

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 THEIR OPPOSITION TO
PLAINTIFF I/P ENGINE INC.'S MOTION TO EXCLUDE OPINIONS AND
TESTIMONY OF KEITH R. UGONE AND EXHIBITS A THROUGH E TO EMILY C.
O'BRIEN'S DECLARATION IN SUPPORT OF DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION TO EXCLUDE OPINIONS AND TESTIMONY OF KEITH R.
UGONE**

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 Their Opposition to Plaintiff I/P Engine Inc.'s Motion to Exclude Opinions and Testimony of Keith R. Ugone ("Portions of Defendants' Opposition to Plaintiff's Motion to Exclude Opinions and Testimony of Keith R. Ugone") and (2) Exhibits A through E to Emily C. O'Brien's Declaration in Support of Defendants' Opposition to Plaintiff's Motion to Exclude Opinions and Testimony of Keith R. Ugone ("Exhibits A through E to the O'Brien Declaration"). Portions of Defendants' Opposition to Plaintiff's Motion to Exclude Opinions and Testimony of Keith R. Ugone and Exhibits A through E to the O'Brien 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’ Opposition to Plaintiff’s Motion to Exclude Opinions and Testimony of Keith R. Ugone and Exhibits A through E to the O’Brien Declaration contain data that is confidential under the Protective Order entered in this matter on January 23, 2012 (“Protective Order”). Defendants specifically state that as reasons for sealing the requested pleadings that:

(a) Portions of Defendants’ Memorandum in Support of Their Opposition to Plaintiff I/P Engine Inc.’s Motion to Exclude Opinions and Testimony of Keith R. Ugone contain confidential third party licensing information, confidential Google licensing information, confidential I/P Engine licensing information, and confidential Google financial information that is not generally known, that has economic value, and would cause competitive harm if made public;

(b) Exhibits A to C Emily C. O’Brien’s Declaration in Support of Defendants’ Opposition to Plaintiff’s Motion to Exclude Opinions and Testimony of Keith R. Ugone contains confidential third party settlement and license agreements containing information that is not generally known, that has economic value, and would cause competitive harm if made public;

(e) Exhibit D to Emily C. O’Brien’s Declaration in Support of Defendants’ Opposition to Plaintiff’s Motion to Exclude Opinions and Testimony of Keith R. Ugone contains confidential third party licensing information, Google licensing information, I/P Engine licensing information, Google financial information, and Google technical information that is not generally known, that has economic value, and would cause competitive harm if made public; and

(f) Exhibit E to Emily C. O'Brien's Declaration in Support of Defendants' Opposition to Plaintiff's Motion to Exclude Opinions and Testimony of Keith R. Ugone contains confidential third party licensing information and Google licensing information that 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 Motion to Exclude Opinions and Testimony of Keith R. Ugone and Exhibits A through E to the O'Brien 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 Motion to Exclude Opinions and Testimony of Keith R. Ugone and Exhibits A through E to the O'Brien 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 Motion to Exclude Opinions and Testimony of Keith R. Ugone and Exhibits A through E to the O'Brien 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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