

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

CURTIS J NEELEY JR, MFA

VS

CASE NO. 5:09CV05151

NameMedia Inc.  
Network Solutions Inc.  
Google Inc.

COMPLAINT FOR TRADEMARK AND COPYRIGHT VIOLATIONS  
RESULTING IN AN INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Comes now Plaintiff, respectfully to this court and states for his complaint as will follow:

1. The Defendants created emotional distress to Plaintiff who is a Washington County, AR resident intentionally and after being made aware of the distress. Defendant NameMedia was aware, or should have been aware, that they were causing emotional distress to Plaintiff. Erik S. Zilinek, the Defendant's Intellectual Property Matters Manager, stated to the Plaintiff directly via email that the Defendants registered eartheye.com in 2003. Defendant NameMedia had been advised of this complaint, or should have been advised by Mr Zilinek. Defendant NameMedia chose to inflict additional distress after being made aware that emotional damages were being caused to the disabled Plaintiff by their trademark and copyright violations. The Plaintiff

maintains in support of his claim that the Defendant registered the domain names eartheye.com and sleepspot.com in bad faith, and used, or are using, the domain names in bad faith in the following respects:

(1) offering the domain name for sale at a price greatly in excess of any documented out-of-pocket costs directly associated with the domain name to the Plaintiff directly; and

(2) using the disputed domain name intentionally to attract, for commercial gain, Internet users to the Defendant NameMedia's websites licensed to Defendant Google by capitalizing on residual and inadvertent traffic. NameMedia did this by utilizing the Plaintiff's established domain and Plaintiffs existing links to the domain.

2. The domain, eartheye.com, was widely used in a copyrighted and trademarked sense in relation to the Plaintiff's photographic art and commercial photography. The domain SleepSpot.com was used to sell hospitality reservation software to sell spots to sleep. SleepSpot.com was going to be the next great Internet place to find a "Spot to Sleep" and would make celebrities feel embarrassed to advertise for a competitor. SleepSpot.com was poised to earn millions each year as will be shown in evidence.
3. The Defendants conspired to cybersquat the Plaintiff's domains without concern or even a rudimentary search for existing trademark rights. Defendants ignored the Plaintiff's strong existing trademark rights and they were aware of Plaintiffs trademarks, or should have been after even a most basic trademark search, as will be

demonstrated to a jury. NameMedia measured the residual traffic that only existed because of Plaintiff's prior use of the domains in commerce.

4. Defendant Network Solutions violated Plaintiffs copyrights and trademark rights by advertising the domain registration expiration dates. Plaintiff had intellectual property rights and trademark rights that were violated by this advertising. Defendant Network Solutions recently alleged this fraudulent act was required by ICANN Inc. of all registrars. The Plaintiff spoke with ICANN Inc and was told the advertising of expiration dates of domains is not required in any way by any authority. Network Solutions' excuse and claim of a detrimental reliance on ICANN Inc. stating that Network Solutions was mandated to advertise trademarked and copyrighted data requires only common sense to see was an error. Evidence will demonstrate each Defendant's actions to be malicious and intentional to differing extents. Each Defendant's malicious actions are contrary to United States law and particularly US Title 15. § 1125 and numerous sections of US Title 17.
5. The Defendant Network Solutions Inc. advertised the domains and Defendant NameMedia Inc. registered and licensed the domains to Defendant Google Inc. The Defendants had no rights or legitimate interests with respect to the domain names they violated. The trademarked domain names were registered and are, or were being, licensed to Google Inc in bad faith in violation of Plaintiff's existing rights, as evidence will prove. Plaintiff has common law trademark rights that were so strong they still

exist after being trampled, blurred, diluted and otherwise violated by each of the Defendants for over six years.

