

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

I/P ENGINE, INC.

Plaintiff,

v.

AOL INC., *et al.*,

Defendants.

Civil Action No. 2:11-cv-512

MEMORANDUM IN SUPPORT OF MOTION TO SEAL (1) PORTIONS OF DEFENDANTS' OPENING BRIEF ON ISSUES RAISED IN THE COURT'S AUGUST 14 ORDER; (2) PORTIONS OF THE BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR LEAVE TO SUBMIT EVIDENCE AND OFFER PROOF IN SUPPORT OF DEFENDANTS' OPENING BRIEF ON ISSUES RAISED IN THE COURT'S AUGUST 14 ORDER; AND (3) EXHIBITS 1-3 OF THE DECLARATION OF HOWARD CHEN IN SUPPORT OF DEFENDANTS' MOTION FOR LEAVE TO SUBMIT EVIDENCE AND OFFER PROOF IN SUPPORT OF DEFENDANTS' OPENING BRIEF ON ISSUES RAISED IN THE COURT'S AUGUST 14 ORDER

In support of their Motion to Seal pursuant to Local Rule 5, and the Protective Order entered in this matter on January 23, 2012 (Doc. No. 85), Defendants Google Inc., Target Corporation, IAC Search & Media, Inc., Gannett Co., Inc. and AOL Inc. (collectively "Defendants") state the following:

1. Defendants have moved the court for leave to file under seal (1) Portions of Defendants' Opening Brief on Issues Raised in the Court's August 14 Order ("Portions of Defendants' Opening Brief"); (2) Portions of the Brief in Support of Defendants' Motion for Leave to Submit Evidence and Offer Proof in Support of Defendants' Opening Brief on Issues Raised in the Court's August 14 Order ("Portions of Defendants' Brief in Support of Motion for Leave"); and (3) Exhibits 1-3 to the Declaration of Howard Chen in Support of Defendants'

Motion for Leave to Submit Evidence and Offer Proof in Support of Defendants' Opening Brief on Issues Raised in the Court's August 14 Order ("Certain Exhibits to the Chen Declaration").

2. Portions of Defendants' Opening Brief, Portions of Defendants' Brief in Support of Motion for Leave, and Certain Exhibits to the Chen Declaration contain data that is confidential under the Protective Order.

3. There are three requirements for sealing court filings: (1) public notice with an opportunity to object; (2) consideration of less drastic alternatives; and (3) a statement of specific findings in support of a decision to seal and rejecting alternatives to sealing. *See, e.g., Flexible Benefits Council v. Feltman*, No. 1:08-CV-371, 2008 U.S. Dist. LEXIS 93039 (E.D. Va. Nov. 13, 2008) (citing *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000)). Defendants contend that Portions of Defendants' Opening Brief, Portions of Defendants' Brief in Support of Motion for Leave, and Certain Exhibits to the Chen Declaration contain data that is confidential under the Protective Order. Defendants specifically state as reasons for sealing the requested pleadings that they contain highly confidential business and trade secret information, all of which is not generally known, has economic value, and the disclosure of which would cause competitive harm if made widely public.

Defendants have made all reasonable efforts to narrowly limit their redactions in compliance with the law of this Circuit.

4. *In camera* copies of Portions of Defendants' Opening Brief, Portions of Defendants' Brief in Support of Motion for Leave, and Certain Exhibits to the Chen Declaration have been forwarded to the Court.

5. By filing narrowly redacted public pleadings, the Defendants have made all reasonable efforts to limit their redactions in compliance with the law of this Circuit.

6. For the sake of consistency with practices governing the case as a whole, Portions of Defendants' Opening Brief, Portions of Defendants' Brief in Support of Motion for Leave, and Certain Exhibits to the Chen Declaration should remain sealed and be treated in accordance with the terms and conditions of the Protective Order.

Accordingly, and in satisfaction of the requirements of Local Rule 5, Defendants respectfully ask the Court to seal Portions of Defendants' Opening Brief, Portions of Defendants' Brief in Support of Motion for Leave, and Certain Exhibits to the Chen Declaration.

DATED: October 30, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2013, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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