

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

ROBERT FIRTH, FAN ACTION, INC., )  
AND BLUEANDGOLD.COM, )

Plaintiffs, )

v. )

CASE NO. 3:10CV075

YAHOO! INC., d/b/a RIVALDS.COM, )  
TIM PRISTER, JACK FREEMAN, )  
PETE SAMPSON, SHANNON TERRY, )  
AND BOBBY BURTON, )

Defendants. )

**DEFENDANTS, TIM PRISTER, JACK FREEMAN AND PETE SAMPSON’S  
MOTION TO DISMISS**

Defendant, Tim Prister, Jack Freeman and Pete Sampson, by counsel, respectfully move the Court, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss Plaintiffs’ Complaint. In support of their Motion, state as follows:

1. On February 4, 2010, Plaintiffs filed a Complaint in the St. Joseph Superior Court, St. Joseph County, Indiana, alleging a myriad of claims against Defendants, including Tim Prister, Jack Freeman and Pete Sampson. On March 3, 2010, Defendants removed the case to this Court.

2. As explained more fully in their Memorandum of Law filed in Support of this Motion to Dismiss and in Defendant, Yahoo! Inc.’s Motion to Dismiss and Memorandum which Defendants herein incorporate and adopt as their own, the Court should dismiss Plaintiffs’ Complaint because it fails to state a cause of action upon which relief can be granted. All of the Counts-save for Count III-are time-barred by the applicable statute of limitations. Count III lacks any specificity to alert the

Defendants, even under notice pleading, as to what contract is alleged to have been breached.

WHEREFORE, Defendants, Tim Prister, Jack Freeman and Pete Sampson, by counsel, respectfully move the Court to grant their Motion to Dismiss, to dismiss Plaintiffs' Complaint against them with prejudice, and for all other just and proper relief.

Respectfully submitted,

/s/ Peter J. Agostino

Peter J. Agostino  
ANDERSON AGOSTINO & KELLER, P.C.  
131 South Taylor Street  
South Bend, IN 46601  
Telephone: (574) 288-1510

*Attorney for Defendants, Tim Prister, Jack Freeman  
and Pete Sampson*

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 11th day of March, 2010, I electronically filed the foregoing Defendants, Tim Prister, Jack Freeman and Pete Sampson's Motion to Dismiss with the Clerk of the Court using the CM/ECF system which sent notification of such filing to Doug A. Bernacchi at bernacchi@adsnet.com, Clay M. Patton at clay@osanpattonlaw.com, Mark R Waterfill at mwatefill@dannpecar.com and James B Chapman, II at jchapman@dannpecar.com, and I hereby certify that I have mailed by United States Postal Service to the following non-CM/ECF participants: D. Alexander Fardon, Harwell, Howard, Hyne Gabbert & Manner, P.C., 315 Deaderick St., Suite 1800, Nashville, TN 37238.

/s/ Peter J. Agostino

Peter J. Agostino