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Attorneys for CoStar Group, Inc. and
CoStar Realty Information, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:

LOOPNET, INC.
Subpoena Enforcement Matter

COSTAR GROUP, INC., a Delaware corporation
and COSTAR REALTY INFORMATION, INC., a
Delaware corporation

vs.

LOOPNET, INC., a California corporation

MISCELLANEOUS ACTION
Case No. CV 05-80294 - Misc. VRW (JL)

**DECLARATION OF THOMAS J.
PERRELLI**

Date: June 28 2006
Time: 9:30 a.m.
Courtroom: F, 15th Floor

1 1. My name is Thomas J. Perrelli. I am the managing partner of the Washington
2 D.C. office of Jenner & Block LLP. The statements in this Declaration are truthful and are made
3 knowingly and voluntarily.

4 2. I have been retained by CoStar Group, Inc (CoStar) to assist it in bringing legal
5 challenges against individuals who illegally upload and download CoStar's photographic intellectual
6 property to and from the website of LoopNet, Inc. (LoopNet).

7 3. In the fall of 2005, CoStar discovered some 1,700 of its copyrighted photographs
8 were posted illegally on LoopNet's website. On October 28, 2005, CoStar sent LoopNet a notification
9 of these infringements, accompanied by 4,000 pages of documenting evidence. LoopNet took no action
10 in response to this notification.

11 4. On December 27, 2005, I requested and obtained a subpoena on behalf of CoStar
12 from the Clerk of Court of the Northern District of California under the provisions of the Digital
13 Millennium Copyright Act. 17 U.S.C. § 512(h).

14 5. The terms of the subpoena required LoopNet to provide information sufficient to
15 identify individuals who had infringed CoStar's copyrights by illegally downloading or uploading
16 CoStar's photographs from or to LoopNet's website. Attached as Ex. 1. As required by statute,
17 CoStar's request was accompanied by a detailed list of the infringing material found on LoopNet's
18 website.

19 6. CoStar initially gave LoopNet an extension to respond to the subpoena. After
20 further delays, LoopNet responded to the subpoena, but only by sending back to CoStar the
21 documentation that Costar had sent LoopNet with its original October notice.

22 7. Dissatisfied with this response, I sent a letter to LoopNet on January 23, 2006,
23 stating that LoopNet's answer was unacceptable under the terms of the subpoena. Attached as Ex. 2.
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8. On March 1, 2006 that LoopNet identified the users who uploaded the photographs to their website.

9. LoopNet has to date provided no information about downloaders. In an email on January 30, 2006, LoopNet responded initially that it “does not collect or maintain this information” and stated that it had no obligation to provide this information to CoStar in any case. Attached as Ex. 3.

10. On February 6, 2006, I wrote again to LoopNet, requesting that LoopNet provide clear and specific assurances about what information it has, what information it had at one time and what information may have been deleted from its computer servers. In this correspondence, I pointed out the features of LoopNet’s website that would appear to provide LoopNet with the relevant information about downloaders. Attached as Ex. 4.

11. Three weeks later, on February 28, 2006, LoopNet again replied that “LoopNet does not have documents that would identify the individuals who downloaded the images at issue.” Attached as Ex. 5.

12. After another round of letters in which I explained that these general denials were insufficient given that LoopNet clearly tracks an enormous amount of information about its users, counsel for LoopNet stated in an email of March 14, 2006 that LoopNet “does not maintain information that would identify persons who download purported infringing photographs. Specifically, LoopNet does not maintain documents that would identify users who have saved or stored purportedly infringing photographs; it does not maintain documents that would identify users that e-mailed purportedly infringing photographs; and it does not maintain documents that would identify users who created reports which incorporated purportedly infringing photographs.” Attached as Ex. 6.

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EXHIBIT 1

Issued by the
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CoStar Group, Inc., CoStar Realty Information, Inc.

SUBPOENA IN A CIVIL CASE

V.

LoopNet, Inc.

Case Number:¹

TO: LoopNet, Inc.
185 Berry, Suite 4000
San Francisco, CA 94107
Attn: Brent Stumme

CV 05 80294-MISC.
VRW

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Information sufficient to identify the individual(s) infringing CoStar's copyrights in photographs listed in the accompanying DMCA notification by uploading or downloading CoStar's photographs, as specified in Schedule A.

