

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

REUNION INDUSTRIES, INC.,
a Delaware Corporation,

Plaintiff,

v.

DOE 1 a/ka/ DENUNZ2005, an adult
individual, DOE 2 a/ka STOCKER 606, an
adult individual, HERBERT BENNET
CONNER, an adult individual and DOE 3
a/k/a PUN 2 DEX, an adult individual,

Defendants.

CIVIL DIVISION

G.D. No. 06-007965

**NOTICE OF NOTICE
OF REMOVAL**

Filed on behalf of:
Defendant, Herbert Bennet Conner

Counsel of Record for This Party:

Dennis St. J. Mulvihill, Esquire
PA I.D. #16411

Bruce E. Rende, Esquire
PA I.D. #52714

Gregory B. Proffitt, Esquire
PA I.D. #204802

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JURY TRIAL DEMANDED.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

REUNION INDUSTRIES, INC.,
a Delaware Corporation,

Plaintiff,

v.

DOE 1 a/ka/ DENUNZ2005, an adult
individual, DOE 2 a/ka STOCKER 606, an
adult individual, HERBERT BENNET
CONNER, an adult individual and DOE 3
a/k/a PUN 2 DEX, an adult individual,

Defendants.

CIVIL DIVISION

G.D. No. 06-007965

NOTICE OF NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §1446(d), Defendant, Herbert Bennet Conner, files herewith a true and correct copy of the Notice of Removal filed with the United States District Court for the Western District of Pennsylvania on May 5, 2008.

Respectfully submitted,

ROBB LEONARD MULVIHILL LLP

By:



Dennis St. J. Mulvihill, Esquire
Bruce E. Rende, Esquire
Gregory B. Proffitt, Esquire

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF NOTICE OF REMOVAL** was served upon the following counsel of record via First Class U.S. Mail, postage prepaid, on this the 5th day of May 2008:

Stephen J. Del Sole, Esquire
Bryan C. Devine, Esquire
DEL SOLE CAVANAUGH STROYD LLC
The Waterfront Building
200 First Avenue, Suite 300
Pittsburgh, PA 15222



Dennis St. J. Mulvihill, Esquire
Bruce E. Rende, Esquire
Gregory B. Proffitt, Esquire

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

REUNION INDUSTRIES, INC.,
a Delaware Corporation,

Civil Action No.

Plaintiff,

JURY TRIAL DEMANDED

v.

DOE 1 a/k/a DENUNZ2005, an adult
individual, DOE 2 a/k/a STOCKER 606,
an adult individual, HERBERT BENNETT
CONNER, an adult individual and DOE 3 a/k/a
PUN 2 DEX, an adult individual,

Defendants.

NOTICE OF REMOVAL

Defendant, Herbert Bennett Conner, by and through his undersigned attorneys, submits the following Notice of Removal to the United States District Court for the Western District of Pennsylvania pursuant to 28 U.S.C. §§ 1441 and 1446:

1. On April 4, 2006, Plaintiff, Reunion Industries, Inc., commenced this action by filing a Complaint in the Court of Common Pleas of Allegheny County, Pennsylvania, at docket number GD-06-007965.

2. In this Complaint, Plaintiff asserted a claim for commercial disparagement against three "John Doe" Defendants for statements these Defendants allegedly posted on a Yahoo! Finance bulletin board designated for Reunion Industries.

3. Plaintiff did not make any averments in this Complaint relating to the identity and/or

citizenship of Doe 1 a/k/a “denunz2005,” Doe 2, a/k/a “stocker606,” and Doe 3 a/k/a “pun2dex.” As such, the identity and/or citizenship of the “John Doe” Defendants was unknown at that time.

4. Despite filing this Complaint, Plaintiff never made a good faith effort to effectuate service of same upon any of the Defendants. As such, Plaintiff’s Complaint was never served. (A true and correct copy of the Official Docket Report is attached hereto as **Exhibit “A.”**)

5. Thereafter, on February 21, 2008, almost two years later, Plaintiff added this Defendant as a named party by filing a Praecipe to Reinstate the Complaint with the Prothonotary’s Office of the Court of Common Pleas of Allegheny County, Pennsylvania. In doing so, Plaintiff identified this Defendant as “Defendant Conner and/or Doe 3, using the alias ‘pun2dex.’”

6. The Official Docket Report of the Court of Common Pleas of Allegheny County has no record of the filing of the reinstated Complaint.

7. Plaintiff did not make any averments in this reinstated Complaint relating to the identity and/or citizenship of Doe 1, a/k/a “denunz2005” or Doe 2, a/k/a “stocker606.” As such, the identity and/or citizenship of Defendant Doe 1 and/or Defendant Doe 2 remains unknown. This is also true for Defendant Doe 3, a/k/a “pun2dex,” if it is not this Defendant.

8. On April 7, 2008, this Defendant was served with a copy of the reinstated Complaint at his home in the State of Florida.

9. The reinstated Complaint was not served on the other Defendants, Doe 1, a/k/a “denunz2005,” Doe 2, a/k/a “stocker606,” and Doe 3, a/k/a “pun2dex.”

10. Plaintiff seeks damages in excess of the jurisdictional limits of the Arbitration Division of Allegheny County, plus punitive damages.

11. Since Allegheny County Local Rule 1301(3) sets the jurisdictional limits of the Arbitration Division at \$25,000, Plaintiff has demanded compensatory damages in excess of \$25,000.

12. As alleged in the reinstated Complaint, Plaintiff is a Delaware Corporation with its principal place of business located at 11 Stanwix Street, Suite 1400, Pittsburgh, Allegheny County, Pennsylvania 15222.¹

13. Although Plaintiff avers that this Defendant is a resident of the State of Florida, Defendant, Herbert Bennett Conner, avers that he is a citizen and domiciliary of the State of Florida since January, 2006. (*See* Affidavit of Herbert Bennett Conner attached hereto as **Exhibit “B”**)

14. In addition, given Plaintiff’s averments of suffering significant injury to its reputation and business, plus a claim for punitive damages, the amount in controversy exceeds \$75,000, exclusive of interest and costs.

15. Based on the averments of the reinstated Complaint and of this Notice of Removal, complete diversity exists between the parties under 28 U.S.C. §1332.

16. Although a Praecipe for Entry of Appearance was filed on October 25, 2006, by Joseph J. Schwerha, IV, Esquire on behalf of Defendant, Doe 1, a/k/a denunz2005, this Notice of Removal remains effective notwithstanding the failure of all Defendants to join in it since Plaintiff has not made any attempt whatsoever to effectuate service of the Complaint on any of the “John

¹On November 26, 2007, Reunion Industries filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Connecticut, Bridgeport Division. Since the Petition Date, Reunion Industries remains in possession and management of its business assets and properties as debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

Doe” Defendants. Thus, in accordance with 28 U.S.C. § 1446(b), a defendant who has not been served cannot be required to consent to removal.

17. Because this Defendant was served with the reinstated Complaint on April 7, 2008, this Notice of Removal is filed timely.

18. In a related action, Plaintiff’s CEO, Kimball Bradley, filed suit against this Defendant on August 17, 2007 in the Court of Common Pleas of Allegheny County (“Bradley Action”) asserting claims for defamation and false light and alleging facts similar to those set forth in the instant matter. The Bradley Action was timely removed to the United States District Court for the Western District of Pennsylvania. On November 29, 2007, Chief District Judge Donetta Ambrose granted this Defendant’s Motion to Dismiss by finding that Bradley’s claims were time-barred. (A true and correct copy of Chief District Judge Ambrose’s Opinion and Order is attached hereto as **Exhibit “C.”**)

19. Copies of all process, pleadings, and other materials served on this Defendant in the action filed in the Court of Common Pleas of Allegheny County, Pennsylvania at docket number GD-06-007965 are filed with this Notice of Removal in accordance with 28 U.S.C. § 1446(a) and attached hereto as **Exhibit “D.”**

20. As required by 28 U.S.C. §1446(d), this Defendant shall properly notify the Plaintiff that this Notice of Removal has been filed.

21. As further required by 28 U.S.C. §1446(d), this Defendant will file a copy of this Notice of Removal with the Prothonotary of the Court of Common Pleas of Allegheny County.

WHEREFORE, Defendant, Herbert Bennett Conner, respectfully requests that the United States District Court for the Western District of Pennsylvania accept this Notice of Removal, assume jurisdiction in this case, and issue such further orders and process as may be deemed just and proper.

Respectfully submitted,

By: /s/Dennis St. J. Mulvihill
Dennis St. J. Mulvihill, Esquire
PA I.D. #16411
Bruce E. Rende, Esquire
PA I.D. #52714
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*Attorneys for Defendant,
Herbert Bennett Conner*

EXHIBIT A

[\[Home\]](#)

Allegheny County - Department of Court Records
Civil/Family Division Docket Report

GD-06-007965

Reunion Industries Inc. vs Doe 1 aka etal

Run Date: 05/05/2008

Run Time: 12:30:53 PM

Court Type: **General Docket**
Case Type: **Contract**
Judge: **Wettick Jr. R. Stanton**
Current Status: **Praecipe to Reinstate**

Related Cases:
Jury Requested: **No**
Amount In Dispute: **\$.00**

Parties

-- Litigants --

ID	LName	FName	MI	Type	Address	Phone	Attorney
@893226	Reunion Industries Inc.	---	---	Plaintiff	11 Stanwix Street Suite 1400 Pittsburgh PA 15222	--	DelSole Stephen J,
@456367	Conner	Herbert	Bennett	Defendant	No Default Address Available	--	--
@1385335	Doe 1	---	---	Defendant	No Default Address Available	--	--
@1385336	Doe 2	---	---	Defendant	No Default Address Available	--	--
@1385337	Doe 3	---	---	Defendant	No Default Address Available	--	--

-- Attorney --

ID	LName	FName	MI	Type	Address	Phone
73460	DelSole	Stephen	J	Plaintiff's Attorney	DelSole Cavanaugh 200 First Avenue Pittsburgh PA 15222	(412) 2612393
73400	Schwerha IV	Joseph	J.	Attorney	No Default Address Available	(412) 2815060

-- Non Litigants --

ID	LName	FName	MI	Type	Address	Phone
JWETTICK	Wettick Jr.	R.	Stanton	Judge	No Default Address Available	(412)3505953

Alternative Names

ID	Name	Alternative Name
@1385335	Doe 1	DENUNZ2005 aka
@1385336	Doe 2	STOCKER606 aka
@1385337	Doe 3	PUN2DEX aka

Docket Entries			
Filing Date	Docket Type	Docket Text	Filing Party
04/04/2006	Complaint		Reunion Industries Inc.
05/19/2006	Motion & Order	Dated 05/18/06. Ordered that the Motion is granted and attached letter Rogatory shall be executed herewith. DellaVecchia J.	Reunion Industries Inc.
09/01/2006	Motion & Order	Dated 08/31/06. Ordered that said Motion is granted and the attached Letter Rogatory shall be executed herewith. Horgos J.	Reunion Industries Inc.
10/25/2006	Praeipce for Appearance	filed on behalf of Joseph J. Schwerha IV Esq.	Doe 1
11/03/2006	Order of Court	Dated 11/03/06. Ordered that Subpoena Duces Tercum (Attached as Exhibit 1) issued by Circuit Court of Loudoun Co., Virginia at 107CL00042716-00 is revoked only as to Doe 1 a/k/a DENUNZ 2005 and the Letter Rogatory associated therewith is recinded without prejudice to re-file. Wettick J.	Wettick Jr. R. Stanton
12/04/2006	Brief in Opposition	to defendant Doe 1 a/k/a enunz2005's motion to revoke letter rogatory (quash subpoena) or, alternatively, objections to subpoena pursuant to rule 4009.21, and motion for protective order	Reunion Industries Inc.
12/05/2006	Brief	of Doe 1 with regard to right of pseudononymous speech.	Doe 1
12/06/2006	Brief	of Doe 1 with regard to right of pseudoanonymous speech.	Doe 1
03/05/2007	Opinion and Order of Court	Dated 03/05/07. Ordered that until further order of court pltf. is barred from obtaining from America Online Inc. any information relating to the identity of Doe 1. Wettick J. eodie copies mailed 3/5/07	Wettick Jr. R. Stanton
02/21/2008	Praeipce to Reinstate	Adding Herbert Bennet Conner as a defendant	Reunion Industries Inc.

CERTIFIED FROM THE RECORD



Prothonotary



Deputy

EXHIBIT B

11. As a citizen of the State of Florida, he has filed income tax returns with the United States government and the State of Florida based on citizenship within the State of Florida.

12. He is a member of various social clubs and organizations which are located in the State of Florida.

13. When he is away from 290 Bermuda Bay Lane, Vero Beach, Florida, 32963 for any reason, business or personal, it is his intention to return there as it is his permanent home.

14. He is neither a citizen nor a domiciliary of the Commonwealth of Pennsylvania.


Herbert Bennett Conner

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 2nd DAY
OF October, 2007.

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Nanette E. Ringler, Notary Public
Ligonier Boro, Westmoreland County
My Commission Expires Oct. 6, 2010

Member, Pennsylvania Association of Notaries


 Notary Public

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KIMBALL J. BRADLEY,)	
)	
Plaintiff,)	
)	
-vs-)	
	)	Civil Action No. 07-1347
)	
HERBERT BENNET CONNER,)	
)	
Defendant.)	

AMBROSE, Chief District Judge.

OPINION and ORDER OF COURT

SYNOPSIS

Plaintiff asserts claims for defamation and false light arising from Defendant's alleged publication of statements on an internet message board. Defendant has moved to dismiss the complaint on the grounds that (1) the claims are barred by the applicable statute of limitations; (2) the statements at issue constitute non-actionable opinion; and (3) Plaintiff has failed to aver necessary elements of a false light action. For the reasons set forth below, I find that Plaintiff's claims are barred by the statute of limitations, and therefore grant Defendant's Motion to Dismiss the Complaint. Because the claims are time-barred, I need not address Defendant's second and third arguments relating to the substance of the claims.

I. LEGAL STANDARD

In deciding a motion to dismiss under Fed. R. Civ. P. 12(b)(6), all factual

allegations, and all reasonable inferences therefrom, must be accepted as true and viewed in a light most favorable to the plaintiff. Haspel v. State Farm Mut. Auto Ins. Co., 2007 WL 2030272, at *1 (3d Cir. July 16, 2007). "In ruling on a motion to dismiss on statute of limitations grounds, the Court may not look beyond the face of the complaint. Thus, 'a 12(b)(6) motion should not be granted on limitations grounds unless the complaint facially shows noncompliance with the limitations period.'" Giusto v. Ashland Chem. Co., 994 F. Supp. 587, 594 (E.D. Pa. 1998) (quoting Clark v. Sears Roebuck & Co., 816 F. Supp. 1064, 1067 (E.D. Pa. 1993)). As the Third Circuit has explained: "We are mindful that the applicability of the statute of limitations usually implicates factual questions as to when plaintiff discovered or should have discovered the elements of the cause of action; accordingly, defendants bear a heavy burden in seeking to establish as a matter of law that the challenged claims are time-barred." Davis v. Grusemeyer, 996 F.2d 617, 623 n.10 (3d Cir. 1993) (quotations omitted).

II. ALLEGATIONS OF THE COMPLAINT

Plaintiff is the Chairman, President and Chief Executive Officer of Reunion Industries, Inc. ("Reunion"), having previously held the position of Chief Operating Officer. Plaintiff, with his family, also owns a controlling interest in Reunion. Reunion is a manufacturing conglomerate with various operating divisions. At all times relevant herein, Reunion was publicly traded on the NASDAQ exchange under the ticker "RUN." Defendant is an attorney who represented Reunion, either personally or through the law firms with which he was affiliated, from 1998-2003.

The internet service provider Yahoo! maintains a website finance channel which includes the "Yahoo! Finance bulletin board." Each publicly traded company has its own designated bulletin board. Each bulletin board provides its members a forum to post messages over the internet regarding the specific publicly traded company. Anyone with internet access can view the posting on the individual bulletin boards.

According to Plaintiff, beginning in August 2005 and continuing through March 2006, Defendant, using the alias "pun2dex," posted numerous messages on the Yahoo! Finance bulletin board designated for Reunion. Plaintiff alleges that Defendant posted the following statements:

On August 10, 2005, pun2dex stated: "As badly as this company is run, there is no shutdown. Richard Conway (of Lc Capital Masters) is in and will be heard. The company has fresh cash and is buying raw material. It will show an operating profit this quarter primarily due to the sales in China by its CPI sub. So long as the bond holders sit still, there could be some upside."

On September 1, 2005: "[Reunion] operates with a lockbox. It has no choice but to pay down the Bank debt. The Bondholders are stuck. The Bank takes all the excess cash and leaves only enough to buy material for production. Leadership is lacking, but well paid anyway. Check the identity of majority ownership in relation to the CEO and COO. I do not know how the outside directors sleep. There is a large lawsuit looming if someone should have the energy to file it."

On September 20, 2005: "Richard Conway is running Reunion. At last someone with an IQ. He paid hard cash. The banks have been backed off and RUN will report around 20 cents, if it so chooses in October, not from operations, but debt reduction. They can now buy raw steel and make product. The Oneida division will be sold

and the cylinder and pressure vessel business will be advanced. Conway will have a \$4.00 stock in 18 months."

On September 21, 2005: "I have followed the company for a very long time and read the filings. The Board is becoming concerned since Worldcom, in light of Sarbox, and well they should. . . . Kimball Bradley [Plaintiff] is still called COO, C E Bradley is still CEO, but the latter is CEO in paycheck only, and will soon be resigning at the request of Mr. Conway. The only way out for [Reunion] is to do what Conway suggests. Look for him to buy the junk bonds, reduce and control the debt and spur the growth of the profitable divisions. Check LC Capital Masters and Lampe, Conway Fund Group. Run (sic) needs management with a higher IQ than club handicap, with Conway, they get one, even if K. Bradley stays in as COO or even moves to CEO. He will not be calling the shots, except on the Golf Course."

On January 1, 2006: ". . . the story is all of failure since the young Bradley took over and will not stop until he is long gone. Until that day, this company and this stock will bounce a little, but is going nowhere."

On January 24, 2006: "If you are intent on paying salaries, you must sell something in the context of this company. Check the President, who is a member of the YPO. That means he was unable to be employed anywhere else, so his father made him president of this company so he could hang out with other young guys who were born on third base and think they hit a triple. This company is going nowhere. The next big thing will be a revolt of the bondholders or the banks. The shareholders will not be happy."

On January 25, 2006: "Our leader will never consider stepping aside to allow someone with the drive and intellect to run the company, so long as he has no other job prospects and strong cash needs. Instead of figuring out a way to make the company profitable, he sells assets to keep his check coming in. Go to GHIN.COM in Pennsylvania for Kimball Bradley and you will quickly see where the energy of management is spent, and only a small fraction of the rounds are posted so as not to upset

his father. What a waste. The bondholders would be well advised to call his bluff, take control and get someone in who will put the company right. There are only a few assets left to sell, and at Kimball's age he will need to sell them all just to pay his caddies."

On February 10, 2006: "The market cap on RUN is \$9,500,000.00. Check what the company was worth when current IsicI management took over. Even at that number you could not sell the stock and hold the current stock price. What a waste. How do those people sleep at night? Subtract the debt from a reasonable enterprise evaluation and you are below zero. A monkey could do better."

On February 22, 2006: "There is a IsicI apparent disconnect between blind optimism and business sense. A manager should get out of his office and go to customers, visit the plants and find new markets, new products and new businesses to bring a company above the profit line. He does not refinance a sea of debt over a five year reign, sell the divisions that earn a profit, add no new ones, shrink the revenue and raise his own salary, while buying a stadium box for his personal use with company funds, leave the office by 3:00 pm every weekday, work no weekends or evenings and pine for a job that makes 'real money.' This guy is rearranging the deckchairs on the Titanic, and only on a part time basis at that, while he works on his golfing handicap. We write in the hope that the board will wakeup and find a real CEO. Will recognize that it has a duty to the shareholders and not to an incompetnat IsicI young boy who cannot find a job on his own. . . .At Worldcom each boardmember was required to pay 20% of his personal net worth to the shareholders because they ignored guys like me. It will happen again."

On March 9, 2006: "This is just more rearranging of the deck chairs on the Titanic. K. Bradley probably thinks he did something meriting a huge bonus or perhaps a pay increase, but look at what has happened since he became COO. Straight down for revenues, profits and share price. I agree he probably can't sleep at night, but he should still put in a full day, although with his ability, the company would do better without him. Still, Dad likes him, so he gets promoted, GO Figure. After all the comments about

YPO, I did some research and have concluded that they are a circle of jerks or a circle jerk. Our Boy fits right in."

Based on these statements, Plaintiff asserts claims under Pennsylvania law for defamation, including defamation per se, and for false light.

III. THE MOTION TO DISMISS

Defendant moves to dismiss, *inter alia*, on the ground that Plaintiff's claims are barred by the statute of limitations. Pennsylvania has a one-year statute of limitations for defamation claims, including claims for false light. 42 Pa. Cons. Stat. Ann. §5523(1) (West 2007); *see also, Smith v. IMG Worldwide, Inc.*, 437 F. Supp.2d 297, 304 (E.D. Pa. 2006)(plaintiff's defamation claim barred by one-year statute of limitations); *Permenter v. Crown Cork & Seal Co., Inc.*, 38 F. Supp.2d 372, 382-83 (E.D. Pa. 1999) (claim for false light is a claim for invasion of privacy and has a one-year statute of limitations), *aff'd*, 210 F.3d 358 (3d Cir. 2000). The one-year period is computed from the time the cause of action accrues. *Dowling v. Philadelphia Newspapers, Inc.*, 1995 WL 1315957, at *1 (Pa. Com. Pl. Feb. 6, 1995), *aff'd*, 665 A.2d 1304 (Pa. Super. Ct. 1995). "Under Pennsylvania law, a cause of action for defamation accrues on the date of publication of the defamatory statements." *Easton v. Bristol-Myers Squibb Co.*, 289 F. Supp.2d 604, 613 (E.D. Pa. 2003). The same accrual rule applies to claims for invasion of privacy. *See Bradford v. American Media Operations, Inc.*, 882 F. Supp. 1508, 1517 (E.D. Pa. 1995).

According to the Complaint, the allegedly defamatory statements were published between August 2005 and March 2006, with the last occurring on March 9, 2006. The Complaint was filed on August 17, 2007. Since the Complaint was filed

more than one-year after even the most recent defamatory statement was made, Plaintiff's claims for defamation and false light based on these statements are barred by the statute of limitations.

Plaintiff argues that Pennsylvania employs a 'discovery rule' in defamation actions, and "because of the discovery rule, the date of publication alone is legally irrelevant." Pl. Mem. at 5. According to Plaintiff, the discovery rule tolled the statute of limitations until he discovered through reasonable diligence the identity behind 'pun2dex' on August 17, 2006. Plaintiff purportedly exercised reasonable diligence through hiring a private investigator, instituting a lawsuit against the anonymous 'pun2dex' in order to acquire a subpoena directed to the internet service provider with information on the identity of 'pun2dex,' and instituting this action within one year (to the day) that 'pun2dex' was identified as Defendant herein. Id. at 4.

As an initial matter, Plaintiff's argument relies on allegations not set forth in his Complaint. "In ruling on a motion to dismiss on statute of limitations grounds, the Court may not look beyond the face of the complaint." Giusto, 994 F. Supp. at 594. Accordingly, for purposes of this motion, I cannot consider Plaintiff's allegations, which are not contained in the Complaint, relating to when he discovered the identity of Defendant. See Fralin v. C and D Security, Inc., 2007 WL 1576464, at *4 (E.D. Pa. May 30, 2007) (in analyzing a statute of limitations issue, court must use date set forth in complaint indicating when the defendant refused to accommodate the plaintiff, not the date the plaintiff argues she learned of the

refusal).

In any event, Plaintiff's application of the discovery rule to this action is not supported by Pennsylvania law. The discovery rule provides that "where the existence of the injury is not known to the complaining party and such knowledge cannot be reasonably ascertained within the prescribed statutory period, the limitations period does not begin to run until the discovery of the injury is reasonably possible." Smith, 437 F. Supp.2d at 305 (quoting Gatling v. Eaton Corp., 807 A.2d 283, 289 (Pa. Super. 2002)). It was developed "in an effort to ameliorate the sometimes-harsh effects of the statute [of limitations]." Cathcart v. Keene Indus. Insulation, 471 A.2d 493, 500 (Pa. Super. Ct. 1984). The discovery rule is strictly applied in Pennsylvania. Bradford, 882 F. Supp. at 1519.

State and federal courts in Pennsylvania, applying Pennsylvania law, have expressly rejected application of the discovery rule where a plaintiff merely lacks knowledge as to the defendant's identity. See, e.g., Cathcart, 471 A.2d at 501 ("mere difficulty in identifying defendants was not sufficient to toll the running of the statute of limitations as to those defendants"); Fauls v. Proctor & Gamble Paper Prods. Co., 1993 WL 765822, at *4 (Pa. Com. Pl. Jan. 15, 1993) (rejecting application of the discovery rule to toll the statute of limitations until the plaintiff learned the identities of the individuals who defamed him); Robinson v. Lowe's Home Centers, Inc., 2007 WL 2739187, at *2 (E.D. Pa. Sept. 19, 2007) ("The Pennsylvania Superior court has generally found the discovery rule inapplicable in cases where a plaintiff was aware of an injury and its cause but had not determined the identity of the

defendants within the limitations period)(citations omitted); Debbs v. Thiokol Corp., 1993 WL 190872, at *4 (E.D. Pa. June 4, 1993) ("An allegation of mere difficulty in identifying the defendants will not toll the statute of limitations."); Merry v. Westinghouse Elec. Corp., 684 F. Supp. 852, 855 (M.D. Pa. 1988) (rejecting application of discovery rule). As the district court in Merry explained:

Nothing in the discovery rule provides for the tolling of the statute until the responsible party is identified. The burden is on the injured party, once he discovers the cause of his injury, to make that determination within the statutory period. An allegation of mere difficulty in identifying defendants [is] not sufficient to toll the running of the statute of limitations.

Merry, 684 F. Supp. at 855 (quoting Cathcart, 471 A.2d at 501).

This case presents an even stronger justification for denying application of the discovery rule. The courts in the above-cited cases all refused to apply the discovery rule where the plaintiffs failed to identify the defendants within the applicable statutes of limitations. Here, by contrast, Plaintiff actually *did* identify Defendant on August 17, 2006, well within the applicable one-year statute of limitations. Inexplicably, however, Plaintiff chose not to commence an action against Defendant within that period. Application of the discovery rule herein would not serve equity, but rather would award Plaintiff for his dilatory conduct.

For the foregoing reasons, the Defendant's Motion to Dismiss is granted.

ORDER OF COURT

AND NOW, this 29th day of November, 2007, after careful consideration, and for the reasons set forth in the accompanying Opinion, it is Ordered that the Motion to Dismiss [Docket No. [2]] is granted. This case is closed forthwith.

BY THE COURT:

/S/ Donetta W. Ambrose

Donetta W. Ambrose,
Chief U. S. District Judge

EXHIBIT D

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., a Delaware Corporation,

Plaintiff,

v.

DOE 1 a/k/a DENUNZ2005, an adult individual, DOE 2 a/k/a STOCKER606, an adult individual and DOE 3 a/k/a PUN 2 DEX, an adult individual,

Defendants.

) CIVIL DIVISION

) No.

9206-7965

) **COMPLAINT**

) Filed on behalf of Plaintiff:

) REUNION INDUSTRIES, INC.

) Counsel of Record for this Party:

) Stephen J. Del Sole, Esquire

) PA ID# 73460

) Bryan C. Devine, Esquire

) PA ID # 88355

) DEL SOLE CAVANAUGH, LLC

) The Waterfront Building

) 200 First Avenue, Suite 200

) Pittsburgh, PA 15222

) Tel: (412) 261-2393

) Fax: (412) 261-2110

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP) CIVIL DIVISION
INDUSTRIES, a Pennsylvania Corporation,)
) No.
)
) Plaintiff,)
)
) v.)
)
)
) DOE 1 a/k/a DENUNZ2005, an adult)
 individual, DOE 2 a/k/a STOCKER606, an)
 adult individual and DOE 3 a/k/a PUN 2 DEX,)
 an adult individual,)
)
)
) Defendants.)

NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

LAWYERS REFERRAL SERVICE
THE ALLEGHENY COUNTY BAR ASSOCIATION
436 SEVENTH AVENUE
400 KOPPERS BUILDING
PITTSBURGH, PENNSYLVANIA 15219
TELEPHONE: (412) 261-6161

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP) CIVIL DIVISION
INDUSTRIES, a Pennsylvania Corporation,)
) No.
)
) Plaintiff,)
)
) v.)
)
)
) DOE 1 a/k/a DENUNZ2005, an adult)
 individual, DOE 2 a/k/a STOCKER606, an)
 adult individual and DOE 3 a/k/a PUN 2 DEX,)
 an adult individual,)
)
)
) Defendants.)

COMPLAINT

Plaintiff, Reunion Industries, Inc. d/b/a CP Industries, by and through its undersigned counsel, files the following Complaint and states as follows:

PARTIES

1. Plaintiff Reunion Industries, Inc. (“Reunion”) is a Delaware corporation with its principal place of business located at 11 Stanwix Street, Suite 1400, Pittsburgh, Allegheny County, Pennsylvania 15222. Reunion is qualified to do business in the Commonwealth of Pennsylvania.

2. Defendant Doe 1 is an individual of unknown residence using the alias “denunz2005” (“Doe 1”) for posting messages on the Yahoo! Finance bulletin board designated for Reunion (found under the ticker symbol “RUN”) and in his/her other communications over the internet. Plaintiff Reunion will amend this Complaint to allege the true name and capacity of Doe 1 when ascertained.

3. Defendant Doe 2 is an individual of unknown residence using the alias “stocker606” (“Doe 2”) for posting messages on the Yahoo! Finance bulletin board designated

for Reunion (found under the ticker symbol “RUN”) and in his/her other communications over the internet. Plaintiff Reunion will amend this Complaint to allege the true name and capacity of Doe 2 when ascertained.

4. Defendant Doe 3 is an individual of unknown residence using the alias “pun2dex” (“Doe 3”) for posting messages on the Yahoo! Finance bulletin board designated for Reunion (found under the ticker symbol “RUN”) and in his/her other communications over the internet. Plaintiff Reunion will amend this Complaint to allege the true name and capacity of Doe 3 when ascertained.

JURISDICTION AND VENUE

5. Reunion is a resident of Allegheny County, Pennsylvania. Further, Reunion’s causes of action against all defendants arose in Allegheny County because the defendants published their defamatory statements in Allegheny County, Pennsylvania and because Reunion suffered damages in Allegheny County, Pennsylvania.

FACTUAL BACKGROUND

6. Reunion is a publicly traded company traded on the NASDAQ exchange under the ticker symbol “RUN.”

7. Reunion’s Chief Executive Officer (“CEO”) is Kimball Bradley. Prior to serving as CEO, Kimball Bradley served as Reunion’s Chief Operating Officer.

8. The Yahoo! Finance bulletin board is part of the Yahoo! Website finance channel. Each publicly traded company has its own designated bulletin board. Each bulletin board provides its members a forum to post messages over the internet regarding specific publicly traded companies.

9. Reunion has been the subject of numerous defamatory messages posted on its designated Yahoo! Finance Bulletin board by Doe 1 a/k/a denunz2005, Doe 2 a/k/a stocker606 and Doe 3 a/k/a pun2dex.

10. On or about March 1, 2006, Defendant Doe 1 a/k/a denunz2005, willfully, without justification and without privilege published or caused to be published to other person on the internet, including specifically the Yahoo! Finance bulletin board designated for RUN and found under the ticker symbol "RUN," the following post:

- a. "OK, its just good to know that my sources are still accurate---I didn't think they were sold but, as I have been saying for a few months---THEY ARE RIPE FOR THE PICKIN'

I also heard their raw material is drying up and their former parent, U.S. Steel, is cutting back on their allocation of steel and demanding payment in advance. The PV Div. is going to RUN dry in short order, Employees are panicking because their is business to be had but no raw material to fill the orders.

Meanwhile, the competition has the money to stockpile the steel and they are picking up all the business because they have the material.

Doesn't bode well for RUN---they better sell while the books are full.

I wonder how many employees would be surprised if they knew whose resume is out on the street---even at his age!

A true and correct copy of the post is attached hereto as Exhibit A.

11. On or about February 7, 2006, February 8, 2006, February 21, 2006, February 23, 2006 and March 8, 2006, Defendant Doe 2 a/k/a stocker 606, willfully, without justification and without privilege published or caused to be published to other persons on the internet, including specifically the Yahoo! Finance bulletin board designated for RUN and found under the ticker symbol "RUN," the following posts:

- a. "So why has the Board or the Bondholders not taken some action to get competent management in place and drop the looser who has been running

the company into the ground. I have a friend who says this guy bought a box at the Steeler Football Stadium with Company money, a lot of it, and takes his friends on Reunion money, not customers. What is wrong. Does the Board think it will not get sued when the company goes under for not doing its job? Think again.”

- b. “You are being kind to say that Kimball is asleep at the wheel. The truth is that he is being as awake and alert as he can be. The problem. Is a lack of intellect and a huge ego. This is a fatal combination. The idea that this boy cannot find another job should not be a reason for keeping him in place, but its true. The Board are all beholden to the Bradleys, and Kimball cannot function away from the golf course. He will never be of value to anyone, and he is killing this company. He has no clue how to right the ship. Ask him and he will probably tell you what a great job he is doing in hard times. He is afraid to ask for help He views it as a sign of weakness, and he would look bad in the eyes of the YPO “Friends” who mostly concur that he is in way over his head. When this ship sinks, someone better keep the sharp objects out of his reach. He will have no one to lay the blame off on, and only a mirror to talk to. Where is the Board?”
- c. “In response to your comment, those notes you mention are right on the money. The problem with Reunion is management. When a father buys a public company so his son can be employed, that is bad news for the shareholders where the son lacks any ability to run a business. Kimball has had ample time to prove himself and he has. He cannot run a company. Even a father should put the public shareholders ahead of his worthless son. I suggest you call Kimball yourself. From the tone of your posting you could have a nice discussion. Neither of you can read a financial statement or know the basics of business. Please buy more shares and encourage you friends and family to buy as well. If This is your kind of company, no one will convinced you otherwise. With some people, reason is the enemy.”
- d. “I think you will find that Kimball has been running the show since 1999. The criticism is directed to the Board in a frustrated attempt to make them do their job, that is hire someone to replace a failed executive. Some shareholders are in so deep that they cannot get off the bus, and hope that a group of Directors will see the light and stop the carnage or get sued for their failure to be a Board concerned with the shareholders and not feelings of the boy who is driving the bus off a cliff.”
- e. “The results post 1999, were brought to you by the Wonder Boy. Ol’ big hat, no cattle himself, Dimball Bradley. And a credit he is to The Young Presidents Organization.”

- f. “God help us. Dimball is now CEO. The old CEO has taken leave, and left us in the hands of an incompetent. This lad comes to work occasionally; knows nothing about the company, but looks good and smiles broadly. Hope that the New York guys are truly running things. Father to son. Stockholders are in for a rough ride. This kid is clueless. Perhaps he will stay after 3:00pm now that he is in charge, but I doubt it. Watch the door of the YMCA. He is wet by 3:15, and on company time. When will he wake up and remember that he works for the shareholders and not for his abs. He will be forced to find meaningful work someday now that his father is fading and he should recall that he is building a record that will haunt him. Those guys in YPO are all smiles when you are in the seat, and will not return calls when you failure is monumental and unforgettable. This poor lad’s fate is sealed unless he wakes up and does his job.”

True and correct copies of the posts are attached to the Complaint as Exhibit B.

12. On or about February 2, 2006, February 22, 2006, and March 9, 2006, Defendant Doe 3 a/k/a pun2dex, willfully, without justification and without privilege published or caused to be published to other persons on the internet, including specifically the Yahoo! Finance bulletin board designated for RUN and found under the ticker symbol “RUN,” the following posts:

- a. “Run has \$25,000,000.00 in junk bond debt, on which they have not made an interest payment in years. They are in default of the bond covenants, Bank Covenants and are always threatening bankruptcy to hold off the bondholders. How do you arrive at the ‘no debt’ conclusion?”
- b. “There is a apparent disconnect between blind optimism and business sense. A manager should get out of his office and go to customers, visit the plants and find new markets, new products and new businesses to bring a company above the profit line. He does not refinance a sea of debt over a five year reign, sell the devisions that earn a profit, add no new ones, shrink the revenue and raise his own salary, while buying a stadium box for his personal use with company funds, leave the office by 3:00 pm every weekday, work no weekends or evenings and pine for a job that makes ‘real money’. This guy is rearranging the deck chairs on the Titanic, and only on a part time basis at that, while he works on his golfing handicap. We write in the hope that the board will wake up and find a real CEO. Will recognize that has a duty to the shareholders and not to an incompetent young boy who cannot fine a job on his own. Check his college history and ask him about his grades. A father cannot be blamed for wanting to help his son, but not in a public company, not at shareholder expense. Wake up. The movie stinks, but I paid to see it and am entitled to complain. The bus is being driven over a cliff, and as a

passenger I cannot get off and will continue to point out the obvious, that this company is being run by an incompetent manager with a rubberstamp board that someday will be called to answer personally. At worldcom each boardmember was required to pay 20% of his personal net worth to the shareholders because they ignored guys like me. It will happen again.”

- c. “This is just more rearranging of the deck chairs on the Titanic. K Bradley probably thinks he did something meriting a huge bonus or perhaps a pay increase, but look at what has happened since he became COO. Straight down for revenues, profits and share price. I agree he probably can’t sleep at night, but should still put in a full day, although with his ability, the company would do better without him. Still, Dad likes him, so he gets promoted, GO figure. After all the comments about YPO, I did some research and have concluded that they are a circle of jerks or a circle jerk. Our boy fits right in.”

True and correct copies of the posts are attached to the Complaint as Exhibit C.

13. Defendants’ statements were seen and read by persons in Pennsylvania and throughout the world who use the internet and specifically persons who access the Yahoo! Finance bulletin board designated for RUN.

COUNT – I – COMMERCIAL DISPARAGEMENT
Plaintiff v. Defendants Doe 1, Doe 2 and Doe 3

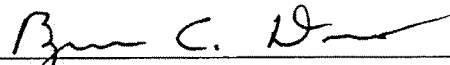
14. Paragraphs 1 through 12 of the Complaint are hereby incorporated by reference as if set forth at length herein.

15. Defendants’ statements disparaged Reunion’s business in that they indicate that:
 - a. Reunion has insufficient raw materials to conduct its business;
 - b. a primary supplier is reducing their allocation of steel to Reunion and requiring it to make payment in advance;
 - c. Kimball Bradley, Reunion’s current CEO and former COO, is incompetent;
 - d. Kimball Bradley, Reunion’s current CEO and former COO, has converted Reunion funds to purchase a luxury box at Heinz Field for his personal use;

- e. Reunion's Board of Directors are not independent and simply rubberstamp any action proposed by Kimball Bradley, Reunion's current CEO and former COO;
 - f. Reunion is in default of its bank and bond covenants.
16. Each of the aforementioned statements were and are false.
17. Defendants intended their statements to cause pecuniary loss to Reunion or reasonably should have recognized that their posts would result in pecuniary loss to Reunion;
18. Defendants either knew that their statements were false or they acted in reckless disregard of their truth or falsity.
19. As a direct and proximate result of Defendants' posting of the false statements, Reunion has suffered an injury to its reputation, has suffered an injury to its business and has been exposed to hatred, contempt and ridicule.

WHEREFORE, Plaintiff Reunion Industries, Inc. requests this Honorable Court to enter judgment in her favor and against Defendants Doe 1, Doe 2 and Doe3 in a sum in excess of the jurisdictional limits of the Board of Arbitrators of this Honorable Court plus punitive damages.

DEL SOLE CAVANAUGH LLC

By: 

Stephen J. Del Sole
Pa. I.D. No. 73460
Patrick K. Cavanaugh
Pa. I.D. No. 72960
Bryan C. Devine
Pa. I.D. No. 88355

The Waterfront Building
200 First Avenue, Suite 200
Pittsburgh, PA 15222

*Attorneys for Plaintiff Reunion
Industries, Inc.*

VERIFICATION

I, Kimball J. Bradley, Chief Executive Officer of Reunion Industries, Inc. have read the foregoing Complaint and verify that the statements therein are true and correct to the best of my knowledge, information and belief.

This verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if a person knowingly makes false statements, he may be subject to criminal penalties.

Date: 4/2/06


Kimball J. Bradley

Chief Executive Officer of Reunion
Industries, Inc.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., a Delaware
Corporation,

Plaintiff,

v.

DOE 1 a/k/a DENUNZ2005, an adult
individual, DOE 2 a/k/a STOCKER606, an
adult individual and DOE 3 a/k/a PUN 2 DEX,
an adult individual,

Defendants.

) CIVIL DIVISION

)
)
) No. GD 06-7965

)
) **MOTION FOR ISSUANCE**
) **OF LETTER ROGATORY**

)
) Filed on behalf of Plaintiff:

) REUNION INDUSTRIES, INC.

)
) Counsel of Record for this Party:

) Stephen J. Del Sole, Esquire

) PA ID# 73460

) Bryan C. Devine, Esquire

) PA ID # 88355

)
) DEL SOLE CAVANAUGH, LLC

) The Waterfront Building

) 200 First Avenue, Suite 200

) Pittsburgh, PA 15222

) Tel: (412) 261-2393

) Fax: (412) 261-2110

FILED

05 MAY 19 AM 7:51

PITTSBURGH
ALLEGHENY COUNTY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP	)	CIVIL DIVISION
INDUSTRIES, a Pennsylvania Corporation,)	
	)	No. GD 06-7965
Plaintiff,)	
)	
v.)	
)	
DOE 1 a/k/a DENUNZ2005, an adult)	
individual, DOE 2 a/k/a STOCKER606, an)	
adult individual and DOE 3 a/k/a PUN 2 DEX,)	
an adult individual,)	
)	
Defendants.)	

**MOTION FOR ISSUANCE
OF LETTER ROGATORY**

Plaintiff, Reunion Industries, Inc. d/b/a CP Industries, by and through its undersigned counsel, moves this Honorable Court for issuance of letter rogatory and states the following in support:

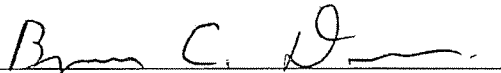
1. Plaintiff Reunion Industries, Inc. ("Reunion") is a publicly traded company traded on the NASDAQ exchange under the ticker symbol "RUN."
2. Reunion's Chief Executive Officer ("CEO") is Kimball Bradley. Prior to serving as CEO, Kimball Bradley served as Reunion's Chief Operating Officer.
3. The Yahoo! Finance bulletin board is part of the Yahoo! Website finance channel. Each publicly traded company has its own designated bulletin board. Each bulletin board provides its members a forum to post messages over the internet regarding specific publicly traded companies.
4. Reunion has been the subject of numerous defamatory messages posted on its designated Yahoo! Finance Bulletin board by Defendant Doe 1 a/k/a denunz2005, Doe 2 a/k/a stocker606 and Doe 3 a/k/a pun2dex.

5. Defendants' statements disparaged Reunion's business in that they indicate that:
 - a. Reunion has insufficient raw materials to conduct its business;
 - b. a primary supplier is reducing their allocation of steel to Reunion and requiring it to make payment in advance;
 - c. Kimball Bradley, Reunion's current CEO and former COO, is incompetent;
 - d. Kimball Bradley, Reunion's current CEO and former COO, has converted Reunion funds to purchase a luxury box at Heinz Field for his personal use;
 - e. Reunion's Board of Directors are not independent and simply rubberstamp any action proposed by Kimball Bradley, Reunion's current CEO and former COO;
 - f. Reunion is in default of its bank and bond covenants.
6. Reunion has initiated this action, by verified Complaint, against Doe 1, Doe 2 and Doe 3 because the identity of denunz2005, stocker606 and pun2dex are unknown.
7. Yahoo, Inc. will only disclose the identity of the individuals using the names denunz2005, stocker606 and pun2dex in response to a subpoena.
8. Yahoo, Inc.'s principle place of business is located at 701 First Avenue, Sunnyvale, California 94089.
9. To determine the identity of the individual(s) using the subject names, Plaintiff needs this Court to issue a letter rogatory to the appropriate authority in Santa Clara County, California so that the appropriate authority can issue a subpoena to Yahoo, Inc.
10. Without issuance of a letter rogatory, as subpoena cannot be issued to Yahoo, Inc. and the Plaintiff will be unable to determine the identity of denunz2005, stocker606 and pun2dex.

11. The administration of justice will fail without the issuance of a letter rogatory because Plaintiff will be unable to substitute the individuals that repeatedly defamed and disparaged it for the Doe Defendants named in the Complaint.

WHEREFORE, Petitioner Reunion Industries, Inc. respectfully requests this Honorable Court to execute the Letter Rogatory to the Appropriate Authority in Santa Clara County, California so that such appropriate authority can issue a subpoena to Yahoo, Inc.

DEL SOLE CAVANAUGH LLC

By: 

Stephen J. Del Sole

Pa. I.D. No. 73460

Patrick K. Cavanaugh

Pa. I.D. No. 72960

Bryan C. Devine

Pa. I.D. No. 88355

The Waterfront Building
200 First Avenue, Suite 200
Pittsburgh, PA 15222

*Attorneys for Plaintiff Reunion
Industries, Inc.*

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP)	CIVIL DIVISION
INDUSTRIES, a Pennsylvania Corporation,)	
)	No. GD 06-7965
Plaintiff,)	
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DOE 1 a/k/a DENUNZ2005, an adult)	
individual, DOE 2 a/k/a STOCKER606, an)	
adult individual and DOE 3 a/k/a PUN 2 DEX,)	
an adult individual,)	
)	
Defendants.)	

**ORDER OF COURT GRANTING
MOTION FOR ISSUANCE OF LETTER ROGATORY**

AND NOW, this 18th day of May, 2006, upon consideration of Plaintiff's Motion for Issuance of Letter Rogatory, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is GRANTED and the attached Letter Rogatory shall be executed herewith.

BY THE COURT,

Michael A. Kelly

Judge

UC

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP)	CIVIL DIVISION
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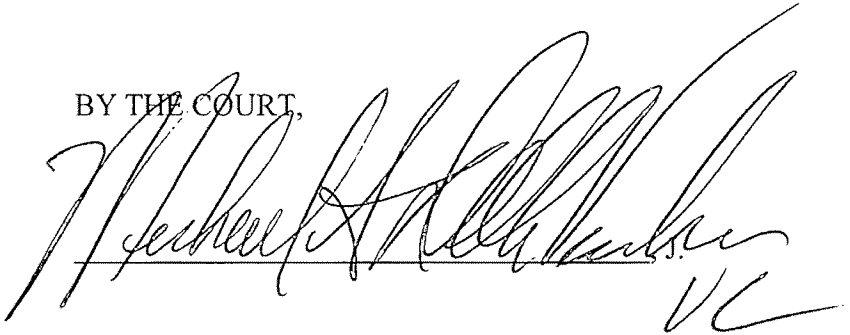
LETTER ROGATORY

To: The Appropriate Authority in
Santa Clara County, California

1. Plaintiff Reunion Industries, Inc. ("Reunion") instituted this action in the Court of Common Pleas of Allegheny County, Pennsylvania to recover for the defamatory and disparaging statements of Defendant Doe 1 a/k/a denunz2005, Doe 2 a/k/a stocker606 and Doe 3 a/k/a pun2dex which were posted on the Yahoo! Finance bulletin board which is part of the Yahoo! Website finance channel.
2. The identity of denunz2005, stocker606 and pun2dex is unknown.
3. Yahoo, Inc. will only disclose the identity of denunz2005, stocker606 and pun2dex pursuant to a properly issued and served subpoena.
4. Reunion has made application to the Court of Common Pleas of Allegheny County, Pennsylvania explaining that it needs to ascertain the identity of denunz2005, stocker606 and pun2dex. A true and correct copy of the Motion for Issuance of Letter Rogatory is attached hereto as Exhibit "A."

5. Having demonstrated in the Motion for Issuance of Letter Rogatory a need to obtain the identity of denunz2005, stocker606 and pun2dex to enforce its rights under Pennsylvania law, this Court has executed this Letter Rogatory and now requests the assistance of the appropriate authority in Santa Clara County, California to permit the issuance of a subpoena to Yahoo, Inc. so as to permit Reunion to obtain the identities of denunz2005, stocker606 and pun2dex so that Reunion can pursue an action against those individuals.

BY THE COURT,

A handwritten signature in black ink, written over a horizontal line. The signature is highly stylized and cursive, appearing to read "Richard A. Keller". To the right of the signature, there are initials "VC".

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., a Delaware
Corporation,

Plaintiff,

v.

DOE 1 a/k/a DENUNZ2005, an adult
individual, DOE 2 a/k/a STOCKER606, an
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) CIVIL DIVISION

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) **MOTION FOR ISSUANCE**
) **OF LETTER ROGATORY**

)
) Filed on behalf of Plaintiff:

) REUNION INDUSTRIES, INC.

)
) Counsel of Record for this Party:

) Stephen J. Del Sole, Esquire

) PA ID# 73460

) Bryan C. Devine, Esquire

) PA ID # 88355

)
) DEL SOLE CAVANAUGH, LLC

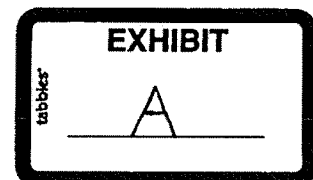
) The Waterfront Building

) 200 First Avenue, Suite 200

) Pittsburgh, PA 15222

) Tel: (412) 261-2393

) Fax: (412) 261-2110



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP) CIVIL DIVISION
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Defendants.)

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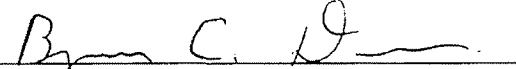
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WHEREFORE, Petitioner Reunion Industries, Inc. respectfully requests this Honorable Court to execute the Letter Rogatory to the Appropriate Authority in Santa Clara County, California so that such appropriate authority can issue a subpoena to Yahoo, Inc.

DEL SOLE CAVANAUGH LLC

By: 

Stephen J. Del Sole
Pa. I.D. No. 73460
Patrick K. Cavanaugh
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Pa. I.D. No. 88355

The Waterfront Building
200 First Avenue, Suite 200
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*Attorneys for Plaintiff Reunion
Industries, Inc.*

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., a Delaware
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) CIVIL DIVISION

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No. GD 06-7965

**MOTION FOR ISSUANCE
OF LETTERS ROGATORY**

Filed on behalf of Plaintiff:

REUNION INDUSTRIES, INC.

Counsel of Record for this Party:

Stephen J. Del Sole, Esquire

PA ID# 73460

Bryan C. Devine, Esquire

PA ID # 88355

DEL SOLE CAVANAUGH, LLC

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP) CIVIL DIVISION
INDUSTRIES, a Pennsylvania Corporation,)
) No. GD 06-7965
)
Plaintiff,)
)
v.)
)
DOE 1 a/k/a DENUNZ2005, an adult)
individual, DOE 2 a/k/a STOCKER606, an)
adult individual and DOE 3 a/k/a PUN 2 DEX,)
an adult individual,)
)
Defendants.)

**MOTION FOR ISSUANCE
OF LETTERS ROGATORY**

Plaintiff, Reunion Industries, Inc. d/b/a CP Industries, by and through its undersigned counsel, moves this Honorable Court for issuance of letters rogatory and states the following in support:

1. Plaintiff Reunion Industries, Inc. ("Reunion") is a publicly traded company traded on the NASDAQ exchange under the ticker symbol "RUN."
2. Reunion's Chief Executive Officer ("CEO") is Kimball Bradley. Prior to serving as CEO, Kimball Bradley served as Reunion's Chief Operating Officer.
3. The Yahoo! Finance bulletin board is part of the Yahoo! Website finance channel. Each publicly traded company has its own designated bulletin board. Each bulletin board provides its members a forum to post messages over the internet regarding specific publicly traded companies.
4. Reunion has been the subject of numerous defamatory messages posted on its designated Yahoo! Finance Bulletin board by Defendant Doe 1 a/k/a denunz2005, Doe 2 a/k/a stocker606 and Doe 3 a/k/a pun2dex.

5. Defendants' statements disparaged Reunion's business in that they indicate that:
 - a. Reunion has insufficient raw materials to conduct its business;
 - b. a primary supplier is reducing their allocation of steel to Reunion and requiring it to make payment in advance;
 - c. Kimball Bradley, Reunion's current CEO and former COO, is incompetent;
 - d. Kimball Bradley, Reunion's current CEO and former COO, has converted Reunion funds to purchase a luxury box at Heinz Field for his personal use;
 - e. Reunion's Board of Directors are not independent and simply rubberstamp any action proposed by Kimball Bradley, Reunion's current CEO and former COO;
 - f. Reunion is in default of its bank and bond covenants.
6. Reunion initiated this action, by verified Complaint, against Doe 1, Doe 2 and Doe 3 because the identity of denunz2005, stocker606 and pun2dex were unknown.
7. Yahoo, Inc. would only disclose the identity of the individuals using the names denunz2005, stocker606 and pun2dex in response to a subpoena.
8. Accordingly, Reunion moved this Court to issue a letter rogatory to the appropriate authority in Santa Clara County, California, the location of Yahoo's principal place of business, so that the appropriate authority could issue a subpoena to Yahoo, Inc.
9. This Court granted Reunion's motion and issued the letter rogatory on May 18, 2006. A true and correct copy of the Order granting the Motion for Issuance of Letter Rogatory and the executed Letter Rogatory are attached hereto as Exhibits "A" and "B," respectively.
10. Reunion subsequently retained California counsel and served subpoenas on Yahoo, Inc. seeking the identities of denunz2005, stocker606 and pun2dex
11. Yahoo, Inc. responded to the subpoenas by producing, for each Yahoo! Account specified, the: 1) User Profile, as produced by the Yahoo! Account Management Tool; 2) the

dates, times and Internet Protocol ("IP") addresses for log-in attempts; and 3) a listing of the dates, times and IP addresses for the messages posted.

12. The User Profile for pun2dex revealed pun2dex's true name. Reunion, therefore, knows the identity of Doe 3 a/k/a pun2dex.

13. The User Profile for denunz2005 indicated that denunz2005's name is Mr. jOJO sandell, which Reunion believes is being used as an alias to hide denunz2005's true identity. The User Profile for denunz2005 is attached hereto as Exhibit "C."

14. The User Profile for stocker606 indicated that stocker606's name is Ms. Emil Schwartz, which Reunion believes is being used as an alias to hide stocker606's true identity. The User Profile for stocker606 is attached hereto as Exhibit "D."

15. The postings of denunz2005 and stocker606 were made via their Internet Service Providers which are AOL and BellSouth Telecommunications, Inc. ("BellSouth").

16. AOL and BellSouth will only reveal the identities of the individuals using the names denunz2005 a/k/a Mr. jOJO sandell and stocker606 a/k/a Ms. Emil Schwartz in response to subpoenas.

17. AOL's principal place of business is located 22000 AOL Way, Dulles, Loudoun County, VA 20166.

18. Bell South's principal place of business is located at 575 Morosgo Drive, Fulton County, Atlanta, GA 30324.

19. To determine the identity of the individual(s) using the names denunz2005 a/k/a Mr. jOJO sandell and stocker606 a/k/a Ms. Emil Schwartz, Plaintiff needs this Court to issue letters rogatory to the appropriate authorities in Loudon County Virginia and Fulton County

Georgia so that the appropriate authorities in those counties can issue subpoenas to AOL and BellSouth.

20. Without issuance of the letters rogatory, the subpoenas cannot be issued to AOL and BellSouth and the Plaintiff will be unable to determine the identity of denunz2005 and stocker606.

21. The administration of justice will fail without the issuance of the letters rogatory because Plaintiff will be unable to substitute the individuals that repeatedly defamed and disparaged it for the Doe Defendants named in the Complaint.

WHEREFORE, Petitioner Reunion Industries, Inc. respectfully requests this Honorable Court to execute the Letters Rogatory to the Appropriate Authorities in Loudon County Virginia and Fulton County Georgia so that the appropriate authorities in those counties can issue subpoenas to AOL and BellSouth.

