

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

The Upper Deck Company v. Pixels.com, LLC

Upper Deck · No. 24-cv-00923-BAS-DEB · Decided December 16, 2025

OPINION

1 2 3 4 5 6 7 8 9 10 11 UNITED STATES DISTRICT COURT 12 SOUTHERN DISTRICT OF
CALIFORNIA 13 14 THE UPPER DECK COMPANY, Case No. 24-cv-00923-BAS-DEB 15
Plaintiff, ORDER DENYING PLAINTIFF'S 16 v. MOTION TO SEAL (ECF No. 137) 17
PIXELS.COM, LLC, 18 Defendant. 19 20 Presently before the Court is Plaintiff Upper Deck
Company's ("Upper Deck") 21 renewed motion to seal.

(ECF No. 137.) For the reasons below, the Court DENIES Upper 22 Deck's motion to seal. (Id.)
23 I. BACKGROUND 24 Defendant Pixels.com ("Pixels") allegedly interfered with Upper
Deck's exclusive 25 rights to use intellectual property assets associated with the brand of world-
famous 26 basketball player, Michael Jordan ("Jordan"), to develop sports memorabilia.

More 27 specifically, Pixels allegedly advertised and sold products appropriating Jordan's likeness
28 online without either Upper Deck's or Jordan's permission. (ECF No. 24 ¶¶ 25–35.) Upper 1
Deck obtained the rights to use Michael Jordan's likeness through licensing agreements. 2 (Id.
¶¶19–24.) Furthermore, Pixels' products also allegedly misappropriated Upper Deck's 3 own
trademarks—including Upper Deck's logo.

(Id. ¶ 11.) 4 On May 28, 2024, Upper Deck initiated this action against Defendant Pixels.com 5
("Pixels"). (ECF No. 1.) On October 1, 2024, Upper Deck filed the operative complaint 6 in this
action alleging causes of action, inter alia, for: (1) false advertising and unfair 7 competition
claims under the Lanham Act, 15 U.S.C.A. § 1125(a); (2) trademark dilution 8 under the Lanham
Act, 15 U.S.C.A. § 1125(c); (3) trademark infringement under 15 9 U.S.C.A. § 1114; (4)
deprivation of rights of publicity, Cal. Civ.

Code § 3344; (5) 10 deprivation of rights of publicity under California common law; (6) unfair
competition 11 under California statutory, Cal. Bus. & Prof. Code § 17200 et seq, and common
law. (ECF 12 No. 24.) 13 Throughout the course of this action, both parties filed motions to seal.
(See ECF 14 Nos. 75, 78, 81, 88, 91, 95, 97, 102, 107.)

The Court partially ruled on Parties' proposed 15 redactions and ordered for Parties to file a
consolidated motion to seal on July 28, 2025. 16 (ECF No. 110.) Upper Deck filed a motion to
seal, consolidating prior motions, on August 17 8, 2025. (ECF No. 114.)

The Court granted in part and denied in part Upper Deck's 18 renewed motion to seal (*id.*). (ECF No. 161.) 19 Upper Deck had separately moved to seal additional exhibits, mainly consisting of 20 email exchanges that Pixels had included in its pretrial disclosures. (ECF No. 137.) Pixels 21 filed a response to Upper Deck's motion to seal, principally arguing that Pixels does not 22 view good cause for those documents to be filed under seal.

(ECF No. 145.) 23 II. LEGAL STANDARD 24 "[T]he courts of this country recognize a general right to inspect and copy public 25 records and documents, including judicial records and documents." *Nixon v. Warner 26 Commc'ns, Inc.*, 435 U.S. 589, 597 (1978). "Unless a particular court record is one 27 'traditionally kept secret,' a 'strong presumption in favor of access' is the starting point." 28 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.

2006) (citing *Foltz 1 v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). "The presumption 2 of access is 'based on the need for federal courts, although independent—indeed, 3 particularly because they are independent—to have a measure of accountability and for the 4 public to have confidence in the administration of justice.'" *Ctr. for Auto Safety v. Chrysler 5 Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir.

2016) (quoting *United States v. Amodeo*, 71 F.3d 6 1044, 1048 (2d Cir. 1995)). 7 A party seeking to seal a judicial record bears the burden of overcoming the strong 8 presumption of access. *Foltz*, 331 F.3d at 1135. The showing required to meet this burden 9 depends upon whether the documents to be sealed relate to a motion that is "more than 10 tangentially related to the merits of the case." *Ctr. for Auto Safety*, 809 F.3d at 1101.

