

# MACFARLANE FERGUSON & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

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CLEARWATER, FLORIDA 33756  
(727) 441-8966 FAX (727) 442-8470

IN REPLY REFER TO:

Post Office Box 1669  
Clearwater, FL 33757  
[jpr@macfar.com](mailto:jpr@macfar.com)

June 4, 2006

**VIA FACSIMILE (301) 656-7146  
and CERTIFIED MAIL – RETURN RECEIPT**

Jonathan Coleman, Esquire  
General Counsel & Secretary  
CoSTAR Group, Inc.  
2 Bethesda Metro Center, 10th Floor  
Bethesda, MD 20814

Re: *Klein & Heuchan, Inc. v. COSTAR Realty Information, Inc. and  
COSTAR Group, Inc.*  
Pinellas County Case No.: 08-8290-CI-15

Dear Mr. Coleman:

This firm has the pleasure of representing Klein & Heuchan, Inc. We were forwarded correspondence from Mr. Curtis Ricketts alleging that our client used CoStar's services without authorization. Mr. Ricketts' May 28, 2008 correspondence included a draft lawsuit alleging breach of contract and copyright infringement and indicated that the Complaint would be filed against my client unless the parties could resolve their differences by Tuesday, June 3, 2008.

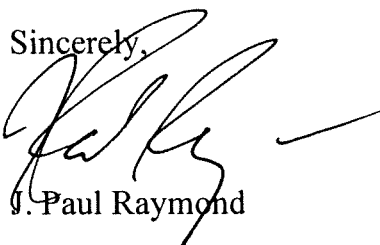
Unfortunately, Mr. Ricketts refused to respond to our repeated attempts at dialog made via telephone and e-mail. For your convenience I am enclosing a copy of my previous correspondence. Because I received no response, we were given no option but to file a lawsuit seeking a declaratory judgment pursuant to the Florida Declaratory Judgment Act. Enclosed please find a courtesy copy of the lawsuit filed today in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida, Civil Division. Please let me know if you are authorized to and willing to accept service of the Complaint. If not, I will have the action served by process server.

Jonathan Coleman, Esquire  
June 4, 2008  
Page 2

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We remain willing to discuss this matter with you further but dialogue is a two-way street.

I await your response.

Sincerely,  
  
J. Paul Raymond

JPR/jg

cc: Curtis Rickets  
(via facsimile (301) 656-7146) and electronic mail (crickets@costar.com)  
Klein & Heuchan, Inc.

MODE = MEMORY TRANSMISSION START=JUN-04 18:20 END=JUN-04 18:22

FILE NO.=021

STN NO.	COMM.	ONE-TOUCH/ ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
001	OK	2	913016649176	008/008	00:01:24

-MACFARLANE FERGUSON -

\*\*\*\*\* - \*\*\*\*\* 727 442 8470- \*\*\*\*\*

**MACFARLANE FERGUSON & McMULLEN**  
*Attorneys and Counselors at Law*

**PERSONAL AND CONFIDENTIAL**

**FAX TRANSMITTAL FORM**

ATTENTION: Jonathan Coleman, Esquire

FIRM NAME: CoSTAR Group, Inc.

FROM: J. Paul Raymond, Esquire

DATE: June 4, 2008

FAX NO: (301) ~~664-9176~~

PHONE NO.:

Number of Pages (including cover page) 8

Client/Matter # Klein & Heuchan

Sender: If there is a problem with this transmission, please contact Sarah at (727) 441-8966.

Message: Please see attached correspondence of today's date.

FAX NO.: (727) 442-8470

TELEPHONE NO.: (727) 441-8966

Mailing Address: P.O. BOX 1669  
Clearwater, Florida 33757

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MODE = MEMORY TRANSMISSION START=JUN-04 18:22 END=JUN-04 18:24

FILE NO.=022

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-MACFARLANE FERGUSON -

\*\*\*\*\* - \*\*\*\*\* - 727 442 8470- \*\*\*\*\*

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*Attorneys and Counselors at Law*

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**FAX TRANSMITTAL FORM**

ATTENTION: Curtis Ricketts

FIRM NAME: CoSTAR Group, Inc.

