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NEW GENERIC TOP-LEVEL DOMAIN NAMES (“gTLD”) DISPUTE RESOLUTION PROCEDURE

RESPONSE FORM TO BE COMPLETED BY THE APPLICANT

- Applicant responding to several Objections or Objections based on separate grounds must file separate Responses
- Response Form must be filed in English and submitted by email to expertise@iccwbo.org
- The substantive part is limited to 5000 words or 20 pages, whichever is less

Disclaimer: This form is the template to be used by Applicants who wish to file a Response. Applicants must review carefully the Procedural Documents listed below. This form may not be published or used for any purpose other than the proceedings pursuant to the New GTLD Dispute Resolution Procedure from ICANN administered by the ICC International Centre for Expertise (“Centre”).

References to use for the Procedural Documents

Name	Abbreviation
Rules for Expertise of the ICC	“Rules”
Appendix III to the ICC Expertise Rules, Schedule of expertise costs for proceedings under the new gTLD dispute resolution procedure	“Appendix III”
ICC Practice Note on the Administration of Cases	“ICC Practice Note”
Attachment to Module 3 - New gTLD Dispute Resolution Procedure	“Procedure”
Module 3 of the gTLD Applicant Guidebook	“Guidebook”

ICC International Centre for ADR Centre international d’ADR de la CCI
 38 Cours Albert 1er, 75008 Paris, France
 Tel +33 (0)1 49 53 30 52 Fax +33 (0)1 49 53 30 49
 E-mail expertise@iccwbo.org Website www.iccexpertise.org

Identification of the Parties and their Representatives

Applicant

Name	Uniregistry, Corp.
Contact person	Mr. Frank Taylor Schilling
Address	3-110 Govenors Square, 1361 GT
City, Country	Grand Cayman, Grand Cayman – KY1-1108, KY
Telephone	1-345-916-7606
Email	contact@uniregistry.com

Objector

Name	National Association of Realtors
Contact person	Kenneth Burlington
Address	430 North Michigan Avenue
City, Country	Chicago, IL 60611 US
Telephone	1-312-329-8360
Email	kburlington@realtors.org

Copy the information provided by the Objector.

Applicant's Representative(s)

Name	John B. Berryhill, LLC
Contact person	John Berryhill, Ph.D., Esq.
Address	204 East Chester Pike, First Floor, Suite 4
City, Country	Ridley Park, PA 19078-0122, USA
Telephone	1-610-565-5601
Email	John@johnberryhill.com

Add separate tables for any additional representative (for example external counsel or in-house counsel).

Applicant's Contact Address

Name	John B. Berryhill, LLC
Contact person	John Berryhill, Ph.D., Esq.
Address	204 East Chester Pike, First Floor, Suite 4
City, Country	Ridley Park, PA 19078-0122 USA
Telephone	1-610-565-5601
Email	John@johnberryhill.com

This address shall be used for all communication and notifications in the present proceedings. Accordingly, notification to this address shall be deemed as notification to the Applicant. The Contact Address can be the Applicant's address, the Applicant's Representative's address or any other address used for correspondence in these proceedings.

Other Related Entities

Name	
Address	
City, Country	
Telephone	
Email	

Add separate tables for any additional other related entity.

Disputed gTLD

gTLD Applicant has applied to and Objector objects to [.example]

Name	.REALESTATE
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Objection

The Objector filed its Objection on the following Ground (Article 3.2.1 of the Guidebook and Article 2 of the Procedure)

Limited Public Interest Objection: the applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

or

Community Objection: there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

Copy the information provided by the Objector.

Point-by-Point Response to the claims made by the Objector (Article 3.3.3 of the Guidebook and Article 11 of the Procedure)

(Provide an answer for each point raised by the Objector.)

