

**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 0 0an à la car

