

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

CIVIL ACTION NO.: 3:16-CV-00012-M

COMMERCIAL CONNECT, LLC,

PLAINTIFF

VS.

INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS,

DEFENDANT

ORDER

This matter is before the Court upon a Motion for Temporary Restraining Order and Preliminary Injunction. [DN 3]. It is not entirely clear that the Plaintiff is seeking the issuance of a Temporary Restraining Order on an *ex parte* basis without providing notice to the Defendant, but to the extent that it is, the motion is **denied**.

Under Fed. R. Civ. P. 65(b)(1), a temporary restraining order may only be issued without notice to the adverse party if facts are shown in an affidavit or verified complaint that immediate and irreparable harm will result before the adverse party can be heard in opposition, **and** the movant's attorney must certify any efforts made to give notice and state the reasons why notice should not be required. No such certification has been made.

The Court is justified in proceeding *ex parte* in two circumstances, (1) where notice to the adverse party is impossible, as in the case where the adverse party is unknown or unable to be found and (2) where notice to the adverse party would render fruitless further prosecution of the action. First Technology Safety Systems, Inc. v. Depinet, 11 F.3d 641 (6th Cir. 1993) “Where there are no practical obstacles to giving notice to the adverse party, an *ex parte* order is justified only if there is no less drastic means for protecting the plaintiff's interests.” Id at 650 (quoting American Can

Company v. Mansukhani, 742 F.2d 314, 322 (7th Cir. 1984)).

It does not appear that there are any practical obstacles to giving notice to the Defendants in this case. Therefore, the Court will conduct a telephonic hearing at 8:30 AM, CST, on January 20, 2016, to discuss the further scheduling of Plaintiff's motion. Plaintiff shall give notice of this Order to the appropriate representative of the Defendant. Plaintiff shall provide to Erica Skinner, case manager for the undersigned, the name and contact information for the Defendant's representative on or before the close of business on January 19, 2016. The Court will initiate the call. Ms. Skinner's telephone number is 270-689-4406.

So ordered.


Joseph H. McKinley, Jr., Chief Judge
United States District Court

cc: counsel of record

January 8, 2016