



Ad Review Meeting
November 1, 2022

ATTORNEY-CLIENT PRIVILEGED

Today's Agenda

FTC Action Against Opendoor

General Public Company Concerns

Advertising Claim Updates

Ad Review & Contests Processes

Other Topics?

Introductions

Legal Team

RE/MAX, Holdings, First

- General Advertising: Jennifer Fuller, Ashley Krause & Kerry Pietrasiewicz
- Franchise Sales Advertising: Tamara Schulte & Jenny Rees-Evans
- Legal Ad Review Inbox Coordinator: Saira Munoz-Gomez

Motto Mortgage

- General Advertising/Compliance: Chris LaRoche
- Franchise Sales Advertising: Chris LaRoche & Jenny Rees-Evans

wemlo

- General Advertising/Compliance: Chris LaRoche & Brandon Reed

Huge
THANK YOU
to Jode for
many years
of ad review
work!

Focus Areas for Legal Review

Advertising laws –
target false or misleading
advertising claims

Franchise sales advertising laws –
encompass any communication
(regardless of format, regardless
of who created it, and regardless
of why it was created), published
or distributed in connection with
an offer or sale of a franchise

Copyright laws –
limit our use of third-party works
without permission

**False endorsement/right of
publicity laws –**
limit our use of another's name,
image, etc. without their consent

Vicarious liability –
we want to minimize our exposure

Fair housing laws –
prohibit discrimination in the sale,
rental and financing of housing

RE/MAX

MOTTO
MORTGAGE

Focus Areas for Legal Review (cont.)

Mortgage Acts and Practices Advertising (MAP) Rule –

designed to prohibit deception/misrepresentations, and requires certain disclosures when “trigger terms” are used, in advertisements regarding mortgage products

Unfair Deceptive & Abusive Acts and Practices (UDAAP) –

a fairly subjective regulation designed prohibit any content the regulator deems to be “unfair”, “deceptive” or “abusive” to the average consumer

State Mortgage Advertising Laws

Brand Standards & Trademark Rights –

require adherence to certain company requirements

And the list goes on....

RE/MAX

MOTTO
MORTGAGE




FTC Action Against Opendoor

- In August, FTC announced enforcement action fining Opendoor \$62M for using misleading claims about its iBuying service.
- Focus of investigation: Opendoor advertising from 2017-2019 claiming that...
 - home sellers would receive “fair market” or “market value” offers for their homes
 - selling with Opendoor involved lower costs (including lower repair costs) than “traditional” sales methods
 - Opendoor makes money from charging fees rather than from “buying low and selling high”


FTC Action Against Opendoor

Facebook Ad from FTC Complaint:


Opendoor
 Sponsored ·

Like Page

Get a fair market offer on your home without ever listing. Sell to Opendoor for a certain sale with no risk of financing fall-through.



Opendoor
Get a free offer on your home

OPENDOOR.COM
No showings, cleaning, or listing necessary.
 Opendoor buys quality homes valued between \$100K...

Get Offer

	Selling to Opendoor	Traditional home sale
	6.8% average service charge*	7-10% average costs*
Offer price (example)	\$200,000	\$200,000
Selling process		
Average days to close transaction	Choose from 14-60 days	50 days
Average days to prep and stage home	0 days	10 days
Average number of showings	0 showings	10 showings
Transaction costs		
Average Opendoor service charge	6.8%	—
Estimated real estate agent fees	—	6%
Estimated seller concessions	—	2%
Estimated home ownership and overlap	—	1%
Repairs needed to sell home	TBD	TBD
Estimated cash before closing	\$186,400	\$182,000



