

Real Estate Co. Must Face CoStar's Revived Copyright Claims

By **Charlie Innis**

Law360 (June 2, 2023, 7:10 PM EDT) -- A California federal judge on Friday resuscitated two of CoStar's copyright allegations against a rival real estate company that the court previously axed with prejudice and allowed back in an amended suit, ruling that the new pleadings are enough to state a claim.

U.S. District Judge Consuelo B. Marshall said in a seven-page order that CoStar Group Inc.'s second amended complaint brings forth additional allegations that clarify that the company's watermark "is recognized in the industry and identifies CoStar as the owner of images on CoStar's webpage." The court previously found that "a bare logo without more" isn't enough to convey that a work is copyrighted.

Other new information within the latest version of CoStar's complaint, which alleges a total of seven claims against Commercial Real Estate Exchange Inc., or CREXi, also establishes the sufficiency of the company's two Digital Millennium Copyright Act claims, according to the order.

Gene Boxer, CoStar's general counsel, lauded the order in an emailed statement to Law360.

"CREXi's latest effort to escape liability for its brazen theft of CoStar's copyrighted images was rightfully thrown out of court today," Boxer wrote.

Elliot Peters of Keeker Van Nest & Peters LLP, counsel for CREXi, said in a written statement that while the claims survived a motion to dismiss, they "won't survive on summary judgment or at trial."

"We remain as confident as ever that CREXi has done nothing wrong, will prevail in this case, and that Costar's pursuit of it is just another chapter in CoStar's rich history of predatory, anticompetitive behavior," Peters wrote.

Real estate information and analytics giant CoStar has accused CREXi of stealing over 50,000 of its copyrighted photographs and reproducing them without permission.

The California federal court previously dismissed CoStar's two Digital Millennium Copyright Act claims with prejudice, but the court allowed the data and analytics firm to re-plead them after the company revealed that new evidence showed CREXi managers had directed their agents to crop CoStar's watermark from pictures.

Judge Marshall cited the second amended complaint's allegations that CREXi instructed agents to crop out CoStar's watermark in his order Friday, saying those pleadings support a finding that the watermark

identifies CoStar as the copyright owner of the photographs.

"CREXi knowingly removed or instructed third parties to remove CoStar's watermark without plaintiffs' permission," Judge Marshall wrote in the order. "This is sufficient to state a claim under the [Digital Millennium Copyright Act]."

CREXi previously argued in a motion to dismiss that the two DMCA claims merely recycled what was tossed by the court two years ago.

Boxer added in his statement Friday that CREXi "will pay a steep price" for its "willful misconduct."

"Indeed, CREXi's failure to persuade the court to dismiss these claims is particularly significant because the [Digital Millennium Copyright Act] provides for high statutory damages (up to \$25,000 per image) for every single instance of CREXi's mass cropping, in addition to the damages CREXi will owe for infringing over 50,000 CoStar images (up to \$150,000 per image for willful infringement)."

CoStar is represented by Nicholas J. Boyle, Sarah Tomkowiak, Caitlin Dahl, Elyse Greenwald, Karen Frankenthal and Katherine Griffitts of Latham & Watkins LLP.

CREXi is represented by Warren A. Braunig, Christine Zaleski, Connie P. Sung, Elliot R. Peters, Jason George, Katie L. Joyce, Niall M. Roberts and Nicholas S. Goldberg of Keeker Van Nest & Peters LLP.

The case is CoStar Group Inc. et al. v. Commercial Real Estate Exchange Inc., case number 2:20-cv-08819, in the U.S. District Court for the Central District of California.

--Additional reporting by Grace Dixon and Isaac Monterose. Editing by Covey Son.
