

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

GATEHOUSE MEDIA
MASSACHUSETTS I, INC., d/b/a
GATEHOUSE MEDIA NEW ENGLAND,

Plaintiff,

v.

THE NEW YORK TIMES CO., d/b/a
BOSTON.COM,

Defendant.

Civil Action No. 1:08-cv-12114-WGY

~~STIPULATED PROPOSED~~ ^{1/14} **STIPULATED PROTECTIVE ORDER**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the parties wish to limit disclosure of confidential business information that may be disclosed during discovery in this action. Therefore, the parties stipulate and agree that:

1. Any party in this action or any third party to whom a subpoena is issued in this action ("Producing Party") shall have the right to designate any material (including, but not limited to, exhibits, documents and things produced by any party or witness, answers to interrogatories, responses to requests for admissions, responses to requests for production, declarations, affidavits, and deposition testimony or transcripts) as "CONFIDENTIAL" or "FOR ATTORNEYS' EYES ONLY." For the purposes of this protective order, CONFIDENTIAL material shall mean documents and other information that is proprietary or sensitive to the Producing Party and/or not otherwise in the public domain and the Producing Party does not want the information made public. For the purposes of this protective order, FOR ATTORNEYS EYES ONLY material shall mean documents and other information that is highly sensitive and proprietary competitive business information that, if disclosed to a competitor, could cause significant business injury to the disclosing party, including, but not limited to, trade secrets,

confidential research (including market research and demographic information), product development, the development and creation of advertising, commercial information (including business plans and license agreements), financial information (including sales figures and advertising expenditures), customer and supplier information, or personnel information. As used herein, information designated "CONFIDENTIAL" or "FOR ATTORNEYS' EYES ONLY" shall be referred to as "Confidential Information."

2. Any document produced by a Producing Party containing information deemed confidential by that party shall be identified by the Producing Party by stamping or otherwise clearly marking the same "CONFIDENTIAL" or "FOR ATTORNEYS' EYES ONLY," together with a designation identifying the Producing Party. Any use of any such document or the information contained therein or Confidential Information otherwise elicited from a party by reason of discovery in this action shall be covered by the provisions of this Order.

3. A Producing Party may designate all or part of a deposition as containing Confidential Information by so indicating on the record during such deposition, in which case the court reporter shall be directed to separately bind the portion of the transcript and to clearly mark the front of the separately bound volume with the designation "CONFIDENTIAL" OR "FOR ATTORNEYS' EYES ONLY" as the case may be.

4. During any deposition that includes testimony concerning Confidential Information, any and all individuals who are not entitled to access to said information may be excluded from that portion of the deposition.

5. Materials marked "CONFIDENTIAL" shall be available only to: (i) the parties and their officers, directors, in-house counsel and employees, provided that as to non-management employees, disclosure is necessary to assist in the litigation; (ii) counsel for the parties (including in-house counsel and all attorneys at the same outside law firm who have

entered an appearance in this action); (iii) court personnel, court reporters, printers, and other service providers to counsel who are advised of the confidential nature of the information; (iv) witnesses at trial and at depositions, provided they are informed of the confidential nature of the information; and (v) any experts and their staff with whom counsel may deem it necessary to consult for the preparation for trial of this action, and who are retained solely for the purpose of assisting in the prosecution of this action, but shall not include any employee, licensee or consultant, officer, director, or agent of a party or any of its subsidiaries, or any competitor of a party, except by agreement of the parties hereto ("Outside Expert"). Prior to any Outside Expert receiving any information marked "CONFIDENTIAL," they must have read a copy of this Stipulated Proposed Protective Order and signed an undertaking in the form attached as Exhibit A hereto. Counsel of record shall maintain in their possession all executed expert undertakings until final disposition of the litigation, and such undertakings shall be made available for inspection by counsel for the Producing Party within thirty (30) days of the conclusion of the litigation.

6. Materials marked "FOR ATTORNEYS' EYES ONLY" shall be available only to: (i) attorneys, paralegals, stenographic and clerical employees from the law firms of Goodwin Procter LLP and Hiscock & Barclay, LLP; (ii) such other outside counsel as may appear as counsel of record for either party; and (3) any "Outside Expert."

7. No documents or information marked FOR ATTORNEYS EYES ONLY shall be provided to any Outside Expert until after the expiration of a two (2) day period commencing with the service by facsimile upon or receipt by, if served by other means, counsel for the producing party of a signed Declaration, the curriculum vitae of the Outside Expert and an identification of any employment or consulting relationship that the Outside Expert has had during the previous five (5) years with the receiving party. During the one (1) day period after

such service, counsel for the producing party may object in good faith to such disclosure for good cause, including but not limited to a business conflict, past or present conflict or competition. In the event of any such objection there shall be no disclosure of FOR ATTORNEYS EYES ONLY information to such Outside Expert except by further order of the Court or by agreement of the parties. If the parties are unable to reach any agreement over the disclosure of FOR ATTORNEYS EYES ONLY information to the Outside Expert, the objecting party shall request by motion that the Court issue an order precluding the disclosure of the FOR ATTORNEYS EYES ONLY information to the Outside Expert. In the event of the filing of any such motion, there shall be no disclosure of FOR ATTORNEYS EYES ONLY information to the Outside Expert pending resolution of the motion by the Court.

