokerage of residential real estate sales in the State of New Hampshire. 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 purchased by searching on Approved Web Sites.

23. The most efficient, and at least in some cases the only, means for NNEREN participants to have their properties listed on the Approved Web Sites is by having the NNEREN Multiple Listing Service transmit those listings.

24. Property owners and their brokers in the NNEREN Multiple Listing Service Area generally consider publication of listings on Approved Web Sites, in conjunction with publication of listings on the NNEREN Multiple Listing System, to be the most effective means of obtaining the broadest market exposure for residential property in the State of New Hampshire.

EFFECTS OF WEB SITE POLICY

25. The Web Site Policy restricted competition by inhibiting the use of Exclusive Agency Listings in the State of New Hampshire and the NNEREN Multiple Listing Service Area.

26. The Web Site Policy may have reduced consumer choices regarding both the purchase and sale of homes and caused consumers to pay for real estate brokerage services that they would not otherwise buy.

THE WEB SITE POLICY OFFERS NO EFFICIENCY BENEFIT

27. There is no cognizable and plausible efficiency justification for the Web Site Policy. The Web Site Policy is not reasonably ancillary to the legitimate and beneficial objectives of NNEREN.

VIOLATION

28. In adopting the policies and engaging in the Acts and Practices described herein, NNEREN had been and was acting as a combination of its participants, or in conspiracy with some of its participants, to restrain trade in the provision of residential real estate brokerage services within the State of New Hampshire and/or the NNEREN Multiple Listing Service Area.

29. The purposes, capacities, tendencies, or effects of the policies, acts, or practices of NNEREN and its participants as described herein had been and were unreasonably to restrain competition among brokers, and to injure consumers.

30. The policies, acts, practices, and combinations or conspiracies described herein constituted 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-second day of November, 2006, issues its Complaint against Respondent Northern New England Real Estate Network, Incorporated.

By the Commission.

Donald S. Clark
Secretary