

**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.

Concise List of Undisputable Facts Supporting Judgment

Plaintiff in the above captioned case lists these undisputable facts to comply with Local Rule 56.1(a). The following list of undisputable facts has been organized sequentially from earliest date to last date of occurrence. Dates are bolded and listed first to help quickly stand out in this complicated intellectual properties matter where dates are critical.

1. **December 22, 1997** Plaintiff first registered eartheye.com and first used the domain commercially to sell photography services as well as selling photographic art and establishing copyrights and trademark in the website. *See* Docket #30 Ex.07
2. **July 30, 1999** Plaintiff registered SleepSpot.com and first used SleepSpot.com in commerce marketing reservation software to hotels and other hospitalities needing reservations of day lengths. This established common law TM. *See* Docket #30 Ex.28
3. **March 04, 2000** SleepSpot.com was using Curtis Internet Reservation Software (CIRS) as written by the Plaintiff for distributing hospitality reservations. SleepSpot.com was being used to provide reservation availabilities for Orlando Howard Johnson's in Florida near Disney World. The CIRS and sleepspot.com were better ten years ago than NAMEMEDIA INC website is today *See* Ex. OHOJO, CIRS, Docket #30 Exhibit #21
4. **September 03, 2002** Plaintiff was involved in a full-speed head-on motor vehicle accident and left in a coma for over six weeks on respirators as well as sustaining severe traumatic brain injuries as disclosed previously in this action.
5. **December 12, 2002** A psychiatric evaluation by Dr. Borian B. Matinchev MD found Plaintiff to be suffering posttraumatic amnesia resulting in establishing legal incompetence.

6. **February 24, 2003** Rachel A. Neeley was made legal guardian for Plaintiff in Washington County Circuit Court due to report of Dr. Borian B. Matinchev MD.
7. **May-June 2003** Network Solutions advertised exclusive listing of eartheye.com while violating the common law TM that was disclosed by a use in commerce that was publicly accessible in the Internet Archive at the time. The service agreement being violated was a fraud and was a fraudulent use of an e-signature by Network Solutions. The fraudulent agreement still asks for “clicking to agree” to a 116 page agreement seven years later by soliciting fraudulent acceptance while advertising a domain as available exclusively through them due to the ICANN registrar requirement that only the prior registrar may register the domain for a short time after expiration. *See Ex. 116CLICK*
8. **April-May-June-2003** Defendants conspired to give an instantaneous process a fraudulently progressive verb use. The term “expiring” is deceptive and publishing a list of domains that are about to expire is violating the common law trademark rights of the respective owners. Network Solutions Inc and NAMEMEDIA INC conspire to use the fraudulent term “expiring domain” promoted by Google Inc selling advertisements triggered by this specifically fraudulent term to Plaintiff.
9. **July 01, 2003** Network Solutions publicized eartheye.com as “pending delete” violating the common law trademark rights that all domains used to sell a good or service create given them pursuant to US Title 17 § 1125 No entity besides the original registrant had any right to advertise anything about the trademark including the expiration date of the registry.
10. Defendants each conspire to create a Ponzi type demand for all short domain names and encourage this by licensing them to do nothing but run advertisements like Google Inc does as a principle business goal for AdSense for Domains under the guise of organizing information. Defendants Google and NAMEMEDIA INC sell AdWords to Plaintiff. *See Ex. AdWords.*
11. **September-October 2003** Network Solutions advertised sleepspot.com as pending delete violating the common law trademark rights that all domains used to sell a good or a service create given them pursuant to US Title 17 § 1125. This TM was disclosed and available by simply looking at the non-profit Internet Archive at the time the registration was conducted. No entity besides the initial registrant had any right to advertise anything about the trademark including its expiration date. Defendants each conspire to create a demand for all short domain names and encourage this by licensing them to do nothing but run advertisements like Google Inc does as a principle business under the guise of organizing information.
12. **July 02, 2003** NAMEMEDIA INC registered the common law copyrighted website and trademarked eartheye.com domain after Defendant Network Solutions Inc offered it for sale instead of allowing the registration to quietly expire as expected due the expiration of fraudulent registration agreements with Defendant Network Solutions Inc as was reasonably expected. *See Docket #30 Ex.04 See Ex. 116CLICK*

