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

Proceeding	92061031
Party	Defendant National Association of Realtors
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Attachments	Response to Surreply (02-05-16).pdf(86318 bytes)

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

Jeffrey Schermerhorn, Petitioner, v. National Association of Realtors[®], Respondent.	Cancelation No.: 92061031 Registration No.: 519,789 Mark: REALTOR
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RESPONSE TO PETITIONER'S SURREPLY BRIEF

Respondent National Association of Realtors[®] (hereinafter "Respondent" or "NAR") files this short response to Petitioner's surreply brief filed on January 22, 2016.

Briefing on NAR's motion for summary judgment closed on December 10, 2015, with the filing of NAR's reply brief in support of the motion. Nevertheless, Petitioner filed a surreply brief on January 22, 2016. The Trademark Rules do not permit the filing of a surreply. *Guthy-Renker Corp. v. Boyd*, 88 USPQ2d 1701 (TTAB 2008); Trademark Rule 2.127(a) (after a reply brief is filed, the Board will consider no further papers in support of or in opposition to a motion); TBMP § 502.02(b) ("No further papers (including surreply briefs) will be considered by the Board."). Accordingly, Petitioner's surreply should be given no consideration.

In any event, the arguments asserted in the surreply are without merit. Petitioner contends that because his membership in NAR has been temporarily suspended for failure to pay dues, NAR's motion for summary judgment based on license estoppel should be denied. (Surreply at 2). However, one cannot avoid licensee estoppel merely by terminating his or her license. The doctrine of licensee estoppel applies to former as well as current licensees. *See e.g., Freeman v. National Association of Realtors*, 64 USPQ2d 1700 (TTAB 2002) (former licensee

precluded from challenging validity of mark). Accordingly, Petitioner's arguments in the surreply are unfounded and should be rejected.

For all of the foregoing reasons, NAR respectfully requests that the Board give no consideration to Petitioner's surreply. Further, for the reasons set forth in its prior submissions, NAR respectfully requests that the Board grant its motion for summary judgment based on licensee estoppel.

Respectfully submitted,

NATIONAL ASSOCIATION OF REALTORS®

Dated: February 5, 2016

By: /Jeffery A. Handelman/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
RESPONSE TO PETITIONER'S SURREPLY BRIEF was served on Petitioner by first class
mail on this 5th day of February, 2016 in an envelope addressed as follows:

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/Andrew J. Avsec /