

THE HONORABLE THOMAS S. ZILLY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

REX – REAL ESTATE EXCHANGE, INC.,

Plaintiff,

v.

ZILLOW, INC., et al.

Defendants.

Case No. 2:21-cv-00312-TSZ

**THE NATIONAL ASSOCIATION OF
REALTORS® OPPOSITION TO REX’S
MOTION TO DISMISS NAR’S
COUNTERCLAIM**

NATIONAL ASSOCIATION OF
REALTORS®,

Counterclaim-Plaintiff,

v.

REX – REAL ESTATE EXCHANGE, INC.,

Counterclaim-Defendant.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>Page</u>
I. INTRODUCTION.....	1
II. ARGUMENT.....	2
A. NAR Has Asserted Valid Lanham Act Claims	2
1. REX’s Statements Are False or Misleading Statements of Fact.....	2
2. REX’s False Statements Appear in Commercial Advertisements	4
3. NAR Does Not Challenge Protected Speech, and <i>Noerr-Pennington</i> Does Not Apply.....	7
B. NAR Has Standing to Challenge REX’s False Advertisements	8
1. NAR Has Article III Standing	8
2. NAR Has Statutory Standing.....	11
C. If NAR’s Counterclaim Is Dismissed, NAR Should Be Granted Leave to Amend.....	13
III. CONCLUSION.....	13

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

Cases

Am. Diabetes Ass’n v. United States Dep’t of the Army,
938 F.3d 1147 (9th Cir. 2019) 10

Ariix, LLC v. NutriSearch Corp.,
985 F.3d 1107 (9th Cir. 2021) 4

Cal Pure Pistachios, Inc. v. Primex Farms, LLC,
No. 09-7874, 2010 WL 11519537 (C.D. Cal. Mar. 25, 2010)..... 3

Coastal Abstract Serv., Inc. v. First Am. Title Ins. Co.,
173 F.3d 725 (9th Cir. 1999) 3

Dependable Sales & Serv., Inc. v. Truecar, Inc.,
No. 15-1742, 2016 WL 79992 (S.D.N.Y. Jan. 6, 2016)..... 3

EP Henry Corp. v. Cambridge Pavers, Inc.,
383 F. Supp. 3d 343 (D.N.J. 2019) 3

Genus Lifesciences Inc. v. Lannett Co., Inc.,
378 F. Supp. 3d 823 (N.D. Cal. 2019)..... 4

Greater Houston Transportation Co. v. Uber Techs., Inc.,
155 F. Supp. 3d 670 (S.D. Tex. 2015)..... 5

Gully v. Nat’l Credit Union Admin. Bd.,
341 F.3d 155 (2d Cir. 2003)..... 10

Havens Realty Corp. v. Coleman,
455 U.S. 363 (1982)..... 10

Heartland Payment Sys., Inc. v. Mercury Payment Sys., LLC,
No. 14-0437, 2015 WL 3377662 (N.D. Cal. Feb. 24, 2015)..... 3

Irish Lesbian & Gay Org. v. Giuliani,
143 F.3d 638 (2d Cir. 1998)..... 11

Lexmark Int’l, Inc. v. Static Control Components, Inc.,
572 U.S. 118 (2014)..... 11, 12

Lona’s Lil Eats, LLC v. DoorDash, Inc.,
No. 20-6703, 2021 WL 151978 (N.D. Cal. Jan. 18, 2021) 4

Luminati Networks Ltd. v. BIScience Inc.,
No. 2:18-483, 2019 WL 2084426 (E.D. Tex. May 13, 2019) 5

Meese v. Keene,
481 U.S. 465 (1987)..... 9

Murphy v. Nat’l Collegiate Athletic Ass’n,
128 S. Ct. 1461 (2018) 11

1 *Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey*,
730 F.3d 208 (3d Cir. 2013)..... 10

