

May 4, 2006

Robert J. Itri
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Attorneys at Law
2575 East Camelback Road
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Re: Shea Homes' Trademark Rights in "Highlands Ranch"

Dear Mr. Itri:

This law firm represents Keller Williams Executives Realty, LLC. We are in receipt of your letter dated April 17, 2006 to Mr. Brian Petrelli of Keller Williams, and provide the following response thereto.

1. There is no likelihood of confusion between the trademark, "Highlands Ranch" registered by your client Shea Homes in class 037 for construction services, and the use of the domain name www.myhighlandsranch.com by Keller Williams Realty. Extensive third party use of the term "Highlands Ranch" is clear evidence that the public has learned to distinguish among different users of the term, without confusion. As of the date of this letter, there are 44 businesses listed in the metro Denver telephone directory starting with the term "Highlands Ranch". A search of business names, trade names and trademarks registered with the Colorado Secretary of State returns so many registered names that it exceeds the search engine's "record count" capability. A Google® search of the mark "highlands ranch" returned 3,650,000 "hits". Accordingly, your client's trademark in the term "Highlands Ranch" will be construed very narrowly. See Brennan's, Inc. v. Brennan's Rest. LLC, 360 F3d 125, 131-32 (2d Cir. 2004); Sun Banks of Fla. Inc. v. Sun Fed. Sav. & Loan Ass'n, 651 F.2d 311, 316 (5th Cir. 1981). Keller William's use of the domain name www.myhighlandsranch.com in connection with its real estate sales and mortgage brokerage services could in no way be confused with Shea Homes' use of the mark "Highlands Ranch". Furthermore, and as both a sign of its good faith and additional proof of lack of confusion, my client has voluntarily placed the following disclaimer on its web site home page since 2002, which includes an active hyperlink to the Shea Homes web site:

"This website is not affiliated with nor does it represent Shea Homes®. If you are looking for more information on Shea Homes®, please visit their website here."

2. Highlands Ranch, Colorado is a geographic place name and is therefore primarily descriptive. While it appears that the USPTO should not have allowed registration of your client's mark under the Lanham Act (see 15 U.S.C. § 1052(3)(2)), it is clear that use of the term "Highlands Ranch" in the domain name www.myhighlandsranch.com in