

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXNET HOLDINGS, INC. : CIVIL ACTION
 :
 v. :
 :
 MAXNET, INC. : NO. 98-3921

MEMORANDUM AND ORDER

HUTTON, J.

September 13, 1999

Presently before this Court is the proposed Stipulated Protective Order of Plaintiff Maxnet Holdings, Inc. and Defendant Maxnet, Inc. For the reasons stated below, approval of the Stipulated Protective Order is **DENIED**.

I. BACKGROUND

This case is brought under the Lanham Trademark Act (the "Act"). On July 28, 1998, Maxnet Holdings, Inc. ("Plaintiff") filed a Complaint charging Maxnet, Inc. ("Defendant") with violating 15 U.S.C. §§ 1114 and 1125(a), (c) (1994) of the Act. After Defendant failed to file an appearance, an answer, or otherwise respond to Plaintiff's Complaint, the Clerk entered a default in favor of Plaintiff and against Defendant arising from Defendant's use of the Maxnet trademark.

Maxnet is a registered trademark ® of Maxnet Systems, Inc. ("Maxnet Systems"). Maxnet Systems is a privately held operating company of Plaintiff that was spawned when Maxnet Communication

Systems, Inc. was acquired by H.I.G. Capital Management. Maxnet Systems is an enterprise network engineering company that supports mission-critical building and campus networks, wide area networks, and metropolitan area networks. Plaintiff's corporate headquarters are located in South Florida. Defendant is a Pennsylvania corporation, maintains offices in Huntingdon Valley, Pennsylvania, is a publicly traded corporation, and is an Internet marketing company.

Plaintiff and Defendant jointly presented to the Court a Stipulated Protective Order ("SPO") and requested that the Court approve and enter said Order.

II. DISCUSSION

A. Standard

Federal Rule of Civil Procedure 26(c)(7) allows a court, "upon good cause shown," to order that "a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way." Miles v. Boeing Co., 154 F.R.D. 112, 114 (E.D. Pa. 1994) (quoting Fed. R. Civ. P. 26 (c)(7)). Nevertheless, such orders of confidentiality cannot be granted arbitrarily. Pansy v. Borough of Stroudsburg, 23 F.3d 772, 785-86 (3d Cir. 1994). "Disturbingly, some courts routinely sign orders which contain confidentiality clauses without considering the propriety of such orders, or the countervailing public interests which are sacrificed by the orders." Id. It is

therefore incumbent upon this Court to carefully scrutinize the parties' request for a confidentiality order.

A party wishing to obtain a confidentiality order over discovery materials must demonstrate that "good cause" exists for the order of protection. Pansy, 23 F.3d at 786; Miles, 154 F.R.D. at 114. "Good cause is established on a showing that disclosure will work a clearly defined and serious injury to the party seeking closure. The injury must be shown with specificity." Publicker Indus., Inc. v. Cohen, 733 F.2d 1059, 1071 (3d Cir. 1984)); see also Aetna Casualty & Surety Co. v. George Hyman Const. Co., 155 F.R.D. 113, 115 n.3 (E.D. Pa. 1994). "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning," do not support a good cause showing. Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3d Cir. 1986), cert. denied, 484 U.S. 976 (1987); see also Frupac Intern. Corp. v. MV "CHUCABUCO", Civ.A. No.92-2617, 1994 WL 269271, *1 (E.D. Pa. Jun. 15, 1994). The burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the order. Id. at 1122. Pansy, 23 F.3d at 786-87 (footnote omitted).

In determining whether good cause exists, the federal courts have adopted a balancing approach, under which the following factors may be considered:

- 1) whether disclosure will violate any privacy interests;
- 2) whether the information is being sought for a legitimate

- purpose or for an improper purpose;
- 3) whether disclosure of the information will cause a party embarrassment;
 - 4) whether confidentiality is being sought over information important to public health and safety;
 - 5) whether the sharing of information among litigants will promote fairness and efficiency;
 - 6) whether a party benefitting from the order of confidentiality is a public entity or official; and
 - 7) whether the case involves issues important to the public.

Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483 (3d Cir. 1995); Pansy, 23 F.3d at 788-89. "Whether this disclosure will be limited depends on a judicial balancing of the harm to the party seeking protection (or third persons) and the importance of disclosure to the public." Pansy, 23 F.3d at 787 (citing Arthur R. Miller, Confidentiality, Protective Orders, and Public Access to the Courts, 105 Harv.L.Rev. 427, 435 (1991)).

B. Analysis

Applying the Pansy test in this case, the Court concludes that the proposed SPO does not satisfy the good cause standard because the parties failed to show with the requisite specificity that disclosure will cause a defined and serious injury. See Aetna Casualty & Surety Co. v. George Hyman Const. Co., 155 F.R.D. 113, 115 (E.D. Pa. 1994). The parties only articulated reason for requesting court-approved protection for their "confidential financial information" is that such information is "valuable competitive information" and that "[d]isclosure could be of great value to the parties' competitors and of little interest to the

public at large." Indeed, the parties fail to provide a single specific example of harm. Moreover, the parties proposed SPO fails to justify the confidentiality of each and every document for which court-approved protection is sought. Therefore, having failed to satisfy the most rudimentary requirements of the Pansy test, the Court need not consider the other factors articulated by the Pansy court.

III. CONCLUSION

The parties proposed SPO fails to state with specificity what information should be protected or what interest the parties have in maintaining confidentiality. Accordingly, the Court disapproves the proposed SPO. Of course, this holding in no way limits the parties' ability "to stipulate among themselves to whatever confidentiality they reasonably, lawfully and ethically conclude is appropriate." Frupac Intern. Corp. v. MV "CHUCABUCO", Civ.A. No.92-2617, 1994 WL 269271, *3 (E.D. Pa. Jun. 15, 1994); see also Aetna Casualty & Surety Co. v. George Hyman Const. Co., 155 F.R.D. 113, 115 (E.D. Pa. 1994).

An appropriate Order follows.

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O R D E R

AND NOW, this 13th day of September, 1999, upon consideration of Plaintiff Maxnet Holdings, Inc. and Defendant Maxnet, Inc.'s Stipulated Protective Order, IT IS HEREBY ORDERED that their request that this Court approve and enter said Order is **DENIED.**

BY THE COURT:

HERBERT J. HUTTON, J.