

DOCKETED

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TN #:	252051
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*Comment Received From: Chris Hanson
Submitted On: 8/31/2023
Docket Number: 23-HERS-02*

**RESNET Trademarking _HERS_ Violation with CEC Agreement -
part 2 of 2**

Additional submitted attachment is included below.

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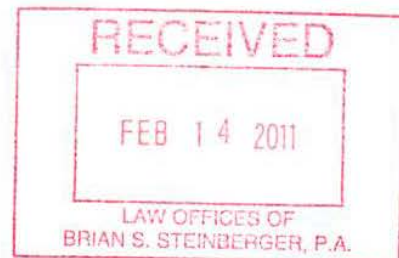
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February 11, 2011

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Re: U.S. Trademark Registration Issues
Title: HERS
Reg. No.: 3,322,697
Owner: Residential Energy Services, Inc.
Our File: CEC1639.17L

Dear Mr. Steinberger:

Enclosed please find a copy of the signed agreement between Residential Energy Services Network, Inc. and the State of California regarding use of the HERS and HOME ENERGY RATING SYSTEM terms. This agreement should bring any dispute or potential dispute between the parties to an end and provides some certainty regarding the Resnet registration and the terms for the future. I am glad that the parties were able to reach an agreement without resorting to litigation and I believe that the agreement benefits both parties.

This should bring the matter to a close. If there are any further questions or concerns please let me know.

Sincerely,

O'BANION & RITCHEY ^{LLP}



Steven L. Smith

Enc.
CC: CEC

SETTLEMENT AGREEMENT

This Agreement is made and entered into as of October, 2010 by and between **Residential Energy Services Network, Inc.**, an Arkansas Non-Profit corporation, centered at 4687 Patina Court, Oceanside, CA 92057, also known to the USPTO as Residential Energy Services, Inc. (hereinafter "RESNET"), and the **State of California, acting through the California Energy Commission**, a governmental entity, located at 1516 9th Street, Sacramento, CA 95814 (hereinafter "CEC"). RESNET and CEC may be referred to individually as "Party" and collectively as the "Parties."

Recitals

WHEREAS, the Code and Regulations of the State of California, contain the phrase "Home Energy Rating System" and its acronym "HERS" in legislated energy conservancy and regulatory programs;

WHEREAS, the CEC uses the term HERS and Home Energy Ratings for field verification to show compliance with *Building Energy Efficiency Standards* (Title 24, Part 6). The Commission also uses these terms in its Title 24 regulations (including Title 24, Part 6, the Commission building standards administrative regulations in Title 24, Part 1, Reference Appendices, and *Alternative Calculation Method Approval Manual* adopted by reference) and in Title 20 regulations for home energy rating system providers and raters (including the *Home Energy Rating System (HERS) Technical Manual* adopted by reference) and in other regulatory and quasi regulatory standards and guides;

WHEREAS, the CEC uses the phrase "Home Energy Rating System" and its acronym "HERS, in providing services to the public and mandated regulatory activities;

WHEREAS, the CEC represents that many different individuals and businesses that deal with the CEC and other state programs use the phrase "Home Energy Rating System" and its acronym "HERS", in their services to the public and interactions with government entities;

WHEREAS, the CEC represents that by law the CEC is directed to approve HERS providers and those HERS providers train and certify HERS raters;

WHEREAS, on October 30, 2007, RESNET obtained U.S. Reg. No. 3,322,697 for "HERS" for use in connection with providing information in the field of energy efficiency, providing financial information on energy efficiency financing and accreditation services;

WHEREAS, CEC was opposed to RESNET application Serial No. 77/075,135 for the phrase HERS HOME ENERGY RATING SYSTEM and application Serial No. 77/328,984 for the term HERS, now abandoned; and

WHEREAS, the parties wish to finally resolve all issues between them regarding their respective operations and other activities that use the terms HERS and HOME ENERGY RATING SYSTEM or similar or derivative terms and phrases.