- 13. October 15, 2003** NAMEMEDIA INC registered the common law copyrighted website and common law trademarked SleepSpot.com domain of the incompetent Plaintiff. Defendant Network Solutions at this time offered SleepSpot.com for sale instead of allowing the trademarked registration to expire as expected quietly pursuant to the Plaintiff registration agreement expiring. This TM violation was done despite copyright and TM notices being publicly visible at the time the domain was purchased instead of being allowed to quietly expire. *See* Docket #30 Ex.24, Ex. *Id.*
- 14. May 09, 2004 Plaintiff** joined the photo.net photography website while an incompetent. NAMEMEDIA INC did not own Photo.net at this time although it would have made absolutely no difference to the Plaintiff because of not recalling his prior life or prior domains. *See* Ex. JNPN
- 15. June 22, 2004** Eartheye.com was archived while advertising as being only for sale for \$1488 by the Internet Archive Inc as an uninterested third party. This, ironically, violates the same exact statute NAMEMEDIA INC alleged as violated by Plaintiff or US Title 15 § 1125(d) without concern for the Plaintiff Constitutional Right to Free Speech. *See* Docket #30 Ex.08
- 16. March 15, 2005** Plaintiff posted on BLOGS for Terri Schiavo site a letter that would report that Plaintiff realized that the Guardian had done DNR orders and removed the respirator to allow nature to take its course. Plaintiff also states that the leading cause of death for paralytics is suicide. Plaintiff was already very expressive via the Internet. In twelve days this Internet expression reaches photo.net. *See* Ex. 2005
- 17. March 27, 2005** Plaintiff posted on the Photo.net thread labeled (Wheelchair Wedding – need help) as follows, “*Well I am a professional wedding photographer who just joined the wheelchair community. I shoot weddings from a wheelchair so it will be no different for me if a subject is in a chair too*”, giving the eventual purchasers of the site NAMEMEDIA INC an opportunity to realize part of Plaintiff disabilities and determination. *See* Ex. WWED
- 18. January 19, 2006** Plaintiff added a comment revealing a photograph of a wedding he had done that displayed the photograph being “fixed” from the Plaintiff server allowing each viewership of the posting to be tracked by the Plaintiff. The comment was as follows, “**Shoot a lot of low angles.** Those of us in wheelchairs see the world from down here” once again allowing readers to believe the Plaintiff was adapting to disabled life in spite of all the medical trauma. *Id.*

- 19. January 26, 2006** Incompetent Plaintiff was taken as demanded via motorized wheelchair to Court in Washington County to appear at the regular competency hearing. Incompetence of Plaintiff was allowed to expire with no witness testimony as expected by process of law. Plaintiff was completely unable to pursue the normal activities of life because the foggy mirror called the mind was unable to be held and seen reflecting due to extreme physical disabilities. Plaintiff was still completely unable to pursue the normal activities of life because the foggy mirror called the mind was still not seen dimly reflecting because the mirror of the mind could not be held properly. Both physical and mental disabilities conspired to create equitable tolling. Plaintiff was unable to do actions as simple as driving or defecating without aid. The immense shattered mental abilities of the Plaintiff were still chained inside the great disabilities of the body preventing the dim reflection in the mirror of the mind from being seen although Plaintiff could describe reflecting better than most could describe reflecting. Plaintiff was not able to defecate or urinate without assistance and was not able to acquire basic transportation and often forgetting to lie in a bed to sleep to prevent pressure wound injuries. The disability that the language in the Arkansas law Ark 16-56-116 (1987) uses was altered to prevent offensive terms like “idiot”, “dimwit” or “insane” from being used and offending, however, Council for NAMEMEDIA INC wishes this Court now constrain the term “disability” to these offensive meanings. The inability to conduct the normal regular activities of life due to an extreme physical disability is another condition intended to establish equitable tolling. The adjunct law professor of the Defendant NAMEMEDIA INC misapplied this law as is now likely ironically realized.
- 20. March 01, 2006** Plaintiff first created a photo.net user profile according to the page display count that was visited 1397 times by Jan 09, 2010. Photo.net was not owned by NAMEMEDIA INC at this time. *See Ex. PNPFL*
- 21. April 24, 2006** Plaintiff had infected tissue and pelvic bones removed due to a large pressure wound at UAMS by Dr Yuan. This was an obvious failure to conduct the normal activities of life because the mirror called the mind was too dimly reflected. Obviously normal activities like sleeping in a bed were obviously absent the dimly reflecting mirror called the mind. This wound was so severe that a pressure sore this bad is usually fatal like the infection that killed Christopher Reeves. *See Ex. WOUND.*
- 22. May 01 2006 Plaintiff** had a flap surgery at UAMS to complete the surgical process begun by Dr. Yuan in preceding paragraph and was all done for the amount that Medicaid would pay.
- 23. May 01-06, 2006** Diana Hausam at UAMS in Little Rock, Arkansas visited Plaintiff. Plaintiff was unable to conduct the basic necessary activities of life without aid at that time like personal hygiene, transportation, and nourishment and was unable to pursue a lawsuit due to being confined to a bed and paralyzed. This would seem too much a disability to overcome and therefore demonstrates conditions for equitable tolling as provided for in Arkansas law. Ark 16-56-116

