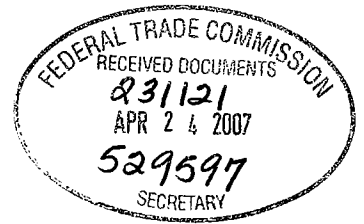


ORIGINAL

PUBLIC RECORD

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**



In the Matter of)

REALCOMP II LTD.,)

Respondent.)

Docket No. 9320

Chief Administrative Law Judge
Stephen J. McGuire

**RESPONDENT REALCOMP II, LTD'S
MOTION AND POINTS OF AUTHORITY FOR DISMISSAL**

Dated: April 20, 2007

Respondent Realcomp II Ltd. ("Respondent" or "Realcomp") hereby moves for summary decision, pursuant to 16 C.F.R. § 3.24, seeking dismissal of the complaint for failure to state a claim upon which relief can be granted. Alternatively, in the event this Court determines that the complaint should not be dismissed in its entirety, Realcomp requests a ruling that specifies: (1) every remaining, alleged basis for relief; and (2) the controlling standard(s) for any grant of relief.

In support of its motion, Realcomp states:

1. Realcomp is a Michigan corporation that is owned by several realtor boards and associations (complaint and answer, ¶ 1).¹ Realcomp serves its members in Southeastern Michigan, including Livingston, Oakland, Macomb, St. Clair and Wayne Counties ("Realcomp Service Area") (Id, ¶ 5). Realcomp's primary function is operating the Realcomp Multiple Listing Service ("Realcomp MLS") (answer, ¶ 2).

2. To be listed in the Realcomp MLS, a home seller must enter into a listing agreement with a real estate broker (the "listing broker") that is a member of the Realcomp MLS. The compensation paid by the home seller to the listing broker is determined by negotiation between the home seller and the listing broker. Whatever type of listing agreement is entered into between the home seller and the listing real estate broker, the Realcomp MLS rules require that the home seller must offer to pay a commission to a cooperating real estate broker, known as a "selling broker," who successfully secures a buyer for the property (complaint and answer, ¶ 12).

3. The parties agree to the following terminology:

"An **Exclusive Right to Sell Listing** is a listing agreement under which the property owner or principal appoints a real estate broker as his or her exclusive agent for a designated period of time, to sell the property on the owner's stated terms, and agrees to pay the broker a commission when the property is sold, whether by the

¹ The "complaint" refers to the Complaint that was issued in this case, dated October 10, 2006. The "answer" refers to Realcomp's answer to that Complaint, dated November 20, 2006.

listing broker, the owner or another broker. An Exclusive Right to Sell Listing is the form of listing agreement traditionally used by listing brokers to provide full-service residential real estate brokerage services."

"An alternative form of listing agreement to an Exclusive Right to Sell Listing is an **Exclusive Agency Listing**. 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 further assistance of the listing broker, in which case the listing broker is paid a reduced or no commission when the property is sold."

(complaint and answer, ¶¶ 8, 9, emphasis added).²

4. A seller that has entered into an Exclusive Agency Listing has an economic incentive to find a buyer without the assistance of either the listing or a selling broker. In such a case, the seller may avoid paying a commission altogether. In this respect, the seller of a property subject to an Exclusive Agency Listing is in competition with the listing broker and potential selling brokers. (See deposition of Kelly Sweeney, pp 70-72, Exhibit A.)

5. In 2001, Realcomp adopted and approved a rule that stated: "Listing information downloaded and/or otherwise displayed pursuant to IDX [Internet Data Exchange] shall be limited to properties listed on an exclusive right to sell basis" (the "Web Site Policy") (complaint and answer, ¶ 13). Under the Web Site Policy, information concerning Exclusive Agency Listings is not transmitted by Realcomp to certain websites (including Realtor.com) otherwise approved to receive information concerning Realcomp MLS listings (collectively, "Approved Web Sites") (complaint and answer, ¶ 15). The complaint further asserts (¶ 14) that the Web Site Policy prevents information from being transmitted to various public real estate websites, which Realcomp denies as untrue (answer, ¶14) because the information can be, and is, transmitted to various public real estate web sites by other means (including, Realtor.com).

² Exclusive right to sell listings are sometimes called "full service" listings. Exclusive agency listings are sometimes called "limited service" listings.

6. In or about the fall of 2003, Realcomp changed the Realcomp MLS search screen to default to Exclusive Right to Sell Listings ("Search Function Policy"). This means that Exclusive Agency listings are not included in the initial search database unless a Realcomp member selects additional listing types in the search screen (Complaint and answer, ¶ 16). Realcomp members may change the default search settings (such that Exclusive Agency listings are always included), which is described as being to make this change, and Realcomp does not prohibit this option. (See deposition of Robert Taylor, p 123, Exhibit B.)

7. Realcomp does not deny membership to brokers who choose to offer Exclusive Agency Listings to their clients. (See deposition of Craig Mincy, p 18, Exhibit C.)

8. Complainant asserts that the Web Site Policy and the Search Function Policy restrain and eliminate competition in the provision of residential real estate brokerage services (complaint ¶¶ 24 and 25) by discriminating in favor of traditional (i.e., Exclusive Right to Sell "ERTS") listing contracts and against "limited service" contracts (including Exclusive Agency Listings).

9. The complaint bases these assertions on Realcomp's alleged possession of market power. Specifically, Complainant asserts that "Participation in Realcomp is a service that is necessary for the provision of effective residential real estate brokerage services to sellers and buyers of real property in the Realcomp service area" and "Access to the Approved Web Sites is a service that is necessary for the provision of effective residential real estate brokerage services in the Realcomp service area" (complaint, ¶¶ 19, 20).³ See also, Complaint Counsel's Objections and Responses to Respondent's First Set of Interrogatories at 9 ("Realcomp ... has market power because it controls key inputs to real estate brokerage services, including (1) the searchable

³ Complainant has similarly characterized Realcomp as having a "choke-hold" (12/04/04 Prehearing Tr, p 23, Exhibit E). Realcomp denies these allegations as untrue (e.g., answer, ¶¶ 19, 20).

collection of all residential real estate listings that utilize a real estate professional in its service area in Southeastern Michigan [i.e. the Search Function Policy]; and (2) a mechanism for publicizing and distributing real estate listings to real estate web sites ... [i.e., the Web Site Policy]." In other words, Complaint Counsel asserts that, but for the challenged policies, effective competition would exist in the market from brokers who promote Exclusive Agency Listings. Complaint Counsel thus has premised the complaint on the theory that Realcomp is an "essential facility" and that Realcomp members have a duty to aid their competitors. (See Exhibit D.)

10. This theory is not cognizable as a matter of law. *Verizon Communications Inc v Law Offices of Curtis V. Trinko, LLP*, 540 US 398; 124 S Ct 872; 157 L Ed 2d 823 (2004), involved a similar complaint alleging that Verizon breached its duty to share its telecommunications network with its competitors. The Telecommunications Act of 1996 "unbundled" Verizon's telecommunications network, and provided that *Verizon's* competitors could have access to the "unbundled" elements of the network. Similarly, the Complainant here alleges that the internet has "unbundled" the provision of real estate services" (Complaint, ¶¶ 10, 11), and contends that Realcomp, like the petitioner in *Trinko*, must assist its competitors who wish to engage in a business of providing "unbundled" elements of service.

11. The *Trinko* Court held that the complaint failed to state a claim under the antitrust laws, explaining: "We conclude that Verizon's alleged insufficient assistance in the provision of service to rivals is not a recognized claim under this Court's existing refusal-to-deal precedents. This result would be unchanged even if we considered to be established law the 'essential facilities' doctrine crafted by some lower courts . . .", observing that the "indispensable requirement" for invoking the doctrine is the *unavailability* of the facility. "[W]here access exists, the doctrine serves no purpose. 540 US at 410. The Court added that "we do not believe

that traditional antitrust principles justify adding the present case to the few existing exceptions from the proposition that there is no duty to aid competitors." *Id* at 411.

12. The Supreme Court also recently re-emphasized its oft-stated view that: "It is axiomatic that the antitrust laws were passed for the 'protection of *competition, not competitors*' . . . Even an act of pure malice by one business competitor against another does not, without more, state a claim under the federal antitrust laws; those laws do not create a federal law of unfair competition . . ." *Brooke Group Ltd v Brown & Williamson Tobacco Corp*, 509 US 209, 224; 113 S Ct 2578; 125 L Ed 2d 168 (1993), (emphasis in original, citations omitted). In *Schachar v American Academy of Ophthalmology*, 870 F2d 397, 399 (7th Cir. 1989), the Seventh Circuit Court of Appeals similarly observed:

"Warfare among suppliers and their different products is competition. Antitrust law does not compel your competitor to praise your product or to sponsor your work. To require cooperation or friendliness among rivals is to undercut the intellectual foundations of antitrust law."

13. Moreover, even if the essential facilities doctrine were to have some plausible theoretical applicability here, record evidence already establishes that the necessary condition of "unavailability" does not exist in this case.

14. The elements historically (i.e., prior to *Trinko*) deemed necessary to establish liability under the essential facilities doctrine are (1) control of the essential facility; (2) a competitor's inability practically or reasonably to duplicate the essential facility; (3) the denial of the use of the facility to a competitor; and (4) the feasibility of providing the facility. *MCI Communications Corp v AT&T*, 708 F 2d 1081, 1132-33 (CA 11, 1982). Here, it is undeniable that Exclusive Agency brokers continue to do business successfully in Southeast Michigan. *Alaska Airlines, Inc v United Airlines, Inc.*, 948 F2d 536, 544 (9th Cir. 1991) ("A facility that is

controlled by a single firm will be considered 'essential' only if control of the facility carries with it the power to *eliminate* competition in the downstream market.").

15. Complainant has identified only one witness who alleged that his business was discontinued in Michigan, allegedly because of the Realcomp rules challenged in this case. Even that witness, however, admitted that his company still does a substantial business in Michigan. Specifically, Wayne Aronson is the president and general manager of YourIgloo, Inc., which is an exclusive agent real estate company located outside of the Realcomp Service Area (in Florida) (Exhibit F, deposition, p 4). He testified that YourIgloo's revenue declined in 2003 and 2004 due to Realcomp's rules, and that YourIgloo stopped doing business in Michigan. (*Id*, pp 28-29, 41-43). He nonetheless admitted that YourIgloo continues to do a substantial referral business in Michigan, and receives compensation for each referral (*Id*, pp 92-96).

16. Exclusive Agency brokers within the Realcomp Service Area continue to do business successfully, even though sellers (and all types of brokers) of Michigan real estate are enduring a difficult period due to Michigan's economy. The impacts of the declining domestic automobile production on Southeastern Michigan (the Realcomp Service Area) are severe and beyond credible dispute. For purposes of this motion, however, specific evidence is provided by Albert Hepp, who operates BuySelfRealty (Exhibit G, deposition, p 4). He claimed to be a victim of Realcomp's alleged anticompetitive actions, but admitted that his Exclusive Agency business in Michigan has grown 10-35% since 2004 (*Id*, pp 34-35, 117). He testified that his business had grown more in other states (*Id*, p 32), but acknowledged: "From a seller perspective, Michigan - - I don't know exact figures, but it wouldn't surprise me if Michigan was the most difficult market for a seller to sell their home, in terms of taking the longest market time and likelihood of success being lower." (*Id*, pp 38-39). Even Complainant's expert, Stephen Murray, acknowledged that for the last three years Southeastern Michigan has probably been the

worst housing market in the country in terms of the decline in sales and increase in inventory (Exhibit H, deposition, p 35).

17. Craig Mincy owns MichiganListing.com, which provides both Exclusive Rights to Sell and Exclusive Agency real estate offerings (Exhibit C, deposition, p 4). He testified that his Exclusive Right to Sell and Exclusive Agency business each increased about 30% from 2005 to 2006, and is trending upward for 2007 (*Id.*, pp 7-8). He does not notice any difference between Exclusive Right to Sell and Exclusive Agency listings with respect to the time that they spend on the market (*Id.*, p 25).

18. [Redacted confidential material.] AmeriSell's website states: "We have great success with limited-service listings, but we have much better success when you are ERTS." [Redacted confidential material.]

19. Complainant suggests that Realcomp precludes exclusive agency listings from getting onto Realtor.com, a national website. (12/04/06 Prehearing Tr, pp 27-28). But testimony in this case establishes that Exclusive Agents can and do take advantage of other MLSs that have less restrictive policies to have these listings placed in Realtor.com. Craig Mincy testified that he is able to place his Exclusive Agency Listings onto Realtor.com through his affiliation with the Shiawassee Regional Board of Realtors (Exhibit C deposition, p 12). Similarly, [Redacted confidential material.]

20. Thus, Exclusive Agency brokers are able to continue to do business selling residential real estate in Michigan, including the Realcomp Service Area. The Complaint fails to plead a viable cause of action, as confirmed by the evidence, and should now be dismissed.

21. It is indisputable that other public websites are numerous and that listings reach those websites without regard to Realcomp's policies.

22. Realcomp is not a public utility. Like any MLS, it is a service provided by, at the expense of, and for its members premised on cooperation between its members and compensation for its members. Indeed, the complaint in this case is premised on the proposition that multiple listing services are a competitive enterprise (and indeed Mr. Mincy's and Mr. Kermath's testimony are consistent with this premise). Yet, Complainant would have Realcomp regulated as a public utility by requiring Realcomp to "wheel" its services to potential competitors.

23. The testimony already adduced in this case establishes that Realcomp is not an "essential facility" as that doctrine has been interpreted by the courts. Absent a credible claim of market power, there can be no violation here. "[M]arket power is an essential ingredient of injury to consumers. ... no market power, no violation ..." *Fishman v. Estate of Wirtz*, 807 F2d 520, 569 (7th Cir. 1986) (Easterbrook, J., dissenting). Complainant's assertions of market power, being based on the faulty premise of an "essential facility," must fail, and with them, the complaint must fail as well.

