

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

JUPITER, TEQUESTA, HOBE
SOUND ASSOCIATION OF REALTORS, INC.

50 2013 CA 006927

Plaintiff,

v.

REGIONAL MULTIPLE LISTING SERVICE, INC.,
REALTORS ASSOCIATION OF THE PALM BEACHES, INC.
AND REALTORS ASSOCIATION OF ST. LUCIE, INC. ,

Defendants.

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COMPLAINT

Plaintiff, Jupiter Tequesta Hobe Sound Association of Realtors, Inc. , ("Plaintiff" or "JTHS") sues Defendants, REGIONAL MULTIPLE LISTING SERVICE, INC. ("RMLS"), REALTORS ASSOCIATION OF THE PALM BEACHES, INC. ("RAPB") AND REALTORS ASSOCIATION OF ST. LUCIE, INC. ("RASL"), for damages in excess of \$15,000.00 and other relief. In support, Plaintiff states:

NATURE OF CAUSE

1. Plaintiff JTHS and Defendants RAPB and RASL are three REALTOR® associations located in Palm Beach and St. Lucie counties.
2. RMLS is a corporation owned by JTHS, RAPB and RASL jointly and is in the business of delivering MLS service to Real Estate agents in Palm Beach, Martin, St. Lucie as well as other regions.
3. JTHS brings this case against RMLS, RAPB and RASL because each of these three associations have caused loss and injury to JTHS through an on-going campaign of false and deceptive advertising by which each have brazenly sought to divert and have diverted real-estate licensees from being subscribers of RMLS through JTHS and have injured the good will and reputation of JTHS.

BACKGROUND SUMMARY

4. Up until on or about November, 2012, RMLS delivered all MLS Services to members of JTHS, RAPB and RASL as well as other licensees that desired MLS Services.

5. On or about November 2012, Real Estate licensees, including brokers and their agents had a choice of which local REALTOR® association, either JTHS, RAPB or RASL, to obtain MLS information from and that RMLS would no longer directly deliver MLS information.
6. The business of each association JTHS, RAPB and RASL is to provide professional development, dispute resolution services and commercial products and services to their respective members who wish to market and sell real estate as well as MLS information.
7. Beginning in November 2012 JTHS, RAPB and RASL began to compete directly for members for MLS Services regardless of the member's primary association membership. In other words, a member of RAPB could obtain MLS Service from JTHS and vice versa.
8. Each association collects MLS dues and monies from their subscribing members and in return each association provides a host of critical services to members for Multiple Listing Service ("MLS") access (containing proprietary compilations of local real estate sales and critical marketing data) and the professional and technological services they offer to real estate licensees who are members.
9. JTHS and RAPB and RASL have members not only in Florida, but also several other states.
10. No matter where their members reside and/or conduct their business, both JTHS and RAPB and RASL are funded by the dues paid by their MLS members.

SUMMARY STATEMENT OF THE INJURY AT ISSUE

11. Upon information and belief, under the leadership of RAPB and RASL and by the Directors of RMLS from each of these three associations, RAPB, RASL and RMLS have embarked on a gradually escalating campaign of false and deceptive advertising not only touting their own business offerings, but also drawing direct false comparisons of RAPB and RASL and JTHS to the detriment of JTHS. This campaign escalated markedly in the weeks preceding the deadline date of March 31, 2013 for agents to renew MLS Service Contracts.
12. Through RAPB, RASL and RMLS' false ad campaign RAPB, RASL and RMLS have expressly and impliedly made false and deceptive statements in ads and emails regarding (among other things) association membership products, product pricing; and purported member savings for joining RAPB or RASL versus JTHS.
13. RAPB, RASL and RMLS' false statements of material fact in advertising and communications have appeared in emails specifically targeted to JTHS membership and potential JTHS MLS Subscribers; on the internet; in promotional market materials distributed in-person; and in

postcards which RAPB caused to be disseminated in Florida to JTHS members and JTHS MLS Subscribers and potential JTHS MLS Subscribers.

