

ESTTA Tracking number: **ESTTA212900**

Filing date: **05/21/2008**

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

Proceeding	91181640
Party	Defendant Henderson, John
Correspondence Address	Fred Robert Slotkin Slotkin Law Firm, P.C. 111 N. McDonough Street Decatur, GA 30030 UNITED STATES bobby@slotkinlawfirm.com
Submission	Other Motions/Papers
Filer's Name	Fred Robert Slotkin
Filer's e-mail	bobby@slotkinlawfirm.com
Signature	/Fred Robert Slotkin/
Date	05/21/2008
Attachments	Applicant's First Interrogatories to Opposer, 05.21.08.pdf (16 pages)(593189 bytes) Applicant's First Req. Admissions, 05.21.08.pdf (5 pages)(155601 bytes) Applicant's First RPDs, 05.21.08.pdf (9 pages)(283004 bytes)

Plaintiff is directed to answer each interrogatory separately and fully, in writing, under oath, and serve a copy of their signed answers upon the undersigned attorney.

DEFINITIONS

A. "YOU," and "YOUR," shall mean the party to whom these interrogatories are directed, Plaintiff, and its predecessors and successors in interest, all parent and subsidiary corporations, units, offices, divisions, officers, directors, employees, agents, attorneys, assigns, consultants, independent contractors and other persons acting on their behalf or at their direction.

B. "DOCUMENTS" shall mean all documents, papers, books, accounts, letters, photographs, objects, including but not limited to any and all documents, handwritten notes, memoranda, telephone messages, logs, diaries, or any other writings, contracts, drawings, graphs, charts, photographs, recordings, data compilations from which information can be obtained or translated, items from which any information can in any way be obtained, and any other tangible things, and any copies thereof. The term "documents" shall also mean the foregoing in any recorded form including, but not limited to, electronic mail, computer files, disks and drives, however described or entitled. The term "documents" should be given the broadest possible interpretation.

C. A document "relating," "related," or "which relates" to any given subject means any document that constitutes, contains, embodies, evidences, reflects, identifies, states, refers to, deals with, bears upon, or is in any way pertinent to that subject, including, without limitation, documents concerning the preparation of other documents.

D. "COMMUNICATIONS" means any transmission, exchange, or making known of information or thoughts by oral, written, pictorial or other means, including but not limited to personal conversations, conferences, telephone conversations, memoranda, letters, correspondence, reports and publications, and shall include any means of conveying a message, thought or idea from one or more persons to one or more persons, including electronic mail, and shall be given the broadest possible interpretation.

E. "PERSON" or "PERSONS" include natural persons, firms, associations, proprietorships, partnerships, corporations, governmental agencies and other legal entities.

F. A request to "IDENTIFY" or furnish "THE IDENTITY OF" a person, witness, or expert shall require you to state the person's full name and last known home and business addresses and phone numbers.

G. A request to "IDENTIFY" or furnish "THE IDENTITY OF" a document shall require you to state the type of document, the author of the document, when and where the document was prepared, the date of the document, a description of the document's subject matter and content, the location of the document, the date of the document's distribution and the identity of its present custodian, and the identity and address of the person or persons to whom copies were sent.

H. Wherever used herein, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular; the masculine shall be deemed to include the feminine, and the feminine shall be deemed to include the masculine; the disjunctive ("or") shall be deemed to include the conjunctive ("and"), and the conjunctive

("and") shall be deemed to include the disjunctive ("or"); and each of the functional words "each," "every," "any," and "all" shall be deemed to include each of the other functional words.

I. "CONCERNING" means referring to, alluding to, responding to, relating to, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, reflecting, analyzing or constituting.

INSTRUCTIONS

J. These interrogatories are continuing in character so as to require you to timely file supplementary answers if you obtain further or different information requested herein that was not available or known at the time your answers to these interrogatories were filed.

K. Where knowledge or information in possession of a party is requested, such request includes knowledge of that party, the party's attorneys, present and former officials, executives, officers, employees, representatives, agents, and all other persons acting or purporting to act on its behalf, any parent, division, subsidiary or affiliate thereof, any corporate predecessor or successor thereof, as appropriate in the context.

