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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ADVERTISE.COM, INC.,  
Plaintiff,  
v.  
AOL INC., AOL ADVERTISING, INC.  
f/k/a PLATFORM-A, INC. and DOES  
1-10,  
Defendants.

Case No. CV 09-5983 VBF (CWx) Lead Case

The Honorable Carla Woehrle

**PROTECTIVE ORDER**

AOL INC, and AOL ADVERTISING  
INC.,  
Plaintiffs,  
v.  
ADVERTISE.COM, INC. f/k/a  
INTERNEXT MEDIA CORP.,  
Defendant.

Consolidated with Case No. CV 09-7374 VBF (CWx)

1 AOL Inc. and AOL Advertising, Inc. f/k/a Platform-A, Inc. (“AOL”), and  
2 Advertise.com, Inc. f/k/a Internext Media Corp. (“Advertise.com”) (collectively  
3 referred to as the “Parties”), anticipate that the discovery process in this case will  
4 involve documents and other information containing trade secrets or other  
5 confidential research, development, or commercial information that may be subject  
6 to protection pursuant to Fed. R. Civ. P. 26(c)(7).

7 IT IS HEREBY ORDERED THAT:

8 1. A party or third party may designate any document, thing or  
9 information (collectively “material”), in whole or in part, as “Confidential” or  
10 “Confidential – Attorneys’ Eyes Only” under the terms of this Order, if counsel for  
11 such party in good faith believes that such material contains or reveals information  
12 falling within the categories described below corresponding to such designations  
13 and could cause substantial harm to the producing party if disclosed to persons  
14 other than those designated in paragraphs 8 and 9 below.

15 (a) the designation “Confidential” may be used for any non-  
16 public confidential, proprietary, commercially-sensitive, or trade  
17 secret information; and

18 (b) the designation “Confidential – Attorneys’ Eyes Only”  
19 shall be reserved for especially sensitive or confidential materials –  
20 namely computer programs, databases and source code; business  
21 financial information; marketing strategies; marketing expenditures;  
22 client lists; business forecasts; business plans and strategies and  
23 research regarding marketing and consumer behavior.

24 Such designation shall be made, where practical, by marking each page of a  
25 document, each separate part or component of a thing, or each separate item of  
26 other information in a conspicuous manner. If it is not practical to so mark the  
27 material itself, a container for or a tag attached to the material shall be so marked.  
28 The marking shall state: “CONFIDENTIAL” or “CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY" or a substantially similar legend (hereinafter  
2 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" as  
3 applicable). Nothing in this paragraph shall be construed as an express or implied  
4 agreement by the non-producing party that material designated as "Confidential"  
5 or "Confidential-Attorneys Eyes Only" is confidential. However, material so  
6 designated shall be treated in accordance with its designation, unless the non-  
7 producing party challenges the designation under Paragraph 7, below.

8         2. In lieu of marking the original of a document or the original of other  
9 material CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS' EYES ONLY  
10 prior to inspection, the producing party or its counsel may orally designate any  
11 document or other material being produced for inspection by counsel for a party as  
12 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS' EYES ONLY, thereby  
13 making it, and the information it contains, temporarily subject to this Order.  
14 However, each copy of such document or other material must be marked by the  
15 producing party as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS'  
16 EYES ONLY as required by this Order at the time it is subsequently delivered to  
17 receiving counsel in order to make the document and copies subject to this Order;  
18 provided, however, that all documents shall be deemed CONFIDENTIAL –  
19 ATTORNEYS' EYES ONLY and temporarily subject to this Order for seven (7)  
20 days from such delivery to permit the producing party to correct any inadvertent  
21 failure to mark delivered documents.

22         3. Information disclosed at a deposition may be designated as  
23 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS' EYES ONLY under the  
24 following circumstances: (a) by indicating on the record during the deposition that  
25 the testimony is CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS' EYES  
26 ONLY and subject to the provisions of this Order, in which case the court reporter  
27 will be directed to produce a separate, confidential transcript or to indicate on the  
28 caption page of the transcript that some or all of its contents are governed by this

1 Order and by marking such pages containing CONFIDENTIAL or  
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY material as CONFIDENTIAL  
3 or CONFIDENTIAL – ATTORNEYS’ EYES ONLY; or (b) within seven (7) days  
4 following receipt of the transcript by counsel for the designating party, by  
5 notifying all parties in writing of the specific pages of the transcript that are to be  
6 treated CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY  
7 thereafter.

