

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

A TRUE COPY  
Date: 10-23-13 Time: 9:05  
MLZ/ 031 - 12th Circuit ☐  
STZ/ 283 - 12th Circuit ☒  
SW/ 353 - 12th Circuit ☐  
SZ/ 613 - 12th Circuit ☐  
DS/ 612 - 12th Circuit ☐

KB HOME, a Delaware corporation

Plaintiff

v.

Andrew Smith; Daniel Koehler; Patrick McGettigan;  
William Crismon; and Armando Oyola-Delgado

Defendant

Civil Action No. 8:13-cv-2644-T-27EAS

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Andrew Smith  
8613 Majestic Elm Court  
Lakewood, Ranch FL 34202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Thomas A. Dye, Esq.  
Florida Bar No. 335207  
Carlton Fields, P.A.  
CityPlace Tower  
525 Okeechobee Boulevard, Suite 1200  
West Palm Beach, FL 33401

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

OCT 15 2013

Date:

R. Becklin  
Signature of Clerk or Deputy Clerk

7108

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

KB HOME, a Delaware corporation,

Plaintiff,

v.

ANDREW SMITH; DANIEL KOEHLER;  
PATRICK MCGETTIGAN; WILLIAM  
CRISMON; and ARMANDO OYOLA-  
DELGADO,

Defendants.

Case No.:

**COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF, AND TRANSFERRED  
OWNERSHIP OR CANCELLATION OF INFRINGING DOMAIN NAME**

Plaintiff, KB Home (“KB Home” or “Plaintiff”), sues defendants, Andrew Smith (“SMITH”), Daniel Koehler (“KOEHLER”), Patrick McGettigan (“MCGETTIGAN”), William Crismon (“CRISMON”), and ARMANDO OYOLA-DELGADO (“DELGADO”) (collectively, the “Defendants”), and, in support, states as follows:

**NATURE OF THE ACTION**

1. This is an action based on violations of the Anti-Cybersquatting Consumer Protection Act (“ACPA”) and the Electronic Communications Privacy Act (“ECPA”), both of which arise under federal law.

2. This is also an action based on civil conspiracies among Defendants and others to carry out violations of the ACPA and ECPA under Florida common law.

**PARTIES**

3. Plaintiff KB Home is a Delaware corporation that maintains its principal place of business in Los Angeles, California.

4. Defendant SMITH is a Florida citizen who is domiciled at 8613 Majestic Elm Court, Lakewood Ranch, Florida 34202.

5. Defendant KOEHLER is a Florida citizen who is domiciled at 7330 Black Walnut Way, Lakewood Ranch, Florida 34202.

6. Defendant MCGETTIGAN is a Florida citizen who is domiciled at 8745 Spruce Hills Court, Lakewood Ranch, Florida 34202.

7. Defendant CRISMON is a Florida citizen who is domiciled in the State of Florida.

8. Defendant DELGADO is a Florida citizen who is domiciled in the State of Florida.

9. All conditions precedent to this action have been performed, waived, or excused.

10. KB Home retained the undersigned attorneys to represent it in this action and agreed to pay its attorneys a reasonable fee for their services.

**JURISDICTION**

11. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338(a) because KB HOME's claims for violations of the ACPA, 15 U.S.C. § 1125(d), arises under federal law and 28 U.S.C. § 1331 because KB Home's claims for violations of the ECPA, 18 U.S.C. § 2511 *et seq.*, arise under federal law. This Court also has supplemental

jurisdiction pursuant to 28 U.S.C. § 1367 because KB Home's state law conspiracy claims are so related to the federal claims that they form part of the same case or controversy.

**VENUE**

12. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b), because the Defendants are domiciled in this District, and because a substantial part of the events giving rise to the claims herein occurred in this District.



**FACTUAL BACKGROUND**

13. Since its founding in 1957, KB Home has built over half a million residential homes throughout the United States. KB Home is one of the largest and most recognized homebuilders in the nation, and its stock is publically traded on the New York Stock Exchange.

14. Since 1974, KB Home has referred to itself as, and promoted itself with, the KB name and trademark, and has been known throughout the United States in the real estate development industry, the financial community, and the general public by the KB name and trademark. KB Home has often been referred to in professional business magazines, investor publications, real estate trade journals, and nationally distributed publications by the KB name and trademark.

15. Because of KB Home's size and the extent of publicity that it regularly receives, during the 1970s, 1980s, and since, the industry and general public came to associate KB, as that name and mark was used in connection with residential real estate development and home building services, with KB Home. Accordingly, KB is KB Home's proprietary trade name and service mark.

16. In January 2001, KB Home adopted the KB HOME trademark as its official corporate name. KB Home also adopted and began using the following design forms of KB

HOME:  and . The official adoption of the KB HOME name has been accompanied by a major investment in advertising and promotional activities throughout the United States, including television, radio, Internet and newspaper advertisements, featuring the KB HOME name and mark.

17. In addition to extensively advertising the KB Home Marks (as hereinafter defined) in television, radio, and print media, KB Home maintains an interactive website on the Internet. The website can be accessed under the “KBHome.com” domain name, which is extensively advertised.

18. The KB Home Marks are arbitrary, fanciful, and inherently distinctive.

19. As a result of KB Home’s longstanding and extensive use of the KB Home Marks in connection with its business, and as a result of widespread advertising and promotion of its services, the KB Home Marks have acquired a high degree of recognition, fame and distinctiveness throughout the United States, including Florida, as a symbol of quality and value in the field of residential real estate construction and development. The KB Home Marks are strong and deserving of a broad scope of protection against the use of confusingly similar marks, and are of great value to Plaintiff.

20. KB Home owns and has used the registered trademarks identified below:

a. Incontestable United States Trademark Registration No. 2,706,002 for the “KB” typed service mark used in construction services, namely, planning, laying out, and

construction of residential communities; construction of single family and multiple family dwelling units; real estate development, in International Class 37, issued on April 15, 2003 and based on a first use date of March 1974;

b. Incontestable United States Trademark Registration No. 2,768,634 for the “KB HOME” design service mark used in construction services, namely, planning, laying out and construction of residential communities; construction of single family and multiple family dwelling units; real estate development, in International Class 37, issued on September 30, 2003 and based on a first use date of January 17, 2001;

c. Incontestable United States Trademark Registration No. 2,832,387 for the “KB HOME” typed service mark used in construction services, namely, planning, laying out and construction of residential communities; construction of single family and multiple family dwelling units; real estate development, in International Class 37, issued on April 13, 2004 and based on a first use date of January 17, 2001;

d. Incontestable United States Trademark Registration No. 2,749,283 for the “KB HOME” design service mark used in construction services, namely, planning, laying out and construction of residential communities; construction of single family and multiple family dwelling units; real estate development, in International Class 37, issued on August 12, 2003 and based on a first use date of January 17, 2001; and

e. Incontestable United States Trademark Registration No. 2,825,554 for the “KB HOME” typed service mark used in mortgage lending and escrow services in connection with the construction and brokerage of single family and multiple family dwelling units, in International Class 36, issued on March 23, 2004 and based on a first use date of

March 6, 2002.

21. KB Home's aforementioned trademarks (the "KB Home Marks") constitute the lawful, valued, subsisting, and exclusive property of KB Home, and, as a result of the high quality of KB Home's products, services, sales, promotion, and advertising thereof, the KB Home Marks have become an intrinsic and essential part of the valuable goodwill and property of KB Home, and are well known and established to consumers and the trade as symbols identifying and distinguishing KB Home's products and services. True copies of the certificates of registration issued by the United States Patent and Trademark Office for the KB Home Marks are attached hereto as **Composite Exhibit "A."**

22. KB Home filed affidavits pursuant to sections 8 and 15 of the Lanham Act, 15 U.S.C. §§ 1058 and 1065, making the KB Home Marks incontestable. True copies of the declarations of incontestability are attached hereto as **Composite Exhibit "B."**

23. KB Home conducts business on the Internet through its website, "KBhome.com."

24. On or about June 23, 2012, SMITH registered the domain name "thekbhome.com," which is confusingly similar to the KB Home Marks. The domain name "thekbhome.com" is also confusingly similar to the domain name "KBHome.com" used on the website by KB Home in the regular course of its business. When SMITH registered the domain name "thekbhome.com," he knew that KB Home had a famous and distinct trademark in the name "KB Home," which was associated with its business.

25. On or about August 10, 2012, SMITH registered "kbhomewillowbrook.com" domain name, which is confusingly similar to the KB Home marks and incorporates the



name "Willowbrook" - the name of the KB Home development where SMITH lived at relevant times hereto. When SMITH registered the "kbhomewillowbrook.com" domain name he knew KB Home had a famous and distinctive trademark in the name "KB Home" and a development named "Willowbrook" associated with its business.

26. SMITH has also registered with a bad faith intent to profit the following domain names which are confusingly similar to KB Home trademarks and some of which also include KB Home's symbol used on the New York Stock Exchange "KBH": a) "thekbhomes.com"; b) "kb-homes-lawsuits.com"; c) "kbhinvestorsbeware.com"; d) "kbhomeforlosures.com; e) "kbhomestock.com"; f) "kbhstock.com"; g) "kbhsucks.com"; and j) "nysekbh.com."

27. KB Home was the original developer and general contractor of Willowbrook, a condominium complex in Manatee County, Florida.

28. KB Home is paying Dueall Construction, Inc. ("Dueall"), an independent contractor selected by the condominium association, to make extensive repairs to homes at Willowbrook. To date, KB Home has already paid Dueall millions of dollars for these repairs, and it is anticipated that KB Home will incur additional millions of dollars in repair costs to complete repairs at Willowbrook.

29. Defendants have all resided at Willowbrook at some time and have all owned units in Willowbrook.

**ATTEMPTS TO COMPEL KB HOME TO BUY-BACK WILLOWBROOK UNITS**

30. SMITH, KOEHLER, MCGETTIGAN, CRISMON, and some other Willowbrook residents have repeatedly demanded that KB Home buy-back their units at original purchase prices, plus pay them other alleged damages and costs.

31. SMITH and KOEHLER have improperly used and trafficked in KB Home Marks in the domain name at “thekbhome.com” to divert traffic from KB Home, to disparage it, damage its reputation, and otherwise cause harm to KB Home.

32. SMITH and KOEHLER have been co-administrators of the website at “thekbhome.com.” SMITH is employed in the information technology field.

33. At material times after registration, SMITH and KOEHLER employed “theKBHome.com” domain name to operate a website devoted to disparaging KB Home’s business reputation, criticizing the quality of KB Home construction, discouraging prospective buyers from purchasing homes developed by KB Home, and attempting to drive down the value of KB Home stock all with the bad faith intent to profit, by attempting to coerce KB Home into buying back their Willowbrook condominiums or otherwise paying them valuable consideration.

34. SMITH and KOEHLER have trafficked in “theKBHome.com” domain name with bad faith intent to profit by attempting to coerce KB Home into buying back their Willowbrook units or otherwise paying valuable consideration in exchange for sale or transfer of “theKBHome.com” domain name and website.

