

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

CoSTAR REALTY INFORMATION, INC., *et. al.* \*

Plaintiffs, \*

v. \*

Case No.: 07 CV 01182 AW

CENTERS & MALLS, LLC, *et. al.* \*

Defendants. \*

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**PLAINTIFFS’ REPLY TO DEFENDANTS’  
OPPOSITION TO PLAINTIFF’S MOTION FOR A  
TEMPORARY RESTRAINING ORDER**

Plaintiffs, CoStar Realty Information, Inc. (“CoStar”), and National Research Bureau, Inc. (“NRB”),<sup>1</sup> through counsel and pursuant to Rule 65 of the Federal Rules of Civil Procedure, respectfully move this Court for a temporary restraining order against defendants Centers & Malls LLC (“Centers & Malls”), Robert Galvin (“Galvin”) and Guy Hays (“Hays”). In support of this motion, CoStar states as follows:

**I. INTRODUCTION**

Centers & Malls’ founder and President Garrett Van Sicen has admitted to stealing the Shopping Center Directory, a copyrighted database owned by CoStar.<sup>2</sup> Without authorization, Mr. Van Sicen took a CD Rom that contained this copyrighted database from his former

<sup>1</sup> NRB has recently assigned all of its’ intellectual property rights to CoStar and has been merged into CoStar. An Amended Complaint reflecting this change will be filed shortly.

<sup>2</sup> The Shopping Center Directory was created and initially copyrighted by National Research Bureau. CoStar purchased the rights to the Shopping Center Directory when it acquired National Research Bureau, Inc. in January of 2005. CoStar paid millions of dollars to obtain the rights of the Shopping Center Directory. Mr. Van Sicen and Centers & Malls brazenly and illegally misappropriated the Shopping Center Directory without permission or any payment.

employer, copied the data and used it to create the Centers & Malls database.<sup>3</sup> Centers & Malls is now selling its database to customers for a profit. In addition, former CoStar employees Robert Galvin and Guy Hays each executed employment agreements with CoStar that contained a non-competition provision prohibiting them from working for a competitor within one year of the termination of their employment with CoStar.<sup>4</sup> Centers & Malls is a direct competitor of CoStar. *See* Deposition of Robert Galvin, attached hereto as Exhibit 3, pp. 91:15-92:17. Within one year of leaving CoStar Mr. Galvin became Centers & Malls' Vice President for Sales and Strategic Partnerships, and Guy Hays became its Director of Client Relations. Mr. Galvin and Mr. Hays remain in these capacities with Centers & Malls today.<sup>5</sup>

Due to the above actions, Plaintiffs respectfully request this Court enter a temporary restraining order enjoining Defendants and any third parties from continuing to disseminate the Centers & Malls' database which was created by copying information from the copyrighted Shopping Center Directory. Plaintiffs also respectfully request a temporary restraining order enjoining Defendants Galvin and Hays from continuing their employment with Centers & Malls.

As will be more fully set forth below, the Court should issue the requested relief for the following reasons:

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<sup>3</sup> Mr. Van Sieten estimates that approximately 70-80% of the data contained on the Centers & Malls database at its inception was taken directly from the Shopping Center Directory. *See* Deposition of Garrett Van Sieten, attached hereto as Exhibit 1, p. 186:5-15.

<sup>4</sup> Upon termination of his employment with CoStar, Galvin was paid \$30,806.33 in consideration for entering into a Confidential Separation Agreement and General Release. *See* Galvin Separation Agreement, attached hereto as Exhibit 2.

<sup>5</sup> It should be noted that there is an inherent conflict of interest with Galvin, Hays, and Centers & Malls all being represented by the same counsel. Galvin and Hays both testified at their depositions that they showed their CoStar employment agreements to Centers & Malls President Garrett Van Sieten and Centers & Malls' legal counsel, and that after discussions with Centers & Malls' counsel, Mr. Van Sieten informed Galvin and Hays that working for Centers & Malls would not violate the non-competition provisions of these agreements. *See* Exhibit 3, p. 130:4-132:8; *see also* deposition of Guy Hays, attached hereto as Exhibit 4, p. 29:13-30:20. This creates the potential for a cause of action by Galvin or Hays against Garrett Van Sieten and/or Centers & Malls. Further, this is direct evidence of Centers & Malls intentional interference with CoStar's contractual relations.

1. Defendants do not contest that Plaintiffs will be irreparably harmed if their activities are permitted to continue.

2. Defendants will not be irreparably harmed if the requested relief is granted, since Centers & Malls does not have any employees or centralized office, and Galvin and Hays have alternative means of generating income.

3. It is not in the public interest to permit the theft of intellectual property and the breach of voluntarily bargained for agreements.