24. However, to the extent anything remains of this case, Realcomp requests that this court define (or direct Complaint Counsel to define) the legal basis of the remaining claims. Beyond the allegations based on abuse of market power arising from the Web Site Policy and the Search Function Policy, the complaint in this case does not state a recognized theory of competitive harm. Consequently, Realcomp is without the ability to determine what showings are necessary to respond to the claims against it.

25. Realcomp objects to having to defend against unpled or unclear allegations. Fundamental due process requires both a meaningful notice of the alleged misconduct and a meaningful opportunity to respond. *Gonzales v United States*, 348 US 407, 415; 75 S Ct 409; 99 L Ed 467 (1955). The United States Supreme Court observed:

"The right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them . . . **Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard on its proposals before it issues its final command.**" *Id.*, 348 US at 413, n 5 (emphasis added).

See also, Bendix Corp v FTC, 450 F2d 534, 537, 542 (6th Cir. 1971) (vacating FTC decision where FTC violated §5 of Administrative Procedure Act, 5 USC § 554, by changing its theory of

the case, without notice to the affected party, and then finding adversely to that party); *NLRB v Johnson*, 322 F2d 216 (6th Cir. 1963) (discussing complaint that failed to apprise the respondent of the issues that it was obliged to meet).

26. Realcomp similarly requests a ruling that specifies the standard(s) governing any grant of relief based on any remaining allegations. This request is in accordance with the authority cited above, and 15 USC § 45(n), which provides:

"The Commission shall have no authority under this section or section 57a of this title to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination."

RELIEF

Realcomp respectfully requests entry of summary decision in its favor dismissing the complaint. In the event that anything remains of this case, Realcomp further requests a ruling that specifies (1) every remaining, alleged basis for relief; and (2) the controlling legal standard(s) for any grant of relief.

Respectfully submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.

Dated: April 20, 2007

By: 

Steven H. Lasher (P28785)
Scott L. Mandel (P33453)
Stephen J. Rhodes (P40112)

313 S. Washington Square
Lansing, Michigan 48933
(517) 371-8100

Signed
4/23/07

Certificate of Service


I hereby certify that on this 23rd day of April, 2007, I caused the original and two copies of the foregoing public record version of Respondent's Motion and Points of Authority for Dismissal to be filed with the Secretary of the Commission by overnight courier.

I also certify that on this same date I served a copy of the foregoing document by electronic mail and first class mail upon:

Sean P. Gates, Esq.
601 New Jersey Ave., N.W.
Rm. NJ-6219
Washington, DC 20001

I also certify that I caused two paper copies of the foregoing document to be hand delivered by overnight courier to:

Hon. Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580



Lorri A. Rosier

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	Docket No. 9320
)	
REALCOMP II LTD.,)	Chief Administrative Law Judge
)	Stephen J. McGuire
Respondent.)	
_____)	

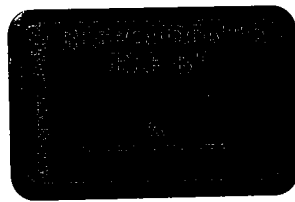
**EXHIBITS A-I
TO
RESPONDENT REALCOMP II, LTD.'S
MOTION AND POINTS OF AUTHORITY FOR DISMISSAL**

1 UNITED STATES OF AMERICA
2 FEDERAL TRADE COMMISSION
3 OFFICE OF ADMINISTRATIVE LAW JUDGES
4

5 IN THE MATTER OF:)
6 REALCOMP, II, LTD.,) Docket No. 9320
7 _____)
8
9
10

11 The Deposition of KELLY SWEENEY,
12 Taken at 32300 Northwestern Highway, Suite 230,
13 Farmington Hills, Michigan,
14 Commencing at 9:43 a.m.,
15 Thursday, March 1, 2007,
16 Before Denise M. Kizy, CSR-2466, RPR, CRR.

17
18
19 CONFIDENTIAL PORTIONS ON PAGES 16-22 AND PAGES 30-46
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25



1 Q. Are you familiar with the Realcomp rules that pertain
2 to that issue?

3 A. Yes.

4 Q. And you yourself are a member of Realcomp?

5 A. Yes.

6 Q. And a member of MiRealSource?

7 A. Yes.

8 Q. You're aware that MiRealSource had a rule itself that
9 prohibited nonexclusive right-to-sell listings from
10 even being entered into the MLS?

11 A. Yes.

12 Q. In contrast, Realcomp as you understand it allows the
13 nonexclusive right-to-sell listings to go into the
14 MLS?

15 A. Yes.

16 Q. With respect to feeding those listings to these
17 publicly available Web sites, do yourself have any
18 position one way or the other as to whether that
19 should or should not occur, these nonexclusive
20 right-to-sell listings?

21 A. My personal opinion is it should not occur.

22 Q. Can you explain the bases for that?

23 A. Well, Realcomp is a trade organization that is
24 supported by the fees that my company and all the
25 other member companies pay, and it is put in place to

1 help us, you know, facilitate our business, which is
2 real estate brokerage.

3 When a limited service or nonexclusive
4 right-to-sell listing is displayed on a public Web
5 site, it provides a pathway for the public to go
6 around using a broker and do a transaction directly
7 with the seller, and there's nothing wrong with that
8 happening. It's just that my trade organization that
9 I'm supporting with my business dollars doesn't need
10 to support it.

11 Q. Mr. Sweeney, I understand your reasoning. I just
12 want to make sure that we probe this, because we're
13 hearing different points throughout this case from
14 counsel for the Federal Trade Commission. Let me see
15 if I can articulate what we're hearing.

16 The Realcomp rules require an offer of
17 compensation for cooperating brokers for a listing to
18 get into the MLS; is that correct?

19 A. Yes.

20 Q. So what we're hearing from the Federal Trade
21 Commission is essentially where's the rub? If there's
22 a requirement of an offer for compensation, if this
23 goes into a publicly available Web site, what harm or
24 potential harm is there to you and exclusive
25 right-to-sell agents since there has to be an offer

1 for compensation there? You're talking about the
2 going around --

3 A. Well, I'm talking about, yes, there's an offer of
4 compensation for a cooperating broker, but what really
5 happens is that if we have a limited service, meaning
6 a nonexclusive right-to-sell listing, posted on a Web
7 site that my business dollars have supported, which
8 means that that seller can sell directly to the
9 consumer without any -- without using a broker, why
10 should our dollars be used to facilitate a member of
11 the public going on a public Web site, identifying
12 that listing, and going directly to that seller to do
13 that transaction in direct conflict with my business
14 model -- or my business purpose.

15 Q. And that member of the public would not even need to
16 go to a cooperating broker?

17 A. No. They could go right to the seller.

18 Q. They can figure it out themselves and go right to the
19 seller?

20 A. Yes. Again, nothing wrong with doing that, but, you
21 know, let the seller pay for his own Web site to do
22 that. He doesn't have to use our Web site to do that.