35. On or around August 6, 2012, SMITH, KOEHLER, MCGETTIGAN, and other Willowbrook homeowners engaged in an organized letter writing campaign to KB

Home executives and government officials demanding that KB Home: a) buy-back their homes at their purchase price; b) reimburse them for all closing costs, improvements, and moving expenses; and c) pay an additional percentage of their homes' values for alleged but unspecified health-related issues.

36. KOEHLER subsequently offered for sale to KB Home executives the website using the domain name "thekbhome.com."

37. SMITH and KOEHLER have used the infringing domain names and associated website with a bad faith intent to profit as expressed in various communications with KB Home that either state, suggest, or imply that the infringing domain name and associated website would be sold or exchanged for valuable consideration.

**USE AND DISCLOSURE OF INTERCEPTED EMAILS TO AND FROM DUEALL'S COMPUTERS**

38. Dueall has maintained a construction trailer at Willowbrook at all times material hereto, from which its employees supervise repair efforts at Willowbrook. Dueall maintains computers (the "Dueall Computers") in its construction trailer. The Dueall Computers use a mobile, password-protected hotspot to access the internet (the "WiFi Hotspot").

39. At all times material hereto, Shawn Seiler ("Mr. Seiler") was a project manager employed by Dueall who maintained an office in Dueall's construction trailer, and used a Dueall computer located in the trailer.

40. CRISMON, a former Willowbrook homeowner who registered and operated his own disparaging website of KB Home and is employed as an information technology professional, instructed Defendants, including MCGETTIGAN and others, on how to

intercept emails to and from the Dueall Computers by hacking into and gaining access to the WiFi Hotspot.

41. At all times material hereto, MCGETTIGAN and others working with the Defendants, resided in homes in close proximity to the Dueall construction trailer, giving them access to hack into the Dueall computer generated WiFi Hotspot.

42. On May 3, 2013, MCGETTIGAN, KOEHLER, and other residents of Willowbrook were conversing outside the Dueall trailer. MCGETTIGAN was in possession of a two-inch thick stack of papers at the time. MCGETTIGAN, while holding the stack of papers, then approached Dueall's President, Salvatore Ventimiglia ("Mr. Ventimiglia"). MCGETTIGAN displayed and read to Mr. Ventimiglia confidential email correspondence between Dueall and KB Home, and questioned Mr. Ventimiglia about the email correspondence. The confidential email correspondence was sent over the Internet and never provided to MCGETTIGAN (or any other Willowbrook resident) by KB Home or Dueall.

43. Upon information and belief, MCGETTIGAN, with help from Defendants and other Willowbrook residents, illegally intercepted the confidential email correspondence to and from the Dueall Computers between KB Home and Dueall.

**COUNT ONE**  
**Violation of Anti-Cybersquatting Consumer Protection Act**  
*15 U.S.C. §1125 (d)(1)(A)*

44. KB Home reasserts the allegations set forth above as though fully set forth herein.

45. KB Home has continuously owned and used the KB Home Marks in connection with marketing, sales, and provision of residential home construction services and

mortgage lending since 2004 and has filed affidavits pursuant to sections 8 and 15 of the Lanham Act, making the KB Home Marks incontestable. *See* Composite Exhibits “A” and “B.”

46. SMITH registered the following domain names with the bad faith intent to profit from their registration and use: a) “thekbhome.com”; b) “thekbhomes.com”; c) “kb-homes-lawsuits.com”; d) “kbhinvestorsbeware.com”; e) “kbhomeforcllosures.com”; f) “kbhomestock.com”; g) “kbhomewillowbrook.com”; h) “kbhstock.com”; i) “kbhsucks.com”; and j) “nysekbh.com.”

47. SMITH and KOEHLER have used KB Home Marks in the domain name “thekbhome.com” to divert and confuse customers looking for KB Home’s website to their website dedicated to disparaging KB Home’s business reputation, discouraging prospective homeowners from purchasing homes developed by KB Home, and driving down the value of KB Home stock all in order to obtain leverage and coerce KB Home into paying valuable consideration to them.

48. The domain name “thekbhome.com” and other domain names registered by SMITH identified herein, are identical or confusingly similar to the KB Home Marks, which were valid, distinctive, incontestable, famous, and exclusively associated with KB Home before the infringing domain names were registered.

49. The domain name “thekbhome.com” is confusingly similar to KB Home trademarks and calculated to steer prospective homebuyers away from, “KBhome.com,” the legitimate website used by KB Home to conduct business over the Internet.

50. SMITH and KOEHLER had a bad faith intent to profit from the registration use and trafficking in “thekbhome.com” domain name by using the domain name and website at the domain name as leverage to coerce KB Home into buying back their units at Willowbrook or otherwise to paying them valuable consideration in exchange for termination or sale of the websites using the infringing domain names.

51. SMITH and KOEHLER’s conduct was intentional, malicious, and willful.

52. Neither SMITH nor KOEHLER: a) possess any rights in the KB Home Marks, b) are identified by names containing the KB Home Marks, or c) have previously used “thekbhome.com” domain name in connection with bona fide offerings of goods or services.

53. SMITH and KOEHLER have used “thekbhome.com” domain name and associated website with the intent to divert customers away from KB Home’s legitimate website and to harm KB Home’s goodwill in the KB Home Marks by creating a likelihood of confusion as to the source of the website associated with “thekbhome.com” domain name.

54. SMITH and KOEHLER have expressly and impliedly offered to transfer, sell, or otherwise assign the websites using the infringing domain names to KB Home for financial gain without intending to use the infringing domain name in connection with commercial offerings of goods or services.

55. SMITH and KOEHLER’s actions constitute cyber-squatting infringement of the KB Home Marks in violation of 15 U.S.C. § 1125.

56. Accordingly, KB Home, as the owner of the KB Home Marks, seeks the following relief from SMITH and KOEHLER pursuant to 15 U.S.C §§ 1116, 1117 and 1125:

a) an injunction barring Defendants from registering, using, or trafficking in any domain name that is confusingly similar to the KB Home Marks; b) forfeiture or cancellation of domain names: “thekbhome.com”; kbhomewillowbrook.com”; “kb-homes-lawsuits.com”; “kbhinvestorsbeware.com”; “kbhomeforlosures.com”; “kbhomestock.com”; “kbhstock.com”; “kbhsucks.com”; nysekbh.com”; “thekbhomes.com,” and their transfer to KB Home; c) any profits made by virtue of the registration, use or trafficking in infringing domain names by defendants; d) compensatory or statutory damages; e) treble damages; f) the cost of this action; g) and reasonable attorneys’ fees.

**COUNT TWO**

**Illegal Disclosure of Emails in Violation of the Electronic Communications Privacy Act**  
*18 U.S.C. § 2511 (c)*

57. KB Home reasserts the allegations set forth above as though fully set forth herein.

58. Defendants and others conspired to intercept electronic communications between the Dueall Computers and KB Home.

59. By information and belief, certain members of the conspiracy used computer-hacking devices or programs to intercept emails to and from the Dueall Computers between it and KB Home.

60. MCGETTIGAN, as a member of the conspiracy, knew or had reason to know that emails between KB Home and Dueall had been intercepted in violation of the ECPA.

61. On or around May 3, 2013, MCGETTIGAN “disclosed” some of the intercepted email correspondence by displaying and reading its contents to Mr. Ventimiglia, and by information and belief, to others.

62. MCGETTIGAN’s conduct was intentional, malicious, and willful.

63. MCGETTIGAN’s activities constitute intentional disclosure of intercepted electronic communications in violation of the ECPA, 18 U.S.C. § 2511(c).

64. Pursuant to 18 U.S.C. § 2520(a), KB Home is entitled to maintain this civil action against MCGETTIGAN and seek the following relief: a) compensatory or statutory damages; b) injunctive relief; and c) reasonable attorneys’ fees and litigation costs.

**COUNT THREE**

**Illegal Use of Emails in Violation of the Electronic Communications Privacy Act**  
*18 U.S.C. § 2511 (d)*

65. KB Home reasserts the allegations set forth above as though fully set forth herein.

66. Defendants and others conspired to intercept electronic communications to and from the Dueall Computers and KB Home.

67. Certain members of the conspiracy used computer-hacking devices or programs to intercept emails to and from the Dueall Computers between Dueall and KB Home.

68. MCGETTIGAN, as a member of the conspiracy, knew or had reason to know that emails between KB Home and Dueall had been intercepted in violation of the ECPA.



69. On or around May 3, 2013, MCGETTIGAN “used” intercepted electronic communications between Dueall and KB Home in a number of ways, including reading and downloading their contents to Mr. Ventimiglia in an attempt to obtain information from him.

70. MCGETTIGAN’s conduct was intentional, malicious, and willful.

71. MCGETTIGAN’s activities constitute intentional use of intercepted electronic communications in violation of the ECPA, 18 U.S.C. § 2511(d).

72. Pursuant to 18 U.S.C. § 2520(a), KB Home’s electronic communications were intercepted and used in violation of the ECPA and as a result KB Home is entitled to maintain this civil action against MCGETTIGAN and seek the following relief: a) compensatory or statutory damages; b) injunctive relief; c) reasonable attorneys’ fees and litigation costs.

**COUNT FOUR**  
**Conspiracy to Violate Anti-Cybersquatting Consumer Protection Act**  
*Florida Common Law*

73. KB Home reasserts the allegations set forth above as though fully set forth herein.

74. A conspiracy exists between SMITH and KOEHLER.

75. SMITH and KOEHLER, and others by information and belief, acted and continue to act in concert in furtherance of their bad faith intent to profit from and traffic in and “theKBHome.com” domain name to attempt to obtain leverage against KB Home to convince it to buy back their Willowbrook units or to otherwise offer valuable consideration in exchange for termination or sale of the infringing domain name and website affiliated with it.

76. SMITH and KOEHLER have committed overt acts in furtherance of the conspiracy.

77. Specifically, SMITH and KOEHLER and others have communicated with KB Home stating expressly or implying that the infringing domain names and websites at “the KBHome.com” would be sold to KB Home or voluntarily terminated, if KB Home agreed to buy-back their units at Willowbrook or otherwise paid them valuable consideration.

78. Additionally, SMITH and KOEHLER have intentionally diverted Internet traffic to the websites located at “thekbhome.com” by using a domain name confusingly similar to KB Home’s famous and distinctive trademarks.

79. As a proximate result of this conspiracy, KB Home has been damaged.

80. Accordingly, KB Home is entitled to pursue this action against SMITH and KOEHLER and seek the following relief: a) damages; b) injunctive relief; and c) such further relief as this Court deems just and proper.

**COUNT FIVE**  
**Conspiracy to Violate Electronic Communications Privacy Act**  
*Florida Common Law*

81. KB Home reasserts the allegations set forth above as though fully set forth herein.

82. A conspiracy exists between MCGETTIGAN, CRISMON, DELGADO and, upon information and belief, others.

83. MCGETTIGAN, CRISMON, DELGADO and others acted and may be continuing to act in concert in furtherance of their scheme to intercept, use, and disclose electronic communications between KB Home and Dueall.