14. Through their false and deceptive advertising and other conduct RAPB, RASL and RMLS have brazenly sought to drive and have driven MLS Subscribers away from JTHS and diverted potential new mls members from joining JTHS thereby causing damage to JTHS.
15. RAPB, RASL and RMLS' false and deceptive advertising efforts have also injured and continue to injure the goodwill and reputation of JTHS.
16. RAPB, RASL and RMLS' false and deceptive advertising continues to injure JTHS and will continue to do so unless it is enjoined by this Court.

PARTIES

17. RAPB, RASL and JTHS are professional organizations relating to the real estate profession.
18. RMLS is a corporation owned jointly amongst RAPB, RASL and JTHS and delivers MLS data to each association for the associations to then deliver to their subscribers.
19. Plaintiff, JTHS is a Florida corporation and maintains its principal and only office location in Palm Beach County, Florida.
20. Defendant, RAPB is a Florida Corporation and maintains its principal office location in Palm Beach County, Florida.
21. Defendant, RMLS is a Florida Corporation with an office in Palm Beach County.
22. Defendant, RASL is a Florida Corporation with an office in St. Lucie County, Florida, but does business in Palm Beach County.
23. In terms of number of members, RAPB touts that it is the largest MLS System in Palm Beach County.
24. RMLS was created by the three (3) shareholders REALTOR[®] associations, RAPB, RASL and JTHS and on or about November 2012 the directors of RMLS voted to change the billing structure of RMLS whereby each association would compete for MLS Subscribers and provide MLS Service to those subscribers from a common database provided by RMLS.

JURISDICTION AND VENUE

25. This Court has jurisdiction over Plaintiff and Defendants because all are incorporated in Florida and registered with the Florida Secretary of State to do business in Florida; they maintain offices and representatives in Palm Beach County or they transact substantial business in Palm Beach County. All parties are corporate citizens of Florida and damages sought are in excess of \$15,000.00.

26. Venue is proper in this County because RAPB and RMLS Defendants reside and may be found in this County; Defendant RASL regularly transacts and solicits business in Palm Beach County; and Defendants have caused harm alleged in this Complaint to Plaintiff who resides and is principally based in this Palm Beach County, Florida.

SUBSTANTIVE ALLEGATIONS COMMON TO ALL COUNTS

27. In order to sell real estate in local Florida real estate markets, an individual or entity must hold a valid real estate license. Real-estate licensees compete for property listings and to represent real property purchasers. In Florida, among other things, real-estate licensees consist of sales associates, broker associates, and brokers. Certain real estate offices must also maintain real estate licensure.
28. Under long-standing "Board of Choice" policies and rules of the National Association of REALTORS® ("NAR"), real estate licensees are free to join any local association of their choosing. However, in order to function and compete effectively for home listings and home buyers in any local market, a real estate licensee should join a local real-estate association like JTHS or RAPB or RASL.
29. REALTOR® associations such as JTHS, RAPB or RASL are not by rule or regulation strictly tied to a particular county or city *per se*. Historically, though, their areas of operations, administration and REALTOR®-related products and services have been tailored to particular geographical markets such as local city, county, or a region containing a mixture of contiguous cities and counties.
30. Today, the market areas of REALTOR® associations like JTHS, RAPB and RASL and their members often overlap and involve real estate properties and markets in larger, contiguous geographical areas.
31. JTHS, RAPB and RASL offer competing products and services relating to real estate properties located in Palm Beach and St. Lucie Counties.
32. Part of the business of JTHS, RAPB and RASL is to provide MLS Service to its subscribers who wish to market and sell real estate. JTHS, RAPB and RASL compete directly for MLS members and on the product and service offerings they provide to both current and potential members.
33. JTHS, RAPB, and RASL MLS Services are funded by the MLS dues paid by their members for MLS data services and products and other services they provide their members for a fee.

