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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ASIS INTERNET SERVICES,

No. C-05-05124 JCS

Plaintiff,

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR PRELIMINARY INJUNCTION AND GRANTING IN PART AND DENYING IN PART COUNTER-MOTION TO DISCLOSE DOCUMENTS TO EXPERT WITNESS [Docket Nos. 268, 293]

v.

OPTIN GLOBAL, INC., ET AL.,

Defendants.

Plaintiff brought a “Motion for a Preliminary Injunction Ordering the Return or Destruction of Sensitive Materials.” Defendant Azoogleads.com, Inc. opposed the motion and brought a counter-motion to disclose the documents at issue to its expert witness, Dr. Fred Cohen. The Court finds that these two motions are appropriate for a resolution without oral argument.

The dispute centers on two groups of documents. The documents labeled AZ000787 are files that purportedly disclose the configurations of Plaintiff’s server. Documents AZ000784-86 are purportedly confidential because they contain the e-mail accounts, among other things, of Plaintiff’s customers.

Plaintiff has demonstrated that the materials involved in these motions are confidential. Indeed, Defendant does not object to Documents AZ000784-86 being designated as “Attorneys’ Eyes Only” under the Protective Order. (Opposition at 1.) While Plaintiff asserts that Document AZ000787 is not relevant to this matter, the Court cannot determine from the conflicting positions of the parties whether these documents will ultimately prove to be relevant to the claims and defenses in this case. That determination will have to wait for the submission of expert witness reports in this matter and the Court’s examination of those reports. However, in the current posture, Document

1 AZ000787 is at least potentially relevant to the claims and defenses. On the other hand, if this
2 document is designated as “Attorneys’ Eyes Only,” Plaintiff has not demonstrated that it will suffer
3 any injury as a result of the disclosure of this document. With respect to the remaining documents,
4 both parties agree that they may be treated as “Attorneys’ Eyes Only” under the Protective Order.

5 Plaintiff objects to the disclosure of the “Attorneys’ Eyes Only” information at issue in these
6 motions to Defendant’s expert, Dr. Cohen. In light of the fact that these documents may be relevant
7 to the issues in this case, it is Plaintiff’s burden to show that injury would result from the disclosure
8 of this information to Dr. Cohen. This, Plaintiff has failed to do. Of course, Dr. Cohen is bound by
9 the terms of the Protective Order, and both he and Defendant are subject to potential sanctions,
10 including contempt, if they violate the terms of the Protective Order in this matter.

11 Accordingly, the Court ORDERS as follows:

- 12 1. The Motion for Preliminary Injunction is GRANTED IN PART and DENIED IN
13 PART. Document Nos. AZ000784-787 are designated as “Attorneys’ Eyes Only”
14 under the Protective Order. Except as so expressly stated, the Motion for Preliminary
15 Injunction is DENIED.
- 16 2. The Counter-Motion for Disclosure of Document Nos. AZ000784-787 to Dr. Cohen
17 is GRANTED. Dr. Cohen must comply with the terms of the Protective Order in this
18 matter under pain of sanctions or contempt.

19 IT IS SO ORDERED.

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21 Dated: December 3, 2007

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24 JOSEPH C. SPERO
25 United States Magistrate Judge
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