

ESTTA Tracking number: **ESTTA667261**

Filing date: **04/17/2015**

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

Proceeding	92061031
Party	Defendant National Association of Realtors
Correspondence Address	NATIONAL ASSOCIATION OF REALTORS 430 NORTH MIGHICAN AVENUE CHICAGO, IL 60611 UNITED STATES
Submission	Answer
Filer's Name	Nicholas G. de la Torre
Filer's e-mail	officeactions@brinksgilson.com, jhandelman@brinksgilson.com, ndelat- orre@brinksgilson.com, mfriedman@brinksgilson.com, saholmes@brinksgilson.com
Signature	/ngt/
Date	04/17/2015
Attachments	Final Answer (Shermerhorn).pdf(272899 bytes )

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

<b>Jeffrey Schermerhorn,</b>  <b>Petitioner,</b>  <b>v.</b>  <b>National Association of Realtors®,</b>  <b>Respondent.</b>	<b>Cancelation No.: 92061031</b>  <b>Registration No.: 519,789</b>  <b>Mark: REALTOR</b>
--	--

**RESPONDENT’S ANSWER TO PETITION TO CANCEL**

Respondent National Association of Realtors® (“Registrant” or “NAR”), through its attorneys, answers the Petition to Cancel filed by Petitioner Jeffrey Schermerhorn (“Petitioner”) in the above proceeding. For the Board’s convenience, the allegations of the Petition to Cancel are numbered and repeated below, and then followed by Registrant’s response.

1. The word “Realtor” should not be protected under the protection of the Trademark Status because the term has and always been synonymous with the Real Estate Industry or profession. Although The National Association of Realtors (NAR) claims by hearsay that the word “Realtor” is unique, that is an untrue statement and more so, is as generic as the word “internet”. In example and comparison, the word “Internet” was once protected, then became generic and associated as the World Wide Web (www) the same as Realtor is to Real Estate Agent and Real Estate in general.

**ANSWER TO PARAGRAPH NO. 1:**

NAR denies the allegations contained in Paragraph 1.

2. Although Claimed by the National Association of Realtors that a survey over 12 years ago indicated a strong outcome that its members know of the Trademark, it is our intention to provide proof that that same statistic or more believes the word “Realtor” to be generic and common not only by their own Members of the National Association of Realtors, but anyone in the real estate business as well by their clients and general public.

**ANSWER TO PARAGRAPH NO. 2:**

NAR admits that a consumer survey regarding the significance of the term REALTOR® was conducted in 2001 by Ivan Ross, Ph.D., and that said survey evidenced the strength of the REALTOR® Mark among real estate agents and brokers. NAR is without knowledge or information sufficient to form a belief as to the truth of Petitioner's intention, and therefore denies those allegations. NAR denies the remaining allegations contained in Paragraph 2.

3. Since 2003 under the last attempt to cancel the Trademark, Social media has provided a great success and accurate way to account for the true nature and claim that Realtor is in fact as generic. It would be impossible to refute this outcome of a social media campaigns showing that not only does the overwhelming majority their own membership of the 1 million plus members support this action to cancel the Trademark "Realtor" but the general public as well. Several examples of other companies using the force and power of Social Media to support similar actions as I intend to do with the word Realtor will be further proof and support of my position to cancel the mark of Realtor.

**ANSWER TO PARAGRAPH NO. 3:**

NAR is without knowledge or information sufficient to form a belief as to the truth of Petitioner's intention, and therefore denies those allegations. NAR denies the remaining allegations of Paragraph 3.

4. Since the 2003 outcome of the last Petition to Cancel Realtor Trademark we are privileged to have such immediate and credible information due to Social Media such as Facebook, Twitter, LinkedIn, Instagram and Google Plus to name a few. With such open access to both Members of the National Association of Realtors as well as the general public we can verify and heavily rely on a topic like this to go "Viral" as a term used in the Social Media world showing that this Petition to Cancel is valid and should be enforceable means to verify this Petition to Cancel the Realtor Trademark.

**ANSWER TO PARAGRAPH NO. 4:**

NAR denies the allegations of Paragraph 4.

5. Furthermore, with such commonality on the Internet even the National Association of Realtors cannot dispute how generic the term and use of Realtor is. With millions

of domains registered to the millions of websites and emails using this generic word to describe a Real Estate Representative, Realtor is as common of a word in the English language as can be. Realtor is described in every dictionary as a noun. Not a Pronoun.

