

IN THE CIRCUIT COURT OF COLBERT COUNTY, ALABAMA

JOHN R. BENN,

*

Plaintiff,

*

v.

*

Case Number: CV-2002-184

ROBERT NOVAK, 1550 Sunrise Highway, Copaque, New York 11726; 1. Whether singular or plural, that entity or those entities, that individual or those individuals that used the online User Name "Jack" and the online User Name "Jackpetsw"; 2. Whether singular or plural, that entity or those entities, that individual or those individuals that posed the derogatory message made the basis of this complaint; 3. Whether singular or plural, that entity or those entities, that individual or those individuals that employed the Defendant who posted the defamatory email made the basis of this complaint; 4. That individual or those individuals or entities, other than those individuals and entities described above, whose wrongful conduct attributed to the occurrences made the basis of this lawsuit. Plaintiff avers that the identities of the fictitious party defendants herein are otherwise unknown to Plaintiff at this time; or, if their names are known to Plaintiff at this time, their identities as proper party defendants are not known to Plaintiff at this time, and their true names will be submitted by amendment when the aforesaid lacking information is ascertained,

Defendants.

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FIRST AMENDED COMPLAINT

COMES NOW Plaintiff John R. Benn and states his claims for damages against the Defendants as follows:

The Parties

1. Plaintiff John Benn is an attorney licensed to practice law in the State of Alabama at all times material to this Complaint.
2. Robert Novak is an individual operating the web site petswarehouse.com and was at all times material to this Complaint doing business in the State of Alabama.

Factual Allegations

3. That on or about November 28, 2001, a person using screenname "Jackpetsw" posted a public message on CompuServe's Aquaria/Fish Forum in which he wrote "[n]o

lawyer worth his salt would do what you are doing, which is why a complaint is pending with your state bar."

5. That as of this date, there is no complaint pending against Plaintiff with the Alabama State Bar Association.

6. That the aforementioned statement is false.

7. That the aforementioned statement was made maliciously and intentionally.

8. That the statement is defamatory *per se* under Alabama law.

9. That the statement was made while said person was acting in the line and scope of his or her employment or agency relationship with Robert Novak d/b/a petswarehouse.com.

COUNT I

Defamation *per se*

10. Plaintiff realleges paragraphs 1 - 9 of this complaint.

11. That the statement made was false and defamatory *per se*.

12. That as a proximate result and consequence, Plaintiff's reputation was damaged by the *per se* defamation.

13. Plaintiff prays for the relief set forth at the conclusion of the complaint.

COUNT II

14. Plaintiff realleges Paragraphs 1 through 13 of this Complaint.

15. On or about the date of the occurrence made the basis of this lawsuit one or more of the fictitious parties defendants listed and described in the caption of this Complaint was guilty of negligence and/or wanton conduct, and said negligent and/or other wrongful conduct was the proximate cause of Plaintiff's damages. Plaintiff avers that this is particularly true in respect to such fictitious parties defendant who posted the defamatory

message. Plaintiff avers that the identities of the fictitious parties defendants are otherwise unknown to Plaintiff at this time or their identities as proper parties defendants are not known to Plaintiff at this time and that their true names will be substituted by amendment when ascertained.

Plaintiff prays for the relief set forth at the conclusion of the complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- A. Will assume jurisdiction over this action;
- B. Enter a Declaratory Judgment that Defendants' actions violated relevant provisions of State law;
- C. Enter a judgment against Robert Novak d/b/a petswarehouse.com for \$70,000.00 for the *per se* defamation complained of in this Complaint; and
- D. Award Plaintiff such other equitable and legal relief to which he shows himself entitled to receive.

Date

John R. Benn BEN009/ASB-0868-B23J
Attorney for Plaintiff
104 West Third Street
Sheffield, AL 35660
205-386-7685

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