

Civil No. H028579

IN THE
Court of Appeal
FOR THE
STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

JASON O'GRADY, MONISH BHATIA, AND KASPER JADE,
Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA,
Respondent,

and

APPLE COMPUTER, INC.
Real Party in Interest.

Petition for Writ of Mandate and/or Prohibition
from the Superior Court for the County of Santa Clara
Case No. 1-04-CV-032178
The Honorable James Kleinberg

**REDACTED VERSIONS OF THE
DECLARATIONS OF ROBIN ZONIC AND AL ORTIZ
IN SUPPORT OF APPLE'S OPPOSITION TO
EFF'S MOTION FOR PROTECTIVE ORDER**

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*Attorneys for Real Party in Interest
Apple Computer, Inc.*

Pursuant to this Court's Order dated August 30, 2005, Real Party in Interest Apple Computer, Inc. ("Apple") hereby files redacted versions of the following documents:

- 1 Declaration of Robin Zonic in Support of Apple's Opposition to EFF's Motion for Protective Order; and
2. Declaration of Al Ortiz in Support of Apple's Opposition to EFF's Motion for Protective Order.

Dated: September 9, 2005

GEORGE A. RILEY
DAVID R. EBERHART
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By



Ian N. Ramage

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**

11 Apple Computer, Inc.,
12 Plaintiff,
13 v.
14 Doe 1, an unknown individual, and Does
15 2-25, inclusive,
16 Defendants.

Case No. 104-cv-032178

**DECLARATION OF ROBIN ZONIC
IN SUPPORT OF APPLE'S
OPPOSITION TO EFF'S MOTION
FOR PROTECTIVE ORDER**

REDACTED

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1 I, Robin Zonic, declare as follows:

2 1. I am the Senior Manager of Investigations in the Corporate Security
3 Department at Apple Computer, Inc. ("Apple"), the plaintiff in this action. I have been
4 employed continuously by Apple since January 1990 and have gained extensive
5 knowledge of Apple's business and operations during that time. I have personal
6 knowledge of the facts set forth in this declaration, and if called as a witness, I could and
7 would testify thereto.

8 2. I previously provided a declaration in this action on December 13, 2004
9 in support of Apple's *Ex Parte* Application to Authorize Discovery. I affirm that the
10 information I provided in that declaration remains true. [REDACTED]
11 [REDACTED]

12 **DESPITE AN EXHAUSTIVE INVESTIGATION, APPLE HAS BEEN UNABLE**
13 **TO IDENTIFY THE RESPONSIBLE PERSON(S)**

14 3. As described in the Declaration of Al Ortiz, Jr. In Support Of Apple's
15 Opposition To EFF's Motion ("Ortiz Decl."), I was an active participant in Apple's
16 investigation of the unauthorized disclosure of trade secret information regarding Asteroid
17 that was posted on www.powerpage.org ("PowerPage") and www.appleinsider.com
18 ("AppleInsider"). I became aware of the investigation on November 19, 2004 and began
19 working on the investigation on or about November 21, 2004.

20 4. During the course of our investigation, Mr. Ortiz and I determined that
21 the trade secret information posted on PowerPage (on November 19, 22, 23, and 26, 2004)
22 and on AppleInsider (on November 23, 2004) originated from an electronic presentation
23 file—or "slide stack"—entitled [REDACTED] (the "Confidential
24 Slides"). These Confidential Slides were conspicuously marked as "Apple Need-to-Know
25 Confidential." We also determined that the Confidential Slides included an internal,
26 confidential Apple drawing of the product (the "Confidential Drawing") that was the
27 source of images posted on PowerPage and AppleInsider. These conclusions were based
28 on our observations of striking similarities between the Confidential Slides and the articles

posted on PowerPage and AppleInsider.

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[REDACTED]

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[REDACTED]

[REDACTED]

17 In the course of our investigation into these unauthorized disclosures,

1 Mr. Ortiz and I communicated with the primary author of the Confidential Slides,
2 [REDACTED] [PK]. [REDACTED] [PK] stated to us that he had created the
3 Confidential Slides with administrative assistance from another Apple employee, [REDACTED]
4 [REDACTED] [JD]. [REDACTED] [PK] informed us that he had distributed the Confidential
5 Slides electronically to a group of 25 Apple employees who had a need for the
6 information, including [REDACTED] [JD]. [REDACTED] [PK] provided us with a complete
7 list of those Apple employees. [REDACTED] [PK] also stated that he had never provided
8 to anyone else the Confidential Slides, the Confidential Drawing, or any of their
9 constituent parts.

