

TRAILBLAZERS

PLAINTIFFS' LAWYERS



NICHOLAS J. BOYLE

PARTNER

WILLIAMS & CONNOLLY LLP

EMAIL: NBOYLE@WC.COM

PHONE NUMBER: 202-434-5343

FAX NUMBER: 202.434.5029

PIONEER SPIRIT Williams & Connolly is typically known for defense work. “We’re not going to be filing class actions any time soon, but we do plaintiffs’ work in the business-to-business space.” The firm has a broad intellectual property practice that encompasses trade secrets and unfair competition matters. “That is an area where our clients are as likely to be on the plaintiffs’ side as on the defense side, and that’s where I practice.”

TRAILS BLAZED Boyle works with corporate clients whose business value is in digital form. “They need to have an affirmative asset-protection strategy, including a litigation element, because it’s so easy to copy and steal data.” Among his IP work, Boyle advises CoStar Group. “They are the biggest commercial real estate data company in the country and a wonderful client. They offer a subscription product that provides buyers, sellers, brokers, investors, and governments 400 different fields of information per property, plus professional photos.” Boyle and fellow Williams & Connolly partner Bryan Wilson recently represented CoStar in a case against Xceligent that began in late 2016. “Xceligent, majority-owned by London’s Daily Mail group, was CoStar’s biggest competitor. Xceligent was copying data and copyrighted photographs from CoStar’s websites on an industrial scale both in the United States and using outsourced labor in India and the Philippines.” The international dimension to the case presented unique challenges. “Xceligent’s headquarters are near Kansas City, so we needed to sue in the United States, but because much of the work was done offshore we were worried that evidence would go missing abroad. We therefore came up with a way to simultaneously commence proceedings in three different jurisdictions around the globe without advance warning to our adversaries. We partnered with local counsel abroad and used a tool called an ‘ex parte civil seizure order.’ It’s not typically available in the United States in the civil context, but we were able to use it in both India and the Philippines to secure crucial evidence. As soon as the seizures were underway at the overseas locations, we filed a late-night complaint against Xceligent in Missouri. By the time everyone woke up in the U.S., we had secured truckloads of computers and terabytes of data in Manila and Mumbai.”

Among the case’s developments, Boyle and his team found that management in the Philippines installed software to monitor the work of researchers. “That gave us stunning evidence of the copying of CoStar’s content in real time. We pasted screenshots into an amended complaint and filed it in Kansas City.”

CoStar’s case came to a head last fall. “We located the U.S.-based affiliate of the Indian agent used by Xceligent and sued them in Pittsburgh. They immediately stipulated to liability and provided a wealth of admissions, including some that implicated senior management at Xceligent. This was on a Friday, and the court entered an injunction on the following Monday. Whether coincidentally or not, the founder and CEO of Xceligent was fired the next day after 17 years.”

“While working on behalf of the IP case, we also stumbled upon game-changing evidence in a much more important matter.” The CoStar team discovered that Xceligent’s agent in the Philippines was also servicing Backpage.com, labeled by the U.S. Senate as one of the world’s leading child-trafficking websites. “We wound up coordinating with the authorities in the U.S., and in the Philippines, and were subpoenaed by individuals who had been trafficked. Backpage’s defense was that they had no control over what was posted on their website, but we found that they appeared to be active participants. The evidence was a potential game changer for those suing Backpage.”

FUTURE EXPLORATIONS More and more value in the economy is digital. This is also an era of globalization. “Increasingly, we are seeing companies trying to play catch-up with a competitor through surreptitious mass-copying of content. It’s attractive to do offshore, because it’s cheap and those companies might think they are beyond the reach of U.S. law. They’re not. In hunting them down, our group uses the same types of creative, aggressive tactics on the plaintiffs’ side that we use on the defense side. This is a major growth area for our practice.”