



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

NATIONAL ASSOCIATION OF )  
REALTORS® and REALTORS® )  
INFORMATION NETWORK, INC. )

Plaintiffs, )

vs. )

C.A. No. \_\_\_\_\_ - \_\_\_\_\_

MOVE, INC. and REALSELECT, INC., )

Defendants. )

**VERIFIED COMPLAINT FOR A DECLARATORY JUDGMENT**

Plaintiffs National Association of Realtors® (“NAR”) and Realtors® Information Network, Inc. (“RIN”), by their undersigned attorneys, for their verified complaint for declaratory and other relief against defendants Move, Inc. (“Move”) and RealSelect, Inc. (“RealSelect”), allege as follows:

**NATURE OF THE ACTION**

1. NAR and RIN have agreements with the Canadian Real Estate Association (“CREA”) and another corporate entity, Real Estate Domains, LLC (“RED”), to license the top level domain name, “.Realtor,” outside of the United States. Move and RealSelect contend that licensure by NAR of top level domain names that include the name of a geographic location outside the United States, and top level domain names for websites that contain property listing information for properties located outside the United States, without their consent would

violate various agreements between NAR/RIN and Move/RealSelect. NAR and RIN disagree with defendants' position.

2. This dispute leaves NAR and RIN in an untenable position that requires judicial intervention. NAR and RIN can comply with their agreements with third parties and thereby risk a claim for breach of contract by Move/RealSelect. Alternatively, NAR and RIN can accede to Move and RealSelect's arguments, forego the benefits of licensing the top level domain name ".Realtor", and risk claims for breach of contract by CREA and RED. Because NAR and RIN are ready to license ".Realtor" domain names in Canada and need to take steps to begin the proposed licensing of domain names elsewhere outside the United States, prompt judicial resolution is necessary.

3. NAR and RIN therefore seek a declaratory judgment that nothing in NAR/RIN's agreements with Move or RealSelect (a) requires NAR or RIN to obtain the consent of Move or RealSelect in order to license top level domain names that include the name of a geographic location outside the United States, or top level domain names for websites that contain property listing information for properties located outside the United States, or (b) creates any financial obligation on the part of NAR or RIN to Move or RealSelect as a result of licensing such domain names.

## **PARTIES**

4. NAR is an Illinois not-for-profit corporation with headquarters at 430 N. Michigan Avenue, Chicago, Illinois 60611.

5. RIN is an Illinois for-profit corporation and is a wholly-owned subsidiary of NAR. RIN is also headquartered at 430 N. Michigan Avenue, Chicago, Illinois 60611.

6. Move is a publicly-traded Delaware for-profit corporation. Its principal place of business is at 10 Almaden Blvd., San Jose, California 95113. Move was formerly known as HomeStore.com Inc. and also as NetSelect LLC.

7. RealSelect is a for-profit Delaware corporation and is a majority-owned subsidiary of Move. Its principal place of business is at 30700 Russell Ranch Road, Westlake Village, California 91362.

## **JURISDICTION AND VENUE**

8. Jurisdiction and venue are proper in the Court of Chancery. Both Move and RealSelect are incorporated in Delaware. In addition, NAR, RIN, Move, and RealSelect, are parties to a Consent Agreement dated September 30, 2014 (the “Consent Agreement”) (Exhibit A). Section 9(a) of the Consent Agreement states, in pertinent part, that each of the parties “agrees to submit any dispute arising under the Operating Agreement after the date of this Agreement . . . to the exclusive jurisdiction of the Court of Chancery of the State of Delaware. . .”

Plaintiffs' claims arise, at least in part, under the referenced Operating Agreement (discussed below).

## **FACTUAL BACKGROUND**

### **I. NAR AND REALTOR.COM**

9. NAR is a professional association of more than one million members involved in all aspects of the brokerage of residential and commercial real estate. The term "Realtor<sup>®</sup>" is a registered collective membership mark that identifies a real estate professional who is a member of NAR and who subscribes to NAR's Code of Ethics. The term "Realtor<sup>®</sup>" is also a registered trademark that identifies the National Association of Realtors<sup>®</sup> as the source or origin of various products and services.