FTC Action Against Opendoor

- Scathing FTC press release announcing the enforcement:
 - Accused Opendoor of “cheating potential home sellers” and engaging in “old-fashioned deception.”
- In addition to \$62M fine (due 4 days ago), Opendoor agreed to a Consent Order:
 - Subjecting Opendoor to a 20-year period of specific obligations including compliance reporting to the FTC for 5 years
 - Obliging Opendoor to support the FTC’s consumer redress efforts, as the \$62M fine is designated to be returned to consumers harmed by Opendoor’s practices
- Non-monetary impact: Reputational harm, stifling effect on future advertising



FTC Action Against Opendoor - Takeaways

- The Order does not create new requirements we need to navigate. The FTC statute violated by Opendoor is one that is always on our radar (Section 5(a) of FTC Act, prohibiting unfair and deceptive acts).
- Support for marketing claims cannot conflict with other internal company data/documents. If conflicting data arises after the advertising begins, the new information should be evaluated to determine whether a claim should be adjusted.
- FTC is now well-versed in advertising relating to real estate transactions, especially “fair market value” types of claims.
 - It is possible that other real estate companies received, or are receiving, scrutiny.



General Public Company Concerns

- Be very careful with forward-looking statements (FLS).
- FLS about RE/MAX Holdings (RMAX) results can bring liability. And plaintiffs' lawyers are creative about turning any statement into an FLS.
- Some press releases have FLS, but these include a lengthy disclaimer (example on next slide).
- Ensure tone is consistent with other messaging. For example, we're currently avoiding talking about a recession or slowdown. Upcoming earnings release talks about "challenging conditions in the housing market."
- Avoid predicting the future—either state past facts / trends, or cite to a credible source (e.g., NAR, CREA, MBA, etc.).
- Marketing materials cannot contain important statistics or information about RMAX that is more recent than what we've included in press releases / SEC filings.
- Materials generally should not contain non-GAAP measures (e.g., Adjusted EBITDA).
- These guidelines apply to social media posts, as well as marketing materials, press releases, articles, etc.



Example FLS Disclaimer – Q2 2022 Earnings Release

This press release includes “forward-looking statements” within the meaning of the “safe harbor” provisions of the United States Private Securities Litigation Reform Act of 1995. Forward-looking statements are often identified by the use of words such as “believe,” “intend,” “expect,” “estimate,” “plan,” “outlook,” “project,” “anticipate,” “may,” “will,” “would” and other similar words and expressions that predict or indicate future events or trends that are not statements of historical matters. Forward-looking statements include statements related to agent count; franchise sales; revenue; operating expenses; the Company’s outlook for the third quarter and full year 2022; non-GAAP financial measures; housing and mortgage market conditions; strategic initiatives; growth; the strength and resilience of the Company’s business model; the Company’s balance sheet; the Company’s cash-generating ability; the Company’s ability to generate profitable growth over the long-term; and the Company’s ability to mitigate the impact of market volatility. Forward-looking statements should not be read as a guarantee of future performance or results and will not necessarily accurately indicate the times at which such performance or results may be achieved. Forward-looking statements are based on information available at the time those statements are made and/or management’s good faith belief as of that time with respect to future events and are subject to risks and uncertainties that could cause actual performance or results to differ materially from those expressed in or suggested by the forward-looking statements. These risks and uncertainties include, without limitation, (1) the global COVID-19 pandemic, which continues to pose significant and widespread risks and ongoing uncertainty for the Company’s business, including the Company’s agents, loan originators, franchisees and employees, as well as home buyers and sellers, (2) changes in the real estate market or interest rates and availability of financing, (3) changes in business and economic activity in general, (4) the Company’s ability to attract and retain quality franchisees, (5) the Company’s franchisees’ ability to recruit and retain real estate agents and mortgage loan originators, (6) changes in laws and regulations, (7) the Company’s ability to enhance, market, and protect its brands, including the RE/MAX and Motto Mortgage brands, (8) the Company’s ability to implement its technology initiatives, (9) risks related to the Company’s CEO transition, (10) fluctuations in foreign currency exchange rates, and (11) those risks and uncertainties described in the sections entitled “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in the most recent Annual Report on Form 10-K and Quarterly Reports on Form 10-Q filed with the Securities and Exchange Commission (“SEC”) and similar disclosures in subsequent periodic and current reports filed with the SEC, which are available on the investor relations page of the Company’s website at www.remaxholdings.com and on the SEC website at www.sec.gov. Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date on which they are made. Except as required by law, the Company does not intend, and undertakes no obligation, to update this information to reflect future events or circumstances.



