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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061031
Party	Plaintiff Jeffrey Schermerhorn
Correspondence Address	JEFFREY SCHERMERHORN 7070 CURTISS AVENUE SARASOTA, FL 34231 UNITED STATES jsny72@gmail.com
Submission	Opposition/Response to Motion
Filer's Name	Jeffrey Schermerhorn
Filer's e-mail	jsny72@gmail.com
Signature	/jeffrey schermerhorn/
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Attachments	2nd Answer To Motion .pdf(109346 bytes)

United State Patent and Trademark Office
Before The Trademark Trial and Appeal Board

Jeffrey Schermerhorn,
Petitioner,
v.
National Association of Realtors.
Respondant

Cancellation No. 92061031
Registration No. 519,789
Mark: Realtor

Petitioners Motion to Deny and Cancel the Respondent's Motion for Summary Judgment with Supporting Documentation and Response to Motion.

I. INTRODUCTION

Jeffrey Schermerhorn as the Petitioner does acknowledge the intent to cancel Registration No. 519,789 for the mark "realtor" based on the basis of genericness along with misrepresentation in original filing for mark.

The National Association of Realtors (hereinafter "Respondent" or "NAR") claims that as a "Member" of their Association I am in violation of the Membership and not entitled to bring any action against the NAR or for their Registered Trademark.

In Response the NAR's Membership is first of all a Contract of Adhesion whereas it is not a negotiable Contract whereas they include that no member is estopped from challenging the registration at issue when in fact only Members are indoctrinated about the mark when forced into being a Member of the NAR (exhibits attached) showing proof that Membership is not willful or voluntary. As for the basis for License Estoppel my original request for a Trademark was in fact filed in Febuary 1, 2013 for Serial Number 85838448 with the USPTO. Only when denied due to procedures I was next required to file for a cancellation of the Mark "realtor" as it is believed to be generic.

In August 2013 I then became a Licensed Real Estate Agent with the State of Florida as a Licensed Sales Associate. Under Florida Law a newly Licensed Real Estate Agent is Required to work under a Licensed Florida Broker for the First 2 Years of being Active. I was then Hired by Capital Real Estate Enterprises Inc. on September 4, 2013. Under the Florida Constitution, Florida is a Right to Work State.

Under Florida Statue One will not be forced into Membership and is free to work for any employer.

Fla. Const. Article 1, § 6§ 6. Right to Work

The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike. (Constitution Amended by General Election, 1944; Revised by General Election November 5, 1968)

Beginning in October 2013 my Employer started being forced to make me join the NAR as he was being pressured by the NAR, FAR and the Local SARASOTA REALTOR BOARD. I was forced to join against my will and against my believe or desire to join the NAR. I lived under the Constitution Of Florida as a Florida Citizen. Nowhere on the Membership Agreement of NAR or the Local Association is there a box that you agree to waive your Constitutional rights as a citizen for the state of Florida. The very laws that allow Florida as a Right to Work State without being forced to join Membership or Unions. The Exhibit showing the chain of emails from my broker indicating I join NAR or he will be fined and he will have to terminate my employment for not joining the NAR. Within the emails will also show that the Florida Association of Realtors under the control of the National Association of Realtors searches the States Database for anyone licensed and working that is not a member of NAR. The email was also given an attachment for my employer to terminate me though the State of Florida's Department of Business and Professional Regulations by force by means of financial fines as punishment for him or terminate my employment. Several emails followed (see as attachments) to the point I finally joined on October 24, 2013 as a last resort and the last day to join and the ability to continue to work.

The Petitioner Jeffrey Schermerhorn request that being forced into Membership and against Florida's Constitutional Rights that no such action be taken on basis of licensee estoppel.

II. STATEMENT OF FACT

Although NAR is the largest Trade Organization it is believed that it is not a voluntary organization. Membership is required. Not only is Membership required but as a Licensed Real Estate Agent unless you are a Member of NAR you do not have access or the ability to List, Sell or Market or be able to conduct business in any type of Real Estate Transaction unless you have access to the Local MLS service. NAR is the owner via local Realtor Associations of each MLS service out there. Please see exhibit for MLS ownership. Each of the Local Realtor Associations own the MLS. Without access to MLS owned by NAR one could not work. Therefore, by force requiring one to join regardless or choice such as myself.