**ANSWER TO PARAGRAPH NO. 5:**

NAR denies the allegations of Paragraph 5.

6. The word Realtor is also so generic and common that main stream media, news, television and movies all refer to and use Realtor as a general and common word to associate one who is a Real Estate agent even if not a member of their association.

**ANSWER TO PARAGRAPH NO. 6:**

NAR denies the allegations of Paragraph 6.

7. We also believe the National Association of Realtors (NAR) with its political Lobbying power and influences to direct use of Lobbying funds and membership dues to influence with political power of unfair reinforcement of the Trademark and business practices. The National Association of Realtors (NAR) is the largest Lobbying Group in the United States spending several millions per year buying influence to protect a generic word. It is unfair and unethical to allow the American system to be persuaded or bought off with such an organization. The National Associations is one of the worst Trademark Bullies. The Actions of the National Association of Realtors as questionable as their practices are, we will request during this process of discovery full accountability of all financial transaction showing who and what each dollar spend on Lobbying and from membership dues goes to influence, support and fight both within the National Association of Realtors and their Political Action Lobbying Offices. This request will help insure the fairness and reliability of this Petition to Cancel to be fair, ethical and based on the merits for this action and not the influence we suspect and will discover from informative sources.

**ANSWER TO PARAGRAPH NO. 7:**

NAR is without knowledge or information sufficient to form a belief as to the truth of Petitioner's beliefs, and therefore denies those allegations. NAR denies the remaining allegations of Paragraph 7.

8. Although first claimed in use 1916 the association did not use the word Realtor in their own name at that time. It was a general way to describe a Real Estate Agent. It is the efforts of the now National Association of Realtors whom have further made this word generic and so closely synonymous with Real Estate Agents. Realtor was first description was a regular profession. Was not until 34 years later when the word Realtor was trademarked. If in fact Realtor were a branded name in 1916 when claimed to be first in use, it would have been

presumed to be a Trademark then not 34 years later. The fact is that it was and always has been a “Generic” word. In 1950, some 34 years later of common use when information was not as readily available to the public as it is today did this happen. It is the believe that if the same practices of the National Association of Realtor for what it does today, if used against them in 1950, this would not be a Trademark today. We believe that in 1950 no petition was made to its existing members allowing them to know or vote the very word used to describe their profession was about to be claimed and used against them. This would be a fraud in the application that this was a generic word in use for over 34 years according to the National Association of Realtors at that time.

**ANSWER TO PARAGRAPH NO. 8:**

NAR admits that it first used the collective mark REALTOR® through its predecessor at least as early as 1916. NAR denies the remaining allegations of Paragraph 8.

9. In closing we will provide current proof and support documenting the common believe of the above-mentioned discussion of facts. As an interesting point to mention in closing that with several discussions with the USPTO it was a surprise to some of the employees and examiners that the word “Realtor” is a Trademark.

**ANSWER TO PARAGRAPH NO. 9:**

NAR is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9, and on that basis denies those allegations.

**AFFIRMATIVE DEFENSE**

Further answering, as an affirmative defense, NAR states that members of NAR are licensed to use the REALTOR® mark in accordance with specified terms and conditions. Petitioner has been and currently is a member of NAR and as such Petitioner uses and is authorized as a licensee to use the REALTOR® mark. Under the doctrine of licensee estoppel, petitioner is precluded from challenging or contesting the validity of the REALTOR® mark and its registration, Registration No. 519,789, which is the subject of this proceeding.

WHEREFORE, NAR respectfully requests that this cancellation petition be dismissed with prejudice.

Respectfully submitted,

NATIONAL ASSOCIATION OF REALTORS®

Dated: April 17, 2015

By:



---

Jeffery A. Handelman  
Nicholas G. de la Torre  
Michael R. Friedman  
BRINKS GILSON & LIONE  
455 N. Cityfront Plaza Drive  
NBC Tower, Suite 3600  
Chicago, Illinois 60611  
(312) 321-4200 Telephone  
(312) 321-4299 Facsimile

Attorney for Registrant

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing  
RESPONDENT'S ANSWER TO PETITION TO CANCEL was served on Petitioner by first  
class mail on this 17<sup>th</sup> day of April, 2015 in an envelope addressed as follows:

Jeffrey Schermerhorn  
7070 Curtiss Avenue  
Sarasota, FL 34231

  
\_\_\_\_\_  
The signature is handwritten in blue ink and reads "Nick de la Torre".