

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

KLEIN & HEUCHAN, INC.,
a Florida Corporation,

Plaintiff/Counter-Defendant,
vs.

Case No.: 8-08-cv-01227-JSM-EAJ

COSTAR REALTY INFORMATION, INC.,
and COSTAR GROUP, INC.,

Defendants and Counter-Plaintiffs.

JUDGMENT AND PERMANENT INJUNCTION

Pursuant to the stipulation of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. While working for Klein & Heuchan, Inc. (“K&H”) in 2007 and 2008, Christopher Scott Bell (“Bell”) engaged in the unauthorized use, copying and distribution of the proprietary CoStar subscription-only commercial real estate information services and portions of the copyrighted works contained therein (collectively, the “CoStar Products”) at and on behalf of K&H. Notwithstanding this copyright infringement, Bell is committed to respecting CoStar’s intellectual property rights in the future.
2. Judgment shall be entered in Co-Star’s favor against Bell as to CoStar’s claim of direct copyright infringement by Bell. Each side to bear its own costs and attorneys’ fees.
3. Bell and any other person in active concert or participation with him who receives actual notice of this Order, by personal service or otherwise, is hereby immediately and permanently restrained and enjoined from directly or indirectly: (a) obtaining, accessing,

using, reproducing, distributing, displaying, or creating derivative works any portion of the CoStar Products, or any other product or service offered by Co-Star now or in the future, unless obtaining CoStar's express permission, in writing, to do so; and (b) assisting, aiding or abetting any other person or business entity in engaging in or performing any of the foregoing activities:

4. The Parties' Settlement Agreement dated February 16, 2010, and each and every provision thereof, shall be deemed incorporated herein as if explicitly set forth and shall have the full force and effect of an Order of this Court. A copy of that Settlement Agreement, along with a copy of the Declaration of that same date executed by Bell, is each attached hereto as Exhibits 1 and 2.

5. This Court shall retain jurisdiction over this action for the purpose of enforcing the Settlement Agreement and this Order and resolving any disputes relating thereto.

6. Nothing in this Order or the Settlement Agreement inures to the benefit of K&H, nor shall anything in this Order or the Settlement Agreement prevent CoStar from continuing the Litigation against K&H.

DONE AND ORDERED in Tampa, Florida, this ____ day of _____,
2010.

U.S. DISTRICT COURT JUDGE

Copies to:
Jeffrey W. Gibson, Esq.
Matthew J. Oppenheim, Esq.
William C. Guerrant, Jr., Esq.
Randall J. Love, Esq.

I, C. Scott Bell, declare as follows:

1. My name is Christopher Scott Bell. I am an adult residing in the state of Florida. The declaration below is based on my personal knowledge. If called upon, I could and would testify as to the matters contained herein.

2. I am a graduate of Florida State University and a licensed commercial real estate sales agent in the state of Florida. I currently do not work in that field.

3. My last job was working as a sales agent for Klein & Heuchan, Inc. ("K&H") in its Clearwater, Florida office. Prior to that, I worked as a sales agent for Coldwell Banker NRT ("Coldwell") in Florida. Coldwell has multiple offices throughout Florida. In each job, my duties involved obtaining real estate listings, closing deals, servicing clients' and prospective clients' requests for advice and information concerning real state, and supporting my colleagues in their same efforts at the foregoing.

4. While at Coldwell, I received a User Identification and password to use the CoStar Property and CoStar COMPS real estate information services (the "CoStar Products"), which contain information and photographs concerning commercial real estate. Coldwell licensed access to the CoStar Products in order to give its agents a competitive advantage and assist us in our work for Coldwell. I liked having access to and use the CoStar Products, as they enabled me to identify opportunities, such as potential clients or space that might meet my clients' needs. The CoStar Products also helped me to better understand market trends and conditions, both by being able to run customized searches and through review of the quarterly and yearly market reports prepared by CoStar. Additionally, I valued being able to review information and photographs concerning specific properties.

5. I started at Coldwell in 2005 and left the firm in November 2006. I joined K&H toward the end of 2006/early 2007 and ceased working there in August 2008. Although I no longer work at K&H, my license still resides with the firm.

6. While working at K&H, I continued to use the CoStar Products using the access codes provided to me when I worked for Coldwell. I used the CoStar Products, in my role as a sales agent at K&H, right from when I started at K&H until this dispute arose and CoStar disabled my access, roughly sometime in April 2008. Among other things, I found the CoStar market reports helpful to advance my knowledge and insights as to commercial real estate. I also used the CoStar Products to perform research to learn about the market and review specific properties.

