

## Could Zillow's recent setbacks spell the end to its market dominance?

Owen F. Miklos

Earlier this month, a U.S. District Court judge [ruled](#) against Zillow in a closely watched antitrust case that targets the method and software through which the Seattle-based housing titan markets its millions of home listings. The order marks only the latest development in a multi-year series of complaints and lawsuits brought by competitors attempting—and routinely failing—to knock Zillow off its throne at the top of the online housing market.

The ruling comes as Zillow faces increased scrutiny from the federal government for its allegedly anticompetitive practices. On August 12, Rep. Ken Buck (CO-4) and Sen. Mike Lee (R-UT) [petitioned](#) the Federal Trade Commission (FTC) to “closely examine” the real estate giant and the impact of its market dominance. The plea followed Zillow’s announcement in February that it intended to acquire Chicago-based ShowingTime, a real estate software company, for \$500,000. The consummation of the deal marked Zillow’s seventeenth acquisition since its inception in 2006 and its largest since its \$2.5 million buyout of San Francisco’s Trulia in 2015. The FTC has since opened an investigation into the matter, per [Inman](#).

The most recent lawsuit focuses on the manner in which Zillow displays its listings—specifically, its compliance with a trade custom promulgated by the National Association of Realtors (NAR) that mandates accredited listings be kept separate from those of other agencies. Complainant REX, Inc. (REX) has not joined NAR, nor does it comply with its terms. According to REX’s complaint, this independence allows REX to get better deals for homebuyers, who can negotiate commissions for sellers’ agents that NAR would otherwise predetermine. Since it updated its website in January to comply with NAR’s so-called “segregation rule,” Zillow now separates REX’s listings from NAR-accredited “Agent listings.” As a result of this “misleading and deceptive” policy, REX alleges, REX and other independent realtors have seen page visits and sales plummet.

At an earlier phase in this lawsuit, Judge Thomas S. Zilly of the U.S. District Court for the Western District of Washington [tossed out](#) REX’s attempt to obtain a preliminary injunction barring Zillow’s use of the segregation rule. In his September 2 order, however, Zilly struck a different tone. Finding among other things that REX “plausibly allege[d] that [Zillow’s] actions have a substantial anticompetitive effect” on players in the housing market, Zilly denied Zillow’s motions to dismiss. The suit will thus proceed to further negotiations.

The REX lawsuit and FTC probe mark a reversal of fortune for Zillow, which had before 2021 experienced little regulatory pushback and no notable legal defeats in its path to success. For years, both public and private parties had [attempted](#) to go after Zillow for its “Zestimate” feature—Zillow’s AI-driven estimate of a home’s value. Zillow portrays its Zestimates as starting points for negotiations, but brokers and sellers have found that Zestimates under asking price can and often do serve to impede transactions. Nevertheless, Zillow has consistently prevailed against plaintiffs who have brought antitrust claims on this score, most recently in a [New Jersey case](#) from this past March. While Zillow may yet prevail against REX in the instant

suit, the recent ruling may provide Zillow’s competitors a long-awaited framework for future actions, and the FTC probe may give them confidence in their pursuit.

Zillow’s recent controversies underscore the tension present in today’s ultra-competitive housing market. Between 2012 and 2019, the average price of an American home [climbed over 50%](#). During the COVID-19 pandemic, this surge was exacerbated as remote workers moved out of urban centers and rural areas have proven resistant to the increase in demand. The consequences have been eye-popping, especially in pockets of the rural West, where year-over-year increases in average home prices have [jumped nearly 20%](#), with no signs of a slowdown incoming.

Zillow’s ubiquity in these transactions has begun to feel like the new normal. But for REX CEO Jack Ryan, that kind of dominance only serves to harm consumers in an already tense environment. After Zilly’s ruling, he had [this to say](#):

“REX is the only real estate industry player willing to fight for consumers in courts of law and public opinion against the cartel that is driving up residential real estate fees, making home ownership so expensive, and making the home buying and selling process difficult and obscure. . . . Today's order is an important first step toward reining in the anti-consumer policies that have come to define big real estate and big tech.”

--

#### Synopsis:

Earlier this month, Zillow suffered a rare legal setback in a court ruling out of the U.S. District Court for the Western District of Washington. The antitrust suit implicates not only the platform on which Zillow markets its homes, but the independent realtors that fight for exposure on the site, as well as the millions of new homebuyers that look to Zillow for options in a tense and saturated housing market.

#### About the author:

Owen Miklos is an alumnus of the University of Notre Dame and is currently a 2L at Vanderbilt Law School. In 2022, he will be a summer associate at Foley & Lardner in Milwaukee, WI.