

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 REPLY
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, AND
EXHIBITS 34 AND 36 TO THE DECLARATION OF JOSHUA L. SOHN IN SUPPORT
OF DEFENDANTS' REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

In support of their Motion to Seal pursuant to Local Rule 5, and the Protective Order entered in this matter on January 23, 2012 (Dk. 85) ("Protective Order"), Defendants Google Inc., Target Corporation, IAC Search & Media, Inc., Gannet 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 Reply in Support of Defendants' Motion for Summary Judgment ("Defendants' Reply in Support") and Exhibits 34 and 36 to the Declaration of Joshua L. Sohn in Support of the Reply in Support of Defendants' Motion for Summary Judgment ("Certain Exhibits to Sohn the Declaration"). Portions of Defendants' Reply in Support and Certain Exhibits to the Sohn Declaration contain data that is confidential under the Protective Order entered in this matter.

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' Reply in Support and Certain Exhibits to the Sohn Declaration *contain confidential material that should be sealed*. Defendants specifically state as reasons for sealing the requested pleadings that:

- (1) Portions of Defendants' Reply in Support contain confidential Google technical information which is not generally known, that has economic value and would cause competitive harm if made public;
- (2) Exhibit 34 to the Sohn Declaration (excerpt of deposition testimony) contains confidential Google technical information which is not generally known, that has economic value and would cause competitive harm if made public; and
- (3) Exhibit 36 to the Sohn Declaration (deposition testimony) describes confidential Google technical information including source code 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' Reply in Support and Certain Exhibits to the Sohn 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' Reply in Support and Certain Exhibits to the Sohn 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' Reply in Support and Certain Exhibits to the Sohn Declaration.

DATED: October 1, 2012

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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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