

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

OANDA CORPORATION,

Plaintiff,

v.

GAIN CAPITAL HOLDINGS, INC., and
GAIN CAPITAL GROUP, LLC,

Defendants.

Civil Action No. 20-05784-ZNQ-DEA

**ORDER GRANTING
MOTION TO SEAL**

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THIS MATTER having been brought before the Court upon the Motion of Defendants GAIN Capital Holdings, Inc. and GAIN Capital Group, LLC (“Defendants”) pursuant to Local Civil Rule 5.3(c), to permanently seal portions of Plaintiff OANDA Corporation’s (“Plaintiff”) January 7, 2022 Letter to the Honorable Douglas E. Arpert, U.S.M.J. (ECF No. 157) (the “Confidential Document”); and the Court having considered the papers submitted in support of the within Motion; and the Court having found that the standards of Local Civil Rule 5.3(c)(3) have been met and support the sealing of the Confidential Document as set forth below; and for the reasons set forth in the record of the proceedings, and for other and good cause having been shown;

The Court adopts the following Findings of Fact and Conclusions of Law:

I. The Nature of the Materials or Proceedings at Issue

A. Findings of Fact

1. Defendants seek to permanently seal its confidential information in the Confidential Document.

2. Local Civil Rule 5.3(c) requires the moving party to show:

(a) the nature of the materials or proceedings at issue;

- (b) the legitimate private or public interests which warrant the relief sought;
- (c) the clearly defined and serious injury that would result if the relief sought is not granted; and
- (d) why a less restrictive alternative to the relief sought is not available.

3. The Confidential Document that is the subject of this Motion reveal, contains and/or reflects sensitive proprietary commercial and business information regarding Defendants' products and has been designated as such under the Discovery Confidentiality Order entered in this matter (ECF No. 43). Further, this proprietary information is presently confidential and unavailable to the public.

B. Conclusions of Law

4. Common law recognizes a public right of access to judicial proceedings and records. *Goldstein v. Forbes (In re Cendant Corp.)*, 260 F.3d 183, 192 (3d Cir. 2001) (citing *Littlejohn v. BIC Corp.*, 851 F.2d 673, 677-78 (3d Cir. 1988)). The party seeking to seal any part of a judicial record bears the burden of demonstrating that “the material is the kind of information that courts will protect.” *Miller v. Indiana Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994) (quoting *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984)).

5. This Court has the power to seal where confidential information may be disclosed to the public. Fed. R. Civ. P. 26(c)(1)(G) allows the court to protect materials containing “trade secret[s] or other confidential research, development, or commercial information[,]” upon motion by a party, to prevent harm to a litigant’s competitive standing in the marketplace. *See Zenith Radio Corp. v. Matsushita Elec. Indus. Co., Ltd.*, 529 F. Supp. 866, 889-91 (E.D. Pa. 1981).

II. The Legitimate Private or Public Interest That Warrants the Relief Sought

A. Findings of Fact

6. The Confidential Document sought to be sealed consists of information that

Defendants assert is confidential and proprietary.

7. Defendants have an interest in not publicly disclosing this information, and relies on the confidentiality of such information to gain a competitive advantage in the online trading industry.

B. Conclusions of Law

8. Courts have recognized that the presumption of public access is not absolute and may be rebutted. *Republic of the Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 662 (3d Cir. 1991). “Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.” *Littlejohn*, 851 F.2d at 678 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

9. Courts may deny access to and seal a document when it encompasses business information that might harm a litigant’s competitive standing. *See Littlejohn*, 851 F.2d at 678 (citations omitted).

10. The District of New Jersey has held that the inclusion of trade secrets and other confidential information in documents warrant the sealing of such documents. “A well-settled exception to the right of access is the ‘protection of a party’s interest in confidential commercial information, such as a trade secret, where there is a sufficient threat of irreparable harm.’” *In re Gabapentin Patent Litig.*, 312 F. Supp. 2d 653, 664 (D.N.J. 2004) (citation omitted). “The presence of trade secrets or other confidential information weighs against public access and, accordingly, documents containing such information may be protected from disclosure.” *Id.* (citations omitted).

III. Clearly Defined and Serious Injury Would Result if the Relief Sought Is Not Granted

A. Findings of Fact

11. In light of its reference to and disclosure of non-public business information that is otherwise unavailable to third parties, the public disclosure of the Confidential Document would pose a substantial risk of harm to Defendants' legitimate proprietary interests and competitive position.

12. If the Confidential Document were to become publicly available, Defendants' competitors could potentially use that information in the highly competitive online trading marketplace.

B. Conclusions of Law

13. The District Court has discretion to balance the factors for and against access to court documents. *See Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 781 (3d Cir. 1994).

14. Protection of a party's interest in confidential commercial information, such as a trade secret, is a sufficient threat of irreparable harm, and is clearly defined as a serious injury. *See Publiker*, 733 F.2d at 1071.

IV. No Less Restrictive Alternative is Available

A. Findings of Fact

15. The request to seal the Confidential Document is tailored to restrict access only to Defendants' confidential and proprietary nonpublic business information.

16. The disclosure of this confidential, proprietary information would pose a financial and competitive risk to Defendants. Accordingly, the only way to protect Defendants' confidential interests is to seal the Confidential Document.

17. Only those portions of the Confidential Document containing confidential

and proprietary information will be sealed.

B. Conclusions of Law

18. The sealing of confidential documents and information is an accepted practice in the District of New Jersey. *See, e.g., In re Gabapentin Patent Litig.*, 312 F. Supp. 2d 653 (D.N.J. 2004).

19. Under Local Civil Rule 5.3(c)(3), the party seeking to seal documents must describe why no less restrictive alternative to the relief sought is available.

20. For all the above reasons, and because Defendants' interests in their confidential information identified herein outweigh the minimal, if any, public interest in its disclosure, there is good cause to grant the instant Motion to Seal with respect to Defendants' confidential information identified below.

THEREFORE, for the above reasons, it is on this 10th day of April, 2023,

ORDERED that Defendants' Motion, pursuant to Local Civil Rule 5.3(c), to permanently seal portions of Plaintiff's January 7, 2022 Letter to the Honorable Douglas E. Arpert, U.S.M.J. (ECF No. 157) is hereby **GRANTED**; and it is further

ORDERED that Plaintiff's January 7, 2022 Letter to the Honorable Douglas E. Arpert, U.S.M.J. (ECF No. 157) shall be permanently sealed and maintained under seal by the Court.



HONORABLE DOUGLAS E. ARPERT
UNITED STATES MAGISTRATE JUDGE

--terminates ECF No. 162