L. Claim of Privilege: In the event you claim any form of privilege as to any interrogatory herein, or claim that disclosure of any information called for in response to these interrogatories would reveal a trade secret or other form of information which you claim merits protection under the law other than privilege, you are requested to identify the statement, document, communication, or information by its date, all author(s), recipient(s), and all other persons who have knowledge of the privilege information,

document or subject matter, and the general nature of the information, document or subject matter without disclosing any claimed privileged information, and the nature of the privilege claimed. You are further requested to state whether you will permit in camera inspection by the Board to determine the validity and appropriateness of such claim of privilege.

M. Claim of Burden or Oppression: In the event you claim any burden or oppression as to any information called for by an interrogatory, state the reason for such claim, the number of files and/or the documents that need to be searched to respond, their location, the time claimed by you to be required to respond to the interrogatory, and the cost (in dollars) of same. In the case of other claims, the precise nature of the claim, e.g., trade secret, shall be stated.

N. If you are unable to respond to any interrogatory completely, you should (a) so state, (b) respond to the extent possible, (c) set forth the reason(s) for your inability to respond more fully, and (d) state whatever knowledge or information you have concerning the unanswered portion.

O. If you object to only part of an interrogatory, identify the part to which you object, and answer the remainder of the interrogatory.

P. Each interrogatory should be interpreted broadly, and the generality of any one interrogatory should not be limited because of the specificity of any other interrogatory.

Q. In the event that you provide only a portion of the information called for by any particular Interrogatory, please state the reason(s) for your inability to provide the remainder of the information requested.

R. When responding to these Interrogatories, please restate the Interrogatory immediately before your response.

INTERROGATORIES

1.

Other than the Marks set forth in Opposer's Opposition to Applicant's Trademark Application, identify all other state and federal registrations, applications for registration, trademarks, service marks, trade names and uses known to Opposer that include the words "Next" or "MLS."

2.

For each mark identified in response to Interrogatory No. 1, please state the name, address, and telephone number of each owner.

3.

Identify all channels of trade in which Opposer currently uses Opposer's Marks, the geographical reach of each such channel of trade, and the approximate percentage of total sales (actual or projected) of goods and/or services through each such channel.

4.

Identify all cities in the United States in which Opposer uses Opposer's Mark.

5.

Please identify each person who you expect to call as an expert witness upon the trial of this case and with respect to each such person, state the subject matter on which the person is expected to testify, state the substance of the facts and opinions to which the person is expected to testify, and state a summary of the grounds for each such opinion.

6.

List the names, addresses (home and business), telephone numbers (home and business), places of employment and job titles for all persons known to you to have knowledge of relevant information, facts or circumstances regarding this action. For each such person, describe the facts and circumstances with which he or she is familiar.

7.

State the date and describe the circumstances whereby Opposer first became aware of Applicant's use of Applicant's Mark.

8.

Identify each and every Person's name, address, and telephone number who has actually confused any of Opposer's Marks with that of Applicant's Mark.

9.

Identify all documents and set forth with specificity all facts with respect to any instance where a person or entity has been confused, mistaken and/or deceived as to whether any good and/or service advertised or sold by Applicant were those of Opposer, or whether any goods or services advertised or sold under Opposer's Marks were those of Applicant and/or Applicant's Affiliates.

10.

Identify the specific class of actual or prospective purchasers/consumers for Opposer's goods or services.

11.

Identify and fully describe each of the goods and/or services on or in connection with which Opposer currently sells or markets, intends to sell or market Opposer's Marks with or without any design element or in a stylized format or any sort.

12.

For each of the goods and/or services identified in response to Interrogatory No. 11:

- a) Identify the first use date(s) and/or expected first use date of the specific Opposer's Mark with such goods or services;
- b) Identify the state or geographic region where each such good and/or service has been or is expected to be sold and/or marketed; and
- c) Identify all documents supporting the responses to subparagraphs (a) and (b) above.

13.

If Opposer offers any real estate good or service under Opposer's Marks, identify specifically the type of good or service, location(s) where such good or service is offered for each such mark.

14.

Identify each person employed by Opposer or each outside agency or agent retained by Opposer, who has been or now is responsible for the marketing, advertising or promotion with respect to any good and/or service offered or intended to be offered under any of Opposer's Marks.

15.