8 4. Party Customer Communication. To the extent any documents or  
9 information is identified as CONFIDENTIAL or CONFIDENTIAL  
10 ATTORNEYS’ EYES ONLY, or subject to this Order, and contains identifying  
11 and/or contact information of a party’s customers and/or clients (“Customers”),  
12 notwithstanding the protections and requirements provided under the Federal Rules  
13 of Civil Procedure, no person, inclusive of counsel, shall issue or serve upon, or  
14 send to, a Customer, a deposition or document subpoena, or otherwise demand a  
15 Customer to appear to testify, or provide documents, for purposes of, or relative to,  
16 this litigation, without at least five (5) business days prior written notice to counsel  
17 of the respective other party before serving the Customer. Notice of the Customer  
18 subpoenas contemplated in this paragraph shall be effective upon receipt between  
19 9:00 a.m. and 5:00 p.m. PST. Service upon counsel of such notice by electronic  
20 mail (e-mail) shall constitute proper and sufficient service.

21 5. The inadvertent or unintentional disclosure by the producing party of  
22 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY  
23 information, either by way of document production or deposition testimony,  
24 regardless of whether the information was so designated at the time of disclosure,  
25 shall not be deemed a waiver in whole or in part of a party’s claim of  
26 confidentiality, either as to the specific information disclosed or as to any other  
27 information relating thereto on the same or related subject matter. Any such  
28 inadvertently or unintentionally disclosed CONFIDENTIAL or CONFIDENTIAL

1 – ATTORNEYS' EYES ONLY information not designated as such pursuant to  
2 paragraphs 1 through 4 shall be so designated, by giving written notice to all  
3 parties, as soon as reasonably possible after the producing party becomes aware of  
4 the inadvertent or unintentional disclosure. Upon such notice, and receipt of  
5 substitute copies bearing the appropriate confidentiality legend, the receiving party  
6 shall return said documents and things and not retain copies thereof, and shall  
7 thereafter treat information contained in said documents and any summaries or  
8 notes thereof as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS' EYES  
9 ONLY, as designated by the producing party, except to the extent such information  
10 has already been publicly disclosed, such as in a court filing.

11 6. If, in connection with this litigation any Party discloses information  
12 subject to a claim of attorney-client privilege, attorney work product protection, or  
13 any other privilege or protection provided ("Protected Information"), pursuant to  
14 Federal Rule of Evidence 502, the disclosure of such information shall not  
15 constitute or be deemed a waiver or forfeiture of any claim of privilege or work  
16 product protection that the producing party would otherwise be able to assert with  
17 respect to the Protected Information and its subject matter. If a claim of privilege  
18 is made by a producing party with respect to Protected Information, the receiving  
19 party shall, within five (5) business days, return or destroy all copies of the  
20 Protected Information and provide a certification of counsel that all such Protected  
21 Information has been returned or destroyed. If the receiving party believes that it  
22 has received Protected Information, the receiving party shall notify the producing  
23 party within five (5) business days of the receipt of such information. The  
24 receiving party shall, within ten (10) business days, return or destroy all copies of  
25 the Protected Information and provide a certification of counsel that all such  
26 Protected Information has been returned or destroyed. The receiving party may  
27 request that the producing party produce a privilege log with respect to Protected  
28 Information, which the producing party shall produce within ten (10) business days

1 of any such request. Any motion compelling production of Protected Information  
2 shall be filed under seal and shall not assert as a ground for its motion the fact or  
3 circumstance of the disclosure of the Protected Information. Nothing in this  
4 paragraph shall limit the right of any party to petition the Court for an in camera  
5 review of Protected Information.

6 7. Nothing in this Order shall be construed to prevent a party to this  
7 action at any time from opposing the designation of materials as CONFIDENTIAL  
8 or CONFIDENTIAL – ATTORNEYS’ EYES ONLY. A party opposing the  
9 designation of materials as CONFIDENTIAL or CONFIDENTIAL –  
10 ATTORNEYS’ EYES ONLY shall serve a written objection, including a statement  
11 of the grounds for the objection, on the designating party. The designating party  
12 will have ten (10) days following the receipt of the objection to withdraw its  
13 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY  
14 designation. If the CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’  
15 EYES ONLY designation is not withdrawn, the objecting party may move the  
16 Court for an order removing the CONFIDENTIAL or CONFIDENTIAL –  
17 ATTORNEYS’ EYES ONLY designation. The designating party has the burden  
18 of proof to establish the confidentiality of the CONFIDENTIAL or  
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY information.