10. Realtor.com is the official website of NAR. On Realtor.com, individuals can search real estate listings for millions of homes for sale across the United States and Canada.

### **II. NAR IS AWARDED THE ".REALTOR" TOP LEVEL DOMAIN NAME**

11. Website addresses on the Internet have historically been organized around a few "top level domains" ("TLDs"). Examples of TLDs include ".com", which typically denotes a commercial website; ".gov", which typically denotes the website of a governmental entity; and ".edu", which typically denotes an educational website.

12. The Internet Corporation for Assigned Names and Numbers (ICANN) is the organization that manages the Internet's domain site system.

13. In early 2011, ICANN approved an expansion of the number of generic top-level domains. As part of this expansion, ICANN allowed corporations and other persons to create domains. In 2012, NAR applied for the right to own the top level domain name “.Realtor.”

14. In July 2014, ICANN granted NAR the right to administer the top level domain name “.Realtor.”

### **III. NAR LICENSES THE “.REALTOR” TOP LEVEL DOMAIN NAME**

15. CREA owns the Realtor<sup>®</sup> mark in Canada. In 2012, NAR entered into an exclusive marketing partnership with CREA pursuant to which Realtor<sup>®</sup> members of CREA will also be able to license and use the “.Realtor” domain in Canada.

16. In October, 2014, NAR began licensing domain names in the “.Realtor” TLD to members of NAR and CREA.

17. NAR plans to provide the first 500,000 members who register for a “.Realtor” domain name with a free one-year license, and CREA will provide 10,000 free domain names to members on a first-come, first-serve basis. After that threshold has been reached, a Realtor<sup>®</sup> licensed to use the “.Realtor” domain will pay \$39.95 a year for the license.

18. NAR has entered into an agreement with RED to license the domain name, “.Realtor”, outside of the United States and Canada.

19. As explained below, threats by Move and RealSelect have prevented NAR from fully implementing its agreements with CREA and with RED. They are currently interfering with licensure of “.Realtor” domain names in Canada, and they are raising an issue with respect to NAR’s plans to license the top level domain “.Realtor” in other foreign countries.

#### **IV. THE RELATIONSHIP BETWEEN NAR/RIN AND MOVE/REALSELECT**

20. In November of 1996, NAR, via its wholly owned subsidiary, RIN, contracted with RealSelect to operate Realtor.com on NAR’s and RIN’s behalf. That arrangement was memorialized in a number of agreements, including several that are pertinent to the dispute that precipitated this lawsuit.

21. One of the November 1996 agreements is referred to as the Operating Agreement (the “Operating Agreement”). Under the Operating Agreement (Exhibit B), RealSelect is responsible for managing and operating the business of soliciting, collecting, and processing real estate information and displaying Real Property Ads (the display of real property listing information on the Internet) on the website Realtor.com.

22. Section 3.2 of the Operating Agreement contains the following exclusivity provision:

Except as provided in this Agreement, during the term of this Agreement, [RealSelect] and RIN shall not engage, directly or indirectly, in the Electronic Display of Real Property Ads and shall not, directly or indirectly, develop, market, sell, acquire an equity position in, be engaged or employed by, or endorse any service or enterprise, or authorize, appoint or engage any other Person for the purpose of the Electronic Display of the RPA Business.

23. A second agreement from November 1996 is referred to as the Joint Ownership Agreement (the “Joint Ownership Agreement”) (Exhibit C). In the Joint Ownership Agreement, the parties agreed to joint ownership of certain software anticipated to be required in order to facilitate Electronic Display of Real Property Ads on the website Realtor.com.

24. Article IV of the Joint Ownership Agreement contains the following exclusivity provision:

Each of the parties agrees for itself and on behalf of its Controlled Entities that, except as permitted in the Operating Agreement, during the term of the Operating Agreement, it and its Controlled Entities shall not engage, directly or indirectly, in the Electronic Display of Real Property Ads (each as defined in the Operating Agreement) and shall not directly or indirectly develop, market, sell, acquire an equity position in, be engaged or employed by, or endorse, sponsor or support any service or enterprise or authorize, appoint or engage any other Persons for the purpose of the Electronic Display of Real Property Ads or real estate information similar to the content of Real Property Ads.