23 Q. You understand that MiRealSource has entered into a
24 consent agreement with the FTC to change its rules
25 with respect to the treatment of these nonexclusive

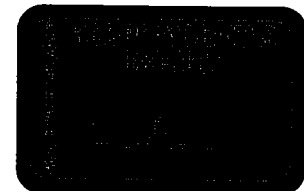
1 UNITED STATES OF AMERICA
2 FEDERAL TRADE COMMISSION
3 OFFICE OF ADMINISTRATIVE LAW JUDGES
4

5 IN THE MATTER OF:
6 REALCOMP, II, LTD.,

7 Docket No. 9320
8
9

10 RESTRICTED CONFIDENTIAL PORTIONS
11

12 The Deposition of ROBERT TAYLOR,
13 Taken at 32300 Northwestern Highway, Suite 230,
14 Farmington Hills, Michigan,
15 Commencing at 1:02 p.m.,
16 Wednesday, March 14, 2007,
17 Before Denise M. Kizy, CSR-2466, RPR, CRR.
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1 A. No.

2 Q. Do you have any personal opinion as to what purpose
3 the search function policy serves?

4 A. No.

5 Q. Okay. So you haven't really paid attention to that
6 particular policy?

7 A. I don't allow that to be -- I search all the listings.

8 Q. Do you personally search all the listings?

9 A. Yes. I don't care.

10 Q. You don't care what the listing type is?

11 A. Correct.

12 Q. Okay. So you'll show EA listings to your potential
13 buyers?

14 A. Absolutely.

15 Q. Even if they aren't -- even if your contract says that
16 your commission is paid by the seller?

17 A. It's in the Multiple Listing Service, the cooperation
18 is in the -- the compensation is in the Multiple
19 Listing Service.

20 Q. Okay. So if the compensation is in the Multiple
21 Listing Service then you'll show EA listings?

22 A. Correct.

23 Q. Because you know that if there's an offer of
24 compensation in the Multiple Listing Service, that
25 offer is kind of guaranteed to a certain extent?

In the Matter of Realcomp II, Ltd.

Docket No. 9320
Hon. Stephen J. McGuire

The Deposition of CRAIG MINCY, taken
before Suzanne Duda, RPR, CSR-3199, Notary Public, at
32300 Northwestern Highway, Suite 230, Farmington Hills,
Michigan, on Wednesday, February 28, 2007, commencing at
9:33 a.m.

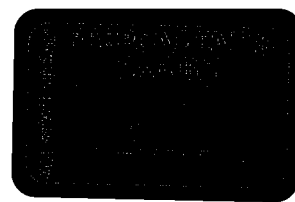
APPEARANCES:

MR. SEAN P. GATES
FEDERAL TRADE COMMISSION
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601 New Jersey Avenue, NW
Washington, DC 20580
(202) 326-3711

Appearing on Behalf of the FTC.

MR. SCOTT L. MANDEL (P33453)
FOSTER, SWIFT, COLLINS & SMITH, P.C.
313 South Washington Square
Lansing, Michigan 48933
(517) 371-8185

Appearing on Behalf of Realcomp.



1 A A real estate brokerage.

2 Q And who is the broker of record for that?

3 A Myself.

4 Q How long have you been licensed as a broker?

5 A I believe since '99 or 2000. I'm not sure exactly.

6 Q Where is MichiganLicense.com located?

7 A MichiganListing.com?

8 Q I'm sorry, MichiganListing.com.

9 A It's located in Brighton, Michigan.

10 Q Can you give me the address, please?

11 A Sure. It's 2160 Grand River Annex, Suite 100.

12 Q And the ZIP Code?

13 A 48114.

14 Q Tell me about the nature of your business at
15 MichiganListing.com.

16 A I'm both a full-service real estate company and a
17 limited-service offering both services.

18 Q How many employees are there at Michigan --

19 A Just myself and an assistant.

20 Q Who is your assistant?

21 A Dawn Krumm, K-R-U-M-M.

22 Q And what does Ms. Krumm do when you say she is an
23 assistant?

24 A She assists me in data entry, listing appointments,
25 marketing.

1 Q Let me go back because I'm just not understanding.

2 A Okay.

3 Q The 140 listings refers to what year?

4 A 2006.

5 Q I'm sorry. Thank you.

6 A Yeah, I just -- I'm not sure about 2005.

7 Q I understand that you're not sure, but 2005, was that
8 less than the 140 or...

9 A Yes.

10 Q So your business has increased; is that correct?

11 A Yes. Correct.

12 Q By about what percentage has your business increased
13 from 2005 to 2006?

14 A I would estimate 30 percent maybe.

15 Q And that increase of 30 percent, has that been
16 primarily -- again, between 2005-2006 -- on the
17 limited-service listings or the full-service listings?
18 Where has the primary growth been?

19 A I would -- I'd probably say it was just a 30 percent
20 growth without --

21 Q Across the board?

22 A -- really knowing -- yeah, without really knowing the
23 percentages.

24 Q And going back to from 2004 to 2005, did you also grow
25 from 2004 that...

1 A Yeah. Again, 2004 we were --

2 Q Just starting?

3 A -- we were only open a couple months. So...

4 Q And 2007 so far this year, is it trending upward as far
5 as business goes?

6 A Listings? Yes.

7 Q And, again, that trending upward for 2007, is that also
8 in both limited service and full service or primarily
9 in one or the other?

10 A Yes, both. Just in raw numbers.

11 Q That's fine.

12 What are your present listings in terms of
13 numbers?

14 A We have about 130 listings on the books right now.
15 That's going to drastically change here because I've
16 got a developer who's really struggling. He's leaving
17 the state of Michigan. So...

18 Q Okay. But at least presently it's 130. And, then,
19 you've got a separate -- That's an economic issue
20 concerning this developer, correct?

21 A Correct. Yes.

22 Q And the listings that you have, is it all residential
23 real estate?

24 A No, I have a couple of multi-units, I think one or two
25 commercial units, but primarily residential.

1 Q And that includes, specifically, southeastern Michigan,
2 correct?

3 A Correct.

4 Q When you are in the limited service arrangement with
5 one of your clients, am I correct in understanding that
6 you are not considered to be an exclusive right to sell
7 agent?

8 A Correct.

9 Q And in that context, assuming you have a listing in
10 southeastern Michigan --

11 A Um-hmm.

12 Q -- how do you enter those onto Realtor.com, the
13 limited-service listings?

14 A I have a secondary board affiliation with the
15 Shiawassee Regional Board of Realtors, and I enter the
16 listing, essentially a duplicate listing, in Shiawassee
17 and they upload it from there to Realtor.com for me.

18 Q I'm sorry. You said you had a secondary board...

19 A It's essentially a secondary MLS that I belong to that
20 I'm a member of.

21 Q And that's Shiawassee --

22 A Subscriber I should say.

23 Q The Shiawassee Regional Board that you are a member of,
24 how long have you been a member of that board?

25 A Probably close to two years. Shortly after we opened.

1 Q And you indicated you had a partner there; is that
2 correct?

3 A Also Gary McCririe, yeah.

4 I wasn't a partner in Help-U-Sell. I joined
5 Help-U-Sell, became a partner, and we bought Realty
6 Executives.

7 Q I understand that you've got the secondary membership
8 with the Shiawassee board. Correct?

9 A Right.

10 Q You're also a member of Realcomp?

11 A Right.

12 Q Are you a member of any other boards or MLSs?

13 A No. Well, not in Michigan. In Florida. Ocala. But,
14 again, that's for the purpose of selling real estate
15 down there.

