

Summons issued SEN 31629

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AT SEATTLE
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NATIONAL ASSOCIATION OF
REALTORS, an Illinois not for profit
corporation,

Plaintiff,

v.

CHAMPIONS REAL ESTATE SERVICES
INC, a Washington corporation; PAT LORD
and RICHARD LORD, husband and wife;
JACQUELINE CLIFF AND JOHN DOE
CLIFF; STEVE HANSON and JANE DOE
HANSON husband and wife; PEGGY
JOHNSON and JOHN DOE JOHNSON,
husband and wife; MARK ANTONCICH, JR.
and JANE DOE ANTONCICH; and DEE
DOYLE and JOHN DOE DOYLE,

Defendants.

No. **C10-049** JR

COMPLAINT FOR TRADEMARK
INFRINGEMENT



10-CV-00049-CMP

Plaintiff, the National Association of Realtors, by and through its attorneys of record,
alleges as follows:

I. NATURE OF ACTION

1. This is an action for willful, knowing and intentional federal trademark
infringement, false designation of origin, and unfair competition arising out of the Lanham Act,
15 USC §1051 et seq., Washington state common law and the Washington state Consumer
Protection Act, RCW 19.86.020.

COMPLAINT FOR TRADEMARK INFRINGEMENT - 1
Case No.

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1 **II. PARTIES**

2 2. Plaintiff, the National Association of Realtors (“Plaintiff” or “NAR”) is a not for
3 profit corporation organized and existing under the laws of the state of Illinois, with its principal
4 place of business in Chicago, Illinois. NAR owns several incontestable United States Registered
5 Trademarks for the REALTOR block “R” logo, REALTOR and REALTORS, including US
6 Registration No. 1,137,081, US Registration No. 519,789 and US Registration No. 515,200.
7 NAR has also obtained substantial common law rights arising from years of use of REALTOR.

8 3. Defendant Champions Real Estate Services (“Champions”) is a corporation
9 organized and existing under the laws of the State of Washington. Champions’ principal place of
10 business is believed to be in Lynnwood, Washington.

11 4. Defendants Pat Lord and Richard Lord (“Lord”) are husband and wife and
12 believed to be residents of King County, Washington. All actions of Defendants Lord,
13 individually and collectively, were on behalf of their marital community.

14 5. Defendants Jacqueline Cliff and John Doe Cliff (“Cliff”) are husband and wife
15 and believed to be residents of King County, Washington. All actions of Defendants Cliff,
16 individually and collectively, were on behalf of their marital community.

17 6. Defendants Steve Hanson and Jane Doe Hanson (“Hanson”) are husband and wife
18 and believed to be residents of King County, Washington. All actions of Defendants Hanson,
19 individually and collectively, were on behalf of their marital community.

20 7. Defendants Peggy Johnson and John Doe Johnson (“Johnson”) are husband and
21 wife and believed to be residents of King County, Washington. All actions of Defendants
22 Johnson, individually and collectively, were on behalf of their marital community.

23 8. Defendants Mark Antoncich and Jane Doe Antoncich (“Antoncich”) are husband
24 and wife and believed to be residents of King County, Washington. All actions of Defendants
25 Antoncich, individually and collectively, were on behalf of their marital community.
26

1 9. Defendants Dee Doyle and John Doe Doyle ("Doyle") are husband and wife and
2 believed to be residents of King County, Washington. All actions of Defendants Doyle,
3 individually and collectively, were on behalf of their marital community.

4 **III. JURISDICTION AND VENUE**

5 10. The Court has original jurisdiction over Plaintiff's trademark and federal unfair
6 competition claims pursuant to 28 USC §§ 1331 and 1338(a). The Court has supplemental
7 jurisdiction over the state law unfair competition and unfair business practices claims pursuant to
8 28 USC § 1388(b), because those claims are joined with substantial and related claims under the
9 Lanham Act.

10 11. Venue in this judicial district is proper under 28 USC § 1391(b), and the
11 Defendants are subject to personal jurisdiction within this Court because the events and
12 omissions giving rise to the claims at issue occurred in the State of Washington and in this
13 District, a substantial part of the injury to the property and rights of NAR that is the subject of
14 these claims occurred in this Judicial District, and Defendants do business in this Judicial District
15 by, inter alia promoting, advertising and offering services in the State of Washington and in this
16 judicial district under a mark that infringes NAR's trademark REALTOR.

17 **IV. PLAINTIFF AND ITS RIGHTS**

18 12. NAR is a corporation organized and existing under the laws of the State of
19 Illinois, with its principal place of business located at 430 North Michigan Avenue, Chicago,
20 Illinois 60611.

