

May 17, 2019

Jonathan Passe
Chief, ENERGY STAR Residential Branch
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20004

Re: Draft Documentation Regarding Potential Changes to Verification Oversight Organizations (VOOs) within the ENERGY STAR Residential New Construction Program
Submitted via email to energystarhomes@energystar.gov

Dear Mr. Passe,

On behalf of more than 140,000 members, the National Association of Home Builders (NAHB) submits these comments to the U.S. Environmental Protection Agency (EPA) on the “Draft Documentation Regarding Potential Changes to Verification Oversight Organizations (VOOs) within the ENERGY STAR Residential New Construction Program” published March 2019.

NAHB is a Washington, D.C. based trade association that works to ensure housing is a national priority and that all Americans have access to safe, decent and affordable housing. The federation includes more than 700 affiliated state and local associations in all fifty states, the District of Columbia, and Puerto Rico. NAHB’s membership includes, among others, those who design, construct, and supply single family homes, build and manage multifamily projects, and remodel existing homes. Each year, NAHB’s members construct about 80 percent of the new homes built in the United States.

On August 10, 2018, EPA solicited feedback from ENERGY STAR program stakeholders on whether the eligibility criteria for EPA recognition as a Verification Oversight Organization (VOO) for the ENERGY STAR New Construction program should be expanded to include organizations that earn and maintain accreditation through ISO/IEC 17065 “Conformity Assessment: Requirements for bodies certifying products, processes, and services,” and also sought feedback on whether the EPA should consider incorporating additional or alternative requirements in the VOO ‘Application for Recognition’ to ensure the impartiality and avoidance of conflict-of-interest of VOOs.¹ NAHB responded with comments to both requests in a letter dated November 15, 2018.² The EPA is now inviting comments and feedback from ENERGY STAR program stakeholders on the draft documentation on the EPA Recognition of Verification Oversight Organizations (VOO), which is a revised set of proposed requirements that

¹ <https://www.energystar.gov/sites/default/files/asset/document/ISO%2017065%20RFI%2008%2009%2018.pdf>

² Letter from Jaclyn Toole, AVP, Sustainability & Green Building, National Association of Home Builders, *Request for Information: ISO/IEC 17065 Verification Oversight for the ENERGY STAR Certified Home Program* (Nov. 15, 2018) (on file with author).

incorporates some prior stakeholder feedback and provides additional detailed information on proposed requirements.

Consistent with EPA's initial request for comments, NAHB assumes that EPA's goal in soliciting feedback from stakeholders is to collect input on the appropriateness of the proposed changes, the potential benefits and negative impacts, and to identify a timeline for implementation. Therefore, NAHB submits the following comments:

I. APPROPRIATENESS OF PROPOSED CHANGES

EPA Proposed Potential Changes to VOO Requirements:

ELIGIBILITY CRITERIA for VERIFICATION OVERSIGHT ORGANIZATIONS

1. *Demonstration of Impartial Governance*

Impartiality is of critical importance for Verification Oversight Organizations. As such, these organizations must be organized and operated to safeguard the objectivity of their activities and maintain policies to ensure that potential conflict of interest issues are identified and avoided. To be eligible for recognition as a VOO, an organization must maintain either:

- *501(c)(3) or 501(c)(6) not-for-profit corporation status, with a Board of Directors or Executive Committee with a diverse representation of interests; and/or*
- *ISO/IEC 17065 "Conformity Assessment: Requirements for bodies certifying products, processes, and services" accreditation to the ENERGY STAR Certification Protocol for Site-Built and Modular Single-Family Homes and Multifamily New Construction Using an Energy Rating Index-Based Compliance Path through a signatory to the International Accreditation Forum (IAF) Multilateral Recognition Agreement (MLA).*

NAHB Comments:

NAHB does not support the new proposed VOO eligibility criteria requiring either a prerequisite of a non-profit organization OR ISO/IEC 17065 accreditation. NAHB believes that compliance with ISO/IEC 17065 should be the only standard level of compliance for all entities seeking VOO status regardless of non-profit/for-profit nature of an organization. By requiring all entities to achieve VOO eligibility through compliance with ISO/IEC17065, the program levels the playing field for the industry. Holding all verifiers to the same quality control standard will provide more consistent ratings regardless of an organization's non-profit status. The ISO/IEC 17065 is primarily concerned with "conformity assessment" in certifications, to only apply this requirement to a portion of the VOOs is counter to the goals of the program. This change could also help to bring additional value and validity to the ENERGY STAR Residential Certified Home Program, knowing that no matter which organization conducts the work, the outcomes will be consistent.

Knowing that one size never fits most, NAHB supports providing options for builders. However, NAHB remains concerned that different levels of compliance could easily lead to inconsistent and unreliable results, ultimately increasing builder liability. The elimination of the non-profit eligibility criteria may allow more competition in the marketplace, enhance quality control through third-party verification, and further distinguish the role of the builder and the verifier. In

this instance, NAHB feels that an organization's tax status has no impact on their ability to be ISO/IEC 17065 accredited and oversee these types of program requirements.