16 Q And what do you pay to be a member of Realcomp?

17 A I think they're similar fees. I don't know exactly
18 what the annual is, but it's \$33 a month. I think the
19 annual is very close to 350.

20 Q With respect to your listings that are placed on the
21 Realcomp MLS, who actually does the work to enter those
22 listings?

23 A Either myself or Dawn.

24 Q Can you describe what that work consists of? I come
25 in, I want to sell my property, and you're going to get

1 A Price.

2 Q -- is that right?

3 A Yes.

4 Q I'm talking about time on market. Do you notice any
5 difference between your limited-service listings and
6 your full-service listings as to the --

7 A I really don't. I really don't.

8 Q From your experience, what are the primary factors that
9 drive the actual sale of residential real estate? What
10 makes it go?

11 A In terms of marketing exposure, things of that nature?

12 Q If I'm coming to you as a seller saying, I understand
13 you got limited service, full service. Tell me what
14 really makes my house sell. What are the factors?

15 A Maximizing exposure for that listing. That's, in my
16 opinion, the most important aspect.

17 Q And within that category of maximizing exposure, what's
18 the most important thing to do?

19 A The most important would be to list it on the MLS.

20 Q What's second most important?

21 A Second, I would say probably Realtor.com and that group
22 of online sites that it goes from from there.

23 Q Is there anything after Realtor.com? Is there a third
24 as far as third most important?

25 A There's an IDX, which is essentially Internet data

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

In the Matter of

REALCOMP II LTD.,
a corporation.

Docket No. 9320

**COMPLAINT COUNSEL'S OBJECTIONS AND RESPONSES TO RESPONDENT'S
FIRST SET OF INTERROGATORIES**

Pursuant to Section 3.35(b) of the Federal Trade Commission's Rules of Practice, Complaint Counsel hereby responds to Respondent Realcomp II Ltd.'s ("Realcomp") First Set of Interrogatories. Complaint Counsel's objections to these requests are set forth below and incorporated herein by reference. Subject to, and without waiving these objections, Complaint Counsel hereby responds below. The full text of the interrogatory is set out below, followed by the response.

GENERAL OBJECTIONS

Complaint Counsel's objections are as follows:

1. Complaint Counsel objects to the First Set of Interrogatories on the grounds that they are contention interrogatories that are premature and inappropriate. Discovery in this matter has just begun and considerable information likely to bear upon important issues in this litigation has not yet come to light. On this basis, Complaint Counsel generally objects to Realcomp's



interrogatory as overly broad and unduly burdensome to the extent it calls for information protected by the attorney work product doctrine. Subject to these objections and the General Objections, Complaint Counsel responds as follows:

Realcomp is, in effect, a combination of thousands of competing brokers and agents. It operates a MLS with over 14,500 real estate professionals as members, with a large and growing number of listings. Specifically, the preliminary data show that Realcomp had approximately 106,000 new listings in 2003; 125,000 new listings in 2004; 140,000 new listings in 2005; and 91,000 new listings for the first nine months of 2006. The number of different listing agents using Realcomp's MLS has been growing as well. Specifically, Realcomp had over 9,700 different agents post listings in its MLS in 2003; over 10,700 different listing agents in 2004; over 11,800 different listing agents in 2005; and over 10,100 different listing agents in the first nine months of 2006. This represents a very significant, and growing, portion of the market.

Realcomp, as a combination of competing brokers and agents, has market power because it controls key inputs to real estate brokerage services, including: (1) the searchable collection of all residential real estate listings that utilize a real estate professional in its service area in Southeastern Michigan; and (2) a mechanism for publicizing and distributing real estate listings to real estate web sites for purposes of advertising listings to the general public. *See also* Petitioner's Responses to Interrogatories Three and Four.

Specifically, brokers representing home sellers in the Realcomp service area must use the Realcomp MLS in order to effectively publish their listings to the over 14,500 Realcomp members. Absent listing on the Realcomp MLS, a broker would effectively be foreclosed from a not insignificant segment of the market of potential buyers (*i.e.*, those buyers represented by

Interrogatory No. 5:

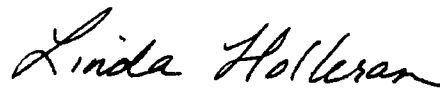
Identify all witnesses with knowledge regarding internet-based websites and other means available to brokers offering Exclusive Agency Listings or Unbundled Real Estate Services to enter and compete in the residential real estate market in Southeastern Michigan during the relevant time period.

Response to Interrogatory No. 5:

In addition to the General Objections, Complaint Counsel specifically objects to this interrogatory as vague and confusing. Complaint Counsel also objects to this interrogatory as unduly burdensome because it seeks to compel Complaint Counsel to undertake investigation, discovery, and analysis on behalf of Respondent. Subject to these objections and the General Objections, Complaint Counsel responds as follows:

To the extent that this interrogatory can be answered, the information sought may be found in Complaint Counsel's Initial Disclosures, Complaint Counsel's Preliminary Witness List, Realcomp's Initial Disclosures, and the Realcomp member list.

Respectfully submitted,


Linda Holleran

Sean P. Gates
Peggy Bayer Femenella
Joel Christie
Linda Holleran
Christopher Renner
Counsel Supporting the Complaint

Bureau of Competition
Federal Trade Commission
Washington, DC 20580

Dated: January 22, 2007

1 UNITED STATES OF AMERICA
2 FEDERAL TRADE COMMISSION

3
4
5 In the Matter of:)
6 REALCOMP II, LTD.,) Docket No. 9320
7 Respondent.)
8 -----)

9
10
11
12 INITIAL PRETRIAL CONFERENCE
13 DECEMBER 4, 2006
14 PUBLIC SESSION

15
16
17
18 BEFORE THE HONORABLE STEPHEN J. McGUIRE
19 Administrative Law Judge
20

21
22
23
24
25 Reported by: Susanne Bergling, RMR-CLR



1 So, he puts it onto the MLS, and boom, that listing
2 is -- can be seen by all these other brokers in the
3 area, which we'll show is critical and necessary for a
4 broker in that area to compete.

5 JUDGE McGUIRE: Now, wasn't this also accessed
6 by consumers as well? You said brokers, but --

7 MR. GATES: Yes, it is -- consumers cannot
8 directly access the multiple listing service. They
9 always have to go through a broker.