In 11 other words, the presumption of public access fully applies to "dispositive pleadings," such 12 as "motions for summary judgment and related attachments." *Kamakana v. City & Cnty. 13 of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006).

However, the Ninth Circuit has "carved 14 out an exception to the presumption of access" to judicial records for a "sealed discovery 15 document [attached] to a non-dispositive motion," such that "the usual presumption of the 16 public's right of access is rebutted." *Id.* at 1179 (citing *Foltz*, 331 F.3d at 1135). 17 The Ninth Circuit, thus, applies different standards for evaluating requests to seal 18 documents accompanying dispositive motions and those accompanying non-dispositive 19 motions.

Kamakana, 447 F.3d at 1179. When the underlying motion is more than 20 tangentially related to the merits (i.e., a dispositive motion), the "compelling reasons" 21 standard applies. *Id.*; see also *Ctr. for Auto Safety*, 809 F.3d 1092 at 1096–98. "In general, 22 'compelling reasons' sufficient to outweigh the public's interest in disclosure and justify 23 sealing court records exist when such 'court files might have become a vehicle for improper 24 purposes,' such as the use of records to

gratify private spite, promote public scandal, 25 circulate libelous statements, or release trade secrets.” Kamakana, 447 F.3d at 1179 26 (quoting Nixon, 435 U.S. at 598).

Under the “compelling reasons” standard, “[t]he mere 27 fact that the production of records may lead to a litigant’s embarrassment, incrimination, 28 or exposure to further litigation will not, without more, compel the court to seal its records.” 1 Id. at 1179.

However, when the underlying document is a non-dispositive motion, the 2 “good cause” standard applies, and a district court may issue “any order which justice 3 requires to protect a party or person from annoyance, embarrassment, oppression, or undue 4 burden or expense.” Id. at 1180. 5 Separately, parties moving to seal documents must comply with the procedures set 6 forth in this Court’s Standing Order for filing documents under seal.

See Standing Order 7 of the Hon. Cynthia Bashant for Civil Cases § 5. These procedures limit sealing to “only 8 those documents, or portions thereof, necessary to protect such sensitive information.” Id. 9 Thus, although sometimes it may be appropriate to seal a document in its entirety, 10 whenever possible, a party must redact. See Kamakana, 447 F.3d at 1183 (noting a 11 preference for redactions so long as they “have the virtue of being limited and clear”); 12 Murphy v. Kavo Am.

Corp., No. 11-cv-00410-YGR, 2012 WL 1497489, at *2–3 (N.D. Cal. 13 Apr. 27, 2012) (denying motion to seal exhibits but directing parties to redact confidential 14 information). 15 III. ANALYSIS 16 A. Whether Upper Deck Meets Procedural Requirements to Seal 17 1. Requirement for Parties to Confer and Submit Responses to 18 Support Relevant Motions to Seal 19 The Court’s Standing Order notes, “[t]he fact that both sides agree to seal a document 20 or that a stipulated protective order was issued is insufficient cause for sealing.” Standing 21 Order § 5.A (“§ 5.A”). “Parties often seek to seal a document only because another party 22 designated the document as sensitive under a protective order... [i]n these circumstances, 23 the moving party must first meet and confer with the designating party to determine 24 whether the designating party maintains that any portion of the document must be filed 25 under seal.” Id. Then, “the designating party must file a response to the sealing motion 26 within seven days that satisfies the sealing standard...

If no response is filed, the Court 27 may order that the document be filed in the public record.” Id. 28 1 Because Upper Deck is the moving party for the present motion to seal (ECF No. 2 114), the designating party’s burden to respond to a sealing motion in § 5.A only applies 3 to documents in which Pixels is the designating party.

First, Pixels has not designated any 4 of the documents in Upper Deck’s motion to seal (ECF No. 137) as confidential. (ECF 5 No. 145 at 2:13-17.) In addition, Pixels has filed an appropriate

response (ECF No. 145) 6 to all of the documents that Upper Deck has moved to seal in its motion to seal (ECF No. 7 137).