- 24. May 05 2006** Plaintiff transferred to Bradley health in Heber Springs because of a need for constant medical attention preventing infections. Curtis J Neeley Jr. remained in a hospital bed and was moved side to side to prevent pressure wounds and was unable to get out of bed for the regular activities of life like defecating, urinating or eating. Besides these regular activities of life, confinement to a hospital bed while paralyzed would seem too much a disability to overcome to pursue a lawsuit regardless of how insane Plaintiff was or was not at the time.
- 25. May 11, 2006** Plaintiff writes in an email from the nursing home advising that he was first able to handle doing bowels without aid. Quoting from that note as follows: “Today I actually did my bowels 100% by my self. I only asked the nurse's aid to throw it away. I can do it now with no trouble as long as it is not too soft”, and see this as a momentous day that might compare to successful potty training that the Plaintiff was excited to have done. This might be called a regular activity of life. This “regular activity of life” that Plaintiff proudly announced accomplishing during confinement to bed while paralyzed, most people would feel perhaps still too much a disability to overcome for pursuing a federal lawsuit *Pro Se* regardless of whether the disabled appeared an idiot or a genius.
- 26. July 07, 2006** Plaintiff was able to maneuver from a hospital bed to a motorized wheelchair completely without assistance although paralyzed mid-back and suffering a hemispherical stroke leaving one fully mobile limb. Legally competent Plaintiff accomplished this but was still unable to pursue the normal activities of life because the mirror that was the mind was still too inconsistently reflecting although the physical disability precluded viewing the dimly reflecting mirror anyway. Extreme physical disability the Defendant NAMEMEDIA INC wants the Courts to dismiss as not being disabled quite badly enough. *See* Ex. STSFR.
- 27. Sept 22 2006** Plaintiff was admitted to Washington Regional Medical Center for bilateral above-the-knee amputations. This makes it an ironically accurate statement as a result to say, “Plaintiff does not have a leg to stand on” while pursuing this action. This lawsuit is against one of the biggest domain name dealers who report fifty to sixty million dollars of yearly income thereby enticing domain investors to continue investing in worthless domains. “Domain investors” create “portfolios” of “internet real estate” given value by the Google Inc attempt to license all “type-in” traffic for e-billboards. *See* Ex. AdWords

Read ¶#40 and *See* Docket #53 Exhibit #1 labeled CHILD

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28. January 01, 2007 Plaintiff rejoiced in a BLOG post and described an amazing accomplishment as follows. Quoting the BLOG post as, *“I got my shower-chair positioned next to my bed then got in bed by MYSELF and got undressed by MYSELF. Then I moved the shower-chair to beside the bed and tied it there with my last pair of shoe-strings so it couldn’t tip or roll back when pushed as a transferred by MYSELF with no Hoyer! I then got in the shower-chair by MYSELF and then with BOTH of my own arms struggled the chair into the shower completely by MYSELF! I had a nice warm shower and emptied my bowels into the pan in the shower. Then I ‘pedaled’ the shower-chair back to the bed and got back in bed by MYSELF. I put on a fresh diaper and dressed MYSELF completely. I then got back in my electric chair by MYSELF and cleaned the pan in the shower and the shower and returned the shower-chair to the shower by MYSELF. MYSELF MYSELF MYSELF MYSELF MYSELF* I have a key for a person like MYSELF who is a little stuck on MYSELF ! Ha!”, and we must question how accomplished a small set of everyday tasks could seem. NAMEMEDIA INC wishes this to demonstrate no disability worthy of tolling the claim of outrage like they desire this Court to do.

