

**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

MULTIPLE LISTING SERVICE, INC.

a corporation.

Docket No. C-4215

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 Multiple Listing Service, Inc. (“Respondent” or “MLS, Inc.”), 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. MLS, Inc. 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 brokerage services.

RESPONDENT AND ITS PARTICIPANTS

1. Respondent Multiple Listing Service, Inc., (“MLS, Inc.”) is a 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 11430 West North Avenue, Wauwatosa, Wisconsin 53226. MLS, Inc. operates for the benefit of its participants.
2. MLS, Inc. has more than 6500 real estate professionals as participants, and is affiliated with the National Association of Realtors (“NAR”). The majority of MLS, Inc.’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 the Southeast Wisconsin Area are participants of MLS, Inc. 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. MLS, Inc. is now and has been providing since 1985 a MLS for the use of its participants doing business in the Southeast Wisconsin Area, and this service is known as the Metro MLS.
5. When a property is listed on the Metro 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. Metro MLS services the Southeast Wisconsin Area, which includes the cities of Milwaukee, Racine, Kenosha and Sheboygan, Wisconsin, and the surrounding counties.
7. Metro MLS is the only MLS that services the Southeast Wisconsin Area.

JURISDICTION

8. MLS, Inc. is and has been at all times relevant to this Complaint a corporation 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 MLS, Inc., 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.

MLS, INC. CONDUCT

10. In 2001, MLS, Inc. adopted and approved a rule that stated: “All active listings of all Participants are eligible for Internet publication unless . . . the listing is subject to an ‘exclusive agency’ contract as indicated on the MLS property profile sheet.” (the “Web Site Policy”). The Web Site Policy was rescinded by the MLS, Inc. Board of Directors in October 2006. MLS, Inc. participants were notified of the change on November 1, 2006.

11. The Web Site Policy prevented certain lawful residential property listings provided to Metro MLS, specifically “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 MLS, Inc. participants to offer lower-cost, Unbundled Real Estate Brokerage 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 listings through the MLS for a flat fee or reduced commission that is very small compared to the full 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 did not permit the publication of Exclusive Agency Listings on web sites approved by MLS, Inc., including (1) the NAR-operated “Realtor.com” web site; (2) the MLS-owned “wihomes.com” web site; and (3) Metro MLS participant web sites (collectively, “Approved Web Sites”).

16. The Web Site Policy had the effect of discouraging MLS, Inc. participants from accepting Exclusive Agency Listings.

MLS, INC. MARKET POWER

17. The provision of residential real estate brokerage services to sellers and buyers of real property in the Southeast 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 Metro 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 Southeast Wisconsin Area.

19. By virtue of industry-wide participation and control over a key input, MLS, Inc. has market power in the Southeast Wisconsin Area.

20. Participation in MLS, Inc. is necessary to a broker providing effective residential real estate brokerage services to sellers and buyers of real property in the Southeast 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 Southeast Wisconsin 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 Southeast 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 MLS, Inc. participants to have their properties listed on the Approved Web Sites is by having Metro MLS transmit those listings.

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

EFFECTS OF WEB SITE POLICY

24. The Web Site Policy restricted competition by inhibiting the use of Exclusive Agency Listings in the Southeast 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, MLS, Inc. has acted as a combination of its participants to restrain trade in the provision of residential real estate brokerage services within the Southeast Wisconsin Area.

28. The purposes, capacities, tendencies, or effects of the policies, acts, or practices of MLS, Inc. and its participants 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 thirteenth day of March, 2008, issues its Complaint against Respondent Multiple Listing Service, Inc.

By the Commission.

Donald S. Clark
Secretary