25. A third agreement entered into contemporaneously with the Operating Agreement and the Joint Ownership Agreement is the Trademark License Agreement between NAR and RealSelect (the “Trademark License Agreement”) (Exhibit D). Under the Trademark License Agreement, NAR granted RealSelect an “exclusive worldwide license *except for use in Canada* to use the Licensed Mark in connection with the RealSelect Business pursuant to the Operating Agreement” (emphasis added). The term “Licensed Mark”, as used in the Trademark License Agreement, refers to “Realtor.com” and to certain other domain name extensions. The term does not include NAR’s registered mark “Realtor<sup>®</sup>” standing alone, and it does not include the top level domain name “.Realtor”.

26. On April 6, 2005, NAR/RIN and Move/RealSelect entered into an Exclusivity Termination Agreement (the “Exclusivity Termination Agreement”) (Exhibit E). The purpose and effect of the Exclusivity Termination Agreement were to limit to the United States the geographic scope of the parties’ exclusivity obligations to each other. Specifically, the Exclusivity Termination Agreement states that:

. . . Homestore [the predecessor to Move] and NAR hereby release each other from any and all Exclusivity Obligations . . . regarding the aggregation, display, distribution (on the Internet or otherwise), exploitation and/or other activities of Foreign Property Listings . . . . Accordingly . . . Homestore and **NAR may engage,**

**directly or indirectly, in any business or activity related to Foreign Property Listings. . . .**

Exclusivity Termination Agreement § 1 (emphasis added). The term “Foreign Property Listings” is defined to include “any and all listing data concerning the sale or lease of real property located outside of the United States of America and/or territories thereof.” *Id.* In other words, NAR was released from any exclusivity obligations related to any listing data concerning the sale or lease of real property located outside of the United States (“the Exclusivity Obligations”).

27. The “Exclusivity Obligations” that were terminated by the Exclusivity Termination Agreement expressly included “the restrictions set forth in Sections 3.2 of the Operating Agreement and Article IV of the November 26, 1996 Joint Ownership Agreement between NAR and Homestore,” as well as “any additional obligations or restrictions of a similar nature which may be contained in any other agreements between any of the parties hereto.” These “other agreements” include the Trademark License Agreement.

28. The Exclusivity Termination Agreement provides that, as of April 6, 2005, whatever exclusivity obligations NAR/RIN had owed to Move/RealSelect were inapplicable to any business or activity related to listing data concerning the sale or lease of real property located outside of the United States.

## V. THE TLD AGREEMENT

29. After NAR applied for the top level domain name “.Realtor”, Move began to raise concerns about how that domain name might affect the business of Realtor.com. That business depends significantly on attracting visitors to the Realtor.com website. Move represented that it did “not wish to get in the way of NAR licensing dot-REALTOR domains to its members,” and that it was “not trying to garner a revenue-share from NAR’s dot-Realtor or other TLD initiatives.” However, Move advised that it was concerned that so called “geographical” domains, such as “Chicago.Realtor” or “California.Realtor,” could affect Realtor.com’s placement in search results from search engines. It feared that an adverse placement in search results could have an effect on the ability of Realtor.com to attract visitors to its website.

30. Move and RealSelect also asserted that certain aspects of NAR’s ownership and licensure of top level domains generally violated the exclusivity provisions of the Operating Agreement and Joint Ownership Agreement. NAR and RIN strongly disagreed with Move’s assertions.

31. Ultimately, in light of their long-standing relationship with Move, NAR and RIN voluntarily agreed to enter into another agreement with Move and RealSelect, known as the Top Level Domain Agreement (the “TLD Agreement”) (Exhibit F). The TLD Agreement became effective as of July 24, 2013. It

provides Move with certain rights concerning the Realtor® Domain Names Program— defined as a program to “license or sell to REALTORS® *in the United States* and entities owned by those REALTORS® domain names using the New TLDs.” TLD Agreement Recital G (emphasis added). The TLD Agreement expressly refers to its limited geographic scope – “in the United States” – in several other places throughout the document.