29. Oct 17, 2007 NAMEMEDIA INC disclosed the purchase of photo.net and intentionally misled investors in a press release that this purchase included *“Photo.net gallery boasts more than 2.5 million high quality user-uploaded images.”*. Plaintiff Curtis J Neeley Jr, MFA was included in the 600,000 registered members. NAMEMEDIA INC agent Josh Root in writing misled the Plaintiff. User deletion of contributed photos would always be allowed as described in the quote listed in a paragraph that follows. See Ex. NMB

30. Oct 17, 2007 many serious photographic artists began leaving Photo.net after the newly acquired NAMEMEDIA INC ad site then began to regularly license to Google Inc advertising using the site furthering the Google Inc deceptive virtual licensing of direct type-in traffic and inflating AdWords profits where clients like the Plaintiff would accidentally pay for photography specific Internet search advertising. Plaintiff never granted NAMEMEDIA INC any rights although NAMEMEDIA INC hoped investors believed the domain “real estate” of Photo.net included this and NAMEMEDIA INC fraudulently assumed perpetual licenses in an updated “Terms of Use” while Josh Root, the NAMEMEDIA INC photo.net community leader, promised no intention of this in writing. See Ex. AdWords and Docket #53 Exhibit #3 called Ex. FRAUD

31. Oct 17, 2007 NAMEMEDIA INC disclosed the purchase of photo.net at about 1:39 PM EST while reassuring the Plaintiff that nothing significant would change as a result of NAMEMEDIA INC purchasing the visual art community site thereby creating a detrimental reliance on a fraudulent act. See Ex. NMB

- 32. Oct 17, 2007 7:20 pm EST** NAMEMEDIA INC dba Photo.net promised when Josh Root, the NAMEMEDIA INC photo.net community leader, wrote to Plaintiff and the rest of the Internet Universe as follows, *“As for leaving the site, just as it has always been, users are free to remove their images at any time and mark their account as deleted. As per the Terms of Use, site submissions (forum posts, critiques, ratings, etc) stay on the site as part of our mission to create a lasting database of photographic knowledge. While you cannot remove these contributions, I am happy to help you change your display name if you wish to distance yourself from the account you created here. Just contact me via the "contact photo.net" form”*, after publicly disclosing new ownership at Photo.net only four hours and forty-one minutes earlier. *Id*
- 33. Oct 17, 2007 7:20 pm EST** NAMEMEDIA INC dba Photo.net contacted Plaintiff in writing fraudulently alleging as above having no intention of claiming a license to user images as a revision of their “Terms of Use” agreement to prevent highly qualified and collected masters of fine art photography like the Plaintiff from departing the site specifically. This promise is another outrageous and malicious deception NAMEMEDIA INC made with Plaintiff for the purpose of creating detrimental reliance on a contractual fraud. *Id*
- 34. November 29, 2007** NAMEMEDIA INC offered eartheye.com to Plaintiff and Ted Olson, s an agent of NAMEMEDIA INC, acknowledged being made aware of Plaintiff desire and the distress created by the NAMEMEDIA INC cybersquatting and advised Plaintiff to contact legal. Ted Olson then provided only a physical address to complicate contacting Erik Zilinek after Plaintiff disclosed being extremely disabled publicly. *See* Docket #30 Ex.#30
- 35. Feb 17. 2008** Plaintiff initially paid Defendant Google Inc for AdWords advertising. Plaintiff was not living undepentantly but Defendant NAMEMEDIA INC already was capitalizing by conspiring with Defendant Google AdWords by selecting AdSense for Domains by default in the AdWords interface. *See* Ex. AdWords
- 36. June 30 2008** Diana Hausam, and Brian Neeley assisted Plaintiff with moving to a handicap accessible apartment thereby successfully moving out and living as independently as possible although extremely disabled both physically and mentally. This date the Plaintiff feels should apply as absolutely the earliest point the equitable tolling toll the limitations period for bringing a claim of outrage. On 30 June 2008 at 9:59 pm Plaintiff wrote in a BLOG post titled (New HOME) “Home is where the heart is. I discovered that is absolutely NOT close to true. I am in an apartment in town and my physical heart is here but my son, who is the love of my life, is in home with my wife. I enjoy almost everything SO much more here by myself than I thought possible, but I miss him enough to keep it from being perfect” and here longing for youngest son of Plaintiff is demonstrated. *See* Ex. MISSE