4. Centers & Malls has the requisite “minimum contacts” with the State of Maryland for this Court to exercise either general or specific jurisdiction over it. Centers & Malls’ contacts with Maryland include but are not limited to: licensing agreements with at least 5 Maryland customers, the distribution of marketing materials to thousands Maryland residents, the direct solicitation of several Maryland residents by Centers & Malls Director of Client Development Guy Hays, and the listing of over 500 Maryland properties on the Centers & Malls website.

5. Galvin and Hays contractually bound themselves to jurisdiction in Maryland with the execution of their employment agreements with CoStar. These agreements expressly state that consideration for the agreement is the employee’s access to confidential information, thus they are enforceable.

6. Plaintiffs are likely to succeed in their breach of contract claims against Galvin and Hays because Galvin and Hays have violated the non-competition provisions of their employment agreements with CoStar by working for one of CoStar’s direct competitors within one year of the termination of their employment. The non-competition provisions of the Galvin and Hays employment agreements are reasonable as to geography, scope, and breadth of activity, and are therefore enforceable.

7. Plaintiffs are likely to succeed in their copyright infringement claim against Defendants, because they have proof that the Shopping Center Directory is copyrighted, is an original and creative work, and Centers & Malls President Garrett Van Siclen has admitted that he copied this database.

8. There are several other Counts against Defendants in this litigation that Plaintiffs are likely to succeed upon, including but not limited to intentional interference with contractual relations, violation of §43(a) of the Lanham Act, and misappropriation.

## **II. STANDARD OF LAW**

The parties do not dispute the legal standard required for obtaining a temporary restraining order. In determining whether or not to award injunctive relief, a court usually must weigh and evaluate the evidence to assess four interrelated factors: 1) the likelihood that the plaintiff will succeed on the merits; 2) the likelihood of irreparable harm to the plaintiff if the injunctive relief is denied; 3) the likelihood of irreparable harm to the defendant if the requested relief is granted; and 4) the public interest. *NaturaLawn of America, Inc. v. West Group, LLC*, No. 06-3325, 2007WL1191131 at 3 (4<sup>th</sup> Cir. 2007); *Rum Creek Coal Sales, Inc. v. Caperton*, 926 F.2d 353, 359 (4<sup>th</sup> Cir. 1991); *Blackwelder Furniture Co. v. Selig Manufacturing Co.*, 550 F.2d 189, 193 (4<sup>th</sup> Cir. 1977).

## **III. ARGUMENT**

CoStar has suffered, and will continue to suffer irreparable injury for each day that the above activities by Defendants are permitted to continue. Defendants do not deny that Plaintiffs will be irreparably harmed if Centers & Malls or other third parties are permitted to continue disseminating information unlawfully copied from the Shopping Center Directory, and if Galvin and Hays are permitted to continue working for Centers & Malls. Nor do Defendants assert that

they will be irreparably harmed if they are enjoined from continuing these activities. On this point it is worth noting that Centers & Malls claims that it has no employees and no centrally located office. *See* Exhibit 1, p. 24:20-26:18. Mr. Galvin claims he is an independent consultant performing independent work for Centers & Malls. *See* Exhibit 3, p. 9:5-16. Mr. Hays states that he is an independent contractor for Centers & Malls who has other sources of income. *See* Exhibit 4, p. 133:14-134:9. The address listed on Centers & Malls correspondence is in fact the address for a box in a Mailboxes, Etc. store. *See* Exhibit 1, 26:14-27:4. Thus, if the Court were to enter an Order shutting down the entire Centers & Malls operation, the harm would be minimal and would affect a limited number of individuals. Finally, Centers & Malls does not assert that it is in the public interest to permit the theft of intellectual property, or to encourage the breach of freely bargained for agreements.

While not seriously contesting any of the above factors, Defendants' Opposition to Plaintiff's Motion for a Temporary Restraining Order ("Opposition") relies entirely on technical arguments which, as will be set forth more fully below, are without merit. To protect the interests of CoStar, and of its approximately 550 Maryland-based employees, this Court should issue a temporary restraining order enjoining Defendants and any third parties from continuing to disseminate information unlawfully copied from the Shopping Center Directory, and enjoining Galvin & Hays' continued employment with Centers & Malls.

**A. *The Court is within its' authority to exercise personal jurisdiction over Centers & Malls***

When determining whether a court has authority to exercise personal jurisdiction over a non-resident defendant, "the burden on the plaintiff is simply to make a prima facie showing of sufficient jurisdictional basis in order to survive the jurisdictional challenge." *Combs v. Bakker*, 886 F.2d 673, 676 (4<sup>th</sup> Cir. 1989). "In deciding whether the plaintiff has proved a prima facie

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