

**COMMISSION
APPROVED**

COLDWELL BANKER RESIDENTIAL REAL ESTATE SERVICES NORTHEAST, INC., and GERALD A. MILLS)	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
)	DOCKET NO. A-4853-85T6
Plaintiffs-Appellants)	
vs.)	
THE NEW JERSEY REAL ESTATE COMMISSION and DARYL G. BELL)	
Defendants-Respondents)	

BRIEF OF FEDERAL TRADE COMMISSION AS AMICUS CURIAE

Robert D. Paul
General Counsel
(202) 326-2480

M. Elizabeth Gee
Assistant Director
Bureau of Competition
(202) 326-2756

Jacques Feuillan
Attorney
Bureau of Competition
(202) 326-2739

Amy Donella-Gershenfeld
Attorney for Amicus Curiae
(212) 264-1226

March 13, 1987

Federal Trade Commission
Sixth & Pennsylvania Avenue, N.W.
Washington D.C. 20580

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
ISSUE PRESENTED BY AMICUS.....	1
INTEREST OF THE FEDERAL TRADE COMMISSION.....	1
PROCEDURAL HISTORY.....	5
STATEMENT OF THE CASE.....	6
SUMMARY OF ARGUMENT.....	10
ARGUMENT:	10
PLAINTIFFS' DISCOUNT COUPON PROGRAM APPEARS TO REPRESENT A TRUTHFUL, NONDECEPTIVE MARKETING STRATEGY, SUPPRESSION OF WHICH IS LIKELY TO INJURE CONSUMER WELFARE.	
I. Offers of Discount Coupons Such As The Plaintiff's Are Not Inherently Deceptive.	10
II. Prohibition of Truthful, Nondeceptive Discount Offers In Real Estate Brokerage Markets Will Tend To Injure Competition And Consumers.....	13
CONCLUSION	15

ISSUE PRESENTED BY AMICUS

Whether a blanket prohibition on real estate brokerage firms competing through offers of coupons for discounts on retail merchandise serves to protect consumers from false or deceptive practices and promote consumer welfare.

INTEREST OF AMICUS

The Federal Trade Commission ("FTC") is an independent administrative agency of the United States, established in 1914 by Act of Congress. The FTC is empowered by 15 U.S.C. §§ 41 et seq. (1982) to prevent the use of unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. The FTC has joint responsibility with the Department of Justice for enforcing the federal antitrust laws and for facilitating national competition policy. In addition, the FTC is the federal agency with primary responsibility for protecting consumers against the use of deceptive and unfair trade practices.

The Federal Trade Commission believes that its expertise and experience in consumer protection and competition analysis can be of use to this Court in resolving some of the issues raised in this case. Plaintiffs-Appellants contend that prohibiting Coldwell Banker's discount coupon program violates the free speech guarantees of the federal and state constitutions. To decide this constitutional question, this Court will be called upon to consider whether the offering of discount coupons such as Coldwell Banker's is deceptive, because false or misleading

commercial speech^{1/} is not constitutionally protected and may therefore be banned.^{2/} See In re R.M.J., 455 U.S. 191, 203 (1982). Plaintiffs also contend that the coupon offer does not fall within the scope of the New Jersey statutory ban on offering prizes in connection with the sale of real estate. Resolving this issue will involve consideration of the relationship between the prohibition of coupon offers and the stated purpose of the statute, which is "to prevent fraud and deception of the public in real estate transactions." Statement Accompanying S. No. 259 (enacted as amended as Pub. L. No. 155, 1948 New Jersey Laws 889, codified at N.J. Stat. Ann. § 45:15-17) (App. PA at 360-62).^{3/}

^{1/} Applying constitutional analysis to the challenged restrictions -- one, a ban on the use of free offerings in advertising, the other, a prohibition on use of games, contests, or prizes in connection with the sale of real estate -- depends initially on finding that they regulate speech. Compare Coldwell Banker Residential Real Estate Servs. of Illinois, Inc. v. Clayton, 105 Ill. 2d 389, 475 N.E.2d 536 (1985) (holding statute prohibiting use of prizes, money, free gifts, etc., as inducements to secure customers is, in effect, an advertising regulation) with Coldwell Banker Residential Real Estate Servs. v. Missouri Real Estate Comm., 712 S.W.2d 666 (Mo. 1986) (statute proscribing use of prizes as inducement to secure customers to purchase real estate held to regulate conduct, not speech). This brief does not address that threshold issue.