- 37. July 04, 2008 Plaintiff** demonstrated yet again that although now legally competent the regular normal activities of life were still a challenge. Returning from a movie in a motorized wheelchair trip of less than three miles the Plaintiff managed to get lost when the movie was over and the sun had set. Failing to maintain basic orientation regularly like remembering the date and the fact that it is dark and more difficult to see outside contributed to the Plaintiff needing to stop and ask where the new home was from Fourth of July celebrators.
- 38. November 01, 2008** Another user posted the following at Photo.net. “I do not wish to belong to photo.net any longer. I cannot find anywhere in my workspace a link to delete my account. I have emailed administration twice with no response whatsoever.” This user could now figure out how to leave NAMEMEDIA INC either. *See Ex. PDS*
- 39. December 08, 2008** A user at the Photo.net site posted, “how do i delete my account? i don't want it to appear in searches, it's confusing my customers”, and got a reply from Josh Root the NAMEMEDIA INC employee in six hours stating, “[s]adly, I do not have that capability at the moment”, and revealed that even staff could not delete photos. *See Ex. NO-DELETE*
- 40. December 26, 2008**, a person who is a minor the Plaintiff loves and whose identity remains undisclosed due to redactions required by law, wrote as follows, “guess wat i will never apologize or forgive u. im tired of people [XXXX] coming up to me sayin [Plaintiff] has nude photos on his page”, in an email received the day after Christmas. This was one outrageous impact the fraudulent actions of NAMEMEDIA INC have. Defendant NAMEMEDIA INC allows minors and the public to view the nude photos attributed to the Plaintiff with no warning thereby ensuring severe distress for the Plaintiff due to nude art photos displayed inappropriately and attributed to Plaintiff in a glaring violation of US Title 17 101(a) as well as US Title 5 § 552a(b). *See Docket #53 Exhibit #1 labeled CHILD.*
This is why hundreds of millions will not be enough.

Read the last paragraph and the last exhibit over again.

Read the last paragraph and the last exhibit over again.

This is why hundreds of millions will not be enough.

41. January 18, 2009 The Plaintiff made a post in the, “photo.net interview with Harold Davis”, with a link to his website biography and demonstrating his disability while trying to adapt and continue photography. Plaintiff winning entry photograph was deleted by NAMEMEDIA INC in stark contrast with the fact that they refuse to delete the photographs attributed to Plaintiff violating exclusive rights granted by US Title 17 § 106(a) and rights enumerated in US Title 5 § 552a(b) to be free from compelled disclosure of private information.

This action resulting in the types of impact we see in paragraphs proceeding where anyone including even a reasonably supervised minor child could find nudes attributed to the Plaintiff. *See* Docket #53 Exhibit #4 titled G-NM-SS

42. January 26, 2009 NAMEMEDIA INC again acknowledged being aware of Plaintiff desire and distress created by cybersquatting when Jason Minor advised Plaintiff to contact him as VP of Sales for NAMEMEDIA INC dba BuyDomain.com and advised Plaintiff of a winter sale reducing the price of eartheye.com. This was allegedly offered exclusively to the Plaintiff and was ironically three years to the day after Plaintiff legal incompetence was allowed to expire due to a Court appearance in a wheelchair while still unable to provide personal transportation, nourishment or even being able to defecate or urinate without assistance. *See* Docket #30 Exhibit #17 titled JM

43. January 30, 2009 Erik Zilinek advised Plaintiff NAMEMEDIA INC had read the disability disclaimer that states, “*DISCLAIMER: Curtis Neeley suffers from a severe traumatic brain injury that impedes the way he communicates. He is often perceived as blunt, self-centered and rude. Although Curtis has a disability, he is determined to continue performing meaningful art*”, although this was not likely the intent of Esq. Zilinek. *See* Docket #30 Ex. #33

44. February 13, 2009 Erik Zilinek legal counsel for NAMEMEDIA INC again acknowledged being aware of Plaintiff desire and distress created by the cybersquatting acts of NAMEMEDIA INC and advised Plaintiff that NAMEMEDIA INC was confident of having cybersquatting affirmed exactly like they felt a tribunal would regarding cargills.com. Erik Zilinek communicated receiving the following message, “Did you receive my amicable attempt to solve this by trading <OzarkPhotos.net>?” from Plaintiff. NAMEMEDIA INC once stated, “[r]espondent disputes that the CARGILL mark and the domain name <cargills.com> are confusingly similar. *See* Docket #30 Ex. #33, Ex. Cargills