In a time where data quality, transparency and consistency are being questioned, it is imperative that changes be made to hold everyone accountable. Once new eligibility criteria are established, all current and future VOOs must be held to the same standard. If a VOO is able to comply with either one of the two currently proposed eligibility criteria, NAHB has significant concerns about the potential for a lack of competitive fees as well as inconsistency in prices between non-profit VOOs and those with the ISO/IEC 17065 accreditation, particularly because of the expenses associated with obtaining the latter. It is important that builders have competitive choices when it comes to these types of programs, so they can better meet the varying needs of their clients, their projects, and any other certifications they wish to pursue.

Therefore, NAHB urges EPA to eliminate the non-profit status eligibility criteria and only allow organizations that have the rigorous ISO/IEC 17065 accreditation to become VOOs. This requested change in eligibility criteria does not restrict any organization from applying, it only increases consistency, confidence in output quality and will streamline the application process with a single criterion.

II. POTENTIAL BENEFITS AND NEGATIVE IMPACTS

EPA Proposed Potential Changes to VOO Requirements:

ELIGIBILITY CRITERIA for VERIFICATION OVERSIGHT ORGANIZATIONS

2. Demonstration of Impartial Governance

- *ISO/IEC 17065 "Conformity Assessment: Requirements for bodies certifying products, processes, and services" accreditation to the ENERGY STAR Certification Protocol for Site-Built and Modular Single-Family Homes and Multifamily New Construction Using an Energy Rating Index-Based Compliance Path through a signatory to the International Accreditation Forum (IAF) Multilateral Recognition Agreement (MLA).*

NAHB Comments:

NAHB questions the stability, application and availability of RESNET's Standard 301 Energy Rating Index (ERI). Initially the HERS standard was proprietary, but then shifted to an open ANSI standard in 2014 where it was first referenced in the 2018 International Energy Conservation Code (IECC). Now, it appears that RESNET is attempting to limit the application of Standard 301 to once again be proprietary as demonstrated in the recently filed and still outstanding lawsuit against Triconic LLC³. The uncertainty that surrounds Standard 301 could potentially give RESNET an unfair advantage as a VOO if they are able to restrict the use of the standard.

While NAHB is not opposed to the incorporation by reference of specific standards, the standard must nonetheless be freely available and allowed to be freely used by the public. However, an important distinction exists between obtaining a standard and the application of that standard.

³ See Appendix A, *Complaint, Residential Energy Services Network, Inc. v. Triconic, LLC*, No. 6:19-cv-00327 (M.D. Fla. Feb. 18, 2019)

EPA Proposed Potential Changes to VOO Requirements:

ROLES AND RESPONSIBILITIES for VERIFICATION OVERSIGHT ORGANIZATION

3. *VOO Responsibilities*

b. *Accredited Software*

- i. *Establish and maintain policies requiring that only home energy modeling software programs that are tested and approved in accordance with the most current version of RESNET Publication 002 shall be used in ENERGY STAR certifications for homes and apartments.*

NAHB Comments:

As written, NAHB has similar concerns with the requirements for the accredited software about the availability, use and application of RESNET Publication 002 as detailed in the previous comment addressing Standard 301. NAHB recommends that EPA obtain a release from RESNET for anyone to use Publication 002 and develop additional criteria to qualify third-party organizations to test and approve software to the most current version of RESNET Publication 002. These third-party organizations can include but should not be limited to VOOs.

EPA Proposed Potential Changes to VOO Requirements:

ROLES AND RESPONSIBILITIES for VERIFICATION OVERSIGHT ORGANIZATION

4. *Database of ENERGY STAR Certified Homes and Apartments*

- a. *Maintain a database of homes and apartments that are certified as ENERGY STAR, and provide EPA with summary reports, as needed, to allow the Agency to track partners' participation in the ENERGY STAR program, as well as obtain general aggregate information about the energy-efficiency features being used in ENERGY STAR certified homes and apartments.*

NAHB Comments:

NAHB encourages EPA to provide a more detailed database requirement for VOOs. The database should minimally include physical address, date, energy rating index, verifier name, company, contact information, version of ENERGY STAR, and software version used. These required data points will allow for uniformity across VOOs and enable EPA to easily compare all single-family ENERGY STAR new home certifications. This requirement has the potential to increase program visibility, and to provide more avenues for consistent data-sharing with organizations like the Multiple Listings Services (MLS).

III. TIMELINE FOR IMPLEMENTATION

EPA Proposed Potential Changes to VOO Requirements:

TERMS OF RECOGNITION FOR VERIFICATION OVERSIGHT ORGANIZATIONS

Modifications

...Organizations previously recognized by EPA will be given at least 180 days to implement any policies or procedures needed to comply with new EPA requirements.

NAHB Comments:

NAHB requests a more detailed timeline for implementation of the recognition of Verification Oversight Organizations (VOO).