DEL SOLE CAVANAUGH LLC

By: 

Stephen J. Del Sole
Pa. I.D. No. 73460
Patrick K. Cavanaugh
Pa. I.D. No. 72960
Bryan C. Devine
Pa. I.D. No. 88355

The Waterfront Building
200 First Avenue, Suite 200
Pittsburgh, PA 15222

*Attorneys for Plaintiff Reunion
Industries, Inc.*

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP) CIVIL DIVISION
INDUSTRIES, a Pennsylvania Corporation,)
) No. GD 06-7965
)
Plaintiff,)
)
v.)
)
DOE 1 a/k/a DENUNZ2005, an adult)
individual, DOE 2 a/k/a STOCKER606, an)
adult individual and DOE 3 a/k/a PUN 2 DEX,)
an adult individual,)
)
Defendants.)

**ORDER OF COURT GRANTING
MOTION FOR ISSUANCE OF LETTER ROGATORY**

AND NOW, this 18th day of May, 2006, upon consideration of Plaintiff's Motion for Issuance of Letter Rogatory, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is GRANTED and the attached Letter Rogatory shall be executed herewith.

BY THE COURT,

Michael J. Kelly
Judge

UC

CERTIFIED FROM THE RECORD

Michael Lentz

Prothonotary

Mailee Joyce

Deputy

EXHIBIT
A

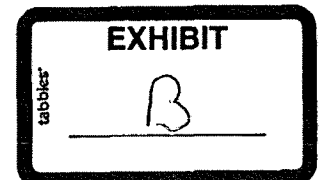
IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP) CIVIL DIVISION
INDUSTRIES, a Pennsylvania Corporation,)
) No. GD 06-7965
)
Plaintiff,)
)
v.)
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DOE 1 a/k/a DENUNZ2005, an adult)
individual, DOE 2 a/k/a STOCKER606, an)
adult individual and DOE 3 a/k/a PUN 2 DEX,)
an adult individual,)
)
Defendants.)

LETTER ROGATORY

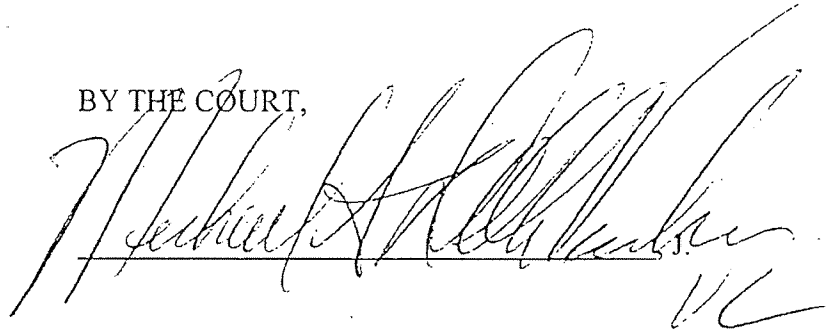
To: The Appropriate Authority in
Santa Clara County, California

1. Plaintiff Reunion Industries, Inc. ("Reunion") instituted this action in the Court of Common Pleas of Allegheny County, Pennsylvania to recover for the defamatory and disparaging statements of Defendant Doe 1 a/k/a denunz2005, Doe 2 a/k/a stocker606 and Doe 3 a/k/a pun2dex which were posted on the Yahoo! Finance bulletin board which is part of the Yahoo! Website finance channel.
2. The identity of denunz2005, stocker606 and pun2dex is unknown.
3. Yahoo, Inc. will only disclose the identity of denunz2005, stocker606 and pun2dex pursuant to a properly issued and served subpoena.
4. Reunion has made application to the Court of Common Pleas of Allegheny County, Pennsylvania explaining that it needs to ascertain the identity of denunz2005, stocker606 and pun2dex. A true and correct copy of the Motion for Issuance of Letter Rogatory is attached hereto as Exhibit "A."



5. Having demonstrated in the Motion for Issuance of Letter Rogatory a need to obtain the identity of denunz2005, stocker606 and pun2dex to enforce its rights under Pennsylvania law, this Court has executed this Letter Rogatory and now requests the assistance of the appropriate authority in Santa Clara County, California to permit the issuance of a subpoena to Yahoo, Inc. so as to permit Reunion to obtain the identities of denunz2005, stocker606 and pun2dex so that Reunion can pursue an action against those individuals.

BY THE COURT,



CERTIFIED FROM THE RECORD



Prothonotary



Deputy

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., a Delaware
Corporation,

Plaintiff,

v.

DOE 1 a/k/a DENUNZ2005, an adult
individual, DOE 2 a/k/a STOCKER606, an
adult individual and DOE 3 a/k/a PUN 2 DEX,
an adult individual,

Defendants.

) CIVIL DIVISION

)

)

) No. GD 06-7965

)

) MOTION FOR ISSUANCE
) OF LETTER ROGATORY

)

)

)

) Filed on behalf of Plaintiff:

)

) REUNION INDUSTRIES, INC.

)

) Counsel of Record for this Party:

)

) Stephen J. Del Sole, Esquire

) PA ID# 73460

) Bryan C. Devine, Esquire

) PA ID # 88355

)

) DEL SOLE CAVANAUGH, LLC

)

) The Waterfront Building

) 200 First Avenue, Suite 200

) Pittsburgh, PA 15222

) Tel: (412) 261-2393

) Fax: (412) 261-2110

)

)

)

)

)



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP	)	CIVIL DIVISION
INDUSTRIES, a Pennsylvania Corporation,)	
	)	No. GD 06-7965
Plaintiff,)	
)	
v.)	
)	
DOE 1 a/k/a DENUNZ2005, an adult)	
individual, DOE 2 a/k/a STOCKER606, an)	
adult individual and DOE 3 a/k/a PUN 2 DEX,)	
an adult individual,)	
)	
Defendants.)	

**MOTION FOR ISSUANCE
OF LETTER ROGATORY**

Plaintiff, Reunion Industries, Inc. d/b/a CP Industries, by and through its undersigned counsel, moves this Honorable Court for issuance of letter rogatory and states the following in support:

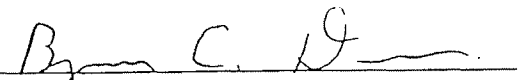
1. Plaintiff Reunion Industries, Inc. ("Reunion") is a publicly traded company traded on the NASDAQ exchange under the ticker symbol "RUN."
2. Reunion's Chief Executive Officer ("CEO") is Kimball Bradley. Prior to serving as CEO, Kimball Bradley served as Reunion's Chief Operating Officer.
3. The Yahoo! Finance bulletin board is part of the Yahoo! Website finance channel. Each publicly traded company has its own designated bulletin board. Each bulletin board provides its members a forum to post messages over the internet regarding specific publicly traded companies.
4. Reunion has been the subject of numerous defamatory messages posted on its designated Yahoo! Finance Bulletin board by Defendant Doe 1 a/k/a denunz2005, Doe 2 a/k/a stocker606 and Doe 3 a/k/a pun2dex.

5. Defendants' statements disparaged Reunion's business in that they indicate that:
 - a. Reunion has insufficient raw materials to conduct its business;
 - b. a primary supplier is reducing their allocation of steel to Reunion and requiring it to make payment in advance;
 - c. Kimball Bradley, Reunion's current CEO and former COO, is incompetent;
 - d. Kimball Bradley, Reunion's current CEO and former COO, has converted Reunion funds to purchase a luxury box at Heinz Field for his personal use;
 - e. Reunion's Board of Directors are not independent and simply rubberstamp any action proposed by Kimball Bradley, Reunion's current CEO and former COO;
 - f. Reunion is in default of its bank and bond covenants.
6. Reunion has initiated this action, by verified Complaint, against Doe 1, Doe 2 and Doe 3 because the identity of denunz2005, stocker606 and pun2dex are unknown.
7. Yahoo, Inc. will only disclose the identity of the individuals using the names denunz2005, stocker606 and pun2dex in response to a subpoena.
8. Yahoo, Inc.'s principle place of business is located at 701 First Avenue, Sunnyvale, California 94089.
9. To determine the identity of the individual(s) using the subject names, Plaintiff needs this Court to issue a letter rogatory to the appropriate authority in Santa Clara County, California so that the appropriate authority can issue a subpoena to Yahoo, Inc.
10. Without issuance of a letter rogatory, as subpoena cannot be issued to Yahoo, Inc. and the Plaintiff will be unable to determine the identity of denunz2005, stocker606 and pun2dex.

11. The administration of justice will fail without the issuance of a letter rogatory because Plaintiff will be unable to substitute the individuals that repeatedly defamed and disparaged it for the Doe Defendants named in the Complaint.

WHEREFORE, Petitioner Reunion Industries, Inc. respectfully requests this Honorable Court to execute the Letter Rogatory to the Appropriate Authority in Santa Clara County, California so that such appropriate authority can issue a subpoena to Yahoo, Inc.

DEL SOLE CAVANAUGH LLC

By: 

Stephen J. Del Sole

Pa. I.D. No. 73460

Patrick K. Cavanaugh

Pa. I.D. No. 72960

Bryan C. Devine

Pa. I.D. No. 88355

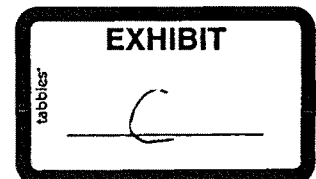
The Waterfront Building
200 First Avenue, Suite 200
Pittsburgh, PA 15222

*Attorneys for Plaintiff Reunion
Industries, Inc.*

YAHOO! ACCOUNT MANAGEMENT TOOL

NOTE: All times are Pacific Time

Login Name: **denunz2005**
Yahoo Mail Name: **denunz2005@yahoo.com**
(Alternate) Email Address: **denunz@aol.com**
Registration IP address: **205.188.116.209**
Other Identities: **denunz2005 (Yahoo! Mail)**
Full Name **Mr jOJO sandell**
Address1:
Address2:
City: **Westborough**
State, territory or province: **MA**
Country: **United States**
Zip/Postal Code: **01581**
Phone:
Time Zone: **et**
Birthday: **December 16, 1946**
Gender: **Male**
Occupation: **VP/Sr VP/Exec VP**
Business Name:
Business Address:
Business City:
Business State:
Business Country: **us**
Business Zip:
Business Phone:
Business Email:
Account Created (reg): **Mon Sep 6 12:34:30 2004**
My Yahoo Configured (dora): **Wed Dec 22 12:14:21 2004**
Account Status **Active**



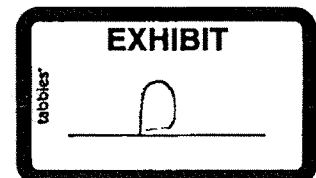
YAHOO! ACCOUNT MANAGEMENT TOOL

NOTE: All times are Pacific Time

Login Name: **stocker606**
Yahoo Mail Name: **stocker606@yahoo.com**
(Alternate) Email Address:
Registration IP address: **65.2.238.84**
Other Identities: **stocker606 (Yahoo! Mail)**
Full Name **Ms Emil Schwartz**
Address1:
Address2:
City: **Pittsburgh**
State, territory or province: **PA**
Country: **United States**
Zip/Postal Code: **15219**
Phone:
Time Zone: **et**
Birthday: **March 24, 1942**
Gender: **Female**
Occupation: **Chairman/CEO/COO**
Business Name:
Business Address:
Business City:
Business State:
Business Country: **us**
Business Zip:
Business Phone:
Business Email:
Account Created (reg): **Tue Feb 7 06:02:58 2006**
Account Status **Active**

[View Account](#)

[Close](#)



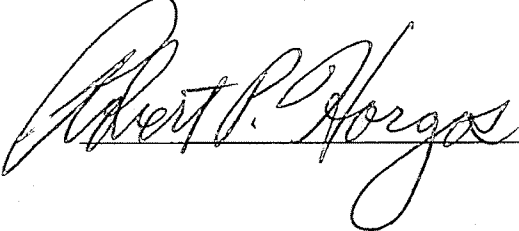
IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP	)	CIVIL DIVISION
INDUSTRIES, a Pennsylvania Corporation,)	
	)	No. GD 06-7965
Plaintiff,)	
)	
v.)	
)	
DOE 1 a/k/a DENUNZ2005, an adult)	
individual, DOE 2 a/k/a STOCKER606, an)	
adult individual and DOE 3 a/k/a PUN 2 DEX,)	
an adult individual,)	
)	
Defendants.)	

**ORDER OF COURT GRANTING
MOTION FOR ISSUANCE OF LETTER ROGATORY**

AND NOW, this 31st day of August, 2006, upon consideration of Plaintiff's Motion for Issuance of Letters Rogatory, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is GRANTED and the attached Letters Rogatory shall be executed herewith.

BY THE COURT,

 J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP) CIVIL DIVISION
INDUSTRIES, a Pennsylvania Corporation,)
) No. GD 06-7965
)
Plaintiff,)
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v.)
)
DOE 1 a/k/a DENUNZ2005, an adult)
individual, DOE 2 a/k/a STOCKER606, an)
adult individual and DOE 3 a/k/a PUN 2 DEX,)
an adult individual,)
)
)
Defendants.)

LETTER ROGATORY

To: The Appropriate Authority in
Loudon County, Virginia

1. Plaintiff Reunion Industries, Inc. ("Reunion") instituted this action in the Court of Common Pleas of Allegheny County, Pennsylvania to recover for the defamatory and disparaging statements of Defendant Doe 1 a/k/a denunz2005, Doe 2 a/k/a stocker606 and Doe 3 a/k/a pun2dex which were posted on the Yahoo! Finance bulletin board which is part of the Yahoo! Website finance channel.
2. Yahoo, Inc. disclosed the names that denunz2005, stocker606 and pun2dex provided to it pursuant to a properly issued and served subpoena.
3. The name provided to Yahoo, Inc. by denunz2005 was Mr. jOJO sandell which is believed to be an alias intended to conceal the true identity of denunz2005.
4. The name provided to Yahoo, Inc. by stocker606 was Ms. Emil Schwartz which is believed to be an alias intended to conceal the true identity of stocker 606.

5. The statements of denunz2005 were posted on the Yahoo! Website via his or her Internet Provider, AOL.

6. Certain of the statements of stocker606 were posted on the Yahoo! Website via his or her Internet Provider, AOL.

7. Reunion has made application to the Court of Common Pleas of Allegheny County, Pennsylvania explaining that it needs to ascertain the identity of denunz2005 a/k/a Mr. jOJO sandell and stocker606 a/k/a Ms. Emil Schwartz. A true and correct copy of the Motion for Issuance of Letters Rogatory is attached hereto as Exhibit "A."

8. Having demonstrated in the Motion for Issuance of Letter Rogatory a need to obtain the identity of denunz2005 a/k/a Mr. jOJO sandell and stocker606 a/k/a Ms. Emil Schwartz to enforce its rights under Pennsylvania law, this Court has executed this Letter Rogatory and now requests the assistance of the appropriate authority in Loudon County, Virginia to permit the issuance of a subpoena to AOL so as to permit Reunion to obtain the identities of denunz2005 a/k/a Mr. jOJO sandell and stocker606 a/k/a Ms. Emil Schwartz so that Reunion can pursue an action against those individuals.

BY THE COURT,

_____, J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP) CIVIL DIVISION
INDUSTRIES, a Pennsylvania Corporation,)
) No. GD 06-7965
)
Plaintiff,)
)
v.)
)
DOE 1 a/k/a DENUNZ2005, an adult)
individual, DOE 2 a/k/a STOCKER606, an)
adult individual and DOE 3 a/k/a PUN 2 DEX,)
an adult individual,)
)
)
Defendants.)

LETTER ROGATORY

To: The Appropriate Authority in
Fulton County, Georgia

1. Plaintiff Reunion Industries, Inc. ("Reunion") instituted this action in the Court of Common Pleas of Allegheny County, Pennsylvania to recover for the defamatory and disparaging statements of Defendant Doe 1 a/k/a denunz2005, Doe 2 a/k/a stocker606 and Doe 3 a/k/a pun2dex which were posted on the Yahoo! Finance bulletin board which is part of the Yahoo! Website finance channel.

2. Yahoo, Inc. disclosed the names that denunz2005, stocker606 and pun2dex provided to it pursuant to a properly issued and served subpoena.

3. The name provided to Yahoo, Inc. by denunz2005 was Mr. jOJO sandell which is believed to be an alias intended to conceal the true identity of denunz2005.

4. The name provided to Yahoo, Inc. by stocker606 was Ms. Emil Schwartz which is believed to be an alias intended to conceal the true identity of stocker 606.

5. Certain of the statements of denunz2005 were posted on the Yahoo! Website via his or her Internet Provider, BellSouth Telecommunications, Inc.

6. Reunion has made application to the Court of Common Pleas of Allegheny County, Pennsylvania explaining that it needs to ascertain the identity of denunz2005 a/k/a Mr. jOJO sandell and stocker606 a/k/a Ms. Emil Schwartz. A true and correct copy of the Motion for Issuance of Letters Rogatory is attached hereto as Exhibit "A."

7. Having demonstrated in the Motion for Issuance of Letter Rogatory a need to obtain the identity of stocker606 a/k/a Ms. Emil Schwartz to enforce its rights under Pennsylvania law, this Court has executed this Letter Rogatory and now requests the assistance of the appropriate authority in Fulton County, Georgia to permit the issuance of a subpoena to BellSouth Telecommunications, Inc. so as to permit Reunion to obtain the identity of stocker606 a/k/a Ms. Emil Schwartz so that Reunion can pursue an action against this individual.

BY THE COURT,

_____, J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA CIVIL DIVISION

<p>REUNION INDUSTRIES, INC., a Delaware Corporation,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>DOE 1 a/k/a DENUNZ2005, an adult individual, DOE 2 a/k/a STOCKER606, an adult individual and DOE 3 a/k/a PUN 2 DEX, an adult individual,</p> <p style="text-align: right;">Defendants.</p>	<p>CIVIL DIVISION</p> <p>No. GD-96-007965</p> <p>PRAECIPE OF APPEARANCE, MOTION TO REVOKE LETTER ROGATORY (QUASH SUBPOENA) OR, ALTERNATIVELY, OBJECTIONS TO SUBPOENA PURSUANT TO RULE 4009.21, AND MOTION FOR PROTECTIVE ORDER</p> <p>Filed on behalf of Defendants: DOE 1.</p> <p>Counsel of Record for this Party:</p>
---	---

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA CIVIL DIVISION

<p>REUNION INDUSTRIES, INC., a Delaware Corporation,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>DOE 1 a/k/a DENUNZ2005, an adult individual, DOE 2 a/k/a STOCKER606, an adult individual and DOE 3 a/k/a PUN 2 DEX, an adult individual,</p> <p style="text-align: right;">Defendants.</p>	<p>CIVIL DIVISION</p> <p>No. GD-06-007965</p> <p>PRAECIPE OF APPEARANCE, MOTION TO REVOKE LETTER ROGATORY (QUASH SUBPOENA) OR, ALTERNATIVELY, OBJECTIONS TO SUBPOENA PURSUANT TO RULE 4009.21, AND MOTION FOR PROTECTIVE ORDER</p> <p>Filed on behalf of Defendants: DOE 1.</p> <p>Counsel of Record for this Party: Joseph J. Schwerha IV, Esq. PA ID #73400 SCHWERHA & ASSOCIATES 173 State St. Charleroi, PA 15022</p>
---	--

PRAECIPE OF APPEARANCE

TO: The Prothonotary,

Please enter my appearance on behalf of Defendant Doe 1 in the above captioned
action.

Respectfully submitted,



Joseph J. Schwerha IV, Esq.
PA ID # 73400
SCHWERHA & ASSOCIATES
173 State St.
Charleroi, PA 15022
P: 412.296.3954
F: 707.202.3143

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA CIVIL DIVISION**

<p>REUNION INDUSTRIES, INC., a Delaware Corporation,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>DOE 1 a/k/a DENUNZ2005, an adult individual, DOE 2 a/k/a STOCKER606, an adult individual and DOE 3 a/k/a PUN 2 DEX, an adult individual,</p> <p style="text-align: right;">Defendants.</p>	<p>CIVIL DIVISION</p> <p>No. GD-06-007965</p> <p>PRAECIPE OF APPEARANCE, MOTION TO REVOKE LETTER ROGATORY (QUASH SUBPOENA) OR, ALTERNATIVELY, OBJECTIONS TO SUBPOENA PURSUANT TO RULE 4009.21, AND MOTION FOR PROTECTIVE ORDER</p> <p>Filed on behalf of Defendants: DOE 1.</p> <p>Counsel of Record for this Party:</p>
---	---

**MOTION TO REVOKE LETTER ROGATORY (QUASH SUBPOENA) OR,
ALTERNATIVELY, OBJECTIONS TO SUBPOENA PURSUANT TO RULE
4009.21, AND MOTION FOR PROTECTIVE ORDER**

AND NOW, comes Defendant Doe 1 (“Doe 1”), by and through his/her attorney Joseph J. Schwerha IV, hereby files this motion to quash any and all subpoenas for production of documents or duces tecum served by the Plaintiff in the above-captioned case, and to secure a protective order to safeguard Defendants’ constitutional First Amendment right to engage in pseudonymous, anonymous speech, and as grounds therefore avers as follows:

History of the Case

1. This case involves attempts of a publicly-traded corporation to use court process to discover the identity of three pseudonymous internet users who, allegedly, published defamatory material about the corporation. Defendant herein argues that these attempts to force non-parties to divulge information revealing the Does' identity are procedurally defective and should, therefore, be quashed. Furthermore, the danger to the Does' First Amendment rights posed by the Plaintiff's continued use of ex parte process requires an appropriate protective order.

2. Plaintiff Reunion Industries, Inc. ("Reunion") is a Delaware corporation with its principal place of business located at 11 Stanwix street, Suite 1400, Pittsburgh, Allegheny County, Pennsylvania 15222.

3. Defendant Doe 1 is the pseudonym for the individual using the alias "denunz2005" for posting messages on the Yahoo! Finance bulletin board designated for Reunion (found under the ticker symbol "RUN") and in his/her other communications over the Internet.

4. Defendant Doe 2 is the pseudonym for the individual using the alias "stocker606" for posting messages on the Yahoo! Finance bulletin board designated

for Reunion (found under the ticker symbol "RUN") and in his/her other communications over the Internet.

5. Defendant Doe 3 is the pseudonym for the individual using the alias "pun2dex" for posting messages on the Yahoo! Finance bulletin board designated for Reunion (found under the ticker symbol "RUN") and in his/her other communications over the Internet.

6. On April 4, 2006, Plaintiff Reunion filed a complaint in the Court of Common Pleas of Allegheny County, Pennsylvania, alleging that the three Does published defamatory information about Reunion on the Yahoo! Finance bulletin board designated for Reunion. Reunion Industries, Inc., v. Doe 1, Doe 2, and Doe 3. A true and correct copy of the Complaint is attached hereto as Exhibit "1" (possibly without some exhibits). To this date this complaint has **not** been served on the Does' counsel. To date, Defendant Doe 1 is unaware of any attempts made by Plaintiff to serve the Complaint or otherwise notify Doe 1 of this lawsuit, in general.

7. On May 18, 2006, Plaintiff filed a Motion for a Letter Rogatory, which was granted by the Honorable Michael A. DellaVecchia of the Court of Common Pleas of Allegheny County, Pennsylvania.

8. Pursuant to the Letter Rogatory of May 18, Plaintiff Reunion served a subpoena on Yahoo!, in an attempt to uncover the identities of the Does.

9. Yahoo! apparently informed Plaintiff Reunion that America Online (“AOL”) was the internet service provider for at least Defendant Doe 1.

10. On August 31, 2006, Plaintiff filed a Motion for a Letter Rogatory, which was granted by the Honorable Robert P. Horgos of the Court of Common Pleas of Allegheny County, Pennsylvania. A true and correct copy of the Motion and resulting Letter Rogatory is attached hereto at Exhibit “2” (possibly without some exhibits).

11. On or about September 28, 2006, local counsel for Plaintiff filed a Praecipe Requesting Foreign Subpoena Deces Tecum. A true and correct copy of this Praecipe is attached hereto as Exhibit “3” (possibly without some exhibits).

12. AOL notified Defendant Doe 1 of the pending complaint and subsequent subpoena.

13. Counsel for the Defendant Doe 1 was not notified of these filings by Plaintiff Reunion, nor was he served in advance with the relevant court documents.

14. The subpoena was issued by Loudoun County on October 2, 2006, with a due date of October 27, 2006.

15. Counsel for Doe 1 has notified AOL of the instant motion and they have decided to not produce any documentation in response to the Loudoun County subpoena until this court has decided the present motion.

Legal Argument

16. Both the application for, and the service of the subpoena upon AOL were procedurally defective under the Pennsylvania Rules of Civil Procedure. Accordingly, the Letter Rogatory with regard to AOL should be revoked (and the subpoena should be quashed). Moreover, a Protective Order should be put in place.

17. The Complaint has expired because it was not served upon Defendant Doe 1 within the prescribed time period. Pennsylvania Rule of Civil Procedure Rule 401 states that “[o]riginal service shall be served within the Commonwealth within thirty days after the issuance of the writ or the filing of the complaint.” Pa. R.C.P. Rule 401. That time period is extended to 90 days for out of state defendants Pa. R.C.P. 404. Plaintiff Reunion filed the Complaint on April 4, 2006. Reunion never made any attempt to serve the Complaint upon Defendant Doe 1. Thus, the Letter Rogatory should be revoked because there was no valid complaint in place at the time the Letter Rogatory was issued. In fact, Defendant Doe 1 only learned that there was a Complaint through notification by AOL in October, 2006.

18. In this case, the Plaintiff chose to have a subpoena issued by virtue of a motion for letter rogatory. Defendant Doe 1 never had an opportunity to defend the Motion, however. Despite allegedly having Defendant Doe 1's email address, to the best of Defendant Doe 1's understanding, no attempt to notify Defendant Doe 1 has ever been made. That failure results in a constitutional violation of Defendant Doe 1's Pennsylvania and Federal constitutional rights to due process.

19. Thus, the Motion for Letter Rogatory should have never been granted and must be immediately revoked.

20. The Motion for Letter Rogatory amounted to the same procedure as sending a subpoena to a non-party. The 1997, amendments to the Rules of Civil Procedure added rules governing the application for, and service of, subpoenas upon non-parties. Pa. R.C.P. 4009.21, *et seq.*

21. Plaintiff Reunion's attempt to subpoena information from AOL to produce documents identifying the Defendant Doe 1 violated the Rules at every turn. In essence, the rules prohibit *ex parte* applications for subpoenas against non-parties. They mandate prior notice to, and an opportunity to object by, the other parties.

22. First, the application itself was faulty. Plaintiff Reunion did not give prior notice to the Defendant Doe 1 of application for the subpoena. Rule 4009.21. The form of this notice is prescribed by Rule 4009.24. Reunion filed a motion for and

was granted a Letter Rogatory on May 18, 2006. This Letter Rogatory allowed Reunion to serve a subpoena on Yahoo! to determine the identities of the Does. Through that subpoena, Reunion learned that AOL was the Internet Services Provider of at least one of the Does. On September 1, 2006, Reunion filed a motion for and was granted a Letter Rogatory to serve a subpoena on AOL to learn the identities of the Defendant Doe 1. It was AOL that sent a copy of the subpoena to the Defendant Doe 1 on October 3, 2006. It was at that time that the Defendant Doe 1 learned of the Complaint that had been filed on April 4, 2006, because Reunion never attempted to serve the Doe 1, even after allegedly having Doe 1's email address.

23. Finally, plaintiff Reunion also failed to comply with the service requirements when it served the subpoenas on Yahoo! and AOL. Rule 4009.22 establishes conditions precedent to service of the subpoenas, namely, giving 20 days notice of the intent to serve the subpoenas on all other parties and filing an appropriate certificate with the court. Pa. R.C.P. Rule 4009.22. The form of the certificate is prescribed by Rule 4009.25. Plaintiff Reunion has neither given 20 days notice nor filed the requisite certificate.

24. These serious procedural flaws in the Motion for Letter Rogatory and application for, and service of, the subpoena, require that this Court revoke the letter rogatory and quash the subpoena. Plaintiff should not be allowed to totally escape these Pennsylvania requirements for due process by merely filing an ex parte Motion for Letter Rogatory. Accordingly, the Defendant Doe 1 respectfully requests herein

that the Court revoke the Letter Rogatory issued with regard to AOL, effectively quashing the subpoenas served on AOL.