21 13. NAR is a trade association of real estate agents and brokers assisting its members
22 to become more profitable and successful. NAR is the leader in developing standards for
23 efficient, effective and ethical real estate brokerage business practices. NAR provides national,
24 state and local facilities for professional development, research and exchange of information
25 among its members and to the public and government.
26

1 14. Since at least as early as 1915, NAR has continuously used REALTOR in the
2 United States in connection with the marketing of its services and the services of its members,
3 including advertising, marketing, product development and other services. NAR is the owner of
4 US Trademark Registration No. 1,137,081, US Trademark Registration No. 519,789 and US
5 Trademark Registration No. 515,200. All of these Registrations are valid and incontestable
6 pursuant to 15 U.S.C. §1065. The Registrations are entitled to presumptions of validity and the
7 exclusive right to use by NAR pursuant to 15 U.S.C. §§1057 and 1115.

8 15. NAR's REALTOR mark is widely recognized by consumers as a result of its use
9 in connection with services rendered by NAR and its authorized members and through
10 substantial and extensive advertising, promoting and popularization of the mark in the United
11 States by NAR and its authorized licensees.

12 16. As a result of such use and advertising, NAR's REALTOR mark is well known in
13 the State of Washington and elsewhere as identifying high quality services of NAR and its
14 members.

15 **V. DEFENDANTS AND THEIR UNLAWFUL ACTIVITIES**

16 17. The terms REALTOR and REALTORS were coined by a member of NAR in
17 1915 to identify members of his local association. The terms were adopted as trademarks by
18 NAR to apply nationally in 1916. NAR filed applications for the registration of both REALTOR
19 and REALTORS as collective membership marks, which applications were approved and have
20 been included on the principal register of the Act of 1946 since their registration. NAR now
21 owns a family of REALTOR marks, including, but not limited to, the REALTOR, REALTORS,
22 REALTOR ASSOCIATE and REALTOR with block logo marks (collectively, the "MARKS").
23 The Marks were coined for the purpose of identifying NAR members from non-member real
24 estate licensees, which remains the current function of the Marks. Only NAR and its members
25 are authorized to use the Marks.
26

1 18. Defendants have and continue to represent themselves as REALTORS without
2 authorization in interstate commerce and have used and continue to use the Marks without
3 authorization in interstate commerce to describe themselves to the public and other real estate
4 licensees.

5 19. On repeated occasions, Defendants have been advised of their infringement and
6 have been asked to cease and desist from further infringement. Despite the incontestable status
7 of Registration Nos. 519,789, 515,200, 1,137,081 and others owned by NAR, Defendants'
8 response was to deny NAR's rights to the Marks. Defendants did not agree to cease use of the
9 Marks.

10 **VI. FIRST CAUSE OF ACTION – TRADEMARK INFRINGEMENT 15 USC § 1114**

11 20. NAR repeats and realleges the allegations set forth in the preceding paragraphs of
12 this complaint.

13 21. Defendants' repeated use of the Marks to market and sell their goods and services
14 is likely to cause confusion and mistake. Such repeated use of the Marks by Defendants
15 deceives, and is likely to deceive, others into believing that Defendants are members of NAR or
16 that their services are sponsored by, approved by, or affiliated with NAR, which they are not.

17 22. Defendants' marketing and sale of services under the marks infringes NAR's
18 rights in the Marks.

19 23. Defendants have had actual and constructive knowledge of NAR's rights in the
20 Marks, including their US Trademark Registrations but, despite such knowledge, continue the
21 infringing behavior in disregard of NAR's rights.

22 24. Defendants knew or should have known of NAR's rights, and Defendants'
23 conduct and continuation of that conduct is knowing, willful and deliberate, making this an
24 exceptional case within the meaning of 15 USC § 1117.

25 25. NAR has been and continues to be damaged in a manner that cannot be fully
26 measured or fully compensated in economic terms and for which there is no adequate remedy at

1 law. The actions of Defendants have damaged and will continue to damage NAR's market,
2 reputation and good will. Such irreparable harm will continue unless Defendants' acts are
3 restrained and/or enjoined during the pendency of this action and thereafter.

4 26. NAR has been damaged by Defendants' actions in an amount to be proven at trial.

5 **VII. SECOND CAUSE OF ACTION -- LANHAM ACT, § 43(a) – FALSE**
6 **REPRESENTATIONS AND FALSE DESIGNATION OF ORIGIN**

7 27. NAR repeats and realleges the allegations set forth in the preceding paragraphs of
8 this complaint.