10 18. Mr. Ortiz and I—in some cases jointly, in others separately—
11 subsequently contacted each of the 25 employees who had received the Confidential
12 Slides from [REDACTED] [PK]. One of those employees, [REDACTED] [KT], stated that he
13 had forwarded the Confidential Slides to another Apple employee who needed the
14 information, [REDACTED] [JF]. We contacted [REDACTED] [JF], who stated that he had not
15 shared the Confidential Slides or any of their constituent parts with anyone else.

16 19. Each of the other 24 employees who had received the Confidential Slides
17 from [REDACTED] [PK] stated either to Mr. Ortiz or me that they had never provided to
18 anyone else the Confidential Slides or any of their constituent parts. [REDACTED] [JD],
19 however, stated that he placed a copy of the Confidential Slides on a secure server at
20 Apple (the “Secure Server”).

21 20. I investigated whether any unauthorized disclosure could have originated
22 with the copy of the Confidential Slides maintained on the Secure Server. I determined
23 that the information on the Secure Server was protected by passwords and other security
24 measures. I also requested and reviewed all available data regarding the identity of users
25 who had accessed that file on the Secure Server. That data indicated that one Apple
26 employee, [REDACTED] [TO], had accessed the Confidential Slides on the Secure Server;
27 that data did not indicate that any other person had accessed the Confidential Slides on the
28 Secure Server.

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21. I contacted [REDACTED] [TO], who stated that he had accessed the Confidential Slides because he had a need to know its contents. With one exception, [REDACTED] [TO] also stated that he had never provided to anyone the Confidential Slides or any of their constituent parts. As an exception to that statement, [REDACTED] [TO] indicated that he had verbally discussed some of the contents of the Confidential Slides with another Apple employee, [REDACTED] [DM], who had a need to know the information.

22. [REDACTED] subsequently contacted [REDACTED] [DM]. He stated that [REDACTED] [TO] had discussed with him information regarding Asteroid. [REDACTED] [DM] stated that he never shared that information with anyone, inside or outside Apple.

23. Mr. Ortiz and I have exhaustively investigated the unauthorized disclosures to PowerPage and AppleInsider discussed above. In particular, we have contacted every person that we could determine received the Confidential Drawing or the Confidential Slides, but we have not been able to uncover the source(s) of the unauthorized disclosure.

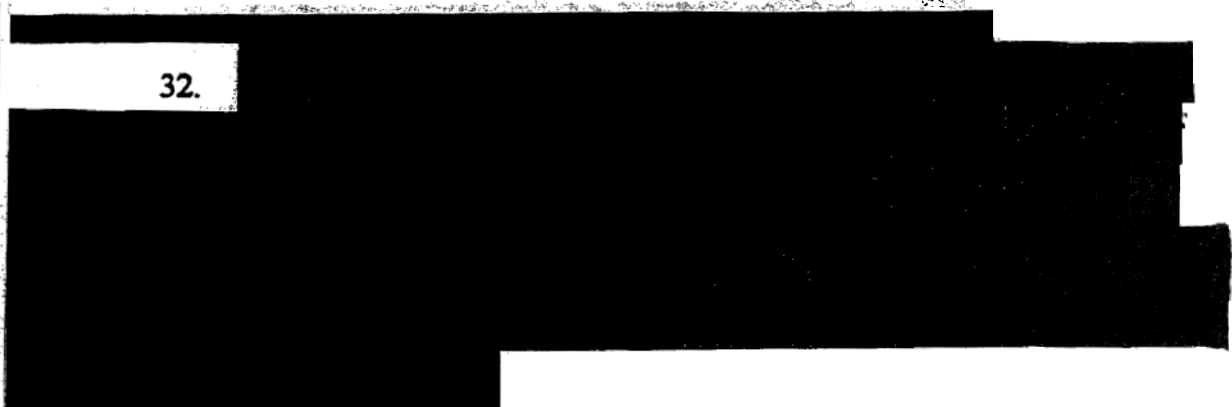
[REDACTED]

[REDACTED]

29. Apple also took, and continues to take, reasonable efforts to maintain the secrecy of the Confidential Drawing, the Confidential Slides, the specification details posted at PowerPage and AppleInsider, and the fact that Apple was developing the Asteroid product. Among other things, all persons who had access to this information had a need for it as part of their job responsibilities, and all of those persons were subject to confidentiality agreements that prohibited them from disclosing, publishing, or disseminating this information. Apple also maintained and maintains tight security over its physical locations and computer systems. The information could not have been provided to PowerPage or AppleInsider absent violations of Apple's confidentiality agreements and the laws protecting trade secrets.

