

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ATARI INTERACTIVE, INC.,

Plaintiff,

v.

PRINTIFY, INC., JANIS BERDIGANS, and
JOHN DOES 1-10,

Defendants.

Civil Action No. 23-civ-8926

**CONFIDENTIALITY STIPULATION
AND PROTECTIVE ORDER**

THIS MATTER is before the Court pursuant to Rule 26(c) of the Federal Rules of Civil Procedure for entry of an order, with the consent and agreement of Plaintiff Atari Interactive, Inc. and Defendants Printify, Inc. and Janis Berdigans (collectively the “Parties”; each a “Party”), governing the disclosure and protection of the Parties’ confidential, proprietary, and trade secret information. In order to facilitate discovery while preserving and maintaining the confidentiality of certain documents that the Parties believe will be produced in this matter, and in the interests of justice, it is hereby ORDERED by the Court that:

1. This Confidentiality Stipulation and Protective Order (this “Protective Order”) shall govern the use, dissemination, and disclosure of all information, documents, or materials that are produced in this action and designated as “Confidential” or “Confidential Attorney Eyes Only.”
2. This Protective Order does not alter any confidentiality obligations that any Party or non-Party may have at law or under another agreement.
3. Any Party or non-Party that produces documents in this action may, in good faith, designate as “Confidential” or “Confidential Attorney Eyes Only” any documents, interrogatory answers, responses to requests for admission, deposition transcripts, documents marked as exhibits

Case 1:23-cv-08926-SHS Document 104 Filed 02/07/24 Page 1 of 19

at any deposition, electronically stored information, or other written, recorded, graphic material, or information produced or disclosed in this litigation that the Party considers to be subject to this Protective Order (hereinafter the “Documents” or “Testimony”).

4. The term “Confidential Information,” as used in this Protective Order, shall mean all Documents and Testimony, and all information contained therein, that the Party or non-Party to this action who produces or supplies the Documents or Testimony (hereinafter, the “Designating Party” or the “Producing Party”) reasonably believes in good faith constitutes or contains non-public proprietary, confidential, technical, business, financial, personal, or commercially sensitive information, or confidential information of third parties.

5. The term “Confidential Attorney Eyes Only Information” as used in this Protective Order shall mean all Documents and Testimony, and all information therein, that the Producing Party reasonably believes in good faith that disclosure of which, other than as permitted pursuant to this Protective Order, will create a likelihood of harm to the business, financial, personal, competitive, or commercial interests of the Designating Party or a Third Party, is substantially likely to cause injury to the Designating Party or a Third Party, or otherwise would violate the legal rights of the Designating Party or a Third Party.

6. Nothing in this Protective Order shall limit the right of a Party to use Documents or Testimony that: (a) was lawfully in its possession prior to the initiation of this action; (b) was, is, or becomes public knowledge, not in violation of this Protective Order; (c) is acquired by the non-producing person from a third party who breached no legal obligation in providing the document(s) to the non-producing person; or (d) becomes declassified under this Protective Order. The Parties shall not designate information as “Confidential” or “Confidential Attorney Eyes Only” for the purpose of interfering with the rights of the receiving Party to conduct discovery.

Confidential Information and Confidential Attorney Eyes Only Information

7. Any Producing Party may designate as “Confidential” or “Confidential Attorney Eyes Only” any such Documents or Testimony that it reasonably and in good faith believes (or with respect to documents received from another person, that it has been reasonably advised by such other person) constitutes or contains Confidential Information or Confidential Attorney Eyes Only Information under the terms of this Protective Order. Depositions may be designated as Confidential or Confidential Attorney Eyes Only by indicating that fact on the record at the deposition. In the event that they were not already designated “Confidential” and/or “Confidential Attorney Eyes Only” in whole or in part at the deposition, all depositions shall presumptively be treated as Confidential Information Attorneys Eyes Only and subject to this Protective Order during the deposition and for a period of twenty (20) days after the final transcript of the completed deposition is prepared and received by those counsel who ordered it. At or before the end of such period, the Producing Party shall identify those pages of the completed transcript that Producing Party deems to be Confidential or Confidential Attorney Eyes Only. Nothing in this paragraph, however, shall preclude any witness from reviewing his or her own deposition transcript. If, at the time the final transcript is received by those counsel who ordered it, a hearing is scheduled less than twenty (20) days after a deposition, then the twenty-day period referenced in this paragraph shall be reduced to a seven-day (7 day) period.