NAR claims to have one million members it is my intent as indicated in request in our Discovery with NAR in this earlier process, to show though a survey of existing members that an overwhelming amount estimating 80 plus percent of the NAR's Membership agree with my Motion to prove genericness of the mark "realtor". The NAR has denied my request for disclosure verifying or knowing my statement of genericness is completely accurate therefore denying my request to access the membership to be able to survey from within. Not to mention or including the general publics opinion that realtor is also as generic as the word "internet" (once a trademark) or as common as a the word smartphone. A word so common and synonymous with cellular technology that no one could claim this as trademark. The use and comparison of smartphone, a word that has been around less then 15 years relating to a type of cellular telephone and compared to the year the word "realtor" claimed to be first used in use, but yet never filed for trademark until 1949, 1950. Nearly 34 years later and claiming it is not "common" or "Generic" is unrealistic or reasonable to believe it is as synonymous with Real Estate as the only word to describe one that would represent a Licensed Person .

I also claimed use before 1916 and therefore the initial application to be not accurate. The example for this type of action and how to prove similar of the word realtor would be the song "Happy Birthday" once thought to be a protected piece of property but now proven to be generic.

As I Jeffrey Schermerhorn currently Licensed as indicated by NAR and a Member is as indicated. It is against my will and against the Florida State Constitution as a Right to Work State as proven in the emails I was forced to join as a Member. Regardless of my desire or want I had no choice to join so I could provide income to support my wife and children. Being forced to join the Association it is a requirement to attend the New Member Orientation.

My continued renewal is required or be fired as shown in emails from my employer.

III. DISCUSSION

As NAR has tried to point out random case law they have overlooked or ignored the precedent and several landmark cases that provide clear and distinctive case law more appropriate to mention. The Sherman Antitrust Act was established and enforced to prevent one company, organization or group from dominating such an industry. The National Association of Realtors claims just that with there actions, ownership interest, rules, enforcement, and total control of the Real Estate market is evident and only time before this is brought against the National Association Of Realtors. The NAR owns everything in the chain all the way down to the Electronic Lock Boxes used and the services providing access to such Lockboxes. This is not disclosed to the general Membership or any other services such as MLS's. The overall membership is misled as to these facts. When one being forced to join the NAR Membership you are also required to join the MLS in your area. It is deceptive practices to not indicate such actions knowing members would raise concern and issue as they are required to pay additional amounts of money per years to have access needed to be able to work. It is a monopoly they have over then entire industry. Again, I in my request for disclosure from the NAR to disclose all vested interest an income streams they denied my request. This request would show how the NAR fails to properly disclose business relationships they own or have. Most every industry for example, banking would be required to make such disclosures even if those services are not being used by the consumer or member. In this case the NAR does not disclose any other services or relationships they have or own to anyone. This is another issue I am sure to be public soon.

As I am not an attorney and doing this Pro Se in further case law one could assert RICO statues being used to enforce Civil cases that are as widely used today as a tool or defense against such organizations that force membership or business to deal with there organization such as NAR. RICO Statue in Civil Case Law would be that of a company or organization using force to violation of any Federal Law. Using RICO to violate the Sherman Anti Trust Laws to control the industry by means of membership, MLS control, right to work laws and so on. Control of the MLS controls the Listing or Sale of real estate is controlling the ability to work unless you're a member of NAR. If you can't access or have very limited access and your ability to work and your forced by joining as a member then these are issues I am forced to deal with and be an ongoing member against my will or desire to be employed and earn a living.

IV. WAIVER

By filing an answer and not asserting the defense of standing, me being a member of NAR, then the NAR has waived their right of defense and standing and motion to deny NAR's Motion to Summary Judgment based on license estoppel should be denied and allow the Trial and Appeals Board to hear the case all the merits of the case and allow the due process to take place in a unobstructed process not influenced by the largest Lobbying organization in the United States according to NAR's own claim.