^{2/} Commercial speech that is not misleading may be regulated, but only when it advances a substantial state interest, and then only to the extent necessary to advance that interest. See Central Hudson Gas & Electric Corp. v. Public Serv. Comm., 447 U.S. 557 (1980); see also Posadas de Puerto Rico Assocs. v. Tourism Co. of Puerto Rico, 106 S. Ct. 2968 (1986). The only governmental interest pertaining to the challenged restraint apparent from the record is the legislature's stated purpose in enacting its ban on use of prizes as promotional devices, and this interest is the prevention of fraud and deception. See App. PA at 361.

^{3/} References to "App. PA" are to the Appendix of Plaintiffs-Appellants.

Thus, the validity of the ban on offers of free goods or services in advertising or promotional material, N.J. Admin. Code § 11:5-1.15(m), and the applicability and validity of the statutory ban on use of games, contests, or prizes to promote the sale of real estate, N.J. Stat. Ann. § 45:15-17(g), depend, in substantial part, on whether the prohibition of discount coupon offers protects consumers against fraud and deception.

In its work to promote and preserve competition and to protect consumers from deception, the FTC frequently addresses issues akin to those involved in assessing the relationship between the challenged restraint and the prevention of deception. The broad mandate that Congress has given to the FTC to prevent "unfair or deceptive acts or practices" has required the FTC to evaluate a multitude of allegedly deceitful programs and activities that may injure consumers. It also has required the FTC to develop standards and guidelines to determine what practices are truly deceptive, to inform businesses of what is and is not forbidden by law, and to do so within the parameters laid down by Congress, the courts, and the United States Constitution. See, e.g., Letter from James C. Miller III to Honorable John D. Dingell (Oct. 14, 1983) (statement on deceptive practices), adopted & reprinted in Cliffdale Associates, 103 F.T.C. 110, 174-184 (1984). The Supreme Court has cited the work of the FTC in distinguishing deceptive from nondeceptive advertising as an indication of the kind of approach the Court will require of government regulators who seek to regulate professional advertising in accordance with the First

Amendment. See Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, 105 S. Ct. 2265, 2279-80 (1985).

In addition, because constitutional protection for commercial speech has been premised in part on the societal benefits of advertising in enhancing the operation of a competitive economy, see, e.g., Bates v. State Bar of Arizona, 433 U.S. 350, 364 (1977), the FTC believes consideration of the competitive effects of prohibiting truthful, nondeceptive discount offers will aid this Court's analysis. The FTC has considerable experience in analyzing the competitive effects of governmental regulation of advertising and marketing. The FTC's experience here extends in particular to practices that affect advertising and marketing by real estate brokerage firms. See Multiple Listing Service of Greater Michigan City Area, Inc., 106 F.T.C. 95 (1985); Orange County Board of Realtors, Inc., 106 F.T.C. 88 (1985); Brief for the Federal Trade Commission as Amicus Curiae, Coldwell Banker Residential Real Estate Services of Illinois, Inc. v. Clayton, 105 Ill. 2d 289, 475 N.E.2d 536 (1985); The Residential Real Estate Brokerage Industry (Staff Report of the FTC Los Angeles Regional Office, 1983); see also Horizon Corp., 97 F.T.C. 464 (1981). In addition, the FTC has specifically examined the effects on competition of marketing and price discounting done through the vehicle of coupons or vouchers that can be redeemed for specified goods or services. See Brief for the Federal Trade Commission as Amicus Curiae, Gonzales & Co. v. Department of Alcoholic Beverage Control, 151 Cal. App. 3d 172, 198 Cal. Rptr. 479 (Cal. Ct. App. 1984); Comments Submitted on California

