

**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

**INFORMATION AND REAL ESTATE
SERVICES, LLC,**

a corporation.

Docket No. C-4179

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 Information and Real Estate Services, LLC (“Respondent” or “IRES”), a Limited Liability Company, has violated 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, private real estate association that operates a Multiple Listing Service, which is a joint venture among its member Boards of Realtors designed to foster real estate brokerage services. IRES had adopted a rule that limits the publication of certain listing agreements on popular internet real estate web sites, in a manner that limits the ability of real estate brokers to use Exclusive Agency Listings to offer unbundled brokerage services at a lower price compared to the full service package. This rule deprives such brokers and the home sellers they represent of a significant benefit afforded by the MLS. The rule discriminates on the basis of lawful contractual terms between the listing real estate broker and the seller of the property, and lacks any justification that such a rule improves competitive efficiency. Consumers will be harmed by this rule because it denies a lower cost option to sellers and increases search costs to buyers. As such, this rule constitutes 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 Information and Real Estate Services, LLC, (“IRES”) is a Limited Liability Company organized, existing and doing business under and by virtue of the laws of the State of Colorado. Respondent’s principal place of business is 2725 Rocky Mountain Avenue, Suite 459, Loveland, Colorado 80538. IRES operates for the benefit of its participants .
2. IRES has more than 5,000 real estate professionals as participants, and is affiliated with the National Association of Realtors (“NAR”). The majority of IRES’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 Northern Colorado are participants of IRES. These professionals compete with one another to provide residential real estate brokerage services to consumers.
4. IRES is now and has been providing since 1996 a Multiple Listing Service (“MLS”) for participants doing business in Northern Colorado. A 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 participants who locate purchasers.
5. When a property is listed on IRES, 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.
6. IRES services the territory within Northern Colorado, specifically Boulder, Broomfield, Fort Collins, Greeley & Weld County, Longmont, Loveland/Berthoud and Morgan Counties. (“IRES Service Area”).
7. IRES is the only MLS that services Northern Colorado. IRES is the dominant MLS in the IRES Service Area.

JURISDICTION

8. IRES is and has been at all times relevant to this complaint a limited liability company organized for its own profit or for the profit of its participants within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.
9. The acts and practices of IRES, 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.

IRES CONDUCT

10. In 2003, IRES adopted and approved a rule that stated: “Listing information downloaded and/or otherwise displayed pursuant to I2I [IDX] shall be limited to properties listed on an exclusive right to sell basis” (the “Web Site Policy”). The Web Site Policy was rescinded by IRES in July 2006 and the participants were notified of the change on July 25, 2006.
11. The Web Site Policy prevented certain lawful residential property listings provided to IRES, including “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.
12. 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.
13. Exclusive Agency Listings provide a means for participants of IRES to offer lower-cost, Unbundled Real Estate Services to consumers. “Unbundled Real Estate Brokerage Services” are 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.
14. Many brokers offering Unbundled Real Estate Brokerage Services 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.
15. The Web Site Policy specifically prevents Exclusive Agency Listings from being published on web sites approved by IRES, including (1) the NAR-operated “Realtor.com” web site; (2) the IRES-owned “Coloproperty.com” web site; and (3) IRES-member web sites (collectively, “Approved Web Sites”).
16. The Web Site Policy has the effect of discouraging IRES participants from accepting Exclusive Agency Listings.

IRES MARKET POWER

17. The provision of residential real estate brokerage services to sellers and buyers of real property in the Northern Colorado and/or the IRES Service Area is a relevant product market.
18. 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

IRES 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 IRES Service Area.

19. By virtue of industry-wide participation and control over a key input, IRES has market power in the IRES Service Area.

20. Participation in IRES is necessary to a broker providing effective residential real estate brokerage services to sellers and buyers of real property in the IRES 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 IRES Service Area.

APPROVED WEB SITES ARE KEY INPUTS

21. Access to the Approved Web Sites is a key input in the brokerage of residential real estate sales in the IRES 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 Approved Web Sites.

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

23. Property owners and their brokers in the IRES Service Area generally consider publication of listings on Approved Web Sites, in conjunction with publication of listings on the IRES MLS, to be the most effective means of obtaining the broadest market exposure for residential property in the IRES Service Area.

EFFECTS OF WEB SITE POLICY

24. The Web Site Policy restricts competition by inhibiting the use of Exclusive Agency Listings in the IRES Service Area.

25. The Web Site Policy reduces consumer choices regarding both the purchase and sale of homes and induces consumers to pay for real estate brokerage services that they would not otherwise buy.

THE WEB SITE POLICY OFFERS NO EFFICIENCY BENEFIT

26. 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 the MLS.

VIOLATION

27. In adopting the policies and engaging in the Acts and Practices described herein, IRES has been 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 Northern Colorado and/or the IRES Service Area.

28. The purposes, capacities, tendencies, or effects of the policies, acts, or practices of IRES and its participants as described herein have been and are unreasonably to restrain competition among brokers, and to injure consumers.

29. 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-second day of November, 2006, issues its Complaint against Respondent Information and Real Estate Services, LLC.

By the Commission.

Donald S. Clark
Secretary