25. Although the foregoing procedural argument should be dispositive, there are three reasons for addressing herein the constitutional interests at stake: 1) any doubts about the propriety of revoking the Letter Rogatory (quashing the subpoena) based on the procedural defects must be resolved in favor of the Does because of the constitutional privacy and free speech issues; 2) if the Court does not agree that the procedural defects require granting this motion, the constitutional issues must be addressed; and 3) in light of the inappropriate methods utilized by Plaintiff to secure the Doe 1's identity, this Court should issue an appropriate protective order to safeguard the Doe 1's First Amendment rights.

26. Doe 1 has a well-documented First Amendment right to communicate anonymously. This First Amendment protection of anonymous speech also applies to discussions on the Internet. *American Civil Liberties Union v. Johnson*, 4 F. Supp. 2d 1029, 1033 (D. N.M. 1998)(statute requiring personal identification information impermissibly "prevents people from communicating and accessing information anonymously". *American Civil Liberties Union v. Miller*, 977 F.Supp. 1228, 1233 (N.C. Ga. 1997)(law making it illegal to use false name "prohibits such protected speech as the use of false identification to avoid social ostracism, to prevent discrimination and harassment, and to protect privacy," which has first amendment implications.)

27. “The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one’s privacy as possible. Whatever the motivation may be, at least in the field of literary endeavor, the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry. Accordingly, an author’s decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the first Amendment.” *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 at 341-42.

28. These First Amendment interests also apply to the discovery process. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34-35 (1984). The way Reunion has proceeded in this matter has been in direct contravention of the privacy rights of the Defendant Does. However, this Court can remedy this injustice by quashing the subpoena, or in the alternative, granting the protective order. *Herbert v. Lando*, 441 U.S. 153, 178 (1979)(Powell, J., concurring)(“In supervising discovery ... a district court has a duty to consider First Amendment interests as well as the private interest of the [defendant]”). *Stenger v. Lehigh Valley Hospital Center*, 530 Pa. 426, 435 n.8 (1992) (“It is acknowledged that court orders which compel, restrict or prohibit discovery constitute state action which is subject to constitutional limitations ...” citing *Rhinehart*, supra.).

29. Defendant Doe 1 does not attempt to argue that the First Amendment privilege should act as a complete bar to discovery. See 6 Standard Pennsylvania Practice 2d, §34.30 (1994) (“The privilege involving First Amendment rights of free association, free speech, and privacy applies to discovery between private litigants; however the privilege is qualified and cannot be used as a blanket bar to discovery.”) It is possible for a plaintiff to pierce the veil of anonymity, but only after he has overcome his burden of justifying such an infringement of a First Amendment right. The trial court must oversee the discovery process in such a way that the defendant’s rights are not trampled, or else Reunion will be able to do an end run around *New York Times v. Sullivan*’s prohibition against direct punishment.

30. Reunion’s attempt to compel the disclosure of the Doe 1’s identity violates the First Amendment if such disclosure does not satisfy a heightened standard of scrutiny. See 6 Standard Pennsylvania Practice 2d, §34.30 (1994) (“Once a litigant shows that a discovery request is directed at the heart of a group’s protected [First Amendment] activities, the court must subject the request to a higher level of scrutiny.”).

31. In deciding whether to permit discovery of confidential identifying information from a third-party, the court should consider the following three burdens which the plaintiff must overcome: 1) whether the plaintiff can effectively demonstrate that he would likely succeed on the merits of his defamation claim; 2) whether the plaintiff can establish that a balance of hardships tips in his favor; and 3) whether the plaintiff can establish that the subpoena is the least intrusive alternative available. These

factors, strike a balance between the plaintiff's right to recover for a legitimate defamation claim, while ensuring that the plaintiff is not able to compel discovery of confidential identifying information when disclosure is neither necessary nor fair to defendant.

32. The first element prevents needless disclosure of an anonymous speaker's identity by requiring plaintiff to demonstrate that he is likely to succeed on the merits of his defamation claim before disclosure can be compelled. The Supreme Court in *New York Times v. Sullivan* imposes several hurdles before a plaintiff may punish speech through a defamation action. The falsity of speech and whether it caused any actual injury can be tested without disclosing the identity of the defendant. Unless the plaintiff can demonstrate that he is likely to succeed on the merit of these two elements of a defamation claim, there is no need to orally examine the defendants by deposition. In the instant case, the defendants aver that not only is Reunion unable to prove that it suffered any damage, financial or otherwise, as a result of the posts at issue, but that Reunion cannot demonstrate evidence of malice. Further, it would be very difficult, if not impossible to prove that Defendant had not "heard" the allegedly defamatory statements, as the allegedly libelous statements merely state that Doe 1 "heard" that they were factual.

33. The second element allows the plaintiff to compel disclosure only when he can prove that the balance of hardships tip in his favor. In determining whether the plaintiff has satisfied this prong, the court should consider the harm caused to plaintiff

by denying it access to the defendant's identity. The court should then balance this against the harm caused to defendant by the unnecessary revelation of defendant's identity. Because disclosure cannot be reversed once it is compelled, plaintiff would only be able to demonstrate that the balance of hardships tip in his favor if he shows that identifying information is essential to proving his defamation claim, that is, if compelled disclosure is the last remaining piece of evidence preventing plaintiff from recovery. The Plaintiff will not be able to demonstrate this element, either.

34. The third element ensures that a plaintiff pursues the least intrusive means possible before the court permits the compelled disclosure of an anonymous speaker's identity. Specifically, before a plaintiff will be allowed to compel defendant's identity from a third-party, she must show that no discovery short of disclosure will be sufficient to meet her legitimate ends. *See e.g., Hatchard v. Westinghouse Broadcasting*, 516 Pa. 184, 192-93 (1987) (discussing restrictions on discovery to protect confidential news informants). For example, if plaintiff sought discovery of the facts known by the speaker, he would have to show why these facts could not be initially obtained by interrogatories to the pseudonymous defendant.

35. In the instant case, not only is the heightened scrutiny dictated by the protected speech at issue, but a higher standard is justified because this case involves a defamation claim by a publicly traded corporation.

36. In conclusion, the constitutional implications of this case support the defendants' procedural argument that the subpoenas should be quashed and that a protective order should issue.

WHEREFORE, Defendant Does 1 respectfully request that this honorable Court revoke the previously issued Letter Rogatory (with regard to AOL) and effectively quash Plaintiff Reunion Industries, Inc.'s subpoena to AOL and the Loudoun County Clerk of Courts and that a protective order be entered enjoining additional discovery pending further order of this Court.

Respectfully Submitted,



Joseph J. Schwerha IV, Esq.

PA ID # 73400

SCHWERHA & ASSOCIATES

173 State St.

Charleroi, PA 15022

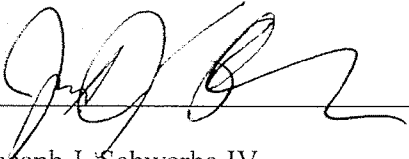
P: 412.296.3954

F: 707.202.3143

Attorney for Defendant Doe1

VERIFICATION

I, Joseph J. Schwerha, hereby verify that I am the attorney for the Defendants Doe
1 and that the factual allegations in the foregoing Motion To Revoke Letter Rogatory
(Quash Subpoena) Or, Alternatively, Objections to Subpoenas Pursuant to Rule 4009.21,
And Motion For Protective Order are, to the best of my information and belief, true and
correct. I understand that false statements made herein are subject to the penalties set
forth in 18 Pa.C.S.A. §4904.



Joseph J. Schwerha IV

10/25/06

Date

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA CIVIL DIVISION

<p>REUNION INDUSTRIES, INC., a Delaware Corporation, Plaintiff, v. DOE 1 a/k/a DENUNZ2005, an adult individual, DOE 2 a/k/a STOCKER606, an adult individual and DOE 3 a/k/a PUN 2 DEX, an adult individual, Defendants.</p>	<p>CIVIL DIVISION No. GD-06-007965 PRAECIPE OF APPEARANCE, MOTION TO REVOKE LETTER ROGATORY (QUASH SUBPOENA) OR, ALTERNATIVELY, OBJECTIONS TO SUBPOENA PURSUANT TO RULE 4009.21, AND MOTION FOR PROTECTIVE ORDER Filed on behalf of Defendants: DOE 1. Counsel of Record for this Party: Joseph J. Schwerha IV, Esq. PA ID #73400 SCHWERHA & ASSOCIATES 173 State St. Charleroi, PA 15022</p>
---	---

PROTECTIVE ORDER AND ORDER QUASHING SUBPOENAS

Having read and considered Defendant's arguments, having entertained oral argument thereon, and for good cause shown, it is on this _____ day of November, 2006 hereby **ORDERED**,

1. That the Letter Rogatory issued by this Court and served by Plaintiff on non-parties America On Line and the Loudoun County Court Clerk for documents identifying Doe 1 be, are hereby revoked; and
2. The Prothonotary of Allegheny County immediately notify the Clerk of Courts of the Loudoun County Circuit Court of this Order; and
3. Until further order from this court Plaintiff is hereby **ENJOINED** from engaging in any further discovery; and

4. That thereafter any discovery attempted by Plaintiff on non-parties shall be served on Defendant Doe's counsel at least twenty (20) days in advance of service and shall otherwise conform to Pennsylvania Rules of Civil Procedure 4009.21, *et seq.*

Hon. R. Stanton Wettick, Jr.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., a Delaware
Corporation,

Plaintiff,

v.

DOE 1 a/k/a DENUNZ2005, an adult
individual, DOE 2 a/k/a STOCKER606, an
adult individual and DOE 3 a/k/a PUN 2 DEX,
an adult individual,

Defendants.

) CIVIL DIVISION

) No.

) *9206-7965*

) **COMPLAINT**

) Filed on behalf of Plaintiff:

) REUNION INDUSTRIES, INC.

) Counsel of Record for this Party:

) Stephen J. Del Sole, Esquire

) PA ID# 73460

) Bryan C. Devine, Esquire

) PA ID # 88355

) DEL SOLE CAVANAUGH, LLC

) The Waterfront Building

) 200 First Avenue, Suite 200

) Pittsburgh, PA 15222

) Tel: (412) 261-2393

) Fax: (412) 261-2110

Ex. "1"

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP	)	CIVIL DIVISION
INDUSTRIES, a Pennsylvania Corporation,)	
	)	No.
Plaintiff,)	
)	
v.)	
)	
DOE 1 a/k/a DENUNZ2005, an adult)	
individual, DOE 2 a/k/a STOCKER606, an)	
adult individual and DOE 3 a/k/a PUN 2 DEX,)	
an adult individual,)	
)	
Defendants.)	

NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

LAWYERS REFERRAL SERVICE
THE ALLEGHENY COUNTY BAR ASSOCIATION
436 SEVENTH AVENUE
400 KOPPERS BUILDING
PITTSBURGH, PENNSYLVANIA 15219
TELEPHONE: (412) 261-6161

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP	)	CIVIL DIVISION
INDUSTRIES, a Pennsylvania Corporation,)	
	)	No.
Plaintiff,)	
)	
v.)	
)	
DOE 1 a/k/a DENUNZ2005, an adult)	
individual, DOE 2 a/k/a STOCKER606, an)	
adult individual and DOE 3 a/k/a PUN 2 DEX,)	
an adult individual,)	
)	
Defendants.)	

COMPLAINT

Plaintiff, Reunion Industries, Inc. d/b/a CP Industries, by and through its undersigned counsel, files the following Complaint and states as follows:

PARTIES

1. Plaintiff Reunion Industries, Inc. ("Reunion") is a Delaware corporation with its principal place of business located at 11 Stanwix Street, Suite 1400, Pittsburgh, Allegheny County, Pennsylvania 15222. Reunion is qualified to do business in the Commonwealth of Pennsylvania.
2. Defendant Doe 1 is an individual of unknown residence using the alias "denunz2005" ("Doe 1") for posting messages on the Yahoo! Finance bulletin board designated for Reunion (found under the ticker symbol "RUN") and in his/her other communications over the internet. Plaintiff Reunion will amend this Complaint to allege the true name and capacity of Doe 1 when ascertained.
3. Defendant Doe 2 is an individual of unknown residence using the alias "stocker606" ("Doe 2") for posting messages on the Yahoo! Finance bulletin board designated

for Reunion (found under the ticker symbol "RUN") and in his/her other communications over the internet. Plaintiff Reunion will amend this Complaint to allege the true name and capacity of Doe 2 when ascertained.

4. Defendant Doe 3 is an individual of unknown residence using the alias "pun2dex" ("Doe 3") for posting messages on the Yahoo! Finance bulletin board designated for Reunion (found under the ticker symbol "RUN") and in his/her other communications over the internet. Plaintiff Reunion will amend this Complaint to allege the true name and capacity of Doe 3 when ascertained.

JURISDICTION AND VENUE

5. Reunion is a resident of Allegheny County, Pennsylvania. Further, Reunion's causes of action against all defendants arose in Allegheny County because the defendants published their defamatory statements in Allegheny County, Pennsylvania and because Reunion suffered damages in Allegheny County, Pennsylvania.

FACTUAL BACKGROUND

6. Reunion is a publicly traded company traded on the NASDAQ exchange under the ticker symbol "RUN."

7. Reunion's Chief Executive Officer ("CEO") is Kimball Bradley. Prior to serving as CEO, Kimball Bradley served as Reunion's Chief Operating Officer.

8. The Yahoo! Finance bulletin board is part of the Yahoo! Website finance channel. Each publicly traded company has its own designated bulletin board. Each bulletin board provides its members a forum to post messages over the internet regarding specific publicly traded companies.

9. Reunion has been the subject of numerous defamatory messages posted on its designated Yahoo! Finance Bulletin board by Doe 1 a/k/a denunz2005, Doe 2 a/k/a stocker606 and Doe 3 a/k/a pun2dex.

10. On or about March 1, 2006, Defendant Doe 1 a/k/a denunz2005, willfully, without justification and without privilege published or caused to be published to other person on the internet, including specifically the Yahoo! Finance bulletin board designated for RUN and found under the ticker symbol "RUN," the following post:

- a. "OK, its just good to know that my sources are still accurate---I didn't think they were sold but, as I have been saying for a few months---THEY ARE RIPE FOR THE PICKIN'

I also heard their raw material is drying up and their former parent, U.S. Steel, is cutting back on their allocation of steel and demanding payment in advance. The PV Div. is going to RUN dry in short order, Employees are panicking because their is business to be had but no raw material to fill the orders.

Meanwhile, the competition has the money to stockpile the steel and they are picking up all the business because they have the material.

Doesn't bode well for RUN---they better sell while the books are full.

I wonder how many employees would be surprised if they knew whose resume is out on the street---even at his age!

A true and correct copy of the post is attached hereto as Exhibit A.

11. On or about February 7, 2006, February 8, 2006, February 21, 2006, February 23, 2006 and March 8, 2006, Defendant Doe 2 a/k/a stocker 606, willfully, without justification and without privilege published or caused to be published to other persons on the internet, including specifically the Yahoo! Finance bulletin board designated for RUN and found under the ticker symbol "RUN," the following posts:

- a. "So why has the Board or the Bondholders not taken some action to get competent management in place and drop the loser who has been running

the company into the ground. I have a friend who says this guy bought a box at the Steeler Football Stadium with Company money, a lot of it, and takes his friends on Reunion money, not customers. What is wrong. Does the Board think it will not get sued when the company goes under for not doing its job? Think again.”

- b. “You are being kind to say that Kimball is asleep at the wheel. The truth is that he is being as awake and alert as he can be. The problem. Is a lack of intellect and a huge ego. This is a fatal combination. The idea that this boy cannot find another job should not be a reason for keeping him in place, but its true. The Board are all beholden to the Bradleys, and Kimball cannot function away from the golf course. He will never be of value to anyone, and he is killing this company. He has no clue how to right the ship. Ask him and he will probably tell you what a great job he is doing in hard times. He is afraid to ask for help He views it as a sign of weakness, and he would look bad in the eyes of the YPO “Friends” who mostly concur that he is in way over his head. When this ship sinks, someone better keep the sharp objects out of his reach. He will have no one to lay the blame off on, and only a mirror to talk to. Where is the Board?”
- c. “In response to your comment, those notes you mention are right on the money. The problem with Reunion is management. When a father buys a public company so his son can be employed, that is bad news for the shareholders where the son lacks any ability to run a business. Kimball has had ample time to prove himself and he has. He cannot run a company. Even a father should put the public shareholders ahead of his worthless son. I suggest you call Kimball yourself. From the tone of your posting you could have a nice discussion. Neither of you can read a financial statement or know the basics of business. Please buy more shares and encourage you friends and family to buy as well. If This is your kind of company, no one will convinced you otherwise. With some people, reason is the enemy.”
- d. “I think you will find that Kimball has been running the show since 1999. The criticism is directed to the Board in a frustrated attempt to make them do their job, that is hire someone to replace a failed executive. Some shareholders are in so deep that they cannot get off the bus, and hope that a group of Directors will see the light and stop the carnage or get sued for their failure to be a Board concerned with the shareholders and not feelings of the boy who is driving the bus off a cliff.”
- e. “The results post 1999, were brought to you by the Wonder Boy. Ol’ big hat, no cattle himself, Dimball Bradley. And a credit he is to The Young Presidents Organization.”

- f. "God help us. Dimball is now CEO. The old CEO has taken leave, and left us in the hands of an incompetent. This lad comes to work occasionally; knows nothing about the company, but looks good and smiles broadly. Hope that the New York guys are truly running things. Father to son. Stockholders are in for a rough ride. This kid is clueless. Perhaps he will stay after 3:00pm now that he is in charge, but I doubt it. Watch the door of the YMCA. He is wet by 3:15, and on company time. When will he wake up and remember that he works for the shareholders and not for his abs. He will be forced to find meaningful work someday now that his father is fading and he should recall that he is building a record that will haunt him. Those guys in YPO are all smiles when you are in the seat, and will not return calls when you failure is monumental and unforgettable. This poor lad's fate is sealed unless he wakes up and does his job."

True and correct copies of the posts are attached to the Complaint as Exhibit B.

12. On or about February 2, 2006, February 22, 2006, and March 9, 2006, Defendant Doe 3 a/k/a pun2dex, willfully, without justification and without privilege published or caused to be published to other persons on the internet, including specifically the Yahoo! Finance bulletin board designated for RUN and found under the ticker symbol "RUN," the following posts:

- a. "Run has \$25,000,000.00 in junk bond debt, on which they have not made an interest payment in years. They are in default of the bond covenants, Bank Covenants and are always threatening bankruptcy to hold off the bondholders. How do you arrive at the 'no debt' conclusion?"
- b. "There is a apparent disconnect between blind optimism and business sense. A manager should get out of his office and go to customers, visit the plants and find new markets, new products and new businesses to bring a company above the profit line. He does not refinance a sea of debt over a five year reign, sell the devisions that earn a profit, add no new ones, shrink the revenue and raise his own salary, while buying a stadium box for his personal use with company funds, leave the office by 3:00 pm every weekday, work no weekends or evenings and pine for a job that makes 'real money'. This guy is rearranging the deck chairs on the Titanic, and only on a part time basis at that, while he works on his golfing handicap. We write in the hope that the board will wake up and find a real CEO. Will recognize that has a duty to the shareholders and not to an incompetent young boy who cannot fine a job on his own. Check his college history and ask him about his grades. A father cannot be blamed for wanting to help his son, but not in a public company, not at shareholder expense. Wake up. The movie stinks, but I paid to see it and am entitled to complain. The bus is being driven over a cliff, and as a

passenger I cannot get off and will continue to point out the obvious, that this company is being run by an incompetent manager with a rubberstamp board that someday will be called to answer personally. At worldcom each boardmember was required to pay 20% of his personal net worth to the shareholders because they ignored guys like me. It will happen again.”

- c. “This is just more rearranging of the deck chairs on the Titanic. K Bradley probably thinks he did something meriting a huge bonus or perhaps a pay increase, but look at what has happened since he became COO. Straight down for revenues, profits and share price. I agree he probably can’t sleep at night, but should still put in a full day, although with his ability, the company would do better without him. Still, Dad likes him, so he gets promoted, GO figure. After all the comments about YPO, I did some research and have concluded that they are a circle of jerks or a circle jerk. Our boy fits right in.”

True and correct copies of the posts are attached to the Complaint as Exhibit C.

13. Defendants’ statements were seen and read by persons in Pennsylvania and throughout the world who use the internet and specifically persons who access the Yahoo! Finance bulletin board designated for RUN.

COUNT – I – COMMERCIAL DISPARAGEMENT
Plaintiff v. Defendants Doe 1, Doe 2 and Doe 3

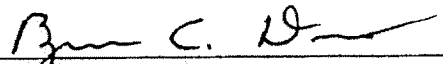
14. Paragraphs 1 through 12 of the Complaint are hereby incorporated by reference as if set forth at length herein.

15. Defendants’ statements disparaged Reunion’s business in that they indicate that:
 - a. Reunion has insufficient raw materials to conduct its business;
 - b. a primary supplier is reducing their allocation of steel to Reunion and requiring it to make payment in advance;
 - c. Kimball Bradley, Reunion’s current CEO and former COO, is incompetent;
 - d. Kimball Bradley, Reunion’s current CEO and former COO, has converted Reunion funds to purchase a luxury box at Heinz Field for his personal use;

- e. Reunion's Board of Directors are not independent and simply rubberstamp any action proposed by Kimball Bradley, Reunion's current CEO and former COO;
 - f. Reunion is in default of its bank and bond covenants.
16. Each of the aforementioned statements were and are false.
17. Defendants intended their statements to cause pecuniary loss to Reunion or reasonably should have recognized that their posts would result in pecuniary loss to Reunion;
18. Defendants either knew that their statements were false or they acted in reckless disregard of their truth or falsity.
19. As a direct and proximate result of Defendants' posting of the false statements, Reunion has suffered an injury to its reputation, has suffered an injury to its business and has been exposed to hatred, contempt and ridicule.

WHEREFORE, Plaintiff Reunion Industries, Inc. requests this Honorable Court to enter judgment in her favor and against Defendants Doe 1, Doe 2 and Doe3 in a sum in excess of the jurisdictional limits of the Board of Arbitrators of this Honorable Court plus punitive damages.

DEL SOLE CAVANAUGH LLC

By: 
Stephen J. Del Sole
Pa. I.D. No. 73460
Patrick K. Cavanaugh
Pa. I.D. No. 72960
Bryan C. Devine
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200 First Avenue, Suite 200
Pittsburgh, PA 15222

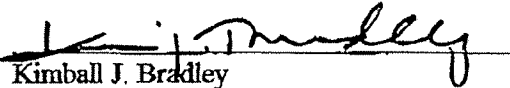
***Attorneys for Plaintiff Reunion
Industries, Inc.***

VERIFICATION

I, Kimball J. Bradley, Chief Executive Officer of Reunion Industries, Inc. have read the foregoing Complaint and verify that the statements therein are true and correct to the best of my knowledge, information and belief.

This verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if a person knowingly makes false statements, he may be subject to criminal penalties.

Date: 4/3/06



Kimball J. Bradley

Chief Executive Officer of Reunion
Industries, Inc.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., a Delaware Corporation,

Plaintiff,

v.

DOE 1 a/k/a DENUNZ2005, an adult individual, DOE 2 a/k/a STOCKER606, an adult individual and DOE 3 a/k/a PUN 2 DEX, an adult individual,

Defendants.

) CIVIL DIVISION

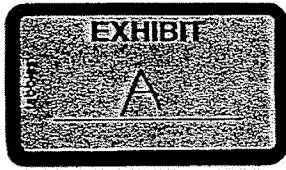
) No. GD 06-7965

) MOTION FOR ISSUANCE
) OF LETTERS ROGATORY

) Filed on behalf of Plaintiff:
) REUNION INDUSTRIES, INC.

) Counsel of Record for this Party:
) Stephen J. Del Sole, Esquire
) PA ID# 73460
) Bryan C. Devine, Esquire
) PA ID # 88355

) DEL SOLE CAVANAUGH, LLC
) The Waterfront Building
) 200 First Avenue, Suite 200
) Pittsburgh, PA 15222
) Tel: (412) 261-2393
) Fax: (412) 261-2110



Ex "2"

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP) CIVIL DIVISION
INDUSTRIES, a Pennsylvania Corporation,)
) No. GD 06-7965
Plaintiff,)
)
v.)
)
DOE 1 a/k/a DENUNZ2005, an adult)
individual, DOE 2 a/k/a STOCKER606, an)
adult individual and DOE 3 a/k/a PUN 2 DEX,)
an adult individual,)
)
Defendants.)

**MOTION FOR ISSUANCE
OF LETTERS ROGATORY**

Plaintiff, Reunion Industries, Inc. d/b/a CP Industries, by and through its undersigned counsel, moves this Honorable Court for issuance of letters rogatory and states the following in support:

1. Plaintiff Reunion Industries, Inc. ("Reunion") is a publicly traded company traded on the NASDAQ exchange under the ticker symbol "RUN."
2. Reunion's Chief Executive Officer ("CEO") is Kimball Bradley. Prior to serving as CEO, Kimball Bradley served as Reunion's Chief Operating Officer.
3. The Yahoo! Finance bulletin board is part of the Yahoo! Website finance channel. Each publicly traded company has its own designated bulletin board. Each bulletin board provides its members a forum to post messages over the internet regarding specific publicly traded companies.
4. Reunion has been the subject of numerous defamatory messages posted on its designated Yahoo! Finance Bulletin board by Defendant Doe 1 a/k/a denunz2005, Doe 2 a/k/a stocker606 and Doe 3 a/k/a pun2dex.

5. Defendants' statements disparaged Reunion's business in that they indicate that:
 - a. Reunion has insufficient raw materials to conduct its business;
 - b. a primary supplier is reducing their allocation of steel to Reunion and requiring it to make payment in advance;
 - c. Kimball Bradley, Reunion's current CEO and former COO, is incompetent;
 - d. Kimball Bradley, Reunion's current CEO and former COO, has converted Reunion funds to purchase a luxury box at Heinz Field for his personal use;
 - e. Reunion's Board of Directors are not independent and simply rubberstamp any action proposed by Kimball Bradley, Reunion's current CEO and former COO;
 - f. Reunion is in default of its bank and bond covenants.
6. Reunion initiated this action, by verified Complaint, against Doe 1, Doe 2 and Doe 3 because the identity of denunz2005, stocker606 and pun2dex were unknown.
7. Yahoo, Inc. would only disclose the identity of the individuals using the names denunz2005, stocker606 and pun2dex in response to a subpoena.
8. Accordingly, Reunion moved this Court to issue a letter rogatory to the appropriate authority in Santa Clara County, California, the location of Yahoo's principal place of business, so that the appropriate authority could issue a subpoena to Yahoo, Inc.
9. This Court granted Reunion's motion and issued the letter rogatory on May 18, 2006. A true and correct copy of the Order granting the Motion for Issuance of Letter Rogatory and the executed Letter Rogatory are attached hereto as Exhibits "A" and "B," respectively.
10. Reunion subsequently retained California counsel and served subpoenas on Yahoo, Inc. seeking the identities of denunz2005, stocker606 and pun2dex
11. Yahoo, Inc. responded to the subpoenas by producing, for each Yahoo! Account specified, the: 1) User Profile, as produced by the Yahoo! Account Management Tool; 2) the

dates, times and Internet Protocol ("IP") addresses for log-in attempts; and 3) a listing of the dates, times and IP addresses for the messages posted.

12. The User Profile for pun2dex revealed pun2dex's true name. Reunion, therefore, knows the identity of Doe 3 a/k/a pun2dex.

13. The User Profile for denunz2005 indicated that denunz2005's name is Mr. jOJO sandell, which Reunion believes is being used as an alias to hide denunz2005's true identity. The User Profile for denunz2005 is attached hereto as Exhibit "C."

14. The User Profile for stocker606 indicated that stocker606's name is Ms. Emil Schwartz, which Reunion believes is being used as an alias to hide stocker606's true identity. The User Profile for stocker606 is attached hereto as Exhibit "D."

15. The postings of denunz2005 and stocker606 were made via their Internet Service Providers which are AOL and BellSouth Telecommunications, Inc. ("BellSouth").

16. AOL and BellSouth will only reveal the identities of the individuals using the names denunz2005 a/k/a Mr. jOJO sandell and stocker606 a/k/a Ms. Emil Schwartz in response to subpoenas.