V. ENFORCEMENT

Although the NAR tries to enforce such a generic mark it becomes selective to whom they enforce actions with. It is hard to understand when the National Association of Realtor tried to enforce their claimed mark when in fact they sold their very own Domain name and rights to www.Realtor.com for nearly \$950 Million to Rupert Murdoch's organization. So if NAR can sell their own name and rights how can they enforce their own Trademark one would ask. The fact is the NAR has selective abandonment of their mark knowing they can never enforce protection of the word realtor. For example just to name one aspect of non enforcement is every internet search engine profits from the use of the word realtor, yet NAR is never compensated for such use. This is clearly abandonment and therefore the request for summary judgment should be denied allowing this to be decided with due process and the Trial and Appeal Board to hear the case in its entirety. As this is not the first nor the last attempt by me or others to make this generic though the USPTO I truly believe the years of due diligence, research, and overwhelming proof this will be a clear and precise case to be decided.

VI. TERMINATION OF MEMBERSHIP

Florida being a right to work state under Florida's Constitution and NAR's policies forcing membership as proven, I would be unable to work and in Real Estate business as it is controlled completely by NAR.

VII. NARS EXHIBITS

NAR has used the following EXHIBITS A, B, and C. In Exhibit A. it is with Effective Date January 1, 2015. These are neither signed by me and obviously not the same as those when forced to join in October 2013. This shows nothing to its members what they agree to or what they must sign or agree to. If an organization requires understanding of its By Laws they should be initials or disclosures on each page. Disclosure such as a home mortgage loan, every page is acknowledged with initial or signature. As these can change at any time or without notice as to what changes occur over previous versions. Therefore, I ask that Exhibit A be dismissed and no consideration should be taken. Furthermore, the date of this is incorrect as the Sarasota and Manatee County Associations did not even merge together legally until mid 2015. Therefore making this document or Exhibit very questionable being dated or effective January 1, 2015. No such Document can be enforceable if it not truly effective as indicated.

NAR's Exhibit B is under the same as indicated regarding Exhibit A. This is also dated 2015 and no signature or agreed upon by its local members is signed off or initialed by me. Making a document up as you go seems unenforceable as changes can be made at any time without oversight or regulation by its members. Again, disclosure or changes to policies or procedures or Bylaws to be enforceable need to be signed specifically and no such actions exist and therefore no enforcement can take place. Same as any contract or document.

NAR's Exhibit C. This is the original enrollment I was forced to join. As you can see on the date it was the last date before being fired in a right to work state. October 24, 2013. Also the actions leading to the cancelation of the mark "realtor" started with the request for a me filing Realtor Review with Serial Number 85838448 that predeceases all mentioned actions and dates as me being forced to join the NAR.

VIII. CONCLUSION

For all the foregoing reasons as it is clearly a questionable monopoly and in violation of the Sherman Anti Trust Laws, Florida's Constitution, The Right to Work Laws, the use of force or threat via monetary harm colluding with both Statewide Associations of Realtors, Local Board of Realtors, and the MLS Services is also considerable to think of RICO Laws in Civil cases like this. Florida Law requiring that a newly Licensed Real Estate Sales Associate MUST be employed by a broker for the first 2 years of License and my time of hire to after the fact being forced to join the association. The proof Attached showing MLS ownership, emails dictating and unwilling but forced membership, show that this is not reasonable to allow a Motion for Summary Judgment. The fact that enough evidence is present to consider additional questions or have a unclear decision then it is the duty of the Trial and Appeal Board to hear this case in its entirety. It should be the pride and respect that both parties present a strong and factual case to the Trial and Appeal Board to allow the proper due process and fairness to take place. In Closing we request the NAR's Motion for Summary Judgment be denied allowing us to both move forward with our case.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Petitioners response for MOTION TO SUSPEND AND MOTION FOR SUMMARY JUDGEMENT and response with MOTION TO DENY REQUEST FOR SUMMARY JUDGEMENT was served to Respondent by First Class Mail on this 20th day of November 20, 2015, in an envelope addressed as follows

Andrew Avsec
Brinks Gilson & Lione
PO Box 10395
Chicago, Illinois 60610
Telephone: 312-321-4200

Dated: November 20, 2015

By: Jeffrey Schermerhorn
7070 Curtiss Ave
Sarasota FL 34231
Telephone: 518-429-1996