FROM: J. Paul Raymond, Esquire

DATE: June 4, 2008

FAX NO: (301) ~~718-2444~~

PHONE NO.:

Number of Pages (including cover page) 8

Client/Matter # Klein & Heuchan

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Message: Please see attached correspondence of today's date addressed to Jonathan Coleman.

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Mailing Address: P.O. BOX 1669  
Clearwater, Florida 33757

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Pinellas County Case No.: 08-8290-CI-15

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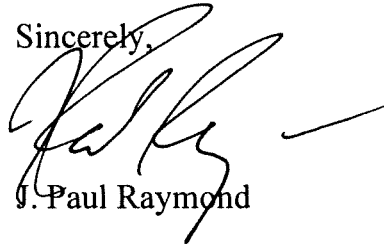
Jonathan Coleman, Esquire  
June 4, 2008  
Page 2

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We remain willing to discuss this matter with you further but dialogue is a two-way street.

I await your response.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Paul Raymond", with a long horizontal flourish extending to the right.

J. Paul Raymond

JPR/jg

cc: Curtis Rickets  
(via facsimile (301) 656-7146) and electronic mail (crickets@costar.com)  
Klein & Heuchan, Inc.

**Paul Raymond**

---

**From:** Paul Raymond  
**Sent:** Monday, June 02, 2008 1:45 PM  
**To:** 'cricketts@costar.com'

This firm represents Klein and Heuchan, Inc. Mark Klein forwarded your email of May 28, 2008, and discussed with me the circumstances surrounding your claim.

It appears that a sales agent, who is an independent contractor and not an employee of my client, was formerly with another firm that has an account with your firm. He evidently was granted a license to use your services and his authority to use those services evidently was not terminated upon his dissociation with his former national firm. For these purposes, we will accept your assertion that this individual continued to access your website as a licensed user. If he did so, he did so for himself and not per the instructions or at the request of my client. If you have any facts to the contrary, please provide them.

It is my understanding that these facts were disclosed to you and that you have threatened a suit in Maryland, a jurisdiction in which my client has no nexus, and provided a copy of the proposed lawsuit. The draft makes allegations that are not true and that you must know are not true. It is my understanding that you indicated that you would not file the lawsuit if my client subscribed to your company's services and then received further communication indicating that the person who made such offer had no authority to do so.

It is my understanding that as a CCIM firm, my client was provided free use of your services as a promotion for a limited time. Mark Klein accessed your firm's web site during that "complimentary" period and determined that the services your firm offered were not helpful in its, primarily local, commercial brokerage business, and never again accessed your firm's site. Again, if you have any facts to the contrary, please provide them.

I placed a call to you last week and again today in an effort to discuss this matter with you. I have not received a return to my call and write to you in an effort to open a dialogue. I look forward to speaking with you.

**J. Paul Raymond, Esq.**  
**Macfarlane Ferguson & McMullen**  
P.O. Box 1669 Clearwater, FL 33757  
625 Court Street Clearwater, FL 33756  
Main: (727) 441-8966  
Direct: (727) 444-1406  
Fax: (727) 442- 8470  
[jpr@macfar.com](mailto:jpr@macfar.com)



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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CERCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION

KLEIN & HEUCHAN, INC.,  
a Florida Corporation

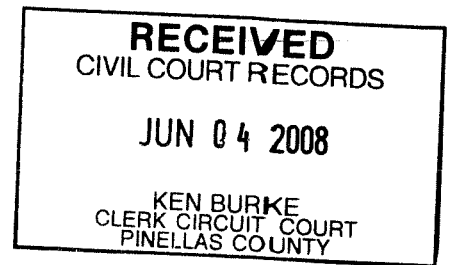
Plaintiff,

v.

