

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 THE  
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT; EXHIBITS 4-9, 21-22, AND 25-31 TO THE DECLARATION OF  
HOWARD CHEN IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT; AND THE DECLARATION OF BARTHOLOMEW FURROW IN  
SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

In support of their Motion to Seal pursuant to Local Rule 5, and the Protective Order [Dk. 85] entered in this matter, Defendants Google, Inc., Target Corporation, IAC Search & Media, Inc., Gannet 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 the Memorandum in Support of Defendants' Motion for Summary Judgment ("Defendants' Memorandum in Support"); (2) Exhibits 4-9, 21-22 and 25-31 to the Declaration of Howard Chen in Support of Defendants' Motion for Summary Judgment ("Certain Exhibits to Chen Declaration"); and (3) the Declaration of Bartholomew Furrow in Support of Defendants' Motion for Summary Judgment ("the Furrow Declaration"). Defendants' Memorandum in Support, Certain Exhibits to Chen Declaration, and the Furrow 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 (4<sup>th</sup> Cir. 2000)). Defendants contend that Defendants’ Memorandum in Support, Certain Exhibits to Chen Declaration, and the Furrow Declaration contain data that is and should be kept confidential. *In camera* copies of Defendants’ Memorandum in Support, Certain Exhibits to Chen Declaration, and the Furrow 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 Defendants’ Memorandum in Support, Certain Exhibits to Chen Declaration, and the Furrow 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 Defendants’ Memorandum in Support, Certain Exhibits to Chen Declaration, and the Furrow Declaration.

DATED: September 12, 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

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

By: /s/ Stephen E. Noona  
Stephen E. Noona  
Virginia State Bar No. 25367  
KAUFMAN & CANOLES, P.C.  
150 W. Main Street, Suite 2100  
Norfolk, VA 23510  
Telephone: (757) 624-3000  
Facsimile: (757) 624-3169

Robert L. Burns  
FINNEGAN, HENDERSON, FARABOW, GARRETT &  
DUNNER, LLP  
Two Freedom Square  
11955 Freedom Drive  
Reston, VA 20190  
Telephone: (571) 203-2700  
Facsimile: (202) 408-4400

Cortney S. Alexander  
FINNEGAN, HENDERSON, FARABOW, GARRETT &  
DUNNER, LLP  
3500 SunTrust Plaza  
303 Peachtree Street, NE  
Atlanta, GA 94111

Telephone: (404) 653-6400

Facsimile: (415) 653-6444

*Counsel for Defendant AOL Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 12, 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 (**also served by hand delivery on 9/11/12**)  
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.*

/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