Assembly Bill 3584 (a bill to prohibit the giving of rebates, coupons, and other redeemable devices in connection with the sale of alcoholic beverages) (FTC San Francisco Regional Office, March 27, 1984); Economic Report: Discount Food Pricing in Washington, D.C. (Staff Report of the FTC Bureau of Economics, 1971); Cents-Off Promotions in the Coffee Industry (Staff Report of the FTC Bureau of Economics, 1966); see also Market Development Corp., 95 F.T.C. 100 (1980).

Accordingly, the FTC through this brief seeks to assist this Court's analysis by offering the Federal Trade Commission's views regarding the effects on the prevention of deception and the promotion of consumer welfare of prohibiting discount coupon offers in the real estate brokerage industry.

PROCEDURAL HISTORY

A petition seeking declaratory and injunctive relief against the enforcement of N.J. Admin. Code § 11:5-1.15(m), a regulation adopted by Defendant New Jersey Real Estate Commission, and against N.J. Stat. Ann. § 45:15-17(g), was filed by Plaintiffs Coldwell Banker Residential Real Estate Services Northeast, Inc., and Gerald A. Mills in the Superior Court of New Jersey, Chancery Division, Morris County, on April 22, 1986. Plaintiffs request relief on both statutory and constitutional grounds.

Pursuant to a motion of Defendants, jurisdiction was transferred to the Appellate Division under Rule 2:2-3(a)(2) as a review of the validity of a state administrative agency rule.

This brief and the accompanying motion for leave to file it with the Court are submitted by the Federal Trade Commission as amicus curiae pursuant to Rule 1:13-9.

STATEMENT OF THE CASE

Plaintiffs in this action are Coldwell Banker Residential Real Estate Services Northeast, Inc., ("Coldwell Banker"), a licensed real estate brokerage corporation, and its operational head, Gerald A. Mills. Plaintiff Coldwell Banker is the New Jersey subsidiary of Coldwell Banker, Inc., which, as the national real estate marketing and management division of the Chicago-based Sears, Roebuck and Company ("Sears"), operates licensed real estate brokerage businesses through subsidiaries or franchisees in each of the 50 states. Plaintiffs seek to prevent Defendants, New Jersey Real Estate Commission and its director, Daryl G. Bell, from attempting to prohibit Coldwell Banker from offering a discount coupon program to individuals who utilize the firm's services. Plaintiffs allege in particular that a regulation adopted by the Real Estate Commission prohibiting any "free offering" in advertising, N.J. Admin. Code § 11:5-1.15(m), and a statutory provision banning promotion of the sale of real estate through the use of lotteries, contests, games, prizes, or drawings, N.J. Stat. Ann. § 45:15-17(g), insofar as it applies to Plaintiffs' coupon offers, are unconstitutional restraints on truthful, nondeceptive commercial speech. (App. PA at 86-91).

The program that has given rise to this case, known as the "Sears Home Buyer's Savings Program," is one in which Coldwell Banker gives a book of "discount" coupons to individuals who purchase residential real estate through a Coldwell Banker office. The coupons entitle the consumer to discounts on the purchase of merchandise at Sears retail stores.^{4/} (App. PA at 376-419). The precise percentage discount and the terms of the offer made by Sears is specified on the face of each coupon. Every buyer through a Coldwell Banker brokerage office participating in the program is eligible to receive a booklet. The coupons are redeemable only by those to whom they have been issued. The booklets are not sold separately to consumers nor are they otherwise distributed.^{5/}

The challenged regulation of the Real Estate Commission provides:

Except as herein provided, no free offering, including the offering of a free appraisal, shall be made in any advertisement or promotional material.

