

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:07-cv-00347-D

LULU ENTERPRISES, INC.,

Plaintiff,

vs.

HULU, LLC, et al.,

Defendants.

**DEFENDANT'S MEMORANDUM OF
LAW IN SUPPORT OF MOTION TO
FILE DOCUMENTS UNDER SEAL
(Local Civil Rule 79.2, EDNC)**

Defendant, Hulu, LLC ("Hulu"), seeks to file certain confidential, proprietary and commercially sensitive business information under seal related to its opposition to Plaintiff Lulu Enterprises, Inc.'s motion for preliminary injunction.

NATURE OF MATTER BEFORE THE COURT

On September 5, 2007, Plaintiff filed this action against Hulu, LLC ("Hulu") asserting various claims, including unfair competition, federal cyberpiracy, unfair and deceptive trade practices and common law trademark infringement and unfair competition. *See* Compl., Counts I-IV. On September 10, 2007, Plaintiff filed its motion for a temporary restraining order, a preliminary injunction, and expedited discovery. By order dated September 14, 2007, and with the consent of the parties upon joint motion, the Court set Plaintiff's motion for preliminary injunction for hearing on October 16, 2007, with the parties' primary memoranda of law and supporting documentation in support of and in opposition to preliminary injunction to be filed with the Court no later than October 9, 2007, and reply memoranda to be filed with the Court no later than October 11, 2007.

On September 28, 2007, the Court entered an Order amending and adopting the Consent Protective Order proposed by the parties regarding the handling of confidential and competitively sensitive financial and business information designated as “Confidential Information” or “Attorneys’ Eyes Only Information.” Hulu files this memorandum of law in support of its Motion to File Documents Under Seal, submitted contemporaneously herewith.

STATEMENT OF THE FACTS

Hulu is a Delaware limited liability company with its principal office located in Los Angeles, California. Hulu was conceived in late 2006 as a joint venture of Fox and NBC Universal, was publicly announced in March 2007, and has been in business since that time. Hulu intends to provide its internet audience exceptional premium video content including current and past broadcast television programming and feature films. That content will be distributed over the internet by Hulu on its website, www.hulu.com, and together with some of the world’s leading Internet destination sites.

The documents requested by Hulu to be filed under seal in this matter include:

- Exhibit B to Plaintiff Lulu Enterprises, Inc.’s Reply in Support of Motion for Preliminary Injunction (“Exhibit B”).

Exhibit B contains confidential business information including excerpts and quotes from the deposition of Jason Kilar, CEO of Hulu, regarding sensitive business information concerning Hulu’s former and current business activities. Hulu has designated the entire Kilar deposition as “Attorneys’ Eyes Only” Information pursuant to the Court’s Order dated September 28, 2007. Counsel for the parties have conferred and Hulu requested that Exhibit B, which Plaintiff intends to file in support of its Reply Memorandum in support of its motion for preliminary injunction, remain confidential and be filed and retained under seal.

ARGUMENT

The Court Should Permit Exhibit B To Be Filed Under Seal

The Fourth Circuit has explicitly set forth the standards and procedure for maintaining documents under seal. A court considering a motion to maintain documents under seal must first determine the nature of the information and the source of the public's right to access. *Stone v. Univ. of Md. Medical Sys. Corp.*, 855 F.2d 178, 180 (4th Cir. 1988); *Hall v. United Air Lines Inc.*, 296 F. Supp. 2d 652, 679 (E.D.N.C. 2003). Although there is a presumption that the public may have access to judicial records and documents, this access is proscribed by a party's right to privacy and to protect trade secrets and confidential business information. *Glaxo Inc. v. Novopharm Ltd.*, 931 F. Supp. 1280, 1299 (E.D.N.C. 1996). Courts have uniformly held that a "well-settled exception to the right of access is the 'protection of a party's interest in confidential commercial information, such as a trade secret.'" *In re Gabapentin Patent Litig.*, 312 F. Supp. 2d 653, 664 (D. N.J. 2004).

Exhibit B contains confidential and competitively sensitive commercial information regarding the former and current business plans of Hulu, not generally known to the public, and as such should be permitted by the Court to be filed under seal in this matter. The public disclosure of such specific information could cause Hulu significant harm, disrupting its business relationships and prejudicing Hulu in the marketplace. Such information is commercially sensitive due to the current early stages of development of Defendant's business.

WHEREFORE, Defendant Hulu, LLC respectfully prays the Court for an Order allowing Exhibit B to be filed and retained under seal.

Respectfully submitted this the 22nd day of October, 2007.

/s/ Hayden J. Silver, III

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CERTIFICATE OF SERVICE

This is to certify that on this date the foregoing was electronically filed with the Clerk of the Court using the CM/ECF System which will send notice to the following CM/ECF participants:

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This the 22nd day of October, 2007.

/s/ Hayden J. Silver, III

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