

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

RE/MAX, LLC,)	
a Delaware limited liability company,)	
)	
Plaintiff,)	Civil Action No. _____
)	
v.)	Jury Demanded
)	
Meridian Business Centers, Inc.,)	
a Texas corporation, and)	
)	
Robert Mead,)	
an individual.)	
)	
Defendants.)	

COMPLAINT AND JURY DEMAND

Plaintiff RE/MAX, LLC ("RE/MAX") for its Complaint against Defendants Meridian Business Centers, Inc., and Robert Mead ("Defendants"), hereby alleges as follows:

Nature of the Action

1. In this action, RE/MAX seeks injunctive and monetary relief for acts of trademark infringement and unfair competition under the laws of the United States, Title 15, United States Code; for violation of Texas Business and Commerce Code §

16.102; and trademark infringement and unfair competition under the common law of the State of Texas.

The Parties

2. RE/MAX is a limited liability company formed under the laws of the state of Delaware with its principal place of business at 5075 South Syracuse Street, Denver, Colorado 80237-2712.

3. Upon information and belief, Defendant Meridian Business Centers, Inc. is a Texas corporation having its principal place of business at 6060 N. Central Expressway, Suite 560, Dallas TX 75206-5268 and, upon information and belief, Robert Mead is one of its principals.

Jurisdiction and Venue

4. This action arises under §§ 1114(1) and 1125(a) of the Lanham Act, 15 U.S.C. § 1051 *et seq.*; Tex. Bus. & Com. Code §16.102, and the common law of the State of Texas.

5. The Court has original jurisdiction over this action pursuant to 15 U.S.C. § 1121 and supplemental jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338 and 1367.

6. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391(b).

Background

7. Throughout the United States, RE/MAX provides real estate brokerage services through a network of franchisees and affiliated independent contractor/sales associates who are authorized to use the RE/MAX trademarks in connection with providing real estate brokerage services (the "RE/MAX Network").

8. Since at least as early as January 1, 1974, those affiliated with the RE/MAX Network have provided real estate brokerage services in interstate commerce in the United States in connection with a service mark consisting of a rectangular sign displaying three horizontal bars, the top of which is red, the middle of which is white, and the bottom of which is blue.

9. RE/MAX is the owner of U.S. Trademark Registration No. 1,702,048 for the service mark comprising the red-over-white-over-blue sign design. A copy of the registration certificate for this mark is attached hereto as Exhibit A.

10. RE/MAX is also the owner of Texas Trademark Registration No. 5572917 for the service mark comprising the red-over-white-over-blue sign design. A copy of the registration certificate for this mark is included in Exhibit A.

11. RE/MAX owns several additional U.S. trademark registrations for a family of marks that include the red-over-white-over-blue design or the horizontal bar design together with other words and/or other design elements, including, but

not limited to U.S. Trademark Registration Nos. 1,691,854 and 1,720,592. Copies of the registration certificates for these marks are also attached hereto in Exhibit A.

12. U.S. Trademark Registration Nos. 1,702,048, 1,691,854, and 1,720,592 have been declared incontestable pursuant to 15 U.S.C. § 1065.

13. The federal registration rights, state registration rights, and common law rights of RE/MAX in the service marks described above are collectively referred to as the "RE/MAX Marks."

14. The RE/MAX Marks are used on a variety of advertising media including listing signs, business cards, Internet web sites, directional signs, open house signs, hot and cold air balloons, television commercials, billboards, bus stop benches, banners and other advertising and promotional items. A color photo of a RE/MAX listing sign comprising the red-over-white-over-blue mark is shown below:



15. Brokers and associates in the RE/MAX Network have used the RE/MAX Marks in connection with representing either the buyer or the seller over 25 million times in real estate sale transactions in the United States and worldwide, resulting in over two and a half trillion dollars in sales volume from 1974 to the present.

16. As a result of substantial sales and extensive advertising and promotion, the RE/MAX Marks have become widely and favorably known as identifying real estate brokerage services originating from, sponsored by or associated with the RE/MAX Network. The public has come to associate the distinctive RE/MAX Marks with the RE/MAX Network as a source of high quality real estate brokerage services.

