

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

REUNION INDUSTRIES, INC.,
a Delaware Corporation,

Civil Action No. 2:08-cv-00609-DWA

Plaintiff,

JURY TRIAL DEMANDED

v.

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

Defendants.

MOTION TO DISMISS

AND NOW, comes Defendant, Herbert Bennett Conner, by and through his undersigned attorneys, and files this Motion to Dismiss:

1. Plaintiff, Reunion Industries, Inc., is a publicly traded company and appears on the NASDAQ exchange under the ticker symbol "RUN." (Compl. ¶ 7, a true and correct copy of the Complaint is attached hereto as **Exhibit "A"**)
2. Reunion's Chief Executive Officer ("CEO") is Kimball Bradley. Prior to serving in this capacity, Kimball Bradley served as Reunion's Chief Operating Officer ("COO"). (**Ex. A**, ¶ 8)
3. On April 4, 2006, Plaintiff filed this lawsuit asserting a single claim for commercial disparagement against three "John Doe" Defendants for statements these Defendants allegedly posted on a Yahoo! Finance message board designated for Reunion Industries. (*See Ex. A; see also* Docket Report, a true and correct copy of which is attached hereto as **Exhibit "B"**)

4. Specifically, Yahoo!, an internet service provider, has a website that includes the Yahoo! Finance board, with designated bulletin boards for each publicly-traded company. Each bulletin board provides its members a forum to post messages or comments over the internet regarding specific publicly traded companies. (**Ex. A**, ¶ 9)

5. Despite the filing of this Complaint, Plaintiff never made a good faith effort to effectuate service of same upon any of the Defendants. As such, this Complaint was never served on any of the Defendants. (**Ex. B**)

6. On February 21, 2008, 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. (A true and correct copy of the reinstated Complaint is attached hereto as **Exhibit "C"**)

7. Even though a copy of the reinstated Complaint was served on this Defendant at his personal residence in the State of Florida on April 7, 2008, the Official Docket Report of the Court of Common Pleas of Allegheny County has no record of the filing of the Reinstated Complaint. (**Ex. B**)

8. A Notice of Removal was promptly filed with the United States District Court for the Western District of Pennsylvania on May 5, 2008, in accordance with 28 U.S.C. §§ 1441 and 1446.

9. Plaintiff has essentially alleged that, beginning in August 2005 and continuing through March 2006, Defendant, Herbert Bennett Conner and/or Doe 3, using the board name "pun2dex" – posted numerous false statements and/or comments on the Yahoo! Finance bulletin board designated for Reunion Industries which have purportedly disparaged Reunion's business. (**Ex. C**, ¶¶ 10, 17-25)

10. 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 the Bradley Complaint and Chief District Judge Ambrose's Opinion and Order are attached hereto as **Exhibits "D"** and **"E,"** respectively.)

11. Defendant, Herbert Bennett Conner, moves the Court as follows:

- a. To dismiss this action on the ground that the one-year limitations period applicable to Plaintiff's commercial disparagement claim expired before Plaintiff identified Herbert Bennett Conner as a Defendant.
- b. To dismiss this action on the ground that Plaintiff failed to make a good faith effort to effectuate service of its original Complaint filed on April 4, 2006, before the applicable one-year limitations period had expired.
- c. To dismiss the Complaint for failure to state a claim against this Defendant upon which relief can be granted because Plaintiff has failed to aver pecuniary loss, an indispensable element of a commercial disparagement claim. *Neurotron Inc. v. Med. Serv. Ass'n of Pa., Inc.*, 254 F.3d 444, 448 (3d Cir.2001) (*citing Pro Golf Mfg., Inc. v. Tribune Review Newspaper Co.*, 761 A.2d 553, 555-56 (Pa. Super. 2000)); Restatement (Second) of Torts § 623A.

12. Defendant, Herbert Bennet Conner, attaches and incorporates herein a Memorandum of Law in Support of this Motion to Dismiss.

WHEREFORE, for the reasons set forth above and in his Memorandum of Law in Support of Motion to Dismiss, Defendant, Herbert Bennett Conner, respectfully requests that this Honorable Court dismiss, with prejudice, Plaintiff's Complaint.

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

Robb Leonard Mulvihill LLP
2300 One Mellon Center
500 Grant Street, 23rd Floor
Pittsburgh, PA 15219

Telephone: (412) 281-5431
Facsimile: (412) 281-3711

*Attorneys for Defendant,
Herbert Bennett Conner*