

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
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO PRECLUDE DR.
OPHIR FRIEDER FROM TESTIFYING REGARDING UNTIMELY OPINIONS THAT
WERE NOT DISCLOSED IN HIS ORIGINAL EXPERT REPORT AND OPINIONS
THAT HE NOW CONCEDES ARE INCORRECT AND CERTAIN MATERIALS FILED
IN SUPPORT THEREOF**

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 Memorandum in Support of Defendants' Motion to Preclude Testimony Dr. Ophir Frieder From Testifying Regarding Untimely Opinions That Were Not Disclosed In His Original Expert Report and Opinions That He Now Concedes Are Incorrect ("Portions of Defendants' Motion to Preclude Frieder") and (2) Exhibits A, B, G, and H to the Declaration of Jen Ghaussy in Support of the Defendants' Motion to Preclude Frieder ("Exhibits A, B, G, and H to the Ghaussy Declaration"). Portions of Defendants' Motion in to Preclude Frieder and Exhibits A, B, G, and H to the Ghaussy 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 to Preclude Frieder and Exhibits A, B, G, and H to the Ghaussy Declaration *contain confidential material that should be sealed*. Defendants specifically state that as reasons for sealing the requested pleadings that:

(a) Portions of Defendants' Motion in to Preclude Frieder discuss technical details of the operation of AdWords which are not generally known, that have economic value and would cause competitive harm if made public;

(b) Exhibits A and B to the Ghaussy Declaration discuss Google source code which is not generally known, that has economic value and would cause competitive harm if made public; and

(c) Exhibits G and H discuss confidential technical details regarding the accused products which are not generally known, that have 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 to Preclude Frieder and Exhibits A, B, G, and H to the Ghaussy 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 to Preclude Frieder and Exhibits A, B, G,

and H to the Ghaussy 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 to Preclude Frieder and Exhibits A, B, G, and H to the Ghaussy 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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