84. MCGETTIGAN, CRISMON, and others have committed overt acts in furtherance of the conspiracy.

85. CRISMON advised MCGETTIGAN and others how to intercept email between KB Home and Dueall and MCGETTIGAN used and disclosed some of the intercepted emails between KB Home and Dueall.

86. As a proximate result of this conspiracy, Plaintiff has been damaged.

87. Accordingly, Plaintiff is entitled to pursue this action against Defendants and seek the following relief: damages; injunctive relief; and such further relief as this Court deems just and proper.

WHEREFORE, KB Home respectfully requests this Court to grant the following relief with respect to SMITH and KOEHLER:

a) Forfeiture or cancellation of “thekbhome.com” and “kbhomewillowbrook.com”; “kb-homes-lawsuits.com”; “kbhinvestorsbeware.com”; kbhomeforclosures.com”; “kbhomestock.com”; “kbhstock.com”; “kbhsucks.com”; “nysekbh.com”; “thekbhomes.com” and other similar infringing domain names registered, used or trafficked in by Defendants or their co-conspirators and transfer to KB Home, as owner of the KB HOME marks, pursuant to 15 U.S.C. § 1125(d)(1)(C);

b) Recovery of compensatory or statutory damages, any profits made from the registration, use or trafficking in the infringing domain names, and the reasonable attorneys’ fees and litigation costs incurred in this action, pursuant to 15 U.S.C. § 1125(a)(5) and 15 U.S.C. §§ 1117; and

c) An injunction against registering, using, trafficking in, or otherwise operating these

and other domain names that infringe on the KB HOME Marks in violation of the ACPA, pursuant to 15 U.S.C. § 1116(a).

WHEREFORE, Plaintiff respectfully requests this Court to grant the following relief with respect to MCGETTIGAN, CRISMON and DELGADO:

a) Recovery of actual or statutory damages and reasonable attorneys' fees and litigation costs, pursuant to 18 U.S.C. §§ 2520; and

b) An injunction against illegally using and disclosing electronic communications between KB Home and Dueall and a return to KB Home and Dueall of all copies of intercepted communications between the two, pursuant to 18 U.S.C. § 2520.

Dated: October 11, 2013

Respectfully submitted,

**CARLTON FIELDS, P.A.**

/s/Thomas A. Dye

THOMAS A. DYE (FBN: 335207)

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Facsimile: (561) 659-7368

*Attorneys for Plaintiff*

Int. Cl.: 37

Prior U.S. Cls.: 100, 103 and 106

Reg. No. 2,706,002

**United States Patent and Trademark Office**

Registered Apr. 15, 2003

**SERVICE MARK  
PRINCIPAL REGISTER**

**KB**

KB HOME (DELAWARE CORPORATION)  
10990 WILSHIRE BLVD.  
LOS ANGELES, CA 90024, BY ASSIGNMENT KAUF-  
MAN AND BROAD HOME CORPORATION (DE-  
LAWARE CORPORATION) LOS ANGELES, CA  
90024

FOR: CONSTRUCTION SERVICES, NAMELY,  
PLANNING, LAYING OUT AND CONSTRUCTION  
OF RESIDENTIAL COMMUNITIES; CONSTRUC-

TION OF SINGLE FAMILY AND MULTIPLE FA-  
MILY DWELLING UNITS; REAL ESTATE  
DEVELOPMENT, IN CLASS 37 (U.S. CLS. 100, 103  
AND 106).

FIRST USE 3-0-1974; IN COMMERCE 3-0-1974.

SER. NO. 76-154,460, FILED 10-26-2000.

HENRY S. ZAK, EXAMINING ATTORNEY



Int. Cl.: 37

Prior U.S. Cls.: 100, 103 and 106

**United States Patent and Trademark Office**

**Reg. No. 2,768,634**

**Registered Sep. 30, 2003**

**SERVICE MARK  
PRINCIPAL REGISTER**



KB HOME (DELAWARE CORPORATION)  
10990 WILSHIRE BOULEVARD  
LOS ANGELES, CA 90024, BY ASSIGNMENT KAUF-  
MAN AND BROAD HOME CORPORATION (DE-  
LAWARE CORPORATION) LOS ANGELES, CA  
90024

FOR: CONSTRUCTION SERVICES, NAMELY,  
PLANNING, LAYING OUT AND CONSTRUCTION  
OF RESIDENTIAL COMMUNITIES; CONSTRU-  
TION OF SINGLE FAMILY AND MULTIPLE FA-  
MILY DWELLING UNITS; REAL ESTATE  
DEVELOPMENT, IN CLASS 37 (U.S. CLS. 100, 103  
AND 106).

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "HOME", APART FROM THE  
MARK AS SHOWN.

IN THE SUBSTITUTE DRAWING, THE LINING/  
STIPPLING INSIDE THE WORD "HOME" IS INTEN-  
DED TO INDICATE THE COLOR GOLD, AND SAID  
COLOR, AS DEPICTED IN THE DRAWING, IS  
CLAIMED AS AN ELEMENT OF THE MARK.

SER. NO. 76-195,237, FILED 1-18-2001.

FIRST USE 1-17-2001; IN COMMERCE 1-17-2001.

SCOTT OSCLICK, EXAMINING ATTORNEY

**Int. Cl.: 37**

**Prior U.S. Cls.: 100, 103, and 106**

**United States Patent and Trademark Office**

**Reg. No. 2,832,387**

**Registered Apr. 13, 2004**

**SERVICE MARK  
PRINCIPAL REGISTER**

**KB HOME**

KB HOME (DELAWARE CORPORATION)  
10990 WILSHIRE BLVD  
LOS ANGELES, CA 90024

FIRST USE 1-17-2001; IN COMMERCE 1-17-2001.

FOR: CONSTRUCTION SERVICES, NAMELY,  
PLANNING, LAYING OUT AND CONSTRUCTION  
OF RESIDENTIAL COMMUNITIES; CONSTRUCTION  
OF SINGLE FAMILY AND MULTIPLE FAMILY  
DWELLING UNITS; REAL ESTATE  
DEVELOPMENT, IN CLASS 37 (U.S. CLS. 100, 103  
AND 106).

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "HOME", APART FROM THE  
MARK AS SHOWN.

SN 76-154,867, FILED 10-26-2000.

HENRY S. ZAK, EXAMINING ATTORNEY

**Int. Cl.: 37**

**Prior U.S. Cls.: 100, 103 and 106**

**Reg. No. 2,749,283**

**United States Patent and Trademark Office**

**Registered Aug. 12, 2003**

**SERVICE MARK  
PRINCIPAL REGISTER**

**KBHOME**

KB HOME (DELAWARE CORPORATION)  
10990 WILSHIRE BLVD  
LOS ANGELES, CA 90024, BY ASSIGNMENT KAUF-  
MAN AND BROAD HOME CORPORATION (DE-  
LAWARE CORPORATION) LOS ANGELES, CA  
90024

FOR: CONSTRUCTION SERVICES, NAMELY,  
PLANNING, LAYING OUT AND CONSTRUCTION  
OF RESIDENTIAL COMMUNITIES; CONSTRUC-

TION OF SINGLE FAMILY AND MULTIPLE FA-  
MILY DWELLING UNITS; REAL ESTATE  
DEVELOPMENT, IN CLASS 37 (U.S. CLS. 100, 103  
AND 106).

FIRST USE 1-17-2001; IN COMMERCE 1-17-2001.

SER. NO. 76-195,868, FILED 1-18-2001.

SCOTT OSLICK, EXAMINING ATTORNEY



**Int. Cl.: 36**

**Prior U.S. Cls.: 100, 101, and 102**

**United States Patent and Trademark Office**

**Reg. No. 2,825,554**

**Registered Mar. 23, 2004**

**SERVICE MARK  
PRINCIPAL REGISTER**

**KB HOME**

KB HOME (DELAWARE CORPORATION)  
10990 WILSHIRE BOULEVARD  
LOS ANGELES, CA 90024

FOR: MORTGAGE LENDING AND ESCROW  
SERVICES IN CONNECTION WITH THE CON-  
STRUCTION AND BROKERAGE OF SINGLE FA-  
MILY AND MULTIPLE FAMILY DWELLING  
UNITS, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 3-6-2002; IN COMMERCE 3-6-2002.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "HOME", APART FROM THE  
MARK AS SHOWN.

SN 76-154,866, FILED 10-26-2000.

HENRY S. ZAK, EXAMINING ATTORNEY

## Combined Declaration of Use and Incontestability under Sections 8 & 15

The table below presents the data as entered.

Input Field	Entered
REGISTRATION NUMBER	2825554
REGISTRATION DATE	03/23/2004
SERIAL NUMBER	76154866
<b>MARK SECTION</b>	
MARK	KB HOME
<b>OWNER SECTION (current)</b>	
NAME	KB HOME
STREET	10990 WILSHIRE BOULEVARD
CITY	LOS ANGELES
STATE	California
ZIP/POSTAL CODE	90024
COUNTRY	United States
<b>ATTORNEY SECTION (current)</b>	
NAME	Sheldon H. Klein
FIRM NAME	ARENT FOX KINTNER PLOTKIN & KAHN PLLC
STREET	1050 CONNECTICUT AVE NW
CITY	WASHINGTON
STATE	District of Columbia
POSTAL CODE	20036-5303
COUNTRY	United States
<b>ATTORNEY SECTION (proposed)</b>	



<b>NAME</b>	Sheldon H. Klein
<b>FIRM NAME</b>	ARENT FOX LLP
<b>STREET</b>	1050 CONNECTICUT AVE NW
<b>CITY</b>	WASHINGTON
<b>STATE</b>	District of Columbia
<b>POSTAL CODE</b>	20036-5303
<b>COUNTRY</b>	United States
<b>PHONE</b>	202.857.6404
<b>FAX</b>	202.857.6395
<b>EMAIL</b>	klein.sheldon@arentfox.com
<b>AUTHORIZED TO COMMUNICATE VIA E-MAIL</b>	Yes
<b>ATTORNEY DOCKET NUMBER</b>	023776.00004
<b>OTHER APPOINTED ATTORNEY</b>	all other attorneys
<b>GOODS AND/OR SERVICES SECTION</b>	
<b>INTERNATIONAL CLASS</b>	036
<b>GOODS OR SERVICES TO BE DELETED</b>	and escrow services
<b>GOODS OR SERVICES IN USE IN COMMERCE</b>	Mortgage lending in connection with the construction and brokerage of single family and multiple family dwelling units
<b>SPECIMEN FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<u>SPN0-20447535-134728341 . KB Home Mortgage.pdf</u>
<b>CONVERTED PDF FILE(S) (3 pages)</b>	<u>\\TICRS\EXPORT8\IMAGEOUT8\761\548\76154866\xml\1\8150002.JPG</u>
	<u>\\TICRS\EXPORT8\IMAGEOUT8\761\548\76154866\xml\1\8150003.JPG</u>
	<u>\\TICRS\EXPORT8\IMAGEOUT8\761\548\76154866\xml\1\8150004.JPG</u>
<b>SPECIMEN DESCRIPTION</b>	web site offering services
<b>PAYMENT SECTION</b>	

NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	300
TOTAL FEE PAID	300
<b>SIGNATURE SECTION</b>	
SIGNATURE	/Tony Richelieu/
SIGNATORY'S NAME	Tony Richelieu
SIGNATORY'S POSITION	Corporate Counsel and Assistant Corporate Secretary
DATE SIGNED	10/29/2009
PAYMENT METHOD	CC
<b>FILING INFORMATION</b>	
SUBMIT DATE	Thu Oct 29 14:15:11 EDT 2009
TEAS STAMP	USPTO/S08N15-204.4.75.35- 20091029141511092374-2825 554-4605a2e24781af65267fb 8d60c191eacf98-CC-434-200 91029134728341362

## Declaration

*The mark is in use in commerce on or in connection with the goods and/or services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce. The mark has been in continuous use in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce. There has been no final decision adverse to the owner's claim of ownership of such mark, or to the owner's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the U.S. Patent and Trademark Office or in the courts.*

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /Tony Richelieu/ Date: 10/29/2009

Signatory's Name: Tony Richelieu

Signatory's Position: Corporate Counsel and Assistant Corporate Secretary

**Mailing Address (current):**

ARENT FOX KINTNER PLOTKIN & KAHN PLLC  
1050 CONNECTICUT AVE NW  
WASHINGTON, District of Columbia 20036-5303

**Mailing Address (proposed):**

ARENT FOX LLP  
1050 CONNECTICUT AVE NW  
WASHINGTON, District of Columbia 20036-5303

Serial Number: 76154866

Internet Transmission Date: Thu Oct 29 14:15:11 EDT 2009

TEAS Stamp: USPTO/S08N15-204.4.75.35-200910291415110

92374-2825554-4605a2e24781af65267fb8d60c

191eacf98-CC-434-20091029134728341362

KB Home Mortgage

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# KB HOME MORTGAGE®

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There's a lot involved in buying a home.

Now less so. Excellent customer service.

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http://www.kbhome.com/ (1 of 3)10/28/2009 3:40:35 PM

KB Home Mortgage

**QUICK LINKS**

- ⚙️ what's my payment?
- ⚙️ can I afford this house?
- ⚙️ down payment
- ⚙️ loan programs

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**welcome home**

Now may be an opportune time to get into a new KB home. Whether you're a first-time buyer or moving up to a luxury home, you can get personalized service that makes the home financing process easier. We are committed to making the loan application process more convenient, and provide a wide array of financing options to help you purchase your dream home. We have a wide range of loan programs for qualified buyers, and we offer:

- UpFront Approval so you can know how much home you can afford<sup>1</sup>
- A complete line of loan programs, including FHA and VA fixed rate loans
- Financing options that can help you with many of your KB Home Studio choices

We're pleased with your interest in a KB home and look forward to serving your home financing needs.

Call us today to get started: **888-KB-HOMES**.

**CONTACT US**


**HouseCALL®**  
Toll Free  
**888-KB-HOMES™**

For information about KB Home communities throughout the United States, our HouseCALL Center is your own personal information source at KB Home.

We're here to take your call 7 days a week.

Monday through Friday  
7am-5pm Saturday  
8am-4pm, PST

<sup>1</sup> UpFront Approval is subject to satisfactory appraisal and title review and no change in financial condition. If the rate is not locked or rate protection expires, any rate increases may lower the loan amount for which the borrower has been preapproved.

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**ROUTING SHEET TO POST REGISTRATION (PRU)**

**Registration Number:** 2825554



**Serial Number:** 76154866



**RAM Sale Number:** 434

**RAM Accounting Date:** 20091030

**Total Fees:** \$300

Note: Process in accordance with Post Registration Standard Operating Procedure (SOP)

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Number of Classes Paid</u>	<u>Total Fee</u>
§8 affidavit	7205	20091029	\$100	1	1	\$100
§15 affidavit	7208	20091029	\$200	1	1	\$200

Physical Location: 900 - FILE REPOSITORY (FRANCONIA)

Lost Case Flag: False

In TICRS (AM-FLG-IN-TICRS): True

**Transaction Date:** 20091029



P.O. Form TSS3 (Rev. 5/2006)

OMB No. 0651-0059 (Exp. 12/31/2011)

## Combined Declaration of Use and Incontestability under Sections 8 & 15

The table below presents the data as entered.

Input Field	Entered
<b>REGISTRATION NUMBER</b>	2749283
<b>REGISTRATION DATE</b>	08/12/2003
<b>SERIAL NUMBER</b>	76195868
<b>MARK SECTION</b>	
<b>MARK</b>	KBHOME (stylized and/or with design)
<b>OWNER SECTION (current)</b>	
<b>NAME</b>	KB HOME
<b>STREET</b>	10990 WILSHIRE BLVD
<b>CITY</b>	LOS ANGELES
<b>STATE</b>	California
<b>ZIP/POSTAL CODE</b>	90024
<b>COUNTRY</b>	United States
<b>ATTORNEY SECTION (current)</b>	
<b>NAME</b>	Sheldon H Klein
<b>FIRM NAME</b>	ARENT FOX KINTNER PLOTKIN & KAHN PLLC
<b>STREET</b>	1050 CONNECTICUT AVE NW
<b>CITY</b>	WASHINGTON
<b>STATE</b>	District of Columbia
<b>POSTAL CODE</b>	20036-5303
<b>COUNTRY</b>	United States
<b>ATTORNEY SECTION (proposed)</b>	

NAME	Sheldon H Klein
FIRM NAME	ARENT FOX LLP
STREET	1050 CONNECTICUT AVE NW
CITY	WASHINGTON
STATE	District of Columbia
POSTAL CODE	20036-5303
COUNTRY	United States
EMAIL	klein.sheldon@arentfox.com
AUTHORIZED TO COMMUNICATE VIA E-MAIL	Yes
<b>GOODS AND/OR SERVICES SECTION</b>	
INTERNATIONAL CLASS	037
GOODS OR SERVICES	KEEP ALL LISTED
<b>SPECIMEN FILE NAME(S)</b>	
ORIGINAL PDF FILE	<u>SPN0-20447535-144423965 . KBHomes - KB Home Customer Service and Customer Care.pdf</u>
CONVERTED PDF FILE(S) (3 pages)	<u>\\TICRS\EXPORT4\IMAGEOUT4\761\958\76195868\xml2\8150002.JPG</u>
	<u>\\TICRS\EXPORT4\IMAGEOUT4\761\958\76195868\xml2\8150003.JPG</u>
	<u>\\TICRS\EXPORT4\IMAGEOUT4\761\958\76195868\xml2\8150004.JPG</u>
SPECIMEN DESCRIPTION	website page
<b>PAYMENT SECTION</b>	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	300
TOTAL FEE PAID	300
<b>SIGNATURE SECTION</b>	
SIGNATURE	/s/ Tony Richelieu
SIGNATORY'S	

<b>NAME</b>	Tony Richelieu
<b>SIGNATORY'S POSITION</b>	Corporate Counsel and Assistant Corporate Secretary
<b>DATE SIGNED</b>	11/25/2008
<b>PAYMENT METHOD</b>	CC
<b>FILING INFORMATION</b>	
<b>SUBMIT DATE</b>	Tue Nov 25 16:02:39 EST 2008
<b>TEAS STAMP</b>	USPTO/S08N15-204.4.75.35- 20081125160239866644-2749 283-4008f854f7821bffa5b41 379322318e9-CC-1596-20081 125144423965510

PIC Form: 1593 (Rev 5/2006)  
OMB No. 0651-0055 (Exp. 12/31/2011)

**Combined Declaration of Use and Incontestability under Sections 8 & 15  
To the Commissioner for Trademarks:**

**REGISTRATION NUMBER:** 2749283

**REGISTRATION DATE:** 08/12/2003

**MARK:** KBHOME (stylized and/or with design)

The owner, KB HOME, having an address of  
10990 WILSHIRE BLVD  
LOS ANGELES, California 90024  
United States

is filing a Combined Declaration of Use and Incontestability under Sections 8 & 15.

For International Class 037, the mark is in use in commerce on or in connection with **all** of the goods or services listed in the existing registration for this specific class; **and** the mark has been continuously used in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce on or in connection with **all** goods or services listed in the existing registration for this class. Also, no final decision adverse to the owner's claim of ownership of such mark for those goods or services exists, or to the owner's right to register the same or to keep the same on the register; and, no proceeding involving said rights pending and not disposed of in either the U.S. Patent and Trademark Office or the courts exists.

The owner is submitting one specimen for this class showing the mark as used in commerce on or in connection with any item in this class, consisting of a(n) website page.

**Original PDF file:**

SPN0-20447535-144423965 . KBHomes - KB Home Customer Service and Customer Care.pdf

**Converted PDF file(s) (3 pages)**

Specimen File1

Specimen File2

Specimen File3

The registrant hereby appoints Sheldon H Klein of ARENT FOX LLP  
1050 CONNECTICUT AVE NW  
WASHINGTON, District of Columbia 20036-5303  
United States

to file this Combined Declaration of Use and Incontestability under Sections 8 & 15 on behalf of the registrant.

A fee payment in the amount of \$300 will be submitted with the form, representing payment for 1 class(es), plus any additional grace period fee, if necessary.

**Declaration**

*The owner, or its related company, is using the mark in commerce on or in connection with the goods and/or services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce. The owner, or its related company, has continuously used the mark in commerce on or in connection with the goods and/or services identified above, for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still using the mark in commerce on or in connection with the identified goods and/or services. There has been no final decision adverse to the owner's claim of ownership of such mark for such goods and/or services, or to the owner's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the U.S. Patent and Trademark Office or in the courts.*

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /s/ Tony Richelieu Date: 11/25/2008

Signatory's Name: Tony Richelieu

Signatory's Position: Corporate Counsel and Assistant Corporate Secretary

**Mailing Address (current):**

ARENT FOX KINTNER PLOTKIN & KAHN PLLC  
1050 CONNECTICUT AVE NW  
WASHINGTON, District of Columbia 20036-5303

**Mailing Address (proposed):**

ARENT FOX LLP  
1050 CONNECTICUT AVE NW  
WASHINGTON, District of Columbia 20036-5303

Serial Number: 76195868

Internet Transmission Date: Tue Nov 25 16:02:39 EST 2008

TEAS Stamp: USPTO/S08N15-204.4.75.35-200811251602398

66644-2749283-4008f854f7821bffa5b4137932

2318e9-CC-1596-20081125144423965510

KB Home - KB Home Customer Service and Customer Care

Home Site Map Customer Care Careers Investor Relations Real Estate Professionals Español



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- Build
- Customize
- Finance
- Contact Us

KB Home -- Customer Care

## Customer Care Your satisfaction is our goal.

KB Home is committed to customer satisfaction. We will go the extra mile for you, ensuring that all facets of your new-home experience meet the expectations of KB Home and you, our valued customer.