6. Mr. Erik S. Zilinek was once Defendant NameMedia's Intellectual Property Matters Manager and communicated directly with Plaintiff regarding eartheye.com and was aware of his disability, distress, and desire for the trademarked domain. He rejected the Plaintiffs claims and expressed his confidence in being upheld by a tribe the Defendant NameMedia regularly uses to solidify their trademark infringements.
7. The Defendant NameMedia offers some of the trademarked domain names it acquires for sale through BuyDomains.com and regularly licenses them to Defendant Google. Numerous circumstances will demonstrate the Plaintiff's trademarked domain names were registered or acquired primarily for the purpose of selling, renting, licensing, or otherwise transferring the domain name registration to the Plaintiff or another for consideration in excess of the domain name registrant's out-of-pocket costs. This creates a situation prohibited by US15 § 1125 and US17 § 106 and Defendant NameMedia Inc even published selling eartheye.com for \$2,300 after being made aware of the violation.
8. The Defendant NameMedia Inc. registered the trademarked domains advertised by Defendant Network Solutions in order to prevent the Plaintiff from reflecting the mark

in a corresponding domain name and the Defendants have each conspired to engage in a pattern of such conduct as will be shown in evidence. They measured the residual traffic and utilized the Plaintiff's prior use of the trademark to establish what Defendant NameMedia Inc calls a "premium domain". The composition of the trademarked domains being short descriptive terms may have been their only criteria for Defendant Google Inc violating the Plaintiff's domains.

- 9.** The Defendants each intentionally attempted to attract, for financial gain, Internet users to the website by exploiting traffic based on the Plaintiff's prior use of the domain name and reputation. The Defendant NameMedia then licensed the trademarked domains to Defendant Google. This was known to cause emotional distress to the Plaintiff, or should have required only common sense to recognize, as the jury will find.
- 10.** Plaintiff contends that the Defendants have never had any legitimate interest in the disputed domain names eartheye.com or sleepspot.com. Evidence will show the Defendant NameMedia is in the business of selling domain names and licensing them to Defendant Google. The Defendant NameMedia has established a pattern of registering domain names that contain others trademark violations purely with the intent of selling such domains for profit or licensing them to Defendant Google.
- 11.** The Defendants NameMedia and Google regularly use domain names to link to services for which Defendants Google Inc and NameMedia Inc receive pay-per-click

income. The Defendant NameMedia has never made a fair or legitimate use of the domain names and registered them with the intent to sell or license them for profit. Defendant NameMedia Inc has an established pattern of not using domain names in connection with a bona fide offering of goods or services and they should be made an example with exemplary or punitive damages.

- 12.** Defendant Google has a pattern of licensing domains that consist of unregistered or misspelled trademarks that are descriptive words with an intention of making the browser location bar become just another Google Inc search query that results in inadvertent visits to a Google licensed domain running Google AdSense for Domains.
- 13.** Google has a pattern of doing this fraudulent practice as a business policy, as evidence will easily show. Just by using three or four trademarks like the Google licensed sites pricelike.com and like one that is now being litigated regarding wwwvulcangolf.com. Thousands and thousands of such acts of fraud will be revealed in discovery to justify an extremely punitive award.
- 14.** Defendant Google profits when PriceLine.com advertises as a Google sponsor and profits by licensing AdSense for Domains for several typographical errors of a website that pays them like their own Google.com search pages. The ads that run in their licensed trademark violations sell the same thing the Google sponsor PriceLine.com pays Google to advertise. This will offend any juror and is another reason Google Inc should pay punitive damages for their business policy that capitalizes on an unjust

enrichment. Billions of dollars each year will be found to result in these exact types of domain frauds, as discovery will show.

**15.** The sale of third-party ads does not represent a use of the domain names in connection with a bona fide offering of goods or services. The prior and current conduct of Defendants creates emotional distress for the Plaintiff and was done intentionally by the Defendants in various degrees. The jury will be asked to decide the amount each must pay for an award to be punitive.

**16.** Defendants never had a legitimate interest to justify their fraudulent use of the two trademarked domains eartheye.com and sleepspot.com.

**17.** Currently and on various previous occasions, as will be demonstrated in evidence, the Defendant NameMedia's placeholder websites licensed to Defendant Google Inc indicated the domain names were for sale. This is complimentary evidence of bad faith on the part of the Defendant NameMedia. The absence of a use of the domain name in connection with a bona fide offering of goods and services and the absence of any relevant permission from Plaintiff proves that the Defendant have no rights or legitimate interest whatsoever in respect to use of the two domain names.