## **VI. MOVE AND REALSELECT ASSERT THAT NAR’S FOREIGN LICENSURE ACTIVITIES VIOLATE NAR/RIN’S EXCLUSIVITY OBLIGATIONS**

32. When NAR announced that it would begin making domain names ending in “.Realtor” available to members of NAR and CREA, Move and RealSelect advised NAR and RIN of their position that the licensure of domain names that included geographic names of locations outside the United States and domain names for sites that display property listings for properties located outside the United States would violate (a) the TLD Agreement and (b) the Trademark License Agreement.

## **VII. THE ASSERTIONS BY MOVE AND REALSELECT ARE WITHOUT MERIT**

33. With regard to the TLD Agreement, the plain language of the TLD Agreement limits any rights that Move might have in NAR’s licensure of TLDs to areas “in the United States.” This limitation follows from the fact that the 2005 Exclusivity Termination Agreement provides that Move and RealSelect have no

exclusivity rights with regard to business activities relating to foreign property listings. Thus, the inclusion in the TLD Agreement of an express geographic limitation concerning activities “in the United States” was meant to, and did, make clear that Move continued to have no rights or authority concerning NAR/RIN’s activities relating to the advertisement of foreign (ex-U.S.) property listings, including the licensing of TLD’s containing foreign geographic terms and the licensing of TLD’s for sites that display foreign property listings.

34. Likewise, nothing in the Operating Agreement or the Joint Ownership Agreement gives Move or RealSelect any rights, or imposes any restrictions, concerning NAR’s licensure of domain names for websites that display foreign property listings. The licensure of domain names was not even considered in those Agreements.

35. In any event, to the extent that the exclusivity provisions of those Agreements would have allowed Move or RealSelect to interfere with NAR’s licensure of TLDs (which they did not), the Exclusivity Termination Agreement limits the geographic scope of these exclusivity provisions to the United States. The licensing of the top level domain “.Realtor” for websites that include the display of listing data outside of the United States amounts to “business or activity related to Foreign Property Listings,” which is carved out from the parties’ exclusivity obligations.

36. NAR's licensure of top level domains outside the United States also does not violate the Trademark License Agreement. By its plain terms, Move's license excludes Canada ("exclusive worldwide license *except for use in Canada*"). Therefore, the Trademark License Agreement provides no basis for any claim by Move or RealSelect regarding NAR's licensure of the ".Realtor" top level domain to CREA members in Canada.

37. Moreover, beyond the Canadian exclusion, the "Licensed Mark" to which Move has a license is the term "REALTOR" when associated with the ".com" extension – *i.e.* "REALTOR.com." The license does not convey to Move or to RealSelect a right to use the term "Realtor<sup>®</sup>" generally. Nor does it convey any right with respect to domain names with the ".Realtor" extension. For that additional reason, licensing of the ".Realtor" domain name falls outside the scope of the exclusive trademark license granted to Move or to RealSelect.

38. Finally, to the extent that the original scope of the Trademark License Agreement would have implicated NAR's foreign licensure activities at all, the 2005 Exclusivity Termination Agreement released NAR from "any and all Exclusivity Obligations" such that "NAR may engage, directly or indirectly, in any business or activity" – including licensure – "related to Foreign Property Listings." As noted above, the "Exclusivity Obligations" from which NAR was released included not just those in the Operating and Joint Ownership Agreements,

but “any additional obligations or restrictions of a similar nature which may be contained in *any other agreements between any of the parties hereto.*”

39. In sum, nothing in the TLD Agreement, the Operating Agreement, the Joint Ownership Agreement, or the Trademark License Agreement supports Move’s position that NAR’s licensure, without the consent of Move or RealSelect, of TLD names that include the name of geographic locations outside the United States and TLD names for websites that contain property listing information for properties located outside the United States violates any contractual obligation to Move or RealSelect, or provides for any financial obligation of NAR to Move or RealSelect as a result of such licensure.

