

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' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S SECOND MOTION FOR DISCOVERY SANCTIONS; (2) PORTIONS OF DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S THIRD MOTION FOR DISCOVERY SANCTIONS; (3) PORTIONS OF THE DECLARATION OF MARGARET KAMMERUD IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S THIRD MOTION FOR DISCOVERY SANCTIONS; (4) PORTIONS OF EXHIBITS A-E, G, I-K TO THE DECLARATION OF JENNIFER GHAUSSY IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S SECOND MOTION FOR DISCOVERY SANCTIONS; AND (5) EXHIBITS L-Q TO THE DECLARATION OF MARGARET KAMMERUD IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S THIRD MOTION FOR DISCOVERY SANCTIONS

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 Opposition to Plaintiff's Second Motion for Discovery Sanctions ("Opposition to Second Motion for Sanctions"); (2) Portions of Defendants' Memorandum in Opposition to Plaintiff's Third Motion for Discovery Sanctions ("Opposition to Third Motion for Sanctions"); Portions of the Declaration of Margaret Kammerud in Support of Defendants'

Opposition to Plaintiff's Third Motion for Discovery Sanctions ("Kammerud Declaration") (4) Portions of Exhibits A-E, G, I-K to the Declaration of Jennifer Ghaussy in Support of Defendants' Opposition to Plaintiff's Second Motion for Discovery Sanctions ("Exhibits A-E, G, I-K to Ghaussy Declaration"); and (5) Portions of Exhibits L-Q to the Kammerud Declaration.

2. Portions of the Opposition to Second Motion for Sanctions, the Opposition to Third Motion for Sanctions, the Kammerud Declaration, Exhibits A-E, G, I-K to Ghaussy Declaration and Exhibits L-Q to Kammerud Declaration contain data that is confidential under the Protective Order entered in this matter on January 23, 2012 ("Protective Order").

3. 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 that the Opposition to Second Motion for Sanctions, the Opposition to Third Motion for Sanctions, the Kammerud Declaration, Exhibits A-E, G, I-K to Ghaussy Declaration, and Exhibits L-Q to Kammerud Declaration contain data that is confidential under the Protective Order. Defendants specifically state as reasons for sealing the requested pleadings that:

(a) The Opposition to Second Motion for Sanctions contains confidential Google financial information and technical information that is not generally known, that has economic value, and would cause competitive harm if made public;

(b) The Opposition to Third Motion for Sanctions contains confidential Google technical information that is not generally known, that has economic value and would cause competitive harm if made public;

(c) The Kammerud Declaration contains confidential Google technical information about the operation of Google technology that is not generally known, that has economic value, and would cause competitive harm if made public;

(d) Exhibit A to the Ghaussy Declaration contains confidential Google financial information that is not generally known, that has economic value, and would cause competitive harm if made public; and

(e) Exhibit B to the Ghaussy Declaration contains confidential Google financial information that is not generally known, that has economic value, and would cause competitive harm if made public;

(f) Exhibit C to the Ghaussy Declaration contains confidential Google financial information that is not generally known, that has economic value, and would cause competitive harm if made public;

(g) Exhibit D to the Ghaussy Declaration contains confidential Google financial information that is not generally known, that has economic value, and would cause competitive harm if made public;

(h) Exhibit E to the Ghaussy Declaration contains confidential Google financial information that is not generally known, that has economic value, and would cause competitive harm if made public;

(i) Exhibit G to the Ghaussy Declaration contains confidential Google technical information about the operation of Google technology that is not generally known, that has economic value, and would cause competitive harm if made public;

(j) Exhibit I to the Ghaussy Declaration contains confidential Google financial information and technical information about the operation of Google technology that is not generally known, that has economic value, and would cause competitive harm if made public;

(k) Exhibit J to the Ghaussy Declaration contains confidential Google technical information about the operation of Google technology that is not generally known, that has economic value, and would cause competitive harm if made public;

(l) Exhibit K to the Ghaussy Declaration contains confidential Google financial information and technical information about the operation of Google technology that is not generally known, that has economic value, and would cause competitive harm if made public;

(m) Exhibit L to the Kammerud Declaration contains confidential Google technical information about the operation of Google technology that is not generally known, that has economic value, and would cause competitive harm if made public;

(n) Exhibit M to the Kammerud Declaration contains confidential Google technical information about the operation of Google technology that is not generally known, that has economic value, and would cause competitive harm if made public;

(o) Exhibit N to the Kammerud Declaration contains confidential Google technical information about the operation of Google technology that is not generally known, that has economic value, and would cause competitive harm if made public;

(p) Exhibit O to the Kammerud Declaration contains confidential Google technical information about the operation of Google technology that is not generally known, that has economic value, and would cause competitive harm if made public;

(q) Exhibit P to the Kammerud Declaration contains confidential Google technical information about the operation of Google technology that is not generally known, that has economic value, and would cause competitive harm if made public; and

(r) Exhibit Q to the Kammerud Declaration contains confidential Google technical information about the operation of Google technology 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.

4. *In camera* copies of Portions of the Opposition to Second Motion for Sanctions, the Opposition to Third Motion for Sanctions, the Kammerud Declaration, Exhibits A-E, G, I-K to Ghaussy Declaration, and Exhibits L-Q to Kammerud Declaration have been forwarded to the Court. In light of Defendants' concerns and the Protective Order, there appears to be no alternative that appropriately serves Defendants' expressed confidentiality concerns.

5. For the sake of consistency with practices governing the case as a whole, Defendants The Opposition to Second Motion for Sanctions, the Opposition to Third Motion for Sanctions, the Kammerud Declaration, Exhibits A-E, G, I-K to Ghaussy Declaration, and

Exhibits L-Q to 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 The Opposition to Second Motion for Sanctions, the Opposition to Third Motion for Sanctions, the Kammerud Declaration, Exhibits A-E, G, I-K to Ghaussy Declaration, and Exhibits L-Q to Kammerud Declaration.

DATED: October 1, 2012

/s/ Stephen E. Noona

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 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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