17. AOL's principal place of business is located 22000 AOL Way, Dulles, Loudoun County, VA 20166.

18. Bell South's principal place of business is located at 575 Morosgo Drive, Fulton County, Atlanta, GA 30324.

19. To determine the identity of the individual(s) using the names denunz2005 a/k/a Mr. jOJO sandell and stocker606 a/k/a Ms. Emil Schwartz, Plaintiff needs this Court to issue letters rogatory to the appropriate authorities in Loudon County Virginia and Fulton County

Georgia so that the appropriate authorities in those counties can issue subpoenas to AOL and BellSouth.

20. Without issuance of the letters rogatory, the subpoenas cannot be issued to AOL and BellSouth and the Plaintiff will be unable to determine the identity of denunz2005 and stocker606.

21. The administration of justice will fail without the issuance of the letters rogatory because Plaintiff will be unable to substitute the individuals that repeatedly defamed and disparaged it for the Doe Defendants named in the Complaint.

WHEREFORE, Petitioner Reunion Industries, Inc. respectfully requests this Honorable Court to execute the Letters Rogatory to the Appropriate Authorities in Loudon County Virginia and Fulton County Georgia so that the appropriate authorities in those counties can issue subpoenas to AOL and BellSouth.

DEL SOLE CAVANAUGH LLC

By: 

Stephen J. Del Sole

Pa. I.D. No. 73460

Patrick K. Cavanaugh

Pa. I.D. No. 72960

Bryan C. Devine

Pa. I.D. No. 88355

The Waterfront Building
200 First Avenue, Suite 200
Pittsburgh, PA 15222

*Attorneys for Plaintiff Reunion
Industries, Inc.*

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP) CIVIL DIVISION
INDUSTRIES, a Pennsylvania Corporation,)
) No. GD 06-7965
)
Plaintiff,)
)
v.)
)
DOE 1 a/k/a DENUNZ2005, an adult)
individual, DOE 2 a/k/a STOCKER606, an)
adult individual and DOE 3 a/k/a PUN 2 DEX,)
an adult individual,)
)
Defendants.)

ORDER OF COURT GRANTING
MOTION FOR ISSUANCE OF LETTER ROGATORY

AND NOW, this 18th day of May, 2006, upon consideration of Plaintiff's Motion for Issuance of Letter Rogatory, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is GRANTED and the attached Letter Rogatory shall be executed herewith.

BY THE COURT,

Michael A. Kelly
Judge

UC

CERTIFIED FROM THE RECORD

Michael Lentz

Prothonotary

Marlene Joyce

Deputy

EXHIBIT
A



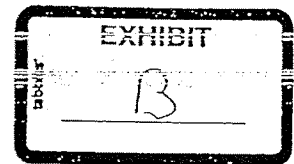
IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP) CIVIL DIVISION
INDUSTRIES, a Pennsylvania Corporation,)
) No. GD 06-7965
Plaintiff,)
)
v.)
)
DOE 1 a/k/a DENUNZ2005, an adult)
individual, DOE 2 a/k/a STOCKER606, an)
adult individual and DOE 3 a/k/a PUN 2 DEX,)
an adult individual,)
)
Defendants.)

LETTER ROGATORY

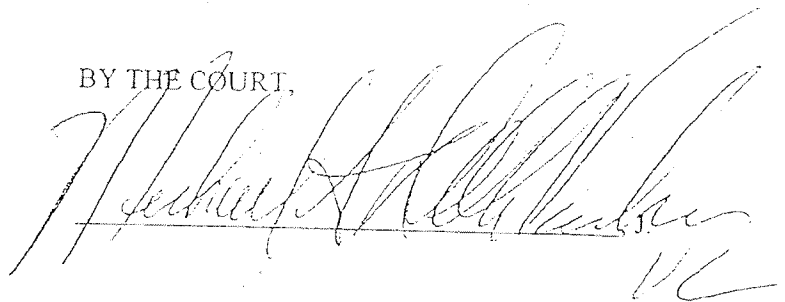
To: The Appropriate Authority in
Santa Clara County, California

1. Plaintiff Reunion Industries, Inc. ("Reunion") instituted this action in the Court of Common Pleas of Allegheny County, Pennsylvania to recover for the defamatory and disparaging statements of Defendant Doe 1 a/k/a denunz2005, Doe 2 a/k/a stocker606 and Doe 3 a/k/a pun2dex which were posted on the Yahoo! Finance bulletin board which is part of the Yahoo! Website finance channel.
2. The identity of denunz2005, stocker606 and pun2dex is unknown.
3. Yahoo, Inc. will only disclose the identity of denunz2005, stocker606 and pun2dex pursuant to a properly issued and served subpoena.
4. Reunion has made application to the Court of Common Pleas of Allegheny County, Pennsylvania explaining that it needs to ascertain the identity of denunz2005, stocker606 and pun2dex. A true and correct copy of the Motion for Issuance of Letter Rogatory is attached hereto as Exhibit "A."



5. Having demonstrated in the Motion for Issuance of Letter Rogatory a need to obtain the identity of denunz2005, stocker606 and pun2dex to enforce its rights under Pennsylvania law, this Court has executed this Letter Rogatory and now requests the assistance of the appropriate authority in Santa Clara County, California to permit the issuance of a subpoena to Yahoo, Inc. so as to permit Reunion to obtain the identities of denunz2005, stocker606 and pun2dex so that Reunion can pursue an action against those individuals.

BY THE COURT,



CERTIFIED FROM THE RECORD

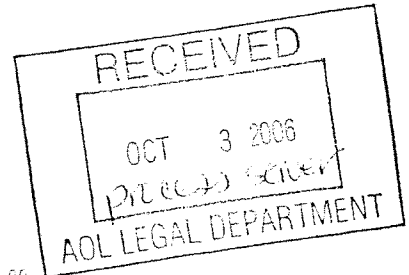


Prothonotary



Deputy

LOUDOUN COUNTY CIRCUIT COURT - CIVIL
18 E MARKET ST/PO BOX 550
LEESBURG, VIRGINIA 20178
(703) 777-0270



SUBPOENA DUCES TECUM

TO THE SHERIFF OF: SPECIAL PROCESS SERV CASE NO. 1070L00042716-60
OR ANY AUTHORIZED OFFICER

YOU ARE COMMANDED TO SUMMON: DOE 1; A/K/A DENUNTI0005; ET AL
SERVE: AOL; LLC
CUSTODIAN OF RECORDS
22000 AOL WAY
DULLES VA 20166
(SPECIAL PROCESS SERVER)

TO PRODUCE IN THE OFFICE OF: MILES & STOCKBRIDGE
1751 PINNACLE DR; #500
MCLEAN VA 22102

THOSE RECORDS AS SET FORTH IN THE ATTACHED REQUEST ON OR BEFORE
OCTOBER 27, 2006 AT : : .K.

THIS SUBPOENA IS ISSUED ON APPLICATION OF THE PLAINTIFF IN THE
CASE OF REUNION INDUSTRIES; INC VS DOE 1; A/K/A DENUNTI0005; ET AL.

DATE ISSUED: OCTOBER 02, 2006

CLERK: GARY CLEMENS

BY: Susan Summers
CLERK/DEPUTY CLERK

ATTORNEY: AARON S GOLDSMITH
MILES & STOCKBRIDGE
1751 PINNACLE DRIVE; #500
MCLEAN VA 22102 703/908-9000

Ex. "3"

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

REUNION INDUSTRIES, INC. d/b/a)
CP INDUSTRIES, a Pennsylvania Corporation,)
)
Plaintiff,)
)
v.)
)
DOE 1 a/k/a DENUNZ2005, an adult individual,)
DOE 2 a/k/a STOCKER606, an adult individual,)
and DOE 3 a/k/a PUN 2 DEX, an adult individual,)
)
Defendants.)

Case No. 42716

PRAECIPE REQUESTIONG FOREIGN SUBPOENA DUCES TECUM

Plaintiff, Reunion Industries, Inc. d/b/a CP Industries, a Pennsylvania Corporation., by counsel, pursuant to the Uniform Foreign Depositions Act, §8.01-411 *et seq.* and the attached a triple-sealed Order of Court Granting Motion for Issuance of Letter Rogatory executed on August 31, 2006 by Judge Robert P. Horgos of the Court of Common Pleas of Allegheny County, Pennsylvania, in the matter styled as Reunion Industries, Inc., d/b/a Reunion Industries, Inc., d/b/a CP Industries, a Pennsylvania Corporation v. Doe 1 a/k/a DENUNZ2005, an adult individual, Doe 2 a/k/a STOCKER606, and adult individual and Doe 3 a/k/a PUN 2 DEX, an adult individual, NO. GD 06-7965 (with attachments including the aforementioned Letter Rogatory);

RESPECTFULLY REQUESTS, that the Clerk of the Circuit Court for Loudoun, County issue a subpoena *duces tecum*:

- (i) Addressed to AOL, LLC;
- (ii) For the documents more fully described in Attachment to Subpoena *Duces Tecum* to AOL, LLC (attached hereto);

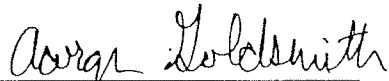
- (iii) To be produced in the offices of Miles & Stockbridge P.C., 1751 Pinnacle Drive, Suite 500, McLean, Virginia 22102-3833;
- (iv) On or before October 27, 2006.

Respectfully submitted,

Reunion Industries, Inc.
d/b/a CP Industries

By Counsel

MILES & STOCKBRIDGE P.C.

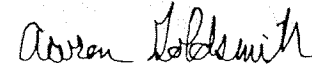


Aaron S. Goldsmith, VSB# 45405
1751 Pinnacle Drive, Suite 500
McLean, Virginia 22102-3833
(703) 903-9000
Facsimile (703) 610-8686
Counsel for Reunion Industries, Inc. d/b/a CP Industries

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of September, 2006, I caused a copy of the foregoing to be served by U.S. Mail, postage prepaid, to:

AOL Custodian of Records
22000 AOL Way
Dulles, Virginia 20166



Aaron S. Goldsmith

ATTACHMENT TO
SUBPOENA DUCES TECUM TO AOL, LLC

(1) Any and all documents which contain, evidence, demonstrate or reflect the name, address, telephone number, social security number, date of birth and any other identifying information referencing or relating to the identity of the Yahoo! Finance message board poster and America Online ("AOL") account holder known as denunz2005, whose Internet Service Provider has been identified as AOL and who has an e-mail address of denunz@aol.com and who made various posts on the Yahoo! Finance message board that are subject to a commercial disparagement action with the following AOL Internet Protocol Address:

- 64.12.116.6 on March 1, 2006 at 3:25 pm EDT

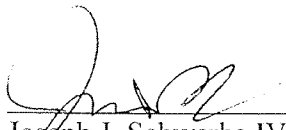
(2) Any and all documents which contain, evidence, demonstrate or reflect the name, address, telephone number, social security number, date of birth and any other identifying information referencing or relating to the identity of the Yahoo! Finance message board poster and America Online ("AOL") account holder known as stocker606, whose Internet Service Provider has been identified as AOL and who made various posts on the Yahoo! Finance message board that are subject to a commercial disparagement action with the following AOL Internet Protocol Address:

- 64.12.116.6 on February 7, 2006 at 9:09 EDT

CERTIFICATE OF SERVICE

I, John Schwerha, HEREBY CERTIFY that on this 25 day of October, 2006, a copy of the foregoing Motion To Revoke Letter Rogatory (Quash Subpoena), Or Alternatively, Objections To Subpoenas Pursuant To Rule 4009.21, And Motion For Protective Order was sent via first class mail to:

Stephen J. Del Sole, Esquire
Del Sole Cavanaugh, LLC
The Waterfront Building
200 First Avenue, Ste 200
Pittsburgh, PA 15222



Joseph J. Schwerha IV

10/25/06
Date

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

Reunion Industries, Inc.

VERSUS

Doc 1 a/k/a Denunz 2005, an adult individual, DOE 2 a/k/a Stacker 606, an adult and DOE 3 a/k/a PUN 2 DEX, an adult individual

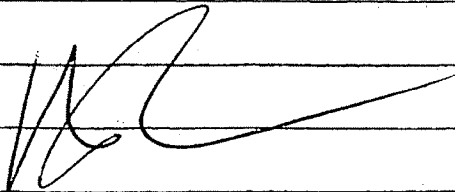
No. 6D-06-007965

ORDER OF COURT

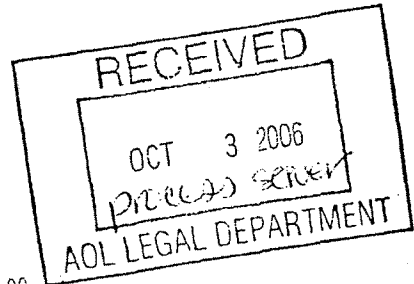
AND NOW, TO-WIT, THIS 3rd DAY OF November,
2006, It is hereby ordered that the Subpoena Duces Tecum (attached hereto as Exhibit "I") issued by Circuit Court of Loudoun County, Virginia at case number 107CL00042716-00 is hereby revoked only as to Doc 1 a/k/a DENUNZ 2005 and the Letter Rogatory associated therewith is rescinded without prejudice to refile

06 NOV - 3 PM '06

FILED
PROTHONOTARY
ALLEGHENY COUNTY



LOUDBON COUNTY CIRCUIT COURT - CIVIL
18 E MARKET ST/PO BOX 550
LEESBURG, VIRGINIA 20179
(703) 777-0270



SUBPOENA DUCES TECUM

TO THE SHERIFF OF: SPECIAL PROCESS SERV CASE NO. 107CL00042716-00
OR ANY AUTHORIZED OFFICER

YOU ARE COMMANDED TO SUMMON: DOE 1; A/K/A DENUN2005; ET AL
SERVE: ADL; LLC
CUSTODIAN OF RECORDS
22000 ADL WAY
DULLES VA 20166
(SPECIAL PROCESS SERVER)

TO PRODUCE IN THE OFFICE OF: MILES & STOCKBRIDGE
1751 PINNACLE DR; #500
MCLEAN VA 22102

THOSE RECORDS AS SET FORTH IN THE ATTACHED REQUEST ON OR BEFORE
OCTOBER 27, 2006 AT : .M.

THIS SUBPOENA IS ISSUED ON APPLICATION OF THE PLAINTIFF IN THE
CASE OF REUNION INDUSTRIES; INC VS DOE 1; A/K/A DENUN2005; ET AL.

DATE ISSUED: OCTOBER 02, 2006

CLERK: GARY CLEMENS

BY: Susan Summers
CLERK/DEPUTY CLERK

ATTORNEY: AARON S GOLDSMITH
MILES & STOCKBRIDGE
1751 PINNACLE DRIVE; #500
MCLEAN VA 22102 703/903-9000

Ex. "3"

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

REUNION INDUSTRIES, INC. d/b/a)
 CP INDUSTRIES, a Pennsylvania Corporation,)
)
 Plaintiff,)
)
 v.)
)
 DOE 1 a/k/a DENUNZ2005, an adult individual,)
 DOE 2 a/k/a STOCKER606, an adult individual,)
 and DOE 3 a/k/a PUN 2 DEX, an adult individual,)
)
 Defendants.)

Case No. 40716

PRAECIPE REQUESTIONG FOREIGN SUBPOENA DUCES TECUM

Plaintiff, Reunion Industries, Inc. d/b/a CP Industries, a Pennsylvania Corporation., by counsel, pursuant to the Uniform Foreign Depositions Act, §8.01-411 *et seq.* and the attached a triple-sealed Order of Court Granting Motion for Issuance of Letter Rogatory executed on August 31, 2006 by Judge Robert P. Horgos of the Court of Common Pleas of Allegheny County, Pennsylvania, in the matter styled as Reunion Industries, Inc., d/b/a Reunion Industries, Inc., d/b/a CP Industries, a Pennsylvania Corporation v. Doe 1 a/k/a DENUNZ2005, an adult individual, Doe 2 a/k/a STOCKER606, and adult individual and Doe 3 a/k/a PUN 2 DEX, an adult individual, NO. GD 06-7965 (with attachments including the aforementioned Letter Rogatory);

RESPECTFULLY REQUESTS, that the Clerk of the Circuit Court for Loudoun County issue a subpoena *duces tecum*:

- (i) Addressed to AOL, LLC;
- (ii) For the documents more fully described in Attachment to Subpoena *Duces Tecum* to AOL, LLC (attached hereto);

- (iii) To be produced in the offices of Miles & Stockbridge P.C., 1751 Pinnacle Drive, Suite 500, McLean, Virginia 22102-3833;
- (iv) On or before October 27, 2006.

Respectfully submitted,

Reunion Industries, Inc.
d/b/a CP Industries

By Counsel

MILES & STOCKBRIDGE P.C.

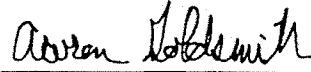


Aaron S. Goldsmith, VSB# 45405
1751 Pinnacle Drive, Suite 500
McLean, Virginia 22102-3833
(703) 903-9000
Facsimile (703) 610-8686
Counsel for Reunion Industries, Inc. d/b/a CP Industries

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of September, 2006, I caused a copy of the foregoing to be served by U.S. Mail, postage prepaid, to:

AOL Custodian of Records
22000 AOL Way
Dulles, Virginia 20166



Aaron S. Goldsmith

**ATTACHMENT TO
SUBPOENA DUCES TECUM TO AOL, LLC**

(1) Any and all documents which contain, evidence, demonstrate or reflect the name, address, telephone number, social security number, date of birth and any other identifying information referencing or relating to the identity of the Yahoo! Finance message board poster and America Online ("AOL") account holder known as denunz2005, whose Internet Service Provider has been identified as AOL and who has an e-mail address of denunz@aol.com and who made various posts on the Yahoo! Finance message board that are subject to a commercial disparagement action with the following AOL Internet Protocol Address:

- 64.12.116.6 on March 1, 2006 at 3:25 pm EDT

(2) Any and all documents which contain, evidence, demonstrate or reflect the name, address, telephone number, social security number, date of birth and any other identifying information referencing or relating to the identity of the Yahoo! Finance message board poster and America Online ("AOL") account holder known as stocker606, whose Internet Service Provider has been identified as AOL and who made various posts on the Yahoo! Finance message board that are subject to a commercial disparagement action with the following AOL Internet Protocol Address:

- 64.12.116.6 on February 7, 2006 at 9:09 EDT

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., a Delaware
Corporation,

Plaintiff,

v.

DOE 1 a/k/a DENUNZ2005, an adult
individual, DOE 2 a/k/a STOCKER606, an
adult individual and DOE 3 a/k/a PUN 2 DEX,
an adult individual,

Defendants.

) CIVIL DIVISION

) No. GD 06-7965

) **PLAINTIFF'S BRIEF IN OPPOSITION**
) **TO DEFENDANT DOE 1 A/K/A**
) **DENUNZ2005'S MOTION TO REVOKE**
) **LETTER ROGATORY (QUASH**
) **SUBPOENA) OR, ALTERNATIVELY,**
) **OBJECTIONS TO SUBPOENA**
) **PURSUANT TO RULE 4009.21, AND**
) **MOTION FOR PROTECTIVE ORDER**

) Filed on behalf of Plaintiff:

) REUNION INDUSTRIES, INC.

) Counsel of Record for this Party:

) Stephen J. Del Sole, Esquire

) PA ID# 73460

) Bryan C. Devine, Esquire

) PA ID # 88355

) DEL SOLE CAVANAUGH, LLC

) The Waterfront Building

) 200 First Avenue, Suite 200

) Pittsburgh, PA 15222

) Tel: (412) 261-2393

) Fax: (412) 261-2110

REUNION INDUSTRIES, INC.

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., d/b/a CP INDUSTRIES, a Pennsylvania Corporation,) CIVIL DIVISION
)
Plaintiff,	) No. GD 06-7965
)
v.)
)
DOE 1 a/k/a DENUNZ2005, an adult individual, DOE 2 a/k/a STOCKER606, an adult individual and DOE 3 a/k/a PUN 2 DEX, an adult individual,)
)
Defendants.)

**PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT
DOE 1 A/K/A DENUNZ2005'S MOTION TO REVOKE LETTER ROGATORY
(QUASH SUBPOENA) OR, ALTERNATIVELY, OBJECTIONS TO SUBPOENA
PURSUANT TO RULE 4009.21, AND MOTION FOR PROTECTIVE ORDER**

Plaintiff Reunion Industries, Inc., through its undersigned attorneys, Del Sole Cavanaugh LLC, files the within Brief in Opposition to Defendant Doe 1 a/k/a Denunz2005's Motion to Revoke Letter Rogatory (Quash Subpoena) or, Alternatively, Objections to Subpoena Pursuant to Rule 4009.21, and Motion for Protective Order and states the following in support:

I. FACTUAL BACKGROUND

Plaintiff Reunion Industries, Inc. ("Reunion") is a publicly traded company traded on the NASDAQ exchange under the ticker symbol "RUN." The Yahoo! Finance bulletin board is part of the Yahoo! Website finance channel. Each publicly traded company has its own designated bulletin board. Each bulletin board provides its members a forum to post messages over the Internet regarding specific publicly traded companies. Reunion has been the subject of numerous defamatory messages posted on its designated Yahoo! Finance Bulletin board by Defendant Doe 1 a/k/a denunz2005, Doe 2 a/k/a stocker606 and Doe 3 a/k/a pun2dex.

Specifically, on or about March 1, 2006, Defendant Doe 1 a/k/a denunz2005, published the following post on the Yahoo! Finance bulletin board designated for Reunion:

“OK, its just good to know that my sources are still accurate---I didn't think they were sold but, as I have been saying for a few months---THEY ARE RIPE FOR THE PICKIN’

I also heard their raw material is drying up and their former parent, U.S. Steel, is cutting back on their allocation of steel and demanding payment in advance. The PV Div. is going to RUN dry in short order, Employees are panicking because their is business to be had but no raw material to fill the orders.

Meanwhile, the competition has the money to stockpile the steel and they are picking up all the business because they have the material.

Doesn't bode well for RUN---they better sell while the books are full.

I wonder how many employees would be surprised if they knew whose resume is out on the street---even at his age!¹

Each of the aforementioned statements were and are false. The statements were seen and read by persons in Pennsylvania and throughout the world who use the Internet and specifically persons who access the Yahoo! Finance bulletin board designated for Reunion.

II. PROCEDURAL BACKGROUND

Reunion initiated this action, by verified Complaint, against Doe 1, Doe 2 and Doe 3 because the identity of denunz2005, stocker606 and pun2dex were unknown. The Complaint asserted a single cause of action for commercial disparagement against the Defendants. Yahoo would only disclose the identity of the individuals using the names denunz2005, stocker606 and pun2dex in response to a subpoena. Accordingly, Reunion moved this Court to issue a letter rogatory to the appropriate authority in Santa Clara County, California, the location of Yahoo's principal place of business, so that the appropriate authority there could issue a subpoena to Yahoo. The Honorable Michael A. DellaVecchia granted Reunion's motion and issued the letter rogatory on May 18, 2006.

Reunion subsequently retained California counsel and served subpoenas on Yahoo seeking the identities of denunz2005, stocker606 and pun2dex. Yahoo informed denunz2005,

¹ The posts of Doe 2 a/k/a stocker606 and Doe 3 a/k/a pun2dex are not at issue because they have not objected to the disclosure of their true identities.

stocker606 and pun2dex of the subpoena and gave them an opportunity to file objections to the subpoena. When no objections to the subpoena were filed, Yahoo produced, for each Yahoo Account specified, the: 1) User Profile, as produced by the Yahoo Account Management Tool; 2) the dates, times and Internet Protocol ("IP") addresses for log-in attempts; and 3) a listing of the dates, times and IP addresses for the messages posted.

The User Profile for pun2dex revealed pun2dex's true name. Reunion, therefore, knew the identity of Doe 3 a/k/a pun2dex. The User Profile for denunz2005 indicated that denunz2005's name is Mr. jOJO sandell. Reunion believes that Mr. jOJO Sandell is actually Joseph Sandell, an executive with one of its direct competitors. Reunion, however, had no way of confirming its belief. The User Profile for stocker606 indicated that stocker606's name is Ms. Emil Schwartz, which Reunion believes is being used as an alias to hide stocker606's true identity.

Reunion learned from Yahoo that the postings of denunz2005 and stocker606 were made via their Internet Service Providers which are AOL and BellSouth Telecommunications, Inc. ("BellSouth"). AOL, whose principal place of business is located 22000 AOL Way, Dulles, Loudoun County, VA 20166, and BellSouth, whose principal place of business is located at 575 Morosgo Drive, Fulton County, Atlanta, GA 30324, will only reveal the identities of the individuals using the names denunz2005 a/k/a Mr. jOJO sandell and stocker606 a/k/a Ms. Emil Schwartz in response to subpoenas. Accordingly, Reunion moved this Court to issue letters rogatory to the appropriate authorities in Loudoun County, Virginia and Fulton County, Georgia so that the appropriate authorities there could issue subpoenas to AOL and Bellsouth. The Honorable Robert P. Horgos granted Reunion's motion and issued the letters rogatory on August 31, 2006.

Reunion subsequently retained Virginia counsel who served a subpoena on AOL seeking the identities of denunz2005 a/k/a Mr. jOJO sandell and stocker606 a/k/a Ms. Emil Schwartz. AOL notified denunz2005 a/k/a Mr. jOJO sandell and stocker606 a/k/a Ms. Emil Schwartz of the subpoena and denunz2005 a/k/a Mr. jOJO sandell retained counsel who filed the instant Motion

to Revoke Letter Rogatory (Quash Subpoena) or, Alternatively, Objections to Subpoena Pursuant to Rule 4009.21, and Motion for Protective Order (the "Motion"). The Motion was argued before this Court on November 3, 2006. The Court entered an Order revoking the Virginia subpoena served on AOL as to Doe 1 a/k/a denunz2005 only and rescinding the letter rogatory issued to the appropriate authority in Loudoun County, Virginia without prejudice to re-file it. The Court further provided the parties with thirty (30) days to file briefs in support of their respective positions.

III. SUMMARY OF THE ARGUMENT

The United States Supreme Court has recognized a limited First Amendment right to speak anonymously in the context of political and/or religious causes where state regulations required potential speakers to reveal their identities prior to speaking. Several courts have purportedly extended this limited right to speak anonymously to cases involving allegedly tortious Internet speech that was not made in the advocacy of political or religious causes. These courts have created different standards that a plaintiff, who has been aggrieved by allegedly tortious Internet speech, must satisfy before disclosure of the anonymous Internet speaker's identity will be permitted.

The extension of the limited right to speak anonymously to such cases, however, is unwarranted. The identities of anonymous Internet users who post allegedly tortious statements on the Internet, which do not concern a public figure or constitute political advocacy, are not entitled to the same level of Constitutional protection as persons engaging in the distribution of political handbills and campaign literature or the door to door advocacy of political causes. Accordingly, there is no need to create new standards to govern when a plaintiff can discover the identities of persons anonymously posting allegedly tortious statements on the Internet. The Pennsylvania Rules of Civil Procedure provide sufficient safeguards to protect such anonymous posters limited First Amendment rights.

Doe 1 a/k/a denunz2005 is not entitled, under the Pennsylvania Rules of Civil Procedure, to prevent Reunion from discovering his or her true identity. Reunion has plead a viable cause of

action against Doe 1 a/k/a denunz2005 under Pennsylvania law based upon his or her Internet postings. Reunion needs Doe 1 a/k/a denunz2005's true identity to serve its Complaint on him/her and to complete the discovery necessary to prove its claim. There is simply no evidence that Reunion has acted in bad faith. Accordingly, Doe 1 a/k/a denunz2005's Motion should be denied in its entirety.

IV. ARGUMENT

A. **The United States Supreme Court has Recognized a First Amendment Right to Speak Anonymously Where State Regulations Required Potential Speakers to Reveal Their Identities Prior to Advocating for Political and/or Religious Causes.**

In a quartet of cases, the United States Supreme Court recognized that the First Amendment guarantees the right to speak anonymously in the context of political and/or religious causes where state regulations required potential speakers to reveal their identities prior to speaking. In Talley v. State of California, 362 U.S. 60, 60-1 (1960), the appellant was convicted of violating a Los Angeles ordinance which prohibited the distribution, in any place under any circumstances, of handbills which did not have printed on them the names and addresses of persons who prepared, distributed or sponsored them. "The handbills [at issue] urged readers to help the organization carry on a boycott against certain merchants and business men, whose names were given, on the ground that, as one set of handbills said, they carried products of 'manufacturers who will not offer equal employment opportunities to Negroes, Mexicans, and Orientals.'" Id. at 61.

