

**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
DECLARATION OF MICHAEL HOCHBERG IN SUPPORT OF PLAINTIFF'S AND
DEFENDANTS' MOTIONS TO SEAL**

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 Portions of the Declaration of Michael Hochberg in Support of Plaintiff's and Defendants' Motions to Seal ("Portions of the Hochberg Declaration"). Portions of the Hochberg 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 the Hochberg Declaration *contain confidential material that should be sealed*. Defendants specifically state as reasons for sealing the requested pleadings that: The Hochberg Declaration contains a detailed description of the confidential technical details of how the accused systems work, and in particular how Google determines which advertisements to serve. This information and related documents contain extraordinarily sensitive and valuable information regarding Google's products and the confidential manner in which they work, the public disclosure of which would cause Google economic and competitive harm and could hurt Google's customers by increasing the rankings of lower quality advertisements. A lack of Court protection of the aforementioned information would cause Google severe economic harm because the information could be used by Google's competitors to attempt to mimic Google's unique, successful, and, thus far, confidential details of its advertising system.

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

3. An *in camera* copy of the Hochberg Declaration is 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 the Hochberg 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 the Hochberg Declaration.

DATED: September 24, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 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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