

Professional Standards Update--New Changes to the *Interpretations of the Code of Ethics*

- New Case Interpretation #12-21, Registration of URL Similar to Name of Subsequently-Established Firm, was adopted as follows:

Realtor® Z was the technology-savvy partner in the XYZ residential real estate firm in the north woods. She was also a former advertising executive who was constantly looking at new and innovative ways to position and market the XYZ firm. While her partners had consistently resisted her suggestions to change the firm's name to better reflect the locale they served, Realtor® Z had, with their concurrence, registered a number of domain names based on firm names she had to date been unable to convince her partners to adopt. She felt this was a wise strategy since it was only a matter of time until she would convince her partners that a name change was beneficial. Among the domain names registered were northwoodsrealestate.com, woodsandlakesrealty.com, and upnorthrealestate.com. None of those names were, to the best of Realtor® Z's knowledge, similar to the names of other area real estate brokerage companies.

Approximately a year later Sales Associate B received his broker's license, left the XYZ firm, and opened his own brokerage firm which he named Up North Real Estate. When he attempted to register the domain name upnorthrealestate.com he learned it had already been registered by Realtor® Z. Upset with this turn of events, he filed an ethics complaint with the local association of Realtors® charging Realtor® Z and her partners with having violated Article 12 of the Code of Ethics, as interpreted by Standard of Practice 12-12.

At the hearing, Realtor® Z defended her actions in registering the domain name upnorthrealestate.com on the grounds she had been actively lobbying her partners to change the firm's name to Up North Real Estate; that she had no intention of using the domain name upnorthrealestate.com until the firm's name was changed and that at the time she had registered the domain name no other firm that she was aware of had a similar, let alone identical, name. Moreover, she argued, a domain name does not have to mirror a firm's name, it merely has to present a "true picture." "The XYZ firm has listed and sold residential property in the north woods for many years. 'Up north' is traditionally used by residents and visitors to refer to our area," she continued. "While I hoped to convince my partners to change the name of our firm to 'Up North Real Estate' at some point, if the XYZ firm had used the domain name—which we haven't—it still would have satisfied Article 12's true picture requirement since it refers to a particular geographic locale, not to a competing real estate company."

The hearing panel agreed with Realtor® Z's reasoning, concluding that at the time Realtor® Z registered the domain name upnorthrealestate.com, it was not similar to the name of any other area real estate company. The panel also noted that if it had been used, the domain name would have satisfied Article 12's true picture requirement since it would have simply suggested to consumers that it was a source of property information in that geographic area.

- New Case #12-22, Registration of Domain Names Based on Competitors' Firms' Names, was adopted as follows:

Realtor® X was the principal broker of a small but growing real estate brokerage firm. Realtor® X was constantly on the lookout for new and innovative ways to distinguish her firm from the competition and to increase its market share. Rather than simply relying on tried and true methods, Realtor® X sought and often followed the advice of education, marketing and technology consultants.

Based on the advice of her technology expert, Realtor® X created and registered domain names for her firm, for the licensees affiliated with her, and for herself. A somewhat more troubling recommendation was that she register domain names mirroring the names of the real estate brokerage firms in her area with the largest market shares. When she questioned the consultant, he responded, "There's no reason why not. Everyone does it. It's just competition—and aggressive marketing."

When Realtor® A tried to register a domain name for his firm ABC Realtors®, he learned that domain name had already been registered by Realtor® X. Doing further research, he learned the names of several other large companies in the area had also been registered as domain names by Realtor® X. Realtor® A filed an ethics complaint with the local association of Realtors® charging Realtor® X with violating Article 12 of the Code of Ethics as interpreted by Standard of Practice 12-12.

At the hearing, Realtor® X defended her actions noting that Article 12 requires Realtors® to "present a true picture in their advertising, marketing, and other representations." She pointed out that she had never used the registered domain name mirroring the name of Realtor® A's firm, or those based on the

names of other local firms. Since she had not used the domain names, she couldn't see how she had violated Article 12.

The hearing panel did not agree with Realtor[®] X's reasoning. The panel based its decision that Realtor[®] X had violated Article 12 on the wording of Standard of Practice 12-12 which bars Realtors[®] from registering URLs or domain names which, if used, would present less than a true picture. The panel also noted that the very act of registering a URL or domain name which, if used, would present an untrue picture is all that is required to violate Article 12, as interpreted by Standard of Practice 12-12.