Identify with specificity the marketing methods used and/or intended to be used in the advertising and/or sale of goods and/or services by or for Opposer under its NEXT marks or designation, including, without limitation, newspapers, magazines, trade journals, billboards, yard signs, internet or any other method in which Opposer has advertised or intends to advertise its goods or services under Opposer's NEXT marks or designation.

16.

Identify the percentage of gross revenue of Opposer that is spent on advertising Opposer's Marks which are the subject of this opposition.

17.

State the exact website address(es) on which Opposer's Marks, which are the subject of this opposition, appear on the internet.

18.

Identify the names, addresses, and telephone numbers of Opposer's five (5) most recent sales of Opposer's goods or services under Opposer's Marks which are the subject of this opposition. For each such Person, please provide complete contact information,

identify the type of good purchased, exact dollar amount of such sale and the location in which such sale occurred.

19.

Identify those persons most knowledgeable about Opposers actual and/or intended sales, advertising and sales promotion, adoption and use, licensing, assignments and/or other transfer of rights with respect to any of Opposer's Marks which are the subject of this opposition.

20.

Identify by Opposition Number all Opposition proceedings in which Opposer is currently involved, either as Opposer or Applicant, before of the USPTO or TTAB.

21.

Has Opposer ever been a party to any litigation or administrative proceeding, other than the present opposition, involving Opposer's Marks which are the subject of this opposition? If yes, please state all circumstances surrounding the same including, but not limited to:

- a) The name of the parties and identification of the proceeding;
- b) Opposer's status in the proceeding (i.e. Defendant, Plaintiff, Applicant, Opposer);
- c) The type of proceeding involved;
- d) The name of the court or agency in which it was filed;
- e) The date of the filing;
- f) The file number; and

g) The ultimate disposition of the proceedings.

22.

Identify each communication, oral or written, received by or known to Opposer which suggests, implies, or infers that Applicant and/or Applicant's affiliates may be connected or associated with Opposer and/or any of Opposer's Marks which are the subject of this opposition, or which inquires as to whether there is or may be such a connection or association and identify any response by Opposer to each such communication.

23.

Identify with particularity the services offered by Opposer under Opposer's Mark that Opposer claims in Paragraph 4 of Opposer's Notice of Opposition that are closely related to services Applicant offers under Applicant's Mark.

24.

For the allegations set forth in Paragraph 3 of your Notice of Opposition, state all facts and circumstances, upon which that allegation is based, identify each and every person with knowledge of those facts or circumstances, and identify all documents which evidence or reflect those facts or circumstances or which evidence your response to this Interrogatory.

25.

For the allegations set forth in Paragraph 5 of your Notice of Opposition, state all facts and circumstances, upon which that allegation is based, identify each and every person with knowledge of those facts or circumstances, and identify all documents which

evidence or reflect those facts or circumstances or which evidence your response to this Interrogatory.

26.

For the allegations set forth in Paragraph 6 of your Notice of Opposition, state all facts and circumstances, upon which that allegation is based, identify each and every person with knowledge of those facts or circumstances, and identify all documents which evidence or reflect those facts or circumstances or which evidence your response to this Interrogatory.

27.

For the allegations set forth in Paragraph 7 of your Notice of Opposition, state all facts and circumstances, upon which that allegation is based, identify each and every person with knowledge of those facts or circumstances, and identify all documents which evidence or reflect those facts or circumstances or which evidence your response to this Interrogatory.

28.

For the allegations set forth in Paragraph 8 of your Notice of Opposition, state all facts and circumstances, upon which that allegation is based, identify each and every person with knowledge of those facts or circumstances, and identify all documents which evidence or reflect those facts or circumstances or which evidence your response to this Interrogatory.

29.

For the allegations set forth in Paragraph 9 of your Notice of Opposition, state all facts and circumstances, upon which that allegation is based, identify each and every person with knowledge of those facts or circumstances, and identify all documents which evidence or reflect those facts or circumstances or which evidence your response to this Interrogatory.

30.


For the allegations set forth in Paragraph 10 of your Notice of Opposition, state all facts and circumstances, upon which that allegation is based, identify each and every person with knowledge of those facts or circumstances, and identify all documents which evidence or reflect those facts or circumstances or which evidence your response to this Interrogatory.

31.

