

## Real Estate Cos. Trade Claims Of Lying, Witness Coercion

By **Bryan Koenig**

*Law360 (April 6, 2023, 8:03 PM EDT)* -- An Indian judgment Thursday further entrenched the bitter fight over alleged copyright infringement between CoStar Group Inc. and commercial property listing startup rival CREXi as the companies and their U.S. attorneys traded accusations of getting witnesses to lie and coercing the withdrawal of truthful statements.

A consent decree accepted by a Delhi High Court judge Thursday ends CoStar Group Inc.'s suit against 247 Web Support with an admission that 247's CEO signed an untrue declaration saying Commercial Real Estate Exchange Inc., or CREXi, told him to protect CoStar's copyrighted imagery, not pilfer it.

Perhaps more importantly, the consent decree gives CoStar further ammunition for its California federal court copyright infringement lawsuit against 247 U.S. client CREXi, although CREXi's counsel at Keker Van Nest & Peters LLP on Thursday vociferously denied pushing anyone into false testimony and instead argued the original declaration was only recanted under coercion.

CoStar has sued multiple alleged CREXi vendors in the Indian court system, accusing the companies of ripping off tens of thousands of copyrighted photos from its commercial real estate listings at CREXi's behest to create CREXi listings. In the case of 247, according to Thursday's consent decree, CREXi and its attorneys at Keker in February 2022 got 247 CEO Ritesh Jaiswal to sign a declaration (which has never been used in the U.S. litigation) asserting that he was told not to use CoStar's photos and not to crop its logo from the imagery.

"CREXi and not Mr. Jaiswal drafted the CREXi declaration, CREXi and its U.S. counsel told Mr. Jaiswal to sign the CREXi declaration for use in the U.S. lawsuit that was filed by CoStar against CREXi, and Mr. Jaiswal signed the declaration 'as CREXi was an important client,'" the consent decree states.

The problem, according to the consent decree Jaiswal signed, is that the declaration, sent to him by CREXi attorney and Keker partner Warren A. Braunig, "contains multiple statements that are not consistent with the directions that CREXi issued to Mr. Jaiswal."

Jaiswal now says, after questioning by court-appointed and CoStar-paid Indian investigators called commissioners, that he'd be hesitant to sign the same declaration today because he doesn't "fully agree" with the statement, having inked a new one in November, according to the consent decree. In fact, according to the decree, at times CREXi told Jaiswal and his fellow company officers to use material copied from CoStar's services, while cropping out CoStar's logo from the imagery.

The consent decree bars future use of CoStar's imagery and threatens fines of \$50,000 per image or property listing if violated.

"CREXi's scheme of infringement is global in nature and we will continue our efforts to take direct action against the wrongdoers wherever CREXi moves its illicit offshore operations," CoStar General Counsel Gene Boxer said in a statement.

"We are pleased that a key CREXi agent made the decision to admit to its role in CREXi's wrongdoing and consent to entry of judgment and an injunction," he continued. "We will pursue further the troubling revelations that CREXi had the agent sign counter-factual testimony for use in litigation in the United States."

The cropping issue has already played out extensively in the California litigation. While the copyright claims remain live, U.S. District Judge Consuelo B. Marshall ruled in June 2021 that the logo by itself isn't enough to establish the photos as copyright management information protected by the Digital Millennium Copyright Act — CoStar is still trying to revive claims that CREXi violated the DMCA by removing CoStar's logo from photos it scraped and reposted to its own site.

CREXi itself has accused CoStar of wrongdoing, including using what CREXi described in filings as "false and misleading allegations" from witnesses as CoStar allegedly tries to force its upstart rival out of the market. CREXi is trying to set up an appeal to revive its since-tossed antitrust counterclaims. The back-and-forth continued Thursday.

"Neither CREXi nor anyone from this firm ever asked, guided or instructed Ritesh Jaiswal or any other witness to provide false testimony. The draft Jaiswal declaration was the result of multiple interviews conducted with him, and the facts were confirmed by him repeatedly," Braunig said in a statement.

"By contrast, the November 2022 statement that CoStar and its Indian 'commissioners' coerced from Mr. Jaiswal and are now publishing to the media came after hours of interrogation, late at night, and after Mr. Jaiswal was repeatedly told he could not speak with his Indian counsel. It is CoStar and its lawyers who engaged in wrongdoing in connection with Mr. Jaiswal," Braunig continued. "This is yet another example of CoStar, and Latham & Watkins, using heavy-handed and abusive tactics to threaten and intimidate small businesses in India, in an effort to bolster their struggling copyright case against CREXi in the U.S."

CREXi did not immediately respond Thursday to a press inquiry.

CoStar is represented by Nicholas J. Boyle, Anne C. Malinee, Belinda S. Lee, Caitlin E. Dahl, David L. Johnson, Elizabeth A. Parvis, Elyse M. Greenwald, Jessica S. Bina, Katherine L. Griffiths, Lauren M. McGuire, Roberto Borgert and Sarah A. Tomkowiak of Latham & Watkins LLP.

CREXi is represented by Warren A. Braunig, Christine Zaleski, Connie P. Sung, Elliot R. Peters, Jason George, Katie L. Joyce, Niall M. Roberts and Nicholas S. Goldberg of Keeker Van Nest & Peters LLP.

The case is CoStar Group Inc. et al. v. Commercial Real Estate Exchange Inc., case number 2:20-cv-08819, in the U.S. District Court for the Central District of California.

--Additional reporting by Grace Dixon, Craig Clough and Isaac Monterose. Editing by John C. Davenport.  
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