

**DIVX, LLC v Harman Intl. Indus., Inc.**

2023 NY Slip Op 32930(U)

August 23, 2023

Supreme Court, New York County

Docket Number: Index No. 656816/2021

Judge: Andrew Borrok

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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DIVX, LLC,

Plaintiff,

- v -

HARMAN INTERNATIONAL INDUSTRIES, INC.,

Defendant.

INDEX NO. 656816/2021

MOTION DATE 07/17/2023,  
07/18/2023

MOTION SEQ. NO. 014 015

**DECISION + ORDER ON  
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 014) 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 472, 474

were read on this motion to/for SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 015) 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 473, 475, 476

were read on this motion to/for SEAL

Upon the foregoing documents and for the reasons set forth below, the motions to seal must be granted.

The Plaintiff moves (Mtn. Seq. No. 014) to seal NYSCEF Doc. Nos. 159, 162-163, 173, 175, 178-179, 189-191, 193-194, 197-198, 221-223, 225, 227-228, 231, 233, 239, 251, 254, 256-257, 263, 295-299, 329, 332, 338, 345, 347-353, 363, and 368 on the grounds that (i) they contain confidential and commercially sensitive information, including pricing terms and licensing deals, (ii) they contain confidential and proprietary customer information, and (iii) they contain commercially sensitive technical information and trade secrets. The Defendant moves (Mtn.

Seq. No. 015) to seal NYSCEF Doc. Nos. 159-161, 165, 168-169, 173-175, 177, 179, 181-184, 192, 197, 201, 203-204, 208-209, 214-219, 221-223, 225, 239, 241, 245, 251, 253, 258-260, 262-263, 275, 277-282, 284-286, 288, 291-292, 294, 305-308, 311-314, 316-319, 330, 333, 336, 339-340, 354-355, 357, and 361-366 on the grounds that (i) they contain confidential and commercially sensitive information, including royalty/pricing terms and licensing deals, (ii) they contain confidential and proprietary customer information, (iii) they contain commercially sensitive technical information and closely guarded sales data, and (iv) they contain confidential and commercially sensitive information regarding audits and settlements with third party media licensors.

Pursuant to Part 216 of the Uniform Rules for the Trial Courts, a court may seal a filing upon a written finding of good cause, specifying the grounds thereof (22 NYCRR § 216.1[a]). In determining whether good cause exists, the court must consider the interests of the public as well as the interests of the parties (*id.*). Courts require a legitimate basis to justify the sealing of a court document and a sealing order should rest on a sound basis or legitimate need to take judicial action (*Danco Labs. V Chemical Works of Gedeon Richter*, 274 AD2d 1, 8 [1st Dept 2000]).

There is a compelling interest to seal documents containing proprietary financial information where disclosure could harm a corporation's competitive standing (*Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007]). Sealing documents is also appropriate where disclosure could threaten a business's competitive advantage (*Mosallem v Berenson*, 76 AD3d 345, 350 [1st Dept 2010]), as would be the case for trade secrets (*id.*) and closely guarded

proprietary information that would grant competitors an unearned advantage (*see Mancheski*, 39 AD3d at 503). Lastly, sealing is appropriate where disclosure could impinge on the privacy rights of third parties who clearly are not litigants in the instant action (*id.*, at 502).

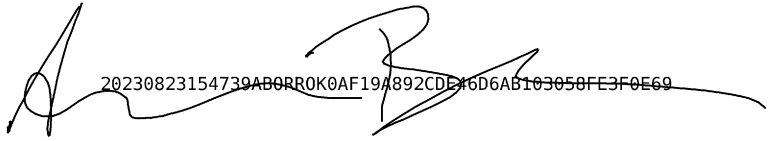
The documents that the parties seek to seal clearly fall into the above categories. Sealing is therefore appropriate and the motions to seal must be granted.

It is hereby ORDERED that the Clerk of the Court is directed, upon service on him of a copy of this order with notice of entry, to seal NYSCEF Doc. Nos. 161, 189-191, 208, 256-257, 280, 284, 292, 295-299; 305-308, 311-314, 329, 345, 347-353, 365-366, and 368 and to separate these documents and to keep them separate from the balance of the file in this action; and it is further

ORDERED that the Clerk of the Court is directed, upon service on him of a copy of this order with notice of entry, to seal NYSCEF Doc. Nos. 159, 160, 162-163, 165, 168-169, 173-175, 177-179, 181-184, 192-194, 197-198, 201, 203-204, 209, 214-219, 221-223, 225, 227-228, 231, 233, 239, 241, 251, 253-254, 258-260, 262-263, 275, 277-279, 281-282, 285-286, 288, 291, 294, 316-319, 330, 332-333, 336, 338-340, 354-355, 357, and 361-364, to separate these documents and to keep them separate from the balance of the file in this action, and allow the re-filing of redacted versions of these documents in accordance with this order of the court; and it is further

ORDERED that thereafter, or until further order of the court, the Clerk of the Court shall deny access to the said sealed documents to anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this case and any party; and it is further

ORDERED that service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).



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8/23/2023

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE