

SEALED

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

ANNE MARTINEZ, individually and on)
behalf of all other persons similarly)
situated,)

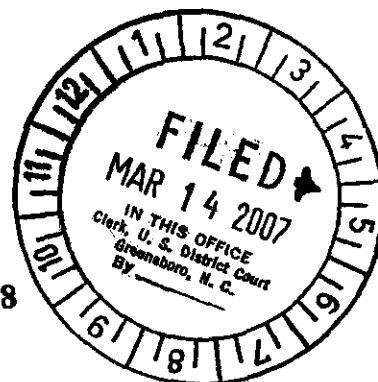
Plaintiffs,)

v.)

REGISTERFLY, INC.,)
UNIFIEDNAMES INC., HOSTING)
SERVICES GROUP INC., KEVIN)
MEDINA, in his personal capacity and)
as an agent of RegisterFly, Inc. and as)
an agent of Unifiednames Inc., JOHN)
NARUSZEWICZ, in his capacity as an)
agent of both Unifiednames and)
RegisterFly, eNom, and ICANN,)

Defendants.)

07cv00188



ORDER OF UNITED STATES MAGISTRATE JUDGE DIRECTING NOTICE

Plaintiff in this proposed class action seeks relief, on behalf of a class of similarly situated individuals, from a number of defendants. Generally, Plaintiff alleges fraud and mismanagement of certain domain names registered with Defendant RegisterFly, Inc., the result of which has been the loss or impending loss of domain names and/or service for thousands of registrants. This matter is before the Court on Plaintiff's Motion for Temporary Restraining Order (Pleading No. 5) pursuant to Rule 65 of the Federal Rules of Civil Procedure. Plaintiff has not provided notice to any of the Defendants, and has filed all pleadings and supporting documents under seal.

The Court has reviewed and considered Plaintiff's Motion for Temporary Restraining Order and brief, as well as the supporting affidavit and exhibits. The Court heard argument by Plaintiff's counsel Clarke Dummit on March 14, 2007.

The issuance of a temporary restraining is an extraordinary remedy reserved for those circumstances in which the applicant is in need of immediate relief. Although Rule 65(b) authorizes entry of a ten-day TRO *without* notice to the opposing party, the rule nevertheless requires that whatever notice is practical be given. Fed. R. Civ. P. 65(b) (applicant must show specific facts that demonstrate 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 must certify in writing what, if any, efforts have been made to notify the opposing parties); *Ciena Corp. v. Jarrard*, 203 F.3d 312, 318 (4th Cir. 2000). Thus, although Rule 65(b) permits a party to obtain a temporary restraining order without first providing notice to opposing parties, it restricts such relief to circumstances where it is clear that notice was not feasible or that irreparable harm would follow from such notice. Fed. R. Civ. P. 65(b).

In this case, counsel for Plaintiff concedes that he made no effort to notify any of the Defendants, but contends that such notice will increase the risk of irreparable harm to the putative class members due to a likelihood of destruction of computer data and/or financial assets by one of the Defendants. Having reviewed the record and heard *ex parte* oral argument by Plaintiff's counsel (recorded and held under seal), the Court finds that Plaintiff has failed sufficiently to articulate why ICANN should not be notified of these proceedings

and afforded an opportunity to respond in court. Provided that *only* ICANN is notified of the proceedings, and the pleadings remain under seal, the Court is not persuaded that irreparable harm will result from such notification.

Accordingly,

IT IS ORDERED that Plaintiff forthwith orally notify ICANN of these proceedings and arrange to have copies of this Order and the pleadings in this case, including the proposed temporary restraining order, made available to ICANN as soon as possible. Further, Plaintiff shall immediately initiate service of process upon ICANN. ICANN is specifically given notice that all filings and proceedings in this action are, until further order, under seal, and ICANN shall not contact any of the other Defendants at this point.

IT IS FURTHER ORDERED that Plaintiff and ICANN appear before the Court on Tuesday, March 20, 2007, at 10:00 a.m. (Greensboro Courtroom 1A) for an in camera hearing on the motion for temporary restraining order. *This Order is SEALED.*



Trevor Sharp, U.S. Magistrate Judge

March 14, 2007