For the allegations set forth in Paragraph 11 of your Notice of Opposition, state all facts and circumstances, upon which that allegation is based, identify each and every person with knowledge of those facts or circumstances, and identify all documents which evidence or reflect those facts or circumstances or which evidence your response to this Interrogatory.

Respectfully submitted this 21 day of May, 2008.

SLOTKIN LAW FIRM, P.C.



Fred Robert Slotkin

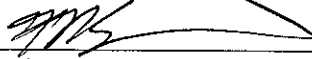
Georgia Bar No. 653001

Attorney for Applicant, John Henderson

Slotkin Law Firm, P.C.
111 N. McDonough Street
Decatur, GA 30030
404-370-1041 phone
404-370-1161 fax
bobby@slotkinlawfirm.com

This 21 day of May, 2008.

SLOTKIN LAW FIRM, P.C.



Fred Robert Slotkin
Georgia Bar No. 653001
Attorney for Applicant, John Henderson

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Decatur, Georgia 30030
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service. Defendants are directed to answer each request separately and fully, in writing, and serve a copy of their signed answers upon the undersigned attorney. When referring to Opposer's marks herein, Applicant is referring to the marks identified in Paragraph 4 of Opposer's Notice of Opposition.

REQUESTS FOR ADMISSION

1.

Admit that Opposer has never used any of Opposer's Marks or any other Mark in conjunction with real estate brokerage services, namely, assisting in the purchase and sale of real property; providing a database of real estate information, namely real estate listing information, providing a directory of real estate agents.

2.

Admit that Opposer cannot legally market, list or sell real estate under any of Opposer's Marks or any other Mark.

3.

Admit that Opposer is not a registered real estate broker in any geographical area where Opposer markets and sells its goods and services.

4.

Admit that Opposer has acquiesced to Applicant's continued use of Applicant's Mark.

5.

Admit that Opposer was aware of Applicant's use of Applicant's Mark prior to Applicant's Mark being published for opposition September 4, 2007.

6.

Admit that Opposer failed to timely file its Notice of Opposition in accordance with §2.101 of the Trademark Rules of Practice.

7.

Admit that Opposer has no knowledge of any actual confusion between Applicant's Mark and Opposer's Marks.

8.


Admit that there are other third party users of Opposer's Mark "NEXT" that Opposer is aware of and has not prevented from using it in conjunction with such Third Party Marks.

9.

Admit that Opposer and Applicant utilize different channels of trade in conjunction with marketing and selling goods and services under their respective marks.

Respectfully submitted this 21 day of May, 2008.

SLOTKIN LAW FIRM, P.C.


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Georgia Bar No. 653001
Attorney for Applicant, John Henderson

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

In the Matter of Trademark Applicant:)
)
John Henderson)
)
Serial No. : 78/886857)
)
Filed : May 18, 2006)
)
Mark: : NextMLS)
)

Published in the Official Gazette dated September 4, 2007

Next Realty, L.L.C.,)	
Opposer,)	
)	
v.)	Opp. No. 91181640
)	
John Henderson,)	
Applicant.)	

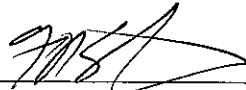
CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing **Applicant's First Request for Admissions to Opposer** upon counsel for the Opposer by depositing a copy of same in the United States mail, in a properly addressed envelope, with adequate postage thereon to ensure delivery as follows:

Larry L. Saret, Esq.
 Luke W. DeMarte, Esq.
 Michael Best & Friedrich LLP
 Two Prudential Plaza
 180 N. Stetson Avenue, Suite 2000
 Chicago, Illinois 60601

This 21 day of May, 2008.

SLOTKIN LAW FIRM, P.C.



Fred Robert Slotkin

Georgia Bar No. 653001

Attorney for Applicant, John Henderson

111 N. McDonough Street
Decatur, Georgia 30030
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requested for inspection by Applicant and his attorney within thirty (30) days of the receipt of this Request at a mutually agreeable location.

In responding to these requests for production of documents under Rule 34 of the Federal Rules of Civil Procedure, furnish all documents that are available to you, including information that is in the possession of your attorneys, insurers and agents. The definitions set out above are applicable.