**18.** Defendant NameMedia communicated to Plaintiff that in 2003 NameMedia acquired eartheye.com in good faith and without notice of any competing claims when the previous registration lapsed. Defendant Network Solutions advertised this registry expiration in violation of Plaintiff's copyrights and trademarks. Plaintiff was incapacitated by post-comatose amnesia and was unaware the eartheye.com registration had expired.

**19.** Plaintiff had extremely strong trademark rights in the domains as will be shown in evidence. In an additional insult to this injury, an employee of the Defendant NameMedia directly contacted Plaintiff and offered the domain eartheye.com to Plaintiff directly in an email several times. Plaintiff received an offer of sleepspot.com directly for \$2,788.00. Plaintiff received the first such insult while in a hospital and as an incompetent.

**20.** Defendant Google is an extremely large company profiting greatly by their fraudulent licensing of descriptive domains and selling Internet advertising on domains as if they were search requests. They have a policy of licensing domains to have the effect of licensing the URL bar of browsers. One percent of Defendant Google's net profits for last year would be much greater than ten million dollars.

**21.** NameMedia is a huge company as well. Defendant NameMedia being required to relinquish the domains would not be an adequate remedy and is a common occurrence



that they consider trivial. The Plaintiff will have emotional scars as a result of these intentional acts that might never fully heal without aid from this Court.. A trivial remedy would only compound the Plaintiff's distress.

**22.** Half of the settlement will be taxes. The public already has a lien on the settlement to repay all costs granted in the interested of justice. The fraudulent business practices of domain name speculation and licensing should be eliminated. This was the intent of the cybersquatting legislation that Defendants are each collectively ignoring.

**23.** Plaintiff prays that the court will value his emotional damages with the websites eartheye.com and sleepspot.com to be in excess of ten million dollars of compensatory damages as will be shown. Because the Defendants actions are quasi-criminal and were intentional, the Plaintiff prays that defendants be required to pay punitive damages that will be significant. Punitive damages must punish the Defendants and must not be seen as a business expense or licensing fee that the Defendants can factor into their normal course of business. The damages were done with Defendant NameMedia's full knowledge of Plaintiff's disability and of his prior use of the two trademarked domains. The Defendants Google continued to license sleepspot after this action commenced and Network Solutions claimed detrimental reliance on ICANN Inc. If Defendants were not aware of Plaintiff's distress, they easily should have been. Failing to do this basic research before licensing, advertising, or registering a domain is inexcusable.

**24.** Defendant NameMedia has recently hidden Plaintiff's prior uses of the sleepspot.com domain at the Internet Archive Inc. This was done after NameMedia became aware of this lawsuit and is an additional considered, intentional, and calculated act. Defendant NameMedia is also currently displaying Plaintiff's copyrighted Figurenude photography and displaying a photograph of the Plaintiff doing nude photography in another blatant violation of Plaintiff's copyrights. This is being done currently at photo.net and after the Plaintiff asked the Defendant NameMedia to remove them. The Plaintiff never agreed, as a competent person, that NameMedia perpetually display his work. Plaintiff transmitted the photos before NameMedia even owned photo.net. Plaintiff seeks five million dollars for this intentional violation of the copyrights to his original fine art nude photos.

WHEREAS premises herein considered as supported by witnesses and evidence presented in trial, Curtis J. Neeley, Jr. respectfully requests that this court enter an order granting rights to Plaintiff's trademarked domain names as well as transferring Defendant NameMedia's copyright violating site photo.net to the Plaintiff. Curtis J. Neeley, Jr. respectfully requests the court additionally award compensatory damages of fifteen million dollars from Defendant NameMedia. Plaintiff seeks statutory and punitive damages greatly exceeding twenty million dollars spread among the Defendants as the jury so determines. Additionally, the Plaintiff seek that the court issue an order that the Defendant Network Solutions cease advertising registration expiration dates completely as well as ordering Google to stop licensing trademark infringing domains when made aware of the claims. The fraudulent advertising of expiration dates policy violates US laws and is not required by any authority. This was what initiated this action of unjust enrichment. Plaintiff states that no matters of law are in question and that only the extent of both compensatory and punitive damages award remain to be determined by a jury.

I CERTIFY THAT THE ABOVE IS COVERED BY THE VERIFICATION MADE ON MY INITIAL COMPLAINT.

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