

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' MEMORANDUM IN SUPPORT OF MOTION IN LIMINE NO. 3 TO
EXCLUDE MARKETING AND HIGH-LEVEL NON-TECHNICAL MATERIALS
RELATED TO HISTORICAL CLICK-THROUGH RATE AND EXHIBITS F, H, I, AND
J TO THE DECLARATION OF JOSHUA L. SOHN IN SUPPORT OF THE
DEFENDANTS' VARIOUS MOTIONS IN LIMINE**

In support of their Motion to Seal pursuant to Local Rule 5, and the Protective Order [Dkt. No. 85] entered in this matter, 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' Memorandum in Support of Motion In Limine No. 3 to Exclude Marketing and High-Level Non-Technical Materials Related to Historical Click-Through Rate ("Portions of Defendants' Motion in Limine No. 3") and (2) Exhibits F, H, I, and J to the Declaration of Joshua L. Sohn in Support of the Defendants' Various Motions in Limine ("Exhibits F, H, I, and J to the Sohn Declaration"). Portions of Defendants' Motion in Limine No. 3 and Exhibits F, H, I, and J to the Sohn Declaration contain data that is confidential under the Protective Order entered in this matter on January 23, 2012 ("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 Portions of Defendants' Motion in Limine No. 3 and Exhibits F, H, I, and J to the Sohn Declaration *contain confidential material that should be sealed*. Defendants specifically state that as reasons for sealing the requested pleadings that:

(a) Portions of Defendants' Memorandum in Support of Motion In Limine #3 to Exclude Marketing and High-Level Non-Technical Materials Related to Historical Click-Through Rate along with Exhibit F to the Sohn Declaration (excerpt of deposition testimony) discuss details of the operation of Google's accused systems which are not generally known, that have economic value and would cause competitive harm if made public;

(b) Exhibit H to the Sohn Declaration discusses portions of a confidential internal Google document which are not generally known, that have economic value and would cause competitive harm if made public;

(c) Exhibit I to the Sohn Declaration (excerpt of deposition testimony) discusses confidential Google information regarding the accused products and the way products are tested which are not generally known, that has economic value and would cause competitive harm if made public; and

(d) Exhibit J to the Sohn Declaration (excerpt of deposition testimony) discusses Google's license agreements which are not generally known, that has economic value and would cause competitive harm if made public.

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

3. *In camera* copies of Portions of Defendants' Motion in Limine No. 3 and Exhibits F, H, I, and J to the Sohn Declaration are being provided to the Court for review. In light of

Defendants' concerns and the Protective Order, there appears to be no alternative that appropriately serves Defendants' expressed confidentiality concerns.

4. For the sake of consistency with practices governing the case as a whole, Defendants believe Portions of Defendants' Motion in Limine No. 3 and Exhibits F, H, I, and J to the Sohn 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' Motion in Limine No. 3 and Exhibits F, H, I, and J to the Sohn Declaration.

DATED: September 21, 2012

/s/ Stephen E. Noona

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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 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:

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