In the event that you wish to assert either attorney-client privilege or work product privilege, or both, or any other privilege as to any document requested herein, then as to each such document you are requested to provide an identification of each such document in writing, such identification to include: the nature of the document, the sender, the author, the recipient, the recipient of each copy, the date, a summary statement of the subject matter of each document in sufficient detail to permit the court to reach a determination in the event of a motion to compel, and a statement of the basis for assertion of the privilege or the like.

Whenever production is requested of a document which is no longer in your possession, custody or control, your response should:

- a) Identify that document by name, number of pages, or other description or date;
- b) State when the document was most recently in your possession, custody or control;
- c) Describe the disposition of the document; and
- d) State the identity of the person or persons now in possession, custody or control of such document.

If the document has been destroyed, the response should state the reason for its destruction and identity of the person or persons who destroyed the document and who directed that the document be destroyed.

REQUESTS

1.

All documents identified in Opposer's responses to Applicant's First Interrogatories to Opposer.

2.

All documents concerning, reflecting or relating to Opposer's Marks which Opposer alleges are similar to Applicant's Mark.

3.

All documents filed with or sent to the U.S. Patent and Trademark Office that relate to Opposer's Marks or any other Mark that Opposer claims is a part of Opposer's alleged "family of marks" as contended in Paragraph 1 of Opposer's Notice of Opposition.

4.

All documents which evidence all Marks that are owned by Opposer that utilize the term "NEXT" or "MLS" in its Mark.

5.

All written statements by any person reflecting actual confusion by such person between Applicant's Mark and Opposer's Marks.

6.

All documents that evidence Opposer's use of Opposer's Marks, which are the subject of this opposition, on the internet or on yard signs.

7.

All documents evidencing all goods and services provided, offered, marketed, or promoted or intended to be provided, offered, marketed, or promoted under Opposer's Marks which are the subject of this opposition.

8.

All documents evidencing, reflecting or relating to advertising of Opposer's goods and services under Opposer's Marks which are the subject of this opposition.

9.

All documents which evidence Opposer's use of Opposer's Mark "NEXT" in commerce as of March 19, 1979.

10.

All documents that evidence, reflect or relate to actual use of the Opposer's Marks, which are the subject of this opposition, in commerce since 1998.

11.

All documents which record, refer or relate to the channels of trade through which Opposer markets any goods or services under Opposer's Marks which are the subject of this opposition.

12.

All documents which record, refer or relate to the target audience and intended market for the goods or services marketed or sold under Opposer's Marks which are the subject of this opposition.

13.

All documents provided to, created by, or relied upon in connection with this proceeding by any expert witness Opposer has consulted or retained in connection with this proceeding.

14.

All surveys, summaries, reports or other documents which evidence, relate to or reflect consumer understanding, recognition or perception of Opposer's Marks which are the subject of this opposition.

15.

All correspondence between Opposer and any person regarding or relating to Applicant's Mark.

16.

All documents which evidence Opposer's challenge or opposition to other third party marks that are the same or substantially similar to Opposer's Marks which are the subject of this opposition.

17.

All documents that show Opposer's use of Opposer's Marks, which are the subject of this opposition, in conjunction with real estate brokerage services, namely, assisting in

the purchase and sale of real property; database of real estate information, namely real estate listing information, providing a directory of real estate agents.

18.

All documents which record, refer to, or relate to Opposer's knowledge and/or awareness of the use and/or application for registration of "NEXTMLS" by Applicant.

19.

All documents which record, refer to, or relate to Opposer's knowledge and/or awareness of the use and/or application of any other third party mark utilizing Opposer's Marks, which are the subject of this opposition, as part of such third party's marks designation.

20.

All documents which record, refer to, or relate to any inquiry, investigation, evaluation, analysis or survey conducted by Opposer or any person acting for or on behalf of Opposer regarding any issues involved in this proceeding.

21.

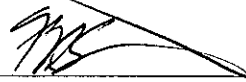
All documents which record, refer to or relate to Opposer's claim in Paragraph 8 of Opposer's Notice of Opposition that Applicant's goods and services are closely related to Opposer's goods and services offered under Opposer's Marks.

22.

Copies of all requests for extensions of time for filing this Opposition proceeding.

Respectfully submitted this 21 day of May, 2008.

SLOTKIN LAW FIRM, P.C.

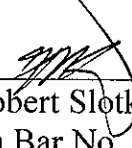


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This 21 day of May, 2008.

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