I. Introduction

This Proceeding is premised on the remarkable proposition that the membership of a single private entity, which strenuously claims to be distinct from the generic term “real estate”, is somehow necessarily invoked and targeted by this generic term. Trade relating to real estate has long existed prior to existence of the Objector, and is not limited to the United States. The sale and purchase of land is one of the oldest global commercial enterprises as described in *Jeremiah*, Chapter 32 (KJV):

⁶ And Jeremiah said, The word of the Lord came unto me, saying, ⁷ Behold, Hanameel the son of Shallum thine uncle shall come unto thee saying, Buy thee my field that is in Anathoth: for the right of redemption is thine to buy it. [...] ⁹ And I bought the field of Hanameel my uncle's son, that was in Anathoth, and weighed him the money, even seventeen shekels of silver. ¹⁰ And I subscribed the evidence, and sealed it, and took witnesses, and weighed him the money in the balances. [...] ¹⁴ Thus saith the Lord of hosts, the God of Israel; Take these evidences, this evidence of the purchase, both which is sealed, and this evidence which is open; and put them in an earthen vessel, that they may continue many days.

¹⁵ For thus saith the Lord of hosts, the God of Israel; Houses and fields and vineyards shall be possessed again in this land.

Jeremiah’s career as a prophet is believed to have spanned from 626 B.C.E. to 587 B.C.E¹.. While trade in real estate no longer requires divine agency as an advertising medium², nor does it require preserving title transactions in clay vessels; advertising, brokerage, and title services such as that described in Jeremiah 32 have long existed and thrived apart from the activities of a single trade organization in a single country founded in 1908 C.E.. The term “real estate” invokes a broad range of services and products well beyond the narrow scope of agency services, and well beyond the Objector’s REALTOR® membership, which Objector grandiosely defines as “one hundred percent” of the “real estate” community.

This gTLD Objection must be understood in a broader context than the exaggerated claims of a single private US membership organization to be representative of a “community” consisting of the generic designation of an entire field of trade. There is a marked difference between a “community” and a private organization with aspirations to be a guild. The Objector has a long history of attempting to restrain competition by real estate agents who are not dues paying members of its private organization from engaging in lawful trade relating to real estate. In 2005, the United States Department of Justice filed a formal complaint against the National Association of Realtors for violating Section 4 of the Sherman Antitrust Act, stating:

The Department of Justice's Antitrust Division today filed a lawsuit against the National Association of Realtors (NAR), challenging a policy that obstructs real estate brokers who use innovative Internet-based tools to offer better services and lower costs to consumers.[...]

Delivering listings over the Internet gives web-savvy consumers more control over their search for a home, allowing them to educate themselves about their options at their own pace and on their own time. This allows brokers to reduce the time that their agents spend searching the MLS database or showing homes the customer dislikes, the Department said. **Because the Internet can be used to deliver brokerage services more efficiently — resulting in better service and lower costs to**

¹ “Introduction to Jeremiah”, The Jewish Study Bible, Oxford University Press, 2004, p. 917.

² The Internet is a thing of awe and wonder to many, but it has its limits. St. Isidore of Seville has been designated by the Vatican as the Patron Saint of the Internet, computers, computer users, and computer technicians. <http://en.wikipedia.org/wiki/Isidore_of_Seville>

consumers — brokers who utilize the Internet represent a competitive challenge to traditional brokers, the Department added.

[...]

NAR's policy denies brokers using new technologies and business models the same benefits of MLS membership available to their competitor brokers, suppresses innovation, discourages competition on price and quality, and prevents new, efficient competitors from entering into the marketplace — all to the detriment of consumers. (Exhibit A – Press Release, US Dept. of Justice. Emphasis Added)

On November 18, 2008 the Court in *U.S. v. National Association of Realtors*, No. 05C-5140 (N.D. Ill. Sep. 8, 2005) entered a final judgment approving a settlement against the Objector. That action was but one example of the many instances discussed in Brown and McCollum, *Antitrust and the Real Estate Industry: Looking Backwards and Forwards*, (Exhibit B) in which US competition authorities and others have had to expend considerable resources to reign in the practices and policies of the Objector and affiliated organizations³ which have sought, through various mechanisms, to restrain trade in real estate in the United States. This gTLD Objection is part and parcel of the Objector's ongoing effort since the 2008 settlement to find other mechanisms to obtain the practical advantage of such detrimental practices while skirting the express grounds of the settlement itself.