IV. CONCLUSION

NAHB supports the availability of voluntary, above-code programs as a means to encourage energy-efficient construction practices. In fact, in a recent survey conducted by NAHB, 81% homebuyers ranked having an ENERGY STAR rating for the whole house as either highly desirable or an essential element for their next home.⁴ This information demonstrates that voluntary, above-code programs can penetrate the market place and create a demand, thus increasing their value. NAHB also supports enhancing consumer choices as well as market-based mechanisms to maintain or increase energy efficiency savings. To be effective, however, any program must send the right signals by creating efficient and effective solutions that not only reduce energy usage, but also promote uniform rigor, limit builder liability and yield less burdensome regulations in the future.

Overall, NAHB has significant concerns with the current draft of proposed changes to the ENERGY STAR Residential New Construction Program and believes that the additional clarity provided by this draft of VOO requirements does not reflect several main points NAHB raised in its November 2018 letter. NAHB values the opportunity to provide comments on the EPA's Draft Documentation Regarding Potential Changes to Verification Oversight Organizations (VOOs) within the ENERGY STAR Residential New Construction Program. In its current form, however, NAHB does not support this draft version and strongly urges the EPA revisit the eligibility criteria. Please contact me at (202)266-8225 or jtoole@nahb.org if you have any questions regarding this letter or would like to discuss these comments in further detail.

Sincerely,



Jaclyn S. Toole, Assoc. AIA, CGP
Assistant Vice President, Sustainability & Green Building

⁴ Emrath, Paul. "The Average Builder Uses 10 Different Green Products and Practices," *Eye on Housing* (blog). March 13, 2017 http://eyeonhousing.org/2017/03/the-average-builder-uses-10-different-green-products-and-practices/?_ga=2.172538915.1055520192.1494427816-135545152.1476289408

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

RESIDENTIAL ENERGY SERVICES
NETWORK, Inc., a California corporation,

Plaintiff,

v.

Triconic, LLC, a foreign limited liability
company,

Defendant.

COMPLAINT

Plaintiff, RESIDENTIAL ENERGY SERVICES NETWORK, Inc. (“RESNET”), a California corporation, hereby files this complaint against Defendant, TRICONIC, LLC (“Triconic”), a foreign limited liability company, and states:

NATURE OF THE ACTION

1. This is an action for false designation of origin and unfair competition under Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)); the United States Copyright Act of 1976, as amended (§ 17 U.S.C. §§ 101 *et seq.*); violations of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) (*Fla. Stat.* §§ 501.201 to 501.213); common law trademark infringement and unfair competition under Florida law pursuant to Fla. Stat. §495.161; and other Federal and causes of action under the laws of the State of Florida, for damages and injunctive relief.

THE PARTIES

2. RESNET is a California Corporation doing business in the State of Florida that owns the intellectual property at issue.

3. Triconic is a foreign limited liability company that is registered to do business in Florida, does business in this jurisdiction, and has infringed RESNET's intellectual property in this jurisdiction.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to, *inter alia*, 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338 and 1367, in that this is a trademark dispute that arises under the federal Lanham Act, 15 U.S.C. § 1051 *et seq.*

5. Venue and jurisdiction is proper in that:

- Triconic operates, conducts, engages in, or carries on a business or business ventures in this State, and the Middle District of Florida, within the meaning of Fla. Stat. § 48.193(1);
- Triconic has committed tortious acts within this State, and the Middle District of Florida, including the infringement set forth herein, within the meaning of Fla. Stat. § 48.193(1); and/or
- Triconic is engaged in substantial and not isolated activity within this State, and the Middle District of Florida, within the meaning of Fla. Stat. § 48.193(2).
- Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the acts or omissions giving rise to this claim occurred, in this judicial district.

BACKGROUND

6. The Residential Energy Services Network (“RESNET”) was founded in 1995 as an independent, non-profit organization to help homeowners reduce the cost of their utility bills by making their homes more energy efficient.

7. In 2002, RESNET became incorporated as a 501 (c) (3) non-profit organization and Energy Rated Homes of America was merged into the organization, with a Board of Directors governing RESNET.

8. After more than a decade of development, the infrastructure needed to make energy efficiency a standard feature in the nation's housing market is now in place. Across the nation, rating programs, in partnership with the housing industry, are forging the public and private partnerships required for successful home energy rating systems. The technical, program and marketing assistance required for this effort is provided by RESNET.

9. The Home Energy Rating System (“HERS”) Index is the industry standard by which a home's energy efficiency is measured. It is also the nationally recognized system for inspecting and calculating a home's energy performance.

10. The HERS Index measures a home's energy efficiency and can calculate other outputs and suggestions, such as how efficiently a home is operating and which modifications can be made for greater energy savings. When selling a home, a low HERS Index Score can command a higher resale price; when purchasing a home, the HERS Index Score can be used to anticipate the costs of energy bills and weigh whether efficiency upgrades are needed.

11. On December 6, 2004, RESNET filed for a trademark on “RESNET RESIDENTIAL ENERGY SERVICES NETWORK,” Reg. No. 3170404, Serial No. 76623423.

12. On January 3, 2007, RESNET filed for a trademark on “HERS,” Reg. No. 3322697, Serial No. 77075107.

13. On November 30, 2017, RESNET filed for a trademark for “RESNET HERS H20,” Serial No. 87703439.

14. On May 3, 2018, RESNET obtained a copyright registration, Reg. No. TX0008577199, for the “Standard for the Calculation and Labeling of the Energy Performance of Low-Rise Residential Buildings using an Energy Rating Index.” RESNET’s trademarks and copyright are collectively referred to as its “Intellectual Property.”