7. I used the CoStar Products to further my work at K&H, in the hopes of bringing in money for myself and the firm. I knew that K&H would not pay for a license/subscription to the CoStar Products, which I wanted to continue to use. As a result, I decided that I would just continue to use the CoStar Products until someone terminated my access. I never asked Coldwell or CoStar if my continued use of the CoStar Products was permissible. I assumed if I did ask, I might jeopardize my access to the CoStar Products. I spoke with CoStar and Coldwell during my time at K&H but never indicated that I was still using the CoStar Products.

8. Within a few months after I joined K&H, Mark Klein and Steve Klein became aware that I was continuing to access and use the CoStar Products. They asked me how I had access, and I told them that I was still using the access codes that had been provided to me while at Coldwell. I made and provided to the Kleins copies of various CoStar Office Reports and CoStar Industrial Reports that I obtained from the CoStar Products. In different combinations, these include the: (a) CoStar Office Report Year-End 2007 Tampa/St Petersburg Office market;

(b) CoStar Office Report First Quarter 2007 Tampa/St Petersburg Office Market; (c) CoStar Industrial Report Year-End 2007 Tampa/St Petersburg Industrial Market; and (d) CoStar Office Report Year-End 2006 Tampa/St Petersburg Office Market. I also provided a colleague of mine at K&H, Judi Healey, with at least one copy of such a CoStar report and looked up properties in the CoStar Products for her.

9. The Kleins asked me to run searches within the CoStar Products concerning specific properties or trends/statistics concerning specific segments of the market. I did so at their request and provided them with the results, along with sometimes doing the same at my own initiative. One instance was in connection with ~~Mark~~^{Steve} Klein's attempt to sell an office condo in Tampa. In another instance, Mark Klein had a client interested in a property and he asked me to obtain the information from the CoStar Products after he could not find certain information about the property from the LoopNet information service. Other examples can be seen by reference to CSGP 639-660/CSGP 750-785, where I forwarded building information from CoStar and the CoStar Office Report Year-End 2006 Tampa/St Petersburg Office Market to Steve Klein, and to which Mr. Klein said "thanks." Another example is CSGP 738-749, where I sent an email to Mark Klein with building information from CoStar to help him with a consulting project.

10. At K&H, I was required to attend bi-weekly meetings. At those meetings, we exchanged information about trends in the market and specific properties, along with specific deals and opportunities. Each person at the table typically discussed what they were working on and brainstormed about opportunities. My use of the CoStar Products substantially contributed to my commercial real estate knowledge and insights, which I shared at these meetings and with

my colleagues and clients/prospective clients outside of these meetings. I shared information and advice both about specific properties and larger segments of the market.

11. Until this dispute arose with CoStar in April 2008, at no time did Mark or Steve Klein ever ask me whether my use of the CoStar Products at and on behalf of K&H was permissible. Nor did they ever tell me to stop using the CoStar Products. Had they done so, I would have stopped immediately. Prior to this dispute arising in April of 2008, they only asked me how I had access to the CoStar Products. Mark or Steve Klein never told me to check with CoStar or Coldwell to ask whether my continued use of the CoStar Products was permissible, and I believe that they never did so either. Mark Klein and Steve Klein are frugal and very cost-conscious. They probably knew that my continued use of the CoStar Products was unauthorized but did not mind.

12. On certain occasions, Mark and Steve Klein indicated that they did not like the CoStar Products or find them necessary. Those comments did not indicate that they have no use for the service; indeed, they asked me to obtain information from the service for them. What they did not like is the price and the notion of paying for the service. I am not aware whether Mark Klein or Steve Klein have ever actually directly logged into and learned how to use the CoStar Products. However, one Saturday I worked in the office researching the Westshore market in Tampa. Mark Klein was in the office too. He came over, watched the research that I was doing in the CoStar Products, and responded that it was "great."

13. I regard the CoStar Products as the "best-in-breed" commercial real estate information service. It, of course, is not the only source for commercial real estate information. But it is the best. Rather than pay for their agents to have access to the CoStar Products, Mark and Steve Klein prefer that their people use free tools such as the LoopNet service or public

records. LoopNet is a bulletin board-type service where brokers post listings for space they represent. The listing information on LoopNet, and other multiple listing services ("MLS"), is only as comprehensive as the extent to which brokers for an entire market post their listings. The listing information is meant for marketing purposes and therefore, by definition, includes the biases of the broker that posted the listing. The listing information is not current if brokers fail to post their listings or if they fail to remove their listings once the space is no longer available. In contrast, the CoStar Products are a researched, objective third-party information service. Additionally, the CoStar Products include much more than just property listings; they also have information on buildings that are not for sale or that are fully leased.

