

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARENDI S.A.R.L.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 13-919-JLH
)	
GOOGLE LLC,)	REDACTED
)	PUBLIC VERSION
Defendant.)	

**NON-PARTY MICROSOFT CORP.’S UNOPPOSED MOTION TO SEAL PORTIONS
OF THE TRIAL TRANSCRIPTS AND EXHIBITS**

Non-party Microsoft Corp. (“Microsoft”) respectfully moves to seal limited portions of the trial transcripts and certain exhibits relating to Microsoft’s highly confidential settlement and licensing agreements. Pursuant to D. Del. L.R. 7.1.1, Microsoft conferred with Plaintiff Arendi S.A.R.L. (“Arendi”) and Defendant Google LLC (“Google”) regarding whether they opposed this request to seal. Both parties indicated that they do not oppose.¹ The bases for this Motion are set forth below.

Microsoft’s proposed redactions are highlighted in the attached sealed Exhibit A.²

I. FACTUAL BACKGROUND

This Court presided over a six-day jury trial from April 24, 2023 to May 2, 2023. During the proceedings, testimony was elicited, and exhibits were admitted, concerning both Microsoft

¹ Although Arendi does not oppose Microsoft’s request to seal portions of the transcripts and exhibits identified in this motion, Arendi indicated that its non-opposition should not be interpreted as agreement that such information is properly subject to sealing. Arendi also disagrees with Microsoft’s assertion that its damages expert, Mr. Weinstein, disclosed information in violation of the Arendi-Microsoft agreements or protective order in this case. *See infra* Section I.

² Because Microsoft was only given access to versions of the trial transcripts that already contained redactions related to other third parties’ confidential information (*see* D.I. 570), to avoid confusion, Microsoft has highlighted, rather than redacted, the information it seeks to seal.

and Microsoft Multi-Modality Inc.'s ("MMI")³ settlement and licensing agreements with Plaintiff Arendi. Specifically, Arendi's damages expert, Mr. Weinstein (*see* Day 3 Tr., *supra* Section III(2)), and Google's damages expert, Mr. Kidder (*see* Day 6 Tr., *supra* Section III(3)), disclosed the confidential settlement/licensing amount Microsoft paid in both agreements. Arendi's owner, Mr. Hedloy, also disclosed the consideration paid in both agreements (*see* Day 1 Tr., *supra* Section III(1)). The settlement and licensing agreement documents were admitted into evidence (PX-75, PX-78, DTX-971). In most instances, the courtroom was sealed when the evidence regarding both agreements was discussed. However, on Day 3, Arendi's damages expert, Mr. Weinstein, disclosed the financial terms of the Microsoft Agreements in open court, without the courtroom being sealed, and without notice to Microsoft, in violation of the terms of those Agreements and the Protective Order in the case. Mr. Weinstein apparently made a similar disclosure of the financial terms of the Apple settlement agreement, leading to Apple filing a motion for sanctions against Arendi, Arendi's counsel, and Mr. Weinstein for disclosure of such information. D.I. 538. That motion remains pending.

On May 25, 2023, Microsoft filed a notice of intent to redact and/or seal limited portions of the trial transcripts. D.I. 556. On June 9, Microsoft filed a stipulation and proposed order in which the parties agreed to allow Microsoft's outside counsel to access portions of the trial transcripts with third-party confidential information unrelated to Microsoft's agreements redacted. D.I. 565. On June 15, the Court ordered the stipulation. D.I. 570. Microsoft received the redacted transcripts from Arendi's counsel on July 7.

³ Microsoft Multi-Modality Inc. is a subsidiary of Microsoft.

Relatedly, non-party Apple filed a motion to seal similar materials, including financial information related to its licensing/settlement agreement with Arendi. *See* D.I. 491, 537. This motion was granted by the Court on June 6. D.I. 562.

II. LEGAL STANDARD

Although there is a “presumptive right of public access” to judicial proceedings, the right is not absolute. *In re Avandia Marketing*, 924 F.3d 662, 672 (3d Cir. 2019) (quoting *In re Cendant Corp.*, 260 F.3d 183, 192–93 (3d Cir. 2001) and *Bank of Am. Nat’l Tr. & Sav. Ass’n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 344 (3d Cir. 1986)). “The party seeking to overcome the presumption of access bears the burden of showing ‘that the interest in secrecy outweighs the presumption.’” *Id.* (quoting *Bank of Am.*, 800 F.2d at 344). The presumption of public access is overcome where the material sought to be protected is “the kind of information that courts will protect and that disclosure will work a clearly defined and serious injury to the party seeking closure.” *Id.* (internal quotation marks omitted); *see also Littlejohn v. Bic Corp.*, 851 F.2d 673, 677-78 (3d Cir. 1988) (recognizing that the right of access to judicial proceedings and records “is not absolute” and stating that “[c]ourts may deny access to judicial records, for example, where they are sources of business information that might harm a litigant’s competitive standing.”).

