

Daily Dicta: Williams & Connolly Launches Litigation Blitzkrieg for CoStar (Pity the Defendants)

By Jenna Greene
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Williams & Connolly litigators on Wednesday evening launched a blitzkrieg of lawsuits against real estate brokers on behalf of commercial real estate information giant CoStar Group Inc.

The seven suits, filed in federal courts in Oregon, Georgia, New Jersey, California and the District of Columbia, send an unequivocal message: Don't mess with CoStar.

The defendants all allegedly accessed CoStar's subscription database without authorization. But it's not quite like, say, using someone's Netflix password to watch the latest episode of "Unbreakable Kimmy Schmidt."

CoStar says the brokers used their proprietary information for profit—as a way to generate business for themselves. And each suit stressed that the defendants were contacted in advance and given the opportunity to make amends and purchase a valid license, but declined to do so.

I'm guessing none of them appreciated the fact that they were about to get sued by Williams & Connolly litigators. It's sort of like bringing a nuclear bomb to a knife fight.

"Our database is our key asset, and we cannot sit back and let freeloaders steal our intellectual property and access to our services," said CoStar CEO Andy Florance in written comments to Lit Daily. "That theft is an attack on our paying customers, our shareholders, and our employees."

According to the complaints, CoStar employs nearly 4,000 people in the United States, and has invested almost \$5 billion over the last 30 years in its database. It contains millions of copyrighted photographs and professionally researched information about commercial properties across the country. More than 100,000 subscribers pay varying fees depending on the scope of their access.

In December, a Williams & Connolly team led by partner Nicholas Boyle crushed CoStar competitor Xceligent Inc. in a copyright infringement case. CoStar flagged 9,000 instances where Xceligent allegedly used CoStar photos, as well as hundreds of unique proprietary data values.

The company ceased operations and terminated all 250 of its employees

The Williams & Connolly team also sued RE BackOffice for its role in the Xceligent scheme. A federal judge in Western Pennsylvania last fall ordered RE BackOffice to disgorge 100 percent of its profits from the venture and to pay \$20,000 per infringing image per day in the event of further infringement.

The latest batch of suits by Boyle and associates David Riskin, Tamara Rubb and Jena Neuscheler show that CoStar isn't just going after the



big fish. These defendants mostly sound like ordinary real estate agents. John Choi of Sandbox Real Estate in Edgewater, New Jersey, for example, doesn't even seem to have any active listings.

Nor do any of them appear to be criminal masterminds. Mainly, they used other people's passwords to sign in to CoStar's database, according to the complaints.

So why is CoStar making such a big deal out of it? Almost surely, the company is going to spend more (probably way more) on legal fees than whatever out-of-pocket losses it suffered.

The complaints address that head-on. "While the marginal cost of any single unauthorized access may be limited, in the aggregate stealing access to CoStar presents a major threat to the ongoing viability of CoStar's products."

It reminds me of the broken windows theory of law enforcement. If you turn a blind eye to small transgressions, you create an environment that encourages bigger ones.

"For CoStar, litigation is a last resort—when we have significant evidence of wrongdoing, and no other options," said CoStar's head of litigation, Jaye Campbell. "Our recent history shows that when we bring suit, we litigate to win. We look forward to successfully prosecuting this new set of unlawful-access cases, and anticipate that more cases of a similar nature will follow."

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