

1 GEORGE A. RILEY (S.B. #118304)  
2 DAVID EBERHART (S.B. #195474)  
3 DHAIVAT H. SHAH (S.B. #196382)  
4 IAN N. RAMAGE (S.B. #224881)  
5 O'MELVENY & MYERS LLP  
6 Embarcadero Center West  
7 275 Battery Street  
8 San Francisco, California 94111-3344  
9 Telephone: (415) 984-8700  
10 Facsimile: (415) 984-8701

11 Attorneys for Plaintiff  
12 Apple Computer, Inc.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF SANTA CLARA**

15 Apple Computer, Inc.,

16 Plaintiff,

17 v.

18 Doe 1, an unknown individual, and  
19 Does 2-25, inclusive,

20 Defendants.

Case No. 104-cv-032178

**NOTICE OF DEPOSITION  
OF KARL KRAFT**

21 **TO ALL INTERESTED PARTIES:**

22 PLEASE TAKE NOTICE THAT Apple intends to take the deposition of Karl  
23 Kraft at the offices of O'Melveny & Myers LLP, 275 Battery Street, San Francisco, CA  
24 94111, commencing at 9:00 a.m. on February 24, 2004.

25 A copy of the deposition subpoena is attached hereto and served herewith.

26 Also attached are copies of the court order and commission granting leave to  
27 serve discovery on Karl Kraft and Nfox.com.

28 PLEASE TAKE FURTHER NOTICE that Apple intends to record the  
testimony at the above-referenced deposition by audiotape and/or videotape, in addition to  
recording the testimony by stenographic means. The deposition will be taken before an  
officer who is authorized to administer an oath.

1 NOTICE IS FURTHER GIVEN that deponent is required to produce at the time  
2 and place set forth above the following documents:

3 All documents relating to the identity of any person or entity who  
4 supplied information regarding an unreleased Apple product code-named  
5 "Asteroid" or "Q97" (the "Product"), including postings that appeared on  
6 Powerpage.com (the "Website") on November 19, November 22,  
7 November 23, and November 26, 2004. These documents include:

8 (a) all documents identifying any individual or individuals who  
9 provided information relating to the Product ("Disclosing Person(s)"),  
10 including true name(s), address(es), internet protocol ("IP") address(es),  
11 and e-mail address(es);

12 (b) all communications from or to any Disclosing Person(s)  
13 relating to the Product;

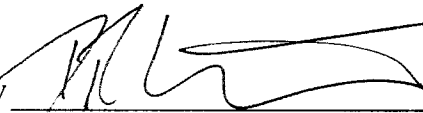
14 (c) all documents received from or sent to any Disclosing  
15 Person(s) relating to the Product; and

16 (d) all images, including photographs, sketches, schematics and  
17 renderings of the Product received from or sent to any Disclosing  
18 Person(s).

19 Production of the above documents will complete deponent's obligations with  
20 respect to the subpoena, following which no testimony will be required.

21 Dated: February 4, 2005

22 GEORGE A. RILEY  
23 DAVID R. EBERHART  
24 DHAI VAT H. SHAH  
25 IAN N. RAMAGE  
26 O'MELVENY & MYERS LLP

27 By   
28 David R. Eberhart  
Attorneys for Apple Computer, Inc.

SF1:575672.1





1 every.”

2 6. All documents shall be produced in the booklet, binder, file, folder,  
3 envelope, or other container in which the documents are kept or maintained by you. If for  
4 any reason the container cannot be produced, please produce copies of all labels or other  
5 identifying markings. Documents attached to each other should not be separated.

6 7. In the event any document is withheld on a claim of attorney/client privilege  
7 or work product immunity, provide a detailed privilege log that describes the nature and  
8 basis for your claim and the subject matter of the document withheld, in a manner  
9 sufficient to disclose facts upon which you rely in asserting your claim, and to permit the  
10 grounds and reasons for withholding the document to be identified. Such description  
11 should, at a minimum:

- 12 a. state the date of the document;
- 13 b. identify each and every author of the document;
- 14 c. identify each and every person who prepared or participated in the  
15 preparation of the document;
- 16 d. identify each and every person who received the document;
- 17 e. identify each and every person from whom the document was received;
- 18 f. state the present location of the document and all copies thereof;
- 19 g. identify each and every person having custody or control of the document  
20 and all copies thereof;
- 21 h. describe the subject and purpose of the document; and
- 22 i. provide sufficient further information concerning the document and  
23 circumstances thereof to explain the claim of privilege or immunity and  
24 permit the adjudication of the propriety of that claim.

25 8. If a document once existed, but has been lost, destroyed, erased or otherwise  
26 is no longer in your possession, identify the document and state the details concerning the  
27 loss or destruction of such document, including the name and address of the present  
28 custodian of any such document known to you.

