

**IN THE UNITED STATES COURT
WESTERN DISTRICT OF ARKANSAS**

CURTIS J NEELEY JR, MFA

VS

CASE NO. 5:09-cv-05151-JLH

NameMedia Inc.
Network Solutions Inc.
Google Inc.

**BRIEF SUPPORTING MOTION OPPOSING DEFENDANT
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff opposes the Defendant Motion for Partial Summary Judgment against Plaintiff claims for outrage, violation of copyrights to fixed artwork as described 17 U.S.C. § 101, and claims for punitive damages as well as emotional distress damages because:

- (1) Plaintiffs claim for outrage is not barred by limitations;
- (2) Plaintiff failed to plead registering a copyright because time allowed for a timely filing has not expired and;
- (3) Punitive damages and emotional distress damages are permitted due to the Lanham Act or Copyright Act by Arkansas State law when violations of them are determined to be outrageous and intentional.

FACTS

Although never done directly or correctly, the First Amended Complaint of the *Pro Se* Plaintiff alleged a claim for outrage. *See* Docket # 14. Plaintiff disclosed a legal incompetence from February 24, 2003 until January 25, 2006 as ordered. *See* Docket # 8, at ¶ 4, p. 6.

The First Amended Complaint alleges a claim for copyright infringement. Plaintiff needs not state that copyright was registered. The book the offending photos are from, *Figure nude*, was a work-in-progress not yet completed. The Amended Complaint seeks punitive damages and emotional distress damages for outrageous malicious actions that would easily offend the regular civilized person exposed to flagrant trademark and copyright violations whether registered or unregistered. *See* Docket # 14 at p. 11.

STANDARD

Summary judgment should be granted the Defendant only when the record, viewed in the light most favorable to the Plaintiff and giving the benefit of all reasonable inferences, shows that there is no genuine issue of material fact and the Defendant is entitled to judgment as a matter of law. The burden is on the Defendant to demonstrate the non-existence of a genuine factual dispute. Defendant fails to demonstrate the non-existence of even one of the three claims the Defendant alleged an entitlement to Summary Judgment on. The Plaintiff will still not rest on the Amended Complaint alone, however, and comes forward with facts shown in exhibits.

The Plaintiff will illustrate the existence of genuine disputes in a manner similar to the frivolous Defendant Motion in form but not effect as will soon be clear.

ARGUMENT

I Plaintiff Claim of Outrage is Subject to Three-Year Limits but Time For Limitation Began to Run No Sooner Than June 30, 2008.

The three-year period did not begin on January 25th 2006 as Defendant alleged in an honest error. The mental disability of the Plaintiff did not cease when legal guardianship was regained. *See* Witness affidavit Ex. R, Ex. DMH Severe traumatic brain injuries and the mental disabilities they introduce are not quantified in the cited Arkansas code. Cited code states that when several disabilities exist at the time the right to an action accrued, the limitation prescribed shall not attach until all disabilities are removed. *See* Ark Code Ann § 16-56-116(a). The Plaintiff will never recover from all the severe traumatic brain injury. *Id.* Although Plaintiff regained legal competency on January 26, 2006, Plaintiff was under the constant care of Rachel A. Neeley, the prior guardian, who continued to oversee every detail of the living needs for Plaintiff. Ms Neeley provided shelter and the required daily activities of life like maintaining personal hygiene, nourishment, and other things like a minor child requires. Plaintiff was often in a hospital or nursing home during this period and was sometimes near death. *Id.* On June 30th 2008 Plaintiff was marginally able to survive on his own. *Id.* Plaintiff still requires a daily attendant provided by Medicaid to assist Plaintiff with preparing meals, taking showers, changing catheters, etc. *See* Witness affidavit Ex. T Plaintiff is currently still extremely disabled.

Defendant NAMEMEDIA INC wishes to arbitrarily toll the limitations to the date Plaintiff regained legal guardianship only so the Plaintiff lawsuit is not allowed. This was not the intent of the law the Defendant cited in an honest error. First Amended Complaint alleges a claim for outrage not barred by limitations. Summary Judgment is therefore inappropriate.

II Plaintiff Hasn't Sought a Copyright Registration Having a Claim for Copyright Violation Since Timely Filing of the Registration has Years Left to Run and Plaintiff Is Slandered by Images Allegedly Submitted to NAMEMEDIA INC By a Severely Mentally Disturbed Artist or an Incompetent.

