

**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

MIREALSOURCE, INC.,

a corporation.

Docket No. 9321

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having heretofore issued its complaint charging Respondent MiRealSource, Inc. with violations of Section 5 of the Federal Trade Commission Act, as amended, and Respondent MiRealSource, Inc. having been served a copy of that complaint, together with a notice of contemplated relief, and Respondent MiRealSource, Inc. having answered the complaint denying said charges and asserting affirmative defenses but admitting the jurisdictional allegations set forth herein; and

The Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order, an admission by the Respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only, is entered into by Respondent and does not constitute an admission by Respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission’s Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules, 16 C.F.R. § 3.25(c) (2006); and

The Commission having thereafter considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments received from interested parties pursuant to Sections 2.34 and 3.25(f) of its Rules, 16 C.F.R. §§ 2.34, 3.25(f) (2006), now in

further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following Order:

1. Respondent MiRealSource, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business at 5700 Crooks Road, Suite 102, Troy, Michigan 48098.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that for the purposes of this Order, the following definitions shall apply:

- A. “Respondent” or “MiRealSource” means MiRealSource, Inc., the MiRealSource Board of Directors, the predecessors, successors and assigns of MiRealSource, Inc., its divisions and wholly or partially owned subsidiaries, affiliates, licensees of affiliates, partnerships, and joint ventures; and all the directors, officers, committees, employees, consultants, agents, and representatives of the foregoing, when acting in such capacity. The terms “subsidiary,” “affiliate” and “joint venture” refer to any person in which there is partial or total ownership or control by MiRealSource, and is specifically meant to include MiRealSource MLS and/or each of the MiRealSource Websites.
- B. “MiRealSource Shareholder” means a member of MiRealSource, including licensees of the shareholder, affiliates, and licensees of the affiliates.
- C. “Multiple Listing Service” or “MLS” means a cooperative venture by which real estate brokers serving a common market area submit their listings to a central service which, in turn, distributes the information for the purpose of fostering cooperation in and facilitating real estate transactions.
- D. “MiRealSource MLS” means any MLS owned, operated or controlled, in whole or in part, directly or indirectly, by MiRealSource.

- E. “IDX” means an internet data exchange process that provides a means or mechanism for MLS listings to be integrated within a Website.
- F. “IDX Website” means a Website that is capable of integrating the IDX listing information within the Website.
- G. “MiRealSource Websites” means any public Website operated (not merely hosted) by MiRealSource, including but not limited to Mirealsource.com.
- H. “Realtor.com” means the Website operated by the National Association of Realtors that allows the general public to search information concerning real estate listings downloaded from a variety of MLSs representing different geographic areas of the country, including but not limited to real estate listings from MiRealSource.
- I. “Approved Website” means a Website to which MiRealSource or MiRealSource MLS provides information concerning listings for publication including, but not limited to, MiRealSource Shareholder IDX Websites, MiRealSource Websites, and Realtor.com.
- J. “Exclusive Right to Sell Listing” means 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 broker, the owner or another broker.
- K. “Exclusive Agency Listing” means 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, but also reserves to the seller a general right to sell the property without assistance from a broker, in which case the listing broker is paid a reduced or no commission when the property is sold.
- L. “Services of the MLS” means the benefits and services provided by the MLS to assist MiRealSource Shareholders in selling, leasing and valuing property and/or brokering real estate transactions. With respect to real estate brokers or agents representing home sellers, Services of the MLS shall include, but are not limited to:

1. having the property included among the listings in the MLS in a manner so that information concerning the listing is easily accessible by cooperating brokers; and
 2. having the property publicized through means available to the MLS, including, but not limited to, information concerning the listing being made available on MiRealSource Websites, Realtor.com and IDX Websites.
- M. The term “Unbundled Real Estate Brokerage Services” means a lawful arrangement pursuant to which a real estate broker or its agent provides that a property offered for sale shall be listed on an MLS, but the listing broker or its agent will not provide some or all of the additional services offered by other real estate brokers or will only offer such additional services as may be chosen from a menu of services for a fee.