Accordingly, the Court now finds that § 5.A of the Standing Order does not 8 necessitate the dismissal of any of Upper Deck's motion to seal (ECF No. 137). 9 2. Requirement to Publicly File Copies of Documents with Proposed 10 Redactions 11 The documents Upper Deck seeks to redact are correctly lodged on the public 12 docket. (See ECF Nos. 137, 139.)

Accordingly, the Court now turns to evaluate Upper 13 Deck's justifications for sealing. 14 B. Whether Upper Deck Presents Good Cause for its Proposed Redactions 15 1. Documents Only Tangentially Related to Merits 16 The Court finds that Pixels' pretrial disclosures that Upper Deck seeks to seal are 17 only "tangentially related" to the merits of the case, since they are originally attached to 18 Pixels' non-dispositive pretrial disclosures (ECF No. 130).

Ctr. for Auto Safety, 809 F.3d 19 at 1098–1101 ("Discovery-related motions are often unrelated to the merits of a case."). 20 Accordingly, the Court applies the "good cause" standard, rather than the more exacting 21 "compelling reasons" standard it applied in its prior orders (ECF Nos. 110, 161). Id. 22 2. "Good Cause" Legal Standard 23 Federal Rule of Civil Procedure ("Rule") 26(c) states that when a party or other 24 person from whom discovery is sought makes a motion asserting good cause for a 25 protective order, "the court in which the action is pending... may make any order which 26 justice requires to protect a party or person from annoyance, embarrassment, oppression, 27 or undue burden or expense," based on any of several listed reasons.

As previously 28 mentioned, the Ninth Circuit applies the "good cause" standard—adopted from Rule 1 26(c)—to evaluate requests to seal documents related to non-dispositive motions. See 2 Kamakana, 447 F.3d at 1180; Foltz, 331 F.3d at 1130; Phillips v. Gen. Motors, 307 F.3d 3 1206, 1212 (9th Cir.2002). Pertinent here, Rule 26(c)(1)(G) states that a court may 4 "requir[e] that a trade secret or other confidential research, development, or commercial 5 information not be revealed or be revealed only in a specified way." A party asserting 6 good cause bears the burden, for each particular document it seeks to protect, of showing 7 that specific prejudice or harm will result if no court order is granted.

Foltz, 331 F.3d at 8 1130–31 (9th Cir. 2003); see also Beckman, 966 F.2d at 476 ("[B]road allegations of 9 harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the 10 Rule 26(c) test."). 11 3. Analysis of "Good Cause" 12 Courts have been willing to seal court filings containing confidential business 13 material, "such as marketing strategies, product development plans, licensing agreements, 14 and profit, cost, and margin data," where the parties have been able to point to concrete 15 factual information to justify sealing.

See, e.g., *Cohen v. Trump*, No. 13-cv-2519-GPC- 16 WVG, 2016 WL 3036302, at *5 (S.D. Cal. May 27, 2016); see also *Skillz Platform Inc. v. 17 AviaGames Inc.*, No. 21-CV-02436-BLF, 2023 WL 8430369, at *2 (N.D. Cal. Dec. 4, 18 2023) (“[C]onfidential business information that would harm a party's competitive standing 19 meet the compelling reasons standard, and thus also meet the ‘less exacting’ good cause 20 standard.”).

21 Further, third-party information is typically not alone sufficient grounds for sealing. 22 *Jones v. PGA Tour, Inc.*, No. 22-CV-04486-BLF, 2023 WL 3594058, at *3 (N.D. Cal. May 23 22, 2023) (“[T]he fact that disclosure would reveal the substance of communications with 24 non-parties does not, by itself, demonstrate good cause for sealing.”).

However, courts 25 within this circuit have sealed “documents contain[ing] information regarding the identity 26 and operations of third party supplied components in [movant]'s products” as confidential 27 business information. See e.g., *DSS Tech. Mgmt., Inc. v. Apple, Inc.*, No. 14-CV-05330- 28 1 HSG, 2020 WL 210318, at *8 (N.D. Cal. Jan. 14, 2020), *aff'd*, 845 F. App'x 963 (Fed.

Cir. 2 2021). 3 Here, Upper Deck moves to file the proposed exhibits under seal on the basis that 4 they involve “[d]iscussion of Jump 23, Inc.’s and Upper Deck’s confidential business 5 information” and “[t]hird party rights to privacy.” (ECF No. 137.)

