

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) EXHIBIT 1 TO THE DECLARATION OF KEITH UGONE, PH.D., IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF I/P ENGINE, INC.'S NOTICE OF CALCULATION OF SUPPLEMENTAL DAMAGES, PREJUDGMENT INTEREST AND POST-JUDGMENT INTEREST; AND (2) EXHIBIT B TO THE DECLARATION OF MARGARET P. KAMMERUD 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 (1) Exhibit 1 to the Declaration of Keith Ugone, Ph.D., in Support of Defendants' Opposition to Plaintiff I/P Engine, Inc.'s Notice of Calculation of Supplemental Damages, Prejudgment Interest and Post-Judgment Interest ("Exhibit 1 to the Ugone Declaration"), and (2) Exhibit B to the Declaration of Margaret Kammerud in Support of Defendants' Opposition to Plaintiff I/P Engine, Inc.'s Notice of Calculation of Supplemental Damages, Prejudgment Interest and Post-Judgment Interest ("Exhibit B to the Kammerud Declaration").

2. Exhibit 1 to the Ugone Declaration, and Exhibit B 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 Exhibit 1 to the Ugone Declaration, and Exhibit B to the Kammerud Declaration contain data that is confidential under the Protective Order. Defendants specifically state as reasons for sealing the requested pleadings that: Exhibit 1 to the Ugone Declaration, and Exhibit B to the Kammerud Declaration contain confidential financial information, all of which is not generally known, has economic value, and the disclosure of which would cause competitive harm if made widely public.

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

4. *In camera* copies of Exhibit 1 to the Ugone Declaration, and Exhibit B to the Kammerud Declaration have been forwarded to the Court. 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. 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.

6. For the sake of consistency with practices governing the case as a whole, Exhibit 1 to the Ugone Declaration, and Exhibit B 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 Exhibit 1 to the Ugone Declaration, and Exhibit B to the Kammerud Declaration.

DATED: August 26, 2013

/s/ Stephen E. Noona

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 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:

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