10 JUDGE McGUIRE: Okay, okay, all right.

11 MR. GATES: And that's right there in the
12 answer. It's paragraph 12.

13 JUDGE McGUIRE: Right.

14 MR. GATES: So, it's always through a broker.

15 JUDGE McGUIRE: Okay.

16 MR. GATES: Okay. Well, these days, Your Honor,
17 it's important to be on the MLS, but it's -- you need
18 more to really compete in the real estate industry, and
19 what you need is to be able to get that listing not only
20 on the MLS but out to the public, out to the internet,
21 so that buyers and sellers can see those things -- well,
22 so buyers can see those things, can see those listings,
23 and that is where the other choke-hold that Realcomp has
24 is, and let me explain how that happens.

25 How do we know, first off, that this is

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

IN THE MATTER OF
REALCOMP, II. LTD.

FTC,

vs.

REALCOMP.
~~~~~

CONTAINS CONFIDENTIAL PORTIONS

DEPOSITION OF

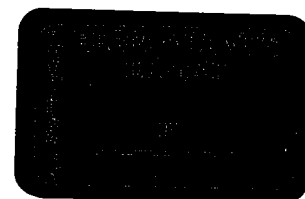
WAYNE ARONSON

February 16, 2007

9:33 a.m.

2255 Glades Road, Suite 200E  
Boca Raton, Florida 33431

Jackie M. Mentecky, Court Reporter and Notary Public  
in and for the State of Florida at Large





1 to answer them truthfully?

2 A. No problem.

3 Q. Okay. Where are you presently  
4 employed?

5 A. Where or was?

6 Q. Where.

7 A. Where? Yourigloo.

8 Q. Spell that.

9 A. It's YourIgloo Inc. It's  
10 Y-O-U-R-I-G-L-O-O, Inc.

11 Q. What is YourIgloo, Inc.?

12 A. We are a discount real estate  
13 company.

14 Q. And where are your headquarters  
15 located?

16 A. Our headquarters is on 530 South  
17 Federal Highway, Suite 203, Deerfield Beach,  
18 Florida. If you need the zip, it's 33441.

19 Q. What is your position at YourIgloo?

20 A. I am currently the vice president  
21 and general manager.

22 Q. How long have you held that  
23 position at YourIgloo?

24 A. That particular position, roughly  
25 two years, but I have been employed by the

1           A.       We kept nationwide statistics of  
2           that, and the nationwide statistic was roughly  
3           65 percent.

4           Q.       Do you know how that compared in  
5           Michigan to the nationwide?

6           A.       I do not.

7           Q.       In the time period that  
8           YourIgloo.com was in Michigan, 2001 to 2004,  
9           did the business grow, stay the same or  
10          decrease over that period of time, that  
11          three-year period?

12          A.       We began in 2001, as we mentioned.  
13          It slightly increased in 2002. And then  
14          towards the tail end of 2003, it dropped off  
15          significantly; therefore, 2003 had a slight  
16          decline versus 2002. And 2004 was almost  
17          gone. Our revenue in Michigan was virtually  
18          nothing.

19          Q.       Do you recall what your revenue  
20          was for those three years in Michigan? Do  
21          you have any information on that?

22          A.       I don't remember those numbers.

23          Q.       What do you attribute YourIgloo's  
24          drop-off in revenue in Michigan in the  
25          2003-2004 time period to?

1           A.       It was due to the fact that  
2           Realcomp prevented us from performing our  
3           business model.

4           Q.       When did Realcomp begin preventing  
5           YourIgloo from performing its business model?

6           A.       I believe it was 2003. I don't  
7           recall the month.

8           Q.       How did Realcomp prevent YourIgloo  
9           from performing its business model?

10          A.       Well, they did this in two ways.  
11          They did this because our sellers were able  
12          to sell the house on their own, and we used  
13          an exclusive agency listing agreement. And  
14          they prevented those types of agreements from  
15          uploading to public web sites such as  
16          Realtor.com. And in addition to that, as far  
17          as the MLS restriction, based on the -- based  
18          on the default that a buyer's broker would  
19          use if they -- the default neglected to  
20          reflect these types of listings. Therefore,  
21          a broker would have to know to include these  
22          types of listings in their search; otherwise  
23          they would not be found.

24          Q.       Is there any other way, aside from  
25          the two means that you just listed, which is

1           A.       Not at this time.

2           Q.       Why not?

3           A.       Because the primary MLS in the  
4           state of Michigan is Realcomp, and until they  
5           change their ways, I am not going to consider  
6           doing business in Michigan.

7           Q.       At least at the present time, so  
8           that I understand your position, with respect  
9           to the ways that you're referring to for  
10          Realcomp is the two ways --

11          A.       That is correct.

12          Q.       -- we talked about, and that being  
13          not transmitting to Realtor.com  
14          exclusive-agency listings and the default  
15          search mechanism; is that correct?

16          A.       That's correct.

17          Q.       If Realcomp were to change the  
18          default search mechanism and leave in place  
19          its provision as it relates to not  
20          transmitting the exclusive-agency listings to  
21          Realtor.com, would you then consider returning  
22          to Michigan?

23          A.       Probably not.

24          Q.       Same question:  If -- with one  
25          exception, which is if Realtor -- sorry,

1 strike that.

2 If Realcomp were to change its  
3 rules relating to transmission of  
4 exclusive-agency listings with Realtor.com, but  
5 kept in place its default function, would you  
6 consider returning to Michigan?

7 A. I may have misunderstood the  
8 question before that. I thought the previous  
9 question was the same thing as this, but  
10 maybe I misunderstood the previous question.

11 Q. Separating --

12 A. Can you go back to the previous  
13 question.

14 Q. Absolutely. I'm separating these  
15 out so we can get both.

16 A. Right.

17 Q. The previous question, I believe,  
18 and let's make sure we're clear on what I  
19 asked you, was there were these two aspects  
20 of Realcomp that you have indicated are at  
21 issue here. My first question was: If  
22 Realcomp were to say, All right, we'll no  
23 longer have our default function rule in  
24 place and we're going to show all the  
25 listings, but we're going to keep in place

1           our rules relating to not transmitting  
2           exclusive-agency listings to Realtor.com, would  
3           you consider returning to Michigan? Your  
4           answer was: Probably not. Is that still  
5           true?

6           A.       That's still true.

7           Q.       All right. Now I'm flipping it  
8           around and I'm saying, okay now, in this  
9           instance, I want you to assume that Realcomp  
10          were to change its rule concerning  
11          transmission to Realtor.com and send all  
12          exclusive-agency listings but keep in place  
13          its default function rule. Would you consider  
14          returning to Michigan?

15          A.       Same answer: Probably not.

16          Q.       Have you yourself looked at the  
17          actual application of Realcomp's default  
18          selection function to see what -- how it  
19          appears to agents?

20          A.       No, I have not.

21          Q.       Do you have any knowledge as to  
22          what, if any, information Realcomp makes  
23          available on its web site with respect to how  