Defendant Brief Supporting Partial Summary Judgment alleges that Plaintiff failed to register a copyright in a timely manner and asserts this as affirmative defense in error. This allegation will further offend the sensibilities of jurors who will agree the Plaintiff has a span of five years from the date of creation to register said art that was also tolled by Plaintiff disabilities. *See* USC 17 § 410 (c) Registration made up to five years after first publication of the work shall constitute *prima facie* evidence of the validity of the copyright. This five-year period has not yet accrued. The material that violates Plaintiff copyrights involved unauthorized excerpts created by a mentally disabled and mentally defective artist of a book that was completed in late November 2008 *See* Ex. BIO and has yet to be published commercially. Several of the nude photos were not selected for the current *Figure nude* book. Plaintiff would have deleted the offending photographs until prevented by NAMEMEDIA INC. from doing so. The photographs allegedly done by the Plaintiff are disparaging of the caliber art only nudes done now by the Plaintiff. Removing Plaintiff access to the photo.net profile summarily judged the Plaintiff copyrights to be non-existent. Reasonable jurors will find it outrageous that Defendant violates copyrights of nude photographs with no concern for model releases *See* Ex. E-K. The common civilized person will find it outrageous that artwork created by artists outside the United States has copyright protection due to US Treaties that NAMEMEDIA INC now seeks to deny the US Plaintiff because of US Copyright laws. This will not withstand judicial review or be found to be valid under the doctrine of Equal Protection guaranteed by the Fourteenth Amendment to the US Constitution. Any legal protection extended to any artist must

be extended to the Plaintiff including the ability to bring suit for copyright violation when registration is not already made. Since there is an exemption for all foreign artists already, equal protection extends it also to this Plaintiff. No United States law can grant rights to foreign artists that it denies a citizen.

Particularly outrageous is the fact that the Defendant violates Plaintiff copyrights while owning domains allegedly focusing exclusively on the photographic community. These sites are photo.net and photography.com. These sites allow the display of the nude art to anyone and the nude art presented by NameMedia at photo.net allegedly shown with the permission of Plaintiff offends the Plaintiff as well as the prior guardian of the Plaintiff. *See* Witness affidavit Ex. R, Ex. E-K Neither the Plaintiff nor Ms Neeley would allow their minor son to see such photographs but the Defendant website ensures that the offensive nude photographs by the Plaintiff remain as a benefit for use by the Defendant without even a warning to minors. Plaintiff links to figure nude photos by a link that includes a warning to minors. *See* Ex FNW The Defendant is maligning the Plaintiff by revealing nude photos that reflect early developing stages of the Plaintiff aesthetics. The reasonable juror will find it particularly offensive and outrageous that the Defendant operates photographic communities while attempting to defend their own copyright violations of six photographs *See* Ex. E-K and while also fraudulently claiming having permission from Plaintiff whom they now face in Court as a result.

Adding additional outrage to the Plaintiff claim is the fraudulent claim that can be seen on every example that fraudulently alleges, “© 1996-2009 NameMedia, Inc. and contributors. Contributed content used with permission”, on every page. *Id.* This fraudulent copyright alert claims an approval and endorsement by the Plaintiff of the NAMEMEDIA INC community website displaying the photos with no warning to minors. Any visitor is likely to believe that the

Plaintiff feels the presentation of these nudes is acceptable in this manner. This is repugnant to the plaintiff. This compelled endorsement is outrageous and supports another cause of action for outrage caused by slander and libel. Plaintiff has talked to a law firm and could not afford the amount they would require for a retainer since Plaintiff does not believe a commission is just. Plaintiff is certain that this forced association creates a related tort, but has yet to learn how best to add it. It will be added eventually and the Defendant NAMEMEDIA INC may hereby take note. It remains if all the other claims are dismissed prejudicially as the Defendant NAMEMEDIA INC now prays for. The constitutional right of the Plaintiff to express dissent and be free from compelled endorsement of messages repugnant to Plaintiff therefore has been and continues to be harmed. These Constitutional rights being violated should not be neglected and recently went before the US Supreme Court. *Rumsfeld v. Forum for Academic & Institutional Rights*, 547 U.S. 47 (2006)

