

Total Destruction, Williams & Connolly Style

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By Jenna Greene

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Williams & Connolly doesn't often find itself in the role of plaintiffs counsel, but firm lawyers are crushing a huge copyright infringement case on behalf of commercial real estate information provider CoStar Group Inc.

Last week, defendant Xceligent Inc. filed for Chapter 7 bankruptcy. The company ceased operations and terminated all 250 of its employees, giving them 30 minutes to pack up and exit its Kansas City, Missouri headquarters.

This was not some fly-by-night operation—Xceligent is owned by London-based Daily Mail and General Trust, a conglomerate with market capitalization of more than \$3.2 billion.

While Xceligent may have rolled over to play dead, the Williams & Connolly team led by partner Nicholas Boyle is not backing off.

“We will continue to litigate on behalf of CoStar across multiple jurisdictions and intend to hold to account every person who participated in this wrongdoing,” Boyle said in a statement. “There is no question that those involved include individuals and entities beyond Xceligent itself.”

The Williams & Connolly team also includes Carl Metz, C. Bryan Wilson, Mary Beth Hickox-Howard, Jonah Perlin, Krista Anderson, Eric Elliot and Sean Douglass.



Williams & Connolly offices in Washington, D.C. August 13, 2015. (Diego M. Radzinski/The National Law Journal.)

In December 2016, Boyle and co-counsel from Shook Hardy & Bacon filed suit on CoStar's behalf against Xceligent in the Western District of Missouri, alleging “brazen and widespread theft of CoStar's intellectual property.”

“On a systemic basis, Xceligent improperly accesses CoStar's databases in order to steal CoStar-copyrighted photographs and proprietary real estate data,” the CoStar lawyers wrote. “After it copies, en masse, CoStar's intellectual property, generated by CoStar researchers at enormous cost—Xceligent integrates the

stolen intellectual property into its own, lower-priced rival products. The scale of Xceligent's piracy is remarkable."

CoStar flagged 9,000 instances where Xceligent allegedly used CoStar photos, as well as hundreds of unique proprietary data values. "Moreover, these findings almost certainly constitute a mere fraction of the total infringement," CoStar said.

The actual copying was done by Xceligent "researchers" in India and the Philippines, CoStar alleged.

Parallel with the U.S. suit, the CoStar team coordinated with foreign counsel to obtain ex parte civil seizure orders in Manila and Mumbai to preserve and leverage evidence of wrongdoing.

They used the information in an amended complaint, which included screenshots of Xceligent's overseas agents, identified by name, copying CoStar images and data. "Xceligent's misconduct cannot be explained away as undue competitive zeal or a frolic by a rogue employee. This is willful and calculated theft of intellectual property on an industrial scale," Boyle and Shook Hardy partner Eric Anielak wrote in June.

Xceligent, which was originally represented by Shearman & Sterling before Polsinelli assumed sole responsibility for the case, responded in late June with antitrust and defamation counterclaims.

"The CoStar Companies have engaged in an anti-competitive scheme designed to raise competitor costs and drive them out of business in order to entrench their monopoly positions," Polsinelli partner Robert Henderson wrote. "CoStar's misconduct is willful and outrageous, undertaken with evil motive and reckless indifference to the rights of Xceligent."



Nicholas J. Boyle



C. Bryan Wilson

But CoStar attacked on another front, filing suit in the Western District of Pennsylvania against RE BackOffice, the company that it said coordinated and hired Xceligent's Indian researchers.

RE BackOffice didn't even try to fight. It promptly stipulated to a permanent injunction, admitting that it conspired with and contributed to infringement by Xceligent. The Oct. 23 order enjoins RE BackOffice from stealing CoStar's data and photographs, requires it 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 day after the injunction was entered, Xceligent fired its founder and CEO.

Boyle praised CoStar's CEO and legal department for working "tirelessly to protect CoStar's intellectual property....Their hands-on involvement, outstanding commitment, and collaboration with the Williams & Connolly trial team has been integral to the inception and progression of this major multi-national litigation."

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