15. Based upon Triconic’s website, Triconic claims that its mission is to be one of the world’s leading producers and providers of certification programs and information. *About*, TRICONIC, LLC (last accessed: Feb. 11, 2019) <<https://triconic.com/about>>.

Mission

Triconic's mission is to be one of the world's leading producers and providers of certification programs and information. By using creativity and innovation to distinguish our portfolio of certification programs, services, and products, we aim to develop the most trusted and profitable certification programs while bringing the best user experiences to all markets we serve. Our team values integrity, openness, and mutual respect, takes on challenges and promises to hold ourselves accountable to customers, shareholders, partners, and employees by honoring our commitments, providing results, and striving for the highest quality.

16. Triconic claims to have a unique process for creating certification programs where it offers a tailored approach for each of its certification program sponsors. *Our Process*, TRICONIC, LLC (last accessed: Feb. 11, 2019) <<https://triconic.com/our-process>>.

Our Process

Triconic has a unique process for creating certification programs. We offer a completely tailored approach for each of our certification program sponsors.

17. On January 28, 2018 at the National Association of Home Builders Green and Energy Subcommittee Meeting, Triconic and the Florida Home Builders Association (“FHBA”) announced the launching of its Certified Ratings Program.

18. At the January 28, 2018 Meeting, it was announced that the FHBA outsourced the daily operations of their rating program to Triconic. At the presentation Triconic’s President & Chief Executive Officer, Darrell Lehman, announced that the FHBA will receive a portion of the proceeds of the ratings conducted through the Certified Ratings Program, providing a financial stake in the program.

19. Mr. Lehman also directed people to Triconic’s webpage on the Certified Ratings Program. *See FHBA Certified Ratings Program, TRICONIC, LLC* (last accessed: Feb. 11, 2019) <<https://triconic.com/fhba-certified-ratings-program>>.

20. At some point after the announcement, Triconic arranged that Wrightsoft Corporation’s Right-Energy® software program would be used to calculate energy rating scores for the program. At that time Wrightsoft Corporation’s Right-Energy® was accredited by RESNET as a HERS software program.

21. On September 26, 2018, RESNET revoked Wrightsoft Corporation’s Right-Energy® accreditation as HERS Rating Provider.

22. December 14, 2018 RESNET notified HERS Raters and HERS accredited Rating Providers that Right-Energy’s accreditation as HERS Rating Software Program Provider was revoked. A copy of the communication “Revocation of the Accreditation of Wrightsoft Corporation’s Right-Energy” is attached as Exhibit “A.”

23. On December 14, 2018, Triconic deceptively sent communications to certified RESNET HERS Raters that “Wrightsoft Corporation’s Right-Energy®, as an ERI/HERS Rating

Software Tool, remains approved for use in the Certified Ratings Program.” A copy of the Triconic notification is attached “Triconic Notification that Right-Energy® Approved” (RESNET staff was forwarded this communication from three different HERS Raters from Florida, Nevada and North Carolina) as Exhibit “B.”

24. Using RESNET’S trademarks, Triconic sent this communication to certified RESNET HERS Raters within three hours after RESNET’s communication.

25. The communication links to the FHBA website, which states, “The Certified Ratings Program, sponsored by the Florida Home Builders Association (FHBA), provides certified energy ratings certificates for new single-family homes, energy rating certificates for homes that are already built.” *Certified Ratings*, FLORIDA HOME BUILDERS ASSOCIATION (FHBA) (last accessed: Feb. 11, 2019) <<http://fhba.com/resources/certified-ratings/>>.

26. The FHBA Certified Rankings website in turn states: “You will be directed to our Program Administrator, Triconic, who can help your HBA launch a Program in your area,” with a link to the Triconic webpage. *Id.*

27. The FHBA site is also linked to Triconic’s webpage. *FAQs*, TRICONIC, LLC (last accessed: Feb. 11, 2019), <<https://triconic.com/faqs>>.

28. On December 16, 2018, FHBA posted that “... Wrightsoft Corporation’s Right-Energy®, as an ERI/HERS rating software, remains approved for use in the Certified Ratings Program. Any policy decision by RESNET does not change Right-Energy® as an approved software tool to produce ERI/HERS values as needed by codes, standards and the Certified Rating Program. Triconic also posted a copy of the post, “Florida State Homebuilders Communication on Right Energy 12-16-18,” which is attached hereto as Exhibit “C.”

29. Triconic is using RESNET's copyrighted material and trademarks to deceptively and unfairly compete with RESNET throughout the country, including Florida, and to confuse the public.

30. Triconic is tarnishing the Intellectual Property and the RESNET brand.

31. Triconic's communications to certified RESNET HERS Raters without RESNET's permission, is a misappropriation and infringement of RESNET's Intellectual Property and damages RESNET and the RESNET brand.

32. Triconic has misappropriated RESNET's Intellectual Property to the detriment of the RESNET and the benefit of the Triconic.

