



Beverly Hills • El Segundo • Manhattan Beach • Marina del Rey/Venice • Santa Monica • West Los Angeles

February 12, 2010

To: All Associates (2002-2007)

From: Holly Thomas

RE: RE/MAX Marquee Partners, Inc. (“RMP”) Trademark Lawsuit Involving Agents

Dear Associates: 

This letter is intended to give you factual information regarding the lawsuit in which you may have been named. **Regardless of your chosen path in the end, you are strongly encouraged to seek the advice of your own attorney.** If you are unsure whether you have been named in the lawsuit, please see the attached complaint and look for your name. [Note that there are two lawsuits involving individuals and both of them are attached. Further, in the Agent Lawsuit, the names are alphabetical but in three columns.] With this letter I want to lay out the brief history of the lawsuit and the legal proceedings that have occurred, and then outline some possible options for your consideration.

LAWSUITS

In June 2005, All Cities Realty, Inc. (“ACR”) filed a trademark infringement lawsuit against RMP (formerly C.F. Real Estate Loans, Inc. dba RE/MAX All Cities Realty¹)². This lawsuit will be called the “Main Lawsuit”. The complaint alleged infringement of a registered U.S. trademark and seeks multimillion dollars in damages. RMP disputes the claims of ACR’s complaint. In March 2006, RMP filed an answer and counterclaims to the complaint. This Main Lawsuit has been set for trial and postponed 4 times over the last three years. The currently scheduled trial date is July 13, 2010.

In July 2006, ACR filed a second complaint against 1700+ individuals (some duplicates)³. This lawsuit will be called the “Agent Lawsuit”. This complaint alleged common law trademark infringement against each of the individuals, many of whom are former/current RMP agents. In the Agent Lawsuit,

¹ For more information on the history of the RE/MAX All Cities Realty name, see the attached memo written by Kelli Todd.

² The formal title on the Main Lawsuit is *All Cities Realty, Inc. v. CF Real Estate Loans, Inc.*, Case No. 8:05CV 00615 AHS (MLGx) and is filed in the District Court for the Central District of California.

³ The formal title on the Agent Lawsuit is *All Cities Realty, Inc. v. Mark Aandrues et al.*, Case No. BC355724 and is filed in the Superior Court for the County of Los Angeles.

the Plaintiff claims damages of \$600,000 per defendant (with over 1700 agents, this makes Plaintiff's claim more than \$1,000,000,000). RMP intervened in the action (meaning RMP filed an action to participate in the lawsuit) and the Court stayed (i.e. stopped) the action from going forward based on RMP's motion in late September 2006, pending the outcome of the Main Lawsuit. Because of such stay, nothing has happened on this Agent Lawsuit nor can anything happen until the stay is lifted.

In February 2008, ACR filed yet another complaint against RMP's two affiliates, Commbroker, Inc. dba RE/MAX Commercial Brokerage, and Hollymax, Inc. dba RE/MAX Hollywood Hills/RE/MAX Sunset Blvd., and 22 individuals who are former/current Commbroker or Hollymax agents as well as the two brokers of record⁴. This lawsuit will be called the "Second Federal Lawsuit". The complaint also alleged infringement of a registered U.S. trademark with damages requested in the amount of \$700,000 per defendant (with 24 defendants, this claim is for almost \$17 million in damages). The attorneys for Commbroker, Hollymax and the individuals have filed 3 motions seeking to dismiss the Second Federal Lawsuit. The first two motions were approved by the judge but the Plaintiff was allowed to file amended complaints both times; one of those amended complaints named Kelli Todd as an additional defendant. The third motion to dismiss was denied except with respect to Kelli; this was due to claims he made against Kelli that were not made against other defendants. Since only three motions to dismiss are allowed before an answer must be filed, there are no more procedures that can be followed before filing the answer. Therefore, an answer to this Second Federal Lawsuit must be filed by each of the individuals named as defendants **by April 1, 2010**. It is our understanding and belief, based on the judge's last ruling, that another dismissal may be won if a comprehensive Motion for Summary Judgment is filed with the court.

Although Kelli Todd feels personally and painfully responsible for each and every one of you, she also feels that RMP was led astray by those who should have known better. Therefore, in June 2007, RMP filed a malpractice lawsuit against Dale Eleniak for professional negligence in his legal services to RMP. This lawsuit continues to be delayed pending the outcome of the Main Lawsuit.

Personally, Kelli has put everything she owns back into RMP. Any benefits that she accumulated over the years from the company are gone – she has no home other than her fully mortgaged and modest 3/2 home in Torrance and she drives a leased Volvo sedan. When the RMP sale is complete, Kelli will have no job, no business and no safety net. This is not said to evoke pity or sympathy, but to let you know of the lengths that she has gone to support RMP through this bad market and past these lawsuits. I believe it has always been her intent to indemnify and defend you.