34. The mix of services and benefits JTHS, RAPB and RASL provide members is similar. Many of these benefits and services are critical to effective competition in the local real estate market. These services and benefits include, but are not limited to:
35. Multiple Listing Service (“MLS”) access- MLS can be generally defined as a cooperative venture by which real estate brokers serving a common local market area submit their listings to a central service, which in turn distributes the information, for the purpose of fostering cooperation and establishing offers of compensation for procuring buyers among brokers and agents in real estate transactions. The MLS facilitates transactions by requiring the listing broker to provide a unilateral offer to compensation to cooperating brokers for the procurement of a buyer of their listing, putting together a home seller, who contracts with a broker who is a member of MLS, with prospective buyers, who may be working with other brokers (a/k/a cooperating brokers) who are also members of the MLS. Membership in the MLS is largely limited to member brokers who generally must possess a license to engage in real estate brokerage services or appraisal services and meet other criteria set by MLS rules. Although REALTOR® membership is not required for basic MLS access in the Eleventh Circuit (based on *Thompson v. Metro. Muti-List, Inc.*, 934 F.2d 1566 (11th Circuit 1991)); membership is required in order to obtain full access to all data sets provided by the MLS in order to more effectively compete.
36. MLS access is critical for a REALTOR® in a given local market and would be material to any decision to join or not join an MLS through a particular association: Nearly 100% of homes for sale in a given local market appear in a local MLS data compilation. When MLS-listed homes sell, REALTORS® update the MLS listing with the final sale price. The MLS listing then moves to an archive section of the MLS where appraisers and REALTORS® can access the data to perform a valuation of homes in the area based on recent closing prices. This information is called comparable data. As a matter of competence, nearly all listing agents use comparable data to determine the correct asking price for a home, and buyer representatives use the same data to determine the correct price to offer for a home. Without access to comparable data, a REALTOR® would be at a severe disadvantage in any local real estate market.
37. Also, listings and information updates are often mandatory in MLS. Punishments set by the MLS provider’s rules can apply when MLS policies and procedures are violated. MLS data compilations and associated software typically have for more powerful search and filter tools than online newspaper listings, REALTOR®.com or the public version of the MLS. Additionally,

MLS databases often have rich background information missing from other real estate information sources. MLS data often has closed sale prices and tremendous specific property information allowing real estate licensees and appraisers to compare subject properties with comparable ones that sold recently.

38. With respect to JTHS and RAPB and RASL members, real estate brokers own their respective listings in the RMLS system. RMLS, as of November 2012, through action of the Directors of which RAPB and RASL have twelve (12) of the sixteen (16) directors voted to allow RMLS data to be delivered on price and terms to be determined by each organization
39. On or about January 2013, RAPB and RASL elected to charge fees in the amount of \$299.00 per year to members for MLS access through their associations, which make up a substantial amount of their respective associations' revenue.
40. JTHS on or about March 2013 elected to charge MLS subscribers through its organization the amount of \$175.00 per year. As a result of this lower pricing of substantially the same product RAPB and RASL and to some extent RMLS started their campaign to discredit and make false and deceptive ads about JTHS and its delivery of MLS Services through JTHS.
41. Membership. MLS Membership in a MLS System offered by JTHS or RAPB or RASL is indispensable for a real estate licensee. Associations, including JTHS and RAPB and RASL provide MLS resources for members to market and sell real estate.
42. The price of and access to an MLS system and its benefits are critical for a REALTOR® in a given local market and would be material to any decision to join or not join a particular MLS service.

RAPB, RASL and RMLS's False Advertising Campaign

43. At all times material to this Complaint, Defendants have solicited current and potential JTHS MLS members to transfer to or to become RAPB or RASL MLS members through ads including false or misleading statements complained of in this suit, which RAPB or RASL disseminated or caused to be disseminated via the internet and USPS.
44. RAPB and RASL have embarked on a gradually escalating campaign of false advertising touting their own MLS service and drawing false comparisons of the associations to the detriment of JTHS. This campaign has escalated markedly in the weeks preceding the filing of this Complaint and continue to date. The recent escalation coincided with the distribution of invoices to JTHS members for MLS dues from RAPB. RAPB, RASL and RMLS have targeted false ads and emails to

JTHS members in Florida to dissuade them from joining JTHS MLS Services or continuing with JTHS for MLS service.

45. RAPB, RASL and RMLS's false ad campaign has been brazen: RAPB, RASL and RMLS have expressly made false statements in ads and emails regarding (among many other things) RAPB association MLS membership and size in Palm Beach County; product pricing; and purported member savings for subscribing to RAPB or RASL's MLS Service versus JTHS. The objective of RAPB and RASL's false advertising was to induce JTHS members and potential members to leave JTHS and join RAPB or RASL's MLS Service.
46. The media of RAPB, RASL and RMLS's false advertising and statements has run the gamut from unsolicited commercial emails, to internet ads to postcards which they caused to be disseminated to JTHS members and potential JTHS members.
47. RAPB, RASL and RMLS's false advertising and false statements continues and will continue unless enjoined by this Court.