II.

IT IS FURTHER ORDERED that Respondent MiRealSource, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the operation of the MiRealSource MLS or MiRealSource Websites in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, shall forthwith cease and desist from adopting or enforcing any policy, rule, practice or agreement of MiRealSource to deny, restrict or interfere with the ability of MiRealSource Shareholders to enter into Exclusive Agency Listings or other lawful listing agreements with the sellers of properties, including but not limited to any policy, rule, practice or agreement to:

1. prevent MiRealSource Shareholders from offering or accepting Exclusive Agency Listings;
2. prevent MiRealSource Shareholders from cooperating with listing brokers or their agents that offer or accept Exclusive Agency Listings;
3. prevent MiRealSource Shareholders from publishing information concerning listings offered pursuant to Exclusive Agency Listings on the MiRealSource MLS and Approved Websites;

4. prevent MiRealSource Shareholders, or the sellers of properties who have entered into lawful listing agreements with MiRealSource Shareholders, from publishing information concerning listings (or, in the case of a seller, the seller's listing) on public real estate web sites, including but not limited to www.FSBO.com;
5. prevent MiRealSource Shareholders from using the MiRealSource MLS unless they maintain a physical office;
6. prevent MiRealSource Shareholders from offering Unbundled Real Estate Brokerage Services, including but not limited to requiring MiRealSource Shareholders to provide a minimum set of real estate brokerage services;
7. deny or restrict the Services of the MLS to Exclusive Agency Listings or other lawful listings in any way that such Services of the MLS are not denied or restricted to Exclusive Right to Sell Listings; and
8. treat Exclusive Agency Listings, or any other lawful listings, in a less advantageous manner than Exclusive Right to Sell Listings, including but not limited to, any policy, rule or practice pertaining to the searching, sorting, ordering, transmission, downloading, or displaying of information pertaining to such listings.

Provided, however, that nothing herein shall prohibit the Respondent from adopting or enforcing any policy, rule, practice or agreement regarding subscription or participation requirements, payment of dues, administrative matters, or any other policy, rule, practice or agreement, including but not limited to, rules allowing a participant to make independent decisions regarding the display of listing information on that participant's web site or the display of listing information provided by that participant to the MiRealSource MLS on the web sites of others, so long as Respondent can show that the policy, rule, practice or agreement is reasonably ancillary to the legitimate and beneficial objectives of the MLS.

III.

IT IS FURTHER ORDERED that Respondent shall, no later than forty five (45) days after the date this Order becomes final, amend its rules and regulations to conform to the provisions of this Order.

IV.

IT IS FURTHER ORDERED that, within ninety (90) days after the date this Order becomes final, Respondent shall (1) inform each MiRealSource Shareholder of the amendments to its rules and regulations to conform to the provisions of this Order; and (2) provide each MiRealSource Shareholder with a copy of this Order. Respondent shall transmit the rule change and Order by the means it uses to communicate with its members in the ordinary course of MiRealSource's business, which shall include, but not be limited to: (A) sending one or more emails with one or more statements that there has been a change to the rule and an Order, along with a link to the amended rule and the Order, to each MiRealSource Shareholder; and (B) placing on the publicly accessible MiRealSource Website (www.MiRealSource.com) a statement that there has been an Order and related rule changes, along with a link to the Order, for a period of no less than ninety (90) days. The Order shall remain accessible through common search terms and archives on the Website for five (5) years from the date it becomes final.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in Respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation or any other proposed changes in the corporation which may affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that Respondent shall file a written report within six (6) months of the date this Order becomes final, and annually on the anniversary date of the original report for each of the five (5) years thereafter, and at such other times as the Commission may require by written notice to Respondent, setting forth in detail the manner and form in which it has complied with this Order.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on March 20, 2017.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: March 20, 2007