- 45. February 13, 2009** Erik Zilinek gave a legal opinion to Plaintiff as Intellectual Property Counsel for NAMEMEDIA INC communicating the following opinion, “[u]pon further consideration and review of the circumstances surrounding NameMedia’s registration and use of the subject domain name, NameMedia is maintaining its position as previously stated. NameMedia’s use of the domain name has been legitimate and proper and in no way impinges on your rights. Since NameMedia registered, and is using, the domain name in good faith, we consider that a tribunal would not preclude NameMedia from retaining or continuing to use the domain”, and NAMEMEDIA INC then once again offered the domain eartheye.com to the Plaintiff in a flagrant violation of US Title 15 § 1125(d), which is the section they now use to bring an action against Plaintiff while ironically disclosing being aware the filed claim is frivolous in the Affirmative Defense #8 they allege in the harassing answer. This allegedly Affirmative Defense revealing being familiar with the “Unclean Hands” legal doctrine while bringing a frivolous counterclaim, ironically, at the same time with outrageously filthy hands. See Docket #30 Ex. #33
- 46. April 01, 2009** Curtis J Neeley Jr. and Rachel A. Neeley are granted a divorce after almost a decade of marriage. The stress Plaintiff felt because of the malicious cybersquatting and copyright violations contributed greatly although it would be difficult to quantify or prove.
- 47. April 17, 2009** DomainNameNews.com reports that NAMEMEDIA INC dba AfternicDLS.com listed selling eartheye.com for \$2,300. See Ex. 2300
- 48. May 01, 2009** NAMEMEDIA INC argues before a domain arbitration forum and states “[we dispute] that the CARGILL mark [Cargill.com] and the domain name <cargills.com> are confusingly similar” and give a legal opinion that the plural of a trademark should not be thought confusingly similar to such trademark. The same allegation they are now, ironically, diametrically apposing. See Ex. Cargills
- 49. May 03, 2009** A user at NAMEMEDIA INC dba Photo.net posted that they wished to delete their account and another user commented, “Yeah. I think it's pretty suspect that you can't delete your account. Sorry about that”, where displeasure was obvious.
- 50. June 26, 2009** Another user wished to delete user accounts at NAMEMEDIA INC dba Photo.net and was unable to do so. See Ex. JN2009
- 51. July 02, 2009** the domain eartheye.com was finally listed with EDATS.com as the new registered owner.

- 52. July 12, 2009** Plaintiff posts on Photo.net forum concerned about domain names that the owner of the site had cybersquatted two domains of. Interesting that Josh Root posted as follows, *“The average cost is about \$9-11 a year. Any less than that and they are trying to get you to buy some other product at the same time, much more than that and you are getting ripped off”*, and was already working and posting as NAMEMEDIA INC employee. Josh Root was already ripping people off. It is also evidence that the copyright violation had not yet occurred at the Internet Archive. *See* Ex. BAN
- 53. July 16, 2009** Plaintiff communicated to Erik Zilinek, Jason Minor, and Peter Lamson all of NAMEMEDIA INC that a lawsuit will be filed with a tracked email as was always done.
- 54. July 22, 2009** Plaintiff filed current lawsuit IFP. *See* Docket #1.
- 55. July 24, 2009** The post in the forum thread above that resulted in the profile at photo.net being deleted was cached by Defendant Google Inc, but was deleted within 48 hours of this by photo.net after being displayed for almost twelve days and monitored daily by the Plaintiff. It might be interesting particularly to read the post that resulted in this action and triggered the hiding of the archived SleepSpot.com.
See Docket #30 Ex. #15, Ex. BAN
- 56. August 12, 2009** another user posted that they could remove all posts from the site. There was only another user response that it was not allowed to delete posts.
See Ex. JDH
- 57. August 20, 2009** Plaintiff initiated advertising the book “Figurenude”. Defendants Google Inc and Defendant NAMEMEDIA INC were violating images from the book and refused to allow deletion of them. Plaintiff paid Photo.net through AdWords for advertisement on Photo.net while the website was actually violating copyrights from US Title 17 § 106(a). *See* Ex. PPN
- 58. Oct 07, 2009** NAMEMEDIA INC harassed Plaintiff and sent him a message asking, “What is a Domain Worth”, although aware of the pending lawsuit. Plaintiff alerted Fayetteville, AR police of the harassment and was told by the officer that it may have been an accidental spam attempting to sell *AFTERNIC* Webinar attendance.
See Ex. POLICE
- 59. Oct 15, 2009** Plaintiff registered NAMEMEDIAS.COM and first used it to express anger towards NAMEMEDIA INC in a constitutionally protected free speech use that is allowed specifically as a bona fide noncommercial fair use of the mark accessible under the domain name. Bad faith intent described under US Title 17 § 1125 shall not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.