A further demonstration that the fraudulent actions by this Defendant are intentional, the Digital Millennium Copyright Act (DMCA) agent, listed as Hannah Thiem at photo.net was notified and ignores Plaintiff requests to delete the nude images. Hannah Thiem received the complaint November 10, 2009 *See* Ex. L, M and NAMEMEDIA INC has not yet acted. (65.219.232.104) is the NAMEMEDIA corporate IP that viewed the message in the Plaintiff exhibit *See* Ex. L, M and resolves to NAMEMEDIA INC headquarters. *Id* This was once viewed by Esq. Erik Zilinek and requested a file that was an IP beacon that could only be accessed by a message sent only to Esq. Zilinek and Hannah Thiem. "IP" is an identifier for a computer or device on a TCP/IP network. Networks using the TCP/IP protocol route messages based on the IP address of the destination. The Hannah Thiem IP is known by the Plaintiff and is disclosed indirectly to protect her privacy. The Hannah Thiem IP is the series of digits described knowing

that the sum of them and 859,755,757 will result in 100 billion and taking these digits and adding decimals to the digits so that they resemble xxx.xxx.xxx.xxx. This IP and the NAMEMEDIA INC corporate IP being used by Esq. Zilinek accessed the page request seen in previous examples. *Id.*

Plaintiff has raw log files from the Plaintiff website for every day since May 06 2005 and the reports were not manipulated in any way. *See* witness affidavit of Diana M. Hausam Ex. DMH This will be described more in a separate Motion Seeking Sanctions for Harassing Answers.

III Punitive Damages and Emotional Distress Damages Are Permitted When Violations of Laws Are Intentional and Outrageous.

Defendant Brief Supporting Partial Summary Judgment correctly notes punitive damages are not permitted specifically in the copyright or trademark legislation. Apparently even a blind hog will occasionally find a morsel. Plaintiff acts *Pro Se* and states that taken in a light most favorable to the *Pro Se* Plaintiff, the record and testimony will maintain that the claim of intentional infliction of emotional distress is supported by these intentional acts and the outrage of these acts are only increased by the Motion to dismiss. Plaintiff believes a jury will be offended to see copyright violation protections offered to NAMEMEDIA INC and will rule accordingly. Other photography community sites like PhotoPoints.com are careful to respect copyrights and deletion of a community profile always results in deletion of all submitted user data. This more judicial process only accentuates the outrage Defendant NAMEMEDIA INC intentionally inflicts on Plaintiff while legally attempting to circumvent copyrights. A reasonable jury will find it outrageous to see NAMEMEDIA INC profiting by their actions that

prevent the Plaintiff enforcing copyrights by simply deleting the user content that was allegedly submitted by Plaintiff while an incompetent or severely brain injured user who detrimentally relied on being allowed to delete submitted content. Plaintiff deleting user content was allowed until NAMEMEDIA INC removed Plaintiff access and asserted a fraudulent perpetual license in a malicious and intentional manner and after being notified that this offended the Plaintiff. NAMEMEDIA INC refuses to delete the photographs mentioned and continues to allege a fraudulent permission from the Plaintiff. *See* Ex. L, M.

CONCLUSION

For the foregoing reasons, NAMEMEDIA INC can be seen to have lied in the record now and is not entitled to summary judgment against the Plaintiff claims for outrage, copyright infringement, punitive damages or emotional distress damages. No photographer should ever face such dishonesty from a photographic community site owner. Therefore, the Motion for Partial Summary Judgment is offensive particularly to this Plaintiff acting *Pro Se* as a severely brain injured and paralyzed photographer. Plaintiff feels the motion should be denied. The counter-Plaintiff can be seen on the record now to be outrageously dishonest. The Plaintiff prays that the Motion for Partial Summary Judgment be entirely dismissed prejudicially. Plaintiff will enter Motion Seeking Sanctions for Harassing Answers and Motion Opposing Filed Answers concurrently.

Respectfully submitted,

Curtis J Neeley Jr, MFA

CERTIFICATE OF SERVICE

I hereby certify that, on this ____ day of December 2009, I mailed a copy of the foregoing to the attorney representing NAMEMEDIA INC at the following address:

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/s/Curtis J Neeley Jr, MFA
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