- New Case #12-23, Intentionally Misspelled Domain Names Based on Names of Competitors' Firms, was adopted as follows:

Realtor[®] V was the sole proprietor of a property management firm. Realtor[®] V hoped to expand into residential brokerage and concluded that attracting buyers and sellers to his website would enhance the growth of his firm's brokerage activity. Realtor[®] V sought the advice of several website developers, each of whom had suggestions on how best to attract and hold visitors. One suggestion Realtor[®] V found particularly interesting was to create domain names similar, but not identical, to the names of established brokerage firms in the area. Realtor[®] V registered and began to use domain names that, while similar to the names of the five largest residential brokerage firms in the area, were each spelled slightly differently than those firms' actual names.

In short order, complaints were filed against Realtor[®] V by Realtors[®] from each of the five largest firms. The grievance committee concluded the complaints were related and consolidated them for consideration at one ethics hearing.

At the hearing, Realtor[®] V acknowledged that Article 12 requires Realtors[®] to be "honest and truthful in their real estate communications" and that Realtors[®] must "present a true picture in their advertising, marketing, and other representations." "If I had used the actual names of any of these firms in my domain names, that would have been a misrepresentation," continued Realtor[®] V, "but when I changed spellings, I constructively created meaningless domain names which aren't deceptive since they don't reflect the name of any actual real estate firm." The hearing panel did not agree with Realtor[®] V's defense, finding that each of the "slightly misspelled" domain names were so similar to the names of Realtor[®] V's competitors that reasonable consumers would readily conclude they would lead consumers to those firms' respective websites. As Realtor[®] V's "misspelled" domain names would mislead reasonable consumers, Realtor[®] V was found in violation of Article 12, as interpreted by Standard of Practice 12-12.

- New Case #12-24, Registration of Domain Name Based on Sales Associate's Name When Sales Associate Subsequently Leaves the Firm, was adopted as follows:

Realtor[®] P was the current broker-owner of the real estate brokerage firm founded by her grandmother. Always on the lookout for ways to attract top sales associates, Realtor[®] P offered comprehensive training and benefits, including state of the art technology tools, individual websites, and personalized domain names for each sales associate.

Sales Associate Q had enjoyed a long and productive relationship with Realtor[®] P's firm but, having gained considerable experience and a broad client base, decided the time had come to start his own firm. The parting was amicable except for one thing—Sales Associate Q's domain name which, under the terms of his independent contractor agreement, remained the property of the firm. Attempts to negotiate a release of the domain name proved unsuccessful and, with no alternative available, Sales Associate Q filed an ethics complaint against Realtor[®] P, alleging violation of Article 12 as interpreted by Standard of Practice 12-12. Sales Associate Q's complaint noted that the domain name included Q's first and last names and that any future use by Realtor[®] P, now that Q was no longer a member of her firm, would present something less than the true picture required by Article 12.

At the hearing, Realtor[®] P defended refusal to release the domain name on the grounds that at the time she had registered it, Sales Associate Q had, in fact, been a member of her firm, and that use of the domain name by a member of her firm had presented a true picture. Circumstances change, she noted, adding that at the time she had registered the domain name on behalf of both her firm and Sales Associate Q, her actions had been consistent with Article 12 as interpreted by Standard of Practice 12-12. "The fact that Sales Associate Q decided to start his own firm shouldn't result in me being found in violation of the Code of Ethics," she concluded.

The hearing panel concluded that Realtor® P was not in violation of Article 12 as interpreted by Standard of Practice 12-12 because her registration of a domain name that used Sales Associate Q's name occurred with the knowledge and consent of Sales Associate Q; at the time of registration, use by Realtor® P's firm satisfied Article 12's true picture requirement; and that Realtor® P had ceased any use of the domain name at the time Sales Associate Q left the firm. The decision also noted that while the Code of Ethics did not require Realtor® P to transfer the domain name to Sales Associate Q, domain name registrations must be renewed periodically and that a future renewal of the domain name by Realtor® P would be a violation of Article 12 if that domain name does not reflect a "true picture" of Realtor® P's business at the time of the renewal.