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**DOCUMENT REQUESTS**

**DOCUMENT REQUEST NO. 1:**

All documents relating to the identity of any person or entity who supplied information regarding an unreleased Apple product code-named "Asteroid" or "Q97" (the "Product"), including postings that appeared on Powerpage.com (the "Website") on November 19, November 22, November 23, and November 26, 2004. These documents include:

(a) all documents identifying any individual or individuals who provided information relating to the Product ("Disclosing Person(s)"), including true name(s), address(es), internet protocol ("IP") address(es), and e-mail address(es);

(b) all communications from or to any Disclosing Person(s) relating to the Product;

(c) all documents received from or sent to any Disclosing Person(s) relating to the Product; and

(d) all images, including photographs, sketches, schematics and renderings of the Product received from or sent to any Disclosing Person(s).

Dated: February 4, 2005

GEORGE A. RILEY  
DAVID R. EBERHART  
DHAI VAT H. SHAH  
IAN N. RAMAGE  
O'MELVENY & MYERS LLP

By 

David R. Eberhart  
Attorneys for Apple Computer, Inc.

SF1:573817.1

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12 Apple Computer, Inc.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF SANTA CLARA

15 Apple Computer, Inc.,

16 Plaintiff,

17 v.

18 Doe 1, an unknown individual, and Does  
19 2-25, inclusive,

20 Defendants.

Case No. 104-cv-032178

~~PROPOSED~~ ORDER GRANTING  
EX PARTE APPLICATION FOR  
AN ORDER GRANTING LEAVE TO  
SERVE EXPEDITED DISCOVERY  
ON NFOX.COM AND KARL KRAFT

21 Based on the *ex parte* application of Plaintiff Apple Computer, Inc.  
22 (“Apple”), and good cause appearing,

23 IT IS HEREBY ORDERED that Apple’s request for discovery is granted  
24 and that Apple is authorized to serve subpoenas, whether through the use of commissions  
25 or in-state process, on Nfox.com and Karl Kraft seeking the following information:

26 All documents relating to the identity of any person or entity who  
27 supplied information regarding an unreleased Apple product code-named  
28 “Asteroid” or “Q97” (the “Product”), including postings that appeared on  
Powerpage.com (the “Website”) on November 19, November 22,  
November 23, and November 26, 2004. These documents include:

(a) all documents identifying any individual or individuals who  
provided information relating to the Product (“Disclosing Person(s)”),

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CHIEF CLERK  
SUPERIOR COURT OF CA  
COUNTY OF SANTA CLARA  
BY *[Signature]*  
C A PINAGATE

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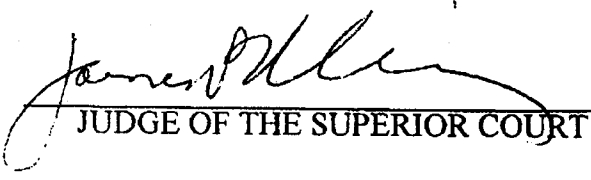
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(d) all images, including photographs, sketches, schematics and  
renderings of the Product received from or sent to any Disclosing Person(s).

DATED: February 1, 2005

  
JUDGE OF THE SUPERIOR COURT

SF1:569530.3



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15 Apple Computer, Inc.,  
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17 v.  
18 Doe 1, an unknown individual, and  
19 Does 2-25, inclusive,  
20 Defendants.

Case No. 104-cv-032178  
**COMMISSION**

21 WHEREAS, a certain civil action is pending in the Superior Court for Santa  
22 Clara County, California in which Apple Computer, Inc. ("Apple") is plaintiff and  
23 defendants are unknown individuals; and

24 WHEREAS, Apple believes that Nfox.com, an entity that provides  
25 collocation and e-mail server services for Powerpage.org, is likely to have information  
26 relating to the identity of the proper defendant or defendants; and

27 WHEREAS, Apple has requested that the Clerk of the Court issue  
28 a commission for a subpoena seeking documents from Nfox.com and/or its owner Karl  
Kraft; and

WHEREAS, the documents requested by Apple are identified in the  
Attachment hereto;

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WHEREAS, pursuant to California Code of Civil Procedure Section 2026(c), the Clerk may issue a commission for deposition in a foreign jurisdiction; and

WHEREAS, pursuant to California Code of Civil Procedure Section 2029, the Court will honor commissions from another state for deposition in California; and

NOW THEREFORE, the Court requests that process issue requiring the attendance and enforcing the obligations of Nfox.com and Karl Kraft to produce documents. Any document production may be effectuated and/or enforced by the methods authorized under the laws of the State of Nevada.

DATED: February 4, 2005

*Kiri Torre*  
Chief Executive Officer/Clerk



*C. A. PINACATE*  
CLERK OF THE SUPERIOR COURT



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18 Dated: February 4, 2005

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25 By 

26 David R. Eberhart  
27 Attorneys for Apple Computer, Inc.

28 SF1:573817.1