The Court recognized that under prior precedent, the ordinance, which barred distribution of "any hand-bill in any place under any circumstances", would be void on its face unless it was saved by the qualification that handbills could be distributed if they contained the names and addresses of the persons who prepared, distributed or sponsored them. See id. at 63-4. Los Angeles argued that the ordinance was designed to "identify those responsible for fraud, false advertising and libel." Id. at 64. The Court rejected this argument because the ordinance was "in

no manner so limited” and because it was not “referred to any legislative history indicating such a purpose.” Id. at 64.²

The Court concluded that the “identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression.” Talley, 362 U.S. at 64. The Court noted that “[a]nonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all.” Id. In concluding that the ordinance was void on its face, the Court reasoned that “identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance.” Id. at 65.

In McIntyre v. Ohio Elections Comm., 514 U.S. 334, 337 (1995), the appellant distributed leaflets to persons attending a public meeting at a school in Ohio in which an imminent referendum on a proposed school tax levy was to be discussed. The leaflets expressed the appellant’s opposition to the levy. See id. The text of the leaflets was not false, misleading or libelous. See id. The Petitioner was subsequently fined for violating Section 3599.09(A) of the Ohio Code, which prohibits the distribution of campaign literature designed to influence voters in an election that does not contain the name and address of the person or campaign official issuing the literature. See id. at 338-40.

The Supreme Court granted certiorari to decide “whether and to what extent the First Amendment’s protection of anonymity encompasses documents intended to influence the electoral process.” See id. at 344. The Court concluded that the Ohio statute regulated core political speech:

Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our constitution. The First Amendment affords the broadest protection to such political expression in order to “assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.

² The Court did not “pass on the validity of an ordinance limited to prevent [fraud, false advertising, libel] or any other supposed evils.” Talley, 362 U.S. at 64.

Id. at 346 (quoting, Roth v. United States, 354 U.S. 476, 484 (1957)). “[T]he speech in which [Petitioner] engaged – handing out leaflets in the advocacy of a politically controversial viewpoint - is the essence of First Amendment expression.” McIntyre, 514 U.S. at 347.

The Court reasoned that when a law, such as the Ohio statute at issue, burdens “core political speech, “exacting scrutiny” must be applied and the restriction can be upheld “only if it is narrowly tailored to serve an overriding state interest.” Id. at 347. The state of Ohio asserted that the disclosure requirement of Section 3599.09(A) of the Ohio Code should be upheld under the “exacting scrutiny” standard because it was justified by two important and legitimate state interests: 1) the prevention of fraudulent and libelous statements; and 2) the provision of relevant information to the electorate. See McIntyre, 514 U.S. at 348. The court rejected the second interest outright concluding that “the name and address of the author add little, if anything, to the reader’s ability to evaluate the document’s message.” Id. at 348-49.

The Court agreed that the first interest, preventing fraud and libel, “carries special weight during election campaigns when false statements, if credited, may have serious adverse consequences for the public at large.” Id. at 349. The Court noted that Ohio’s Election Code includes detailed prohibitions against making or disseminating false statements during political campaigns and that Section 3599.09(A) of the Ohio Code is not its principal weapon against fraud. See id. at 349-50. The Court agreed that Section 3599.09(A) aids enforcement of the detailed prohibitions against the making of false statements and is a deterrent to the making of such statements. See id. at 350. The Court, however, held that these ancillary benefits do not justify Section 3599.09(A)’s extremely broad prohibition. See id. at 350.

The prohibition encompasses documents that are not even arguably false or misleading. It applies not only to the activities of candidates and their organized supporters, but also to individuals acting independently and using only their own modest resources. It applies not only to leaflets distributed on the eve of an election, when the opportunity to reply is limited, but also to those distributed months in advance. It applies no matter what the character or strength of the author’s interest in anonymity.

Id. at 351-52.

The Court recognized that anonymous, political pamphleteering “exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation – and their ideas from suppression – at the hand of an intolerant society.” Id. at 357. The Court also explained that in the context of political speech, the risk of fraudulent conduct inherent in the right to remain anonymous is generally outweighed by the value of free speech: “[t]he right to remain anonymous may be abused when it shields fraudulent conduct. But political speech by its nature will sometimes have unpalatable consequences, and, in general, our society accords greater weight to the value of free speech than to the dangers of its misuse.” McIntyre, 514 U.S. at 357.

In Buckley v. Am. Constitutional Law Foundation, Inc., 525 U.S. 182 (1999), nonprofit public interest organizations and individuals who regularly participated in Colorado’s initiative and referendum petition process brought a § 1983 action against state officials challenging statutes regulating that process. Upon appeal, the Court reviewed three conditions Colorado placed on the ballot-initiative process: (1) the requirement that initiative-petition circulators be registered voters³; (2) the requirement that they wear an identification badge bearing the circulator’s name; and (3) the requirement that proponents of an initiative report the names and addresses of all paid circulators and the amount paid to each circulator. See id. at 639.

In upholding the striking of the badge requirement, the Court concluded that it “discourages participation in the petition circulation process by forcing name identification without sufficient cause.” Id. at 646. The Court agreed that the petition at issue was similar to the political hand bill at issue in McIntyre because both involved a one-on-one communication. See id. However, the Court reasoned that “the restraint on speech in this case is more severe than was the restraint in McIntyre” because “[p]etition circulation is the less fleeting encounter, for the circulator must endeavor to persuade electors to sign the petition.” Buckley, 525 U.S. at

³ The Court upheld the striking of this requirement agreeing that it produces a speech diminution of the very kind produced by Colorado’s ban on paid circulators which it had previously struck down in Meyer v. Grant, 486 U.S. 414 (1988).

646. “The injury to speech is heightened for the petition circulator because the badge requirement compels personal name identification at the precise moment when the circulator’s interest in anonymity is greatest.” Id.

Colorado argued “that the badge enables the public to identify, and the state to apprehend, petition circulators who engage in misconduct.” Id. at 645. The Court rejected that argument in light of the fact that Colorado law also contains a requirement, which was upheld in the court below, that each petition be accompanied by a notarized affidavit containing the circulator’s name, address and signature. See id.

This notarized submission, available to law enforcers, renders less needful the state’s provision for personal names on identification badges. While the affidavit reveals the name of the petition circulator and is a public record, it is tuned to the speaker’s interest as well as the State’s. Unlike a name badge worn at the time a circulator is soliciting signatures, the affidavit is separated from the moment the circulator speaks.

Id.

The Court also upheld the striking of the requirement that proponents of an initiative report the names and addresses of all paid circulators and the amount paid to each circulator. See id. at 648. The Court reasoned that this requirement failed the “exacting scrutiny” test because it only tenuously advanced the substantial interests served by disclosure and because it “forced paid circulators to surrender the anonymity enjoyed by their volunteer counterparts.” Id.

In Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 536 U.S. 150 (2002), the appellant, a religious organization which coordinates the preaching activities of Jehovah’s Witnesses throughout the United States and publishes Bibles and religious periodicals, sued the Village of Stratton seeking to enjoin it from enforcing an ordinance that required individuals to obtain a permit prior to engaging in door-to-door advocacy and to display the permit upon demand. See id. at 154. The Supreme Court granted certiorari to decide whether “a municipal ordinance that requires one to obtain a permit prior to engaging in the door-to-door advocacy of a political cause and to display upon demand the permit, which

contains one's name, violate the First Amendment protection accorded to anonymous pamphleteering or discourse." Id. at 161.

The Court first recognized the high level of First Amendment protection given to the hand distribution of religious materials:

The cases emphasize the value of the speech involved. For example, in Murdock v. Pennsylvania, the Court noted that 'hand distribution of religious tracts is an age-old form of missionary evangelism-as old as the history of printing presses. It has been a potent force in various religious movements down through the years.... This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits. It has the same claims to protection as the more orthodox and conventional exercises of religion. It also has the same claim as the others to the guarantees of freedom of speech and freedom of the press.

Watchtower Bible, 536 U.S. at 161-2.

The Court found it unnecessary to decide what standard of review should be applied in assessing the constitutionality of the ordinance "because the breadth of speech affected by the ordinance and the nature of the regulation make it clear that the Court of Appeals erred in upholding it." Id. at 164. The Village argued that its ordinance served three interests: the prevention of fraud, the prevention of crime and the protection of residents' privacy. See id. at 164-5. The Court concluded that, "in light of our precedent, ... these are important interests that the Village may seek to safeguard through some form of regulation of solicitation activity." Id. at 165. The Court, however, ultimately concluded that the ordinance was not tailored to the Village's interests. See id. at 168.

The Court reasoned that if the ordinance "had been construed to apply only to commercial activities and the solicitation of funds, [it] would have been tailored to the Village's interest[s]." Id. at 165. The Village's administration of the ordinance, however, demonstrated that it applied to religious causes, political campaigns or to enlisting support for unpopular causes. See id. at 168. The Court held that the Village's legitimate interests provided no support for its application to these causes. See id. The Court also concluded that the ordinance's provision for the posting of "No Solicitation" signs coupled with a resident's unquestioned right

to refuse to engage in conversation with unwelcome visitors provided ample protection for the privacy rights of the Village's residents. See id. The Court also concluded that "it seems unlikely that the absence of a permit would preclude criminals from knocking on doors and engaging in conversations not covered by the ordinance. See id. at 169.

The Court concluded that the ordinance was offensive "to the very notion of a free society-that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so." Watchtower Bible, 536 U.S. at 166. First, the Court noted that a significant number of persons support causes anonymously and that "[t]he requirement that a canvasser must be identified in a permit application filed in the mayor's office and available for public inspection necessarily results in a surrender of that anonymity". See id. The Court recognized that the loss of anonymity resulting from the ordinance may well preclude some persons from canvassing for unpopular causes. See id. at 167.

Such preclusion may well be justified in some situations-for example, by the special state interest in protecting the integrity of a ballot-initiative process... or by the interest in preventing fraudulent commercial transactions. The Village ordinance, however, sweeps more broadly, covering unpopular causes unrelated to commercial transactions or to any special interest in protecting the electoral process.

See id.

Second, the Court noted that "requiring a permit as a prior condition on the exercise of the right to speak imposes an objective burden on some speech of citizens holding religious or political views" which would prevent them from applying for such a license. See id. Third and finally, the Court acknowledged that "there is a significant amount of spontaneous speech that is effectively banned by the ordinance." See id. "[A] spontaneous decision to go across the street and urge a neighbor to vote against the mayor could not lawfully be implemented without first obtaining the mayor's permission." See id.

B. The Supreme Court Has Not Recognized a First Amendment Right to Speak Anonymously in Cases Involving Tortious Speech.

In Talley, McIntyre, Buckley and Watchtower, the Supreme Court recognized a right to anonymous speech in the context of state regulation of handbills, the initiative and referendum petition process, and door to door advocacy. It did not, therefore, recognize a generalized right to speak anonymously. The Supreme Court simply acknowledged the long-respected tradition of anonymity in the advocacy of political and religious causes. Additionally, the speech at issue in Talley and McIntyre was not alleged to be defamatory or otherwise tortious. Consequently, the Supreme Court also did not recognize a right to speak anonymously in cases involving allegedly tortious speech. These cases, therefore, are not directly applicable to the present controversy. The present case in no way involves the advocacy of political or religious causes. It does not even involve a public figure. The present case involves a publicly traded corporation who was subject to defamatory statements, posted on the Yahoo! Finance bulletin board, which indicated that its business was crumbling.

C. The Pennsylvania Supreme Court Has Not Recognized a First Amendment Right to Speak Anonymously in Cybersmear Cases Which Do Not Involve A Public Figure and/or Political Advocacy.

The Pennsylvania Supreme Court has never recognized a right to speak anonymously in the case of tortious speech that was uttered in the non-political context. In Melvin v. Doe, 836 A.2d 42, 47 (Pa. 2003), the Pennsylvania Supreme court, citing Talley and McIntyre, acknowledged that the Supreme Court has found that there is a right to speak anonymously in certain cases. Melvin, however, was a case in which a sitting Superior Court judge was seeking the identity of individuals who posted allegedly defamatory statements about her judicial conduct on the Internet. See Melvin v. Doe, 49 Pa. D. & C.4th 449, 450-51 (Alleg. 2000). Melvin,

therefore, involved a public figure and the advocacy of a political cause.⁴ Consequently, it is not directly applicable to the present controversy.⁵

D. Several Courts Have Extended the Right to Speak Anonymously to Cybersmear Cases Which Do Not Involve A Public Figure and/or Political Advocacy.

Several courts have extended the right to speak anonymously as recognized by the Supreme Court in Talley, McIntyre, Buckley and Watchtower to cases involving allegedly tortious Internet speech that was not made in the advocacy of political or religious causes. In In re Subpoena Duces Tecum to America Online, Inc., 2000 WL 1210372, (Va. Cir. Ct. 2000), a publicly traded corporation sought a subpoena duces tecum in Virginia in connection with an Indiana lawsuit requiring AOL, the Internet service provider of several John Doe defendants, who published allegedly confidential material, insider information and defamatory statements in Internet chat rooms, to disclose the identities of the unknown defendants. AOL filed a motion to quash arguing that the subpoena unreasonably impaired the First Amendment rights of the John Doe Defendants to speak anonymously on the Internet. The Court, relying on Talley and McIntyre, held that the First Amendment afforded the right to speak anonymously in diverse contexts including the Internet. See id. at *6.

The Court, recognizing that the right to communicate anonymously is not absolute, held that a non-party, Internet service provider should only be ordered to provide information concerning the identity of a subscriber:

- (1) when the court is satisfied by the pleadings or evidence
- supplied to the court (2) that the party requesting the subpoena has

⁴ The Supreme Court remanded the case to the Superior Court for consideration of whether “the First Amendment requires a public official defamation plaintiff to establish a prima facie case of actual harm prior to obtaining discovery of an anonymous defamation defendant’s identity.” Melvin v. Doe, 836 A.2d at 50. The appeal was withdrawn before the issue was resolved by the Superior Court.

⁵ In Doe v. Cahill, 884 A.2d 451 (Del. 2005), the Delaware Supreme Court, citing McIntyre, also acknowledged the right to speak anonymously. Cahill, however, was a case in which an elected town council member was seeking the identities of four unknown defendants who posted allegedly defamatory statements about him on the Internet concerning his job performance. Cahill, 884 A.2d at 454. Cahill, therefore, like Melvin, involved a public figure and the advocacy of a political cause. The Delaware Supreme Court held that “before a defamation plaintiff can obtain the identity of an anonymous defendant through the discovery process he must support his defamation claim with facts sufficient to defeat a summary judgment motion.” Id. at 460.

a legitimate, good faith basis to contend that it may be the victim of conduct actionable in the jurisdiction where suit is filed and (3) the subpoenaed identity information is centrally needed to advance the claim.

See id. at *8.⁶

In Dendrite International, Inc. v. Doe No. 3, 775 A.2d 756 (NJ. Super. Ct. App. Div. 2001), a publicly traded corporation brought a defamation action against several John Doe defendants based upon messages that they posted on its designated Yahoo! Finance bulletin board. The posted statements accused the company and its president of altering accounting methods to overstate revenue and secretly shopping the company for sale because it was no longer competitive. See id. at 760-61, 763. The company sought an order to show cause why it should not be granted leave to conduct limited discovery to determine the John Doe defendants' identities. The New Jersey Superior Court, Appellate Division held, in apparent reliance on Buckley, McIntyre and Talley, that the defendant's identities were constitutionally protected if the statements were lawful. Dendrite, 775 A.2d at 765-66. The Court reasoned, therefore, that the discovery of the defendant's identity turned on the issue of whether the statements were defamatory or not. See id. at 166.

The Court concluded that before discovery of an anonymous defendant's identity would be permitted, a plaintiff must: (1) establish that its action can withstand a motion to dismiss; and (2) produce sufficient evidence supporting each element of its cause of action on a prima facia basis. See id. at 765.⁷ The Court also concluded that if the plaintiff presents a prima facia cause of action, "the court must balance the defendant's First Amendment right of anonymous free speech against the strength of the prima facie case presented and the necessity for the

⁶ Applying that three-pronged test, the Court denied AOL's motion to quash. It concluded that the subpoena did not unduly burden the First Amendment rights of the John Doe Defendants. In re Subpoena Duces Tecum to America Online, Inc., 2000 WL at *8. The case was subsequently reversed on other grounds by America Online, Inc. v. Anonymous Publicly Traded Co., 542 S.E.2d 377 (Va. 2001).

⁷ The Court upheld the trial court's denial of the plaintiff's discovery motion on the ground that it failed to establish that the allegedly defamatory statements caused it harm. Dendrite, 775 A.2d at 772.

disclosure of the anonymous defendant's identity to allow the plaintiff to properly proceed." Id. at 760-765.

In Best Western International, Inc. v. Doe, 2006 WL 2091695, *1 (D. Ariz. 200), a corporate plaintiff initiated an action against various John Doe defendants claiming that they posted anonymous messages on an Internet site which defamed it, breached contracts with it, breached fiduciary duties owed to it, revealed confidential information, infringed its trademarks and constituted unfair competition with it. The plaintiff filed a motion to conduct accelerated discovery in order to subpoena various Internet service providers to determine the identities of the sponsor of the Internet site as well as the individuals who posted the messages. Best Western International, 2006 WL 2091695 at *1. Relying on Buckley and McIntyre, the court concluded that "the John Doe Defendants have a First Amendment right to anonymous Internet speech, but that the right is not absolute and must be weighed against BWI's need for discovery to redress alleged wrongs." Id. at *3-*4. The court held that given the significant First Amendment interest at stake, the summary judgment standard adopted by the Delaware Supreme Court in Doe v. Cahill, 884 A.2d 451 (Del. 2005)⁸ must be satisfied by the plaintiff before it can discover the identities of the John Doe Defendants. See id. at *5. That standard requires a defamation plaintiff to support his defamation claim with facts sufficient to defeat summary judgment before it can obtain the identity of anonymous defendants.⁹ See id.

In Polito v. AOL Time Warner, Inc., 2004 WL 3768897, *1 (Lack. 2004), the plaintiff was receiving harassing, pornographic embarrassing, insulting, annoying and confidential communications via the Internet. The anonymous senders of the communications used multiple screen names which they frequently changed thereby preventing plaintiff from permanently blocking receipt of the communications. See id. The plaintiff asked AOL to identify the account

⁸ Cahill involved a public figure and the advocacy of a political cause and therefore should never have been applied in Best Western. See Fn. 4, supra.

⁹ The court denied plaintiff's motion concluding that it did not make a sufficient showing to justify discovery of the identities of the John Doe Defendants. Best Western International, 2006 WL 2091695 at *6.

holders for the offending screen names but it indicated that it would only do so in response to a court order. See id. The plaintiff commenced this action and obtained a rule to show cause why AOL should not be compelled to release the requested information. See id. The Lackawanna Court of Common Pleas, relying on Talley, McIntyre, Buckley and Watchtower as well as In re Subpoena Duces Tecum to America Online, Inc. and Dendrite, concluded that “while the anonymous subscribers in this case clearly have a First Amendment Right to anonymous speech on the Internet, that right is subject to limitation.” Id. at *3. The court held, based on its review of Melvin, In re Subpoena Duces Tecum to America Online, Inc. and Dendrite, that the plaintiff was entitled to obtain the identity of the AOL subscribers provided she:

- (1) satisfactorily states a cognizable claim under Pennsylvania law entitling her to some form of civil or criminal redress for the actionable speech of the unknown declarant(s);
- (2) demonstrates that the identifying information is directly related to her claim and fundamentally necessary to secure relief;
- (3) is seeking the requested information in good faith and not for some improper purpose such as harassing, intimidating or silencing her critics; and
- (4) is unable to discover the identity of the anonymous speaker(s) by alternative means.

Polito v. AOL Time Warner, Inc., 2004 WL 3768897 at *7.¹⁰

E. The Extension of the Right to Speak Anonymously to Cybersmear Cases Which Do Not Involve A Public Figure and/or Political Advocacy is Unwarranted.

The courts in the cases discussed in Section III. D. above (hereinafter, the “Cybersmear Cases”) used the Supreme Court’s holdings in Talley, McIntyre, Buckley and Watchtower (hereinafter, the “Anonymity Cases”) as the primary basis for their apparent determination that the First Amendment protects the identity of all anonymous Internet speakers, regardless of the content of their speech. The courts in the Cybersmear Cases, however, never critically analyzed

¹⁰ The court concluded that the plaintiff satisfied the criteria and was therefore entitled to an order compelling AOL to divulge the identities of the anonymous subscribers for the screen names at issue. Polito, 2004 WL 3768897 at *11.

the Supreme Court's holdings in the Anonymity Cases. They simply concluded that the right to anonymous speech recognized by the Supreme Court in the context of state regulations which required potential speakers to reveal their identities before advocating political causes fully applied in the context of unregulated, allegedly tortious speech made over the Internet.

The extension of the limited right to speak anonymously recognized by the Supreme Court in the Anonymity Cases to the Cybersmear Cases was not warranted. First, the Anonymity Cases involved the regulation of political and religious advocacy. The speakers in those cases, therefore, were entitled to the highest level of constitutional protection. See McIntyre, 514 U.S. at 347 and 346 (“[T]he speech in which [Petitioner] engaged – handing out leaflets in the advocacy of a politically controversial viewpoint - is the essence of First Amendment expression” – “The First Amendment affords the broadest protection to such political expression in order to “assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.) The statements at issue in the Cybersmear cases did not involve political or religious advocacy. They concerned, for the most part, the internal management and financial condition of business corporations. As such, the speech at issue in the Cybersmear Cases does not occupy the same prime First Amendment real estate as the speech at issue in the Anonymity Cases. Accordingly, the speech at issue in the Cybersmear Cases was not entitled to the high level of protection given by the Supreme Court to the speech at issue in the Anonymity Cases.

Second, the speech at issue in Talley and McIntyre was not alleged to be defamatory or otherwise tortious as was the speech in the Cybersmear Cases. The First Amendment does not protect or value intentionally false speech similar to some of the postings in the Cybersmear Cases. See Gertz v. Robert Welch, Inc., 418 U.S. 323, 340 (1974) (stating that there is no constitutional value in false statements of fact”); N.Y. Times Co. v. Sullivan, 376 U.S. 254, 270 (1964) (stating that neither intentional lie nor careless error materially advances society's interest in “uninhibited, robust, and wide open debate on public issues”); Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942) (noting that libelous speech is “of such slight social value as a step to

truth that any benefit that may be derived from [the speech] is clearly outweighed by the social interest in order and morality”). Thus, the extension of the high level of protection given by the Supreme Court to the speech at issue in the Anonymity Cases to the speech at issue in the Cybersmear Cases was not legally justified.

Third and finally, the state regulations at issue in the Anonymity Cases were all in the nature of prior restraints. Each regulation required those wishing to speak in the advocacy of political or religious causes to first reveal their identities.¹¹ Prior restraints on speech forbid expression before it takes place. See Neb. Press Ass’n v. Stuart, 427 U.S. 539, 556 (1976) (stating that the First Amendment’s guarantees have been interpreted to “to afford special protection against orders that prohibit the publication or broadcast of particular information or commentary – orders that impose a ‘previous’ or ‘prior’ restraint on speech”). Courts heavily disfavor prior restraints on speech and impose a heavy presumption against their validity. See Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963) (“Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.”)

In contrast to the Anonymity Cases, no prior restraints were at issue in the Cybersmear Cases. In the Cybersmear Cases, plaintiffs were seeking legal redress for injuries sustained as a result of unregulated, allegedly tortious speech. The Supreme Court has acknowledged that the proper remedy for a person injured by tortious speech is the use of libel law; not prior restraints. See Near v. Minnesota, 283 U.S. 697, 718-19 (1931) (“Public officers, whose character and conduct remain open to debate and free discussion in the press, find their remedies for false accusations in actions under libel laws providing for redress and punishment, and not in

¹¹ In Tally, a Los Angeles ordinance prohibited the distribution of handbills which did not have printed on them the names and addresses of persons who prepared, distributed or sponsored them. In McIntyre, an Ohio statute prohibited the distribution of campaign literature designed to influence voters in an election that does not contain the name and address of the person or campaign official issuing the literature. In Buckley, the Colorado election code required that that all initiative-petition circulators wear an identification badge bearing their name and that proponents of an initiative report the names and addresses of all paid circulators and the amount paid to each circulator. In Watchtower, a Village of Stratton ordinance required individuals to obtain a permit prior to engaging in door-to-door advocacy and to display the permit upon demand.

proceedings to restrain the publication of newspapers and periodicals.”) Since the Cybersmear Cases involve parties seeking legal redress for allegedly tortious speech after it has already been uttered, the extension of the high level of protection given by the Supreme Court to the speech at issue in the Anonymity Cases to the speech at issue in the Cybersmear Cases was not legally justified.

F. Existing Procedural Rules Are Sufficient to Protect an Internet Poster’s Limited First Amendment Rights In Cybersmear Cases Which Do Not Involve A Public Figure and/or Political Advocacy.

Reunion does not contend that Internet posters enjoy no First Amendment rights. Reunion contends that persons who post allegedly tortious statements on the Internet, which do not concern a public figure or constitute political advocacy, such as the postings at issue in the present controversy and the postings at issue in the Cybersmear Cases, are not entitled to the high level of protection recognized by the Supreme Court in the Anonymity Cases. Accordingly, Reunion asserts that the Pennsylvania Rules of Civil Procedure sufficiently protect such an Internet poster’s limited First Amendment Rights and that, consequently, there is no need to adopt additional standards to govern the disclosure of such a poster’s identity as the Courts did in the Cybersmear Cases.

In a recent, well-reasoned opinion, the Philadelphia Court of Common Pleas agreed with Reunion’s position. In Klehr Harrison Harvey Branzburg & Ellers, LLP v. JPA Development, Inc., 2006 WL 37020, *1 (Phil. Jan 4, 2006), the plaintiff, a law firm, filed a complaint against several defendants alleging defamation and civil conspiracy based upon a website which accused several of its attorneys of criminal and fraudulent conduct. The plaintiff propounded discovery to the defendants seeking the identities of those persons who posted anonymous messages on the website. JPA Development, Inc., 2006 WL 37020 at *3. The defendants moved for a protective order to preclude the production of information and documentation related to all areas of inquiry regarding the identities of the anonymous posters on the grounds that it would violate the posters right to anonymous speech. See id.

The court recognized that “courts have arrived at differing standards for determining whether to allow disclosure of an anonymous Internet user’s identity when the user is sued for making defamatory statements over the Internet.” See id. at *4. After reviewing the standards adopted in the Dendrite and Cahill cases, the court concluded that no new standards were required because Pennsylvania’s existing procedural rules adequately protected the First Amendment rights of anonymous Internet posters. JPA Development, Inc., 2006 WL 37020 at *9. The court agreed with one commentator’s concerns regarding the wave of new standards concerning the discovery of anonymous Internet poster’s identities:

Though well intentioned, the rush to apply new standards [to discovery issues related to anonymous posters to the Internet] should be slowed. The threat to core First Amendment free speech rights from too readily identifying anonymous speakers is real, and should be taken seriously by the courts. At the same time, however, the new standards offer little real protection for anonymous speech beyond what the courts can provide under existing rules. In exchange for this limited benefit, however, the grafting of new tests onto existing rules threatens to compromise the values protected by other constitutional provisions, including due process, equal protection, and the right to a trial by jury. In particular, application of an out-come determinative heightened discovery standard singles out one class of plaintiffs who are systematically deprived of the litigation procedures, specifically discovery and trial, that are available to other plaintiffs, including plaintiffs with claims that are similar in all regards except that they allege harm by plaintiffs who did not act anonymously.

JPA Development, Inc., 2006 WL 37020 at *8. (quoting, Michael S. Vogel, Unmasking “John Doe” Defendants: The Case Against Excessive hand-Wringing over Legal Standards, 83 Oregon L.Rev. 795, 801 (2004)).

Accordingly, the court declined to apply the Dendrite or Cahill standards and instead analyzed the motion for a protective order under existing Pennsylvania discovery rules. JPA Development, Inc., 2006 WL 37020 at *9. Specifically, the court analyzed the defendant’s motion for a protective order under Pennsylvania Rule of Civil Procedure 4011 which provides that:

No discovery or deposition shall be permitted which

(a) is sought in bad faith;

- (b) would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent or to any party;
- (c) is beyond the scope of discovery as set forth in Rules 4003.1 through 4003.6...

See id. at *9.