The Objector has spent decades establishing and maintaining a distinction between its members and all others engaged in real estate agency and other services who compete with the Objector. The effort which the Objector expends, in any forum with the sole exception of this one, to set itself apart from the real estate community generally is reflected in the relatively consistent presentation in the Complaint of the term "REALTORS®" complete with the registered trademark symbol which the Objector licenses in order to distinguish its members from all other entities in the United States having an interest of some kind in real estate.

II. Community

Under the Policy, "The objector must prove that the community expressing opposition can be regarded as a clearly delineated community". However, one may scour the Complaint for an answer to the question of "What is the community?" in search of a definite answer. The words "real estate" have a definite meaning in the English language, and trade in real estate involves such persons as sellers, buyers, agents, advertising companies, lawyers, property insurers, title insurers, rental agencies, developers, investors, builders, landscapers, home inspectors, mortgage lenders, and a roster of other occupations and professions who are, by definition, excluded from membership in the Objector's organization. The purpose of the "community" objection was to avoid the consequences of delegating TLD's to clearly identifiable communities designated by names invoked by the disputed TLD string. The purpose was not to impede TLD's broadly designating a field of commerce in which trade is conducted by many unassociated, and indeed competitive, individuals, professions and economic interests.

The Objector has a substantial membership, which is not unusual given that trade in real estate generally is vast, and much larger than the subset of a segment comprising the Objector's membership, which is estimated to be only half of licensed US real estate agents⁴, to the exclusion of all other occupations and interests that may be connected with the broader term "real estate". But at no point

³ Indeed, the Objector has been named on similar anti-trust grounds as a counter-defendant in *Metropolitan Home Realty Network Inc. v. American Home Realty Network Inc. et al.*, Case No. 12-cv0954 (D. Md., September 24, 2012), due in part to the Objector's encouragement and support of the use of copyright claims to advance the same unlawful aims alleged in the DoJ action, including offering financial support to listing organizations who pursue such claims against non-member real estate agents. (Exhibit B)

⁴ Dave Ross, "How Realtors Work", *How Stuff Works*, <<http://home.howstuffworks.com/real-estate/realtor1.htm>>, "Only about half of all licensed real estate agents in the U.S. are Realtors or members of the NAR."

does the Objector clearly explain what “community” is represented by the Objector, other than its own membership. Instead, the Objector defines itself as the “community” per se, as at Paragraph 2(b) of the Complaint which concludes by referring to its members, “**each of whom are REALTORS (the ‘Community’)**”. It is, in fact, one of the few places in the Complaint which omits the registered trademark symbol, because the Objector, at least in that sentence, did not want to draw attention to the fact that its very definition of “community” sets it apart from all others engaged in a real estate business of any kind. The principal business of the Objector is to license use of the “REALTORS®” trademark which, by definition, is an exclusionary right.

By re-defining “community” as “our licensees”, it is of course tautological that membership in this “community” is clearly defined, but it completely misses the point of this first prong of the Policy. The Objector, as at Paragraph 2(b) defines “REALTORS” as “(the ‘Community’)”, and elsewhere defines the “community” as “members of the National Association of REALTORS®”. The proposed TLD string is .REALESTATE, and refers neither to the Objector’s “REALTOR®” mark, nor does it refer to the “National Association of REALTORS®”. The Applicant Guidebook (AGB) at 3.54 states:

“[T]he objector **must** prove that: [...]

There is a **strong** association between the community invoked and the applied-for gTLD string”
(Emphasis Added)

In other words, the definition of “community” as the Objector *per se*, skips the foundational requirement of the Policy to demonstrate that such community is **invoked** by the gTLD string itself. For example, the US National Park Service is one of the largest holders of real estate in the United States, but it is not signified, invoked, or called to mind by the term “real estate”. To be “invoked” is to be called forth or identified. The United Auto Workers also has a membership approximating one million people, but it would hardly be sensible to consider the UAW to be “invoked” or called to mind by the word “automobile” as a TLD string. If, on the other hand, the Objector means to suggest that its “REALTOR®” mark, which defines the “clear delineation” the Objector seeks to draw around the “community”, is somehow synonymous with the generic term “real estate”, then this Proceeding will be interesting indeed.

