

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

3M COMPANY

Plaintiff,

CASE NO. 8:20-cv-1003-T-35CPT

v.

TAC2 GLOBAL LLC

Defendant.

**DEFENDANT’S MOTION TO CONTINUE HEARING ON
PLAINTIFF’S MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION AND SUPPORTING MEMORANDUM OF LAW**

Defendant, TAC2 GLOBAL LLC, by and through its undersigned counsel, pursuant to M.D. Fla. Local Rule 3.09, herein files this Motion to Continue Hearing on Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction and in support thereof, states as follows:

1. This is an action for injunctive relief and damages against TAC2 GLOBAL LLC (“TAC2” or “Defendant”).
2. On April 30, 2020, Plaintiff commenced this action by filing its Complaint [D.E. 1]. Defendant first learned of the lawsuit on or about May 1, 2020 when contacted by a reporter, but Defendant was not aware of any motion for injunctive relief being filed with the lawsuit.
3. Defendant was served with the Complaint on May 6, 2020.
4. On May 6, 2020, Plaintiff filed, but did not serve, its forty-nine (49) page, inclusive of exhibits, Motion for Temporary Restraining Order and Preliminary Injunction and Supporting Memorandum of Law [D.E. 8]. Plaintiff attempted to have a Temporary Restraining Order entered without notice to Defendant, which was denied by this Court. [D.E. 12]

5. On May 8, 2020, at approximately 2:24 p.m. Derek McAfee, President of TAC2 was served via electronic mail with a copy of multiple documents filed on the CM/ECF portal, including Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction [D.E. 8], Declarations of Charles Stobbie and David A. Crist, [D.E. 9 & 10 respectively], and the Order on Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction [D.E. 12].

6. On May 11, 2020, at approximately 9:47 a.m. Derek McAfee, President of TAC2 GLOBAL LLC, was served via electronic mail with the Hearing Order Setting a two-hour telephonic hearing on Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction (the "Motion") for May 12, 2020, at 10:00 a.m. [D.E. 15].

7. Although the Hearing Order was entered on Friday, May 8, 2020 it was not served on TAC2 until Monday morning. Thus, TAC2 had only one day notice of the hearing.

8. TAC2 has not had a chance to fully investigate and respond to the allegations in the Complaint and Motion. Likewise, undersigned counsel does not have the time necessary to adequately respond to the allegations and legal analysis contained in the Motion and accompanying Memorandum of Law before tomorrow's hearing.

9. Undersigned counsel is in the process of reviewing the Motion and supporting Declarations and obtaining and reviewing materials from TAC2 to prepare an adequate defense to the Motion. In the limited time available TAC2 has filed the Declaration of Derek McAfee that disputes the allegations made in the Motion and sets out the basis for a meritorious defenses as well as facts indicating that the entry of an overly broad injunction would cause significant damage to TAC2 and its customers.

10. Defendant should have the opportunity to file a full Response in Opposition to the Motion and supporting Memorandum of Law, as well as any additional Declarations necessary to adequately defend itself against the allegations in the Motion.

11. Defendant would therefore respectfully request that the hearing on the Motion be continued for a short period of 10-15 days to allow Defendant's counsel time to file an adequate response to the Motion. Pursuant to Local Rule 4.06(b)(3) Defendant's response would be due seven (7) days prior to the hearing. If this Motion for Continuance is granted Defendant would also request that Defendant be allowed to file its response and supporting declarations up to 5 days prior to the rescheduled hearing.

12. Defendant has meritorious defenses to the Motion and therefore no prejudice will be suffered by Plaintiff in continuing the hearing.

MEMORANDUM OF LAW

The requirements of a fair hearing on a preliminary injunction motion require giving defendants the ability to present controverting factual data and such opportunity is illusory if there is not adequate notice of plaintiff's claims. *Four Seasons Hotels And Resorts, B.V. v. Consorcio Barr, S.A.*, 320 F.3d 1205, 1211 (11th Cir. 2003) ("It goes without saying that the requirements of a fair hearing include notice of the claims of opposing party and an opportunity to meet them"). The Court in *Four Seasons Hotels and Resorts, B.V.*, concluded that a continuance was required where the defendant had been served with the Motion for a TRO and a notice of hearing only two days prior to the hearing. *Id.* ("The two day notice period provided insufficient time to read the pertinent documents, obtain and consult with counsel, and locate witnesses or obtain affidavits supporting the Appellants' position.")

Failure to provide the Defendants with the necessary continuance to prepare and submit its response to the Motion ultimately would lead to the reversal of any injunction entered under such circumstances. *See, Marshall Durbin Farms, Inc. v. Nat'l Farmers Org., Inc.*, 446 F.2d 353, 356–57 (5th Cir. 1971) (reversing grant of preliminary injunction where defendants only had a few days to respond to a motion that involved multiple occurrences and supporting affidavits).

WHEREFORE, Defendant, TAC2 GLOBAL LLC, respectfully requests that this Honorable Court grant its motion to continue hearing on Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction for ten to fifteen days, and allow Defendant to file their response and supporting declarations up to 5 days prior to the rescheduled hearing time, and for all other relief the Court deems just and proper.

/s/ Amy E. Stoll

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CERTIFICATE OF GOOD FAITH

DEFENDANT'S COUNSEL HEREBY CERTIFIES that it conferred with Plaintiff's counsel, in good faith and in accordance with Local Rule 3.01(g), and Plaintiff's counsel indicated they could not agree to continue the hearing.

CERTIFICATE OF SERVICE

DEFENDANT'S COUNSEL HEREBY CERTIFIES that on May 11, 2020, a true and correct copy of this motion was electronically filed with the Clerk of Court using the CM/ECF system so that notice will be sent to all counsel of record.

/s/ Amy E. Stoll

Amy E. Stoll, Esquire
Florida Bar No. 150959