8. Counsel for the Producing Party shall have the right to exclude from oral deposition any person not authorized by this Order to receive information designated as Confidential or Confidential Attorneys Eyes Only, but such right of exclusion shall be applicable only during periods of examination or testimony directed to or comprising Confidential or Confidential Attorneys Eyes Only information. The failure of such other persons to comply with a request of

this type shall constitute justification for counsel to advise the witness that he or she need not answer the question until all present in the room are authorized to receive the information contained in the testimony.

9. Where reasonably practicable, the designation of Documents or Testimony as Confidential or Confidential Attorney Eyes Only for purposes of this Protective Order shall be made by marking every such page "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEY EYES ONLY." Such markings should not obliterate or obscure the content of the material that is produced. Where marking every page of such material is not reasonably practicable, such as with certain native file documents, a Producing Party may designate material as Confidential or Confidential Attorney Eyes Only by informing any receiving Party in writing in a clear and conspicuous manner at the time of production of such material that such material is designated as Confidential or Confidential Attorney Eyes Only. For testimony, each court reporter participating in any such deposition or testimony shall be provided with a copy of this Protective Order and shall adhere to its provisions. Each court reporter shall mark those portions (including exhibits) of such deposition or testimony transcript(s) (and where the deposition is videotaped, the relevant portions of the recording) with the legend "CONFIDENTIAL OR CONFIDENTIAL ATTORNEY EYES ONLY – DESIGNATED BY COUNSEL," and shall place on the cover of any such transcript(s) and recording(s) the following legend:

THIS TRANSCRIPT CONTAINS MATERIALS WHICH ARE
CLAIMED TO BE CONFIDENTIAL AND/OR CONFIDENTIAL
ATTORNEY EYES ONLY AND COVERED BY A STIPULATED
PROTECTIVE ORDER.

10. Confidential Information, and any and all information contained therein, shall be given, shown, made available, or communicated only to the following:

- a. The Court and its personnel in any judicial proceeding that may result from this action;
- b. The Parties' counsel and employees of such counsel assigned to and reasonably necessary to assist such counsel in this action;
- c. The named Parties, including any employees of the Parties to whom disclosure is reasonably necessary for the purpose of prosecuting, defending, or settling this action;
- d. Any consultant, investigator, or expert (collectively, "Expert") who is retained by a Party as an Expert for the purpose of prosecuting or defending this action, and who has signed a Declaration in the form provided as Exhibit A;
- e. Any person who is the author, addressee, or recipient of the document, or in the case of meeting minutes, an attendee of the meeting, or any other person who would have likely reviewed such document during his or her employment as a result of the substantive nature of his or her employment position (unless the person indicates that he or she did not have access to the document);
- f. Deposition witnesses during the course of their deposition testimony;
- g. For purposes of witness preparation, a deponent who was noticed for a deposition or a witness who is on a witness list for hearing or trial, in preparation for their noticed deposition, hearing, or trial testimony where such Confidential Information is determined by counsel in good faith to be necessary to the anticipated subject matter of testimony, provided, however, that such Confidential Information can be shared with such person only in connection with preparation for the anticipated testimony, and the persons identified in this paragraph will not be permitted to retain copies of such Confidential Information and shall be required to sign a Declaration in the form provided as Exhibit A;
- h. Court reporters, stenographers, or videographers who transcribe or record testimony in connection with this action;
- i. Outside photocopying, graphic production services, or litigation support services (e.g., e-discovery vendors/contract review attorneys, trial/jury consultants), as reasonably necessary for use in connection with this action, and who have signed a Declaration in the form provided as Exhibit A;
- j. Mediators, arbitrators, or discovery masters retained by the Parties or assigned by this Court; and

Case 1:23-cv-08926-SHS Document 104 Filed 02/07/24 Page 5 of 10

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