

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 SUPPORT OF RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW ON NON-INFRINGEMENT OR NEW TRIAL; (2) PORTIONS OF DEFENDANTS' MEMORANDUM IN SUPPORT OF RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW ON DAMAGES OR NEW TRIAL; AND (3) CERTAIN EXHIBITS TO THE DECLARATION OF JOSHUA L. SOHN IN SUPPORT OF DEFENDANTS' RENEWED MOTIONS FOR JUDGMENT AS A MATTER OF LAW ON DAMAGES, INVALIDITY AND NON-INFRINGEMENT OR NEW TRIAL**

In support of their Motion to Seal pursuant to Local Rule 5, and the Protective Order entered in this matter on January 23, 2012 (Dkt. No. 85), 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 Renewed Motion for Judgment as a Matter of Law on Non-Infringement or New Trial ("Memorandum in Support of Renewed JMOL on Non-Infringement"); (2) Portions of Defendants' Memorandum in Support of Renewed Motion for Judgment as a Matter of Law on Damages or New Trial ("Memorandum in Support of Renewed JMOL on Damages"); and (3) Certain Exhibit to the Declaration of Joshua L. Sohn in Support of

Defendants' Renewed Motions for Judgment as a Matter of Law on Damages, Invalidity and Non-Infringement or New Trial ("Exhibit 1 to the Sohn Declaration").

2. Portions of the Memorandum in Support of Renewed JMOL on Non-Infringement, Memorandum in Support of Renewed JMOL on Damages, and Exhibit 1 to the Sohn Declaration contain data that is confidential under the 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 (4<sup>th</sup> Cir. 2000)). Defendants contend that Portions of the Memorandum in Support of Renewed JMOL on Non-Infringement, Memorandum in Support of Renewed JMOL on Damages, and Exhibit 1 to the Sohn Declaration contain data that is confidential under the Protective Order. Defendants specifically state as reasons for sealing the requested pleadings that:

(a) The Memorandum in Support of Renewed JMOL on Non-Infringement contains confidential Google financial information that is not generally known and would cause competitive harm if made public, was discussed after the Court closed the courtroom during trial, and/or is subject to a pending motion to redact the transcript (Dkt. 802);

(b) The Memorandum in Support of Renewed JMOL on Damages contains confidential Google financial information that is not generally known and would cause competitive harm if made public, and/or is subject to a pending motion to redact the transcript (Dkt. 802); and

(c) Exhibit 1 to the Sohn Declaration contains confidential Google financial information that is not generally known, would cause competitive harm if made public, and/or is subject to a pending motion to redact the transcript (Dkt. 802).

Defendants have made all reasonable efforts to narrowly tailor limit their redactions in compliance with the law of this Circuit.

4. *In camera* copies of Portions of the Memorandum in Support of Renewed JMOL on Non-Infringement, Memorandum in Support of Renewed JMOL on Damages, and Exhibit 1 to the Sohn Declaration have been forwarded to the Court. The Court also finds that by filing narrowly redacted public pleadings, the Defendants have made all reasonable efforts to limit their redactions in compliance with the law of this Circuit.

5. For the sake of consistency with practices governing the case as a whole, Portions of the Memorandum in Support of Renewed JMOL on Non-Infringement, Memorandum in Support of Renewed JMOL on Damages, and Exhibit 1 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 the Memorandum in Support of Renewed JMOL on Non-Infringement, Memorandum in Support of Renewed JMOL on Damages, and Exhibit 1 to the Sohn Declaration.

DATED: December 18, 2012

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 18, 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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