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CoStar Bars Rival From Using Allegedly Stolen Pics, Listings

By **Nicole Narea**

Law360, New York (October 24, 2017, 3:16 PM EDT) -- A Pennsylvania federal judge on Monday granted commercial real estate information giant CoStar Group Inc.'s request for a permanent injunction barring a contractor for its rival Xceligent Inc. from violating its copyrights after the contractor allegedly stole photos and real estate listings from CoStar's website.

District Judge Arthur Schwab ordered RE Backoffice Inc. to pay CoStar the profits it earned from its contract with Xceligent and, if it is found to violate the terms of the injunction, \$20,000 per infringing photo per day of infringement and \$20,000 per listing.

CoStar sued REBO in Pennsylvania federal court earlier this month for allegedly conspiring with Xceligent, which CoStar accused in another ongoing suit of repeatedly gaining access to its subscription and public databases and stealing photos and information for use on Xceligent's own site.

"Judgment is hereby entered in favor of CoStar and against REBO on CoStar's claims of contributory copyright infringement and vicarious copyright infringement and CoStar's claims of conspiracy to violate the Computer Fraud and Abuse Act and civil conspiracy to engage in unfair competition," the decision states.

CoStar filed suit against Xceligent in Missouri federal court in December, claiming that it had located no fewer than 9,000 instances of its own photos appearing in Xceligent's databases and saying the theft of its intellectual property was occurring on an "industrial scale."

Xceligent shot back in June with counterclaims alleging violations of the Sherman Act, false or deceptively misleading advertising and libel, for statements allegedly made about Xceligent accusing it of theft, as well as for injurious falsehood.

The company said CoStar uses anti-competitive practices to block it and other rivals from entering or gaining a significant share of the market, by limiting access to some of its information and using pricing structures and terms of service that prevent brokers from using other services.

In the Pennsylvania district court, CoStar accused REBO of rounding up offshore researchers in India for Xceligent and asking them to hack into CoStar websites to copy its copyrighted photographed and proprietary data. It brought claims of contributory copyright infringement, vicarious copyright infringement and conspiracy to violate the CFAA, demanding damages and injunctive relief to prevent

further damage to its business.

CoStar asserted that Xceligent had contracted REBO starting in 2012 and that REBO's team, which included senior staff, was aware that it was wrong to bypass security measures and copy content from CoStar's websites onto Xceligent's databases. REBO admitted as much in a joint stipulation of facts presented to the court last week.

"Such copying of a competitor's content is a form of internet piracy," the joint stipulation stated. "Using a competitor's content to compete directly with them is wrong and runs afoul of business's rules of fair play. [R]egrettably, that is exactly what REBO in fact did at Xceligent's behest."

The court agreed Monday, entering judgment in favor of CoStar. The court prohibited REBO from infringing CoStar's photographs, accessing its websites for competitive use, bypassing its security software, publishing CoStar's content or passing it on to others for competitive use.

"The facts admitted by Xceligent's agent, and the injunction issued by a federal judge against that agent, speak for themselves," a spokesperson for CoStar told Law360 on Tuesday. "We will continue to pursue our claims against Xceligent directly and will, at the appropriate time, bring these developments to the attention of the court in that case."

Xceligent countered in a note to its customers Tuesday that CoStar's suit against REBO exemplified its strategy of "'using [its] heft to stifle' the competition, noting that REBO likely settled with CoStar simply to avoid ongoing legal fees.

"CoStar's monopolistic tactics are no surprise to us," an Xceligent spokesperson told Law360 on Tuesday. "ReBackOffice is a small company with nowhere near the resources of CoStar, and we believe that they, like others before them, felt intimidated to settle with CoStar for business reasons. CoStar has been running a misleading PR campaign against Xceligent since last December, continuously telling the industry falsehoods to tarnish Xceligent's reputation and directly damage its business. The industry deserves the right to competition and the right to share information freely. Xceligent will fight to protect that right."

Counsel for REBO did not immediately respond to requests for comment Tuesday.

CoStar is represented by C. Bryan Wilson and Nicholas J. Boyle of Williams & Connolly LLP and Anthony Cillo of Cohen & Grigsby.

REBO is represented by Shaheen Wallace of the Law Office of Shaheen Wallace LLC.

The case is CoStar Group Inc. v. RE Backoffice Inc., case number 2:17-cv-01354, in the U.S. District Court for the Western District of Pennsylvania.

--Additional reporting by Matthew Perlman. Editing by Jack Karp.