KB Home's 100% Satisfied Pledge program represents the rigorous standards of customer satisfaction practiced throughout the company. We have achieved extraordinary homeowner loyalty with satisfaction index scores among the highest in company history, while outstanding warranty claims remain low. The KB Home 100% Satisfied Pledge problem-solving policy involves making great effort to resolve homeowner concerns easily, efficiently and effectively. It is our goal to resolve warranty issues within 8 weeks.

[Click here for more information on the Warranty.](#)



<http://www.kbhome.com/CustomerCare.aspx> (1 of 3) 11/20/2008 11:06:57 AM



KB Home - KB Home Customer Service and Customer Care



The quality of our work is also a very important component to our customer service standards, KB Home has adopted a "100% Satisfied Pledge", which offers homebuyers 10 point quality construction checkpoints at every step

A graphic titled "KB Home 10 Quality Checkpoints". At the top left is a paperclip icon. At the top center is the KB Home logo. The title "KB Home 10 Quality Checkpoints" is in a large, bold font. Below the title, the checkpoints are listed in two columns. The first column lists checkpoints 1 through 4 under the heading "PRE-CONSTRUCTION BUYER ORIENTATION". The second column lists checkpoints 5 through 10 under the heading "PRE-DRYWALL BUYER ORIENTATION". To the right of the list, there is a paragraph of text. At the bottom right, there is a silhouette of a person sitting at a desk, looking at a computer screen.

**KB Home 10 Quality Checkpoints**

**PRE-CONSTRUCTION BUYER ORIENTATION**

- 1 PRE-POUR QUALITY CHECKPOINT
- 2 FRAME QUALITY CHECKPOINT
- 3 INTERIM FRAME QUALITY CHECKPOINT
- 4 FRAME PUNCHOUT QUALITY CHECKPOINT

**PRE-DRYWALL BUYER ORIENTATION**

- 5 PRE-DRYWALL QUALITY CHECKPOINT
- 6 DRYWALL PUNCHOUT QUALITY CHECKPOINT
- 7 TRIM PUNCHOUT QUALITY CHECKPOINT
- 8 PRE-CARPET QUALITY CHECKPOINT
- 9 PRE-FINAL QUALITY CHECKPOINT
- 10 COMMUNITY TEAM FINAL QUALITY CHECKPOINT

**HOMEOwner ORIENTATION**

The KB Home 10-point quality checklist is overseen by the construction superintendent. This checklist is closely followed during each stage of the construction process.

http://www.kbhome.com/CustomerCare.aspx (2 of 3) 11/20/2008 11:06:57 AM

KB Home - KB Home Customer Service and Customer Care



KB Home also adopted a first-of-its-kind quality certification program developed by the NAHB Research Center's National Housing Quality (NHQ) Program throughout its operations in the U.S. The rigorous certification process emphasizes efficiency, accountability and communication on the jobsite. The KB Home 10-year limited warranty is also one of the most comprehensive in the industry.

Call today for more information. 888-KB-HOMES.

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<http://www.kbhome.com/CustomerCare.aspx> (3 of 3) (12/2/2008 11:06:57 AM)

**ROUTING SHEET TO POST REGISTRATION (PRU)**

**Registration Number:** 2749283



**Serial Number:** 76195868



**RAM Sale Number:** 1596

**RAM Accounting Date:** 20081126

**Total Fees:** \$300

Note: Process in accordance with Post Registration Standard Operating Procedure (SOP)

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Number of Classes Paid</u>	<u>Total Fee</u>
§8 affidavit	7205	20081125	\$100	1	1	\$100
§15 affidavit	7208	20081125	\$200	1	1	\$200

Physical Location: 900 - FILE REPOSITORY (FRANCONIA)

Lost Case Flag: False

In TICRS (AM-FLG-IN-TICRS): True

**Transaction Date:** 20081125



UFG Form 1553 (Rev. 5/2003)  
OMB No. 0651-0055 Exp. 12/31/2013

## Combined Declaration of Use and Incontestability under Sections 8 & 15

The table below presents the data as entered.

Input Field	Entered
<b>REGISTRATION NUMBER</b>	2706002
<b>REGISTRATION DATE</b>	04/15/2003
<b>SERIAL NUMBER</b>	76154460
<b>MARK SECTION</b>	
<b>MARK</b>	KB
<b>OWNER SECTION (current)</b>	
<b>NAME</b>	KB HOME
<b>STREET</b>	10990 Wilshire Blvd.
<b>CITY</b>	Los Angeles
<b>STATE</b>	California
<b>ZIP/POSTAL CODE</b>	90024
<b>COUNTRY</b>	US
<b>ATTORNEY SECTION (current)</b>	
<b>NAME</b>	Sheldon H. Klein
<b>FIRM NAME</b>	ARENT FOX
<b>STREET</b>	1050 CONNECTICUT AVENUE NW
<b>CITY</b>	WASHINGTON
<b>STATE</b>	District of Columbia
<b>POSTAL CODE</b>	20036-5339
<b>COUNTRY</b>	United States
<b>ATTORNEY SECTION (proposed)</b>	
<b>NAME</b>	Sheldon H. Klein
<b>FIRM NAME</b>	Arent Fox LLP

<b>STREET</b>	1050 Connecticut Ave. NW
<b>CITY</b>	WASHINGTON
<b>STATE</b>	District of Columbia
<b>POSTAL CODE</b>	20036-5339
<b>COUNTRY</b>	United States
<b>PHONE</b>	202.857.6404
<b>FAX</b>	202.857.6395
<b>EMAIL</b>	klein.sheldon@arentfox.com
<b>AUTHORIZED TO COMMUNICATE VIA E-MAIL</b>	Yes
<b>ATTORNEY DOCKET NUMBER</b>	023776.00006
<b>OTHER APPOINTED ATTORNEY</b>	all other attorneys
<b>GOODS AND/OR SERVICES SECTION</b>	
<b>INTERNATIONAL CLASS</b>	037
<b>GOODS OR SERVICES</b>	KEEP ALL LISTED
<b>SPECIMEN FILE NAME(S)</b>	\\TICRS\EXPORT6\IMAGEOUT6 \\761\544\76154460\xml\1\81 50002.JPG
<b>SPECIMEN DESCRIPTION</b>	digital copy of brochure advertising services
<b>PAYMENT SECTION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>NUMBER OF CLASSES PAID</b>	1
<b>SUBTOTAL AMOUNT</b>	300
<b>TOTAL FEE PAID</b>	300
<b>SIGNATURE SECTION</b>	
<b>SIGNATURE</b>	/Tony Richelieu/
<b>SIGNATORY'S NAME</b>	Tony Richelieu
<b>SIGNATORY'S POSITION</b>	Corporate Counsel, Assistant Corporate Secretary
<b>DATE SIGNED</b>	04/08/2009
<b>PAYMENT METHOD</b>	CC
<b>FILING INFORMATION</b>	
<b>SUBMIT DATE</b>	Wed Apr 08 13:01:01 EDT 2009

**TEAS STAMP**

USPTO/S08N15-204.4.75.35-  
20090408130101876819-2706  
002-440f4a83367c297785d10  
a448689ca598a0-CC-8222-20  
090408095422003754

P.O. Form 1583 (Rev. 5/2/03)  
OMB No. 0631-0055 (Exp. 12/31/2011)

**Combined Declaration of Use and Incontestability under Sections 8 & 15  
To the Commissioner for Trademarks:**

**REGISTRATION NUMBER:** 2706002

**REGISTRATION DATE:** 04/15/2003

**MARK:** KB

The owner, KB HOME, having an address of  
10990 Wilshire Blvd.  
Los Angeles, California 90024  
US

is filing a Combined Declaration of Use and Incontestability under Sections 8 & 15.

For International Class 037, the mark is in use in commerce on or in connection with **all** of the goods or services listed in the existing registration for this specific class; **and** the mark has been continuously used in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce on or in connection with **all** goods or services listed in the existing registration for this class. Also, no final decision adverse to the owner's claim of ownership of such mark for those goods or services exists, or to the owner's right to register the same or to keep the same on the register; and, no proceeding involving said rights pending and not disposed of in either the U.S. Patent and Trademark Office or the courts exists.

The owner is submitting one specimen for this class showing the mark as used in commerce on or in connection with any item in this class, consisting of a(n) digital copy of brochure advertising services.  
Specimen File1

The registrant hereby appoints Sheldon H. Klein and all other attorneys of Arent Fox LLP  
1050 Connecticut Ave. NW  
WASHINGTON, District of Columbia 20036-5339  
United States

to file this Combined Declaration of Use and Incontestability under Sections 8 & 15 on behalf of the registrant. The attorney docket/reference number is 023776.00006.

A fee payment in the amount of \$300 will be submitted with the form, representing payment for 1 class(es), plus any additional grace period fee, if necessary.

**Declaration**

*The mark is in use in commerce on or in connection with the goods and/or services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce. The mark has been in continuous use in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce. There has been no final decision adverse*

*to the owner's claim of ownership of such mark, or to the owner's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the U.S. Patent and Trademark Office or in the courts.*

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /Tony Richelieu/ Date: 04/08/2009

Signatory's Name: Tony Richelieu

Signatory's Position: Corporate Counsel, Assistant Corporate Secretary

**Mailing Address (current):**

ARENT FOX  
1050 CONNECTICUT AVENUE NW  
WASHINGTON, District of Columbia 20036-5339

**Mailing Address (proposed):**

Arent Fox LLP  
1050 Connecticut Ave. NW  
WASHINGTON, District of Columbia 20036-5339

Serial Number: 76154460

Internet Transmission Date: Wed Apr 08 13:01:01 EDT 2009

TEAS Stamp: USPTO/S08N15-204.4.75.35-200904081301018

76819-2706002-440f4a83367c297785d10a4486

89ca598a0-CC-8222-20090408095422003754



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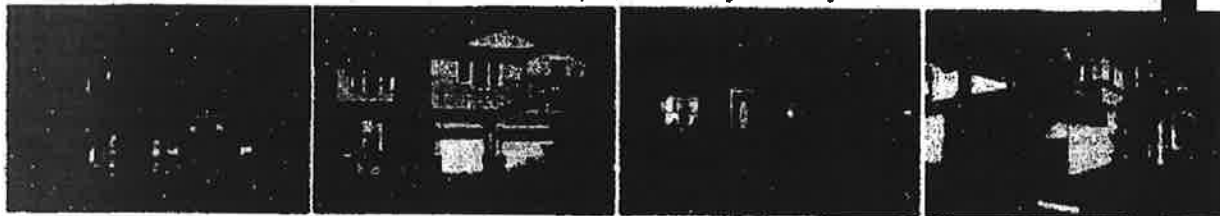
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**ROUTING SHEET TO POST REGISTRATION (PRU)**

**Registration Number:** 2706002



**Serial Number:** 76154460



**RAM Sale Number:** 8222

**RAM Accounting Date:** 20090408

**Total Fees:** \$300

Note: Process in accordance with Post Registration Standard Operating Procedure (SOP)

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Number of Classes Paid</u>	<u>Total Fee</u>
§8 affidavit	7205	20090408	\$100	1	1	\$100
§15 affidavit	7208	20090408	\$200	1	1	\$200

Physical Location: 900 - FILE REPOSITORY (FRANCONIA)

Lost Case Flag: False

In TICRS (AM-FLG-IN-TICRS): True

**Transaction Date:** 20090408



PTO Form 1583 (Rev. 5/2006)  
 OMD No. 5051-0055 (Exp. 12/31/2011)

## Combined Declaration of Use and Incontestability under Sections 8 & 15

The table below presents the data as entered.

