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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 HYPERTOUCHE, INC.,)	CASE NO. C 04 5203 SI
13 PLAINTIFF,)	
14 vs.)	ADMINISTRATIVE MOTION TO SEAL:
15 KENNEDY-WESTERN UNIVERSITY,)	WOOLLACOTT DECLARATION:
16 DEFENDANTS.)	PROPOSED ORDER
<hr/>		HEARING: 10 FEBRUARY 2006, 9 A.M.
		COURTROOM OF THE HON. SUSAN ILLSTON

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18 Pursuant to Local Rules 7-11 and 79-5(d), Kennedy-Western University requests on
19 behalf of designating party Hypertouch, Inc. that the following documents, portions of its
20 motion for summary judgment, be filed under seal pursuant to the Stipulated Protective
21 Order in this action:

- 22 – Exhibits to Declarations Filed Per Protective Order, consisting of Exhs. 1040 and
- 23 1041 and Hypertouch’s person most knowledgeable Joe Wagner deposition excerpts, the
- 24 former designated as Attorneys’ Eyes Only by Hypertouch and the latter designated as
- 25 Confidential by Hypertouch; and
- 26 – Memorandum of points and authorities, as it cites to the above exhibits and
- 27 testimony.

1 It should be noted that Kennedy-Western University does not agree that the materials
2 are confidential or proprietary and has requested they be de-designated. But the motion is
3 made because Hypertouch has designated these materials pursuant to the Protective Order
4 and has not agreed to stipulate they may be filed without seal or even to stipulate that they
5 may be filed under seal.

6 The material in the two exhibits, 1040 and 1041, are generally described as discovery
7 responses as to Hypertouch's status as an ISP and as a legitimate business – seeking a list
8 of lawsuits filed by Hypertouch, Hypertouch's spam-suit-related income and Hypertouch's
9 non-spam-suit-related income. These responses were ordered by this Court as a result of
10 motions to compel, finding this information relevant to the case. It is unclear why relevant
11 evidence could be designated as "Attorneys' Eyes Only" when it does not deal with any trade
12 secret or proprietary material.

13 The material in Joe Wagner's deposition concerns Hypertouch's business and
14 background of it and Mr. Wagner. Hypertouch designated the entire transcript "Confidential."
15 It is unclear why any portion of this transcript deserves privacy.

16 On 4 January 2006 counsel requested in writing de-designation or a stipulation to file
17 under seal. Despite follow-up by telephone there has been no response. This motion
18 became necessary.

19 The Protective Order contains an acknowledgement on page 1 that there is no
20 entitlement to file under seal. This motion is made to comply with the Protective Order since
21 Hypertouch is the designating party.

22 If the motion is denied, Kennedy-Western University requests that the two documents
23 at issue be treated as filed rather than lodged as of this date.

24 Dated: 6 January 2006

WOOLLACOTT JANNOL LLP

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By Cynthia Woollacott
CYNTHIA WOOLLACOTT
Attorneys for defendant Kennedy-Western
University (signature on original)

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Declaration of Cynthia Woollacott

I, Cynthia Woollacott, declare as follows:

1. I am a partner with Woollacott Jannol LLP, attorneys for Kennedy-Western University in this matter. I have personal knowledge of the following facts and would testify competently to those facts.

2. I wish to file Exh. 1040 and 1041 in support of defendant's motion for summary judgment. These are discovery answers served in response to the Order Compelling Responses regarding Hypertouch's filed lawsuits, Hypertouch's "spamsuit" income and Hypertouch's non-spamming income. Hypertouch designated these exhibits "Attorneys' Eyes Only."

3. I wish to file excerpts of Hypertouch's person most knowledgeable, Joe Wagner, deposition transcript. The deposition went through Hypertouch's and Joe Wagner's backgrounds and contentions. Hypertouch designated the entire transcript "Confidential."

4. I wish to file a memorandum of points and authorities that cites to the above three materials.

5. Early on 4 January 2006 I asked Hypertouch's counsel to either de-designate these materials or stipulate to filing them under seal. I sent a lengthy email outlining what I wanted to use and my belief that the materials should not be designated. I had my staff follow up by telephone to get a response, but as of this morning there has been none.

Executed in Los Angeles, California on 6 January 2006. I declare under penalty of perjury that the foregoing is true and correct.

Cynthia Woollacott
CYNTHIA WOOLLACOTT
(signature on original)

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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12	HYPERTOUCHE, INC.,)	CASE NO. C 04 5203 SI
13	PLAINTIFF,)	
14	vs.)	[PROPOSED] ORDER TO SEAL
15	KENNEDY-WESTERN UNIVERSITY,)	
16	DEFENDANTS.)	HEARING: 10 FEBRUARY 2006, 9 A.M. COURTROOM OF THE HON. SUSAN ILLSTON

17 Kennedy-Western University's request on behalf of designating party Hypertouch, Inc.
18 that the following documents, portions of its motion for summary judgment, be filed under
19 seal pursuant to the Stipulated Protective Order in this action is denied:

20 – Exhibits to Declarations Filed Per Protective Order, consisting of Exhs. 1040 and
21 1041 and Hypertouch's person most knowledgeable Joe Wagner deposition excerpts, the
22 former designated as Attorneys' Eyes Only by Hypertouch and the latter designated as
23 Confidential by Hypertouch; and

24 – Memorandum of points and authorities, as it cites to the above exhibits and
25 testimony.

26 These documents, lodged on 6 January 2006, are to be treated as lodged or filed
27 pursuant to this Order.

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Dated:



The Hon. Susan Illston
United States District Judge