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JENNER & BLOCK LLP
601 13th Street NW
Washington, D.C., 20005
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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 Coblentz 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, appearing to read "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

JENNER & BLOCK

February 6, 2006

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

BY E-MAIL AND U.S.

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

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

Dear Ken,

I am responding to your email of January 30, 2006 concerning CoStar's subpoena to LoopNet for the identities of infringers of CoStar's copyrighted photographs.

Your e-mail provides little in the way of response to the subpoena or to the request for information in my letter to you. The basic facts remain the same: There continues to be (as there has been for years) large amounts of infringement of CoStar's copyrighted photographs on the LoopNet site. LoopNet has done and continues to do little or nothing to prevent such infringement because its business model requires it to turn a blind eye. To deflect attention from itself, LoopNet has pointed to users of its own service, suggesting to CoStar that it pursue infringement remedies against those users. And now that CoStar is pursuing that course, LoopNet is again serving as an obstacle, refusing to take any steps to respond to a subpoena that seeks to identify the end users of LoopNet's service who are engaging in copyright infringement. Indeed, the sum total of LoopNet's response thus far has been to deliver back to CoStar a copy of the very same attachments included with CoStar's original takedown notice.

As your email and LoopNet's "production" appear to concede, CoStar is entitled to the identities of individuals who have infringed its copyrights by uploading photographs onto LoopNet's site. It also appears clear that LoopNet has information responsive to the subpoena (beyond that which it returned to CoStar), such as the exact end user/end user account who uploaded the photographs at issue. Your letter goes on at some length about why, in LoopNet's view, CoStar does not require this information or should not care about it. But that is irrelevant to CoStar's entitlement to it and LoopNet's obligation to provide it. LoopNet clearly knows the end user/end user account who uploaded each photograph; indeed, we think it likely that LoopNet contacted these end users after CoStar provided its initial notice in October. Because CoStar is entitled to this information, which is readily available to LoopNet, please provide us with the identities of the end users/end user accounts who uploaded the photographs in question.

With respect to downloaders, we want to be clear about LoopNet's representations concerning whether it possesses any such information. To the extent that CoStar's copyrighted photographs are being further disseminated following their unlawful posting on LoopNet's site,

Kenneth B. Wilson
February 6, 2006
Page 2

we need this information in order to protect CoStar's rights under the Copyright Act. LoopNet's website touts a number of features that appear to involve reproduction and/or re-dissemination of listings (and thus photographs). To the extent that LoopNet maintains information on end users who make use of such features or who download photographs in any other manner from the LoopNet website, CoStar is entitled to that information. Among other features, LoopNet touts the following:

* The Saved Property Folders feature

(<http://www.loopnet.com/PremiumMembership.asp?Products=SavedFolders>), which allows LoopNet users to organize saved properties into custom folders, from which they can then email properties, create reports, and access such properties.

* The Custom Marketing Email feature

(<http://www.loopnet.com/PremiumMembership.asp?Products=CustomMarketingEmails>), which enables LoopNet users to create custom emails that market listings to their prospects.

* The Professional Quality Reports feature

(<http://www.loopnet.com/PremiumMembership.asp?Products=ReportingTools>), which enables LoopNet users to create a variety of reports from listings and properties found on LoopNet, which can be saved, printed or emailed.

* The Exposure Reports feature,

(<http://www.loopnet.com/PremiumMembership.asp?Products=ExposureReports>), by which it claims to be able to track, at a minimum, how many times a particular property listing has been viewed, displayed and disseminated, and possibly by and to whom.

To the extent that LoopNet collects or maintains information concerning the use of such features, as well as other similar features, it may have information responsive to the subpoena and the request for information about downloaders. For example, presumably the photos stored in the Saved Property folders and the emails sent/received from the LoopNet service are saved onto LoopNet computer servers. Similarly, the Exposure Reports suggest, at a minimum, that LoopNet tracks the number of times a particular listing is copied or disseminated; if LoopNet maintains the identities of the senders, such information may be responsive to the subpoena. While your email indicated that "with respect to the identities of persons who may have downloaded the photographs at issue, LoopNet simply does not collect or maintain this information[]," I respectfully request that you confirm that this representation addresses the features mentioned above, as well as other similar features.

Of course, in the event that LoopNet had such information but has failed to preserve it or destroyed it, please let me know. A clear and complete answer to these questions will not only help resolve and streamline issues relating to the subpoena at hand but also with respect to CoStar photos found on the LoopNet site in the future.

Kenneth B. Wilson
February 6, 2006
Page 3

I would appreciate a response as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Perrelli". The signature is written in a cursive style with a large, sweeping initial "T".

