

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

ROBERT NOVAK, d/b/a/  
Pets Warehouse.com,

\*

\*

Plaintiff

\*

Case No.: CV 02-2978 (DRH)(WDW)

v.

\*

ACTIVE WINDOW PRODUCTIONS,  
INC., et al.,

\*

Defendants.

\*

FIRST AFFIDAVIT OF JOHN R. BENN

STATE OF ALABAMA )

COUNTY OF COLBERT )

John R. Benn, first being duly sworn, says:

I have personal knowledge of the information contained herein.

1. This Affidavit is submitted in support of my FRCP Rule 12(b)(2) request to dismiss Plaintiff's Amended Complaint against me for lack of personal jurisdiction.
2. My name is John R. Benn. I am now, and was at all times referred to herein, employed as a private attorney in Colbert County, Alabama. This Affidavit has been created in connection with the lawsuit styled *Robert Novak, d/b/a Petswarehouse.com v. Active Window Productions, Inc., et. als*, Case Number CV-02-2978 which is currently pending in the United States District Court for the Eastern District of New York. I am the defendant named "John Benn" in that action.
3. I am now, and was at all times referred to in Plaintiff's Amended Complaint, a resident of the State of Alabama. I reside in Sheffield, Alabama.
4. I own no real property in New York.
5. I own no business interests in New York.

6. I do not operate any business interests in New York.
7. I have not contracted to supply any goods or services in New York.
8. I derive no income from goods sold neither in New York nor for any services rendered in New York.
9. I do not regularly do business in, nor solicit any business from New York.
10. I currently earn my livelihood as a private attorney in Colbert County, Alabama.
11. I do not advertise my services in New York.
12. I have not received any payment for my services as an attorney from anyone in New York.
13. I have no agents or offices in New York.
14. From 2001 to present, which includes all times relevant to Plaintiff's Amended Complaint, I have been employed as a private attorney and derived no revenues from interstate commerce.
15. I have had no occasion to travel to or through New York for any purpose related to this litigation.
16. I have no contracts or agreements with AOL-Times Warner.
17. I have a contract to operate and maintain the Lawyers Forum of CompuServe with the entity CompuServe Interactive Services, Inc. which is a Delaware corporation with its principal offices in Columbus, Ohio. The Lawyers Forum is operated on a *pro bono* basis to provide legal information to the public. No advertising is offered and there is no revenue generated from this CompuServe Forum.
18. In an individual capacity I have no other legal relationship with CompuServe Interactive Services, Inc. I have no agency relationship with CompuServe.
19. I do not offer any advertising space on any Internet web site.

Done this the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
John R. Benn

STATE OF ALABAMA

COUNTY OF COLBERT

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that, prior to or immediately after filing the foregoing with the Court, I mailed U.S. Mail, postage prepaid, or mailed by email a copy to:

Mr. Robert Novak  
1550 Sunrise Highway  
Copaigue, New York 11726  
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Thomas Barr  
(via email)

Ann Hahn  
(via email)

Mark Rosenstein  
(via email)

Erik Olson  
(via email)

Date: \_\_\_\_\_

\_\_\_\_\_  
John R. Benn