Input Field	Entered
<b>REGISTRATION NUMBER</b>	2768634
<b>REGISTRATION DATE</b>	09/30/2003
<b>SERIAL NUMBER</b>	76195237
<b>MARK SECTION</b>	
<b>MARK</b>	KB HOME (stylized and/or with design)
<b>OWNER SECTION (current)</b>	
<b>NAME</b>	KB HOME
<b>STREET</b>	10990 WILSHIRE BOULEVARD
<b>CITY</b>	LOS ANGELES
<b>STATE</b>	California
<b>ZIP/POSTAL CODE</b>	90024
<b>COUNTRY</b>	United States
<b>ATTORNEY SECTION (current)</b>	
<b>NAME</b>	Sheldon H. Klein
<b>FIRM NAME</b>	ARENT FOX KINTNER PLOTKIN & KAHN
<b>STREET</b>	1050 CONNECTICUT AVENUE NW
<b>CITY</b>	WASHINGTON
<b>STATE</b>	District of Columbia
<b>POSTAL CODE</b>	20036-5339
<b>COUNTRY</b>	United States
<b>ATTORNEY SECTION (proposed)</b>	

<b>NAME</b>	Sheldon H. Klein
<b>FIRM NAME</b>	ARENT FOX LLP
<b>STREET</b>	1050 CONNECTICUT AVENUE NW
<b>CITY</b>	WASHINGTON
<b>STATE</b>	District of Columbia
<b>POSTAL CODE</b>	20036-5339
<b>COUNTRY</b>	United States
<b>PHONE</b>	202.857.6404
<b>FAX</b>	202.857.6395
<b>EMAIL</b>	klein.sheldon@arentfox.com
<b>AUTHORIZED TO COMMUNICATE VIA E-MAIL</b>	Yes
<b>ATTORNEY DOCKET NUMBER</b>	023776.00015
<b>OTHER APPOINTED ATTORNEY</b>	all other attorneys
<b>GOODS AND/OR SERVICES SECTION</b>	
<b>INTERNATIONAL CLASS</b>	037
<b>GOODS OR SERVICES</b>	KEEP ALL LISTED
<b>SPECIMEN FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<u>SPN0-20447535-122259956 . Specimen.pdf</u>
<b>CONVERTED PDF FILE(S) (1 page)</b>	<u>\\TICRS\EXPORT8\IMAGEOUT8\761\952\76195237\xml1\8150002.JPG</u>
<b>SPECIMEN DESCRIPTION</b>	screen shot of website
<b>PAYMENT SECTION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>NUMBER OF CLASSES PAID</b>	1
<b>SUBTOTAL AMOUNT</b>	300
<b>TOTAL FEE PAID</b>	300

<b>SIGNATURE SECTION</b>	
<b>SIGNATURE</b>	/Tony Richelieu/
<b>SIGNATORY'S NAME</b>	Tony Richelieu
<b>SIGNATORY'S POSITION</b>	Corporate Counsel and Assistant Corporate Secretary
<b>DATE SIGNED</b>	09/25/2009
<b>PAYMENT METHOD</b>	CC
<b>FILING INFORMATION</b>	
<b>SUBMIT DATE</b>	Fri Sep 25 15:14:29 EDT 2009
<b>TEAS STAMP</b>	USPTO/S08N15-204.4.75.35- 20090925151429801236-2768 634-460c2b0ff343f4a908698 051364f5cdf84-CC-1479-200 90922122259956706

P10 Form 1-802 (Rev. 5/20/03)  
USPTO Reg. No. 1-802 (Rev. 5/20/03)

**Combined Declaration of Use and Incontestability under Sections 8 & 15  
To the Commissioner for Trademarks:**

**REGISTRATION NUMBER:** 2768634

**REGISTRATION DATE:** 09/30/2003

**MARK:** KB HOME (stylized and/or with design)

The owner, KB HOME, having an address of  
10990 WILSHIRE BOULEVARD  
LOS ANGELES, California 90024  
United States

is filing a Combined Declaration of Use and Incontestability under Sections 8 & 15.

For International Class 037, the mark is in use in commerce on or in connection with **all** of the goods or services listed in the existing registration for this specific class; **and** the mark has been continuously used in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce on or in connection with **all** goods or services listed in the existing registration for this class. Also, no final decision adverse to the owner's claim of ownership of such mark for those goods or services exists, or to the owner's right to register the same or to keep the same on the register; and, no proceeding involving said rights pending and not disposed of in either the U.S. Patent and Trademark Office or the courts exists.

The owner is submitting one specimen for this class showing the mark as used in commerce on or in connection with any item in this class, consisting of a(n) screen shot of website.

**Original PDF file:**

SPN0-20447535-122259956 . Specimen.pdf

**Converted PDF file(s) (1 page)**

Specimen File1

The registrant hereby appoints Sheldon H. Klein and all other attorneys of ARENT FOX LLP  
1050 CONNECTICUT AVENUE NW  
WASHINGTON, District of Columbia 20036-5339  
United States

to file this Combined Declaration of Use and Incontestability under Sections 8 & 15 on behalf of the registrant. The attorney docket/reference number is 023776.00015.

A fee payment in the amount of \$300 will be submitted with the form, representing payment for 1 class(es), plus any additional grace period fee, if necessary.

**Declaration**

*The mark is in use in commerce on or in connection with the goods and/or services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce. The mark has been in continuous use in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce. There has been no final decision adverse to the owner's claim of ownership of such mark, or to the owner's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the U.S. Patent and Trademark Office or in the courts.*

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /Tony Richelieu/ Date: 09/25/2009

Signatory's Name: Tony Richelieu

Signatory's Position: Corporate Counsel and Assistant Corporate Secretary

**Mailing Address (current):**

ARENT FOX KINTNER PLOTKIN & KAHN  
1050 CONNECTICUT AVENUE NW  
WASHINGTON, District of Columbia 20036-5339

**Mailing Address (proposed):**

ARENT FOX LLP  
1050 CONNECTICUT AVENUE NW  
WASHINGTON, District of Columbia 20036-5339

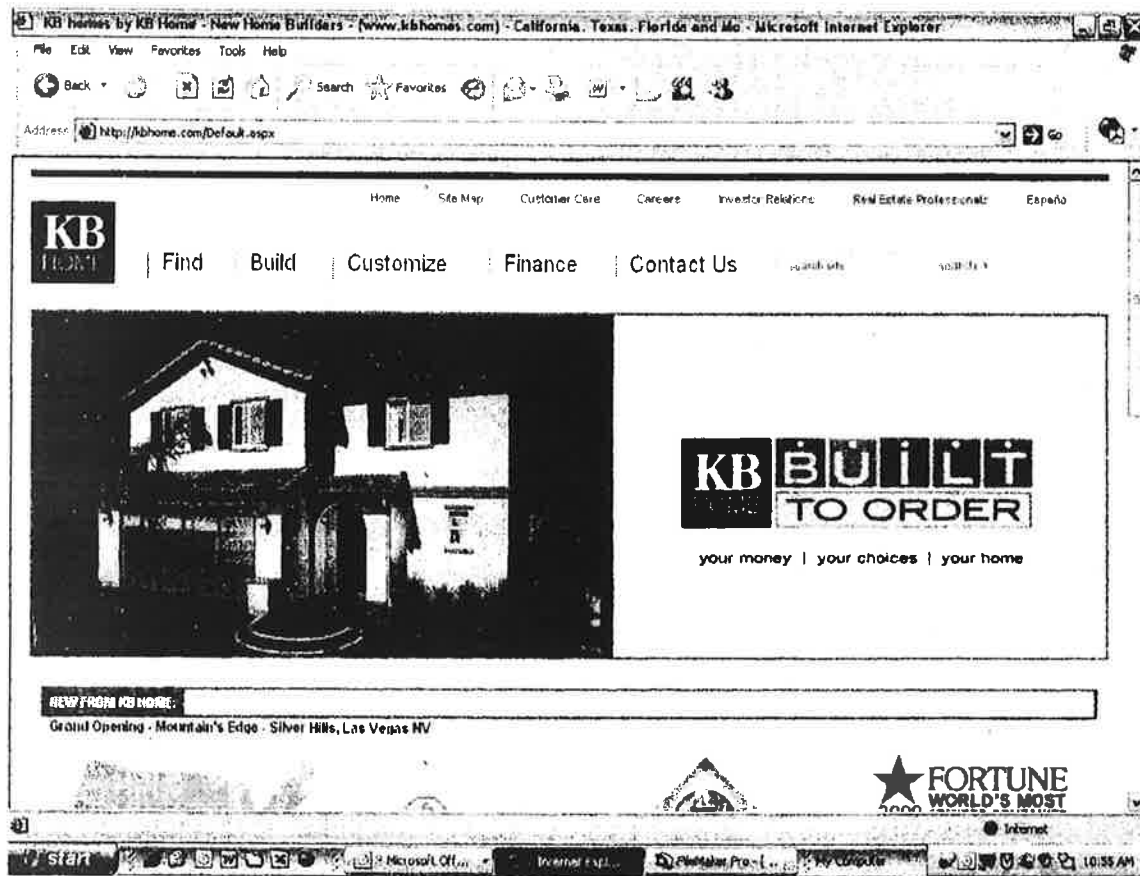
Serial Number: 76195237

Internet Transmission Date: Fri Sep 25 15:14:29 EDT 2009

TEAS Stamp: USPTO/S08N15-204.4.75.35-200909251514298

01236-2768634-460c2b0ff343f4a90869805136

4f5cdf84-CC-1479-20090922122259956706





**ROUTING SHEET TO POST REGISTRATION (PRU)**

**Registration Number:** 2768634



**Serial Number:** 76195237



**RAM Sale Number:** 1479

**RAM Accounting Date:** 20090928

**Total Fees:** \$300

Note: Process in accordance with Post Registration Standard Operating Procedure (SOP)

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Number of Classes Paid</u>	<u>Total Fee</u>
§8 affidavit	7205	20090925	\$100	1	1	\$100
§15 affidavit	7208	20090925	\$200	1	1	\$200

Physical Location: 900 - FILE REPOSITORY (FRANCONIA)

Lost Case Flag: False

In TICRS (AM-FLG-IN-TICRS): True

**Transaction Date:** 20090925



PTC Form 1283 (Rev. 5/2010)  
 GBD No. 0001-0055 (Exp. 12/31/2011)

## Combined Declaration of Use and Incontestability under Sections 8 & 15

The table below presents the data as entered.