60. October 29, 2009 NAMEMEDIA INC intellectual properties attorney Erik Zilinek or employee using username ezilinek logged on at the NamePros.com forum using the NAMEMEDIA INC corporate IP and inadvertently reaffirms being completely aware of Plaintiff distress, disability, and the pending District Court lawsuit. Plaintiff listed NAMEMEDIAS.COM as a source for this issue and rather than communicating an objection gave the Plaintiff a waiver for continuing to express free speech.

See ZNAMEPRO

61. November 01, 2009 NAMEMEDIA INC dba BuyDomains.com again send an offer for \$2,788 to acquire sleepspot.com to Plaintiff although they were aware they were facing Plaintiff in District Court for cybersquatting. This is another outrageous violation of US Title 15 § 1125(d) although NAMEMEDIA INC did not wish Plaintiff to stop using Namedias.com. *See Docket #30 Ex. #02*

62. November 01, 2009 Plaintiff communicates a trademark complaint with Google “AdSense for Domains” for licensing sleepspot.com and received an incident number of [#535961205].

63. November 03, 2009 The Registered Digital Millennium Copyright Agent listed by NAMEMEDIA INC for the site Photo.net accessed the Plaintiff complaint regarding the continued display and attribution of nude photographs on the website. Listed agent is Agent Hannah Thiem and Ms Thiem viewed the complaint from her personal computer not on a NAMEMEDIA INC IP.

Plaintiff has every page or file accessed from curtisneeley.com by IP for every single day back to May 06, 2004. This includes tracking beacons that are not on any website that are included in messages exclusively to verify viewership by sometimes only one individual.

Hannah Thiem had no reason to expect that the flickr® or MySpace® friend request was from a photographer with the intention of complaining about a copyright violation at Photo.net and thereby acknowledged the notification of a DMCA complaint electronically.

Ms Thiem assumed that her only duty as a DMCA Copyright agent involved occasionally checking the US Mail for complaints. The Photo.net site disclosed that complaints not sent by mail might not be acknowledged intentionally.

See Ex. THIEM, Ex. MSTHIEM. See Docket #30 Ex. #20

64. November 03, 2009 An employee viewed a personal message sent through the NamePros.com forum and acknowledged the Plaintiffs disability, distress and legal intent by viewing a graphic that was a unique IP beacon sent in a message only Eric Zilinek and listed Digital Millennium Copyright Agent, Hannah Thiem. This was another awareness of use of NAMEMEDIAS.COM to express Plaintiff displeasure and another waiver for this Free Speech use.

On this day, a NAMEMEDIA INC employee and as well as registered “DMCA” agent, Hannah Thiem, inadvertently acknowledged awareness of Plaintiff outrage created by the photo.net violation of copyrights to nude photographs attributed to Plaintiff and acknowledging awareness of the Plaintiff US Title 17 § 106(a) claim.

See Docket #30 Ex. #20, NAMEPRO

- 65. November 05, 2009** Neja N Jain, of IBM Ask, contacted Plaintiff because Protest-Clicks revealed they were benefiting from the NAMEMEDIA INC and Google Inc cybersquatting. *See Ex. NNJ.*
- 66. November 05, 2009** Google AdSense for Domains requested proof of common law trademarks and stated, *"These domains are comprised of generic or descriptive terms. Descriptive and generic terms are free for all to use, and therefore we do not take action against domains comprised of descriptive or generic terms"*, and asserts rights to license domains unless common law trademarks were proven instead of suspending use as would be prudent after receiving a complaint listing a federal lawsuit filing. *See Ex. GTMIGN, Ex. GTM*
- 67. November 06, 2009** NMEDIA INC is served with first complaint.
- 68. November 09, 2009** Network Solutions Inc was advised of Plaintiff intention to file this action and offered an opportunity to settle out of court for two million dollars for their advertising availability of expiration dates of domain registries although not registering it when lapsing.
- 69. November 10, 2009** Krista Quintell from the Network Solutions Executive Office replied that after reviewing my email they had determined not registering the domain and advised being mandated by ICANN to follow guidelines, as were all registrars. This statement was after listing the ICANN guidelines after further research and finding them as follows. *" ICANN requires accredited registrars to collect and provide free public access to the name of the registered domain name and its name servers and registrar, the date the domain was created and when its registration expires, and the contact information for the Registered Name Holder, the technical contact, and the administrative contact."* Ms Quintrell thereby implied ICANN mandated they advertise the information with no concern whatsoever about copyrights or trademarks. *See Ex. KQ*
- 70. November 12, 2009** Maria Burke from the Network Solutions Executive Office wrote to Plaintiff and suggested placing a certified offer for the domain and sent a link to a Network Solutions Certified Offer Service website whereby Plaintiff would be solicited for an offer of trafficking in the domain as is prohibited by US Title 15 1125(d). *See Ex. MB*
- 71. Jan 24, 2010** Separate Defendant Network Solutions signed for certified mail for receiving the Second Amended Complaint at 1:06 PM in Herndon, VA 20171. This defendant has not yet appeared but acceptance of the service of certified mail of the second complaint has been made. *See USPO FORM3800*
- 72. Jan 24, 2010** Plaintiff contacted the new registered DMCA agent Robb Rosell as well as every website Mr Rosell had disclosed doing and politely demanded that Photo.net stop violating Plaintiff copyrights. Message was sent to Mr Rosell at 8 AM and viewed by Mr Rosell between 1 and 2 PM at IP [166.137.137.174]. Mr Rosell quickly hid disclosure of email. *See Ex. RHIDE*

