

**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.

**List of Undisputable Facts With No Issue to Be Tried**

Plaintiff in the above captioned case lists these undisputable facts as Plaintiff to the Defendant's malicious and legally frivolous counter claim. The following list of undisputable facts has been organized sequentially from earliest date of occurrence to last with dates bolded and listed first to help dates 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. (*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. (*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. *See Id.*
4. **September 03, 2002** Plaintiff was involved in a full-speed head-on motor vehicle accident and left in a coma and 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 legally incompetent Plaintiff in Washington County Circuit Court based on the report of Dr. Borian B. Matinchev MD.
7. **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 registration agreements with Network Solutions Inc as was reasonably expected. Network Solutions Inc agreement was fraudulent. Currently Network Solutions Inc asks that a registering person click to accept 116 typed single-spaced pages.
8. **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.
9. **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.
10. **June 22, 2004** Eartheye.com was archived while advertising as being only for sale for \$1488 by the Internet Archive Inc an uninterested third party. This, ironically, violates the same exact statute NAMEMEDIA INC alleges as violated by Plaintiff or US Title 15 § 1125(d) without concern for the Plaintiff Constitutional Rights to Free Speech or their “unclean hands”.
11. **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 a part of Plaintiff disability.
12. **January 19, 2006** Plaintiff added a comment revealing a photograph of a wedding Plaintiff had done was “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.

- 13. January 26, 2006** Incompetent Plaintiff was taken as demanded via motorized wheelchair to Court in Washington County to appear at the regular competency hearing. Plaintiff incompetence was allowed to expire with no witness testimony as expected by 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. NAMEMEDIA INC wishes for the court to limit “all disabilities” the law does not describe to now be limited by what they called “insanity”. Council for NAMEMEDIA INC wishes this Court to now constrain the term “disability” to these offensive meanings. This, ironically, angers Plaintiff additionally. The existing inability to conduct the normal regular activities of life due to an extreme physical disability is the type conditions intended to establish equitable tolling. The adjunct law professor misapplied this law and is likely now realizing the irony.
- 14. 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.
- 15. May 29, 2007** NAMEMEDIA INC offered eartheye.com to Plaintiff and Ted Olson as an agent of NAMEMEDIA INC acknowledged being made aware of Plaintiff desire and 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.
- 16. 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 fraud.
- 17. January 26, 2009** NAMEMEDIA INC again acknowledged being aware of Plaintiff desire and distress created by NAMEMEDIA INC cybersquatting when Jason Minor advised Plaintiff as VP of Sales for NAMEMEDIA INC dba BuyDomain.com of a winter sale reducing the price of eartheye.com. This was allegedly offered exclusively to the Plaintiff and not published on the public website. This outrageous action 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 being able to defecate or urinate without assistance.

- 18. 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 or the NAMEMEDIA INC harassing answer admission of communicating with Plaintiff. (See Docket #17 ¶ #1, #6, #24)
- 19. 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 the NAMEMEDIA INC cybersquatting affirmed exactly like they felt tribunals would do regarding cybersquatting of cargills.com compared to cargill.com. Erik Zilinek communicated receiving the following message, “Did you receive my amicable attempt to solve this by trading <OzarkPhotos.net>?” from Plaintiff. (See Docket #30 Ex. #33)
- 20. 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 used now to bring a frivolous action against Plaintiff while ironically disclosing being aware the filed claim is frivolous in the Affirmative Defense #8 in Docket #17. In this harassing answer the allegedly Affirmative Defense revealing familiarity with the “Unclean Hands” legal doctrine should preclude bringing a frivolous counterclaim, ironically, with outrageously filthy hands. (See Docket #17 ¶ labeled Affirmative Defense #8)
- 21. April 17, 2009** DomainNameNews.com reports that NAMEMEDIA INC dba AfternicDLS.com listed selling eartheye.com for \$2,300. (See Docket #30)
- 22. 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 the registered trademark should not be thought confusingly similar. The same allegation they now are now, ironically, diametrically apposing. (See Docket #17 Counterclaim Section III ¶ #8)

