

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

_____		)	
I/P ENGINE, INC.,		)	
		)	
	Plaintiff,	)	
	v.	)	Civ. Action No. 2:11-cv-512
		)	
AOL, INC. et al.,		)	
		)	
	Defendants.	)	
_____		)	

**MEMORANDUM IN SUPPORT OF MOTION TO SEAL PLAINTIFF I/P ENGINE, INC.’S OPPOSITION TO DEFENDANTS’ MOTION IN LIMINE #3 TO EXCLUDE MARKETING AND HIGH-LEVEL NON-TECHNICAL MATERIALS RELATED TO HISTORICAL CLICK-THROUGH RATE ALONG WITH EXHIBITS 3-11**

In support of its Motion to Seal pursuant to Local Rule 5, Plaintiff I/P Engine, Inc. (“I/P Engine”) states the following:

1. I/P Engine moves the Court for leave to file under seal its Opposition to Defendants’ Motion in Limine #3 to Exclude Marketing and High-Level, Non-Technical Materials Related to Historical Click-Through Rate along with Exhibits 3-11. The aforementioned contain information that is marked as confidential by Defendants under the Protective Order entered in this matter on January 23, 2012 (D.I. 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 *Ashcroft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000)). I/P Engine’s

Opposition to Defendants' Motion in Limine #3 to Exclude Marketing and High-Level, Non-Technical Materials Related to Historical Click-Through Rate along with Exhibits 3-11 contains information that is marked by Defendants as confidential. An in camera copy of the aforementioned is being provided to the Court. In light of Defendant's representation that this is confidential material under the Protective Order, there appears to be no alternative that appropriately serves Defendants' confidentiality concerns.

3. The information contained in the Opposition and Exhibits 3-11 contains Google's proprietary and confidential information.

4. For the sake of consistency with practices governing the case as a whole, I/P Engine believes its Opposition and Exhibits 3-11 should remain sealed and be treated in accordance with the terms and conditions of the Protective Order.

5. Accordingly, and in satisfaction of the requirements of Local Rule 5, I/P Engine respectfully asks the Court to enter the Proposed Agreed Order sealing its Opposition to Defendants' Motion in Limine #3 to Exclude Marketing and High-Level, Non-Technical Materials Related to Historical Click-Through Rate along with Exhibits 3-11.

Dated: September 27, 2012

By: /s/ Jeffrey K. Sherwood  
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Counsel for Plaintiff I/P Engine, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of September, 2012, the foregoing  
**MEMORANDUM IN SUPPORT OF MOTION TO SEAL PLAINTIFF I/P ENGINE,  
INC.'S OPPOSITION TO DEFENDANTS' MOTION IN LIMINE #3 TO EXCLUDE  
MARKETING AND HIGH-LEVEL NON-TECHNICAL MATERIALS RELATED TO  
HISTORICAL CLICK-THROUGH RATE ALONG WITH EXHIBITS 3-11,** was served  
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/s/ Jeffrey K. Sherwood \_\_\_\_\_