The Objector has a storied history of strenuously objecting to its membership being considered to being interchangeable with “real estate agents”. The Objector goes to considerable lengths to ensure that its members are most definitely not considered representative of real estate agents generally. The Objector provides a video introduction at <<http://www.realtor.org/videos/why-nar-protects-the-realtor-trademark>> to its extensive Membership Marks Manual on use of the term defined in the Complaint as “REALTORS (the ‘Community’)”. The Objector’s video, as shown in Exhibit C hereto, displays the text, “**REALTOR® ≠ Real Estate Agent**” to the narration, “We need your help to ensure that the term ‘REALTOR®’ continues to mean member of the National Association of Realtors, **and not just any real estate agent.**” As further noted in the Objector’s admission in Exhibit C:

The term REALTOR® is not only a trademark owned by NAR and protected by federal law; **it distinguishes members from all others in the real estate business.**
(Emphasis Added)

Even if the Objector were to be successful in equating the terms “real estate agent” and “REALTOR®” for the purpose of this proceeding, such equation would be limited to the United States and to the exclusion of all other occupations and professions whose business, in one way or another, relates to real estate. Should the Panel find the Objector has been successful in equating “real estate agent” and “REALTOR®” in this Proceeding, the Applicant respectfully requests the Panel to expressly state this subsidiary finding in its decision. However, the Objector, at its own web site shown in Exhibit C **admits and concedes** that its members are distinct from “all others in the real

estate business” and that the term REALTOR® is not broadly representative of the term “real estate” or even “real estate agent”.

Accordingly, there is no question that the Objector’s membership of “REALTORS®”, defined by the Objector as “the community”, is clearly delineated, but can the Objector’s membership be deemed generally representative of anyone with an interest in a trade or interest in real estate? The Objector’s answer to that question is clearly stated in *Zimmerman v. National Association of Realtors*, 70 U.S.P.Q.2d 1425 (TTAB 2004), quoting from the Objector’s own argument:

Moreover, respondent argues throughout the prosecution of these proceedings that whether a real estate agent or broker is a member of respondent is a material issue to other agents or brokers:

As used, the marks serve to distinguish NAR and its member associations from competing service providers and real estate associations that are not affiliated with NAR. Moreover, the marks enable real estate agents and brokers to determine whether their peers, with whom they deal regularly in connection with real estate transactions, are or are not members of NAR. This is important to transactional efficiency and the smooth functioning of the marketplace because ... NAR members are obligated to abide by a Code of Ethics and established rules and regulations that do not apply to non-members.
(Emphasis Added)

Hence, the Objector **admits and concedes** it is not broadly representative of a generic “real estate community” and in fact refers to non-members, constituting half of the licensed real estate agents in the United States, in sworn testimony as “competing service providers and real estate associations”. What the Objector is seeking to do in this Objection is not to protect the interests of a “community”, but merely to seek a competitive advantage over its competitors, and to pre-emptively disenfranchise other licensed real estate professionals from using the term “real estate” in a domain name.

The Objector is a private corporation, and not some sort of benevolent society, religion, fraternity, or cultural or ethnic group, which were the intended beneficiaries of the “community” basis for TLD objections. The Objector has further **admitted by conduct** that it does not consider itself to qualify under the ICANN standards of a “community”. The Objector admits in the Complaint at 2(f) that it is the principal interest behind the “.REALESTATE” TLD application filed by dotRealEstate LLC⁵. The ICANN TLD application process specifically provided for “community preference” TLD applications, but the Objector’s .REALESTATE TLD is not itself a “community preference” application. The Objector further states in the Complaint that it intends to exclude other real estate associations and licensed professionals, to whom Objector refers as its competitors before the Trademark Trial and Appeal Board, from using the generic indication “real estate”. The Objector does not mention in the Complaint that it is also the sponsor of ICANN TLD Application No. 299 for “.REALTOR”⁶. The Applicant agrees that the mark “REALTOR®”, in the United States, distinguishes the Objector and its membership from competitors in the real estate business. But what the Objector is seeking to do here is to obtain both its well-defended US trademark, as well as the generic indication for “real estate”, to arrive at a situation where the only community served by a .REALESTATE TLD is the Objector’s membership, which the Objector defines as **the** community, to the exclusion and detriment of the Objector’s competitors from whom the Objector and its members seek to distinguish themselves from all other real estate professionals.

