

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 OPPOSITION TO PLAINTIFF'S RULE 59
MOTION FOR A NEW TRIAL ON THE DOLLAR AMOUNT OF DAMAGES AND
EXHIBIT 2 TO THE DECLARATION OF MARGARET P. KAMMERUD FILED IN
SUPPORT THEREOF**

In support of their Motion to Seal pursuant to Local Rule 5, and the Protective Order entered in this matter on January 23, 2012 (Doc. 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 Portions of Defendants' Memorandum in Opposition to Plaintiff's Rule 59 Motion for a New Trial on the Dollar Amount of Damages ("Memorandum in Opposition to Rule 59 Motion") and Exhibit 2 to the Declaration of Margaret P. Kammerud filed in support of that Opposition ("Exhibit 2 to the Kammerud Declaration").

2. Portions of the Memorandum in Opposition to Rule 59 Motion and Exhibit 2 to the Kammerud Declaration contain data that is confidential under the Protective Order.

3. There are three requirements for sealing court filings: (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 Portions of the Memorandum in Opposition to Rule 59 Motion and Exhibit 2 to the Kammerud Declaration contain data that is confidential under the Protective Order. Defendants specifically state as reasons for sealing the requested pleadings that:

(a) Portions of the Memorandum in Opposition to the Rule 59 Motion reference financial information that is not generally known, that has economic value, and would cause competitive harm if made widely public. Additionally, the material is subject to a pending motion to redact certain transcripts (Doc. No. 802); and

(b) Exhibit 2 to the Kammerud Declaration references financial information that is not generally known, that has economic value, and would cause competitive harm if made widely public. Additionally, the material is subject to a pending motion to redact certain transcripts. (Doc. No. 802.)

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

4. *In camera* copies of Portions of the Memorandum in Opposition to Rule 59 Motion and Exhibit 2 to the Kammerud 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 Opposition to Rule 59 Motion and Exhibit 2 to the 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 Portions of the Memorandum in Opposition to Rule 59 Motion and Exhibit 2 to the Kammerud Declaration.

DATED: January 25, 2013

/s/ Stephen E. Noona

Stephen E. Noona
Virginia State Bar No. 25367
KAUFMAN & CANOLES, P.C.
150 West Main Street, Suite 2100
Norfolk, VA 23510
Telephone: (757) 624-3000
Facsimile: (757) 624-3169
senoona@kaufcan.com

David Bilsker
David A. Perlson
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
50 California Street, 22nd Floor
San Francisco, California 94111
Telephone: (415) 875-6600
Facsimile: (415) 875-6700
davidbilsker@quinnemanuel.com
davidperlson@quinnemanuel.com

*Counsel for Google Inc., Target Corporation,
IAC Search & Media, Inc., and Gannett Co., Inc.*

/s/ Stephen E. Noona

Stephen E. Noona
Virginia State Bar No. 25367
KAUFMAN & CANOLES, P.C.
150 W. Main Street, Suite 2100
Norfolk, VA 23510
Telephone: (757) 624-3000
Facsimile: (757) 624-3169
senoona@kaufcan.com

Robert L. Burns
FINNEGAN, HENDERSON, FARABOW, GARRETT &
DUNNER, LLP

Two Freedom Square
11955 Freedom Drive
Reston, VA 20190
Telephone: (571) 203-2700
Facsimile: (202) 408-4400

Cortney S. Alexander
FINNEGAN, HENDERSON, FARABOW, GARRETT &
DUNNER, LLP
3500 SunTrust Plaza
303 Peachtree Street, NE
Atlanta, GA 94111
Telephone: (404) 653-6400
Facsimile: (415) 653-6444
Counsel for Defendant AOL Inc.

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2013, 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:

Jeffrey K. Sherwood
Kenneth W. Brothers
DICKSTEIN SHAPIRO LLP
1825 Eye Street NW
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201
sherwoodj@dicksteinshapiro.com
brothersk@dicksteinshapiro.com

Donald C. Schultz
W. Ryan Snow
Steven Stancliff
CRENSHAW, WARE & MARTIN, P.L.C.
150 West Main Street, Suite 1500
Norfolk, VA 23510
Telephone: (757) 623-3000
Facsimile: (757) 623-5735
dschultz@cwm-law.com
wrsnow@cwm-law.com
sstancliff@cwm-law.com

Counsel for Plaintiff, I/P Engine, Inc.

/s/ Stephen E. Noona
Stephen E. Noona
Virginia State Bar No. 25367
KAUFMAN & CANOLES, P.C.
150 West Main Street, Suite 2100
Norfolk, VA 23510
Telephone: (757) 624-3000
Facsimile: (757) 624-3169
senoona@kaufcan.com