

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

ROBERT NOVAK, *
Plaintiff, *
vs. * CASE NO.: CV-02-2978(DRH)(WDW)
JOHN BENN, et als., *
Defendants. *

DEFENDANT "JOHN BENN D/B/A PETSFORUM.COM AND
FORUMS.COMPUSEVE.COM"'S 12(b)(6) MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Comes now Defendant "John Benn d/b/a PetsForum.com and Forums.CompuServe.com" and moves the Court to dismiss this action for failure to state a claim upon which relief can be granted. In support of said Motion, Defendant would show as follows:

1. Plaintiff Novak in his Amended Complaint names as a separate defendant "John Benn".
2. Plaintiff Novak in his Amended Complaint also names as a separate defendant "John Benn d/b/a PetsForum.com and Forums.CompuServe.com".
3. John Benn does not do business as either "PetsForum.com" or "Forums.CompuServe.com."
4. "PetsForum.com" is a web address and not an entity. This web address and the subsidiary web pages available through the web site is operated by and maintained by a corporation - PetsForum Group, Inc.

5. "Forums.CompuServe.com" is a web address and not an entity. This web address is a gateway or portal to Forums which are operated on the CompuServe Information Services, Inc. web site. The PetsForum Group, Inc. operates and maintains several pet and animals related Forums on CompuServe which are available through this gateway.

6. Neither "Petsforum.com" or "Forums.CompuServe.com" are legal entities capable of being sued.

7. That named defendant "John Benn d/b/a PetsForum.com and Forums.CompuServe.com" is not an entity that can be sued under rule FRCP 9(a).

8. That named defendant "John Benn d/b/a PetsForum.com and Forums.CompuServe.com" hereby seeks dismissal of Plaintiff's Amended Complaint for failure to state a cause of action under rule FRCP 12(b)(6).

9. This Motion is based upon the Affidavit of John Benn attached and incorporated herein.

Date

John R. Benn, *Pro se* ASB-0868-B23J
104 West Third Street
Sheffield, AL 35660
Phone: 256-386-7685
FAX: 256-386-7615

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
FAX: 1-631-789-9340
(via US Postal Mail)

Robert Hudson
(via email)

Cynthia Powers
(via email)

Vince Chan
(via email)

Mr. James E. Arden
(attorney for ATI & Greg Gooden)
Attorney at Law
15315 Magnolia Blvd., Suite 203
Sherman Oaks, CA 91403-1174
(via US Postal Mail)

Ms. Cynthia Kouril
(attorney for Mark Rosenstein)
Robert L. Folks & Associates, LLP
Attorneys at Law
510 Broad Hollow Road, Ste. 305
Melville, New York 11747
FAX: 1-631-845-8779
(via US Postal Mail)

Thomas Barr
(via email)

Ann Hahn
(via email)

Mark Rosenstein
(via email)

Erik Olson
(via email)

Date: _____

John R. Benn