Agreement

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants and agreements set forth herein, and of other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, do hereby agree as follows:

1. CEC agrees not to contest, challenge, or attack RESNETS's use or registration of the HERS name, U.S. Reg. No. 3,322,697 through an administrative or legal proceeding now or in the future.
2. RESNET agrees not to enforce or attempt to enforce any rights it may claim arising from use of the phrase HOME ENERGY RATING SYSTEM, the term HERS or in registration No. 3,322,697, or any other application or registration, against CEC or any individual, company or governmental entity that deals with the State of California. Such use includes use in CEC programs such as HERS programs by HERS Providers and HERS Raters, and service providers who have a professional need to use the terms as well as use by other governmental agencies that have some relevance to CEC laws and regulations related to the HERS programs and recipients of HERS related services, and businesses, citizens or other persons who have reason to refer to the possible applications of the related services covered by federal or California codes or regulations at any time. Such use also includes promotion of programs or services in any medium.
3. The Parties agree that in the future neither CEC nor RESNET will file a federal or state trademark application using the specific term HERS or the phrase "HOME ENERGY RATING SYSTEM" or confusingly similar variations of this phrase or term.
4. Except for those rights, duties, obligations, claims, causes of action, and defenses specifically created by this Agreement, each Party, for itself and its agents, employees, partners, predecessors, successors, and assigns hereby releases and forever discharges the other party and its agents, employees, partners, predecessors, successors, and assigns from any and all claims, demands, causes of action, controversies, damages, losses, costs, expenses, fees and all other liabilities whatsoever in connection with the HERS term and HOME ENERGY RATING SYSTEM phrase.

5. This Agreement shall be applicable worldwide and shall be binding in all respects upon and inure to the benefit of the parties hereto and their respective owners, officers, directors, successors, parents, affiliates, subsidiaries, related companies, licensees, transferees, and assigns, each of whom will be entitled to enforce the provisions of this agreement.

6. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and all prior or contemporaneous oral and/or written agreements, negotiations, understandings, and discussions between or among them with respect to the subject matter hereof are canceled and superseded by this Agreement. This Agreement shall not be varied in its terms by oral agreement, representation, or otherwise, and may only be varied by an instrument in writing subsequent to the Effective Date of this Agreement by all of the parties.

7. In the event that any portion of this Agreement is declared invalid or unenforceable for any reason, such portion is deemed severable, and the remainder of this Agreement will be deemed and remain fully valid and enforceable unless such invalidity or unenforceability tends to substantially deprive any party of the benefits to be provided to it by this Agreement, in which case the deprived party will have the option of keeping this Agreement in effect or terminating it.

8. This Agreement is executed voluntarily and without any duress or undue influence on the parties or their officers, employees, agents, or attorneys and no party is relying on any inducements, promises, or representations made by any other party or any of its officers, employees, agents, or attorneys other than as expressly set forth in this Agreement. The parties hereto acknowledge that they have been represented in the negotiations for and in the preparation of this Agreement by counsel, that they have had this Agreement fully explained to them by such counsel, and that they are aware of the contents of this Agreement and of its legal effect. The Parties represent that (a) they have read this Agreement in its entirety, (b) their entry into this Agreement has been of their own free will and accord, and (c) the signatories of this Agreement have the full authority to execute this Agreement on behalf of their respective entities and to bind it as a party to this Agreement.

9. This Agreement and its construction and performance, as well as the rights and obligations of the Parties, will be governed, construed, and enforced in accordance with the laws of, and in the state and/or federal courts of, the State of California, without regard to principles of choice of law. The parties consent to and waive any objection to the personal jurisdiction and venue of California as the exclusive venue for any action arising out of this Agreement.

10. This Agreement may be executed simultaneously in one or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same agreement. For purposes of this Agreement, faxed signatures and photocopied signatures shall be considered original signatures. This Agreement will be enforceable upon the exchange of facsimile or electronic signatures and will be effective on the date of the last signature hereto (the "Effective Date").

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year of the effective date written below.

RESIDENTIAL ENERGY SERVICES, NETWORK, INC. aka RESIDENTIAL ENERGY SERVICES, INC. (RESNET)	STATE OF CALIFORNIA, through THE CALIFORNIA ENERGY COMMISSION (CEC)
By: <u>St. Bal</u>	By: <u>Robert B. Wasson</u>
Name: <u>Steve Bader</u>	Name: <u>Robert B. Wasson</u>
Title: <u>Executive Director</u>	Title: <u>Chair</u>
Date: <u>11/23/10</u>	Date: <u>2/8/11</u>