[REDACTED]


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I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct.

Executed at Cupertino, California, this 24TH day of February, 2005.



Robin Zonic

SF1-577282.6

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13 Apple Computer, Inc.

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

16 Apple Computer, Inc.,

17 Plaintiff,

18 v.

19 Doe 1, an unknown individual, and Does
20 2-25, inclusive,

21 Defendants.

Case No. 104-cv-032178

DECLARATION OF AL ORTIZ, JR.
IN SUPPORT OF APPLE'S
OPPOSITION TO EFF'S MOTION
FOR PROTECTIVE ORDER

REDACTED

1 I, Al Ortiz, Jr., declare and state as follows:

2 1. I am a Senior Investigator in the Corporate Security Department at Apple
3 Computer, Inc. ("Apple"), the plaintiff in this action. I have been employed continuously
4 by Apple since April 1998 and have gained significant knowledge of Apple's operations
5 and business during that time. I make this declaration based on my personal knowledge of
6 the facts stated herein, and, if called as a witness, could and would testify thereto.

7 **APPLE'S EXHAUSTIVE INVESTIGATION HAS NOT REVEALED THE**
8 **IDENTITY OF THE PERSON(S) DISCLOSING THE TRADE SECRETS**

9 2. On November 19, 2004, I was alerted to the presence of an article on the
10 website www.powerpage.org ("PowerPage") detailing a highly-confidential, unannounced
11 Apple product code-named "Q97" or "Asteroid." I immediately began investigating the
12 source of this unauthorized disclosure of Apple trade secret information. Apple's Robin
13 Zonic was also an active participant in this investigation.

14 3. As detailed in the Declaration of Robin Zonic ("Zonic Decl."),
15 Ms. Zonic and I determined that the trade secret information posted on PowerPage (on
16 November 19, 22, 23, and 26, 2004) and on AppleInsider (on November 23, 2004)
17 originated from an electronic presentation file—or "slide stack"—entitled [REDACTED]
18 [REDACTED] (the "Confidential Slides"). These Confidential Slides were
19 conspicuously marked as "Apple Need-to-Know Confidential." We also determined that
20 the Confidential Slides included an internal, confidential Apple drawing of the product
21 (the "Confidential Drawing") that was the source of images posted on PowerPage and
22 AppleInsider.

23 4. As part of our investigation of the disclosure, I communicated with the
24 Apple employee who had created the Confidential Drawing, [REDACTED] [SZ] [REDACTED]
25 [REDACTED] [SZ] stated that he created the Confidential Drawing specifically for the
26 Confidential Slides, that he had provided the Confidential Drawing only to two Apple
27 employees—[REDACTED] [DW] and [REDACTED] [PK], both of whom had a need to
28 know based on their involvement in the Asteroid project—and that he had never provided

1 the Confidential Drawing to anyone else inside or outside Apple. [redacted] [SZ] also
2 stated that he had never incorporated the Confidential Drawing into any other document.

3 5. I subsequently communicated with [redacted] [DW], who stated that he
4 had never provided the Confidential Drawing to anyone else inside or outside Apple.
5 [redacted] [DW] further indicated that he had never incorporated the Confidential
6 Drawing into any other document.

7 6. Ms. Zonic and I also communicated with [redacted] [PK], who stated
8 to us that he had created the Confidential Slides with administrative assistance from
9 another Apple employee, [redacted] [JD]. [redacted] [PK] informed us that he had
10 distributed the Confidential Slides to a group of 25 Apple employees who had a need for
11 the information, including [redacted] [JD], [redacted] [DW], and [redacted] [SZ].
12 [redacted] [PK] provided us with a complete list of those Apple employees. [redacted]
13 [PK] also stated that he had never provided to anyone else the Confidential Slides, the
14 Confidential Drawing, or any of their constituent parts.