Defendants' Activities

17. RE/MAX learned that Defendants have been using, in conjunction with real estate services, red-over-white-over-blue and blue-over-white-over-red signs that are confusingly similar to the RE/MAX Marks. Color photos of the Defendants' listing signs are depicted below:



18. RE/MAX, by correspondence dated December 15, 2011, April 25, 2012, July 10, 2012, October 19, 2012, and July 24, 2013, expressed its objection to Defendants' use of red, white, and blue signs such as those depicted above because of the likelihood of consumer confusion arising from that use.

19. Despite constructive and actual knowledge of RE/MAX's trademark rights and RE/MAX's multiple requests to cease using the confusingly similar design, Defendants have used and, upon information and belief, continue to use the confusingly similar red-over-white-over-blue and blue-over-white-over-red signs in connection with the advertising and promotion of their real estate services in competition with the RE/MAX Network.

20. Defendants began using the confusingly similar red-over-white-over-blue and/or blue-over-white-over-red signs for real estate services subsequent to

RE/MAX's use and registration of the RE/MAX Marks, and on information and belief, are still using such infringing real estate signs.

COUNT I
(Trademark Infringement Under Federal Law)

21. RE/MAX realleges the allegations contained in each of the paragraphs above.

22. This is a claim for infringement of the federally-registered trademarks of RE/MAX, as depicted in the attached Exhibit A.

23. Defendants' conduct is likely to cause confusion, or to cause mistake, or to deceive the purchasing public and others, whereby they would be led to mistakenly believe that Defendants are affiliated with, related to, sponsored by, or connected with RE/MAX or the RE/MAX Network, in violation of 15 U.S.C. § 1114(1). Defendants' conduct also constitutes an attempt to trade on the goodwill that RE/MAX has developed in the RE/MAX Marks, all to the damage of RE/MAX.

24. Defendants' conduct has caused and, unless restrained and enjoined by this Court, will continue to cause irreparable harm, damage, and injury to RE/MAX.

25. RE/MAX has no adequate remedy at law.

COUNT II
(Unfair Competition Under Federal Law)

26. RE/MAX realleges the allegations contained in each of the paragraphs above.

27. This is a claim for unfair competition under the Lanham Act, 15 U.S.C. § 1125(a), arising from Defendants' unlawful acts, including, without limitation, use of a false designation of origin which is likely to cause confusion, mistake, or deception as to origin, sponsorship, or approval, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Defendants' conduct constitutes an attempt to trade on the goodwill that RE/MAX has developed in the RE/MAX Marks, all to the damage of RE/MAX.

28. By their conduct, Defendants have caused RE/MAX irreparable harm and injury and will continue to do so unless Defendants are restrained and enjoined by this Court from further violation of RE/MAX's rights.

29. RE/MAX has no adequate remedy at law.

COUNT III
(Trademark Infringement in Violation of Tex. Bus. & Com. Code § 16.102)

30. RE/MAX realleges the allegations contained in each of the paragraphs above.

31. This is a claim for infringement of the state-registered trademark of RE/MAX, as depicted in the attached Exhibit A.

32. Defendants' conduct is likely to cause confusion, or to cause mistake, or to deceive the purchasing public and others, whereby they would be led to mistakenly believe that Defendants are affiliated with, related to, sponsored by, or connected with RE/MAX or the RE/MAX Network, in violation of Tex. Bus. & Com. Code § 16.102.

33. Defendants' conduct also constitutes an attempt to trade on the goodwill which RE/MAX has developed, all to the damage of RE/MAX.

34. As a result of Defendants' conduct, Defendants have caused and, unless restrained and enjoined by this Court, will continue to cause irreparable harm, damage, and injury to RE/MAX.

35. RE/MAX has no adequate remedy at law.

COUNT IV
(Trademark Infringement Under Texas Common Law)

36. RE/MAX realleges the allegations contained in each of the paragraphs above.

37. Defendants' conduct is likely to cause confusion, or to cause mistake, or to deceive the purchasing public and others, whereby they would be led to mistakenly believe that Defendants are affiliated with, related to,

sponsored by, or connected with RE/MAX or the RE/MAX Network, in violation of the common law of the state of Texas.