COUNT I

FALSE AND DECEPTIVE ADVERTISING

VIOLATION OF 15 U.S.C. §1125(a)

48. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.
49. JTHS and RAPB and RASL are competitors which compete directly for MLS members and on the product and service offerings they provide to potential MLS Members relating to real estate sales in the Palm Beach and St. Lucie counties.
50. The Lanham Act, under 15 § 1125(a)(1)(B), provides, in pertinent part, "Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any...false or misleading description of fact, or false or misleading representations of fact, which...in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act."
51. JTHS is a "person" within the meaning of the Lanham Act.
52. As set forth above, RAPB, RASL and RMLS have caused the dissemination of commercial advertising or promotion in connection with its goods or services. That advertising was not only

solicited sales of their MLS products and services, but also advanced their business interests to the detriment of JTHS's interests.

53. RAPB, RASL and RMLS advertising or promotions have contained literally false statements and representations of fact and/or statements and representations which implicitly convey a false impression, are misleading in context, or likely to deceive consumers.
54. RAPB, RASL and RMLS's false and/or misleading advertising statements misrepresented the nature, characteristics and qualities of RAPB and RASL's goods, services or commercial activities.
55. RAPB and RASL's advertising statements in advertising were made in or had an effect on interstate commerce.
56. RAPB and RASL's advertising statements and representations alleged above were literally false and thus presumptively deceptive; or RAPB and RASL's advertising statements and representations were actually deceptive to the targeted audience or had the tendency to deceive the targeted audience.
57. RAPB and RASL's statements and representations in advertising alleged above were material in that they were likely to influence purchasing decisions of the targeted audience.
58. RAPB and RASL's false or misleading statements and representations in advertising have directly and proximately caused JTHS to lose sales of MLS memberships and MLS member-related fees and thereby suffer damages and loss of revenue; and directly and proximately caused JTHS to lose profits and revenue from JTHS's MLS offerings to members and potential members. Concurrently, as a direct result of its false ads, RAPB and RASL have profited by the transfer or diversion of JTHS members or prospective members.
59. RAPB and RASL's false or misleading statements and representations in advertising have also injured or are likely to injure the good will and reputation of JTHS.
60. RAPB and RASL and RMLS willfully and deliberately made the foregoing false or misleading statements and representations in advertising and emails, or made such statements in bad faith.

WHEREFORE, Plaintiff requests that this Court enter judgment against Defendant for the following:

- a. Any damages suffered by JTHS by reason of RAPB, RASL and RMLS's false advertising and false statements;
- b. Treble damages pursuant to 15 U.S.C. §1117;

- c. All profits and revenues RAPB, RASL and RMLS derived from the false advertising or such sums as the Court shall find to be just, according to the circumstances of the case;
- d. Reasonable attorney's fees and costs;
- e. Pre-judgment and post-judgment interest;
- f. A temporary and permanent injunctions; and,
- g. Such other and further relief as the Court may deem necessary or appropriate.

COUNT II

INJUNCTIVE RELIEF

- 61. Plaintiff hereby incorporates paragraphs 1-60 by reference as though fully set forth herein and further alleges as follows:
- 62. The Lanham Act creates statutory and legal duties for Defendant which it owes to Plaintiff, and the Lanham Act creates legal rights for Plaintiff.
- 63. The Lanham Act, under 15 § 1125(a)(1)(B), imposes on Defendants a duty not to engage false or misleading advertising and unfair competition resulting therefrom. As set forth above, Defendants have violated that duty, injured Plaintiff, and violated one or more cognizable legal rights Plaintiff possesses.
- 64. Moreover, either concurrently or alternatively, § 817.415, Fla. Stat., imposes on Defendant a duty not to offer a service as "Free" unless it is in fact free and all conditions on the offer are disclosed. This statute creates a right in Plaintiff.
- 65. Also, concurrently or alternatively, Florida common law creates legal duties and rights in competitors. As set forth above, RAPB, RASL and JTHS compete for a common pool of customers. Florida common law imposes on RAPB and RASL a duty not to harm a competitor through fraudulent or deceptive conduct which would likely cause consumer confusion.
- 66. As set forth above, RAPB and RASL through its false statements of material facts in ads, has concurrently or alternatively engaged in unfair competition where those statements and ads were deceptive and likely to cause confusion among the targets of the ads. Through such unfair competition RAPB and RASL have harmed JTHS. RAPB and RASL have thereby violated its duty not to engage in unfair competition and harmed JTHS.
- 67. Defendants continue on a course of violating one or more of its statutory and common law duties set forth above and Plaintiff will likely prevail in showing one or more of these violations.