33. RESNET never licensed, or gave exclusive permission, to Triconic to use any of RESNET's Intellectual Property.

34. Triconic's continued use of RESNET's Intellectual Property is: (a) damaging RESNET's Intellectual Property; (b) damaging the RESNET brand; and (c) causing confusion in the marketplace.

35. Triconic does not have license, authority, or other permission from RESNET to use any of RESNET's copyrighted material.

36. The forgoing acts of Triconic constitutes direct copyright infringement in violation of federal law.

37. The foregoing acts of Triconic are intended to cause, have caused, and are likely to continue to cause confusion or mistake, or to deceive consumers, the public, and the trade into believing that its Certified Ratings Program is authentic, authorized, or equivalent to RESNET's program and HERS index.

38. RESNET enters into binding provider agreements with its authorized providers who adhere to the requirements for accreditation and quality assurance as established by RESNET.

39. RESNET has contracts with providers throughout the United States, which includes Florida.

40. Triconic was aware, or should have been aware, that RESNET has binding provider agreements or prior business relationships with these providers, which is why, on information and belief, Triconic intentionally sought to send the correspondence to certified RESNET HERS Raters.

41. Triconic specifically intended to interfere with Plaintiff's business relationships with its providers.

42. The activities of Triconic, as described above, are likely to create a false impression and deceive consumers, the public, and the trade into believing that there is a connection or association between Triconic and RESNET.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT/FALSE DESIGNATION
OF ORIGIN UNDER 15 U.S.C. §1125(a)

43. RESNET incorporates the allegations of the Paragraphs 1 through 42 as if fully set forth herein.

44. By *inter alia*, circulating materials that falsely state Wrightsoft Corporation's Right-Energy® software remains accredited by RESNET and directing certified RESNET HERS Raters to Triconic's advertisements under this pretext, Triconic has falsely designated and represented that the accreditation of Right-Energy® by RESNET still exists and that Triconic's correspondences are endorsed by, connected with, authorized by, or otherwise associated with RESNET, who owns federal registrations for its Intellectual Property.

45. Triconic has used and continues to use RESNET's Intellectual Property throughout the United States, including the Middle District of Florida.

46. Triconic has improperly used, and continues to use, RESNET trademarks and copyright in connection with the same services, which is likely to cause confusion or mistake, or to deceive as to affiliation, connection, or association of Triconic with RESNET, or as to the origin, sponsorship, or approval of their goods and/or services.

47. Triconic's acts have damaged or are likely to damage goodwill associated with RESNET, the Intellectual Property, and the RESNET brand.

48. Triconic's acts have been willful, intentional, and intended to benefit Triconic at RESNET's expense.

49. Triconic's actions violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

50. Triconic's actions have directly and proximately caused, and will continue to cause, irreparable harm to RESNET, unless preliminarily and permanently enjoined.

51. RESNET does not have an adequate remedy at law.

52. Furthermore, Triconic is realizing profit and will continue to realize a profit from its unlawful actions, which are causing, and will cause, RESNET monetary damage in an amount to be determined at trial.

WHEREFORE, RESNET prays that the Court grant the Prayer for Relief set forth below.

COUNT II
FEDERAL UNFAIR COMPETITION - 15 U.S.C. § 1125(a)

53. RESNET incorporate the allegations of the Paragraphs 1 through 42 as if fully set forth herein.

54. RESNET has not authorized Triconic to use RESNET's Intellectual Property, ideas, programs, or customers in any manner.

55. Triconic willfully, intentionally, and deliberately stole RESNET's ideas, programs, customers and Intellectual Property in derogation of RESNET's rights.

56. Triconic's use of RESNET's intellectual property, including trademark, copyrights, programs and concepts in commerce is likely to cause confusion, mistake, or to deceive as to the affiliation, connection, or association; and/or likely to cause confusion, mistake, or to deceive as to the origin, sponsorship, or approval of the Triconic's services and affiliations, and thus, constitutes unfair competition, false designation of origin, and/or false description or representation in violation of § 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

57. Triconic's actions have directly and proximately caused, and will continue to cause, irreparable harm to RESNET, unless preliminarily and permanently enjoined.

58. RESNET does not have adequate remedy at law.

59. Furthermore, Triconic is realizing profit and will continue to realize a profit from its unlawful actions, which are causing, and will cause, RESNET monetary damage in an amount to be determined at trial.

WHEREFORE, RESNET prays that the Court grant the Prayer for Relief set forth below.

COUNT III
VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR
TRADE PRACTICES ACT - FLA. STAT. § 501.201 et. seq.

60. RESNET re-alleges and re-incorporates the allegations in paragraphs 1 through 42 as though fully set forth herein.

61. RESNET has not authorized Triconic to use RESNET's Intellectual Property, ideas, programs, or customers in any manner.

62. Triconic's involvement in the fraudulent scheme to steal the RESNET's rights, title, and interest in its Intellectual Property, customers, good will and business reputation, as well as its

unlawful and unauthorized use of the RESNET's Intellectual Property, constitutes unfair methods of competition, unconscionable acts and practices, and unfair and deceptive acts and practices in the conduct of any trade or commerce violative of *Fla. Stat. § 501.204(1)*.