Marketing Portal Updates

- New claims have been added to the Marketing Portal for US & Canada!
- Reference the Claims & Slogans page for current claims and required legal language.
- If you have any suggestions for claims to add, contact Erin and we can work with her to ensure the claim is substantiated.



***NEW* First Claims**

- **Agents win an average 4 deals in their first 3 months of using First.**
 - Footnote: *Average of total productivity for RE/MAX agents who began using First after January 1, 2021 and used it for at least three months, including some agents who may have had higher than average baseline productivity prior to use of the First app.
- **Agents win an average 7 deals in their first 6 months of using First.**
 - Footnote: *Average of total productivity for RE/MAX agents who began using First after January 1, 2021 and used it for at least six months, including some agents who may have had higher than average baseline productivity prior to use of the First app.
- **Agents win an average 10 deals in their first 9 months of using First.**
 - Footnote: *Average of total productivity for RE/MAX agents who began using First after January 1, 2021 and used it for at least nine months, including some agents who may have had higher than average baseline productivity prior to use of the First app.
- **Agents who use First are on average 39% more productive than agents who don't.**
 - Footnote: *Comparison of transaction sides for RE/MAX agents using the First app to transaction sides for RE/MAX agents who are non-users with similar individual/team relationship composition, within the same RE/MAX office, in 2021. Some agents who use the First app may have had higher than average baseline productivity prior to use of the First app than non-users of the app.



General & Franchise Sales Ad Review Process

- We are introducing a new streamlined process for review requests!
- Instead of sending in an email request, you will submit a form via Smartsheet.
 - There are two forms – one for ad review and one for contests and sweepstakes.
 - RE/MAX Advertising Review:
<https://app.smartsheet.com/b/form/4336129e25c049bbadd6ea868d724213>
 - Contest/Sweepstakes (both RE/MAX and Motto):
<https://app.smartsheet.com/b/form/5934f39b21a04c5183a2ad773be151d3>



Process Updates: Ad Review & Contests

Request For Review

Your Name *

Deadline for Review *

Please allow up to two weeks for us to review and provide comments back to you.

Project Title *

If you have a Tracking Number you can add it in front of the Project Title. If you don't, the system will automatically assign a Tracking Number.

For Franchise Sales? *

Select or enter value

Does this need review by Mark Rohr?

Select or enter value

Additional Information for Review Team

Please provide information on related projects, intended use, substantiation, etc.

File Upload

For any questions regarding this form or problems uploading your documents, please contact legaladreview@remax.com.

Drag and drop files here or [browse files](#)

Contests and Sweepstakes

1. Name of the Contest or Sweepstakes *

If you have a Tracking Number you can add it in front of the Name of the Contest or Sweepstakes. If you don't, the system will assign a Tracking Number.

2. Your Name *

3. Sponsor of Contest or Sweepstakes *

Select or enter value

4. Date by which you need the contest rules? *

5. Are we working with a third party on this? *

If yes, please explain.

6. Who can enter? (Check all that apply.) *

☐ U.S. citizens

☐ Canadian citizens (excluding Quebec)

☐ RE/MAX network (B/O, agent, LO)

☐ General public

☐ RE/MAX employees

7. May a person enter more than once? *

Select or enter value

Applies to Motto
contests, too!