Input Field	Entered
<b>REGISTRATION NUMBER</b>	2832387
<b>REGISTRATION DATE</b>	04/13/2004
<b>SERIAL NUMBER</b>	76154867
<b>MARK SECTION</b>	
<b>MARK</b>	KB HOME
<b>OWNER SECTION (current)</b>	
<b>NAME</b>	KB HOME
<b>STREET</b>	10990 WILSHIRE BLVD
<b>CITY</b>	LOS ANGELES
<b>STATE</b>	California
<b>ZIP/POSTAL CODE</b>	90024
<b>COUNTRY</b>	United States
<b>ATTORNEY SECTION (current)</b>	
<b>NAME</b>	Sheldon H. Klein
<b>FIRM NAME</b>	ARENT FOX KINTNER PLOTKIN & KAMIN PLLC
<b>STREET</b>	1050 CONNECTICUT AVE NW
<b>CITY</b>	WASHINGTON
<b>STATE</b>	District of Columbia
<b>POSTAL CODE</b>	20036-5303
<b>COUNTRY</b>	United States
<b>ATTORNEY SECTION (proposed)</b>	

<b>NAME</b>	Sheldon H. Klein
<b>FIRM NAME</b>	ARENT FOX LLP
<b>STREET</b>	1050 CONNECTICUT AVE NW
<b>CITY</b>	WASHINGTON
<b>STATE</b>	District of Columbia
<b>POSTAL CODE</b>	20036-5303
<b>COUNTRY</b>	United States
<b>PHONE</b>	202.857.6404
<b>FAX</b>	202.857.6395
<b>EMAIL</b>	klein.sheldon@arentfox.com
<b>AUTHORIZED TO COMMUNICATE VIA E-MAIL</b>	Yes
<b>ATTORNEY DOCKET NUMBER</b>	023776.00005
<b>OTHER APPOINTED ATTORNEY</b>	all other attorneys
<b>GOODS AND/OR SERVICES SECTION</b>	
<b>INTERNATIONAL CLASS</b>	037
<b>GOODS OR SERVICES</b>	KEEP ALL LISTED
<b>SPECIMEN FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<u>SPN0-20447535-161534383 . Specimen.pdf</u>
<b>CONVERTED PDF FILE(S) (1 page)</b>	<u>\\TICRS\EXPORT8\IMAGEOUT8\761\548\76154867\xml\1\8150002.JPG</u>
<b>SPECIMEN DESCRIPTION</b>	screen shot of website offering services
<b>PAYMENT SECTION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>NUMBER OF CLASSES PAID</b>	1
<b>SUBTOTAL AMOUNT</b>	300
<b>TOTAL FEE PAID</b>	300

<b>SIGNATURE SECTION</b>	
<b>SIGNATURE</b>	/TONY RICHELIEU/
<b>SIGNATORY'S NAME</b>	Tony Richelieu
<b>SIGNATORY'S POSITION</b>	Corporate Counsel and Assistant Corporate Secretary
<b>DATE SIGNED</b>	11/03/2009
<b>PAYMENT METHOD</b>	CC
<b>FILING INFORMATION</b>	
<b>SUBMIT DATE</b>	Tue Nov 03 16:25:14 EST 2009
<b>TEAS STAMP</b>	USPTO/S08N15-204.4.75.35- 20091103162514767693-2832 387-46081e2d6a82b981b9654 7f73be8ae1e10-CC-2556-200 91103161534383958

PTO Form 1-57 (Rev. 8/2006)  
OMB No. 4251-0005 (Exp. 12/31/2015)

**Combined Declaration of Use and Incontestability under Sections 8 & 15  
To the Commissioner for Trademarks:**

**REGISTRATION NUMBER:** 2832387

**REGISTRATION DATE:** 04/13/2004

**MARK:** KB HOME

The owner, KB HOME, having an address of  
10990 WILSHIRE BLVD  
LOS ANGELES, California 90024  
United States

is filing a Combined Declaration of Use and Incontestability under Sections 8 & 15.

For International Class 037, the mark is in use in commerce on or in connection with **all** of the goods or services listed in the existing registration for this specific class; **and** the mark has been continuously used in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce on or in connection with **all** goods or services listed in the existing registration for this class. Also, no final decision adverse to the owner's claim of ownership of such mark for those goods or services exists, or to the owner's right to register the same or to keep the same on the register; and, no proceeding involving said rights pending and not disposed of in either the U.S. Patent and Trademark Office or the courts exists.

The owner is submitting one specimen for this class showing the mark as used in commerce on or in connection with any item in this class, consisting of a(n) screen shot of website offering services.

**Original PDF file:**

SPN0-20447535-161534383 . Specimen.pdf

**Converted PDF file(s)** (1 page)

Specimen File1

The registrant hereby appoints Sheldon H. Klein and all other attorneys of ARENT FOX LLP  
1050 CONNECTICUT AVE NW  
WASHINGTON, District of Columbia 20036-5303  
United States

to file this Combined Declaration of Use and Incontestability under Sections 8 & 15 on behalf of the registrant. The attorney docket/reference number is 023776.00005.

A fee payment in the amount of \$300 will be submitted with the form, representing payment for 1 class(es), plus any additional grace period fee, if necessary.

**Declaration**

*The mark is in use in commerce on or in connection with the goods and/or services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce. The mark has been in continuous use in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce. There has been no final decision adverse to the owner's claim of ownership of such mark, or to the owner's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the U.S. Patent and Trademark Office or in the courts.*

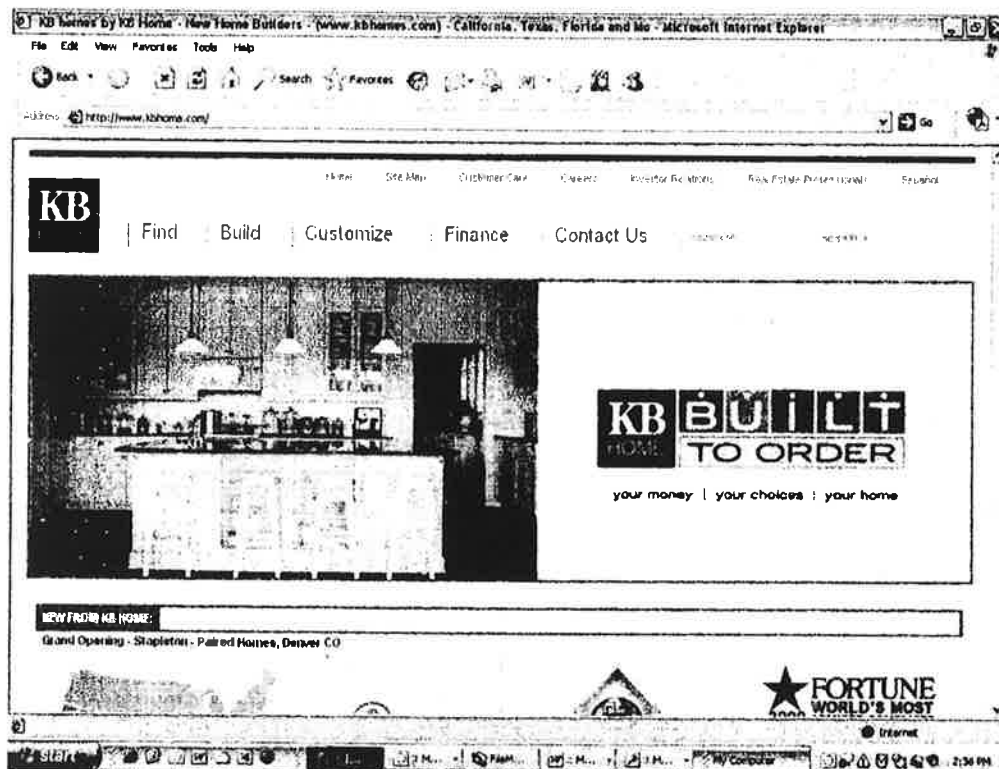
The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /TONY RICHELIEU/      Date: 11/03/2009  
Signatory's Name: Tony Richelieu  
Signatory's Position: Corporate Counsel and Assistant Corporate Secretary

Mailing Address (**current**):  
ARENT FOX KINTNER PLOTKIN & KAMIN PLLC  
1050 CONNECTICUT AVE NW  
WASHINGTON, District of Columbia 20036-5303

Mailing Address (**proposed**):  
ARENT FOX LLP  
1050 CONNECTICUT AVE NW  
WASHINGTON, District of Columbia 20036-5303

Serial Number: 76154867  
Internet Transmission Date: Tue Nov 03 16:25:14 EST 2009  
TEAS Stamp: USPTO/S08N15-204.4.75.35-200911031625147  
67693-2832387-46081e2d6a82b981b96547f73b  
e8ae1e10-CC-2556-20091103161534383958



**ROUTING SHEET TO POST REGISTRATION (PRU)**

**Registration Number:** 2832387



**Serial Number:** 76154867



**RAM Sale Number:** 2556

**RAM Accounting Date:** 20091104

**Total Fees:** \$300

Note: Process in accordance with Post Registration Standard Operating Procedure (SOP)

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Number of Classes Paid</u>	<u>Total Fee</u>
§8 affidavit	7205	20091103	\$100	1	1	\$100
§15 affidavit	7208	20091103	\$200	1	1	\$200

Physical Location: 900 - FILE REPOSITORY (FRANCONIA)

Lost Case Flag: False

In TICS (AM-FLG-IN-TICS): True

**Transaction Date:** 20091103





# CIVIL COVER SHEET

The JS 44 civil coversheet 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

KB HOME, a Delaware corporation

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Thomas A. Dye, Esq., Carlton Fields, P.A., 525 Okeechobee Blvd., Suite 1200, West Palm Beach, FL 33401, Tel: (561) 659-7070

## DEFENDANTS

ANDREW SMITH, DANIEL KOEHLER, PATRICK MCGETTIGAN, WILLIAM CRISMON, AND ARMANDO OYOLA-DELGADO

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |                                         | 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 type="checkbox"/> 4 | <input 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 |

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

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 (Excl. 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	<b>PERSONAL INJURY</b> <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 - Med. Malpractice	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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 <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. 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 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <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"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <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			

## 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

## VI. CAUSE OF ACTION

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

18 U.S.C. § 1030 ; 18 U.S.C. § 2511

Brief description of cause:

CYBERSQUATTING; INTERCEPTION OF PRIVATE E-MAILS

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

10/11/2013 /s/Thomas A. Dye

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use on the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statute unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket number and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

\* AO 120 (Rev. 3/04)

<b>TO:</b> <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been

filed in the U.S. District Court Middle District of Florida, Tampa on the following Patents or Trademarks:

DOCKET NO. 8:13cv2644-T-27EAJ	DATE FILED 10/15/13	U.S. DISTRICT COURT Middle District of Florida - Tampa Division
<b>PLAINTIFF</b>  KB HOME, a Delaware corporation		<b>DEFENDANT</b>  Andrew Smith, Daniel Koehler, Patrick McGettigan, William Crismon and Armando Oyola-Delgado
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		SEE ATTACHED COMPLAINT
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY		
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK  Sheryl L. Loesch	(BY) DEPUTY CLERK  /s/ D. Greco	DATE  10/15/13
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
Tampa Division**

KB HOME, a Delaware corporation,

Plaintiff,

v.