63. Triconic's fraudulent misrepresentation, omission, and concealment of their involvement in the fraudulent scheme constitutes unfair methods of competition, unconscionable acts and practices, and unfair and deceptive acts and practices in the conduct of any trade or commerce violative of *Fla. Stat. § 501.204(1)*.

64. The conduct described above offends established public policy and is immoral, unethical, oppressive, unscrupulous and substantially injurious.

65. Triconic's actions have directly and proximately caused, and will continue to cause, RESNET to, and continues to, suffer damages, including but not limited to economic losses, damages to goodwill, and attorneys' fees in connection with this litigation.

WHEREFORE, RESNET prays that the Court grant the Prayer for Relief set forth below.

COUNT IV
UNFAIR COMPETITION UNDER FLORIDA LAW

66. RESNET re-alleges and re-incorporates the allegations in paragraphs 1 through 42 as though fully set forth herein.

67. RESNET has used and continue to use Intellectual Property in interstate commerce.

68. Triconic's actions have been willful, deliberate, and intended to benefit Triconic at RESNET's expense.

69. Triconic's use of RESNET's Intellectual Property in commerce is likely to cause confusion, mistake, or to deceive as to the affiliation, connection, or association; and/or likely to cause confusion, mistake, or to deceive as to the origin, sponsorship, or approval of Triconic's

services, and thus, constitute unfair competition, false designation of origin, and/or false description or representation.

70. Triconic's actions have directly and proximately caused, and will continue to cause, irreparable harm to RESNET, unless preliminarily and permanently enjoined.

71. RESNET has no adequate remedy at law.

72. Furthermore, Triconic is realizing profit and will continue to realize a profit from its unlawful actions, which are causing, and will cause, RESNET monetary damage in an amount to be determined at trial.

WHEREFORE, RESNET prays that the Court grant the Prayer for Relief set forth below.

COUNT V
DIRECT COPYRIGHT INFRINGEMENT

73. RESNET repeats and re-alleges the allegations of paragraphs 1 through 42 as though fully set forth herein.

74. RESNET is the sole owner of the copyright for the "Standard for the Calculation and Labeling of the Energy Performance of Low-Rise Residential Buildings using an Energy Rating Index." Reg. No. TX0008577199.

75. Triconic intentionally infringed RESNET's copyright by duplicating, using, advertising the Certified Ratings Program which uses RESNET's copyrighted "Standard for the Calculation and Labeling of the Energy Performance of Low-Rise Residential Buildings using an Energy Rating Index."

76. Triconic's infringement was undertaken knowingly, and with the intent to financially gain from RESNET's protected copyright.

77. Triconic's actions have directly and proximately caused, and will continue to cause, irreparable harm to RESNET, unless preliminarily and permanently enjoined.

78. RESNET has no adequate remedy at law.

79. Furthermore, Triconic is realizing profit and will continue to realize a profit from its unlawful actions, which are causing, and will cause, RESNET monetary damage in an amount to be determined at trial.

COUNT VI
CONTRIBUTORY COPYRIGHT INFRINGEMENT

80. RESNET repeats and re-alleges the allegations of paragraphs 1 through 42 as though fully set forth herein.

81. Triconic intentionally infringed RESNET's copyright by duplicating, using, and advertising its Certified Ratings Program, which purports to be identical to, or substantially similar to RESNET's copyrighted "Standard for the Calculation and Labeling of the Energy Performance of Low-Rise Residential Buildings using an Energy Rating Index."

82. Triconic contributed to Wrightsoft and FHBA engaging in the illegal and infringing activity described herein, and, with knowledge of such activities, deliberately or recklessly willfully blinded itself to this illegal conduct, deciding instead to profit from the revenues it produced.

83. Triconic also had and continues to have a direct financial interest in, and the right and ability to supervise and control the infringing activities of Wrightsoft and FHBA.

84. Triconic's actions have directly and proximately caused, and will continue to cause, irreparable harm to RESNET, unless preliminarily and permanently enjoined.

85. RESNET has no adequate remedy at law.

86. Furthermore, Triconic is realizing profit and will continue to realize a profit from its unlawful actions, which are causing, and will cause, RESNET monetary damage in an amount to be determined at trial.

COUNT VII
Federal Trademark Infringement, 15 U.S.C. § 1114

87. RESNET realleges and incorporates the foregoing paragraphs 1 through 42, as though fully set forth herein.

88. Triconic's use of RESNET's trademarks is likely to cause confusion, or to cause mistake, or to deceive as to the source, origin, or affiliation, connection, or association of Triconic's products and services with RESNET's, or as to the approval of Triconic's products or services by RESNET and thus constitutes infringement of RESNET's federally registered marks, in violation of the Lanham Act, 15 U.S.C. § 1114.

89. Triconic's actions have been willful, deliberate, and intended to benefit Triconic at RESNET's expense.

90. Triconic's actions constitute trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

91. Triconic's actions have directly and proximately caused, and will continue to cause, irreparable harm to RESNET, unless preliminarily and permanently enjoined.