8. All information received by persons identified in Paragraphs 5 and 6 of this Order pursuant to pretrial discovery in this action, which is designated by the Producing Party as containing Confidential Information, shall be retained in secrecy, shall not be disclosed to any other person, and shall be used only for the purposes of this litigation, and for no other purposes.

9. The Receiving Party shall maintain all Confidential Information in a secure and safe area and shall exercise due and proper care with respect to the storage, custody and use of all Confidential Information.

10. The inadvertent failure to designate Confidential Information properly (or at all) in accordance with this Stipulated Proposed Protective Order prior to or at the time of disclosure shall not operate as a waiver of a party's right to thereafter designate such information as confidential prior to trial. In the event that Confidential Information is designated as "CONFIDENTIAL" or "FOR ATTORNEYS' EYES ONLY" after disclosure but before trial, all receiving parties shall employ reasonable efforts to ensure that all inadvertently disclosed

information is subsequently treated as confidential pursuant to the terms of this Stipulated Proposed Protective Order.

11. Within sixty (60) days after conclusion of this action and any appeal thereof, any document and all reproductions of documents produced by a party shall be returned to the Producing Party, except as this Court may otherwise order to the extent such information was used as evidence. As far as the provisions of any Protective Orders entered in this action restrict the communication and use of the documents produced thereunder, such Orders shall continue to be binding after the conclusion of this action, except that there shall be no restriction on documents that are used as exhibits in open Court.

12. (a) This Stipulated Protective Order shall be without prejudice to any party bringing before the Court at any time the question of whether any particular information is or is not, in fact, confidential. In the event of any such dispute, the parties shall first try to resolve such dispute in good faith on an informal basis, such as by the production of redacted copies. Upon a hearing or motion on such dispute, the party objecting to the designation shall have the burden of demonstrating that the document or information in question is not properly designated.

(b) This Stipulated Proposed Protective Order shall be without prejudice to the right of any party to oppose production of any information for any reason other than confidentiality, or to seek modification by the Court of any of the terms of this Stipulated Protective Order.

13. If a party inadvertently produces or provides discovery that it believes is protected from discovery by any privilege or immunity, the Producing Party may give written notice to the Receiving Party or parties that the material is privileged or immune from discovery, stating the grounds for such privilege or immunity, and request that the material be returned to the Producing Party. Within five (5) days of receiving such notice, the Receiving Party shall return to the Producing Party such material and all copies thereof, provided that the Receiving Party

may thereafter move the Court for an order that the material in question is not protected from discovery by the asserted privilege or immunity. The inadvertent disclosure of any documents or information protected by any privilege or immunity is not and will not be construed as a general or specific waiver of any such privilege or immunity.

14. Nothing in this Stipulated Proposed Protective Order shall bar or otherwise restrict any counsel herein from rendering advice to their client with respect to this action and, in the course thereof, referring to or relying in a general way upon their examination of Confidential Information produced or exchanged herein.

15. Nothing shall be filed in court pursuant to this order.

Dated: January 12, 2008

GATEHOUSE MEDIA
MASSACHUSETTS I, INC.,

By its attorneys:

/s/ Anthony A. Scibelli
Anthony A. Scibelli (BBO #556507)
Carolyn A. Marcotte (BBO #663616)
HISCOCK & BARCLAY, LLP
50 Federal Street, 5th Floor
Boston, Massachusetts 02110
Telephone: (617) 274-2901
Facsimile: (617) 722-6003

and

Michael J. Grygiel (*pro hac vice*)
William A. Hurst (*pro hac vice*)
HISCOCK & BARCLAY, LLP
50 Beaver Street
Albany, New York 12207
Telephone: (518) 429-4234

THE NEW YORK TIMES CO.,

By its attorneys:

/s/ R. David Hosp
R. David Hosp (BBO #634091)
Mark S. Puzella (BBO #644850)
GOODWIN PROCTER LLP
Exchange Place
Boston, Massachusetts 02109-2881
Telephone: (617) 570-1000
Facsimile: (617) 523-1231

and

Parker Bagley (*pro hac vice*)
Ira J. Levy (*pro hac vice*)
GOODWIN PROCTER LLP
The New York Times Building
620 8th Avenue
New York, NY 10018
Telephone: (212) 813-8800
Facsimile: (212) 355-3333

So ORDERED AND SIGNED this ^{as modified} 13th day of January, 2009.

William G. Young
WILLIAM G. YOUNG
UNITED STATES DISTRICT JUDGE