In denying the Defendant's motion for a protective order, the court concluded that there was no evidence that the plaintiff sought the identities of the anonymous posters in bad faith. See id. at *10. It also concluded that the discovery was calculated to lead to the discovery of relevant information. See id. Finally, the court, after acknowledging the "democratizing power of the Internet" and "that the right to speak anonymously is subsumed within the Constitutional right to speak freely," concluded that the discovery would not unreasonably burden the anonymous poster's First Amendment rights. See id. Its conclusion was based on the fact that the United States Supreme Court has explicitly held that defamatory and libelous speech enjoys no Constitutional protection and that many of the statements on the website were defamatory.

See id.

G. Doe 1 a/k/a Denunz2005 is Not Entitled, Under the Pennsylvania Rules of Civil Procedure, to Prevent Reunion from Discovering His or Her True Identity.

Even if Doe 1 a/k/a Denunz2005 has a limited First Amendment right to anonymity, that right is not absolute. "It is well understood that the right of free speech is not absolute at all times and under all circumstances. Chaplinsky, 315 U.S. 568, 572 (1942). The United States Supreme Court has recognized that the states have justifiable interests in preventing certain evils including defamation:

The legitimate state interest underlying the law of libel is the compensation of individuals for the harm inflicted on them by defamatory falsehood. We would not lightly require the State to abandon this purpose, for, as Mr. Justice Stewart has reminded us, the individual's right to the protection of his own good name "reflects no more than our basic concept of the essential dignity and worth of every human being – a concept at the root of any decent system of ordered liberty. The protection of private personality, like the protection of life itself, is left primarily to the individual States under the Ninth and Tenth Amendments. But this does not mean that the right is entitled to any less recognition by this Court as a basic of our constitutional system."

Melvin, 836 A.2d at 49 (quoting, Gertz v. Robert Welch, Inc., 418 U.S. 323, 341 (1974) (quoting, Rosenblatt v. Baer, 383 U.S. 75, 92 (1966) (concurring opinion))).

There are no grounds under Pa. R. Civ. P. 4011 or any other Pennsylvania Rule of Civil Procedure which would justify quashing the subpoena that Reunion served on AOL. First, Reunion has plead a claim against Doe 1 a/k/a Denunz2005 for commercial disparagement which is specifically recognized under Pennsylvania law. See Pro Golf Mfg., Inc. v. Tribune Review Newspaper Co., 809 A.2d 243, 246 (Pa. 2002). Reunion is entitled to be compensated for the damage caused to its business and reputation by the false statements of Doe 1 a/k/a Denunz2005.

Second, there is simply no evidence that Reunion acted in bad faith in having the subpoena served. Third, no credible argument can even be made that the identity of Doe 1 a/k/a Denunz2005 is beyond the scope of discovery. The identity of Doe 1 a/k/a Denunz2005 is relevant to prove his intent in making the statements. Without his identity, Reunion will be unable to take the discovery needed to prosecute its claim. Reunion needs to depose Doe 1 a/k/a Denunz2005 to learn, among many other things, what steps he or she took (or failed to take) to determine whether his or her statements were true before he or she posted them on the Internet. Additionally, Reunion needs Doe 1 a/k/a Denunz2005's identity so that it can serve the Complaint upon him or her.

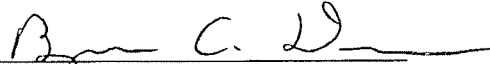
Fourth and finally, given that Reunion has sufficiently plead a cognizable claim for commercial disparagement against Doe 1 a/k/a Denunz2005, that Reunion needs Doe 1 a/k/a Denunz2005's identity to prosecute its claim and that there is no alternative means to obtain his or her identity, the subpoena does not unreasonably burden Doe 1 a/k/a Denunz2005's limited First Amendment rights. Accordingly, Reunion must be permitted to discover Doe 1 a/k/a Denunz2005's identity from AOL. Refusal to permit Reunion to discover Doe 1 a/k/a Denunz2005's identity would deprive Reunion of its Constitutional right to a jury trial, to the equal protection of the laws and to the due process of law.

V. CONCLUSION

For the forgoing reasons, Defendant Doe 1 a/k/a Denunz2005's Motion to Revoke Letter Rogatory (Quash Subpoena) or, Alternatively, Objections to Subpoena Pursuant to Rule 4009.21, and Motion for Protective Order should be denied in its entirety and this court should enter an order compelling AOL to respond to the subpoena at issue.

Respectfully submitted,

DEL SOLE CAVANAUGH LLC

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Industries, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 4th day of December, 2006, a true and correct copy of the foregoing *Plaintiff's Brief in Opposition to Defendant Doe 1 a/k/a denunz2005's Motion to Revoke Letter Rogatory (Quash Subpoena) or, Alternatively, Objections to Subpoena Pursuant To Rule 4009.21, and Motion for Protective Order* was served via First Class, U.S. Mail, postage prepaid upon the following:

Joseph J. Schwerha IV, Esquire
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173 State Street
Charleroi, PA 15022

Attorney for Defendant Doe 1 a/k/a denunz2005


Bryan C. Devine

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA CIVIL DIVISION

<p>REUNION INDUSTRIES, INC., a Delaware Corporation,</p> <p>Plaintiff,</p> <p>v.</p> <p>DOE 1 a/k/a DENUNZ2005, an adult individual, DOE 2 a/k/a STOCKER606, an adult individual and DOE 3 a/k/a PUN 2 DEX, an adult individual,</p> <p>Defendants.</p>	<p>CIVIL DIVISION</p> <p>No. GD-06-007965</p> <p>BRIEF OF DOE 1 WITH REGARD TO RIGHT OF PSEUDOANONYMOUS SPEECH</p> <p>Filed on behalf of Defendants: DOE 1.</p> <p>Counsel of Record for this Party: Joseph J. Schwerha IV, Esq. PA ID # 73400 SCHWERHA & ASSOCIATES 173 State St. Charleroi, PA 15022 P: 412.296.3954 F: 707.202.3143</p>
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2006-06-22
Allegany County

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA CIVIL DIVISION

<p>REUNION INDUSTRIES, INC., a Delaware Corporation,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>DOE 1 a/k/a DENUNZ2005, an adult individual, DOE 2 a/k/a STOCKER606, an adult individual and DOE 3 a/k/a PUN 2 DEX, an adult individual,</p> <p style="text-align: right;">Defendants.</p>	<p>CIVIL DIVISION</p> <p>No. GD-06-007965</p> <p>BRIEF OF DOE 1 WITH REGARD TO RIGHT OF PSEUDOANONYMOUS SPEECH</p> <p>Filed on behalf of Defendants: DOE 1.</p> <p>Counsel of Record for this Party: Joseph J. Schwerha IV, Esq. PA ID # 73400 SCHWERHA & ASSOCIATES 173 State St. Charleroi, PA 15022 P: 412.296.3954 F: 707.202.3143</p>
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**BRIEF OF DOE 1 WITH REGARD TO RIGHT OF PSEUDOANONYMOUS
SPEECH**

AND NOW, comes Defendant Doe 1 (“Doe 1”), by and through his/her attorney Joseph J. Schwerha IV, hereby files this brief in support of Defendants’ constitutional First Amendment right to engage in pseudonymous speech, and as grounds therefore avers as follows:

History of the Case

This case involves attempts of a publicly-traded corporation to use court process to discover the identity of three pseudonymous internet users who, allegedly, published defamatory material about the corporation. Defendant herein argues that these attempts to force non-parties to divulge information revealing the Does' identity are procedurally defective and should, therefore, be quashed. Furthermore, the danger to the Does' First Amendment rights posed by the Plaintiff's continued use of ex parte process requires an appropriate protective order.

Plaintiff Reunion Industries, Inc. ("Reunion") is a Delaware corporation with its principal place of business located at 11 Stanwix street, Suite 1400, Pittsburgh, Allegheny County, Pennsylvania 15222. Defendant Doe 1 is the pseudonym for the individual using the alias "denunz2005" for posting messages on the Yahoo! Finance bulletin board designated for Reunion (found under the ticker symbol "RUN") and in his/her other communications over the Internet. Defendant Doe 2 is the pseudonym for the individual using the alias "stocker606" for posting messages on the Yahoo! Finance bulletin board designated for Reunion (found under the ticker symbol "RUN") and in his/her other communications over the Internet. Defendant Doe 3 is the pseudonym for the individual using the alias "pun2dex" for posting messages on the Yahoo! Finance bulletin board designated for Reunion (found under the ticker symbol "RUN") and in his/her other communications over the Internet.

On April 4, 2006, Plaintiff Reunion filed a complaint in the Court of Common Pleas of Allegheny County, Pennsylvania, alleging that the three Does published defamatory information about Reunion on the Yahoo! Finance bulletin board designated for Reunion. Reunion Industries, Inc., v. Doe 1, Doe 2, and Doe 3. A true and correct copy of the Complaint was attached to DOE 1's Motion as Exhibit "1". To this date this complaint has **not** been served on the Does' counsel. To date, Defendant Doe 1 is unaware of any attempts made by Plaintiff to serve the Complaint or otherwise notify Doe 1 of this lawsuit, in general. On May 18, 2006, Plaintiff filed a Motion for a Letter Rogatory, which was granted by the Honorable Michael A. DellaVecchia of the Court of Common Pleas of Allegheny County, Pennsylvania. Pursuant to the Letter Rogatory of May 18, Plaintiff Reunion served a subpoena on Yahoo!, in an attempt to uncover the identities of the Does. Yahoo! apparently informed Plaintiff Reunion that America Online ("AOL") was the internet service provider for at least Defendant Doe 1.

On August 31, 2006, Plaintiff filed a Motion for a Letter Rogatory, which was granted by the Honorable Robert P. Horgos of the Court of Common Pleas of Allegheny County, Pennsylvania. A true and correct copy of the Motion and resulting Letter Rogatory was attached to DOE 1's Motion as Exhibit "2". On or about September 28, 2006, local counsel for Plaintiff filed a Praecipe Requesting Foreign Subpoena Duces Tecum. A true and correct copy of this Praecipe was attached to DOE 1's Motion as Exhibit "3". AOL notified Defendant Doe 1 of the pending complaint and subsequent subpoenas. Counsel for the Defendant Doe 1 was not notified of these filings by Plaintiff Reunion, nor was he served in advance with the relevant court documents. The subpoena

was issued by Loudoun County on October 2, 2006, with a due date of October 27, 2006. Counsel for Doe 1 has notified AOL of the instant motion and they have decided to not produce any documentation in response to the Loudoun County subpoena until this court has decided the present motion.

On the date of the first argument herein, the Honorable Judge Stanton Wettick ordered that both sides brief the issue of whether there is a right to pseudonymous speech on the internet. The argument set forth below clearly demonstrates that there is such a right.

Legal Argument

Doe 1 has a well-documented First Amendment right to communicate anonymously. This First Amendment protection of anonymous speech also applies to discussions on the Internet. *American Civil Liberties Union v. Johnson*, 4 F. Supp. 2d 1029, 1033 (D. N.M. 1998)(statute requiring personal identification information impermissibly “prevents people from communicating and accessing information anonymously”. *American Civil Liberties Union v. Miller*, 977 F.Supp. 1228, 1233 (N.C. Ga. 1997)(law making it illegal to use false name “prohibits such protected speech as the use of false identification to avoid social ostracism, to prevent discrimination and harassment, and to protect privacy,” which has first amendment implications.) Moreover, said right anonymous speech is also asserted under Article 1, Section 7 of the Pennsylvania Constitution.¹ In the past, the

¹ From this point forward, reference to the 1st Amendment shall also be deemed to reference Article 1, Section 7 of the Pennsylvania Constitution.

Pennsylvania Supreme Court has indicated that such section affords greater protection than the 1st Amendment of the United States Constitution.

“The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one’s privacy as possible. Whatever the motivation may be, at least in the field of literary endeavor, the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry. Accordingly, an author’s decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the first Amendment.” *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 at 341-42.

These First Amendment interests also apply to the discovery process. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34-35 (1984). The way Reunion has proceeded in this matter has been in direct contravention of the privacy rights of the Defendant Does. However, this Court can remedy this injustice by permanently quashing the subpoena, or in the alternative, granting the protective order. *Herbert v. Lando*, 441 U.S. 153, 178 (1979)(Powell, J., concurring)(“In supervising discovery ... a district court has a duty to consider First Amendment interests as well as the private interest of the [defendant]”). *Stenger v. Lehigh Valley Hospital Center*, 530 Pa. 426, 435 n.8 (1992) (“It is acknowledged that court orders which compel, restrict or prohibit discovery constitute state action which is subject to constitutional limitations ...” citing *Rhinehart*, *supra*).

Doe 1 does not attempt to argue that the First Amendment privilege should act as a complete bar to discovery. See 6 Standard Pennsylvania Practice 2d, §34.30 (1994) (“The privilege involving First Amendment rights of free association, free speech, and privacy applies to discovery between private litigants; however the privilege is qualified and cannot be used as a blanket bar to discovery.”) It is possible for a plaintiff to pierce the veil of anonymity, but only after he has overcome his burden of justifying such an infringement of a First Amendment right. The trial court must oversee the discovery process in such a way that the defendants’ rights are not trampled, or else Reunion will be able to do an end run around *New York Times v. Sullivan*’s prohibition against direct punishment.² Reunion’s attempt to compel the disclosure of the Does’ identity violates the First Amendment if such disclosure does not satisfy a heightened standard of scrutiny. See 6 Standard Pennsylvania Practice 2d, §34.30 (1994) (“Once a litigant shows that a discovery request is directed at the heart of a group’s protected [First Amendment] activities, the court must subject the request to a higher level of scrutiny.”).

**PENNSYLVANIANS HAVE A RIGHT TO ANONYMOUS
NON-POLITICAL SPEECH.**

Pennsylvania courts have yet to establish what the proper standard of analysis for deciding whether to order the revelation of the identities of anonymous posters in defamation cases. There is one recent case that sheds some light on the question of whether non-political speech is protected in Pennsylvania. In *Klehr Harrison Harvey Branzburg & Ellers, LLP v. JPA Development, Inc.*, 2006 Phila. Ct. Com. Pl. LEXIS 1,

² See *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)

the trial court denied a protective order requested by the anonymous posters because the statements in question were made to a website whose content had already been determined to be defamatory per se. Specifically, the court held that the request to reveal the identity of the posters was not based on bad faith and that the posters' were not unreasonably burdened by the denial of the protective order. *Klehr v. JPA*, 2006 Phila. Ct. Com. Pl. LEXIS 1 at *32. Please note that while the Court had written the opinion to be submitted to Superior Court, the case was settled before the appeal was perfected.

We disagree with both the conclusion and the reasoning of *Klehr*. The *Klehr* court based its decision on a procedural rule. Rather than adopting either of the tests being utilized in other jurisdictions, the court in *Klehr* instead stated that existing procedural rules are adequate to weigh the First Amendment rights of the John Doe against the party seeking the identifying information. Specifically, Pennsylvania Rule of Civil Procedure 4011 dictates that the scope of discovery shall be limited when information is sought by a party in bad faith, or that would be an unreasonable burden against another party, then goes on to define "bad faith" as "fraud dishonesty, or corruption." *Citing Casel v. Scott*, 330 Pa. Super. 412, 416 (1984) *citing In Re Estate of Roos*, 305 Pa. Super. 86, 94-95 n2 (1982).

The *Klehr* court's logic dictates that Rule 4011 is adequate to accurately balance the First Amendment anonymous free speech right of the anonymous poster with the interest of the adverse party to discovery in aid of their lawsuit. *Klehr*, at 27-28. We feel that the mere inquiry into bad faith and unreasonable burden do not suffice to address the

myriad concerns involved in weighing these competing interests. In fact, even *Klehr* admits that neighboring jurisdictions have reasoned that a court should depart from traditionally applied legal standards in determining whether to disclose a poster's identity in a First Amendment case. *See Klehr* at 13, *et. seq.*

Even under *Klehr*'s flawed reasoning, however, there must be an initial analysis of whether the underlying statements could be defamatory. Based upon the ruling in *Klehr*, if not for the defamatory nature of the communication, the good faith of the seeking party could have been called into question and posters would have been awarded the protective order. In the instant matter, we have contended from the start that the allegedly defamatory remarks are not, in fact, defamatory and that, for that reason, Reunion would not be able to present a prima facie case of defamation. Therefore, Reunion should not be able to strip John Doe #1 of his anonymity.

The trend among courts, moreover, is to provide more protection for internet speech, not less. One the latest cases even blatantly prohibits disclosure of identifying information based up the Stored Communications Act. In *O'Grady v. Superior Court*, 2006 WL 1452685 (Cal. App. 6th Dist. May 26, 2006), the 6th Circuit held that the owner of a blog was prohibited from disclosing emails sent to that blog in response to a civil subpoena. Apple had sued several Does in relation to an investigation into posting of trade secrets. The owner of the Blog moved for a protective order. The appellate court held that the protective order was appropriate given that the Stored Communications Act outlines five reasons that such information may be disclosed and that responding to a civil subpoena was not one of them.

THIS COURT SHOULD APPLY THE DENDRITE STANDARD TO DETERMINE WHETHER TO UNCOVER DOE 1'S IDENTITY.

The court in *Klehr* also analyzed the tests outlined in *Dendrite v. Doe*, 2001 N.J. Super. LEXIS 300, and *Doe v. Cahill*, 884 A.2d 451 (Del. 20056), which both recommend a higher standard of review for defamation cases involving anonymous internet posters. In addition to contemplating these tests, *Klehr* looks at *Melvin v. Doe*, 2003 Pa. LEXIS 2162 which, while it does not recommend a particular standard, suggests that the *Dendrite* standard might be adopted in Pennsylvania. The court in *Dendrite*, however, recommended an even higher standard than had been recommended in existing opinions, such as *AOL*³ and *SeesCandy*⁴. Even under *AOL* and *SeesCandy*, however, a Plaintiff must prove that they have a case that could survive a motion to dismiss.

While no court in Pennsylvania has embraced a formula for balancing the First Amendment right of an internet poster against the interest in the party seeking his identity for the purposes of a defamation lawsuit, it seems that the courts in Pennsylvania will embrace the standard outlined in *Dendrite*. In the earlier *Melvin* Court opinion, the Court stated:

³ In *America Online, Inc. v. Nam Tai Electronics, Inc.*, 571 S.E.2d 128 (2002), the court outlined the following test in determining whether to unmask the identity of an anonymous defendant: 1) the party seeking the identifying information must plead a prima facie claim that it is the victim of a particular tort; and 2) the subpoenaed identifying information must be central to advancing that claim.

⁴ In *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573 (N.D. Cal. 1999), the following test was suggested before uncovering an anonymous defendant's identity: 1) the plaintiff must identify the missing party with sufficient specificity such that the court can determine that the defendant is a real person or entity subject to the court's jurisdiction; 2) the plaintiff must identify all previous steps taken to locate the defendant; 3) the plaintiff must establish to the court's satisfaction that the plaintiff's suit against the defendant could withstand a motion to dismiss; and 4) the plaintiff must file a discovery request that justifies the need for the identifying information.

In the instant case, Appellants argue that the trial court did not adequately protect their First Amendment right to engage in anonymous political speech, since it directed disclosure of their identities without requiring Appellee to establish actual economic harm. We find that the United States Supreme Court has endorsed that right in certain circumstances. The issue of whether that right protects Appellants' identities presents a significant possibility of trespass upon their First Amendment rights. There is no question that generally, the constitutional right to anonymous free speech is a right deeply rooted in public policy that goes beyond this particular litigation, and that it falls within the class of rights that are too important to be denied review.

Melvin v. Doe, at *20-21. Further, the Court went on to say:

The fact that the trial court's order limits disclosure to Appellee does not prevent Appellants from losing their anonymity. Further, as the trial court acknowledged, "any ruling that does not fully protect the anonymity of the anonymous Internet speaker may deter anonymous Internet speech." Trial ct. slip op., p. 31.

Melvin v. Doe, at *21 n11.

In *Dendrite* the court held that prior to ordering the disclosure of the identity an unnamed defendant the trial court should pass several tests. *First*, the plaintiff must undertake efforts to notify the anonymous posters that they are the subject of a subpoena or application for an order of disclosure. *Second*, the plaintiff must identify and set forth the exact statements purportedly made by each anonymous poster that the plaintiff alleges constitute actionable speech. *Third*, the plaintiff must set forth a prima facie cause of action against the fictitiously-named anonymous unnamed defendant, both by establishing that its action can withstand a motion to dismiss for failure to state a claim upon which relief can be granted and by producing sufficient evidence supporting each element of its cause of action, on a prima facie basis. *Fourth*, assuming that the trial court concludes that the plaintiff has presented a prima facie cause of action, the court

must then balance the defendant's First Amendment right of anonymous free speech against the strength of the prima facie case presented and the necessity for the disclosure of the anonymous defendant's identity. *Dendrite*, at *35-6.

Under the *Dendrite* analysis, the plaintiff will not be able to obtain disclosure of the defendant Doe 1's identity. In this case, the first prong of the test has not been met to the defendant's satisfaction. At page 10 of the plaintiff's response to the Defendant's Motion to Quash Subpoena, the plaintiff claims that the act of serving the subpoena on AOL is sufficient notice to the plaintiff—we disagree. Serving notice of a complaint through incidental notice from a third party does not constitute notice to the plaintiff. Instead, an email to the anonymous defendants at their email addresses, which the plaintiff had knowledge of, would have been, while unofficial, actual notice to the defendants. Second, we stipulate as to the accuracy of plaintiff's recitation of the statements posted to the Yahoo Bulletin board, so prong two of the test is met. Third, Doe 1 has maintained from the very beginning that the plaintiff must state a prima facie case of defamation, and we still so maintain. We also aver that because there has been no harm, and harm cannot be proven, that plaintiff cannot successfully state a prima facie case of defamation. Further, we claim that the statements made are truthful and thereby cannot be considered defamation. For that reason, we do not believe the forth prong will ever be reached, and analysis of that point is unnecessary. If in fact the fourth prong is reached, however, the court can then embark upon its comparison of that prima facie case against the defendant's right to anonymous speech. We do not wish to speculate to this

court as to how it would rule on this prong, however, we do ask that the court not order disclosure until the court has been able to perform this analysis.

WHEREFORE, the defendant respectfully requests that the court allow Doe #1 to remain anonymous until the court is satisfied that plaintiff has stated a prima facie case of defamation, and only enforces Reunion Industries, Inc.'s subpoenas to AOL and the Loudoun County Clerk of Courts if the court then decides that that prima facie case is so compelling as to warrant the unmasking of the identity of John Doe #1.

Respectfully Submitted,

/s/ Joseph J. Schwerha IV
Joseph J. Schwerha IV, Esq.
PA ID # 73400
SCHWERHA & ASSOCIATES
173 State St.
Charlottesville, PA 15022
P: 412.296.3954
F: 707.202.3143

Attorney for Defendant Doe 1

CERTIFICATE OF SERVICE

I, Joseph John Schwerha IV, HEREBY CERTIFY that on this 4th day of December, 2006, a copy of the foregoing BRIEF OF DOE 1 WITH REGARD TO RIGHT OF PSEUDOANONYMOUS SPEECH was sent to the Plaintiff via his attorney at the address set forth below:

Stephen J. Del Sole, Esquire
Del Sole Cavanaugh, LLC
The Waterfront Building
200 First Avenue, Ste 200
Pittsburgh, PA 15222

/s/ Joseph J. Schwerha IV
Joseph J. Schwerha IV

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

REUNION INDUSTRIES, INC., a
Delaware Corporation,

Plaintiff

vs.

DOE 1 a/k/a DENUNZ2005,
an adult individual, DOE 2
a/k/a STOCKER606, an
adult individual and DOE 3
a/k/a PUN 2 DEX, an
adult individual,

Defendants

CIVIL DIVISION

NO. GD06-007965

CODE _____

OPINION AND ORDER OF COURT

HONORABLE R. STANTON WETTICK, JR.

Counsel for Plaintiff:

Stephen J. Del Sole, Esquire
Bryan C. Devine, Esquire
200 First Avenue
Suite 200 The Waterfront Building
Pittsburgh, PA 15222

Counsel for Defendant Doe 1
a/k/a denunz2005:

Joseph J. Schwerha, IV, Esquire
173 State Street
Charleroi, PA 15022

OPINION AND ORDER OF COURT

WETTICK, A.J.

Plaintiff, a publicly traded corporation, has filed a complaint raising a cause of action for commercial disparagement against three Does, based on messages posted over the Internet on the Yahoo! Financial Bulletin Board. Plaintiff seeks a court order compelling AOL to identify Doe 1.¹ Through a motion seeking a protective order, Doe 1 seeks a court order barring AOL from releasing this information on the ground that Doe 1's identity is protected from disclosure by the First Amendment of the Federal Constitution. This motion is the subject of this Opinion and Order of Court.

In 2000, I considered a discovery request to obtain the name of an anonymous defendant who published allegedly defamatory statements on an Internet website in *Melvin v. Doe*, 149 P.L.J. 12, 49 D.&C.4th 449. In the *Melvin* litigation, an unknown person published statements on a website which accused Judge Melvin of engaging in political activity that was inappropriate for a judge. She brought a defamation claim against the unknown speaker and sought to obtain the speaker's identity through discovery. The defendant obtained counsel who sought a protective order that would prevent this discovery. While I rejected the defendant's contention that the First Amendment absolutely protects anonymous speech, I ruled that the defendant was protected by a qualified privilege rooted in the First Amendment against compelled

¹Yahoo! Inc. identified AOL as being the Internet provider for Doe 1.

disclosure of anonymous sources in civil lawsuits and that a summary judgment standard would appropriately balance the right of one party to speak anonymously against the right of another party to protect his or her reputation.

I then gave the plaintiff the opportunity to establish a *prima facie* case. She produced credible evidence that would support a finding that the statement was made, the statement was false, the statement was defamatory, and she sustained actual harm. Consequently, I entered a court order permitting the plaintiff to discover the identity of John Doe.

The defendant filed an appeal to the Superior Court in which he contended that findings of impairment of reputation and standing in the community, personal humiliation, mental anguish, and suffering are an insufficient basis for compelling disclosure; he contended that I should have protected his anonymity unless the plaintiff could establish out-of-pocket monetary losses or medical treatment.

The Pennsylvania Superior Court ruled that my order denying the motion for a protective order is not a collateral order subject to immediate appeal. 789 A.2d 696 (Pa. Super. 2001). The Pennsylvania Supreme Court rejected the Superior Court's ruling and remanded the case to the Superior Court to consider the defendant's constitutional question, namely whether the First Amendment requires a public official defamation plaintiff to establish a *prima facie* case of actual economic harm prior to obtaining discovery of an anonymous defamation defendant's identity. 836 A.2d 42 (Pa. 2003). The appeal was withdrawn prior to any ruling by the Superior Court.

In the present case, plaintiff contends that my use of a summary judgment standard to protect anonymous speech should be limited to criticism of public officials. However, it cites no cases supporting this position that case law governing anonymous

speech differentiates between criticism of public officials and other types of speech such as commercial disparagement. Also, I am not aware of any line of cases holding that commercial disparagement is less valuable speech or that it is not of equal First Amendment importance. Plaintiff has not offered and I am not aware of any justification for giving less protection, than a summary judgment standard, to anonymous speech involving information that may affect the value of a publicly traded company.

At the time I made my rulings in *Melvin v. Doe*, the parties did not cite, and I was not aware of, any reported cases that had addressed the issue of whether the First Amendment protects the anonymity of persons who anonymously publish an allegedly defamatory statement on an Internet website. Following my ruling, two appellate court cases have addressed the same issue and have ruled that a plaintiff who cannot produce evidence supporting a *prima facie* case may not learn the identity of a Doe defendant.²

In *Dendrite International, Inc. v. John Doe No. 3*, 775 A.2d 756 (N.J. Super. Ct. App. Div. 2001), the corporation commenced a lawsuit against several John Does based on allegedly defamatory comments posted on an Internet message board. Through discovery, the plaintiff sought to compel the Internet Service Provider to disclose the identity of the John Doe defendants. John Doe No. 3 opposed on the ground that his right to speak anonymously was protected by the United States and New Jersey Constitutions.

The trial court ruled that both the First Amendment protections of the Federal Constitution and the New Jersey Constitution protect the anonymity of a speaker unless

²I am not aware of any other appellate court case law addressing this issue.

the party seeking to ascertain the identity of the speaker can establish a *prima facie* case of defamation which, for corporation defamation, requires a showing of actual damages. The trial court denied the motion of the plaintiff-corporation to compel discovery because the plaintiff-corporation had failed to offer evidence which would support a finding that the plaintiff-corporation was harmed.