9 28. Defendants' use of the Marks for the marketing of their goods and services
10 constitutes false designation of origin, false or misleading description and/or false and
11 misleading representation. Such unauthorized use is likely to cause confusion, mistake or
12 deception of others as to the affiliation, connection or association of Defendants with NAR and is
13 likely to cause confusion, mistake or deception as to the origin, sponsorship or approval of the
14 goods and services of Defendants with those of NAR and its members.

15 29. Such false designations, descriptions and/or representations constitute unfair
16 competition and are an infringement of NAR's rights in its Marks in violation of § 43(a) of the
17 federal Lanham Act, 15 USC § 1125(a).

18 30. NAR has been and will continue to be damaged by such false description, false
19 representation and false designation of origin in a manner and amount that cannot be measured
20 or compensated in economic terms. Defendants' actions have damaged and will continue to
21 damage NAR's market, reputation and good will and that of its members. Such irreparable harm
22 will continue unless Defendants' acts are restrained or enjoined during the pendency of this
23 action and thereafter.

24 31. NAR has been damaged by Defendants' actions in an amount to be proven at trial.
25
26

1 **VIII. THIRD CAUSE OF ACTION – UNFAIR COMPETITION UNDER RCW 19.86.020**

2 32. NAR repeats and realleges the allegations set forth in the preceding paragraphs of
3 this complaint.

4 33. Defendants' repeated, unauthorized use of the Marks infringes NAR's Marks and
5 constitutes an unfair method of competition and business and an unfair trade practice and
6 business, as well as fraudulent misrepresentation, which is damaging to the public interest in
7 violation of the Washington Consumer Protection Act, RCW 19.86.020.

8 34. Defendants' infringing use of the Marks in connection with the promotion,
9 marketing and sale of its goods and services has been knowing, willful and deliberate.

10 35. NAR has been and will continue to be irreparably injured by reason of
11 Defendants' unfair methods of competition and unfair trade practices in violation of the
12 Washington Consumer Protection Act. Such irreparable damage will continue unless the acts of
13 Defendants are enjoined during the pendency of this action and thereafter.

14 **IX. FOURTH CAUSE OF ACTION –**

15 **COMMON LAW TRADEMARK INFRINGEMENT**

16 36. NAR repeats and realleges the allegations set forth in the preceding paragraphs of
17 this complaint.

18 37. Defendants' repeated, unauthorized use of the Marks infringes NAR's Marks and
19 constitutes trademark infringement of NAR's common law trademark rights in Washington State
20 and elsewhere.

21 38. The likelihood of confusion, mistake or deception as a result of this unauthorized
22 use is evidenced by RCW 18.85.230(14) which provides that the misrepresentation of a real
23 estate licensee's membership in any state or national real estate association is conduct warranting
24 disciplinary action against such real estate licensee by the Washington State Department of
25 Licensing.

1 39. Defendants' infringing use of the Marks in connection with the promotion,
2 marketing and sale of its goods and services has been knowing, willful and deliberate. NAR has
3 been and will continue to be irreparably injured by reason of Defendants' unauthorized use of
4 NAR's Marks in connection with Defendants' services. Such irreparable damage will continue
5 unless the acts of Defendants are enjoined during the pendency of this action and thereafter.

6 **X. PRAYER FOR RELIEF**

7 Wherefore, NAR prays for judgment as follows:

8 1. That Defendants, and their offices, agents, servants, employees, attorneys and all
9 other persons in active concert or participation with any of them, be enjoined and restrained
10 during the pendency of this action, and permanently thereafter, from using the Marks or any
11 mark that is confusingly similar to the Marks, including an order for impoundment and
12 destruction of any items in Defendants' possession or control bearing the Marks pursuant to 15
13 U.S.C. § 1116 and 1118;

14 2. That Defendants' and their officers, agents, servants, employees, attorneys and all
15 other persons in active concert or participation with any of them, be enjoined and restrained
16 during the pendency of this action, and permanently thereafter, from all acts of trademark
17 infringement, false designation of origin, unfair competition, and unfair business practices to
18 include the use of the Marks or any mark that is confusingly similar to the Marks;

19 3. That Defendants be directed to file with this Court and serve on NAR's counsel
20 within thirty (30) days after service of an injunction, a report in writing, under oath, setting forth
21 in detail the manner and form in which Defendants have complied with the injunction;

22 4. That Defendants be required to pay NAR such damages as NAR has sustained,. or
23 will sustain, in consequence of Defendants' false designation of origin, unfair competition and
24 trademark infringement and to account for all gains, profits and advantages derived by
25 Defendants that are attributable to such unlawful acts; and that such damages be trebled as
26 provided for by 15 USC § 1117:

