

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 08-cv-2044-RPM-BNB

RE/MAX INTERNATIONAL, INC., a Colorado corporation,

Plaintiff,

v.

Gateway Realty Services, a Colorado corporation

and

Adam Malachi,  
an individual.

Defendants.

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**ORDER AND CONSENT JUDGMENT**

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This action was commenced on September 23, 2008, by Plaintiff, RE/MAX International, Inc. (“RE/MAX”), against Defendants Gateway Realty Services, Inc., and Adam Malachi, having their principal place of business at 6740 E. Hampden Avenue, Suite 100, Denver, CO 80224. Defendant Malachi initiated on October 9, 2008 a Chapter 7 bankruptcy proceeding, Petition No. 08-25810-ABC, and this instant litigation has been stayed with respect to Malachi pursuant to 11 U.S.C. § 362(b). On January 30, 2009, Malachi was granted a discharge pursuant to 11 U.S.C. § 727 of the Bankruptcy Code. RE/MAX and Defendant Gateway (“Defendant” or “Gateway”) have agreed to settle this matter and to terminate this action by entry of an Order and Consent Judgment which incorporates their settlement agreement, and in particular, the terms, admissions and covenants as follows:

### **THE PARTIES' TERMS OF SETTLEMENT**

1. This is an action for acts of trademark infringement and unfair competition under the laws of the United States, Title 15, United States Code, and for trademark infringement under the trademark law of the state of Colorado; and trademark infringement, and unfair competition under the common law of the state of Colorado.

2. The Court has subject matter jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1338 and 1367. This Court has personal jurisdiction over Defendant. Venue is proper in this judicial district.

3. RE/MAX is a corporation incorporated under the laws of the State of Colorado with its principal place of business at 5075 South Syracuse Street, Denver, Colorado 80237-2712.

4. 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. RE/MAX owns 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. U.S. Trademark Registration Nos. 1,702,048; 1,691,854; and 1,720,592 have achieved incontestability under 15 U.S.C. § 1065.

5. RE/MAX owns Colorado State Trademark Registration No. 881058152 for a mark comprising a red, white, and blue rectangular bar design. The federal registration rights, state law rights and common law rights of RE/MAX in the red-over-white-over-blue mark, as described above, are collectively referred to as the "RE/MAX Trademark."

6. Gateway provides real estate brokerage services in competition with RE/MAX and the RE/MAX network of sales affiliates in the state of Colorado. Gateway has provided real

estate brokerage services using red-over-white-over-blue yard signs (collectively, the "Gateway Sign Design"), which is identified in the Complaint pending in this action.

7. The parties have agreed to the entry of this Order and Consent Judgment which incorporates certain terms, admissions, and covenants of settlement as set forth in the Settlement Agreement resolving the dispute between the parties.

8. Each party has read this Order and Consent Judgment and agrees to be fully bound by its terms.

**THEREFORE, IT IS ORDERED AND ADJUDGED:**

A. Defendant, and any of its principals, agents, servants, employees, successors and assigns, and all those in privity, concert or participation with Defendant who receive actual notice of this Order by personal service or otherwise, are hereby immediately and permanently enjoined and restrained from use of the Gateway Sign Design in connection with providing, advertising or promoting real estate services or real estate-related goods and services, and shall cease all such use no later than March 31, 2009, including without limitation:

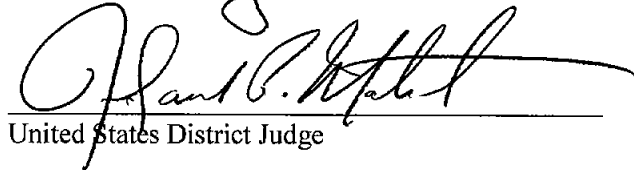
- (i) using, imitating, copying, duplicating, or otherwise making unauthorized use of the RE/MAX Trademark;
- (ii) manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any product, advertisement, card or sign, bearing any simulation, reproduction, counterfeit, copy or colorable imitation of the RE/MAX Trademark;
- (iii) using any simulation, reproduction, counterfeit, copy or colorable imitation of the RE/MAX Trademark in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any real estate product or service in such fashion as to relate or connect, or tend to relate or connect, such products or services in any way to RE/MAX or to any products or services sponsored or approved by, or connected with RE/MAX; and

- (iv) assisting, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (i) through (iii) above.

B. Violation by Defendant of the injunctive relief set forth herein would cause irreparable harm and injury and, in such event, RE/MAX shall be entitled to seek enforcement of the specific provisions of this Consent Judgment.

C. The parties have consented to the entry of this Order and Consent Judgment without further notice.

**DONE AND ORDERED** this 18<sup>th</sup> day of February, 2009.

  
United States District Judge

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