N.J. Admin. Code § 11:5-1.15(m). Prior to implementation of its coupon program in New Jersey, Coldwell Banker, Inc., was advised by the Real Estate Commission that the program would conflict

^{4/} A few coupons in each of the booklets are redeemable for such trivial "free" items as a box of laundry detergent. Others, however, may be exchanged for percentage discounts off the regular prices of more substantial items, such as refrigerators or dishwashers.

^{5/} According to Plaintiffs' amended complaint (App. PA at 86-91), Coldwell Banker, Inc., also has a coupon program, used in states other than New Jersey, that provides discount coupons to individuals who list their homes for sale with Coldwell Banker.

with this regulation. (App. PA at 98, 99-103, 111-13). In July 1985, however, the Real Estate Commission repealed section 11:5-1.15(m), (id. at 131), after which Coldwell Banker began offering the coupon program in New Jersey.

Following its repeal of the ban on free offerings, the Real Estate Commission proposed an amendment to N.J. Admin. Code § 11:5-1.15(m) that would have allowed real estate brokers to advertise truthful, nondeceptive offers of free or discounted goods or services. (Id. at 140-42). According to the proposal published for public comment, the proposed amendment was intended "to conform [N.J. Admin. Code § 11:5-1.15(m)] with developing law on the regulation of professional advertising." (Id. at 140). In particular, the Real Estate Commission noted that Illinois statutory provisions similar to the New Jersey ban on free offerings had been held to violate the First and Fourteenth Amendments of the United States Constitution, citing Coldwell Banker Residential Real Estate Services of Illinois v. Clayton, 105 Ill. 2d 389, 475 N.E.2d 536 (1985). (Id.).

In March 1986, the Real Estate Commission voted not to adopt the proposed amendment, rescinded its earlier repeal of the ban on free offerings, and readopted the prior version of section 11:5-1.15(m). (Id. at 264-306). In April 1986, Plaintiffs filed a petition with the Chancery Division of the Superior Court of Morris County, seeking a declaratory ruling that the regulation unconstitutionally infringed its rights of free speech, and requesting an injunction against enforcement of the regulation. Plaintiffs also sought a declaratory ruling and injunctive relief

that either: (1) their discount coupon program is not an offer of a "prize" within the meaning of N.J.S.A. § 45:15-17(g);^{6/} or (2) that the statute insofar as it prohibits Plaintiffs' offering of discount coupons is an unconstitutional restraint on commercial speech.^{7/}

On motion of the Defendants, the case was transferred to the Appellate Division.

SUMMARY OF ARGUMENT

Nothing in the Coldwell Banker discount coupon program, as it is described in the record filings of the parties, is deceptive, misleading, or fraudulent. Such a program is not likely to injure consumers. Indeed, Coldwell Banker's discount coupon program appears to represent a stimulus to price competition and enhanced consumer choice in real estate brokerage markets, suppression of which would likely injure consumer welfare.

^{6/} This statutory provision prohibits real estate brokers from:

Using any plan, scheme or method for the sale or promotion of the sale of real estate which involves a lottery, a game, a prizes, a drawing, or the offering of a lot or parcel or lots or parcels for advertising purposes.

^{7/} Any other claims that may be raised by Plaintiffs are not addressed in this amicus brief and the FTC takes no position on them.

ARGUMENT

PLAINTIFFS' DISCOUNT COUPON PROGRAM APPEARS TO REPRESENT A TRUTHFUL, NONDECEPTIVE MARKETING STRATEGY, SUPPRESSION OF WHICH IS LIKELY TO INJURE COMPETITION AND CONSUMER WELFARE.

I. Offers Of Discount Coupons Such As The Plaintiffs' Are Not Inherently Deceptive.

The FTC recently synthesized decades of case law on deception into a standard composed of three elements:

[T]he Commission will find an act or practice deceptive if, first, there is a representation, omission, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material.

