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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. CV 12-2525-JST (ANx)

Date: March 27, 2012

Title: Mgame Corp. v. K2 Network Inc.

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Present: **Honorable JOSEPHINE STATON TUCKER, UNITED STATES DISTRICT JUDGE**

Ellen Matheson  
Deputy Clerk

N/A  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:      ATTORNEYS PRESENT FOR DEFENDANT:

Not Present

Not Present

**PROCEEDINGS:      (IN CHAMBERS) ORDER (1) DENYING EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER (Doc. 5), AND (2) ISSUING ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION**

On March 23, 2012, Plaintiff Mgame Corporation (“Plaintiff”) filed an *ex parte* application for a temporary restraining order and an order to show cause re: preliminary injunction. (Doc. 5.) Defendant K2 Network, Inc. (“Defendant”) filed an Opposition on March 26, 2012 (Doc. 16), and Plaintiff filed a Reply on March 27, 2012 (Doc. 23). For the reasons stated below, the Court (1) DENIES Plaintiff’s *ex parte* application for a temporary restraining order, and (2) ORDERS Defendant to show cause why this Court should not issue a preliminary injunction.

**I.      Temporary Restraining Order**

To justify *ex parte* relief, “the evidence must show that the moving party’s cause will be irreparably prejudiced if the underlying motion is heard according to regular noticed motion procedures. . . . [and] it must be established that the moving party is without fault in creating the crisis that requires *ex parte* relief, or that the crisis occurred as a result of excusable neglect.” *Mission Power Eng’g. Co. v. Cont’l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995). Here, Plaintiff asserts that there is an emergency, but its actions suggest otherwise. The parties agree that the underlying dispute is subject to arbitration in accordance with the UNCITRAL Arbitration Rules. Plaintiff concedes that the UNCITRAL Rules allow Plaintiff to seek interim relief from the arbitral tribunal directly, but states that “recourse to the tribunal is not currently available.” Although Plaintiff implies that emergency relief is not available from the arbitral tribunal because of the length of time required to constitute the tribunal, Plaintiff has not yet initiated arbitration. Instead, Plaintiff merely states that it intends to initiate arbitration. Therefore, at least part of the reason that recourse to the arbitral tribunal is unavailable is that

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Plaintiff has failed to initiate arbitration. Furthermore, Plaintiff has been aware of a dispute with Defendant since at least the beginning of February, first responding with self-help, then terminating the agreement with Defendant on February 23, 2012. Only now, a month later, has Plaintiff sought a temporary restraining order. The Court concludes that this does not amount to an emergency requiring ex parte relief. Accordingly, Plaintiff's request for a temporary restraining order is DENIED.

**II. Order to Show Cause**

Plaintiff also seeks a preliminary injunction enjoining Defendant, either directly or indirectly, from continuing to operate, promote, publish, produce, distribute and service the Game; ordering Defendant to immediately transfer the Game Servers and Billing and User Databases to Plaintiff, including up-to-date billing and user data; ordering Defendant to provide Plaintiff with up-to-date sales information; and ordering Defendant to take any further steps necessary to transfer control of the Game to Plaintiff without disruption in its availability and continuity. It is ORDERED that Defendant appear before this Court on **April 30, 2012, at 10:00 a.m.**, to show cause as to why a preliminary injunction should not issue. Any additional papers in support of or in opposition to a preliminary injunction should be filed in accordance with the Local Rules.

Initials of Preparer: enm