14. When I worked at K&H, I was not paid a salary. Instead, I earned money on a commission basis. For each deal I completed, whether a property sale or leasing of space, the resulting commission was split on a 50-50 basis between me and K&H. While the Kleins treated me like a professional and did not dictate my work hours, they were in charge of the firm, frequently controlling the approach to research, marketing, prospecting, client service, and completing deals. In fact, I could not accept any listings without their specific authorization. They could also end my affiliation with K&H if I did not comply with their requests.

15. When I accessed the CoStar Products, I did so by visiting the CoStar website at www.costar.com. On the upper-right corner of the homepage, there is a login area for the user to enter their Username and Password. It includes a conspicuous notice that says "Login/Use Subject to Terms." By clicking on the word "Terms," the terms of use agreement that governs use of the website appears.

16. At that login area, each time I used the CoStar Products I entered the Username and password supplied to me as a sales agent at Coldwell and clicked the "LOGIN" button. I

then conducted various searches, whether to lookup the information and photographs for a specific property, perform a customized search for various properties or market trends/statistics that meet certain criteria, or to obtain a copy of a CoStar Office Report or CoStar Industrial Report. In the process of doing so, I downloaded that material from the CoStar Products to my computer and then either saved a permanent electronic copy, printed the material, or emailed the material to others.

17. While logged into the CoStar Products, the screen noted my name and affiliation with Coldwell. Certain materials that I printed from the service also contained my name and Coldwell company identifier. In one instance, when I sent materials from CoStar to a client of mine at K&H concerning a property we visited that day, I used a marker to black-out and hide the reference to Coldwell. The documents are labeled CSGP 730-737.

18. My document production in this litigation resulted from a search of whatever emails and other documents existed on my computer at the time I had to respond to CoStar's document requests. My document production does not represent the complete universe of all the photographs and other material that I obtained from the CoStar Products. For example, it does not include the property records that I obtained from CoStar and printed. It also does not include material from the CoStar Products in any email that no longer resided on my computer at the time of my search for documents.

19. CoStar has provided me with a release from personal liability as set forth within a settlement agreement that requires my truthful testimony in connection with this matter. Other than the release, CoStar has not provided me with compensation of any kind.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 1, 2010 in Pasco, Florida.



Christopher Scott Bell

AGREEMENT

Dated and effective as of February 1, 2010 (the "Effective Date"), this agreement ("the Agreement") is made by and between CoStar Group, Inc. and CoStar Realty Information, Inc. (collectively, "CoStar"), on the one hand, and Christopher Scott Bell ("Bell"), on the other hand.

WHEREAS, in the litigation currently pending in the United States District Court for the Middle District of Florida, Civ. Act. No. 8:08-cv-01227-JSM-MSS ("the Litigation"), CoStar filed claims against Bell and Klein & Heuchan, Inc. ("K&H") related to the unauthorized access, use, copying and distribution of the proprietary CoStar subscription-only commercial real estate information services and the copyrighted works contained therein (collectively, the "CoStar Products"). The Litigation includes a declaratory judgment claim filed by K&H against CoStar, and Bell is a third-party defendant in the Litigation. .

WHEREAS, notwithstanding Bell's infringement of CoStar's copyrights while acting as a sales agent for K&H, during which time both Bell and K&H lacked any authorization to access, use, copy or distribute the CoStar Products, Bell is now committed to respecting CoStar's intellectual property rights in the future.

WHEREAS, Bell and CoStar seek to settle and resolve amicably their claims, and Bell has indicated that he does not have the funds to pay a substantial judgment or settlement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which is acknowledged, CoStar and Bell (collectively, the "Parties") agree as follows:

1. Bell covenants that:
 - a) Prior to the execution of this Agreement, he will provide CoStar, under oath, with a signed copy of the declaration attached hereto as Exhibit 1 (the "Declaration"), testifying completely, truthfully, fully, and without evasion concerning his involvement with K&H and his knowledge relevant to the

claims at issue in the Litigation, including, without limitation, (i) the documents produced to CoStar in response to discovery, (ii) his and others' use and copying of the CoStar Products on behalf of and within K&H, and (iii) K&H's knowledge and encouragement of such use and copying.

- b) In any trial, hearing or other context in which he testifies or provides information to CoStar in this Litigation, he will testify completely, truthfully, fully, without evasion, and consistent with the testimony in his Declaration, including his involvement with K&H and his knowledge relevant to the claims at issue in the Litigation.
- c) He will not assert any privilege, other than attorney-client privilege, as a basis for refusing to respond to any question or provide any testimony in any context in the Litigation.
- d) If requested by CoStar, he will appear voluntarily at any trial or hearing in the Litigation, will provide further testimony by affidavit or declaration if requested by CoStar, and will cooperate with CoStar, including without limitation by meeting with CoStar for further interviews relating to his knowledge relevant to the claims at issue in the Litigation and the documents produced to CoStar.
- e) He has no direct or indirect financial or other interest in either K&H or CoStar and is not and has not in the past been an owner, director, officer or senior level manager at K&H or CoStar.
- f) He has first-hand information concerning, among other things, the unauthorized use, copying and distribution of the CoStar Products on behalf of and within K&H, including by him, along with K&H's knowledge and encouragement of the same.
- g) He further represents that he has been represented by legal counsel of his choosing in connection with this Agreement, including during any and all discussions leading to his execution of this Agreement.