Cliffdale Associates, 103 F.T.C. 110, 164-65 (1984); accord Southwest Sunsites, Inc., 105 F.T.C. 7 (1985), aff'd, 785 F.2d 1431 (9th Cir.), cert. denied, 107 S. Ct. 109 (1986). In applying this standard, the FTC takes into account, among other things, the likely impact on the audience to whom the claim is addressed. Cliffdale Associates, 103 F.T.C. at 179.

The FTC can find no basis for concluding that Plaintiffs' discount coupon program is deceptive under this standard. The program offered by the Plaintiff appears to represent an effort to engage in what amounts to a form of price competition. By "absorbing" the cost of the coupons, Sears appears to be offering sellers who list their properties for sale with Coldwell Banker the full range of usual brokerage services plus an additional item -- a new "service" or "benefit" that may induce buyers to come in and consider the properties listed or offered for sale through Coldwell Banker. At the same time, buyers are also offered something of value, for the coupons provide an opport-

unity for a buyer to reduce his or her total expenditures when purchasing certain household amenities through Sears.

The Sears coupons given out under Plaintiffs' marketing program appear to provide precisely the options and advantages stated on their face. (App. PA at 376-419). Therefore, the coupons are not dishonest. Nor is there any indication that their use in other states has been misleading or deceptive. Cf. Coldwell Banker Residential Real Estate Services of Illinois, Inc. v. Clayton, 105 Ill. 2d 389, 475 N.E.2d 536 (1985); Coldwell Banker Residential Real Estate Service of Ohio, Inc. v. Bishop, 26 Ohio App. 3d 149, 498 N.E.2d 1382 (1985).

The value of such coupons to any individual consumer may vary, of course. Some consumers may wish to deal with the Plaintiffs but may not desire any goods or services made available through the coupon program by Plaintiffs' parent company, Sears, and may dispose of the coupons accordingly. Others may choose to use the coupons extensively. A benefit whose actual value varies according to the needs of the individual consumer, however, still remains a benefit. That its ultimate monetary value is to be determined by the recipient's own actions does not render an offer inherently deceptive.

The coupons seem easily understandable and therefore are unlikely to mislead consumers. Coupons that are made available on a fully disclosed and equitable basis to all purchasers are an attractive option to many consumers precisely because such an option is one that has long been familiar to them. Couponing is

a form of marketing that has been extensively used by reputable firms in various industries over the course of many decades.

Although a practice not deceptive to consumers in general may deceive a particular class of consumers because of their particular circumstances, consumers of real estate brokerage services are, as a class, not particularly ignorant, confused, incompetent, or overwrought so as to make discount coupon programs of a sort widely used in other industries likely to mislead or defraud them. The FTC receives numerous consumer complaints every year on a wide variety of subjects, but it is not aware of any situations where buyers have been led into purchasing a home they did not want or need by the prospect of receiving a book of coupons.

In the experience gained by the FTC in enforcing its deception standard under Section 5 of the FTC Act, consumers are not usually deceived by offers of honest discount coupons. Arguments about the possibility that some consumers might be confused by even an honest offer, or be "distracted" from the real estate transaction itself, thereby creating the potential for abusive practices appear to be based only on conjecture. (APP. PA at 204-06; 307-08). Neither the FTC's own deception analysis, nor the Supreme Court's commercial speech doctrine, condone suppression of advertising that is only conjecturally or potentially misleading. See, e.g., In re R.M.J., 455 U.S. at 203; Cliffdale Associates, Inc., 103 F.T.C. at 174-84. In such cases, the preferred remedy is to provide more information to

consumers rather than less. See, e.g., Bates v. State Bar of Arizona, 433 U.S. at 372-75.

In sum, there is nothing inherently deceptive about offers of discount coupons, nor is there anything to suggest that Plaintiffs' coupon offers are or will prove to be deceptive. To the extent that discount coupon offers are in fact used to deceive, such conduct may be addressed under the state's general authority to prohibit deceptive practices. A total ban on coupon offers is an overly broad means of preventing any deception that might potentially arise.