2

3 *Parsons v. U.S. Dep't of Just.*,
801 F.3d 701 (6th Cir. 2015).....9, 10

4 *PAX Water Techs., Inc. v. Medora Corp.*,
No. 18-9143, 2019 WL 4390567 (C.D. Cal. Aug. 5, 2019)..... 2

5

6 *Pegasystems, Inc. v. Appian Corp.*,
463 F. Supp. 3d 152 (D. Mass. 2020)..... 5

7 *Reddy v. Litton Indus., Inc.*,
912 F.2d 291 (9th Cir. 1990)..... 13

8

9 *Rescue v. Walters*,
No. 20-5700, 2021 WL 22591 (W.D. Wash. Jan. 4, 2021).....4, 11

10 *RingCentral, Inc. v. Nextiva, Inc.*,
No. 19-2626, 2020 WL 4039322 (N.D. Cal. July 17, 2020) 2

11

12 *SKEDKO, Inc. v. ARC Prod., LLC*,
No. 3:13-696, 2014 WL 2465577 (D. Or. June 2, 2014) 5

13 *The Presbyterian Church v. United States*,
870 F.2d 518 (9th Cir. 1989)..... 10

14

15 *TransUnion LLC v. Ramirez*,
141 S. Ct. 2190 (2021)..... 9

16 *Turkish Coal. of Am., Inc. v. Bruininks*,
678 F.3d 617 (8th Cir. 2012)..... 11

17

18 *United States v. Corinthian Colleges*,
655 F.3d 984 (9th Cir. 2011)..... 13

19 *W. Sugar Coop. v. Archer-Daniels-Midland Co.*,
No. 11-3473, 2015 WL 12683192 (C.D. Cal. Aug. 21, 2015) 5

20

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272 F.3d 1114 (9th Cir. 2001) 9

22

23

24

25

26

27

28

I. INTRODUCTION

REX has engaged in a campaign of lies that have misled consumers and harmed NAR's reputation. NAR's counterclaim seeks to hold REX responsible for those falsehoods. Specifically, as described in NAR's counterclaim, REX has made the following false statements on its website:

- “REX charges a low fee by totally eliminating the buy side agent commission.” ECF 114 (Counterclaim) ¶ 8.
- REX charges “[n]o buyer’s agent fee Even if your buyer is working with a non-REX agent, REX doesn’t ask sellers to cover the cost.” *Id.* ¶ 9.
- With REX, “no additional buyer’s agent commission [is] required.” *Id.* ¶ 10.
- “REX’s services cost significantly less when compared with those of traditional real estate agents,” who are “members of the National Association of Realtors (NAR).” *Id.* ¶ 11.
- “By removing the obligation to pay two agent commissions for a single transaction, [REX] save[s] [its] customers an average of \$10,435 off their home sales” *Id.* ¶ 13.
- “Our tech geniuses have come up with algorithms and computations that use data and AI to find qualified buyers.” *Id.* ¶ 27.
- “By more efficiently pairing sellers and buyers, we can reduce costs for all involved—REX charges a fixed 2% covering both sides of the transaction instead of the 5-6% customarily enforced by MLS participants.” *Id.* ¶ 29.
- “Using machine learning, we’ve built predictive analytics that can target and accurately match sellers and buyers of properties.” *Id.*
- “REX uses smart, direct and cost-effective marketing to drive traffic to each listing through proprietary data-driven algorithms. Smarter marketing enables us to sell homes faster, while avoiding buy-side agent commissions of 2-3%” *Id.* ¶ 30.
- “[W]e have PhDs from the best schools in the country predicting who we think within a certain radius or square mile or demographic is the best buyer for your home, and then dropping them a note.” *Id.* ¶ 38.
- “So most people come to [REX to] sell their home and then we target people who would like to buy that home. Not using the MLS, not using agents, but just using digital technology to identify them.” *Id.* ¶ 39.

REX used these false advertisements on its website to attack NAR. Specifically, REX falsely advertised its services (for example, claiming REX does not charge buyer-agent commissions) and then drew false comparisons between REX’s services and aspects of the services

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