38. Defendants' conduct also constitutes an attempt to trade on the goodwill which RE/MAX has developed, all to the damage of RE/MAX.

39. As a result of Defendants' conduct, Defendants have caused and, unless restrained and enjoined by this Court, will continue to cause irreparable harm, damage, and injury to RE/MAX.

40. RE/MAX has no adequate remedy at law.

COUNT V
(Unfair Competition Under Texas Common Law)

41. RE/MAX realleges the allegations contained in each of the paragraphs above.

42. Defendants' conduct constitutes misappropriation of valuable property rights of RE/MAX and trading on the goodwill symbolized by the distinctive RE/MAX Marks, and is thereby likely to confuse and deceive members of the purchasing public. By virtue of Defendants' conduct, Defendants have engaged in unfair competition in violation of the common law of the state of Texas.

43. As a result of Defendants' conduct, Defendants have caused and, unless restrained and enjoined by this Court, will continue to cause irreparable harm, damage, and injury to RE/MAX.

44. RE/MAX has no adequate remedy at law.

Relief Sought

WHEREFORE, RE/MAX asks this Court to:

A. Grant preliminary and permanent injunctive relief enjoining Defendants and any principals, agents, servants, employees, successors, and assigns of Defendants and all those in privity, concert, or participation with Defendants from:

(i) imitating, copying, duplicating, or otherwise making any use of the RE/MAX Marks or any mark confusingly similar to or dilutive of the distinctiveness of the RE/MAX Marks;

(ii) manufacturing, producing, distributing, circulating, selling, or otherwise disposing of any printed material which bears any copy or colorable imitation of the RE/MAX Marks;

(iii) using any unauthorized copy or colorable imitation of the RE/MAX Marks in such fashion as is likely to relate or connect Defendants with RE/MAX or the RE/MAX Network;

(iv) using any false designation of origin or false description which can or is likely to lead the trade or public, or individual members thereof, to believe

mistakenly that any service advertised, promoted, offered, or sold by Defendants is sponsored, endorsed, connected with, approved, or authorized by RE/MAX;

(v) causing likelihood of confusion or injury to RE/MAX's business reputation and to the distinctiveness of the RE/MAX Marks by unauthorized use of a confusingly similar sign design;

(vi) engaging in any other activity constituting unfair competition or infringement of the RE/MAX Marks or RE/MAX's rights in, or to use, or to exploit the same; and

(vii) assisting, aiding or abetting another person or business entity in engaging or performing any of the activities enumerated in subparagraphs (i) through (vi) above.

B. Find that Defendants have infringed the RE/MAX Marks in violation of federal law and have damaged RE/MAX's goodwill by Defendants' conduct.

C. Find that Defendants have unfairly competed with RE/MAX by the acts complained of herein in violation of federal law.

D. Find that the acts of Defendants constitute a violation of Tex. Bus. & Com. Code § 16.102.

E. Find that the acts of Defendants constitute trademark infringement in violation of the common law of the state of Texas.

F. Find that the acts of Defendants constitute unfair competition in violation of the common law of the state of Texas.

G. Grant an order requiring Defendants, and any principals, agents, servants, employees, successors, and assigns of and all those in privity or concert with Defendants who receive actual notice of said order, to deliver up all signs, articles, promotional, advertising and any other printed materials of any kind bearing the RE/MAX Marks, any mark confusingly similar to or dilutive of the distinctiveness of the RE/MAX Marks.

H. Find Defendants liable and award to RE/MAX monetary damages in an amount to be fixed by the Court in its discretion as just, including all of the Defendants' profits or gains of any kind resulting from their willful infringement and/or acts of unfair competition, said amount to be trebled, and exemplary damages in view of the intentional nature of the acts complained of herein, pursuant to 15 U.S.C. § 1117 and Tex. Bus. & Com. Code §16.102.

I. Award to RE/MAX its attorneys' fees due to the exceptional nature of this case, and all of RE/MAX's costs and expenses of litigation; and

J. Grant to RE/MAX such other and further relief as the Court may deem just, proper, and equitable under the circumstances.

Jury Demand

RE/MAX demands a trial by jury on all issues so triable.

Dated: January 21, 2014

Respectfully submitted,

By: _____/s/

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