

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: (1) PORTIONS OF DEFENDANTS' OPPOSITION TO PLAINTIFF I/P ENGINE'S FIRST MOTION IN LIMINE TO EXCLUDE INADMISSIBLE EVIDENCE, (2) PORTIONS OF DEFENDANTS' OPPOSITION TO PLAINTIFF I/P ENGINE'S SECOND MOTION IN LIMINE TO PRECLUDE LICENSE AGREEMENTS, AND (3) EXHIBITS E AND K TO THE DECLARATION OF MARGARET P. KAMMERUD IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S 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' Opposition to Plaintiff I/P Engine's First Motion in Limine to Exclude Inadmissible Evidence ("Portions of Defendants' Opposition to Plaintiff's First Motion in Limine"); (2) Portions of Defendants' Opposition to Plaintiff I/P Engine's Second Motion in Limine to Preclude License Agreements ("Portions of Defendants' Opposition to Plaintiff's Second Motion in Limine"); and (3) Exhibits E and K to the Declaration of Margaret P. Kammerud in Support of Defendants' Opposition to Plaintiff's Motions in Limine ("Exhibits E and K to the Kammerud Declaration"). Portions of Defendants' Opposition to Plaintiff's First Motion in

Limine, Portions of Defendants' Opposition to Plaintiff's Second Motion in Limine, Exhibits E and K to the Kammerud 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 (4<sup>th</sup> Cir. 2000)). Defendants contend Portions of Defendants' Opposition to Plaintiff's First Motion in Limine, Portions of Defendants' Opposition to Plaintiff's Second Motion in Limine, Exhibits E and K to the Kammerud Declaration contain data that is confidential under the Protective Order. Defendants specifically state as reasons for sealing the requested pleadings that:

- (a) Portions of Defendants' Opposition to Plaintiff I/P Engine's First Motion in Limine to Exclude Inadmissible Evidence contains confidential Google financial information and Plaintiff and third party confidential licensing information that is not generally known, that has economic value, and would cause competitive harm if made public;
- (b) Portions of Defendants' Opposition to Plaintiff I/P Engine's Second Motion in Limine to Preclude License Agreements contains confidential Google licensing information and confidential third party licensing information that is not generally known, that has economic value and would cause competitive harm if made public;
- (c) Exhibit E to Margaret P. Kammerud's Declaration in Support of Defendants' Opposition to Plaintiff's Motions in Limine contains confidential Google financial and licensing information which is not generally known, that has economic value and would cause competitive harm if made public; and
- (d) Portions of Exhibit K to Margaret P. Kammerud's Declaration in Support of Defendants' Opposition to Plaintiff's Motions in Limine contains confidential Google technical information which is 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' Opposition to Plaintiff's First Motion in Limine, Portions of Defendants' Opposition to Plaintiff's Second Motion in Limine, Exhibits E and K to the Kammerud 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' Opposition to Plaintiff's First Motion in Limine, Portions of Defendants' Opposition to Plaintiff's Second Motion in Limine, Exhibits E and K to the Kammerud 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' Opposition to Plaintiff's First Motion in Limine, Portions of Defendants' Opposition to Plaintiff's Second Motion in Limine, Exhibits E and K to the Kammerud Declaration.

DATED: September 27, 2012

/s/ Stephen E. Noona

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## **CERTIFICATE OF SERVICE**

I hereby certify that on September 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:

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