92. RESNET has no adequate remedy at law.

93. Furthermore, Triconic is realizing profit and will continue to realize a profit from its unlawful actions, which are causing, and will cause, RESNET monetary damage in an amount to be determined at trial.

COUNT VII
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS

94. RESNET realleges and incorporates the foregoing paragraphs 1 through 42, as though fully set forth herein.

95. RESNET has beneficial and ongoing relationships with its authorized providers who adhere to the requirements for accreditation and quality assurance as established by RESNET.

96. As set forth above, Triconic intentionally, maliciously, unlawfully and without justification interfered with these contractual and advantageous business relationships between RESNET and its providers by intentionally sending misleading correspondence to RESNET's providers.

97. Triconic was aware, or should have been aware, that RESNET has binding provider agreements or prior business relationships with these providers, which is why, on information and belief, Triconic intentionally sought to send the correspondence to certified RESNET HERS Raters.

98. Triconic specifically intended to interfere with Plaintiff's business relationships with its providers.

99. The activities of Triconic, as described above, are likely to create a false impression and deceive consumers, the public, and the trade into believing that there is a connection or association between Triconic and RESNET.

100. Triconic's actions may reasonably induce or cause providers to not continue to conduct business with RESNET.

101. RESNET has been damaged as a result of Triconic's interference with its providers.

PRAYER FOR RELIEF

WHEREFORE, RESNET prays that this Court enter judgment in RESNET's favor on the claims set forth above and award RESNET the following relief:

a. That this Court adjudge that RESNET's Intellectual Property has been infringed, as a direct and proximate result of the willful acts of Triconic as set forth in this Complaint, including

Triconic's use of RESNET's trademarks and copyright, in violation of RESNET's rights under federal and state law.

b. That this Court adjudge that Triconic has competed unfairly with RESNET in violation of RESNET's rights under federal and state law.

c. That this Court adjudge that Triconic has committed acts in violation of the Florida Deceptive and Unfair Trade Practices Act.

d. For damages in an amount to be proven at trial for trademark infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114;

e. An injunction against the Triconic, and all officers, directors, agents, servants, employees, attorneys, successors, and assigns, and all persons in active concert or participation therewith, finding that they be preliminarily and permanently enjoined and restrained:

- 1) From using the RESNET's Intellectual Property, customer lists, programs or any reproduction, infringement, copy or colorable imitation and any formative variations or phonetic equivalents thereof, or any term, name or mark which incorporates any of the foregoing, or any trademarks similar thereto or likely to be confused therewith, in connection with the distribution, marketing, advertising or sale of any unauthorized goods and/or services;
- 2) From using any logo, trade name, or trademark which may be calculated to falsely represent or which has the effect of falsely representing that the unauthorized goods and/or

services of Triconic are sponsored by, authorized by, or in any way associated with RESNET;

- 3) From infringing, contributing to, conspiring to, or inducing the infringement of the RESNET's Intellectual Property;
- 4) From doing any other act or thing likely to cause the public or the trade to believe that there is any connection between Triconic and RESNET, or their respective goods, programs or services; and
- 5) From falsely representing themselves or their affiliates as being connected with RESNET, or sponsored by or associated with RESNET, or engaging in any act which is likely to falsely cause the trade and/or members of the purchasing public to believe that Triconic or its affiliates are associated with RESNET and/or that RESNET are associated with Triconic, and that Triconic be prohibited from any and all use of RESNET's Intellectual Property; and
- 6) Invalidating and/or nullifying any contracts that Triconic may have signed or disseminated to third parties utilizing the RESNET's Intellectual Property; and
- 7) Preventing and prohibiting the Triconic from utilizing the "RESNET" or "HERS" marks, or any derivative thereof.

e. That Triconic be required to recall and deliver up for destruction all goods, labels, signs, prints, packages, wrappers, inventory, advertisements, internet advertising and other written or printed material in the possession or control of Triconic, or third party advertisers, that

bear any of RESNET's Intellectual Property or any infringement thereof, and any formative variations or phonetic equivalents thereof, or any term, name or mark which incorporates any of the foregoing, or any trademarks similar thereto or likely to be confused therewith, alone or in combination with any other word or element.

f. That Triconic be directed to file with this Court and to serve upon RESNET within thirty (30) days after service of the injunction issued in this action, a written report under oath, setting forth in detail the manner of compliance with paragraphs (d) and (e), including all subparts.

g. That RESNET recover Triconic's profits and the damages incurred by RESNET, including without limitation damages sufficient for corrective advertising, arising from Triconic's acts of trademark infringement and unfair competition, and that the Court, pursuant to § 35 of the Lanham Act, 15 U.S.C. § 1117, enter judgment, and that said sums be trebled as authorized pursuant to 15 U.S.C. § 1117(b).

h. That RESNET be entitled to injunctive relief as set forth in § 34 of the Lanham Act, and that RESNET has and recover the remedies set forth in §§ 35(a) and 36 of the Lanham Act, 15 U.S.C. §§ 1117(a) and 1118.