20 8. “Confidential” Material – Material designated “Confidential” may  
21 only be disclosed, summarized, described, or otherwise communicated or made  
22 available in whole or in part, for the purposes set forth above, to the following  
23 persons:

- 24 a. attorneys of Neal, Gerber & Eisenberg, LLP; Mitchell,  
25 Silberberg & Knupp LLP; Williams & Connolly LLP; Buchanan  
26 Ingersoll & Rooney PC; Michelman & Robinson, LLP; and Howard  
27 Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation.

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1 b. AOL's and Advertise.com's respective in-house legal staff  
2 (including attorneys, secretaries, legal assistants, and clerks) with the  
3 exception of AOL's in-house "point-of-contact" attorney assigned to  
4 the Advertising.com business unit;

5 c. no more than five (5) employees of each of the parties ("Party  
6 Representative"), as necessary to provide assistance in the conduct  
7 and evaluation of this Action, provided that each Party Representative  
8 shall be identified by delivering to the Producing Party the name and  
9 position of the Party Representative in writing at least five (5)  
10 business days prior to such disclosure. If, within five (5) business  
11 days following receipt of such written identification, the Producing  
12 Party objects to such disclosure, the Party seeking disclosure must  
13 seek relief from the Court, either following Local Rule 7-19 or Local  
14 Rule 37. No disclosure shall be made to that Party Representative  
15 until the Court has ruled.

16 d. The employees of counsel listed in 8(a) above (including  
17 partners, secretaries, legal assistants, and clerks) actually assisting  
18 such counsel in preparation of this case; provided, however, that such  
19 employees have access to CONFIDENTIAL material only to the  
20 extent necessary to perform their duties;

21 e. Non-party experts or consultants retained to assist counsel of  
22 record in this case, subject to compliance with paragraph 10(a) below;

23 f. Court reporters involved in transcribing depositions or other  
24 proceedings in this litigation, provided that they agree to be subject to  
25 the terms of this Order and provided that they are provided  
26 CONFIDENTIAL information only to the extent necessary to perform  
27 the transcription;  
28

- 1 g. Persons who were the author of or are shown to have lawfully
- 2 received a copy of the Confidential information;
- 3 h. The Court;
- 4 i. Court personnel involved with this case; and
- 5 j. Members of the jury, if any, in this case.

6 9. “Confidential – Attorneys’ Eyes Only” Material. Material designated  
7 “Confidential – Attorneys’ Eyes Only” may be disclosed to only persons  
8 qualifying under paragraphs 8(a), 8(d), 8(e), 8(f), 8(g), 8(h), 8(i), or 8(j), and the  
9 following members of the AOL in-house legal department: James Villa, Sarah  
10 Harris, Anne Cornelius, Courtney Barton, Marissa Gahafer, A. Brian Dengler, (and  
11 their individual secretaries and legal assistants provided, however, that such  
12 support staff have access to CONFIDENTIAL – ATTORNEYS’ EYES ONLY  
13 material only to the extent necessary to perform their duties) (collectively, the  
14 “AOL AEO In-House Counsel”). Party Representatives designated in paragraph  
15 8(c) shall not receive access to or disclosure of CONFIDENTIAL –  
16 ATTORNEYS’ EYES ONLY material, absent the written consent of the producing  
17 party or order of the Court.

18 10. (a) Prior to disclosing any material designated as  
19 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY to any  
20 person described in Paragraph 8(e) above, a party shall provide a written  
21 identification of any such person to the opposing party, setting forth the name of  
22 the person, his or her occupation, business address, and a curriculum vitae. The  
23 parties shall be allowed to disclose materials designated as CONFIDENTIAL or  
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY to such persons unless, within  
25 seven (7) days after the identification of the retained person has been provided to  
26 the opposing party, the opposing party objects to the disclosure of materials  
27 designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES  
28 ONLY to the particular person. If objection to disclosure is made within the seven



1 (7) days, the objecting party shall, no later than three (3) days after objection,  
2 comply with either Local Rule 7-19 or Local Rule 37. If an objection is made and  
3 the objecting party petitions the Court for an order prohibiting the disclosure at  
4 issue, no materials designated as CONFIDENTIAL or CONFIDENTIAL –  
5 ATTORNEYS’ EYES ONLY shall be made available to the particular person until  
6 after the Court rules that disclosure can be made. If the objecting party fails to  
7 timely petition the Court for an order prohibiting the disclosure at issue, then  
8 materials designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’  
9 EYES ONLY may be made available to the particular person. Notwithstanding  
10 anything contained in this Order, discovery of experts will be governed by Federal  
11 Rule of Civil Procedure 26(b)(4).

