

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.

N-F NEWSITE, LLC,

and

HULU TECH, INC.,

Defendants.

**DEFENDANT'S MOTION AND MEMORANDUM TO FILE
DOCUMENTS UNDER SEAL**

Defendant N-F NewSite, LLC ("NewSite"), by and through its undersigned counsel and pursuant to Local Rule of Civil Procedure 79.2 of the Eastern District of North Carolina hereby moves this Court for an order allowing NewSite to file under seal its Confidential Disclosure required by the Court in its September 12, 2007 Order. In support of its motion, NewSite provides the following:

1. NewSite attests that the Confidential Disclosure required by the Court contains proprietary and competitively sensitive information, including the launch date of the Hulu.com private beta site, the product at issue in this case.
2. Counsel for Plaintiff Lulu Enterprises, Inc. ("Lulu") has consented to this motion.

ARGUMENT AND CITATION OF AUTHORITY

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 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).

The Confidential Disclosure Statement required by the court contains highly competitive information relating to the launch date of Hulu.com and as such should be filed under seal.

WHEREFORE, Defendant N-F Newsite, LLC respectfully prays the Court for an Order allowing it to file its Confidential Disclosure under seal. A proposed Order is submitted with this Motion.

[Signature on Next Page]

Respectfully submitted this the 13th day of September, 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 13th day of September, 2007.

/s/ Hayden J. Silver, III

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EXHIBIT A

FILED UNDER SEAL