

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

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): George A. Riley (S.B. #118304) David R. Eberhart (S.B. #195474) http://www.jdsupra.com/post/documentViewer.aspx?fid=f692bfde-2214-4aa9-a00e-32fae1dc351e O'Melveny & Myers, LLP 275 Battery Stree, Suite 2600, San Francisco, California 94111 TELEPHONE NO.: (415) 984-8700 FAX NO.: (415) 984-8701 ATTORNEY FOR (Name): Apple Computer, Inc.	FOR COURT USE ONLY Document hosted at JDSUPRA™
NAME OF COURT: Santa Clara County Superior Court STREET ADDRESS: 191 North First Street MAILING ADDRESS: same as above CITY AND ZIP CODE: San Jose, California 95113 BRANCH NAME:	CASE NUMBER: 104-cv-032178
PLAINTIFF/ PETITIONER: APPLE COMPUTER, INC. DEFENDANT/ RESPONDENT: DOE 1, ET AL	
<p style="text-align: center;">DEPOSITION SUBPOENA For Personal Appearance and Production of Documents and Things</p>	

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 Karl Kraft

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:


Date: February 24, 2005	Time: 9:00 AM	Address: O'Melveny & Myeres, LLP, 275 Battery Street, Suite 2600, San Francisco, Claifornia 94111
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- a. As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 4. (Code Civ. Proc., § 2025, subd. (d)(6)).
 - b. You are ordered to produce the documents and things described in item 3.
 - c. This deposition will be recorded stenographically through the instant visual display of testimony, and by audiotape videotape
 - d. This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025(u)(4).
2. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
3. The documents and things to be produced and any testing or sampling being sought are described as follows:
- Continued on Attachment 3.
4. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are described as follows:
- Continued on Attachment 4.
5. **IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.**
6. *At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition.*

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: February 4, 2005

David R. Eberhart
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PERSON ISSUING SUBPOENA)
 Attorney for Apple Computer, Inc.
 (TITLE)

(Proof of service on reverse)

ATTACHMENT

DEFINITIONS AND INSTRUCTIONS

1
2
3 Unless the context indicates otherwise, the following words and phrases have the
4 meanings given:

5 1. "You" or "your" mean and refer to Nfox.com, its employees, agents,
6 representatives and attorneys, and its corporate predecessors, successors, affiliates,
7 divisions, branches, subsidiaries and related entities, and all persons acting for or on its
8 behalf; and Karl Kraft, his agents, representatives and attorneys, and all persons acting for
9 or on his behalf.

10 2. Your production must include requested documents, materials and files from
11 any file server, mainframe computer, mini computer, personal computer, notebook or
12 laptop computer, personal data assistant, or other storage device, including but not limited
13 to e-mail. All requested files that are still on storage media and identified as erased, but
14 are still recoverable, shall be included.

15 3. The term "document" is used as interpreted under the California Civil Code
16 and the California Evidence Code and includes, without limitation, all originals and
17 copies, duplicates, drafts, and recordings of any written, printed, graphic, photographic,
18 electronic or otherwise recorded matter, however produced or reproduced, and all
19 writings, as defined in California Evidence Code § 250, of any nature, whether on paper,
20 magnetic tape, electronic or optical media or other information storage means, including
21 film, tapes, computer disks or cards, or personal data assistant memory; and where any
22 such items contain any marking not appearing on the original or are altered from the
23 original, then such items shall be considered to be separate original documents.

24 4. The term "relate," "related," "relates," or "relating" means concerning,
25 referring to, summarizing, reflecting, constituting, containing, embodying, pertaining to,
26 involved with, mentioning, discussing, consisting of, comprising, showing, commenting
27 on, evidencing, describing or otherwise relating to the subject matter.

28 5. As used herein, "all," "any," "each," or "every" means "all, any, each and

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.

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

FILED

FEB -4 2005

1 GEORGE A. RILEY (S.B. #118304)
2 DAVID EBERHART (S.B. #195474)
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CHIEF CLERK
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
BY *[Signature]*
C A PINAGATE

Attorneys for Plaintiff
Apple Computer, Inc.

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

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

17 Based on the *ex parte* application of Plaintiff Apple Computer, Inc.
18 ("Apple"), and good cause appearing,

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

22 All documents relating to the identity of any person or entity who
23 supplied information regarding an unreleased Apple product code-named
24 "Asteroid" or "Q97" (the "Product"), including postings that appeared on
25 Powerpage.com (the "Website") on November 19, November 22,
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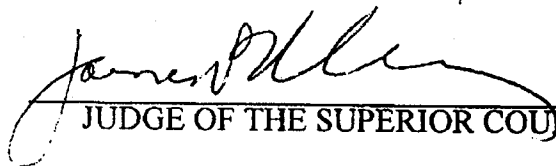
including true name(s), address(es), internet protocol ("IP") address(es),
and e-mail address(es);

(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 1, 2005



JUDGE OF THE SUPERIOR COURT

SF1:569530.3

1 GEORGE A. RILEY (S.B. #118304)
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7 Attorneys for Plaintiff
 Apple Computer, Inc.

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

10
 11 Apple Computer, Inc.,
 12 Plaintiff,
 13 v.
 14 Doe 1, an unknown individual, and
 Does 2-25, inclusive,
 15 Defendants.

Case No. 104-cv-032178
COMMISSION

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

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

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

26 WHEREAS, the documents requested by Apple are identified in the
 27 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

ATTACHMENT

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6 7. In the event any document is withheld on a claim of attorney/client privilege
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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
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GEORGE A. RILEY
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By 

David R. Eberhart
Attorneys for Apple Computer, Inc.

SF1:573817.1