

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

CURTIS J. NEELEY JR.,	§	
	§	
PLAINTIFF	§	
	§	
VS.	§	CIVIL ACTION NO. 09-5151
	§	
NAMEMEDIA, INC., NETWORK SOLUTIONS, INC., GOOGLE INC.	§	
	§	
DEFENDANT	§	

GOOGLE INC.'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Defendant Google Inc. ("Google"), pursuant to Federal Rule of Civil Procedure 12(b)(6) and the corresponding case law, submits this motion to dismiss Plaintiff Mr. Curtis J. Neeley's Second Amended Complaint. Mr. Neeley's allegations, even presumed true, fail to state a claim against Google upon which relief can be granted and should be dismissed. Dismissal under Rule 12(b)(6) "is proper when the plaintiff's complaint fails to state a claim upon which relief can be granted." *Northstar Indus., Inc. v. Merrill Lynch & Co.*, 576 F.3d 827, 831-832 (8th Cir. 2009).

Mr. Neeley does not have a registered copyright, Google is not a governmental agency subject to Title 5, and Mr. Neeley does not and cannot plead facts to support a claim of either direct or indirect trademark infringement by Google. As established more fully in the supporting brief filed contemporaneously to this motion, these undisputed facts and reasons preclude Mr. Neeley from stating a claim against Google; thus, Mr. Neeley's alleged claim against Google should be dismissed.

For all of these reasons and those stated in the supporting brief, Google respectfully requests that the Court dismiss all claims against Google with prejudice.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT
GOOGLE INC.**

CERTIFICATE OF SERVICE

I, Joshua R. Thane, hereby certify that on February 8, 2010, I electronically filed the foregoing GOOGLE INC.'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following list:

H. William Allen
Kevin M. Lemley
Allen Law Firm, P.C.
212 Center Street
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Little Rock, Arkansas 72201

and I hereby certify that I have mailed the document by the United States Postal Service to the following non-CM/ECF participants:

Curtis J. Neely, Jr.
2619 N. Quality Lane
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\s\ Joshua R. Thane
Joshua R. Thane