**VIII. MOVE’S ALLEGATIONS OF BREACH IMMEDIATELY THREATEN NAR’S CONTRACTUAL RELATIONSHIPS WITH THIRD-PARTIES**

40. Move’s and RealSelect’s assertion that NAR and RIN will be in breach of the parties’ agreements if they license domain names with foreign geographic names and listing information for properties outside the United States without the consent of Move or RealSelect threatens NAR’s and RIN’s relationships with third-parties, including CREA and RED. Although NAR and RIN have entered into agreements to license top level .Realtor domain names in Canada and in other countries, NAR cannot fully implement these agreements while the threat of litigation by Move or RealSelect for breach of contract hangs

over it. Thus, for example, NAR has withheld providing CREA with geographical TLDs while the dispute with Move and RealSelect is pending.

41. NAR has explained to Move that Move's position that licensure of the top level domain name ".Realtor" outside the United States without the consent of Move is without merit (See letter of November 5, 2014, attached as Exhibit G). It has asked Move and RealSelect to acknowledge, among other things, that the rights and obligations set forth in the TLD Agreement apply only to the licensing of domain names in the United States, and that nothing else in the agreements between NAR/RIN and Move/RealSelect requires NAR to obtain Move's or RealSelect's consent to license top level domain names outside the United States, or provides for any financial obligation of NAR to Move as a result of such licensure.

42. Despite NAR's request, Move and RealSelect have refused to provide that acknowledgement. On the contrary, they continue to take the position that NAR may not license ".Realtor" domain names outside the United States.

43. Accordingly, absent a declaratory judgment establishing the respective rights and obligations of the parties concerning NAR's foreign licensure of the top level domain ".Realtor", NAR and RIN are faced with a dilemma. They can halt licensure in Canada and refuse to comply with their contractual obligations to CREA and RED – thereby exposing themselves to a claim for breach

of contract from these third-parties and losing the benefits to themselves and to NAR members of use of the TLD “.Realtor”. Alternatively, they can fully implement their foreign property listing TLD licensing program and risk a claim for breach of contract by Move and RealSelect.

**COUNT I:  
DECLARATORY JUDGMENT**

44. NAR and RIN repeat and reallege the allegations of paragraphs 1 through 43 as if fully set forth herein.

45. There is a direct and immediate controversy between the parties regarding NAR’s and RIN’s rights to license TLDs outside of the United States. That controversy arises out of disputed interpretations of the Operating Agreement, the Joint Ownership Agreement, the Trademark License Agreement, and the TLD Agreement.

46. The parties’ interests in this dispute are real, immediate, and adverse.

47. The issues presented herein are ripe for a judicial declaration. NAR and RIN are unable to move forward with full implementation of their agreements with CREA and others due to defendants’ position that doing so would violate various agreements. Accordingly, NAR and RIN currently are suffering concrete harm as a result of the dispute with Move and RealSelect.

48. Delaying resolution of this dispute will further compound plaintiffs’ injury by increasing the risk that NAR and RIN will be sued for failure to comply

with their licensing obligations to third-parties. By contrast, a judicial declaration of the parties' rights under the contracts at issue will substantially resolve the dispute between the parties.

WHEREFORE, NAR and RIN seek an order:

A. Declaring that:

1. Move's and RealSelect's rights and obligations set forth in the TLD Agreement dated July 24, 2013, do not extend to the licensing of domain names for websites that include the name of geographic locations outside the United States or to domain names for websites that contain property listing information for properties located outside the United States.
2. Nothing in the Trademark Licensing Agreement affects the licensing of ".Realtor" domain names by NAR and RIN.
3. In the event that a geographic area located outside the United States has the same name as a Geographical Domain Name, NAR and RIN are not prohibited from licensing or selling such geographical domain name outside the United States, provided that the content of any website resolving at such geographical domain name outside the United States does not display any significant number of residential properties located in the United States.

4. Nothing in any agreement to which they are a party requires NAR or RIN to obtain Move's or RealSelect's consent to license top level domain names outside the United States, or provides for any financial obligation of NAR or RIN to Move or RealSelect a result of such licensure.

B. Awarding NAR and RIN their attorneys' fees and costs incurred in this action; and

C. Granting such other, further and different relief as the Court may deem just and proper.

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