

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-21136-CIV-LENARD/KLEIN

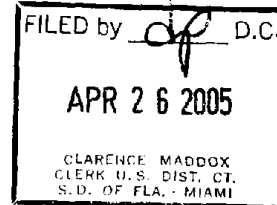
TIGER DIRECT, INC.,

Plaintiff,

vs.

APPLE COMPUTER, INC.,

Defendant.



**ORDER DENYING WITHOUT PREJUDICE EX PARTE APPLICATION FOR
EMERGENCY TEMPORARY RESTRAINING ORDER BY PLAINTIFF TIGER
DIRECT, INC.**

THIS CAUSE is before the Court on the Ex Parte Application for Emergency Temporary Restraining Order by Plaintiff, filed on April 26, 2005. Plaintiff also filed on April 26, 2005, a (1) Memorandum of Points and Authorities in Support of Tiger Direct, Inc.'s Application for Temporary Restraining Order, (2) the Declaration of Roxanne Elings in Support of Plaintiff Tiger Direct, Inc.'s Ex Parte Application for Temporary Restraining Order, (3) the Declaration of Lonny R. Paul in Support of Plaintiff Tiger Direct, Inc.'s Motion for a Temporary Restraining Order Against Apple Computer, Inc., and (4) Attachments in support of Plaintiff's Motion for a Temporary Restraining Order.

Upon review of the Motion, the Memorandum, the Declarations, and the Attachments, the Court finds as follows.

Under Federal Rule of Civil Procedure 65(b), a temporary restraining order ("TRO") may issue only if:

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(1) [I]t clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

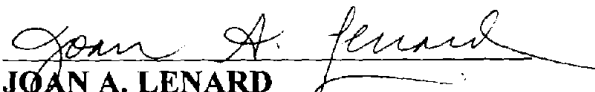
FED. R. CIV. P. 65(b) (emphasis added).

Having carefully reviewed the Plaintiff's pleadings, the Court notes that the Plaintiff avers that it has attempted to settle this dispute with Apple Computers, Inc. in the recent weeks without success. See Declaration of Roxanne Elings at ¶ 8. The Plaintiff's attorney has not, however, certified to the court in writing, pursuant to Rule 65(b), the efforts, if any, which have been made to give notice to Apple Computer, Inc. of this action and the reasons supporting Plaintiff's claim that notice should not be required. It not being apparent from the pleadings why notice should not be required, a motion for preliminary injunction with notice to Apple Computer, Inc. may be a more appropriate means of proceeding with this action.

It is hereby

ORDERED AND ADJUDGED that the Ex Parte Application for Emergency Temporary Restraining Order by Plaintiff, filed on April 26, 2005, is **DENIED WITHOUT PREJUDICE.**

DONE AND ORDERED in Chambers at Miami, Florida this 26 day of April,
2005.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

Cc: Magistrate Judge Theodore Klein
All counsel of record
05-21136-CIV-LENARD/KLEIN

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