RMP'S DEFENSE OF AGENTS

In living up to the commitment made in 2006, RMP has been funding the defense and associated legal fees of all three of these lawsuits for all defendants, even during the downturned market in the last

⁴ Case is styled *All Cities Realty, Inc. v. Hollymax, Inc. and Commbroker, Inc., et al.*, Case No. SA CV08-195-CJC (MLGx) and is filed in the District Court for the Central District of California. It was originally filed under the Honorable Cormac J. Carney in the Western Division but was transferred as a related case to the Honorable Alice Stotler in the Southern Division, who is the judge in the Main Lawsuit.

few years. We have continued to recognize that people were brought into all of these lawsuits due to RMP's former fictitious business name: RE/MAX All Cities Realty. Over the last 4 years we have continued to vigorously defend against the claim that we have infringed on ACR's name. Unfortunately, once RMP files for bankruptcy, RMP will no longer be able to defend or in any way fund the defense of any of the lawsuits or indemnify any of the individuals.

While RMP has been funding the lawsuit defenses, I have been the go-between between defendants and counsel. I have tried to be a buffer for you on the "day to day" aspects of the litigation so that you would not be distracted from your business and personal lives. You needed to be focused on your real estate business rather than the business of lawsuit defense. However, the tide of unfortunate circumstances has made it necessary that you become an active participant in your defense.

OPTIONS

As a named defendant in the Agent Lawsuit or the Second Federal Lawsuit, there are many options for you to consider. I cannot give you legal advice, nor do I have the space in this letter to outline all of your options. For that information, you will need to consult your own personal attorney. After much deliberation and discussion with our own trademark and business attorneys, however, we understand that the following may be some of the choices for you to consider:

- (1) Represent yourself Pro Per⁵. – This is the cheapest option, but will probably be the riskiest and will take the most time away from your business. It requires that you as an individual represent yourself in court. Judges tend to be somewhat understanding of the difficulty faced by people who because of circumstances outside of their control must represent themselves. That is not to say that this is what would happen in this case, but it would certainly create a new twist to have hundreds of agents show up in court to represent themselves and it might be enough to push the judge to look for realistic options for ending the case.
- (2) Join a group defense team. – We believe that if enough of you band together, for less than a few thousand dollars per agent, you should be able to hire a law firm to represent you in the Agent Lawsuit or the Second Federal Lawsuit and finish with the Plaintiff once and for all. Byron Rife, Broker of Record, will be retaining an intellectual property law firm for both the Second Federal Lawsuit and the Agent Lawsuit. If you are interested in participating with him and saving many duplicated fees, then please e-mail me (hthomas@realestatelocalosangeles.com) and I will help to facilitate that.
- (3) Hire your own legal counsel. – If you feel strongly about hiring your own legal counsel, this will get costly. RMP has put over \$1 million dollars into the defense to date and we have not gone to trial.

⁵ Pro Per means to represent yourself without an attorney before the court. I believe that the biggest disadvantage is that you do not have any legal experience or training so you do not know what you are doing or what to expect in the courtroom. And I believe that the biggest advantage is that it does not cost you anything but time.

(4) Check with your insurance agent. – Your homeowner’s or umbrella insurance policies may have coverage for this.



Some of you may be thinking that you should contact the Plaintiff to negotiate a settlement. **Please consult your own attorney prior to doing this!** As you can quickly surmise from the above, and by a quick trip to his web site, this plaintiff does not operate with the same standards as you! However, that may be an option (but to me does not seem like a sound one). At this point, the Agent Lawsuit is stayed; therefore, nothing can happen on the case – no dismissal, AND **no withdrawal of a name** until the case is re-opened, **even if you make a settlement.** If you pay the Plaintiff money now without having a dismissal filed, you will have no guarantee that you will ever be dismissed from the case. **Please beware of Plaintiff’s offers to settle unless you have consulted your own attorney to discuss the pros and cons.**

I recognize that none of the options presented in this letter are ideal. We deeply regret this. We present these options to you, so that you can choose your path. I will provide whatever documents you need to help you clear your name and get out from under the lawsuit that you may be involved in.

Most of you already know that your name is tied to the Plaintiff’s web site: www.remaxlawsuits.com. I am sure that you are curious to go online and see his daily postings or to read his factually flawed blog (but remember that he is not being forthright in the blog; for example, as it was updated last night (2/11) but his new entry was listed as a continued entry under the last blog date in January). But please remember that every time you visit Plaintiff’s website, you only encourage the popularity of that web address, which ties the lawsuit to you and the other 1700 names thus keeping his website at the top of many Google/Yahoo search engines. I encourage you to resist that temptation. RMP monitors this site frequently and can provide you various snapshots upon request.

RMP sincerely regrets that you have been pulled into any of these lawsuits. We will make every effort to assist you with this misfortune.

Sincerely,

A handwritten signature in black ink, appearing to read "Holly M. Thomas", with a long horizontal flourish extending to the right.