24          to bypass a default search function?

25          A.       I am not familiar with it.

1 Q. When you say your "mind is always  
2 open to any" --

3 A. Well, for example, if he called me  
4 and said, I have a listing in Florida. I  
5 can't do Florida. I'm only a licensed broker  
6 in Michigan, so would you like this listing?  
7 I would like to give you a referral. I  
8 would be glad to accept it.

9 Q. Okay. Do you know Gary Moody?

10 A. Yes, I do.

11 Q. How do you know Gary Moody?

12 A. Gary Moody is a licensed broker in  
13 the state of Michigan. Since 2004, when we  
14 pulled out of Michigan and were no longer  
15 able to handle Michigan listings with our own  
16 licensed brokers, I have referred business to  
17 him. People have wanted -- have signed up  
18 on our web site, wanted a listing in the  
19 state of Michigan. And since we couldn't do  
20 it, I refer him business.

21 Q. When you refer business to Gary  
22 Moody, do you receive any form of  
23 compensation for the referral?

24 A. Both sides make money.

25 Q. Do you know how many referrals

1           you've given to Gary Moody since you stopped  
2           doing business in Michigan in 2003?

3           A.        If I had to estimate, I would say  
4           between 50 and a hundred.

5           Q.        And do you refer Michigan business  
6           to anyone other than Gary Moody since you  
7           stopped doing business in Michigan in 2004?

8           A.        For a short period of time I was  
9           referring business to Shannon Scott.

10          Q.        Do you know how many referrals  
11          you've made to Shannon Scott?

12          A.        I would say less than 30.

13          Q.        When did you start making these  
14          referrals to Gary Moody? Right after you  
15          stopped doing business --

16          A.        I believe it was around 2005.

17          Q.        And has that continued, referrals  
18          to Gary Moody?

19          A.        Yes.

20          Q.        Shannon Scott, when is it that you  
21          made referrals to Shannon Scott?

22          A.        Sporadically between 2005 and 2007.

23          Q.        What type of business does Shannon  
24          Scott have in reference to these referrals?  
25          Is it a discount brokerage?



1           A.       Same thing, discount broker. I  
2           also believe she's involved with a mortgage  
3           company, but I'm not sure if she's a mortgage  
4           broker or not. But she owns a mortgage  
5           brokerage as well.

6           Q.       But what you're doing when you  
7           make these referrals to Gary Moody and  
8           Shannon Scott is referring customers to  
9           discount, flat-fee brokers; is that correct?

10          A.       Correct.

11          Q.       Have there been any other referrals  
12          you've made other than those you've covered  
13          now, Gary Moody and Shannon Scott? Any other  
14          referrals?

15          A.       In the state of Michigan?

16          Q.       Yes.

17          A.       I think I do recall right after I  
18          spoke to Mr. Kurmath, I think I sent him one  
19          listing, come to think of it. I sent him an  
20          order -- I don't remember if he actually  
21          completed the listing or not. I don't  
22          remember.

23          Q.       And so that would be relatively  
24          recently?

25          A.       That would be recently, yeah.

1 Q. Within the past few months?

2 A. I've only known him for about four  
3 months. That's when I had first spoken to  
4 him. So it was sometime during the last  
5 four months. I may -- I think I sent him  
6 one order, and I'm not sure if he completed  
7 it or not.

8 Q. When you make these referrals, you  
9 indicate that both sides make money. That  
10 means YourIgloo and the broker to whom you  
11 are referring the business in Michigan; is  
12 that right?

13 A. Correct.

14 Q. Is that negotiable as to what the  
15 amount is that both sides make money?

16 A. It is negotiable.

17 Q. Can you give me any range as far  
18 as what the arrangement is as far as this  
19 referral fee is concerned? What does  
20 YourIgloo receive by way of commission?

21 A. Well, we receive, generally, a fee  
22 anywhere from 399 to 489 to list a home on  
23 our web site. That's what they send us to  
24 list on our web site. And in order to get  
25 them a listing on MLS, we refer the order to

1 the broker, in this case Gary Moody. And  
2 Gary Moody typically gets roughly between 150  
3 and \$200. And we retain the rest, primarily  
4 to cover our advertising, marketing fees.

5 Q. So these referrals to Gary Moody  
6 after YourIgloo stopped doing business in  
7 Michigan, so we're dealing after 2004.

8 A. Correct.

9 Q. What I just heard you say, at  
10 least understood, was that these customers are  
11 coming to you because of your web site or  
12 whatever reason, correct?

13 A. Correct.

14 Q. Do they sign up with YourIgloo, or  
15 do they sign up with Gary Moody?

16 A. They sign up with us.

17 Q. So after 2004, these customers,  
18 roughly 50 to 100 that you referred on to  
19 Gary Moody, have actually signed up with  
20 YourIgloo from Michigan; is that correct?

21 A. Correct.

22 Q. And then they're referred to Gary  
23 Moody, correct?

24 A. Correct.

25 Q. Explain to me, if you are able,

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of  
REALCOMP II LTD.,

Respondent.  
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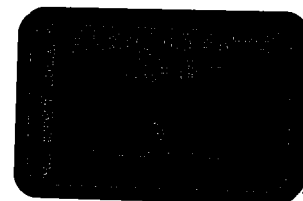
DEPOSITION OF

ALBERT HEPP

February 14, 2007  
9:00 a.m.

Moss & Barnett  
Suite 4800, 90 South Seventh Street  
Minneapolis, MN 55402

Lisa M. Tiedeman, Notary Public in and for the County of Goodhue, State of Minnesota



1 Q. What is your business address?

2 A. Our main corporate headquarters is  
3 8053 East Bloomington Freeway, Suite 275, and  
4 that's Bloomington, Minnesota 55420.

5 Q. And what is the name of your  
6 business?

7 A. It's BuySelf B-U-Y-S-E-L-F Realty,  
8 Incorporated.

9 Q. Is that all one word or two words?

10 A. BuySelf is one word, Realty is a  
11 separate word.

12 Q. In what state is that business  
13 incorporated?

14 A. Minnesota.

15 Q. Aside from the Bloomington,  
16 Minnesota, office, do you have any other  
17 physical locations or offices?

18 A. Yes.

19 Q. Okay. What other physical  
20 locations do you have?

21 A. We have -- both Ohio and Michigan  
22 require that you have physical office  
23 addresses where you display your license.

24 Q. Okay.

25 A. Our Michigan address, is that what

1 Michigan?

2 A. Yeah. In general. Kind of like  
3 our referral business, these four states has  
4 grown, and that would include Michigan. I  
5 don't know exact figures. I would guess that  
6 Michigan hasn't grown as much, but has grown  
7 over the last --

8 Q. You indicated the referral business  
9 was available for parts of Michigan. We went  
10 through all the brokers that you recall from  
11 memory as to who you've had. All of those  
12 brokers seem to be in the Detroit  
13 metropolitan area if I understand your  
14 testimony. Is that the parts of Michigan  
15 your business is available for, or is it  
16 something other than the metropolitan area?

17 A. There are other areas that became  
18 available I'm going to guess in like the last  
19 year or two.

20 Q. Is it fair to say that the  
21 principal area that the brokers were available  
22 for referral business in Michigan was the  
23 Detroit metropolitan area?

24 A. That was the first area that  
25 became available through our referral business.

1           those options haven't been available as a  