Having applied for both, the Objector has no “string similarity” objection to the co-existence of a .REALTOR TLD, for which the Objector is the uncontested applicant, and a .REALESTATE TLD. Hence, the Objector will, in all likelihood, become the sole and exclusive operator of the

⁵ See application at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/301>

⁶ See application at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/299>

.REALTOR TLD. To the extent that Objector has defined “the community” as “REALTORS®”, the defined community’s interests will be accurately, distinctly, and completely served by the .REALTOR TLD. To the extent that the Objector desires to additionally operate a .REALESTATE TLD, by disqualifying all others, it must be understood, by the Objector’s own statement of intent, that it will be operated to the competitive detriment of anyone else in whatever may be defined as a real estate community not consisting of the Objector’s own membership.

The Policy suggests the Panel consider:

“The level of public recognition of the group as a community at a local and/or global level”

The Objector firmly establishes that it is not a global organization, and admits that even in the English speaking world, it has not operated in Canada since 1938. Such is the import of the word “National” in the Objector’s name. While the Objector maintains trademark registrations in some countries, such formal filings are not evidence of “public recognition” in any of them. In *Zimmerman*, the Objector successfully argued that public recognition of the Objector’s REALTOR® community was not material. The US Trademark Trial and Appeal Board noted the Objector’s survey evidence, finding:

Respondent [Objector] argues that real estate professionals make up the proper survey universe, as they are actually the purchasers or prospective purchasers of membership in respondent and the services provided by respondent. According to the results of this survey, the primary significance of the term “Realtor” is that of a proprietary term indicating association with respondent – not a generic word. **Specifically, when asked whether “Realtor” refers to all real estate agents or only those who are members of respondent or one of its local or state associations, 84.3% of 204 individuals surveyed recognized this term as indicating members of respondent or one of its associations.**
(*Zimmerman, supra*. Emphasis Added)

Hence, while the Objector’s REALTOR® community is clearly delineated, it is firmly established by the Objector’s own efforts not to refer to real estate agents generally.

In relation to the other factors the Panel is advised to consider, the Objector’s REALTOR® community, in existence since 1908, is a newcomer in relation to, for example, the prophet Jeremiah’s trade in real estate among countless others over centuries. The Objector is clear that it is a “national” and not an “international” organization, and even within the US, the Objector considers roughly half of licensed US real estate professionals to be its competitors, with whom relations with the Objector are most accurately characterized as hostile, and have been deemed by the US Department of Justice to be anti-competitive in particular relation to use of the Internet as an advertising medium.

III. Substantial Opposition

The Objector here refers to its membership as constituting substantial opposition, but provides no evidence that its membership is of one mind, or has even been asked or informed about the question. Certainly, the million other licensed US real estate agents have not been asked whether they support the Objector’s effort to exclude them from use of a generic indication on the basis of the Objector’s distinct REALTOR® community. The Objector is the sole professional organization which objects to anyone other than itself operating a .REALESTATE TLD. Accordingly, for the various considerations suggested by the Policy in relation to this prong of the Policy, we have one Objector. In relation to “historical defense of the community”, the anti-trust and other litigation noted above bears testimony to the longstanding anti-competitive and exclusive posture the Objector has taken in relation to any real estate professionals who are not members of the Objector’s REALTOR® community, which consists solely of the membership of one organization and excludes, for example,

the substantial proportion of what are called FSBO's – for sale by owner transactions – for whom a number of entities provide assistance apart from estate agency.