12 (b) All persons authorized by Paragraph 8(e) above to have access to  
13 material designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’  
14 EYES ONLY must sign an Undertaking in the form of Exhibit A attached to this  
15 Order before gaining access to such material or information.

16 11. Each recipient of the CONFIDENTIAL or CONFIDENTIAL –  
17 ATTORNEYS’ EYES ONLY material shall maintain such material in a secure,  
18 safe area and shall exercise the same standard of care with respect to the storage,  
19 custody, use and dissemination of such material as is exercised by the recipient  
20 with respect to its own confidential and proprietary material. CONFIDENTIAL -  
21 ATTORNEYS' EYES ONLY material stored at AOL is to be segregated from  
22 other produced documents, password protected, and only accessible to the AOL  
23 AEO In-House Counsel.

24 12. Except upon consent of the designating party or upon order of the  
25 Court, any and all CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’  
26 EYES ONLY materials produced, served or otherwise made available by the  
27 designating party to another party during the course of this action, together with all  
28 reproductions, copies, abstracts, indices, or summaries of those materials, shall be

1 used only for preparation and presentation of this action and for no other purpose  
2 whatsoever.

3 13. Any papers filed with the Court that contain or reveal materials  
4 designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES  
5 ONLY shall be filed with an application to have the documents filed under seal in  
6 accordance with the procedures outlined in the Local Rules and shall not be  
7 publicly disclosed, except upon consent of the designating party or upon further  
8 order of the Court.

9 14. Within sixty (60) days after final determination of this action, all  
10 materials designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’  
11 EYES ONLY that have been served or otherwise made available by the  
12 designating party to another party during the course of this action, together with all  
13 reproductions, copies, abstracts, indices, summaries or any other embodiment of  
14 those materials, shall be destroyed or delivered to counsel for the designating  
15 party. Notwithstanding the above or the Undertaking in Exhibit A, counsel  
16 designated under paragraph 8(a) above may retain one copy of such material to  
17 maintain a complete file of the litigation; provided, however, that all further copies  
18 of CONFIDENTIAL and CONFIDENTIAL – ATTORNEYS’ EYES ONLY  
19 documents of the designating party shall be destroyed or delivered to counsel for  
20 the designating party.

21 15. If material or information designated CONFIDENTIAL or  
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY is disclosed to any person other  
23 than in the manner authorized by this Order, the party responsible for the  
24 disclosure must immediately bring all pertinent facts relating to such disclosure to  
25 the attention of the opposing party and the designating party, and without prejudice  
26 to the rights and remedies of the designating party, make every effort to prevent  
27 further unauthorized disclosure on its own part or on the part of the recipient of  
28 such information or material.



1 **EXHIBIT A**

2  
3 I, \_\_\_\_\_, declare and say that:

4 1. I live at \_\_\_\_\_. I am  
5 employed as [state position] \_\_\_\_\_ by [state name and  
6 address of employer] \_\_\_\_\_.

7 2. I have read the Protective Order entered in ADVERTISE.COM, INC.  
8 v. AOL INC., AOL ADVERTISING, INC. f/k/a PLATFORM-A, INC., Case No.  
9 CV09-5983 VBF (CWx); and AOL INC. and AOL ADVERTISING INC., f/k/a/  
10 Platform-A, Inc. v. ADVERTISE.COM, INC. f/k/a InterNext Media Corp., Case  
11 No. CV 09-7374 VBF (CWx) and a copy of Protective Order has been given to me.

12 3. I agree to be bound by the terms of the Protective Order and agree that  
13 any CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY  
14 material within the meaning of the Protective Order will be used by me only in  
15 connection with the furtherance of the above-referenced litigation.

16 4. I agree that I will not disclose or discuss CONFIDENTIAL or  
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY material with anyone other than  
18 the persons allowed access to such CONFIDENTIAL or CONFIDENTIAL –  
19 ATTORNEYS’ EYES ONLY material as set forth in Paragraphs 8 and 9 of the  
20 Order.

21 5. I understand that any disclosure or use of CONFIDENTIAL or  
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY material in any manner  
23 contrary to the provisions of the Protective Order may subject me to sanctions for  
24 contempt of the Court’s Order.

25 6. I agree to return all CONFIDENTIAL or CONFIDENTIAL –  
26 ATTORNEYS’ EYES ONLY material to counsel who provided it to me upon the  
27 conclusion of this action.  
28

