

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORKCAPITOL RECORDS LLC, *et al.*,

Plaintiffs,

-v-

REDIGI INC., *et al.*,

Defendants.

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 4/10/17No. 12-cv-95 (RJS)  
ORDERRICHARD J. SULLIVAN, District Judge:

On December 20, 2016, the Court issued an order partly granting Defendants-Appellants' ("ReDigi's") unsealing request and directing Plaintiffs-Appellees ("Capitol Records") to more thoroughly justify their request that the following documents remain under seal: docket numbers 74 (Exhibit 3), 76, 78, 90, and 91 (Exhibit 1). (Doc. No. 283.) The Court is now in receipt of a letter from Capitol Records, dated December 29, 2016, that argues for the continued sealing of those documents (Doc. No. 307), and a letter from ReDigi, also dated December 29, 2016, that responds to one part of Capitol Records' letter (Doc. No. 308).

Having considered the parties' letters, the Court finds that the continued sealing of the documents specified above is justified under the standard set forth in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006), which requires courts to weigh the presumption in favor of public access to judicial documents against "countervailing factors," including "the privacy interests of those resisting disclosure," *id.* at 120. Businesses sometimes have a strong countervailing privacy interest, sufficient to outweigh the presumption of open records, in maintaining the confidentiality of proprietary information. *See, e.g., In re N.Y. Times Co. to Unseal Wiretap & Search Warrant Materials*, 577 F.3d 401, 410 n.4 (2d Cir. 2009) ("When litigation requires disclosure of trade secrets, the court may disclose certain materials only to the attorneys


involved.”); *GoSMiLE, Inc. v. Dr. Jonathan Levine, D.M.D. P.C.*, 769 F. Supp. 2d 630, 649–50 (S.D.N.Y. 2011) (ordering continued sealing of documents containing “highly proprietary material” about marketing strategies, product development, costs, and budgeting). Here, the documents in question contain excerpts from contracts between Capitol Records and a third party, the terms of which are not publicly known and whose disclosure, according to Capitol Records, “would afford [competitors] an unwarranted and unfair business advantage.” (Doc. No. 307 at 2.) The Court previously found that Capitol Records’ interest in maintaining the confidentiality of the documents in question outweighed the presumption in favor of public access (*see* Doc. Nos. 71, 102), and the Court now finds that Capitol Records’ interest justifies continued sealing of those documents for the same reasons.

ReDigi’s letter indicates that it “believes the [contracts] to be highly relevant to its appeal” and that it intends to quote various provisions of the contracts in its briefs. (Doc. No. 308.) At this time, the Court does not find that ReDigi’s anticipated reliance on the contracts tips the balance in favor of unsealing the documents in question. ReDigi has access to the unredacted versions of the contracts, and if ReDigi needs to quote redacted portions, the parties can later request permission to file briefs in redacted form or renew a motion for unsealing.

Accordingly, IT IS HEREBY ORDERED THAT docket numbers 74 (Exhibit 3), 76, 78, 90, and 91 (Exhibit 1) shall remain under seal.

SO ORDERED.

Dated: January 10, 2017  
New York, New York

  
RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE