

ORIGINAL

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of

REALCOMP II LTD.,  
a corporation.

Docket No. 9320

Public

**JOINT STIPULATION REGARDING RESPONDENT'S SEARCH FUNCTION POLICY**

Whereas the Commission alleges that Respondent Realcomp II Ltd. ("Realcomp" or "Respondent") has restrained competition in the provision of residential real estate brokerage services by combining or conspiring with its members or others, or by acting as a combination of its members or others, to hinder unreasonably the ability of real estate brokers in Southeastern Michigan to offer residential real estate brokerage services on terms other than those contained in the traditional form of listing agreement known as an Exclusive Right to Sell Listing;

Whereas the Commission alleges that in 2001, Realcomp adopted and 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");

Whereas the Commission alleges that in or about the Fall of 2003, Respondent changed the Realcomp MLS search screen to default to Exclusive Right to Sell Listings ("Search Function Policy"). The Search Function Policy refers to the Realcomp MLS search screen which defaults to Exclusive Right to Sell/Full Service listings. (Complaint ¶16). In order to view any other listing types, including Exclusive Agency Listings, Realcomp members have to select the additional listing types in the search screen;

Whereas the Commission alleges that the purposes, capacities, tendencies, or effects of the policies, acts, or practices of Realcomp and its members as described in the Complaint have been and are unreasonably to restrain competition among brokers, and to injure consumers, in the market for provision of residential real estate brokerage services within Southeastern Michigan and/or the Realcomp Service Area;

Whereas Realcomp denies that it has restrained competition in the provision of residential real estate brokerage services by combining or conspiring with its members or others, or by acting as a combination of its members or others, to hinder unreasonably the ability of real estate brokers in Southeastern Michigan to offer residential real estate brokerage services on terms other than those contained in the traditional form of listing agreement known as an Exclusive Right to Sell Listing;

Whereas the Realcomp Board of Governors voted to change the search function in the Realcomp MLS on April 27, 2007, to no longer default to any listing type and to no longer require that Exclusive Right to Sell listings be Full Service listings;

Complaint Counsel and Respondent Realcomp hereby Stipulate as follows:

A. Complaint Counsel and Realcomp agree to resolve all determinations of relief regarding Realcomp's "Search Function Policy."

B. Realcomp enters into this Stipulation without admitting liability.

C. The terms of relief of this Stipulation are contemplated in the relief provisions contained in Paragraph II.5. of the Notice of Contemplated Relief issued by the Commission on October 10, 2006.

D. The relief provided by this Stipulation does not resolve any issue regarding relief for the Website Policy.

E. For the purposes of Commission Rule 3.51(c), 16 C.F.R. § 3.51(c), Complaint Counsel and Realcomp stipulate that this Stipulation shall constitute the basis for which the Court shall include in its Initial Decision and Order the definitions and relief concerning Realcomp's "Search Function Policy" as described in the preamble to this Stipulation and specified in ¶¶ F.1-10 and G, *infra*. These definitions and this relief concerning Realcomp's "Search Function Policy" shall be included in the Court's Initial Decision and Order, without regard to the Court's finding of facts, conclusions of law, any determination of a violation, and other determinations of necessary relief made in its Initial Decision based on other evidence of record or whether the Court finds, based on other evidence of record, that Realcomp violated Section 5 of the FTC Act, 15 U.S.C. § 5.

F. The Court, as authorized by Commission Rule 3.26(g), 16 C.F.R. § 3.26(g), shall include in its Initial Decision and Order the following Definitions:

1. "Respondent" or "Realcomp" means Realcomp II Ltd., 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 28555 Orchard Lake Road, Suite 200, Farmington Hills, Michigan 48334. The term also means the Realcomp Owners, Board of Directors, its predecessors, divisions and wholly or partially owned subsidiaries, affiliates, licensees of affiliates, partnerships, and joint ventures; and all the directors, officers, shareholders, participants, employees, consultants, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate" and "joint venture" refer to any person in which there is partial

or total ownership or control by Realcomp, and is specifically meant to include Realcomp MLS and/or each of the Realcomp Websites.

2. "Owners" means the current and future Boards and Associations of Realtors that are the sole shareholders of Realcomp, which included the Dearborn Board of REALTORS, Detroit Association of REALTORS, Livingston Association of REALTORS, Metropolitan Consolidated Association of REALTORS, North Oakland County Board of REALTORS, Eastern Thumb Association of REALTORS and Western-Wayne Oakland County Association of REALTORS at the time of entry of this order.
3. "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 and offering compensation in and facilitating real estate transactions.
4. "Realcomp MLS" means the Realcomp MLS or any other MLS owned, operated or controlled, in whole or in part, directly or indirectly, by Realcomp, any of its Owners, predecessors, divisions and wholly or partially owned subsidiaries, affiliates, and all the directors, officers, employees, agents, and representatives of the foregoing.
5. "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, or any other definition that Realcomp ascribes to the term "Exclusive Right to Sell Listing."
6. "Exclusive Agency Listing" means a listing agreement that authorizes the listing broker, as an exclusive agent, to offer cooperation and compensation on a blanket unilateral basis, but also reserves to the seller a general right to sell the property on an unlimited or restrictive basis, or any other definition that Realcomp ascribes to the term "Exclusive Agency Listing."
7. "Full Service" means a listing broker will provide the following services: (1) Arrange appointments for cooperating brokers to show listed property to potential purchasers; (2) Accept and present to the seller(s) offers to purchase procured by cooperating brokers; (3) Advise the seller(s) as to

the merits of offers to purchase; (4) Assist the seller(s) in developing, communicating, or presenting counteroffers; and (5) Participate on the seller(s) behalf in negotiations leading to the sale of the listed property.

