

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

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

<p>In the Matter of</p> <p>REALTORS ASSOCIATION OF NORTHEAST WISCONSIN, INC.,</p> <p>a non-profit corporation.</p>	<p>Docket No. C-4178</p>
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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 Realtors Association of Northeast Wisconsin, Inc. (“Respondent” or “RANW”), a corporation, 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 allegations 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 participants designed to foster real estate brokerage services. RANW adopted a rule that limits the publication of certain listing agreements on popular internet real estate websites, 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 are harmed by this rule because it inhibits 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 Realtors Association of Northeast Wisconsin, Inc., (“RANW”) is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin. Respondent’s principal place of business is W6124 Aerotech Drive, Appleton, Wisconsin 54912-2637. RANW operates for the benefit of its members.
2. RANW has more than 2000 real estate professionals as members, and is affiliated with the National Association of Realtors (“NAR”). The majority of RANW’s members 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 the Northeast Wisconsin Area are members of RANW. These professionals compete with one another to provide residential real estate brokerage services to consumers.
4. A Multiple Listing Service (“MLS”) is a clearinghouse through which participating real estate brokerage firms regularly and systematically exchange information on listings of real estate properties and share commissions with other participants who locate purchasers. RANW is now and has been providing since 1985 a MLS for the use of its members doing business in the Northeast Wisconsin Area, and this service is known as the RANW Multiple Listing Service, Inc. (“RANW MLS”). The RANW MLS is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin. RANW owns all the stock of RANW MLS and controls its operations.
5. When a property is listed on the RANW MLS, 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, is made available to participants of the MLS so that a suitable buyer can be found.
6. RANW MLS services the Northeast Wisconsin Area, which includes the cities of Green Bay, Appleton, Oshkosh and Fond du Lac, Wisconsin, and the surrounding counties.
7. RANW MLS is the only MLS that services the Northeast Wisconsin Area.

JURISDICTION

8. RANW is and has been at all times relevant to this Complaint a corporation organized for its own profit or for the profit of its members 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 RANW, 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.

RANW CONDUCT

10. In 2001, RANW adopted and approved a rule that stated: “All active listings of all RANW MLS Participants ... that are subject to an Exclusive Right to Sell contract are eligible for IDX Internet publication” (the “Web Site Policy”). The Web Site Policy was amended by the RANW Board of Directors on August 29, 2006, before the filing of this Complaint, to provide that properties listed on an exclusive agency basis are now eligible to be included in popular internet real estate websites. RANW MLS participants were notified of the change on or about August 31, 2006.
11. The Web Site Policy had prevented certain lawful residential property listings provided to RANW MLS, 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 RANW members and RANW MLS participants 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. 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 can reserve to the home seller the right to sell the property without owing more than an agreed-to amount to the listing broker.
15. The Web Site Policy in effect through August 29, 2006 did not permit the publication of Exclusive Agency Listings on Web Sites approved by RANW, including (1) the NAR-operated “Realtor.com” Web Site; and (2) RANW MLS participant Web Sites (collectively, “Approved Web Sites”).
16. The Web Site Policy had the effect of discouraging RANW MLS participants from accepting Exclusive Agency Listings.

RANW MARKET POWER

17. The provision of residential real estate brokerage services to sellers and buyers of real property in the Northeast Wisconsin 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 RANW 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 Northeast Wisconsin Area.
19. By virtue of industry-wide participation and control over a key input, RANW has market power in the Northeast Wisconsin Area.
20. Participation in RANW MLS is necessary to a broker providing effective residential real estate brokerage services to sellers and buyers of real property in the Northeast Wisconsin 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 Northeast Wisconsin Area.

APPROVED WEB SITES AND KEY INPUTS

21. Access to the Approved Web Sites is a key input in the brokerage of residential real estate sales in the Northeast Wisconsin 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 RANW MLS participants to have their properties listed on the Approved Web Sites is by having RANW MLS transmit those listings.
23. Property owners and their brokers in the Northeast Wisconsin Area generally consider publication of listings on Approved Web Sites, in conjunction with publication of listings on the RANW MLS, to be the most effective means of obtaining the broadest market exposure for residential property in the Northeast Wisconsin Area.

EFFECTS OF WEB SITE POLICY

24. The Web Site Policy restricted competition by inhibiting the use of Exclusive Agency Listings in the Northeast Wisconsin Area.
25. The Web Site Policy reduced consumer choices regarding both the purchase and sale of homes and induced consumers to pay for real estate brokerage services that they would not otherwise have purchased.

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, RANW has acted as a combination of its members to restrain trade in the provision of residential real estate brokerage services within the Northeast Wisconsin Area.
28. The purposes, capacities, tendencies, or effects of the policies, acts, or practices of RANW and its members as described herein have been 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 Realtors Association of Northeast Wisconsin, Inc.

By the Commission.

Donald S. Clark
Secretary