Thomas J. Perrelli

EXHIBIT 5

Perrelli, Thomas J

From: Wilson, Kenneth (Perkins Coie) [KWilson@perkinscoie.com]
Sent: Tuesday, February 28, 2006 7:30 PM
To: Perrelli, Thomas J
Subject: RE: DMCA subpoena to LoopNet

Tom:

As promised, in response to CoStar's subpoena, LoopNet is prepared to produce documentation showing the "Contact," the "Administrator," and the "Submitter" for each of the listings identified by CoStar. This should fully satisfy CoStar's subpoena request to the extent it was directed at the identities of persons who uploaded the images at issue. I was actually prepared to attach an electronic version of the document to this e-mail, when it occurred to me that there may be some privacy concerns. If you will commit to limiting access to the information to Jenner lawyers until we reach an arrangement to provide sufficient privacy protections, I would be happy to send you the electronic copy this evening, followed by hard copies in a couple of days (our office has been decimated by some type of virus, which has left me without a paralegal to process the hard copy documents). For your information, the hard copy version of the list will be about 350 pages long.

With respect to the identity of individuals who have downloaded the images in questions, while I do not believe that you are entitled to this information under the subpoena statute, I can again confirm that LoopNet does not have documents that would identify the individuals who downloaded the images at issue. This representation addresses the features identified in your February 6 letter.

While I could go on to rebut the other extraneous allegations and suggestions of wrongdoing by LoopNet, I will resist the temptation, as it will serve no purpose. LoopNet's compliance with the subpoena is complete (or at least it will be once I get you the list identified above). Engaging in continued exchanges about whether LoopNet engaged in misconduct is simply not productive, particularly since the Courts have already found in favor of LoopNet on these issues.

I trust that once you receive the list identified above, that will put an end to this issue. However, if you have any questions or wish to discuss this matter further, please do not hesitate to let me know.

Thanks,

Ken

Kenneth B. Wilson
Perkins Coie LLP
180 Townsend St., 3rd Floor
San Francisco, CA 94107-1909
Direct Dial: 415-344-7001
Fax No.: 415-344-7201

-----Original Message-----

From: Perrelli, Thomas J [mailto:TPerrelli@jenner.com]
Sent: Wednesday, February 22, 2006 5:36 PM
To: Wilson, Kenneth (Perkins Coie)
Subject: RE: DMCA subpoena to LoopNet

Ken --

We continue to wait for a response from LoopNet concerning my last letter. As you know, the subpoena was initially served back in December and we still have not received a satisfactory response. We have been patient in accommodating your

5/3/2006

EXHIBIT 6

Perrelli, Thomas J

From: Wilson, Kenneth (Perkins Coie) [KWilson@perkinscoie.com]
Sent: Wednesday, March 15, 2006 12:06 AM
To: Perrelli, Thomas J
Subject: RE: DMCA subpoena to LoopNet

Tom:

Thank you for your March 8 letter. Unfortunately, it appears that CoStar has misinterpreted the parties' rights and obligations under Section 512(i).

Pursuant to Section 512(i), CoStar was entitled to request issuance of a subpoena for identification of an alleged infringer. In response, LoopNet was obligated to respond by producing the documents required by the subpoena, subject to the protections of the Federal Rules of Civil Procedure. While LoopNet believed (and continues to believe) that CoStar's subpoena exceeded the scope of the statutory grant, and that there are other problems with CoStar's subpoena (as set forth in LoopNet's response to the subpoena), LoopNet fully complied with the subpoena. Since complying with the subpoena, LoopNet has repeatedly reiterated that it has complied with the subpoena. Nothing more is required of LoopNet, and specifically, LoopNet is not required to engage in a game of "twenty questions" regarding what records or information that LoopNet maintains. Nor is it required to repeatedly rebut CoStar's baseless charges that LoopNet has not complied with its legal obligations to CoStar

Nonetheless, I am willing to engage in this final round of correspondence to try to put CoStar's mind at ease. With respect to the information regarding uploaded photographs, we disagree with your characterization of events. Nonetheless, we can agree that you have now unequivocally committed that the information that LoopNet has provided in response to the subpoena will be used by CoStar only for the purpose of protecting its purported rights under the Copyright Act. Based on that representation, we will agree that the documents produced by LoopNet can be shared with the appropriate CoStar representatives.

With respect to "downloader information," I can reiterate (as I have on several occasions already) that notwithstanding your mistaken assumptions about how LoopNet's system operates, LoopNet does not maintain information that would identify persons who download purportedly 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. And I can further state that no responsive documents have been destroyed; LoopNet simply does not maintain this type of information.

I trust this answers your concerns. LoopNet has been more than patient in responding to CoStar's repeated inquiries, and it has provided CoStar with substantially more information than it is entitled to receive under the subpoena. But LoopNet's patience is not endless. Unless you can articulate some substantive basis for asserting that LoopNet has not in fact complied with the subpoena (something that CoStar has not done to date), I will assume that this correspondence finally puts this matter to rest.

Sincerely,

Ken

-----Original Message-----

From: Perrelli, Thomas J [mailto:TPerrelli@jenner.com]
Sent: Wednesday, March 08, 2006 5:06 PM
To: Wilson, Kenneth (Perkins Coie)
Subject: RE: DMCA subpoena to LoopNet

Ken --

Attached is a letter I am sending on behalf of CoStar. Let me know if

5/3/2006