Good cause must be demonstrated to justify redacting a judicial transcript. *See Mosaid Technologies Inc. v. LSI Corp.*, 878 F. Supp. 2d 503, 507 (D. Del. 2012). To determine whether “good cause” to seal exists, a court may look to a number of things, including (1) whether disclosure will violate any privacy interests; (2) whether the party benefiting from the order of confidentiality is a public entity or official; and (3) whether the case involves issues important to the public. *See Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995). The Supreme Court has acknowledged that “courts have refused to permit their files to serve as ... sources of

business information that might harm a litigant's competitive standing." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S 589, 598 (1978); *see also Littlejohn*, 851 F.2d at 677-78 (recognizing that the right of access to judicial proceedings "is not absolute" and that "[c]ourts may deny access to judicial records, for example, where they are sources of business information that might harm a litigant's competitive standing"). The Third Circuit has also recognized that "if a case involves private litigants, and concerns matters of little legitimate public interest, that should be a factor weighing in favor of granting or maintaining an order of confidentiality." *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 788 (3d Cir. 1994).

III. INFORMATION TO BE SEALED

Microsoft respectfully requests to seal exhibits and limited portions of the trial transcripts consistent with Third Circuit law. Specifically, with respect to the non-redacted portions of the trial transcripts to which Microsoft has access,⁴ it requests sealing the confidential information found on the following pages/lines:

1. The Day 1 Transcript:
 - a) Page 157, lines 1, 4
 - b) Page 158, lines 7, 16
 - c) Page 164, line 8
 - d) Page 243, lines 10, 13, 17
 - e) Page 250, line 16
 - f) Corresponding portions of the index related to these redactions

2. The Day 3 Transcript:
 - a) Page 576, lines 20-21
 - b) Page 577, lines 6, 12
 - c) Page 578, line 12
 - d) Page 579, line 2
 - e) Page 589, line 19

⁴ Microsoft has been informed that the sealed trial transcripts have recently been filed on the docket. *See* D.I. 577-585. The page/line numbers noted in Microsoft's motion, however, correspond to the versions of the transcripts it received from Arendi's counsel. To the extent that there are any discrepancies between the page/line numbers of the transcripts, Microsoft requests that the confidential information highlighted in Ex. A should control.

- f) Page 590, line 12
- g) Page 591, lines 10-11, 15
- h) Page 618, line 11, 24
- i) Page 619, lines 4, 6, 9, 11
- j) Page 621, lines 2, 7, 12, 17
- k) Page 626, line 25
- l) Page 627, line 12
- m) Page 665, line 3
- n) Corresponding portions of the index related to these redactions

3. The Day 6 Transcript:

- a) Page 1286, line 5
- b) Page 1290, line 9
- c) Page 1292, line 21
- d) Page 1294, line 17
- e) Page 1322, line 13
- f) Page 1323, lines 5, 9-13, 25
- g) Page 1324, lines 4, 7, 11-15, 24-25
- h) Corresponding portions of the index related to these redactions

4. Exhibits PX-75 (Microsoft Agreement), PX-78 (MMI Agreement), and DTX-971 (Microsoft Agreement) in their entirety

IV. ARGUMENT

The testimony and exhibits that Microsoft seeks to seal contain information relating to highly confidential settlement and licensing agreements. Similar to non-party Apple's requested redactions, which were granted by the Court (*see* D.I. 562), Microsoft's requested redactions are narrowly tailored to seek to redact either the exact amount paid by Microsoft in the Microsoft and MMI Agreements or information from which the exact amounts paid could be calculated. Notably, Microsoft does not seek to redact other mentions of the Microsoft and MMI Agreements, including references made to the recitals of those Agreements.

It is well-established that parties have a "legitimate private interest in keeping confidential the terms of a confidential business agreement not otherwise available to the public." *Mars, Inc. v. JCM Am. Corp.*, 2007 WL 496816, at *2 (D.N.J. Feb. 13, 2007). Public disclosure of information parties have agreed to keep confidential may "dampen [the party's] ability to negotiate

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