i. That this case be deemed "exceptional" within the meaning of 15 U.S.C. § 1117, and that RESNET be awarded its reasonable attorneys' fees incurred in this action, pursuant to § 35 of the Lanham Act, 15 U.S.C. §1117.

j. That RESNET be awarded its reasonable attorneys' fees and costs as set forth in Fla. Stat. § 501.2105.

k. That RESNET recover its taxable costs and disbursements herein, pursuant to §35 of the Lanham Act, 15 U.S.C. § 1117, Fed. R. Civ. P. 54, and/or Fla. Stat. § 57.041, and/or as otherwise authorized.

l. That Triconic be directed to pay over to RESNET pre-judgment interest from the date the infringement began and post-judgment interest at the maximum rate permitted by law.

m. That RESNET recover such further relief as the Court deems just and proper.

JURY DEMAND

RESNET demands a trial by jury as to all issues triable of right by a jury.

Respectfully submitted this 18th day of February, 2019.

**NELSON MULLINS BROAD AND
CASSEL**

Attorneys for RESNET,
390 North Orange Avenue, Suite 1400
Orlando, Florida 32801
P.O. Box 4961 (32802-4961)
Telephone: (407) 839-4200
Facsimile: (407) 650-0927

By: /s/ Nicolette C. Vilmos
Nicolette C. Vilmos
Florida Bar #: 0469051
nicolette.vilmos@nelsonmullins.com

From: Laurel Elam <laurel@resnet.us>

Sent: Friday, December 14, 2018 11:38 AM

To: undisclosed-recipients:

Subject: Revocation of the Accreditation of Wrightsoft Corporation's Right-Energy HERS, as a HERS Rating Software Tool

To: Accredited Rating Providers, Rater Training and HERS Software Providers and Certified HERS® Raters

As required by Section 911.4.4 of the Mortgage Industry National Home Energy Rating Standards, RESNET® is providing this notification that the RESNET HERS Rating Software Tool Provider Accreditation of Wrightsoft Corporation has been revoked. Accordingly, Wrightsoft's Right-Energy HERS is no longer a RESNET Accredited HERS Software Tool.

The decision to suspend Wrightsoft's accreditation is based on the commission of a serious violation of RESNET's standards and procedures, which resulted in Wrightsoft gaining unauthorized access to data in the RESNET National Registry. Upon discovery, RESNET blocked Wrightsoft's access, took additional precautions, and initiated an investigation.

From: Triconic LLC <info@triconic.com>
Date: December 14, 2018 at 4:49:20 PM EST
To: pgillis@thehomeaudit.com
Subject: Right-Energy® Approved
Reply-To: info@triconic.com



Inspectors,

We thought you should know that *Wrightsoft Corporation's Right-Energy®*, as an ERI/HERS Rating Software Tool, remains approved for use in the Certified Ratings Program. Any recent policy decision by RESNET does not change Right-Energy® as an approved software tool to produce ERI/HERS values as needed by codes, standards, and the Certified Ratings Program.

If you would like more information on Wrightsoft Corporation's Right-Energy®, please [click here](#). For more information on the Certified Ratings Program, please visit FHBA's website by [clicking here](#).

[Learn More](#)

Triconic LLC | (833) 237-8397 | info@triconic.com | www.triconic.com

Connect with us





	FHBA	Membership	Advocacy	Education	News & Events	Publicator
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Right-Energy® is Approved

RESNET recently took action against Right-Energy®. As a contractor, the question is can you continue to use Right-Energy® software? In Florida, the Building Commission approves software used to produce an energy rating index, ERI (also known as the old HERS rating) not RESNET. While RESNET may approve software for its use, the FHBA Certified Ratings Program and other providers rely on the Florida Building Commission's approval of ERI software.

Therefore, Wrightsoft Corporation's Right-Energy®, as an ERI/HERS rating software, remains approved for use in the Certified Ratings Program. Any recent policy decision by RESNET does not change Right-Energy® as an approved software tool to produce ERI/HERS values as needed by codes, standards, and the Certified Ratings Program.

The following links to software currently approved by the Commission:
<http://www.myfloridalicense.com/DBPR/building-codes-and-standards/energy/>

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS RESIDENTIAL ENERGY SERVICES NETWORK, INC. (b) County of Residence of First Listed Plaintiff <u>California</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i> (c) Attorneys (Firm Name, Address, and Telephone Number) Nicolette C. Vilmos, Esq., Nelson Mullins Broad and Cassel 390 N. Orange Ave., Ste. 1400, Orlando, FL 32801 407-839-4200	DEFENDANTS TRICONIC, LLC County of Residence of First Listed Defendant <u>foreign limited liability comp</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i> NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i> <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i> <input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>	III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i> <i>(For Diversity Cases Only)</i> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT <i>(Place an "X" in One Box Only)</i>				Click here for: Nature of Suit Code Descriptions.		
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Acts <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District *(specify)*
 6 Multidistrict Litigation - Transfer
 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
15 U.S.C. 1051

Brief description of cause:
Trademark dispute

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE: 02/18/2019 SIGNATURE OF ATTORNEY OF RECORD: Nicolette C. Vilmos

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

