

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

Gibson Guitar Corporation,)	
)	
Plaintiff,)	
)	NO. 3:08-00279
v.)	
)	JURY DEMAND
Wal-Mart Stores, Inc., Target Corporation,)	
Kmart Corporation, Sears, Roebuck & Co.,)	Judge Wiseman
Amazon.com, Inc., GameStop Corporation,)	
Toys-R-Us, Inc., Harmonix Music Systems,)	Magistrate Judge Griffin
Inc., Viacom International, Inc., and)	
Electronic Arts, Inc.)	
)	
Defendants.)	

MOTION FOR LEAVE TO FILE UNDER SEAL

Defendants Wal-Mart Stores, Inc., Target Corporation, Kmart Corporation, Sears, Roebuck & Co., Amazon.com, Inc., GameStop Corporation, and Toys-R-Us, Inc. (collectively, the “Retailer Defendants”) jointly and respectfully request leave from the Court to file under seal the following documents, each of which is being filed contemporaneously herewith as a “Sealed Document” pursuant to Administrative Order No. 167, Section 5.07:

- 1) The Retailer Defendants’ Reply In Support Of Their Joint Motion to Dismiss or, in the Alternative, to Stay This Action in Favor of a First-Filed Action in the Central District of California; and
- 2) The Supplemental Declaration Of James M. Glass In Support Of The Retailer Defendants’ Joint Motion to Dismiss or, in the Alternative, to

Stay This Action in Favor of a First-Filed Action in the Central District of California.

Defendants Harmonix Music Systems, Inc., Viacom International, Inc., and Electronic Arts, Inc. do not oppose this motion, without waiving any right to seek production of the sealed version of the attached papers at a later date.

Because of the confidential nature of these papers, all of the Defendants have agreed to accept service of non-confidential, redacted versions of the above-identified materials.

The Retailer Defendants request that their Joint Motion to Dismiss or Stay (and papers filed in support thereof) be filed under seal for the following reasons:

1. Gibson and Activision entered into an agreement that includes a confidentiality provision (“Agreement”). The Agreement is attached as Exhibit B to the unredacted Declaration of James M. Glass.

2. In a March 25, 2008 letter, Gibson accused Activision of breaching the confidentiality provision of the Agreement. Specifically, Gibson accused Activision of breaching the confidentiality provision of the Agreement by “disclosing the existence of the Agreement,” and by referencing the Agreement in a press release. (Glass Decl. Ex. J at 2.)

3. The Retailer Defendants’ Reply is based in part on the Agreement and discusses the terms of the Agreement. To avoid any dispute with Gibson regarding the confidentiality provision of the Agreement, the Retailer Defendants hereby request leave from the Court to file under seal the unredacted version of their Reply as well as certain declarations and exhibits in support thereof.

The Retailer Defendants further request that should the Court grant this motion to seal, the Retailer Defendants’ Reply be deemed filed as of June 4, 2008.

Should the Court deny this motion to seal, the Retailer Defendants' request that all papers be returned to the Retailer Defendants, and not be made part of the public record.

WHEREFORE, Defendants Wal-Mart Stores, Inc., Target Corporation, Kmart Corporation, Sears, Roebuck & Co., Amazon.com, Inc., GameStop Corporation, and Toys-R-Us, Inc. respectfully request that the Court grant this Motion for Leave to File Under Seal.

Respectfully submitted,

s/ Samuel D. Lipshie

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing is being filed electronically.

Notice of this filing will be sent by operation of the Court's electronic filing system to:

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on this the 4th day of June, 2008.

s/ Samuel D. Lipshie

Samuel D. Lipshie