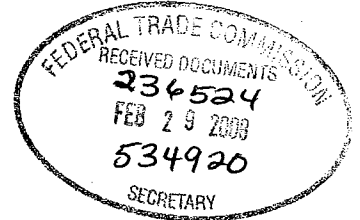


ORIGINAL

PUBLIC

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



In the Matter of)
REALCOMP II LTD.)
_____))
_____)

Docket No. 9320

ANSWERING BRIEF OF RESPONDENT

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TABLE OF ABBREVIATIONS

CCBr	Appeal Brief of Counsel Supporting the Complaint (Jan. 25, 2008)
CCPF	Complaint Counsel's Proposed Findings of Fact (July 31, 2007)
CCRB	Complaint Counsel's Post Trial Reply Brief (Aug. 16, 2007)
IDF (#)	Initial Decision Findings of Fact (#)
ID	Initial Decision (Dec. 10, 2007)
RCCPF	Respondent's Reply to Complaint Counsel's Proposed Findings of Fact (Aug. 17, 2007)
RPF	Respondent's Proposed Findings of Fact and Conclusions of Law (July 31, 2007)

Introduction

This case asks a straightforward question. Did Realcomp's establishment of the Website Policy and the Search Function Policy (the "Realcomp Policies") – different rules for different types of real estate listing "products" – create cognizable adverse competitive effects in a specific market (four counties of Southeast Michigan)? The evidence in this case demonstrated that there were no such effects. The case was properly dismissed.

Complaint Counsel implies that this case may be about other things, but those implications are inaccurate. This case is not about the wisdom or effects of similar rules in other markets investigated by the FTC. Nor can the issue in this case be decided by analogy to altogether different conduct undertaken by real estate brokers in other markets that came before courts in 1950 or 1971 or 1980. This case is not about determining public policy for the real estate industry. The complaint in this case concerns Southeast Michigan. The Initial Decision was properly based on the evidence from Southeast Michigan.

This case is not about competition between so-called traditional brokers and non-traditional (limited service or discount) brokers. The Realcomp Policies concern types of listings, not types of brokers. All participants in the Realcomp MLS are equally subject to the Realcomp Policies, and the evidence shows that both traditional and non-traditional brokers use both types of listings.

Having failed to persuade Chief Administrative Law Judge McGuire ("ALJ") that the Realcomp Policies diminished competition in Southeast Michigan, this appeal finds Complaint Counsel challenging the credibility of its own witnesses, and backpedaling to find

a viable legal argument – purporting to reveal the Realcomp Policies as disguised price restraints. These arguments cannot obscure the fact that Complaint Counsel failed to meet its burden. The ALJ's opinion should be sustained, and the complaint should be dismissed.

Factual Background

A. Respondent and Its Environment.

The fundamental facts concerning Respondent, types of listing agreements, the operation of the Realcomp MLS, and the Southeast Michigan real estate market are largely undisputed and reflected in the ALJ's findings of fact. *See* IDF 50-78; 132-281.

B. The Realcomp Policies

1. The Website Policy

As a service to its members, Realcomp transmits Realcomp MLS listing information to certain public websites. These include Realcomp's MoveInMichigan.com, and Realtor.com, the website of the National Association of Realtors®. (RPF ¶89). The MoveInMichigan website, in turn, is "framed" by ClickOnDetroit.com, another public website containing various information concerning the Detroit metropolitan area. (IDF 211; RPF ¶89(b)). Realcomp is under no legal obligation to transmit any listing information to any public website at any time.

Realcomp also feeds listings to the individual websites of its member brokers. To receive those listing feeds, a broker must agree to permit his or her own listings to be transmitted to other member-broker websites. (RPF ¶89). This is referred to as the Internet Data Exchange ("IDX"). (Kage, Tr. 947-48).

In 2001, Realcomp adopted the "Website Policy," which prevents Exclusive Agency ("EA") listings from being sent to "Approved Websites", meaning Realtor.com, MoveInMichigan.com and the Internet Data Exchange ("IDX"). (IDF 349, 350, 355). Due to the fact that Realcomp did not require listing types to be disclosed by listing brokers until late in 2003, the Website Policy was not implemented until 2004. (RPF ¶¶89, 91).

2. The Search Function Policy

Realcomp members search the MLS for listed properties using Realcomp Online. In or about the fall of 2003, Realcomp changed the Realcomp Online search program to default to Exclusive Right to Sell ("ERTS") and "Unknown" listings ("Search Function Policy"). (RPF ¶¶90-91, 124). Specifically, the search program allows a Realcomp member to search (by checking a box) any or all of the following listing types: ERTS, EA, MLS-Entry Only, and Unknown. Pursuant to the Search Function Policy, the ERTS and Unknown types were pre-selected for each search query. If a member wished to also search EA listings, for example, the member had to check the EA box on the search screen. Similarly, if the member did not want to search ERTS listings, the member had to de-select the ERTS box. In either event, the required action is a single click of the computer mouse. (RPF ¶¶125-126).¹ The ease of making that selection is shown from the screen seen by the user (RX 159) as depicted below:

¹ Members could individually change the initial defaults so that a different combination of listing types (or no listing type) would be pre-selected. (RPF ¶¶127-128).