2. Bell agrees to pay CoStar the sum of \$5,000 (the "Payment"). The Payment

does not constitute, represent, or in any way quantify the damages that CoStar is entitled to receive as a result of the copyright infringement committed by Bell or any other party. Rather, this figure represents a compromise based on a number of considerations, including, without limitation, recognition of Bell's inability to pay a more significant amount.

within the middle District of Florida

within the middle District of Florida

3. Subject to Bell's fulfillment of the provisions set forth in this Agreement, CoStar hereby releases Bell from any liability for the claims asserted against Bell in the Litigation, subject to the following conditions:

- (a) CoStar's release shall only cover Bell's unauthorized use, copying and distribution to the extent such activity would have complied with each and every term and condition of the standard CoStar license agreement for the CoStar Products, as if Bell had been a fully licensed subscriber at all relevant times;
- (b) CoStar's release does not cover Bell or any third party from (i) any resale of any portion of any CoStar product or service, (ii) use of any portion of any of CoStar product or service to create or maintain directly or indirectly any database or other product directly or indirectly competitive with any portion of any CoStar product or service, or (iii) any provision, disclosure or transmission of any portion of any CoStar product or service to a direct or indirect competitor of CoStar, or any access or use of any CoStar product or service by any direct or indirect competitor of CoStar; and
- (c) CoStar's release shall be limited to Bell alone, and shall not cover any third parties who may have made unauthorized or unlicensed use of the CoStar Products with or without Bell's assistance, authorization, or facilitation, including, without limitation, K&H.

4. In return for the CoStar's commitments in this Agreement, Bell hereby releases CoStar, and its shareholders, officers, directors, employees, and attorneys, from any and all legal claim, costs, damages, expenses or attorneys' fees that he may have based upon the subject matter of this Agreement or the conduct leading or relating hereto.

5. Bell agrees that he will respect CoStar's contractual and intellectual property rights, and will not access, use, reproduce, display, distribute or create derivative works from the CoStar Products unless such actions are specifically authorized, in writing, by CoStar. Bell further agree that he shall not instruct, encourage, direct, facilitate, assist, or otherwise cause third parties to engage in unlicensed or unauthorized use of the CoStar Products or to violate CoStar's contractual or intellectual property rights. Further, following complete and final

resolution of the Litigation, including any appeal, Bell shall destroy each and every reproduction (including electronic copies) of any portion of the CoStar Products in his possession and, upon request shall certify completion of the same to CoStar.

6. The parties shall jointly request that the Court to enter a Final Order and Judgment in the form attached hereto as Exhibit 2. Each party shall bear its own costs and attorneys' fees. The parties will jointly request the Court to retain jurisdiction over this matter and any disputes arising from this Agreement and agree that the law of the state of Maryland shall govern the interpretation of this Agreement.

7. CoStar at any time shall have the right to terminate this Agreement and void CoStar's release in Paragraph 3 above in the event (a) that any of Bell's representations is demonstrated to be untrue in any material respect, or (b) that Bell fails to comply with any of his obligations under this Agreement, or (c) that Bell is found liable by any court of competent jurisdiction of infringing CoStar's copyrights based on Bell's conduct occurring after the Effective Date of this Agreement.

8. This Agreement is the entire agreement between the Parties concerning its subject matter, supersedes all prior agreements and understandings, whether or not written, and nothing in this Agreement shall be construed to confer on K&H, or any person other than the Parties, any rights or remedies hereunder. Nothing in this Agreement shall prevent CoStar from initiating or continuing any civil proceedings against K&H or any other party.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the undersigned Parties.


Name (print): Jonathan Coleman

Title: General Counsel

Signature: _____

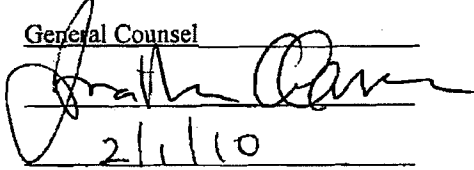
Date: _____

Name: C. Scott Bell

Signature: 

Date: 2/1/10

Title: General Counsel

Signature: 

Date: 2/1/10

Name: C. Scott Bell

Signature: _____

Date: _____