15 7. Ms. Zonic and I—in some cases jointly, in others separately—
16 subsequently contacted each of the 25 employees who had received the Confidential
17 Slides from [redacted] [PK]. One of those employees, [redacted] [KY], stated that
18 he had forwarded the Confidential Slides to another Apple employee who needed the
19 information, [redacted] [JF]. We contacted [redacted] [JF], who stated that he had not
20 shared the Confidential Slides or any of its constituent parts with anyone else.

21 8. Each of the other 24 employees who had received the Confidential Slides
22 from [redacted] [PK] stated either to Ms. Zonic or me that they had never provided to
23 anyone else the Confidential Slides or any of their constituent parts. I am informed and
24 believe, however, that [redacted] [JD] stated to Ms. Zonic that he had placed a copy of
25 the Confidential Slides on a secure server at Apple. I am also informed and believe that
26 Ms. Zonic investigated whether any unauthorized disclosure could have originated with
27 that secure server.

28 9. As part of our investigation, I also requested a broad search of Apple's

e-mail servers for communications regarding the Confidential Slides, the Confidential Drawing, or details regarding Asteroid and/or Q97. I reviewed the results of that search and found no evidence that the trade secret information had been transmitted outside Apple or to anyone other than the persons Ms. Zonic and I had interviewed.

10. Ms. Zonic and I have exhaustively investigated the unauthorized disclosures to PowerPage and AppleInsider discussed above. In particular, we have contacted every person that we could determine received the Confidential Drawing or the Confidential Slides, but we have not been able to uncover the source(s) of those disclosures.

**THE INFORMATION REGARDING ASTEROID IS AN APPLE TRADE
SECRET, AND APPLE MADE REASONABLE EFFORTS TO PROTECT THAT
INFORMATION**

11. The Confidential Drawing, the Confidential Slides, the specification details posted at PowerPage and AppleInsider, and the fact that Apple was developing the Asteroid product are all Apple trade secrets. The secrecy of that information has value to Apple for at least two reasons.

12. First, Apple participates in highly competitive markets. Giving Apple's competitors advance knowledge of unannounced Apple products enables those competitors to gain a "head start" in competing with the forthcoming Apple products. This head start provides an economic benefit to the competitors and may also harm Apple. Second, Apple uses secrecy to make its new product launches more effective and beneficial to the company. Secrecy surrounding announced products enables Apple to generate more publicity for the product at the time of the launch.

13. Apple also took, and continues to take, reasonable efforts to maintain the secrecy of the Confidential Drawing, the Confidential Slides, the specification details posted at PowerPage and AppleInsider, and the fact that Apple was developing the Asteroid product. Among other things, all persons who had access to this information had a need for it as part of their job responsibilities, and all of those persons were subject to

ontidentiality agreements that prohibited them from disclosing, publishing, or disseminating this information. Apple also maintained and maintains tight security over its physical locations and computer systems. The information could not have been provided to PowerPage or AppleInsider absent violations of Apple's confidentiality agreements and the laws protecting trade secrets.

APPLE'S OVERRIDING INTEREST IN PROTECTING ITS CONFIDENTIAL INFORMATION JUSTIFIES THE SEALING OF THIS DECLARATION

9 14. The information contained in this declaration constitutes highly-confidential and valuable trade secret information to Apple. Apple takes rigorous measures to protect its confidential business information.

3 15. Absent the sealing of this declaration, details regarding Apple's unreleased product and its efforts to uncover the misappropriation of its trade secrets will become publicly available for broad dissemination. These disclosures would also validate the accuracy of the information that has been disclosed and compound the harm to Apple. Such public knowledge would deprive Apple of the ability to control the nature and timing of the product release, thereby causing Apple to lose the benefit of its investment in the product launch. Disclosure of the contents of this declaration would allow Apple's competitors to acquire more detailed trade secret information regarding its new products and the measures Apple takes to protect against unauthorized disclosures.

22 16. Complete closure and sealing of this declaration is necessary to protect Apple's confidential business information. The very purpose of these proceedings is to discover the identities of defendants misappropriating Apple's confidential information and to prevent Apple's confidential information from being disclosed to the public. Closure and sealing of this declaration is the least restrictive means of protecting Apple's interest in its confidential trade secret information.

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I declare under penalty of perjury under the laws of the State of California that
the foregoing statements are true and correct.

Executed at CUPERTINO, California, this 25TH day of February, 2005.


Al Ortiz, Jr.

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