II. Prohibition Of Truthful, Nondeceptive Discount Offers In Real Estate Brokerage Markets Will Tend To Injure Competition And Consumers.

Although prohibiting Plaintiffs' discount coupon offers appears to offer little or nothing by way of protection to consumers against fraud or deception in real estate transactions, its does appear to affect consumer welfare, and to affect it for the worse. It restricts a form of wholly legitimate competition in an industry that has historically been characterized by a relatively narrow range of competitive practices.

The real estate brokerage industry has long exhibited active and vigorous interfirm competition at the local level. But this competition has largely involved image advertising and around increases in the volume of services provided by rival firms rather than around price competition. Several recent studies using a variety of data sources and measurement tools have concluded that in each local market analyzed, and with regard to the sale of most types of residential properties, two things

remain constant in real estate markets: most sales are made through brokers and most properties are listed for sale under brokerage contracts that carry very similar or identical commission rates. M.T. Carney, Real Estate Brokerage Commission Rates: Price Fixing in Home Brokerage, 1-2 (Unpublished Dissertation for the Ph.D., University of California at Los Angeles, 1981); G. Butters, Consumers' Experiences with Real Estate Brokers: A Report on the Consumers Survey of the Federal Trade Commission's Residential Real Estate Brokerage Investigation, 12-15 (Staff Report of the FTC Bureau of Economics, Nov., 1983); The Residential Real Estate Brokerage Industry, 82 (Staff Report of the FTC Los Angeles Regional Office, 1983). While horizontal agreements to fix the price at which real estate brokerage service will be provided were once prevalent in the industry, they are now recognized to be unlawful under the anti-trust laws.^{8/} However, there is no evidence that this

^{8/} At one time explicit use of "mandatory" and later of "recommended" price lists promulgated by trade associations of brokers was prevalent in the industry. Cf. W. North, Antitrust and Real Estate, 2:2-2:5 (National Association of Realtors, Chicago, 1982). Agreements among brokers to adhere to price schedules were at that time buttressed by trade association rules that declared deviations from such schedules to be violations of professional standards of ethical practice. United States v. Nat'l Ass'n of Real Estate Bds., 339 U.S. 485 (1950). Price-fixing was also supported by broker-controlled multiple listing services (information exchanges that exist in most local markets on which data about properties for sale is distributed among member brokers) that adopted rules denying exchange service to contracts that carried a commission rate different from that set by the service. E.g., People ex rel. Scott v. MAP Multiple Listing Service, 1971 Trade Cas. (CCH) ¶ 73,654 (Ill. Cir. Ct. of Cook County 1971) (consent decree). Overt forms of price fixing such as this were found to violate the antitrust laws and have now essentially vanished from most local brokerage markets. United States v. Nat'l Ass'n of Real Estate Bds., supra; United States v. Jack Foley Realty, (Continued)

recognition has led to significantly less stability of commission rates.

Governmental restraints on price competition will generally injure consumers. This is particularly likely in industries where price competition is not already vigorous. Prohibition of programs such as Plaintiffs' will likely stifle varieties of price competition that could benefit consumers. It may also have the effect of reducing consumers' range of fair, nonfraudulent, and nondeceptive options in selecting among real estate brokers. Thus, prohibiting Plaintiff's program will likely serve only to injure consumers, obstruct informed choice, and erect a barrier to innovative competition.

Inc., 1981-1 Trade Cas. (CCH) ¶ 63,930 (D. Md. 1981)
(consent decree).

CONCLUSION

A total ban on offers of discount coupons by real estate brokers does not serve to protect consumers from deceptive practices. Rather, it appears to hinder unnecessarily a form of competition that may prove highly beneficial to consumers.