68. Plaintiff has no fully adequate remedy at law by virtue of Defendants' on-going course of conduct.
69. Irreparable injury to Plaintiff has and will be suffered unless injunction issues to prevent Defendant from continuing on the foregoing course of conduct, including its false ads, which if unabated will continue to cause or are likely to cause diversion of members from JTHS to RAPB and RASL and to injure Plaintiff's good will and reputation.
70. Any potential injury to the Defendants attributable to an injunction to enjoin the conduct alleged above is outweighed by the injury that Plaintiff and the public will suffer if such injunction is not issued, and such injunction would not be adverse to the public interest.

WHEREFORE, Plaintiff prays for a temporary and permanent injunction:

- a. Enjoining the Defendants as set forth in Plaintiff's subsequent motion for injunction or as requested at trial;
- b. Awarding reasonable costs and attorney's fees; and
- c. Awarding such other relief as the Court may deem just and proper.

COUNT III

FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

71. Plaintiff realleges paragraphs 1-60 by reference as though fully set forth herein and further alleges as follows:
72. Chapter 501, Florida Statutes, known as the Florida Deceptive & Unfair Trade Practices Act (FDUTPA) is to be liberally construed to protect the public, such as the Plaintiff in this case, from those who engage in unfair methods of competition, or unconscionable, deceptive or unfair acts in the conduct of any trade or commerce.
73. RAPB, RASL and RMLS have engaged in deceptive and unfair trade practices by their actions as set forth herein above.
74. The deceptive and unfair practices of RAPB, RASL and RMLS are likely to deceive and have deceived the consumers of JTHS MLS Services.

75. Plaintiff has been damaged by the deceptive actions of RAPB, RASL and RMLS, including monetary losses, loss of business opportunities, inconvenience, frustration and other incidental and consequential damages.

WHEREFORE, Plaintiff demands judgment against defendants for all damages and equitable relief available under applicable law, including (but not limited to), compensatory damages, incidental and consequential damages, costs, interest, attorneys fees (pursuant to FDUPTA) and any other further relief the Court deems proper.

COUNT IV

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS

76. Plaintiff re-alleges paragraphs 1-60 by reference as though fully set forth herein and further alleges as follows:
77. Plaintiff has established business relations with subscribers desiring to purchase MLS Services through JTHS and those that may desire to purchase MLS Services through JTHS.
78. Defendants have full knowledge of these business relationships established between subscribers to MLS Services through JTHS.
79. Defendants through their actions as set forth herein have intentionally and unjustifiably interfered with the business relationship established by JTHS.
80. As a result of the Defendants' actions JTHS has been damaged.

WHEREFORE, Plaintiff seeks damages against Defendants together with costs, attorney fees and such other relief as the court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims so triable in this action.

Dated: April 25, 2013

RESPECTFULLY SUBMITTED,

LAW OFFICE OF GARY J. NAGLE

Attorney for JTHS, PLAINTIFF

14255 U.S. Highway, Suite 203

Juno Beach, FL 33408

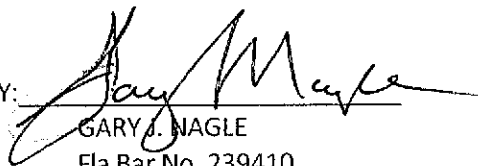
(561)626-0270 FAX: 626-1244

Service Emails:

Gary@naglelawfl.com

Jody@naglelawfl.com

BY:



GARY J. NAGLE
Fla Bar No. 239410