As discussed, third 6 party rights to privacy cannot typically be the sole ground for sealing or redacting 7 documents absent a showing of specific harm upon disclosure. See *Jones*, 2023 WL 8 3594058, at *3. Next, though the proposed exhibits may appear to contain confidential 9 business information (i.e., concerning the proprietary development of Upper Deck’s 10 products, including the involvement of third parties), Upper Deck has failed to explicitly 11 allege how the disclosure of the allegedly confidential business information in the exhibits 12 result in specific harm.

Foltz, 331 F.3d at 1130–31 (9th Cir. 2003); see also *Beckman*, 966 13 F.2d at 476. Upper Deck has not provided declarations of individuals with knowledge of 14 these documents to support its argument that these documents require sealing. See 15 *Orthopaedic Hosp. v. Encore Med. L.P.*, No. 19-CV-970 JLS (AHG), 2022 WL 257104, 16 at *3 (S.D. Cal. Jan. 27, 2022) (same); see also *Kilbourne v. Coca-Cola Co.*, No. 14CV984- 17 MMA BGS, 2015 WL 5117080, at *3 (S.D.

Cal. July 29, 2015) (finding good cause where 18 “defendants have filed a supplemental declaration under seal detailing with particularity 19 the exhibits that contain confidential information and the manner in which disclosure of 20 such information would be detrimental to Defendants or otherwise improper.”). 21 Per this Court’s Standing Order § 5.B (emphasis added): 22 A party seeking a sealing order must provide the Court with: (1) a specific description of particular documents or categories of 23 documents to be protected; and (2) declaration(s) showing a 24 compelling reason or good cause to protect those documents from disclosure.

The standard for filing documents under seal 25 will be strictly applied. 26 27 Upper Deck has not even alleged that disclosure of the exhibits at issue would give 28 competitors insight into its processes or otherwise harm its or third parties' competitive 1 standing. See e.g., *In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008) (finding 2 sealable "business information that might harm a litigant's competitive standing"); *Lin v. 3 Solta Med., Inc.*, No. 21-CV-05062-PJH, 2024 WL 2112893, at *3 (N.D.

Cal. Apr. 11, 4 2024) (finding good cause where movant alleged competitors would gain insight into 5 internal processes if not for sealing); *Fed. Trade Comm'n v. Qualcomm, Inc.*, No. 17-cv- 6 00220-LHK, 2019 WL 95922, at *3 (N.D. Cal. Jan. 3, 2019) (finding compelling reasons 7 for "information that, if published, may harm [a party's] or third parties' competitive 8 standing and divulges terms of confidential contracts, contract negotiations, or trade 9 secrets.").

10 Finding Upper Deck has failed to demonstrate good cause for its proposed sealings, 11 the Court DENIES WITHOUT PREJUDICE Upper Deck's motion to seal (ECF No. 12 137). 13 IV. CONCLUSION 14 For the reasons above, the Court DENIES WITHOUT PREJUDICE Upper Deck's 15 motion to seal (ECF No. 137). If Upper Deck wishes to file a renewed motion to seal for 16 the denied requests, they may do so no later than January 12, 2025, after the issuance of 17 this Order.

To the extent Upper Deck wishes to renew its motion to seal (*id.*) for any 18 document or portion thereof, that party is ORDERED to include a table including: the title 19 of the document, the ECF number of the public document, the ECF number of the 20 lodgment, and the reason for sealing each proposed redaction or document. Also, if Upper 21 Deck renews its motion to seal (*id.*), Upper Deck is also ORDERED include one or more 22 declarations explaining further why there is good cause for each proposed sealing.

See 23 Standing Order § 5.B. 24 Otherwise, Upper Deck is instructed to file the public versions of the documents it 25 moved to seal in ECF No. 137 on the public docket no later than January 19, 2025. When 26 filing the documents on the public docket, Parties must strictly adhere to the relevant 27 Federal Rules of Civil Procedure, this district's Civil Local Rules, this Court's Standing 28 Order for Civil Cases, and this district's Electronic Case Filing Administrative Policies & 1 Procedures Manual.

Non-compliance with this Order or any relevant rules may result in 2 sanctions pursuant to Civil Local Rule 83.1. 3 IT IS SO ORDERED. 4 ~ 5 || DATED: December 16, 2025 (yatta Baphar ☐☐ 6 H n. Cynthia Bashant, Chief Judge United States District Court 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 Qo.