Holly M. Thomas
General Counsel

cc: Kelli Todd
Dave Sandelands, Esq.

THE HISTORY OF 'RE/MAX ALL CITIES REALTY' NAME

By Kelli Todd

February 12, 2010

In 2002, RMP (at that time known as C.F. Real Estate Loans, Inc. with multiple DBA's) had grown beyond the Los Angeles metropolitan area from Torrance to Pacific Palisades, from the Pacific Ocean to Hollywood and then up into the mountains of Crestline and Lake Arrowhead. The problem was that no one knew that our DBA's: RE/MAX Beach Cities Realty, RE/MAX Westside Properties, RE/MAX Beverly Hills, RE/MAX Lake Arrowhead, RE/MAX Crestline, and RE/MAX Hollywood Hills were related to each other. Because RE/MAX advertised that each of its franchises were "independently owned and operated", clients did not understand that they were really getting the benefit of a very large operation and many of our RE/MAX agents did not even know what offices were associated with the company. Therefore, with the go-ahead of our former attorney, and the agreement of RE/MAX International (who must consent to the use of any name), we registered the additional DBA name 'RE/MAX All Cities Realty' with the County of Los Angeles and began using it as an "umbrella" name to cover all of the offices while each maintained their unique neighborhood DBA's. This allowed the company and agents the choice to brand itself/themselves beyond each physical location (Beach Cities, Westside, Beverly Hills, Hollywood, Crestline, and Lake Arrowhead) and become a powerhouse in Los Angeles County and the mountain resorts of San Bernardino County. The success of RE/MAX All Cities Realty (now RMP) under the umbrella name was not due to the name itself, but rather, to YOU, the experienced professional full time agent(s) - partnered with the big international brand of RE/MAX. You and your clients realized that having a large branded company (RE/MAX) with diversified marketplaces and the entire infrastructure, support and services that RE/MAX International and we, RMP, offered, was a good place for your business. 

As the old cliché goes, experience makes you wiser, and you don't know what you don't know. I now know that registering with the County of Los Angeles alone did not complete the process necessary for the use of a fictitious name or DBA. Instead, the proper standard of practice is that your legal counsel should run a name search and confirm that that name you are seeking to use is not being used by anyone else in a way that will conflict with your usage. Because I had my former attorney conduct the name approval and registration process, I trusted that it had been done correctly. Unfortunately, I was not aware that a name search had not been conducted. Neither former counsel nor RE/MAX International ever advised me verbally, or in writing, that C.F. Real Estate Loans, Inc. (RMP) or I needed to conduct this type of search as a condition to use the name.

To compound matters, when the Plaintiff in the three lawsuits sent cease and desist letters demanding that C.F. Real Estate Loans, Inc., (RMP) stop using the 'All Cities Realty' name, our former counsel and the former intellectual property attorneys (that former counsel sought advice from) continued to advise me and RMP that C.F. Real Estate Loans, Inc. (RMP) could continue to operate under the RE/MAX All Cities Realty name. I was told that RE/MAX was the trademark and whatever name came after that did

not matter. Our current counsel and I feel strongly that there is no consumer confusion, no financial damages to Plaintiff, and no benefits have been bestowed upon RMP due to the use of the 'All Cities Realty' name. Nevertheless, the bad advice that RMP received through former counsel and the former intellectual properties attorneys led to the filing of the three lawsuits and to today's results.

In 2007, after much discussion with and under the counsel of its current intellectual property attorneys, Cislo & Thomas, C.F. Real Estate Loans, Inc., (RMP) abandoned the name RE/MAX All Cities Realty and took on the new name of RE/MAX Marquee Partners, Inc.

For perspective, All Cities Realty, Inc., is owned by a man named Joseph Minor who operates a small office (2-3 licenses, varies) in a Class B or C strip mall in Costa Mesa, California off of the 55 freeway. His location is in another county (Orange County) and nowhere near the primary market places worked by RMP's agents.

Looking back now, eight years later, it is clear that RMP should have received counsel on what path to take with respect to its name. You may now be asking: how could RMP put you in a position that would create "such liability" for you; why did RMP give an indemnification to you that is now worth nothing. All I can say is that when the Agent Lawsuit was filed in 2006, RMP was a thriving profitable company in the midst of one of the biggest real estate booms this country had ever seen. We fully intended to live up to our obligation to indemnify and defend you. We were set and prepared to go to trial on 4 different dates over the last three years to defend these actions. We always expected to be vindicated and absolved of any damages. No one could have known or predicted the antics and delays and what would occur over the past three years in our market place, and with the economy. RMP was caught in a downward spiral under extraordinary circumstances that could not be reversed, no matter what measures we took.

I cannot express enough the sincere regret that I have for you to have been pulled into any of these lawsuits. On behalf of RMP I deeply apologize that the Plaintiff has felt it necessary to drag you and your well respected names through this process.