PLACE Colbentz Patch Duffy & Bass, One Ferry Building, Ste 200, San Francisco CA 94111 Attn: Zuzana J. Svihra	DATE AND TIME 01/3/06 at 10:00 a.m.
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE 12-16-05
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ISSUING OFFICER'S NAME, ADDRESS AND PHONENUMBER
Richard W. Wieking, Clerk, US District Court, Northern District of California
450 Golden Gate Avenue, San Francisco CA 94102 (415) 522-2000

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

_____ DATE

_____ SIGNATURE OF SERVER

_____ ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance,
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SCHEDULE A

For each of the CoStar photographs which were previously identified in a notification sent by letter on October 28, 2005, and which are listed in the accompanying DMCA notification, you are directed to expeditiously provide information sufficient to identify the individual(s) who have infringed CoStar's copyrights by uploading or downloading the photograph.

For purposes of this subpoena "uploading" shall mean posting, submitting, providing, transmitting or copying to LoopNet, the LoopNet listing service or www.loopnet.com. "Downloading" shall mean copying, transferring, or obtaining from any server owned or operated by LoopNet a digital copy of one or more of CoStar's photographs, including, but not limited to, in connection with use of (a) the LoopNet listing service, or (b) any LoopNet product or service that utilizes photographs from the LoopNet listing service, including, but not limited to, (i) the LoopNet Prospect List lead generation service, (ii) the LoopNet Email Alert service, (iii) the LoopNet Personalized ListingsLink service, (iv) the LoopNet Customer Marketing Email service, and (v) any LoopNet Saved Property Folders.

For each individual identified, you are directed to identify the photograph infringed, to specify whether they have uploaded and/or downloaded the photograph, and to provide identifying information in LoopNet's possession, including, but not limited to, name, employer, address, telephone number, and email address.

EXHIBIT 2

JENNER & BLOCK

January 23, 2006

BY FACSIMILE AND OVERNIGHT MAIL

Kenneth B. Wilson
Perkins Coie
180 Townsend Street
3rd Floor
San Francisco, CA 94107-1909

Jenner & Block LLP
601 Thirteenth Street, NW
Suite 1200 South
Washington, DC 20005
Tel 202-639-6000
www.jenner.com

Chicago
Dallas
New York
Washington, DC

Thomas J. Perrelli
Tel 202 639-6004
Fax 202 661-4855
tperrelli@jenner.com

Dear Ken:

I am writing concerning LoopNet's response to the DMCA subpoena served on it by CoStar on December 27, 2005, following attempts to reach you by phone. LoopNet's response to the subpoena is deficient in virtually all respects.

As you know, LoopNet and CoStar have had many discussions concerning rampant copyright infringement on the LoopNet website. CoStar's discovery in October of over 1700 of its copyrighted photographs on LoopNet's site is only the latest in a long history of such infringement. CoStar has repeatedly requested that LoopNet take real and effective steps to reduce this infringement. Because its business model relies on this infringement, LoopNet to date has done little to address this longstanding problem.

The response to CoStar's most recent subpoena is the latest demonstration that LoopNet is not serious about stopping copyright infringement on its site. LoopNet has repeatedly sought to deflect attention from itself by suggesting to CoStar that it should seek to pursue individuals uploading and downloading CoStar photographs on its website. With this subpoena, CoStar sought to do exactly that - to obtain from LoopNet the information CoStar needs to protect its rights under the Copyright Act and to stop the unauthorized dissemination of its copyrighted photographs by and through LoopNet's website.

CoStar's subpoena followed a detailed notice of infringement that provided over 5000 pages documenting infringement of over 1700 photographs on the LoopNet site. The subpoena sought the identities of individuals who were uploading and downloading those photographs without authorization. Rather than providing a constructive response, LoopNet simply sent back to us a copy of the 5000-page DMCA notice that CoStar sent in October.

The documentation that LoopNet returned to CoStar is not "responsive" to the subpoena. It does not provide information from LoopNet concerning the identity of any individuals who uploaded or downloaded CoStar's photographs without authorization. Although the web pages have names on them, many have more than one name, leaving CoStar unable to ascertain the true identity of the uploader. Even for those listings that have a single name, CoStar does not know for certain whether that individual or some one else uploaded the photograph. Only LoopNet has that information because it knows which of its end user accounts uploaded each photograph.