Ad Review Process Updates

- The new forms ask for the same information we previously requested. However, the Smartsheet will automatically generate a tracking number, although you can still include your own. If the piece requires Franchise Sales review, the Smartsheet will automatically be sent to them once General Advertising has completed its review.
- After you submit the form, the Legal Ad Review team (“LAR team”) will be notified. Once the legal review is complete, the LAR team will send comments back to you via email.
- Please contact the LAR box – legaladreview@remax.com – if you are having difficulties with the forms or have specific questions.



General Ad Review Process

Thank you to
everyone for
cutting down
on rush review
requests!





Franchise Sales Review & Filing Process

- RE/MAX Review meetings: Wednesday with Tamara, Jenny, Paul, Sheryl, Ashley McLellan and Kate Bakarich (Manager, Franchise Operations)
- Jenny files advertising pieces as needed in Washington and Minnesota
- When submitting pieces for review, keep in mind the waiting period (7 days in Washington, 5 business days in Minnesota)

Please provide us with as much time to review a marketing piece as possible



Franchise Sales Materials - Reminders

- Advertisements cannot state or infer that the prospect:
 - will profit or make money
 - will be successful
 - is making a safe investment
- Advertisements must contain:
 - the name and **address** of the franchisor;
 - the franchisor's trademark;
 - the franchise sales disclaimer (legible, please)
 - the **Minnesota registration number** (F-9950)
 - Each Office Independently Owned and Operated



Advertising Review & Filing Process

- Motto Review meetings: Tuesday Afternoons with Kelly, Rhilee, Chris and Jenny
 - Focus is on pieces with Legal feedback, upcoming advertising pieces and pieces that need to be filed
- Jenny files pieces once per week
 - Please group filings as Motto files in 5 states, each with a different filing process (online or emailing)
- Each registration state has a waiting period before a piece may be used. To avoid wait periods, file in advance!
- **Reminder:** Final version of each piece is required for filing, including graphics
- Remember that California opposes rankings in franchise marketing materials. Pieces filed in California that include rankings may be rejected.



Advertising Review – Top 5 List

1. **Proper Company Name** - Ward is President and CEO of “Motto Franchising, LLC” not “Motto Mortgage” or “Motto”
2. **State Law Prohibition on Use of “Best”**- Several states prohibit use of the word “best” in advertisements
3. **“Motto” & “Motto Mortgage” Are Not a Thing** - Use “brand” or “network” after the words “Motto” or “Motto Mortgage” whenever possible
4. **Authority to Use Likenesses** - We need to have permission to use pictures of individuals in advertisements unless using stock photos
5. **Claims & Quotes Must Be Substantiated, Permissioned & Sourced; Plus Comply with Franchise Sales and Testimonials Law** - Failure to comply raises legal and compliance risks


Franchise Sales Advertising Review– Top 5

- ❌ **Don't refer to Average Sales Associate Income or Annual Mortgage Network Loan Origination Volume** (states view this info as a financial performance representation)
- ❌ **Don't include Financial Performance Representations** - Any express or implied statements indicating a prospect will or may earn a specific or potential level or range of income, sales, or profits.
- ❌ **Don't use unsubstantiated claims** - Include substantiation in the body of the advertisements
- ❌ **Don't imply an investment is safe**
- ✅ **Include the address and phone number!** All franchise marketing materials must include the franchisor's contact information



Advertising Reminders

- “Virtual in-house” processing language in quotes
- Monday afternoons with Kyle, Kelly, Chris, and Brandon
- Focused on upcoming projects and any questions on pieces currently under review
- No filing requirements for wemlo advertising
- Still need to focus on UDAAP, MAP and state law compliance

The image features two identical 3D white humanoid figures walking towards the center. Each figure is carrying a large, bright red 3D question mark on its back. In the center of the image is a large white diamond shape with a thin grey border. Inside this diamond, the text "Any questions or other topics for discussion?" is written in a black, sans-serif font. The background is a light grey gradient, and the floor is a reflective white surface.

Any questions
or other topics
for discussion?

Thank you.