

IN THE CIRCUIT COURT OF COLBERT COUNTY, ALABAMA

JOHN R. BENN,

*

Plaintiff,

*

v.

*

Case Number: CV-2002-184

ROBERT NOVAK,

*

Defendant.

*

PROPOUNDING PARTY: JOHN R. BENN

RESPONDING PARTIES: ROBERT NOVAK

INTERROGATORIES: FIRST

TO DEFENDANT AND HIS ATTORNEY OF RECORD:

PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT

COMES NOW The Plaintiff and submits the following interrogatories for answer under oath within forty five (45) days, pursuant to the provisions of Rule 33 of the Alabama Rules of Civil Procedure. Plaintiff further requests that the Defendant produce and attach copies of all documents used in answering these interrogatories and attach other documents as are requested herein.

In answering these interrogatories, you are requested to provide all information which is known or reasonably available to you, including all information in the possession of your attorneys, investigators, physicians, representatives, agents, and others acting on your behalf or under your direction or control.

These interrogatories call for all information available to the Defendant, his officers, agents, and employees with respect to the subject matter into which he inquires. If some of the information is known or available to a particular officer, employee, agent, or

family member and other information is available to another officer, employee, agent or family member, please include in your answers all information known to each officer, employee, agent or family member, and please specify which officer, employee, or agent provided information with respect to each answer.

Unless otherwise indicated, these interrogatories refer to the time, place, and circumstances of the occurrence mentioned or complained of in the pleadings.

If any of these interrogatories cannot be answered in full, please answer to the extent possible, specifying the reason for your inability to answer the remainder, and stating whatever information or knowledge you have concerning the unanswered portion.

DEFINITIONS

"Custodian" means the person who has possession or control of documents, and a request for the identity of a custodian constitutes a request for his name and address.

"Document" as used in these interrogatories shall mean all written or graphic matter of every kind and description, however produced or reproduced, whether draft or final, original or reproduction, in the actual or constructive possession, custody, or control of Defendant including, but not limited to, letters, correspondence, memoranda, documents, minutes, city council files, mayor's files, films, transcripts, contracts, agreements, memoranda of telephone conversations or personal conversations, micro-film, telegrams, books, newspaper, magazine advertisements, periodicals, bulletins, circulars, pamphlets, statements, notices, reports, requests for regulations, directives, teletype messages, communications (internal or otherwise), minutes of meetings, ledgers, books of account, vouchers, proposals, prospectuses, orders, working papers,

desk calendars, appointment books, diaries, time sheets, logs, movies, tape (audio or visual) recordings, or material similar to any of the foregoing, however denominated by Defendant, inclusive of writings, drawings, renderings, graphs, charts, photographs, phonograph records, and data processing results, print-outs and computations (both in existence or stored) and other data compilations from which data can be stored.

If no documents exist which could be the basis for exact answers to any of the interrogatories set forth below, Defendant is requested to provide the best answers possible based on existing documents and recollections of the persons most fully acquainted with the information solicited. Where information is requested from a date certain to the present and documents covering the entire period are available, please indicate the dates or approximate dates for which relevant documents are available and those for which they are not available and provide answers as extensive and complete as possible in each case.

When a document is asked to be identified, it is requested that the Defendant identify the document with sufficient specificity to form the basis for an eventual Rule 34 request for the production of documents and particularly to state its location, the name and title of the person in charge of its custody or maintenance, its date, author, and length and a synopsis of its contents.

CONTINUING REQUEST

These interrogatories are to be deemed continuing in nature. Supplementary answers are hereby requested in the event the Defendant subsequently obtains or becomes aware of the existence of additional or different information than that contained in answers filed in response to these interrogatories.

1. State the name and residence address of the person who posted the message on the Aquaria/Fish Forum which is made the basis of this lawsuit.

2. For the period January 1, 2000 to present state the names, residence addresses, social security numbers and inclusive dates of employment for all Defendant's employees.

3. For the period January 1, 2000 to present state the names and addresses of all "Affiliates" of the web site "Petswarehouse.com".

4. For the period January 1, 2000 to present state the names, addresses, order number and date of transactions for all web transactions or purchases submitted to "Petswarehouse.com".

5. For the period January 1, 2000 to present state the names, addresses and account numbers of all suppliers of products used to list items on "Petswarehouse.com" or otherwise involved in inventory or purchases for retail sales.

6. In paragraph 36 of your "First Counterclaim" you allege that "Novak has been damaged by counsel fees and other amounts". With respect to such allegation state:

(a) State in detail the facts upon which you base this contention.

(b) State the name, residence address, residence telephone number of all persons who have or claim to have any knowledge or information regarding any facts stated in subpart a.

7. With respect to your allegation that you have incurred "counsel fees" state:

(a) The name and business address of any attorneys you have consulted about this matter.

(b) Whether you are related by blood or marriage to the above.

(c) The date(s) of any consultations.

(d) The date and amounts paid for any legal services.

(e) The method of payment for the above items.

8. If your response to any request for admission is other than an unqualified admission, state for each such request for admission the following:

(a) All facts (not opinions) that you contend support in any manner your refusal to admit.

(b) Identify all documents, notes, reports, memorandums, electronic and/or tape recordings, photographs, oral statements, or other tangible or intangible thing that supports in any manner your refusal to admit or your qualification of any admission. Identification is to be sufficient to identify the aforesaid things in a request for production.

(c) The name and address of all persons, including consultants, purporting to have any knowledge or factual data upon which you base your refusal to admit or the qualifications to any admission.

The purpose of this interrogatory is to have you reveal everything presently known by you that bears on your refusal to admit or any qualifications to your admissions. Please note that Plaintiff at the time of trial will move the Court for an order excluding from evidence all tangible or intangible things known to your or any witnesses not disclosed in your responses to this Interrogatory.

John R. Benn BEN009 / ASB-0868-B23J
Attorney for Plaintiff
104 West Third Street
Sheffield, Alabama 35660
(256) 386-7685

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 delivered by hand a copy to:

Mr. Robert Novak
1550 Sunrise Highway
Copaigue, New York 11726

Date: _____

John R. Benn