

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 PORTIONS OF
DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION TO COMPEL PLAINTIFF
TO SUPPLEMENT ITS INFRINGEMENT CONTENTIONS AND EXHIBITS K, L, M
AND N TO THE DECLARATION OF EMILY C. O'BRIEN IN SUPPORT OF
DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION TO COMPEL PLAINTIFF
TO SUPPLEMENT ITS INFRINGEMENT CONTENTIONS**

In support of their Motion to Seal pursuant to Local Rule 5, Defendants Google, Inc. and IAC Search & Media, Inc. (collectively, "Defendants") state the following:

1. Defendants move the Court for leave to file under seal Portions of Defendants' Brief in Support of Their Motion to Compel Plaintiff to Supplement its Infringement Contentions ("Portions of Defendants' Brief") and Exhibits K, L, M and N to the Declaration of Emily C. O'Brien in Support of Defendants' Brief in Support of Their Motion to Compel Plaintiff to Supplement its Infringement Contentions ("Certain Exhibits to O'Brien Declaration"). Portions of Defendants' Brief and Certain Exhibits to O'Brien Declaration contain data that is confidential under the Protective Order entered in this matter on January 23, 2012 (Dkt. No. 85) ("Protective Order").

2. There are three requirements for sealing court findings: (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. Feldman*, 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' and Certain Exhibits to O'Brien Declaration contain data that is and should be kept confidential. An *in camera* copy of Defendants' Brief and Certain Exhibits to O'Brien Declaration are being provided to the Court. In light of Defendants' concerns and the Protective Order, there appears to be no alternative that appropriately serves Defendants' expressed confidentiality concerns.

3. For the sake of consistency with practices governing the case as a whole, Defendants believe Portions of Defendants' Brief and Certain Exhibits to O'Brien 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 enter the Proposed Agreed Order sealing Portions of Defendants' and Certain Exhibits to O'Brien Declaration.

DATED: March 27, 2012

/s/ Stephen E. Noona
Stephen E. Noona
Virginia State Bar No. 25367
KAUFMAN & CANOLES, P.C.
150 West Main Street, Suite 2100
Norfolk, VA 23510
Telephone: (757) 624.3000
Facsimile: (757) 624.3169
senoona@kaufcan.com

David Bilsker
David A. Perlson
QUINN EMANUEL URQUHART &
SULLIVAN, LLP

50 California Street, 22nd Floor
San Francisco, California 94111
Telephone: (415) 875-6600
Facsimile: (415) 875-6700
davidbilsker@quinnemanuel.com
davidperlson@quinnemanuel.com

*Attorneys for Google Inc., Target Corporation,
IAC Search & Media, Inc., and Gannet Co., Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2012, 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:

Jeffrey K. Sherwood
Kenneth W. Brothers
DICKSTEIN SHAPIRO LLP
1825 Eye Street NW
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201
sherwoodj@dicksteinshapiro.com
brothersk@dicksteinshapiro.com

Donald C. Schultz
W. Ryan Snow
Steven Stancliff
CRENSHAW, WARE & MARTIN, P.L.C.
150 West Main Street, Suite 1500
Norfolk, VA 23510
Telephone: (757) 623-3000
Facsimile: (757) 623-5735
dschultz@cwm-law.com
wrsnow@cwm-law.com
sstancliff@cwm-law.com

Counsel for Plaintiff, I/P Engine, Inc.

Stephen E. Noona
Virginia State Bar No. 25367
KAUFMAN & CANOLES, P.C.
150 West Main Street, Suite 2100
Norfolk, VA 23510
Telephone: (757) 624-3000
Facsimile: (757) 624-3169
senoona@kaufcan.com

*Counsel for Google Inc.,
Target Corporation,
IAC Search & Media, Inc., and
Gannet Co., Inc.*

/s/ Stephen E. Noona

Stephen E. Noona

Virginia State Bar No. 25367

KAUFMAN & CANOLES, P.C.

150 West Main Street, Suite 2100

Norfolk, VA 23510

Telephone: (757) 624.3000

Facsimile: (757) 624.3169

senoona@kaufcan.com

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