2           referral broker long enough to really get a  
3           sense for growth or how they are doing.

4           Q.       So you indicated that you had  
5           growth in Michigan, your sense is it's not as  
6           much as other states, but there's been  
7           growth.  Again, when you say there's been  
8           growth, you are referring to the Detroit  
9           metropolitan area; is that right?

10          A.       Yes.

11          Q.       Now, when you say you've had  
12          growth in the Detroit metropolitan area, do  
13          you have any sense of how much growth you've  
14          had?

15          A.       Specific to Detroit?

16          Q.       Detroit metropolitan area?

17          A.       Right, specific to that  
18          metropolitan area, I don't have exact figures.  
19          Yeah, I don't have exact figures.

20          Q.       Okay.  Again, my question was do  
21          you have any sense of how much growth there's  
22          been, and if you don't, you can just say  
23          that.

24          A.       I could give a wide range that I  
25          would guess the growth has been between 10 to

1 maybe 35 percent.

2 Q. Is that since 2004 until now? Is  
3 that what you are saying so I understand what  
4 you are referring to?

5 A. Yes.

6 Q. And in these other states -- you  
7 indicated that in Michigan there's been  
8 growth, but not as much as the other states.  
9 What has the growth been like during that  
10 same period of time for your company?

11 A. I would say that, you know, our  
12 typical area probably grows between like 35  
13 to 60 percent.

14 Q. From 2004 until now?

15 A. Yes. And again, those aren't  
16 exact figures.

17 Q. I understand.

18 A. It's just kind of our recollection.

19 Q. From 2004 until now, how does the  
20 Michigan real estate market compare with the  
21 other states that you do business in?

22 A. I'm sorry, from what year?

23 Q. 2004 until now.

24 A. How does the market compare?

25 Q. Right. Your real estate market?



1           A.       Right.

2           Q.       I'm asking about the states you  
3           are licensed in.

4           A.       Oh.

5           Q.       I understand you may have a pocket  
6           of a city, but I'm talking as a state, is  
7           Michigan at least at this point the most  
8           difficult to do business in the residential  
9           real estate side because of the economy?

10          A.       The Michigan -- can you rephrase  
11          the question?

12                   MR. MANDEL:   Could you read that  
13          back?

14                   (Whereupon the last question was  
15          read back by the court reporter.)

16          Q.       (By Mr. Mandel) I'll rephrase the  
17          question.  Of the states where you're  
18          licensed to do business, is Michigan the most  
19          difficult to do business in in residential  
20          real estate because of the economy?

21          A.       From a seller perspective, Michigan  
22          -- I don't know exact figures, but it  
23          wouldn't surprise me if Michigan was the most  
24          difficult market for a seller to sell their  
25          home, in terms of taking the longest market

1 time and likelihood of success being lower.  
2 We don't rank the markets we are in. So  
3 it's really, you know, I can't say that  
4 authoritatively.

5 Q. With respect to your package of  
6 services that you offer in Michigan, you  
7 indicated that there were some of those  
8 services that depended upon location within  
9 Michigan. I want to go back to those. IDX,  
10 you indicated that that depended on location.  
11 What are you talking about there as far as  
12 that service?

13 A. So you are asking like in what  
14 areas is IDX available and what areas is IDX  
15 not?

16 Q. Correct.

17 A. Okay. It's driven by the broker  
18 that we refer to. They tell us is it  
19 available, is it not.

20 Q. And do you know what areas IDX is  
21 not available in Michigan?

22 A. The -- I would have to double  
23 check. Like, I am fairly certain it's  
24 available. I really should double check. I'm  
25 fairly certain it's available in the

1           Q.       But as it relates to Michigan,  
2           have we covered what you are referring to  
3           when you say you are a victim of  
4           anticompetitive actions?

5           A.       I don't recall, you know, other  
6           things specific to Michigan that we haven't  
7           covered. I mean, it's almost like a routine  
8           course of business that we'll get the  
9           occasional call from an agent that says, "You  
10          guys shouldn't be in the business, we won't  
11          show your listings. I don't like you. You  
12          should go away."

13          Q.       But you are not attributing those  
14          -- let me be specific, as it relates to  
15          Realcomp, have we covered everything that you  
16          are referring to as far as anticompetitive?

17          A.       I believe so.

18          Q.       Okay.

19          A.       I can't --

20                 MR. MANDEL: Thank you. I have  
21          no further questions.

22                 MR. GATES: Let's take a short  
23          break.

24                         (Whereupon a short recess was  
25          taken.)

FEDERAL TRADE COMMISSION

I N D E X

| WITNESS:     | EXAMINATION:    | PAGE |
|--------------|-----------------|------|
| STEVE MURRAY | BY MR. MANDEL   | 4    |
|              |                 | 101  |
|              | BY MS. HOLLERAN | 96   |

| EXHIBIT:      | DESCRIPTION                           | FOR ID |
|---------------|---------------------------------------|--------|
| Number RX-154 | Expert Report of<br>Stephen H. Murray | 96     |



1 UNITED STATES OF AMERICA  
2 FEDERAL TRADE COMMISSION  
3 OFFICE OF ADMINISTRATIVE LAW JUDGES  
4

5 In the Matter of: )  
6 REALCOMP II, LTD., ) Docket No. 9320  
7 Respondent. )  
8 -----)

9 Tuesday, April 17, 2007

10  
11 Room 6201  
12 Federal Trade Commission  
13 601 New Jersey Avenue, N.W.  
14 Washington, D.C. 20001  
15

16 The above-entitled matter came on for  
17 deposition, pursuant to notice, at 9:05 a.m.  
18  
19  
20  
21  
22  
23  
24  
25

1 your opinion is concerned, is Southeastern Michigan even  
2 worse than Denver, Indianapolis or Cleveland as far as  
3 the predominance of it being a buyer's market during  
4 that period of time?

5 A. If we say, for instance, over the last three  
6 years?

7 Q. Yes.

8 A. If we take that three-year period of time,  
9 Detroit is probably worse off than those other markets I  
10 just mentioned, in terms of the decline in sales and the  
11 increase in inventory.

12 Q. If you know, do exclusive right-to-sell agents  
13 in Southeastern Michigan vary their charges by the  
14 amount of service that they provide?

15 A. I don't have any precise information about  
16 that.

17 Q. Does that happen in your experience in the  
18 real estate industry?

19 A. Yes. Considerably.

20 And I would expect that it takes place in  
21 Southeast Michigan as it does throughout the whole  
22 country.

23 Q. Would you take a look at your paragraph 12 of  
24 your report, RX-154.

25 You have within that paragraph ten subcategories

**[REDACTED CONFIDENTIAL MATERIAL]**



**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
In the Matter of )  
 )  
REALCOMP II LTD., )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. 9320

**PROPOSED ORDER GRANTING RESPONDENT'S  
MOTION AND POINTS OF AUTHORITY FOR DISMISSAL**

The complaint is dismissed with prejudice.

ORDERED:

Dated: \_\_\_\_\_, 2007

\_\_\_\_\_  
Stephen J. McGuire  
Chief Administrative Law Judge