8. "Other Lawful Listing" means a listing agreement, other than an Exclusive Right to Sell Listing or Exclusive Agency Listing, which is in compliance with applicable state laws and regulations, including but not limited to, Limited Service listings and MLS Entry Only listings.
9. "Limited Service listing" means a listing agreement in which the listing broker will not provide one or more of the following services: (1) Arrange appointments for cooperating brokers to show listed property to potential purchasers but instead gives cooperating brokers authority to make such appointments directly with the seller(s); (2) Accept and present to the seller(s) offers to purchase procured by cooperating brokers but instead gives cooperating brokers authority to present offers to purchase directly to the seller(s); (3) Advise the seller(s) as to the merits of offers to purchase; (4) Assist the seller(s) in developing, communicating, or presenting counteroffers; and (5) Participate on the seller(s) behalf in negotiations leading to the sale of the listed property.
10. "MLS Entry Only listing" means a listing agreement in which the listing broker will not provide any of the following services: (1) Arrange appointments for cooperating brokers to show listed property to potential purchasers; (2) Accept and present to the seller(s) offers to purchase procured by cooperating brokers; (3) Advise the seller(s) as to the merits of offers to purchase; (4) Assist the seller(s) in developing, communicating, or presenting counteroffers; and (5) Participate on the seller(s) behalf in negotiations leading to the sale of the listed property.

G. The Court, as authorized by Commission Rule 3.26(g), 16 C.F.R. § 3.26(g), shall include in its Initial Decision and Order the following provisions concerning Realcomp's "Search Function Policy":

**IT IS ORDERED** that Respondent Realcomp, its successors and assigns, and its Board of Directors, officers, committees, agents, representatives, and employees, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the operation of a Multiple Listing Service 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 Realcomp that treats Exclusive Agency Listings, or any other lawful listings, in a less advantageous manner than Exclusive Right to Sell Listings with regard

to the search function in the Realcomp MLS, including but not limited to any policy, rule, practice or agreement that:

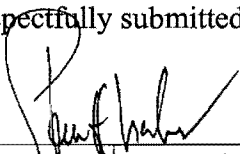
1. Discriminates against Exclusive Agency listings or Other Lawful listings in the property search functions in the Realcomp MLS by defaulting to another listing type;
2. Defaults the searches in the Realcomp MLS to Exclusive Right to Sell/Full Service listings and Unknown listings;
3. Associates Exclusive Right to Sell listings with Full Service, and/or that does not allow Exclusive Right to Sell/Limited Service listings and Exclusive Right to Sell/MLS Entry Only listings.

**IT IS FURTHER ORDERED** that:

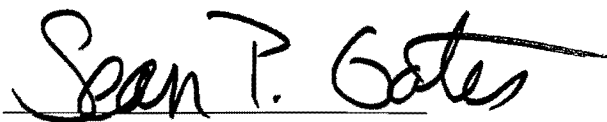
1. The duration of this Order shall be for a period of ten (10) years from the date the Order is issued; and Realcomp shall submit reports of compliance, and make other notifications, as required in any other such order, all as contemplated in Paragraphs V. through VII. of the Notice of Contemplated Relief issued on October 10, 2006, in this matter;
2. The "Search Function Policy" as described herein shall not be modified unless: the Commission otherwise orders; the Commission and Realcomp (in writing) otherwise so agree; or the terms of any order concerning the "Search Function Policy" expire as provided in ¶ G, *supra*.

H. Realcomp stipulates that it shall implement the new "Search Function Policy" described in the preamble to this Stipulation and as specified in ¶ G as soon as practicable after it executes this Stipulation and shall not delay implementation until the filing of the Initial Decision or the entry of any subsequent orders concerning this action.

Respectfully submitted,



\_\_\_\_\_  
Scott L. Mandel  
Steven H. Lasher  
Webb A. Smith  
Stephen J. Rhodes  
Kirsten M. McNelly  
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Dated: July 31, 2007

*Counsel Supporting the Complaint*

Bureau of Competition  
Federal Trade Commission  
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Washington, D.C., 20580  
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**CERTIFICATE OF SERVICE**

This is to certify that on July 30, 2007, I caused a copy of the attached Joint Stipulation Regarding Respondent's Search Function Policy to be served upon the following persons:

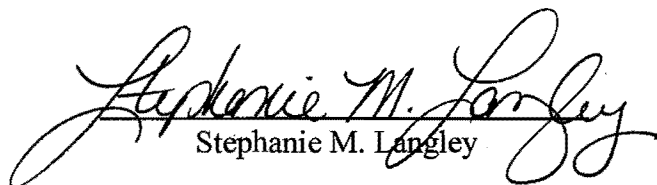
by hand delivery to:

The Honorable Stephen J. McGuire  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

and by electronic transmission to:

Scott Mandel, Esq.  
Steven H. Lasher, Esq.  
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*Counsel for Respondent Realcomp II, Ltd.*

  
Stephanie M. Langley