The New Jersey Superior Court affirmed the ruling of the trial court that the plaintiff was not entitled to discover the identity of the anonymous speaker because of its failure to offer evidence that would support a finding of actual harm. The Court ruled that the following guidelines govern discovery seeking disclosure of the identity of anonymous Internet posters who are sued for allegedly violating the rights of individuals, corporations, or businesses:

The complaint and all information provided to the court should be carefully reviewed to determine whether plaintiff has set forth a *prima facie* cause of action against the fictitiously named anonymous defendants. In addition to establishing that its action can withstand a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to R. 4:6-2(f), the plaintiff must produce sufficient evidence supporting each element of its cause of action, on a *prima facie* basis, prior to a court ordering the disclosure of the identity of the unnamed defendant.

Finally, assuming the court concludes that the plaintiff has presented a *prima facie* cause of action, the court must balance the defendant's First Amendment right of anonymous free speech against the strength of the *prima facie* case presented and the necessity for the disclosure of the anonymous defendant's identity to allow the plaintiff to properly proceed. *Id.* at 760-61.

In *Doe No. 1 v. Cahill*, 884 A.2d 451 (De. 2005), an elected council member and his wife brought a defamation action against John Doe defendants based on anonymous statements posted on an Internet weblog. Through a discovery request that was the subject of this litigation, the plaintiffs sought to learn the identity of John Doe

No. 1 from Comcast, which owned John Doe No. 1's IP address. Doe sought a protective order to prevent the plaintiffs from obtaining his identity.³

The trial court, applying a good faith standard—a showing of a good faith basis upon which to bring the action and a showing that the information sought is related to the claim and cannot be obtained from any other source—denied Doe's motion for a protective order. The Delaware Supreme Court reversed on the ground that the trial court applied an incorrect standard. It held that a defamation plaintiff must satisfy a summary judgment standard before obtaining the identity of an anonymous defendant: "We, accordingly, hold that before a defamation plaintiff can obtain the identity of an anonymous defendant through the compulsory discovery process he must support his defamation claim with facts sufficient to defeat a summary judgment motion." *Id.* at 460.⁴

Also see *Best Western International, Inc. v. Doe*, 2006 WL 2091695 (D. Ariz. 2006), which applied a summary judgment standard.

In *Klehr Harrison Harvey Bransburg & Ellers, LLP v. JPA Development, Inc.*, 2006 WL 37020 (C.P. Phila. 2006), the Philadelphia Common Pleas Court concluded that the implementation of new standards for cases involving a plaintiff's effort to learn the identity of anonymous Internet posters will likely do more harm than good. The Court ruled that a balancing of John Doe's First Amendment rights against the plaintiff's rights to the information sought is built into the Commonwealth's existing civil procedure.

³According to footnote 4, federal law (47 U.S.C. §551(c)(2)) requires an Internet Service Provider to furnish notice to the Internet service subscriber before it can disclose the identity of its subscriber to a third party. *Id.* at 455 n.4.

⁴The Court rejected the additional requirement in *Dendrite* that the trial court must balance the defendant's First Amendment rights against the strength of the plaintiff's *prima facie* case. It stated that the summary judgment test is the balance.

Consequently, the defendant's motion for a protective order should be analyzed under existing Pennsylvania discovery rules.

Also see *In Re: Subpoena Duces Tecum to America Online, Inc.*, 2000 WL 1210372 (Va. Cir. Ct. 2000), reversed on other grounds, *America Online, Inc. v. Anonymous Publicly Traded Company*, 542 S.E.2d 377 (2001), where a Virginia trial court applied a good faith standard to a request to learn the identity of John Doe defendants.

Upon consideration of the case law decided after my rulings in *Melvin v. Doe*, I continue to believe that a summary judgment standard is the appropriate standard for balancing the First Amendment protections of anonymous speech against interests furthered through state libel laws.

For these reasons, I am entering a court order granting Doe 1's motion for a protective order barring further discovery to learn the identity of Doe 1. However, plaintiff may request that I rescind this court order if plaintiff is able to make a *prima facie* showing that (1) the statements on the bulletin board were false; (2) the publisher either intended the publication to cause pecuniary loss or reasonably should have recognized that the publication would result in pecuniary loss; and (3) pecuniary loss did, in fact, result.⁵

For these reasons, I enter the following Order of Court.

⁵A cause of action for commercial disparagement also requires a showing that the publisher either knows that the statement is false or acts in disregard of its truth or falsity. See *Pro Golf Management, Inc. v. Tribune Review Newspaper Co.*, 809 A.2d 243, 246 (Pa. 2002). Plaintiff cannot establish this requirement without knowing the identity of the publisher. Thus, if plaintiff must meet this requirement, I would be giving absolute First Amendment protection to anonymous speech in commercial disparagement claims. For the reasons that I have discussed, this would be a balance that fails to take into consideration the interests protected through state libel law.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

REUNION INDUSTRIES, INC., a
Delaware Corporation,

Plaintiff

vs.

DOE 1 a/k/a DENUNZ2005,
an adult individual, DOE 2
a/k/a STOCKER606, an
adult individual and DOE 3
a/k/a PUN 2 DEX, an adult
individual,

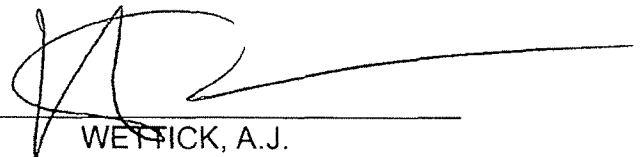
Defendants

NO. GD06-007965

ORDER OF COURT

On this 5 day of March, 2007, upon consideration of Doe 1's motion for a protective order, it is hereby ORDERED that until further order of court, plaintiff is barred from obtaining from America Online, Inc., any information relating to the identity of Doe 1.

BY THE COURT:


WETTICK, A.J.

Copies needed. (all) 3/5/07

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., a Delaware Corporation,

Plaintiff,

v.

DOE 1 a/k/a DENUNZ2005, an adult individual, DOE 2 a/k/a STOCKER606, an adult individual, HERBERT BENNET CONNER, an adult individual and DOE 3 a/k/a PUN 2 DEX, an adult individual,

Defendants.

) CIVIL DIVISION

) No. GD 06-7965

) **PRAECIPE TO REINSTATE
) COMPLAINT AND ADD PARTY
) DEFENDANT PURSUANT TO
) P.A.R.CIV.PRO. 401.**

) Filed on behalf of Plaintiff:

) REUNION INDUSTRIES, INC.

) Counsel of Record for this Party:

) Stephen J. Del Sole, Esquire

) PA ID# 73460

) Bryan C. Devine, Esquire

) PA ID # 88355

) DEL SOLE CAVANAUGH STROYD LLC

) The Waterfront Building

) 200 First Avenue, Suite 300

) Pittsburgh, PA 15222

) Tel: (412) 261-2393

) Fax: (412) 261-2110

FILED

08 FEB 21 AM 10:12

PROthonotary
ALLEGHENY COUNTY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

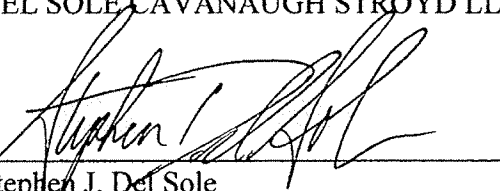
REUNION INDUSTRIES, INC., a Delaware Corporation,	)	CIVIL DIVISION
)	
	)	No. GD 06-7965
Plaintiff,)	
)	
v.)	
)	
DOE 1 a/k/a DENUNZ2005, an adult individual, DOE 2 a/k/a STOCKER606, an adult individual, HERBERT BENNET CONNER, an adult individual and DOE 3 a/k/a PUN 2 DEX, an adult individual,)	
)	
Defendants.)	

PRAECIPE TO REINSTATE COMPLAINT AND ADD PARTY DEFENDANT
PURSUANT TO PA.R.CIV.PRO. 401.

To the Prothonotary:

Reinstate the Complaint in the above captioned matter in the form attached hereto adding Herbert Bennet Conner as a party defendant pursuant to Pa.R.Civ.Pro 401(b)(2).

DEL SOLE CAVANAUGH STROYD LLC

By: 

Stephen J. Del Sole
Pa. I.D. No. 73460
Bryan C. Devine
Pa. I.D. No. 88355

The Waterfront Building
200 First Avenue, Suite 300
Pittsburgh, PA 15222

Attorneys for Plaintiff Reunion Industries, Inc.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., a Delaware
Corporation,

Plaintiff,

v.

DOE 1 a/k/a DENUNZ2005, an adult
individual, DOE 2 a/k/a STOCKER606, an
adult individual, HERBERT BENNET
CONNER, an adult individual and DOE 3 a/k/a
PUN 2 DEX, an adult individual,

Defendants.

) CIVIL DIVISION

) No. GD 06-7965

) COMPLAINT

) Filed on behalf of Plaintiff:

) REUNION INDUSTRIES, INC.

) Counsel of Record for this Party:

) Stephen J. Del Sole, Esquire

) PA ID# 73460

) Bryan C. Devine, Esquire

) PA ID # 88355

) DEL SOLE CAVANAUGH STROYD LLC

) The Waterfront Building

) 200 First Avenue, Suite 300

) Pittsburgh, PA 15222

) Tel: (412) 261-2393

) Fax: (412) 261-2110

FILED

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PROCLERK
ALLEGHENY COUNTY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., a Delaware Corporation,) CIVIL DIVISION
)
) No. GD 06-7965
)
Plaintiff,)
)
)
v.)
)
)
DOE 1 a/k/a DENUNZ2005, an adult individual,)
DOE 2 a/k/a STOCKER606, an adult individual,)
HERBERT BENNET)
CONNER, an adult individual and DOE 3 a/k/a)
PUN 2 DEX, an adult individual,)
)
Defendants.

NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

LAWYERS REFERRAL SERVICE
THE ALLEGHENY COUNTY BAR ASSOCIATION
436 SEVENTH AVENUE
400 KOPPERS BUILDING
PITTSBURGH, PENNSYLVANIA 15219
TELEPHONE: (412) 261-6161

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

REUNION INDUSTRIES, INC., a Delaware Corporation,	)	CIVIL DIVISION
)	
	)	No. GD 06-7965
Plaintiff,)	
)	
v.)	
)	
DOE 1 a/k/a DENUNZ2005, an adult individual, DOE 2 a/k/a STOCKER606, an adult individual, HERBERT BENNET CONNER, an adult individual and DOE 3 a/k/a PUN 2 DEX, an adult individual,)	
)	
Defendants.)	

COMPLAINT

Plaintiff, Reunion Industries, Inc., by and through its undersigned counsel, files the following Complaint and states as follows:

PARTIES

1. Plaintiff Reunion Industries, Inc. (“Reunion”) is a Delaware corporation with its principal place of business located at 11 Stanwix Street, Suite 1400, Pittsburgh, Allegheny County, Pennsylvania 15222. Reunion is qualified to do business in the Commonwealth of Pennsylvania.

2. Defendant Doe 1 is an individual of unknown residence using the alias “denunz2005” (“Doe 1”) for posting messages on the Yahoo! Finance bulletin board designated for Reunion (found under the ticker symbol “RUN”) and in his/her other communications over the internet. Plaintiff Reunion will amend this Complaint to allege the true name and capacity of Doe 1 when ascertained.

3. Defendant Doe 2 is an individual of unknown residence using the alias “stocker606” (“Doe 2”) for posting messages on the Yahoo! Finance bulletin board designated for Reunion (found under the ticker symbol “RUN”) and in his/her other communications over the internet. Plaintiff Reunion will amend this Complaint to allege the true name and capacity of Doe 2 when ascertained.

4. Defendant Herbert Bennet Conner (“Defendant Connor”) is an adult individual who, upon information and belief, resides in the state of Florida. It is believed and therefore averred that Defendant Conner used the alias “pun2dex” for posting messages on the Yahoo! Finance bulletin board designated for Reunion (found under the ticker symbol “RUN”) and in his other communications over the internet.

5. In the event that the alias “pun2dex” was not the alias used by Defendant Conner, Defendant Doe 3 is an individual of unknown residence using the alias “pun2dex” (“Doe 3”) for posting messages on the Yahoo! Finance bulletin board designated for Reunion (found under the ticker symbol “RUN”) and in his/her other communications over the internet. Plaintiff Reunion will amend this Complaint to allege the true name and capacity of Doe 3 when ascertained.

JURISDICTION AND VENUE

6. Reunion’s principal place of business is located in Allegheny County, Pennsylvania. Further, Reunion’s causes of action against all defendants arose in Allegheny County because the defendants published their defamatory statements in Allegheny County, Pennsylvania and because Reunion suffered damages in Allegheny County, Pennsylvania.

FACTUAL BACKGROUND

7. At the time of the acts that form the basis of the claims set forth herein, Reunion was publicly traded on the NASDAQ exchange under the ticker symbol “RUN.”

8. Reunion's Chief Executive Officer ("CEO") is Kimball Bradley. Prior to serving as CEO, Kimball Bradley served as Reunion's Chief Operating Officer.

9. The Yahoo! Finance bulletin board is part of the Yahoo! Website finance channel. Each publicly traded company has its own designated bulletin board. Each bulletin board provides its members a forum to post messages over the internet regarding specific publicly traded companies.

10. Reunion has been the subject of numerous defamatory messages posted on its designated Yahoo! Finance Bulletin board by Doe 1 a/k/a denunz2005, Doe 2 a/k/a stocker606, and Defendant Conner and/or Doe 3 a/k/a pun2dex.

11. On or about March 1, 2006, Defendant Doe 1 a/k/a denunz2005, willfully, without justification and without privilege published or caused to be published to other person on the internet, including specifically the Yahoo! Finance bulletin board designated for RUN and found under the ticker symbol "RUN," the following post:

- a. "OK, its just good to know that my sources are still accurate---I didn't think they were sold but, as I have been saying for a few months---THEY ARE RIPE FOR THE PICKIN'

I also heard their raw material is drying up and their former parent, U.S. Steel, is cutting back on their allocation of steel and demanding payment in advance. The PV Div. is going to RUN dry in short order, Employees are panicking because their is business to be had but no raw material to fill the orders.

Meanwhile, the competition has the money to stockpile the steel and they are picking up all the business because they have the material.

Doesn't bode well for RUN---they better sell while the books are full.

I wonder how many employees would be surprised if they knew whose resume is out on the street---even at his age!

12. On or about February 7, 2006, February 8, 2006, February 21, 2006, February 23, 2006 and March 8, 2006, Defendant Doe 2 a/k/a stocker 606, willfully, without justification and without privilege published or caused to be published to other persons on the internet, including specifically the Yahoo! Finance bulletin board designated for RUN and found under the ticker symbol "RUN," the following posts:

- a. "So why has the Board or the Bondholders not taken some action to get competent management in place and drop the looser who has been running the company into the ground. I have a friend who says this guy bought a box at the Steeler Football Stadium with Company money, a lot of it, and takes his friends on Reunion money, not customers. What is wrong. Does the Board think it will not get sued when the company goes under for not doing its job? Think again."
- b. "You are being kind to say that Kimball is asleep at the wheel. The truth is that he is being as awake and alert as he can be. The problem. Is a lack of intellect and a huge ego. This is a fatal combination. The idea that this boy cannot find another job should not be a reason for keeping him in place, but its true. The Board are all beholden to the Bradleys, and Kimball cannot function away from the golf course. He will never be of value to anyone, and he is killing this company. He has no clue how to right the ship. Ask him and he will probably tell you what a great job he is doing in hard times. He is afraid to ask for help He views it as a sign of weakness, and he would look bad in the eyes of the YPO "Friends" who mostly concur that he is in way over his head. When this ship sinks, someone better keep the sharp objects out of his reach. He will have no one to lay the blame off on, and only a mirror to talk to. Where is the Board?"
- c. "In response to your comment, those notes you mention are right on the money. The problem with Reunion is management. When a father buys a public company so his son can be employed, that is bad news for the shareholders where the son lacks any ability to run a business. Kimball has had ample time to prove himself and he has. He cannot run a company. Even a father should put the public shareholders ahead of his worthless son. I suggest you call Kimball yourself. From the tone of your posting you could have a nice discussion. Neither of you can read a financial statement or know the basics of business. Please buy more shares and encourage you friends and family to buy as well. If This is your kind of company, no one will convinced you otherwise. With some people, reason is the enemy."

- d. "I think you will find that Kimball has been running the show since 1999. The criticism is directed to the Board in a frustrated attempt to make them do their job, that is hire someone to replace a failed executive. Some shareholders are in so deep that they cannot get off the bus, and hope that a group of Directors will see the light and stop the carnage or get sued for their failure to be a Board concerned with the shareholders and not feelings of the boy who is driving the bus off a cliff."
- e. "The results post 1999, were brought to you by the Wonder Boy. Ol' big hat, no cattle himself, Dimball Bradley. And a credit he is to The Young Presidents Organization."
- f. "God help us. Dimball is now CEO. The old CEO has taken leave, and left us in the hands of an incompetent. This lad comes to work occasionally; knows nothing about the company, but looks good and smiles broadly. Hope that the New York guys are truly running things. Father to son. Stockholders are in for a rough ride. This kid is clueless. Perhaps he will stay after 3:00pm now that he is in charge, but I doubt it. Watch the door of the YMCA. He is wet by 3:15, and on company time. When will he wake up and remember that he works for the shareholders and not for his abs. He will be forced to find meaningful work someday now that his father is fading and he should recall that he is building a record that will haunt him. Those guys in YPO are all smiles when you are in the seat, and will not return calls when you failure is monumental and unforgettable. This poor lad's fate is sealed unless he wakes up and does his job."

13. Defendant Conner has been a licensed attorney in the Commonwealth of Pennsylvania since 1968. Beginning in 1988 and continuing through 2003, Defendant Conner had a professional attorney-client relationship with Reunion and Mr. Bradley.

14. Throughout the time period of the attorney/client relationship between Defendant Connor and Reunion/Mr. Bradley, Defendant Conner, personally and/or the law firms in which he was a partner or a shareholder, represented Reunion and Mr. Bradley in numerous, sensitive business and personal legal matters.

15. Indeed, as is evidenced by the substantial fees that were paid to Defendant Connor, Reunion and Mr. Bradley were significant clients of the Defendant. From 1988 through

2003, Reunion and/or the Bradley family paid the Defendant in excess of \$4,000,000.00 in legal fees.

16. As a result of the attorney/client relationship between Defendant Connor and Reunion/Mr. Bradley, Defendant Connor, gained confidential and proprietary information concerning Reunion's and Mr. Bradley's professional and personal affairs.

17. Defendant Connor and/or Doe 3, using the alias "pun2dex," posted numerous messages on the Yahoo! Finance bulletin board designated for Reunion which defame Reunion.

18. Defendant Conner and/or Doe 3, using the alias "pun2dex," began with false accusations concerning financial issues of Reunion and the assertion that the company was distressed due to poor management. Defendant Conner and/or Doe 3, using the alias "pun2dex," falsely stated: "As badly as this company is run, there is no shutdown. Richard Conway (of Lc Capital Masters) is in and will be heard. The company has fresh cash and is buying raw material. It will show an operating profit this quarter primarily due to the sales in China by its CPI sub. So long as the bond holders sit still, there could be some upside."

19. In subsequent postings, Defendant Conner and/or Doe 3, using the alias "pun2dex," amplified his rhetoric and continued to make false accusations that the cause of the purported financial distress of Reunion was due to malfeasance of the senior management, i.e., Mr. Bradley. Mr. Conner's defamatory statements also implied some sinister relationship between the Board of Directors of Reunion and the Bradleys and even went so far as to encourage a lawsuit against the company and its senior management by falsely stating:

- "[Reunion] operates with a lockbox. It has no choice but to pay down the Bank debt. The Bondholders are stuck. The Bank takes all the excess cash and leaves only enough to buy material for production. Leadership is lacking, but well paid anyway. Check the identity of the majority ownership in relation to the CEO and COO. I do not know how the outside directors sleep. There is a large lawsuit looming if someone should have the energy to file it."

- “Richard Conway is running Reunion. At last someone with an IQ. He paid hard cash. The banks have been backed off and RUN will report around 20 cents, if it so chooses in October, not from operations, but debt reduction. They can now buy raw steel and make product. The Oneida division will be sold and the cylinder and pressure vessel business will be advanced. Conway will have a \$4.00 stock in 18 months.”

20. Defendant Conner and/or Doe 3, using the alias “pun2dex,” also published statements that falsely implied that he had inside knowledge that the Board of Directors of Reunion was “concerned” about inappropriate activities of senior management, stating: “I have followed the company for a very long time and read the filings. The Board is becoming concerned since Worldcom, in light of Sarbox, and well they should....”

21. Defendant Conner and/or Doe 3, using the alias “pun2dex,” references to “Worldcom” and “Sarbox” suggest that he has “inside” knowledge that some improper or illegal activities had occurred which, in fact, is false.

22. Through additional postings at or about the same time, Defendant Conner and/or Doe 3, using the alias “pun2dex” implied that senior management is professionally incompetent and falsely stated that Reunion was being run by others:

- “Kimball Bradley is still called COO, C E Bradley is still CEO, but the latter is CEO in paycheck only, and will soon be resigning at the request of Mr. Conway. The only way out for [Reunion] is to do what Conway suggests. Look for him to buy the junk bonds, reduce and control the debt and spur the growth of the profitable divisions. Check LC Capital Masters and Lampe, Conway Fund Group. Run needs management with a higher IQ than club handicap, with Conway, they get one, even if K. Bradley stays in as COO or even moves to CEO. He will not be calling the shots, except on the Golf Course.”

23. It is axiomatic that an attorney has a continuing duty of loyalty and fidelity to clients and former clients. Nevertheless, Defendant Conner proceeded to publish posting after posting falsely and improperly attacking Reunion and Mr. Bradley personally and professionally. Defendant Conner, through his postings, disparaged the Company by falsely stating that its CEO

had failed as a manager, was unqualified for his position in the company, was overpaying himself, was not performing his job duties, was to blame for Reunion's decrease in market capitalization, had used significant company funds for personal purposes, and more. Defendant Conner made the following false and defamatory postings:

- "... the story is all of failure since the young Bradley took over and will not stop until he is long gone. Until that day, this company and this stock will bounce a little, but is going nowhere."
- "If you are intent on paying salaries, you must sell something in the context of this company. Check the President, who is a member of the YPO. That means he was unable to be employed anywhere else, so his father made him president of this company so he could hang out with other young guys who were born on third base and think they hit a triple. This company is going nowhere. The next big thing will be a revolt of the bondholders or the banks. The shareholders will not be happy."
- "Our leader will never consider stepping aside to allow someone with the drive and intellect to run the company, so long as he has no other job prospects and strong cash needs. Instead of figuring out a way to make the company profitable, he sells assets to keep his check coming in. Go to GHIN.COM in Pennsylvania for Kimball Bradley and you will quickly see where the energy of management is spent, and only a small fraction of the rounds are posted so as not to upset his father. What a waste. The bondholders would be well advised to call his bluff, take control and get someone in who will put the company right. There are only a few assets left to sell, and at Kimball's age he will need to sell them all just to pay his caddies."
- "The market cap on RUN is \$9,500,000.00. Check what the company was worth when current [sic] management took over. Even at that number you could not sell the stock and hold the current stock price. What a waste. How do those people sleep at night? Subtract the debt from a reasonable enterprise evaluation and you are below zero. A monkey could do better."

24. Thereafter, Defendant Conner and/or Doe 3, using the alias "pun2dex," willfully, without justification and without privilege published or caused to be published to other persons on the internet, including specifically the Yahoo! Finance bulletin board designated for RUN and found under the ticker symbol "RUN," the following posts:

- a. "Run has \$25,000,000.00 in junk bond debt, on which they have not made an interest payment in years. They are in default of the bond covenants,

Bank Covenants and are always threatening bankruptcy to hold off the bondholders. How do you arrive at the 'no debt' conclusion?"

- b. "There is an apparent disconnect between blind optimism and business sense. A manager should get out of his office and go to customers, visit the plants and find new markets, new products and new businesses to bring a company above the profit line. He does not refinance a sea of debt over a five year reign, sell the divisions that earn a profit, add no new ones, shrink the revenue and raise his own salary, while buying a stadium box for his personal use with company funds, leave the office by 3:00 pm every weekday, work no weekends or evenings and pine for a job that makes 'real money'. This guy is rearranging the deck chairs on the Titanic, and only on a part time basis at that, while he works on his golfing handicap. We write in the hope that the board will wake up and find a real CEO. Will recognize that has a duty to the shareholders and not to an incompetent young boy who cannot fine a job on his own. Check his college history and ask him about his grades. A father cannot be blamed for wanting to help his son, but not in a public company, not at shareholder expense. Wake up. The movie stinks, but I paid to see it and am entitled to complain. The bus is being driven over a cliff, and as a passenger I cannot get off and will continue to point out the obvious, that this company is being run by an incompetent manager with a rubberstamp board that someday will be called to answer personally. At worldcom each boardmember was required to pay 20% of his personal net worth to the shareholders because they ignored guys like me. It will happen again."
- c. "This is just more rearranging of the deck chairs on the Titanic. K Bradley probably thinks he did something meriting a huge bonus or perhaps a pay increase, but look at what has happened since he became COO. Straight down for revenues, profits and share price. I agree he probably can't sleep at night, but should still put in a full day, although with his ability, the company would do better without him. Still, Dad likes him, so he gets promoted, GO figure. After all the comments about YPO, I did some research and have concluded that they are a circle of jerks or a circle jerk. Our boy fits right in."

25. Defendant Connor's and/or Doe 3 using the alias "pun2dex", false and defamatory statements were seen and read by persons in Pennsylvania and throughout the world who use the internet and specifically persons who access the Yahoo! Finance bulletin board designated for Reunion. Those individuals presumably have a greater interest in the activities of Reunion and its senior management and, as such, are more impressionable and susceptible to

influence through misrepresentations concerning Reunion and its senior management, such as the type published by Defendant Conner and/or Doe 3 using the alias “pun2dex”.

26. Defendant Conner anonymously published the defamatory statements described herein under an alias in an attempt to deceive the recipients about his true identity so as to avoid detection and the ethical and legal consequences of his false statements concerning his former clients.

27. Defendants’ statements were seen and read by persons in Pennsylvania and throughout the world who use the internet and specifically persons who access the Yahoo! Finance bulletin board designated for RUN.

COUNT – I – COMMERCIAL DISPARAGEMENT
Plaintiff v. Defendants Doe 1, Doe 2, Conner and Doe 3

28. Paragraphs 1 through 27 of the Complaint are hereby incorporated by reference as if set forth at length herein.

29. Defendants’ statements disparaged Reunion’s business in that they indicate that:

- a. Reunion has insufficient raw materials to conduct its business;
- b. a primary supplier is reducing their allocation of steel to Reunion and requiring it to make payment in advance;
- c. Kimball Bradley, Reunion’s current CEO and former COO, is incompetent;
- d. Kimball Bradley, Reunion’s current CEO and former COO, has converted Reunion funds to purchase a luxury box at Heinz Field for his personal use;
- e. Reunion’s Board of Directors are not independent and simply rubberstamp any action proposed by Kimball Bradley, Reunion’s current CEO and former COO;
- f. Reunion is in default of its bank and bond covenants.

30. Each of the aforementioned statements were and are false.

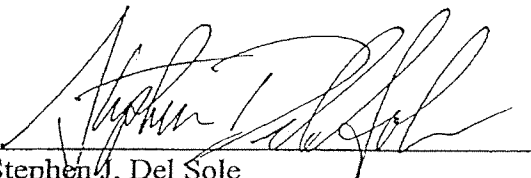
31. Defendants intended their statements to cause pecuniary loss to Reunion or reasonably should have recognized that their posts would result in pecuniary loss to Reunion;

32. Defendants either knew that their statements were false or they acted in reckless disregard of their truth or falsity.

33. As a direct and proximate result of Defendants' posting of the false statements, Reunion has suffered an injury to its reputation, has suffered an injury to its business and has been exposed to hatred, contempt and ridicule.

WHEREFORE, Plaintiff Reunion Industries, Inc. requests this Honorable Court to enter judgment in her favor and against Defendants Doe 1, Doe 2 and Defendant Conner and/or Doe 3, in a sum in excess of the jurisdictional limits of the Board of Arbitrators of this Honorable Court plus punitive damages.

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By: 

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