

**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

AUSTIN BOARD OF REALTORS,

a corporation.

Docket No. C-4167

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 Austin Board of Realtors (“Respondent” or “ABOR”), a corporation, also trading and doing business as Austin/Central Texas Realty Information 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, private real estate association that operates a Multiple Listing Service, which is a joint venture among its members designed to foster real estate brokerage services. ABOR has adopted a rule that limits the publication of certain listing agreements on popular internet real estate web sites, in a manner that injures real estate brokers that use such listing agreements to offer lesser 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 MEMBERS

1. Respondent Austin Board of Realtors, (“ABOR”) is a not for profit corporation organized, existing and doing business under and by virtue of the laws of the State of Texas. Respondent’s principal place of business is at 10900 Stonelake Boulevard, Suite 100, Austin, Texas 78759. ABOR operates for the benefit of its members.
2. ABOR has more than 5,000 real estate professionals as members, and is affiliated with the National Association of Realtors (“NAR”). The majority of ABOR’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 Austin, Texas, metropolitan area are members of ABOR. These professionals compete with one another to provide residential real estate brokerage services to consumers.
4. ABOR is now and has been providing since 1952 a Multiple Listing Service (“MLS”) for members doing business in the metropolitan Austin, Texas area. 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 members who locate purchasers.
5. The ABOR MLS is organized through the Austin/Central Texas Realty Information Service (“ACTRIS”), which is a Texas not for profit corporation, all of whose stock is owned by ABOR. ACTRIS rules and policies, and any amendments thereto, must be approved by the ABOR Board of Directors.
6. When a property is listed on ACTRIS, it is made available to all members 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 members of the MLS so that a suitable buyer can be found.
7. ACTRIS services the territory within central Texas, specifically metropolitan Austin, including Bastrop, Blanco, Burnet, Caldwell, Fayette, Gillespie, Hays, Hutto, Lee, Llano, Milam, Travis and Williamson counties in the State of Texas (“ACTRIS Service Area”).
8. ACTRIS is the only MLS that services metropolitan Austin, Texas. ACTRIS is the dominant MLS in the ACTRIS Service Area.

JURISDICTION

9. ABOR 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.

10. The acts and practices of ABOR, 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.

ABOR CONDUCT

11. In 2005, ACTRIS adopted and ABOR approved a rule that stated: “Listing information downloaded and/or otherwise displayed pursuant to IDX shall be limited to properties listed on an exclusive right to sell basis” (the “Web Site Policy”).

12. The Web Site Policy prevented certain lawful residential property listings provided to ACTRIS, 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 often used by members of ABOR 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. Many 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 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.

16. The Web Site Policy specifically prevents Exclusive Agency Listings from being published on web sites approved by ABOR and ACTRIS, including (1) ACTRIS-member web sites; (2) the ABOR-owned “Austinhomesearch.com” web site; and (3) the NAR-operated “Realtor.com” web site (collectively, “Approved Web Sites”).

17. The Web Site Policy has the effect of discouraging members of ABOR and participants in ACTRIS from accepting Exclusive Agency Listings. In the first three months that the Web Site Policy was in effect, the number of Exclusive Agency Listings on the ACTRIS MLS in Austin dropped from 18 percent to approximately 2.5 percent of all the listings on the MLS.

ABOR MARKET POWER

18. The provision of residential real estate brokerage services to sellers and buyers of real property in the Austin, Texas and/or the ACTRIS Service Area is a relevant service market.

19. 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 ACTRIS 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 ACTRIS Service Area.

20. By virtue of industry-wide participation and control over a key input, ABOR and ACTRIS have market power in the ACTRIS Service Area.

21. Membership or participation in ACTRIS is essential to a broker providing effective residential real estate brokerage services to sellers and buyers of real property in the ACTRIS Service Area. Membership 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 ACTRIS Service Area.

APPROVED WEB SITES ARE KEY INPUTS

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

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

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

EFFECTS OF WEB SITE POLICY

25. The Web Site Policy has reduced the use of Exclusive Agency Listings in the ACTRIS Service Area. Prior to the initiation of the Web Site Policy, about 1,500 of 8,500, or 18 percent, of the listings on ACTRIS were Exclusive Agency Listings. After the Web Site Policy was

implemented, the number of Exclusive Agency Listings dropped to about 250 out of 10,000, or 2.5 percent.

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

THE WEB SITE POLICY OFFERS NO EFFICIENCY BENEFIT

27. 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

28. In adopting the policies and engaging in the Acts and Practices described herein, ABOR has been and is acting as a combination of its members, or in conspiracy with some of its members, to restrain trade in the provision of residential real estate brokerage services within metropolitan Austin, Texas and/or the ACTRIS Service Area.

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

30. 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-ninth day of August, 2006, issues its Complaint against Respondent Austin Board of Realtors.

By the Commission.

C. Landis Plummer
Acting Secretary

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