According to the Objector's own "2012 Profile of Home Buyers and Sellers: Most Difficult Task for FSBO Sellers" (Exhibit D), fully 12% of home sales in the United States were transacted without using a real estate agent, NAR member or not. While this number fluctuates over the years, and the Objector is clearly gleeful at a recent and small drop in that figure, FSBO service providers, along with non-members of this sole Objector, have no voice in this Proceeding, and will have no access to a .REALESTATE TLD as an advertising medium, in accordance with the Objector's intentions stated in the Complaint itself, in relation to a .REALESTATE TLD.

As stated by the Objector at 2(a), "Since NAR's membership defines the Community, and as the NAR represents all of its members, and in doing so opposes the current application, this ratio is one hundred percent (100%)". Hence, the Objector fancies itself as the sole authoritative voice on the subject of "real estate", to the exclusion of FSBO service providers and half of the licensed real estate agents in the United States. It is precisely this arrogant posture, that the Objector is the real estate market and should rightfully exclude all others from using the Internet in relation to real estate, which led to the DoJ's action against Objector noted above.

While the Objector, which includes a vast government lobbying apparatus, refers to relations with various state government entities, it is also true that every non-community non-member of the NAR who is a licensed real estate agent likewise has authorization by such official bodies to do business in real estate, to the Objector's continued chagrin. Notably under this prong, however, the Objector has presented no expression of support or endorsement of this Objection from any other organization to which the Objector refers. As the Objector claims, it is "one hundred percent" of the community and none of the other organizations with whom the Objector claims to have relationships has spoken, or would even be deemed relevant by the Objector to this Proceeding. The Objector claims to be 100% of the relevant community, which is an ominous portent of the Objector's aims in seeking a .REALESTATE TLD.

Additionally, the term "real estate" is much broader, and encompasses a much wider range of economic activity than the agency and direct selling and advertising functions of the Objector's membership. Builders, lenders, inspectors, developers, and many others may certainly seek to use the words "real estate" as a more effective means than ".com" of signifying their particular focus. The words "real estate" do not signify any particular set of service providers, nor do they signify a "community" of any sort – "real estate" is an entire economic sector.

IV. Targeting

Under this prong of the Policy, the Objector "must prove" that it is in some way "targeted" by the TLD string such that the gTLD string strongly suggests an association with the Objector. The extent to which the "NAR's membership defines the Community", the Objector has been adamant that its REALTOR® community stands apart from others engaged in a business relating in some way to real estate and as stated by the Objector in Exhibit C hereto, "The term REALTOR®" which is the defining feature of the Objector's REALTOR® community "distinguishes members from all others in the real estate business." Again, as the Objector is the unopposed applicant for a .REALTOR TLD, then the term .REALESTATE, in competition with the Objector's community, cannot be considered to target the Objector's REALTOR® community.

Moreover, the Objector, in seeking to limit the entirety of the "community" invoked by the generic words "real estate", to only the Objector's members, or those who qualify for such membership; fails to define, as a threshold question, a community commensurate with the broad scope of the general term "real estate". Mortgage lenders, builders, architects, lawyers, surveyors, and a host of other trades should be entitled, on equal terms with any other registrant, to be able to use the word "real estate" – connected with services they provide – in a domain name if they desire to do so. **"Real estate" does not call to mind a community of any kind, any more than "manufacturing" or**

any other broad generic commercial term. It is a broad area of commerce and law, which engages a host of providers of goods and services. Indeed, there may be large, or even dominant, entities in any given field of commerce, but being influential in one limited aspect of a field of commerce does not confer title to the entire field, nor does it confer a right to speak for the competitors one is seeking to exclude.

III. Detriment

This prong of the Policy, as applied to this Proceeding, is rich with irony. The Objector has a documented history of action against it by the United States Department of Justice for alleged anti-competitive and detrimental actions against its competitors in the real estate industry by excluding others from the use of Internet advertising mechanisms. In the Complaint, the Objector claims it intends to apply unspecified standards to those who would use the Objector's .REALESTATE TLD. It is practically an admission by the Objector that it intends to restrain trade in the real estate market. FSBO's, constituting 12% of US home sales by the Objector's own reckoning, are certainly not going to qualify for use of a walled garden TLD which will complement the Objector's unopposed .REALTOR TLD.