Case No. 08-8290C1-15

COSTAR REALTY INFORMATION, INC.,  
a foreign Corporation and  
COSTAR GROUP, INC.,  
a foreign Corporation

Defendants.



COMPLAINT

Plaintiff KLEIN & HEUCHAN, INC., a Florida Corporation (hereinafter "K&H") hereby sues Defendants COSTAR REALTY INFORMATION, INC., a foreign Corporation and COSTAR GROUP, INC., a foreign Corporation (hereinafter collectively "COSTAR") and alleges as follows:

1. This is an action for a declaratory judgment pursuant to the Florida Declaratory Judgment Act, Chapter 86, Florida Statutes.
2. Plaintiff K&H is a Florida Corporation, organized and existing under the laws of the State of Florida.
3. Plaintiff K&H is authorized to and conducts business in Pinellas County, Florida as a licensed real estate broker.



4. Defendant COSTAR REALTY INFORMATION, INC. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business and corporate offices located in Bethesda, Maryland.

5. Defendant COSTAR REALTY INFORMATION, INC. conducts business throughout the State of Florida including Pinellas County, Florida.

6. Defendant COSTAR GROUP, INC. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business and corporate offices located in Bethesda, Maryland.

7. Defendant COSTAR GROUP, INC. conducts business throughout the State of Florida including Pinellas County, Florida.

8. COSTAR is a national commercial real estate information service provider that has created and maintains a commercial real estate information database. Access to this commercial real estate information database is obtained via the internet.<sup>1</sup>

9. COSTAR charges a fee for access to the COSTAR database and only permits access by authorized users.

10. K&H is a licensed real estate broker.

11. Scott Bell is a licensed agent and independent contractor of K&H.

12. At all times material, Scott Bell was an authorized user of the COSTAR database.

13. COSTAR claims that K&H obtained access to the COSTAR database by obtaining authorized users' user names and passwords and accessed the COSTAR database for its own commercial purpose without a valid license or any other authorization from COSTAR.

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<sup>1</sup> The internet based commercial real estate information database is hereinafter referred to as the "COSTAR database".

14. K&H did not obtain access to the COSTAR database by obtaining authorized users' user names and passwords and did not access the COSTAR database for its own commercial purpose without a valid license or any other authorization from COSTAR.

15. COSTAR claims that K&H accessed the COSTAR database and that by accessing the COSTAR database it agreed to be bound by the terms of use agreement of the website maintained by COSTAR.

16. COSTAR claims that K&H breached this phantom agreement and that COSTAR was injured as a result of this breach.

17. K&H is unsure as to what phantom agreement COSTAR alleges has been breached.

18. Plaintiff K&H is in doubt as to its rights and obligations.

19. Plaintiff K&H is in further doubt as to the existence or nonexistence of any legal relationship between COSTAR and K&H.

20. This is a bona fide, present and practical need for declaration of rights.

21. The declaration concerns a present, ascertained or ascertainable state of facts or present controversy as to a state of facts.

22. An immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts.


23. The relief sought is not merely giving of legal advice or the answer to questions propounded for curiosity.

WHEREFORE, Plaintiff KLEIN & HEUCHAN, INC, prays that this Court declare Plaintiff KLEIN & HEUCHAN, INC.'s rights and obligations as they relate to: (1) COSTAR REALTY INFORMATION, INC., and COSTAR GROUP, INC., and that Plaintiff KLEIN &

HEUCHAN, INC. have no obligation(s) pursuant to the phantom terms of service agreement alleged by COSTAR REALTY INFORMATION, INC., and COSTAR GROUP, INC.

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(727) 441-8966 - Phone  
(727) 442-8470 - Fax  
Attorneys for Plaintiff  
KLEIN & HEUCHAN, INC.

By



---

J. Paul Raymond, Esq.  
SPN No. 00170550 / FBN. 0169268  
Jeffrey W. Gibson, Esq.  
SPN 02530932 / FBN 0568074

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