Kenneth B. Wilson
January 23, 2006
Page 2

Moreover, the information sent to LoopNet provides CoStar with no information concerning individuals downloading CoStar photographs and likely continuing to copy and disseminate those photographs without authorization. To the extent that LoopNet maintains such information, it must provide it in response to the subpoena.

By this letter, I am requesting that you supplement LoopNet's response to the subpoena to identify uploaders and downloaders of CoStar's copyrighted photographs. In the event that LoopNet cannot or will not do so, I request that you inform us whether LoopNet has information that is responsive and is simply refusing to respond or whether LoopNet had such information and destroyed it.

Please send me a response by Wednesday, January 25. If you have any question or would like to discuss this matter, please call me at 202-639-6004.

Sincerely,

A handwritten signature in black ink that reads "Tom Perrelli". The signature is written in a cursive style with a large, sweeping initial "T".

Tom Perrelli

EXHIBIT 3

Perrelli, Thomas J

From: Wilson, Kenneth (Perkins Coie) [KWilson@perkinscoie.com]
Sent: Monday, January 30, 2006 7:48 PM
To: Perrelli, Thomas J
Subject: LoopNet: CoStar Subpoena

Tom:

Thank you for your January 23, 2006 letter. While your letter contains a substantial amount of rhetoric, it does not identify any way in which LoopNet has failed to comply with its obligations with respect to the DMCA subpoena CoStar served on LoopNet on December 27, 2005. Rather than respond to the spurious and unwarranted accusations about LoopNet's purported disregard of copyright law, which have by and large been rejected by every Court to which they have been presented, I'll focus my response on the actual issue at hand, which is the December 27 subpoena and LoopNet's response.

With respect to CoStar's request for documents sufficient to show the identities of the persons who uploaded the photographs that CoStar contends infringe its copyrights, the best information on this subject is the information that LoopNet produced. As you know, the purpose of a Section 512(h) subpoena is to obtain the identity of unknown infringers, as set forth in the title of the relevant subsection of the statute. Here, the entity that posted the accused material is plainly identified in the posting itself. The only information that is absent from the posting is the name of the individual who performed the ministerial task of uploading the listing, who I suspect in many instances is an administrative assistant. Requiring LoopNet to produce the identity of these individuals poses an unnecessary burden on LoopNet, and we cannot imagine that CoStar would actually pursue claims against the person who performs these ministerial tasks where there is an entity and associated individuals who take credit for the listing on the face of the listing itself. If you disagree, please let me know, as I'd be happy to discuss this issue with you directly.

With respect to the identities of persons who may have downloaded the photographs at issue, LoopNet simply does not collect or maintain this information. As a result, there is nothing for LoopNet to produce in response to this portion of the subpoena.

Finally, although I understand that you are relatively new to the disputes between LoopNet and CoStar and therefore do not have full knowledge of the background and history of these disputes, it is particularly inappropriate for you to suggest that LoopNet is not serious about preventing infringement of CoStar's copyrights. Over the past few years, LoopNet has spent tens of thousands of dollars demonstrating in Court that it has complied and continues to comply with its legal obligations in this regard. Moreover, LoopNet has repeatedly reminded CoStar that CoStar could easily reduce the amount of alleged infringement occurring on LoopNet's site simply by putting digital watermarks on its photographs, as set forth under the parties' Settlement Agreement. Inexplicably, CoStar apparently has not yet implemented (at least on any significant scale) this relatively simple procedure to eliminate or lessen infringement. By this letter, LoopNet reiterates its offers to meet with CoStar to discuss the digital watermarking process. If CoStar is really serious about combating infringement of its images (as opposed to simply using copyright infringement as a pretense for harassing a competitor), I can see no reason why CoStar wouldn't accept this offer.

At any rate, I trust that this letter resolves any concerns you have about sufficiency of LoopNet's response to CoStar's DMCA subpoena. If CoStar still has concerns in this regard, please let me know at your earliest convenience.

Sincerely,

Ken

Kenneth B. Wilson
Perkins Coie LLP
180 Townsend St., 3rd Floor
San Francisco, CA 94107-1909

5/3/2006

Direct Dial: 415-344-7001

Fax No.: 415-344-7201

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

EXHIBIT 4

