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UNITED STATES DISTRICT COURT 2010 MAR -2 PM 1:56
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION FOR 7.

ROBERT FIRTH, FAN ACTION, INC., BLUE AND GOLD.COM,

Plaintiffs,

vs.

YAHOO! INC. dba: RIVAL.S.COM, TIM PRISTER, JACK FREEMAN, PETE SAMPSON, SHANNON TERRY, BOBBY BURTON,

Defendants.

Case No. 3 10 CV 075

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(b) (Federal Question)

TO THE CLERK OF THE ABOVE-REFERENCED COURT:

PLEASE TAKE NOTICE that defendant Yahoo! Inc. ("Yahoo!"), hereby removes to this Court the state court action described below:

1. On February 4, 2010, an action was commenced in the Superior Court of Indiana, County of St. Joseph, entitled: ROBERT FIRTH FAN ACTION, INC. BLUEANDGOLD.COM, Plaintiffs v. YAHOO! Inc. dba RIVAL.S.COM, TIM PRISTER, JACK FREEMAN, PETE SAMPSON, SHANON TERRY, BOBBY BURTON, Defendants, Cause No. 71D061002, Ct. 00022. A true and correct copy of the complaint as Yahoo! received it is attached hereto as Exhibit A.

2. Defendant Yahoo! Inc. first received a copy of the complaint on February 9, 2010 when it received via certified mail a copy of the complaint and the summons issued from the state court designating service by certified mail. A true and correct copy of the summons received by Yahoo is attached hereto as exhibit B.

3. Removal to this Court is proper because this action is a civil action of which this Court has original jurisdiction under 18 U.S.C. § 1331 and is one which may be removed to this Court by defendants pursuant to 28 U.S.C. § 1441, subdivision (b) because it arises under the laws

of the United States as follows:

a. Count X of the Complaint asserts a cause of action against all defendants arising under the federal Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961 et seq. Thus, this Court has original jurisdiction founded on a claim or right arising under the laws of the United States. 28 U.S.C. § 1331.

b. Although the Complaint does not include a specific cause of action for copyright infringement under the federal copyright laws, Plaintiffs allege misuse of “copyrighted” material and seek relief that includes enjoining defendants’ “infringing acts” and continued “use” of plaintiffs’ “trademarks and copyrights” such that it appears from the face of the Complaint that Plaintiffs’ claims arise under the copyright laws of the United States, 17 U.S.C. §§101 *et seq.*. *See, e.g.,* Cpt., ¶ 12, Prayer for Relief to Count I, p. 6-7, ¶ A, B; Prayer for Relief to Count II, p. 7 ¶A. Additionally, while the Complaint does not contain an express claim for relief for trademark infringement, the Complaint references trademark infringement repeatedly, and the exhibits attached to the Complaint confirm that the referenced trademarks are federally registered. *See*, Cease and Desist letter dated April 21, 2006 to Mr. Greg Gough, attached as an exhibit to the Complaint and referencing expressly federally registered trademarks. Thus, it appears from the face of the Complaint that this Court has original jurisdiction founded on a claim or right arising under the laws of the United States because the claims are governed by 17 U.S.C. §§ 101 *et seq.* and/or the Lanham Act, 15 U.S.C. § 1121(a) and therefore satisfies 28 U.S.C. § 1331.

c. Though the Complaint does not include a specific cause of action for violation of the federal Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125 (d), paragraphs 7, 12, 13, 16 of the Complaint allege that Rivals “stole” plaintiffs’ domain names, “co-opted” plaintiffs’ domain names, misdirected traffic intended for plaintiffs’ websites, all of which is conduct falling within 15 U.S.C. § 1125(d) such that this Court has original jurisdiction founded on a claim or right arising under the laws of the United States. 28 U.S.C. § 1331.

4. All other defendants who have been served with the summons and complaint in this action joined in this notice of removal as evidenced by the joinders of defendants Shannon Terry, Bobby Burton, Tim Prister, Jack Freeman and Pete Sampson, filed concurrently herewith.

5. This notice is timely under 28 U.S.C. § 1446(b) in that it is filed with this Court within thirty days after receipt by Yahoo! through service or otherwise of Plaintiffs' Complaint.

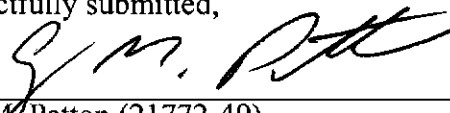
6. True and correct copies of all pleadings, process and orders that have been served upon Yahoo! are attached hereto as Exhibits A-B. A copy of the state court's entire file on this matter is attached hereto as Exhibit C.

7. Pursuant to 28 U.S.C. § 1446(d), promptly after the filing of this Notice of Removal, written notice will be given to all parties and a copy of this Notice of Removal will be filed with the Clerk of the Superior Court of Indiana, County of St. Joseph.

WHEREFORE, Defendants request that this case proceed as an action properly removed hereto.

Dated: March 3, 2010

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3rd day of March, 2010, a true and correct copy of the above and foregoing was served on the following interested parties in this action via the Court's CM/ECF system and/or by depositing same in the United States Mail, in envelope(s) properly addressed with sufficient postage affixed:

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