73. Jan 27, 2010 Plaintiff was never notified that the nude photographs had been deleted but the nude photos were finally removed at Photo.net. It appears that it only required a Federal suit and around eleven months of distress and use of the domain name namemedias.com to get the photographs deleted.

74. Jan 27, 2010 Plaintiff was never notified that Defendant Google Inc had ceased using sleepspot.com in AdSense for domains although it appears they ceased using the domain in AdSense or Defendant NAMEMEDIA INC had removed it from cybersquatting at Google Inc. Sleepspot.com was still being used to make profits but had apparently moved to Yahoo.com, Google Inc, and AdManage.com. The page has tracking running in JavaScript on the page. URLs are hidden though listed in the exhibit. *See Ex. SS2010*

75. Jan 28, 2010 A user announced they wanted to delete his account at photo.net but could not locate a delete option. That is obvious because there is not one. *See Ex. SL*

76. Jan 31, 2010 NAMEMEDIA INC dba Photo.net have an outrageous agreement acceptance for users of the community site. The fraud says that use of the website assigns a perpetual license for use of user images and user personal data. This fraud includes an acceptance of any updates. A user grants a perpetual license that user personal data is published perpetually. The Plaintiff is one of the top photographers of the human figure as an article of art. Plaintiff is not simply one of the best of but of the entire Earth.

The Plaintiff has worked for a lifetime to separate figure nude photographs and other art photos. Plaintiff feels that Defendants NAMEMEDIA INC act unconscientiously by working to ensure that nudes are shown to minors. Defendant Google Inc and NAMEMEDIA INC each ensure images not allowed viewed in a movie theater by minors have blankets of protection on the Internet. The excuse that an image search engine automatically looks and no human sees the images will not suffice. Organizing the information should be illegal unless supervised. Period!

Tonight the nudes that had had been returned are no longer returning because NAMEMEDIA INC has stopped their abuse of nudes attributed to Plaintiff. Defendant Google still ensures that nudes are still attributed to all "safe" image searches for the name of Defendant. This will sustain a separate action or Third Amended Complaint. *See Ex. G-SS-2010*

Law is either logical or it is wrong. Plaintiff believes that it was illogical that Defendant NAMEMEDIA INC needed to see this much outrage before they stopped violating copyrights and TMs. These seventy-six paragraphs and exhibits will give Network Solutions Inc and Google Inc a chance to spend money to accomplish nothing if they wish. NAMEMEDIA INC got to illustrate how NOT to answer. The list of issues not needing trial will now be shorter for each separate defendant.

Wherefore, these seventy-six paragraphs of *uncontestable* facts will support a Summary Judgment against all the Defendants when they become timely. These material facts leave absolutely no genuine issues left for trial with any Defendant. NAMEMEDIA has had longer than the twenty days for timely harassing and has yet to regret the repetitive harassing sufficiently. This list will support Summary Judgment for liability and allow the various Defendants each time to settle. The First Motion for Summary Judgment will be specifically toward NAMEMEDIA INC for establishing liability. *Uncontestable* is a completely appropriate word of the English language. Plaintiff would like to invite NAMEMEDIA INC to contest any of these facts and challenge any of the other Defendants to prepare for similar Summary Motions. Legal fees will have the affect of being punitive.

Respectfully submitted,

Curtis J Neeley Jr, MFA