Respectfully submitted,

Robert D. Paul
General Counsel

M. Elizabeth Gee
Assistant Director
Bureau of Competition

Jacques Feuillan
Attorney
Bureau of Competition

Amy Donella-Gershenfeld
Attorney for Amicus Curiae

March 13, 1987

The validity of the regulation challenged by Plaintiffs and the applicability of the New Jersey Legislature's ban on the use of prizes by real estate brokers to Plaintiff's discount coupon marketing program depend, in substantial part, on whether the restriction protects consumers against fraud and deception.

The Federal Trade Commission, which has authority to define deceptive acts and practices for purposes of the Federal Trade Commission Act 15 U.S.C. § 45 argues, in its brief, that the buyers' discount coupon program of the plaintiff is, in fact, neither fraudulent or deceptive. Amicus further argues that application of the regulation and statute so as to prohibit plaintiffs from implementing and advertising their coupon program would injure consumers by halting the injection of potentially important interfirm competition and an opportunity for enhanced consumer choice into a market traditionally characterized by stifled price competition.

The Federal Trade Commission is familiar with the issues in this case and believes that it is appropriate for it to brief the issues specified.

CONCLUSION

This court should grant the Federal Trade Commission's request to file the attached brief amicus curiae.

Respectfully submitted,

Robert Paul
General Counsel

M. Elizabeth Gee
Assistant Director
Bureau of Competition

Jacques Feuillan
Attorney
Bureau of Competition

BY: Amy Donella-Gershenfeld
Attorney for Amicus Curiae
Telephone (212) 264-1226

FEDERAL TRADE COMMISSION
Washington, D.C. 20580
As Amicus Curiae

PLAINTIFFS-APPELLANTS,
COLDWELL BANKER RESIDENTIAL REAL ESTATE
SERVICES NORTHEAST, INC. AND
GERALD A. MILLS

vs.

DEFENDANTS-RESPONDENTS,

NEW JERSEY REAL ESTATE COMMISSION and
DARYL G. BELL.

SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION

Docket No. A-4853-85T6

CIVIL ACTION
CERTIFICATION OF
SERVICE

AMY DONELLA-GERSHENFELD, of full age, certifies as follows:

1. I am an attorney, a licensed member of the bar of the State of New Jersey employed by the Federal Trade Commission, at its offices in New York City.
2. On Friday, March 20, 1987, I caused four (4) copies of the Federal Trade Commission's Motion for Leave of Court and Amicus Brief to be served by DHL courier to the Superior Court of New Jersey Appellate Division, Clerk Elizabeth McLaughlin, Hughes Justice Complex, CN-0006, Trenton, New Jersey, 08625.
3. On Friday, March 20, 1987, I caused two (2) copies of the Federal Trade Commission's Motion for Leave of Court and Amicus Brief to be served by DHL mail courier to the Office of the Attorney General, Hughes Justice Complex, CN-080, Trenton, New Jersey, 08625.
4. On Friday, March 20, 1987, I caused two (2) copies of the Federal Trade Commission's Motion for Leave of Court and Amicus Brief to be served by DHL mail courier on attorney for Coldwell Banker, Inc., George R. Hirsch, Esq., of Ravin, Sarasohn, Cook, Baumgartner, Fisch and Baime, 103 Eisenhower Parkway, Roseland, New Jersey, 07068-1072.
5. On Friday, March 20, 1987, I caused two (2) copies of the Federal Trade Commission's Motion for Leave of Court and Amicus Brief to be served by DHL courier to the attorney for the New Jersey Association of Realtors/Amicus Curiae C. Keith Henderson, Esq. of Lautman, Henderson, Mills & Wight, 52 Abe Voorhees Drive, P.O. Box 260, Manasquan, New Jersey, 08736.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the aforesaid statements made by me are wilfully false, I may be subject to punishment.

AMY DONELLA-GERSHENFELD

DATED: March 20, 1987

cc: Sarah Darrow, Deputy Attorney General
George R. Hirsch, Esq.
C. Keith Henderson, Esq.