Case No: 8:13-cv-2644-T-27EAJ

ANDREW SMITH, et al.,

Defendants.

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**NOTICE OF DESIGNATION UNDER LOCAL RULE 3.05  
AND CASE MANAGEMENT NOTICE**

Please take notice that, in accordance with Local Rule 3.05, this action is designated as a Track **TWO** Case. Plaintiff is responsible for serving a copy of this notice and any attachment to this notice upon all other parties. All parties must meet any requirements established in Local Rule 3.05 for cases designated on this track and utilize the attached Case Management Report form.

The Court advises the parties of the following:

1. Most Track TWO cases will be tried within twelve (12) to eighteen (18) months of the filing date.
2. Pre-trial conference will be conducted approximately thirty (30) days prior to trial.
3. Dispositive motion deadline will be scheduled ninety (90) days prior to pre-trial conference.
4. Discovery cut-off and expert witness disclosure deadlines will be as agreed to in the case management report unless specifically excepted in the Case Management and Scheduling Order.

On Monday, July 12, 2004, the United States District Court for the Middle District of Florida converted to a mandatory paperless electronic filing system: CM/ECF. The Court requires parties to utilize the Court's CM/ECF system in all actions pending before this Court, no later than 15 days after appearing in an action.

JAMES D. WHITEMORE  
United States District Judge

By: Anne Ohle, Deputy Clerk

Distribution:

- Copies to plaintiff(s) (including bankruptcy appellant(s),  
and removing defendant(s))
- Case Management Report form attached

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

KB HOME, a Delaware corporation,

Plaintiff,

v.

Case No: 8:13-cv-2644-T-27EAJ

ANDREW SMITH, et al.,

Defendants.

\_\_\_\_\_/

**CASE MANAGEMENT REPORT**

1. Meeting of Parties: Pursuant to Local Rule 3.05(c)(2)(B) or (c)(3)(A), a meeting was held on \_\_\_\_\_ (date) at \_\_\_\_\_ (time) (check one) ( ) by telephone (or) ( ) at \_\_\_\_\_ (place) and was attended by:

\_\_\_\_\_  
Name Counsel for (if applicable)

2. Initial Disclosures:

a. Fed. R. Civ. P. 26(a)(1) as amended December 1, 2000 provides that "[e]xcept in categories of proceedings specified in Rule 26(a)(1)(E), or to the extent otherwise stipulated or directed by order, a party must, without awaiting a discovery request, provide to other parties: (A) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information; (B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment; (C) a computation of any category of damages claimed by the disclosing party, making available for inspection and

Case Management Report  
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copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and (D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment." Fed. R. Civ. P.26(a)(1).<sup>1</sup>

The parties (check one)

\_\_\_\_\_ have exchanged information referenced by Fed. R. Civ. P. 26(a)(1)(A)-(D) or agree to exchange such information on or before \_\_\_\_\_  
(date).<sup>2</sup>

\_\_\_\_\_ stipulate to not disclose information referenced by Fed. R. Civ. P. 26(a)(1)(A)-(D) for the specific reason(s) that:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ have been unable to reach agreement on whether to disclose information referenced by Fed. R. Civ. P. 26(a)(1)(A)-(D). (Identify party or parties) \_\_\_\_\_ objects to disclosure of such information for the specific reason(s) that:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> A party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures. See Fed. R. Civ. P. 26(a)(1).

<sup>2</sup> Information referenced by Fed. R. Civ. P. 26(a)(1)(A)-(D) must be made "at or within 14 days of the Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in the circumstances of the action and states the objection in the Rule 26(f) discovery plan." Fed. R. Civ. P. 26(a)(1). Any party first served or otherwise joined after the Rule 26(f) conference must make these disclosures within 30 days after being served or joined unless a different time is set by stipulation or court order. See Fed. R. Civ. P. 26(a)(1).

Case Management Report  
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3. Discovery Plan - Plaintiff: The parties jointly propose the following Plaintiff's discovery plan:

a. Plaintiff's Planned Discovery: A description of every discovery effort Plaintiff plans to pursue is described below. The description of each discovery effort will be listed under the appropriate heading below and will include the subject matter of the discovery and the time during which the discovery will be pursued:

(1) Requests for Admission:

Number of Requests for Admission: Parties may seek to limit the number of Plaintiff's requests for admission in accordance with Fed. R. Civ. P. 26(b)(2). Any such request must be made in paragraph 6 below and approved by the court.

(2) Written Interrogatories:

Number of Interrogatories: Local Rule 3.03(a) provides "[u]nless otherwise permitted by the Court for cause shown, no party shall serve upon any other party, at one time or cumulatively, more than twenty-five (25) written interrogatories pursuant to Rule 33, Fed.R.Civ.P., including all parts and subparts." Any request by Plaintiff to exceed this limit must be made in paragraph 6 below and approved by the court.

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(3) Requests for Production or Inspection:

(4) Oral Depositions:

Number of Depositions: Local Rule 3.02(b) provides, "[i]n accordance with Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A), no more than ten depositions per side may be taken in any case unless otherwise ordered by the Court." Any request by Plaintiff to exceed this limit must be made in paragraph 6 below and approved by the court.

Time Permitted for Each Deposition: Each deposition is limited to one day of seven hours in accordance with Fed. R. Civ. P. 30(d)(2) unless extended by agreement of the parties or order of Court.

The parties stipulate/request a court order to extend the time to take the deposition of the following individuals:

<u>Name</u>	<u>Proposed length of Deposition</u>	<u>Grounds</u>
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Case Management Report  
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b. Disclosure of Non-Expert Testimony: Parties stipulate that they will disclose all non-expert witnesses by the date listed below (no later than sixty (60) days prior to pre-trial conference):

c. Disclosure of Expert Testimony: Parties stipulate, in accordance with Fed. R. Civ. P. 26(a)(2)(C), that Plaintiff's Fed. R. Civ. P. 26(a)(2) disclosure will be due as noted here:

d. Supplementation of Disclosures and Responses: Parties agree that Plaintiff's supplementation under Fed. R. Civ. P. 26(e) will be provided at the following times:

e. Completion of Discovery: Plaintiff will commence all discovery in time for it to be completed on or before \_\_\_\_\_ (date).

4. Discovery Plan - Defendant: The parties jointly propose the following Defendant's discovery plan:

a. Defendant's Planned Discovery: A description of every discovery effort Defendant plans to pursue is described below. The description of each discovery effort will be listed under the appropriate heading below and will include the subject matter of the discovery and the time during which the discovery will be pursued:

(1) Requests for Admission:

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Number of Requests for Admission: Parties may seek to limit the number of Defendant's requests for admission in accordance with Fed. R. Civ. P. 26(b)(2). Any such request must be made in paragraph 6 below and approved by the court.

(2) Written Interrogatories:

Number of Interrogatories: Local Rule 3.03(a) provides "[u]nless otherwise permitted by the Court for cause shown, no party shall serve upon any other party, at one time or cumulatively, more than twenty-five (25) written interrogatories pursuant to Rule 33, Fed.R.Civ.P., including all parts and subparts." Any request by Defendant to exceed this limit must be made in paragraph 6 below and approved by the court.

(3) Requests for Production or Inspection:

(4) Oral Depositions:

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Number of Depositions: Local Rule 3.02(b) provides, "[i]n accordance with Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A), no more than ten depositions per side may be taken in any case unless otherwise ordered by the Court." Any request by Defendant to exceed this limit must be made in paragraph 6 below and approved by the court.

Time Permitted for Each Deposition: Each deposition is limited to one day of seven hours in accordance with Fed. R. Civ. P. 30(d)(2) unless extended by agreement of the parties or order of Court.

The parties stipulate/request a court order to extend the time to take the deposition of the following individuals:

<u>Name</u>	<u>Proposed length of Deposition</u>	<u>Grounds</u>
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b. Disclosure of Non-Expert Testimony: Parties stipulate that they will disclose all non-expert witnesses by the date listed below (no later than sixty (60) days prior to pre-trial conference):

c. Disclosure of Expert Testimony: Parties stipulate, in accordance with Fed. R. Civ. P. 26(a)(2)(C), that Defendant's Fed. R. Civ. P. 26(a)(2) disclosure will be due as noted here:

d. Supplementation of Disclosures and Responses: Parties agree that Defendant's supplementation under Fed. R. Civ. P. 26(e) will be provided at the following times:

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Parties agree to consent to binding arbitration pursuant to Local Rules 8.02(a)(3) and 8.05(b). \_\_\_\_\_yes \_\_\_\_\_no \_\_\_\_\_likely to agree in future

If binding arbitration is not agreed to, the court may order nonbinding arbitration pursuant to Chapter Eight of the Local Rules of the Middle District of Florida, mediation pursuant to Chapter Nine of the Local Rules of the Middle District of Florida, or both.

9. Consent to Magistrate Judge Jurisdiction: The parties agree to consent to the jurisdiction of the United States Magistrate Judge for final disposition, including trial. See 28 U.S.C. § 636.  
\_\_\_\_\_yes \_\_\_\_\_no \_\_\_\_\_likely to agree in future

10. Preliminary Pretrial Conference:  
Track Three Cases: Local Rule 3.05(c)(3)(B) provides that preliminary pretrial conferences are mandatory in Track Three Cases.

Track Two Cases: Parties  
\_\_\_\_\_request (check one)  
\_\_\_\_\_do not request

a preliminary pretrial conference before entry of a Case Management and Scheduling Order in this Track Two case. Unresolved issues to be addressed at such a conference include:

11. Final Pretrial Conference and Trial: Parties agree that they will be ready for a final pretrial conference on or after \_\_\_\_\_(date) and for trial on \_\_\_\_\_(date). This **Jury** \_\_\_\_\_ **Non-Jury** \_\_\_\_\_ trial is expected to take approximately \_\_\_\_\_ hours. \_\_\_\_\_after

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12. Pretrial Disclosures and Final Pretrial Procedures: Parties acknowledge that they are aware of and will comply with pretrial disclosures requirements in Fed. R. Civ. P. 26(a)(3) and final pretrial procedures requirements in Local Rule 3.06.

13. Other Matters:

Date: \_\_\_\_\_

Signature of Counsel (with information  
required by Local Rule 1.05(d))

and

Signature of Unrepresented Parties

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

UNITED STATES DISTRICT COURT  
for the  
Middle District of Florida

<i>Plaintiff</i>	)	
v.	)	
<i>Defendant</i>	)	Civil Action No. 8:13-cv-2644-T-27EAJ
	)	

**NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE**

*Notice of a magistrate judge's availability.* A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

*Consent to a magistrate judge's authority.* The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

<i>Parties' printed names</i>	<i>Signatures of parties or attorneys</i>	<i>Dates</i>

**Reference Order**

**IT IS ORDERED:** This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date: \_\_\_\_\_

\_\_\_\_\_  
*District Judge's signature*

\_\_\_\_\_  
*Printed name and title*

**Note:** Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.