As the Objector defines itself as "one hundred percent" of the REALTOR® community, then a .REALESTATE TLD, applying the Objector's mathematical relation of "REALTOR® ≠ Real Estate Agent", cannot be understood to have a detrimentally impact on the continued ability of the Objector to distinguish by a TLD which does not signify the sole feature by which the Objector's admittedly "distinguishes members from all others in the real estate business". Again, the Objector cannot seriously claim it has brought this Proceeding to promote, represent or protect a global "real estate community" interest, or even a US "real estate community" interest. The only interest sought to be advanced here is the Objector's pretended total authority to speak for the entire global real estate industry, and the expansion of its proprietary REALTOR® mark as a lever to obtain exclusive control over the generic indication for real estate services. Indeed, in Section 4(a), the Objector claims that the Applicant's neutral operation of a .REALESTATE TLD, without regard to whether registrants paid tribute to the Objector, would somehow threaten global trade in real estate. These claims by the Objector turn the concept of economic detriment on its head. The Objector's documented history of engaging in restraint of trade, and in particular relation to use of the Internet, demonstrate that the Objector is seeking to circumvent the terms of the settlement it reached with the US Department of Justice, by securing control of the term "real estate" itself, to the exclusion of others. The Objector's expansive and breathtakingly arrogant allegation in this Proceeding, that its private US member-only trade organization, represents "one hundred percent" of the real estate industry, speaks for itself on this score and requires no further elaboration. If the Objector believes, as it has stated here, to have cornered "one hundred percent" of the real estate industry, despite all of its references to "competitors" before the TTAB and elsewhere, then should the Objector be successful in this Proceeding, we may expect further action by the United States government again in short order.

IV. Conclusion

For the foregoing reasons, the Applicant submits that this Proceeding should be recognized for what it is. This Proceeding does not arise from a broad "community" signified by the TLD being targeted to its detriment. The "community" defined in the Complaint is a single self-interested private organization with a strong and distinctive trademark it vigorously defends against genericide. Having successfully distinguished itself as an organization apart from all other competitors in its field, the Objector is merely seeking to leverage its considerable proprietary success in what amounts to a bold and exclusionary grab for anti-competitive purposes. In so doing, the Applicant asks this Panel to ignore Objector's hard-fought efforts to maintain a distinction between the members of the Objector's organization and all others engaged in any way relating to the real estate industry, signified by the very definition of the Objectors "REALTOR® community" of which it is "100%". If the Objector has now finally decided that its REALTOR® mark now signifies a generic denotation of "real estate", then a most remarkable day has come, which even Jeremiah could not have foreseen.

Communication (Article 6(a) of the Procedure and Article 1 of the ICC Practice Note)

A copy of this Response is/was transmitted to the Objector on: June 9, 2013
by _____email_____ to the following address:
_____mthiel@realtors.org_____

A copy of this Response is/was transmitted to ICANN on: June 9, 2013
by email to the following address: _____drfiling@icann.org_____

Filing Fee (Article 1 Appendix III to the Rules and Article 11(f) of the Procedure)

As required, Euros 5 000 were paid to ICC on June 7, 2013 by wire transfer annotated to identify this Proceeding.

Evidence of the payment is attached for information.

Description of the Annexes filed with the Response (Article 11(e) of the Procedure)

List and Provide description of any annex filed.

EXHIBIT A - DOJ press release on US v. National Association of Realtors

EXHIBIT B – “Antitrust and the Real Estate Industry: Looking Backwards and Forwards”

EXHIBIT C - Screenshot of Objector's Introductory Video On Brand Protection

EXHIBIT D - 2012 Profile of Home Buyers and Sellers: Most Difficult Task for FSBO Sellers

Date: _____ June 9, 2013 _____

Signature: _____