23. **July 02, 2009** the domain eartheye.com was finally listed with EDATS.com as the new registered owner.
24. **July 12, 2009 Plaintiff** posts on Photo.net forum concerned about domain names that the owner of the site had cybersquatted two domain of Plaintiff and refused to allow deletion of the nude photos attributed to the Plaintiff violating US Title 17 §106(a) and presented as a fraudulent endorsement of displaying the nudes without a warning to minors violating US Title 5 § 552a(b).
25. **July 14, 2009 Plaintiff** initially files claims of trademark and copyright infringement against NAMEMEDIA INC. (See Docket #1)
26. **July 16, 2009** Plaintiff initially communicated to Erik Zilinek, Jason Minor, and Peter Lamson, all of NAMEMEDIA INC, that a lawsuit had been filed with a tracked email as always done.
27. **July 24, 2009** The post in the forum thread ¶ #23 resulted in the profile at photo.net being deleted but 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. (See Docket #30 Ex. #15)
28. **Oct 07, 2009** NAMEMEDIA INC harassed Plaintiff and sent 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 accidentally sent spam attempting to sell *AFTERNIC* Webinar attendance. (See Ex. POLICE)
29. **Oct 15, 2009** Plaintiff registered NAMEMEDIAS.COM and first used it to express his 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 in a site 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 having reasonable grounds that the use of the domain name was a fair use or otherwise lawful. The very statute NAMEMEDIA INC brings could easily result in the Court exerting Jurisprudence to now dismiss this frivolous and harassing counterclaim.
30. **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 where Plaintiff listed NAMEMEDIAS.COM as a source for this issue. (See Docket #30 Ex. #33)

- 31. November 01, 2009** NAMEMEDIA INC dba BuyDomains.com sent an offer of \$2,788 for acquiring 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). (See Docket #30 Ex. #02)
- 32. November 10, 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 was Hannah Thiem and Ms Thiem viewed the complaint from her personal computer not on a NAMEMEDIA INC corporate IP. (See Docket #30 Ex. #19, #20 and Ex. Thiem)
- 33.** 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. This is an extremely rare policy to maintain in order to verify viewership and be able to keep a historical log that practically no person would have except one who continually forgets and uses this as a coping strategy at times resulting in unique tracking files for each message sent. Very few people use readers that block any included image pulled from a tracking server especially when believing they are communicating with a regular person. Hannah Thiem had no reason to expect that a MySpace message had the intention of complaining about a copyright violation at Photo.net and thereby acknowledged the notification of a DMCA complaint electronically and assumed the only duty as a DMCA Copyright agent involved occasionally checking the US Mail for complaints. The Photo.net site disclosure that complaints not sent by mail might not be acknowledged did not prevent accidentally acknowledging the notice.
- 34. November 03, 2009** Eric Zilinek or an employee using the computer of the Intellectual Properties attorney 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 Registered Digital Millennium Copyright Agent, Hannah Thiem. This was another awareness of NAMEMEDIAS.COM used to express Plaintiff displeasure and Plaintiff outrage created by the photo.net violation of copyrights to nude photographs attributed to Plaintiff and acknowledged awareness of the Plaintiff US Title 17 § 106(a) claim. (See Docket #30 Ex. #15)
- 35. November 06, 2009** NMEDIA INC is served with first complaint and every action to this point is a result of their actions toward the Plaintiff. A law professor should have been able to recognize the textbook example of the “Unclean Hands” doctrine.

**36. November 15, 2009** NAMEMEDIA INC former Registered Digital Millennium Copyright Agent Hannah Thiem requested the tracking beacon while viewing the request that the nude photographs be deleted on this day.

**37. Jan 06, 2010** NAMEMEDIA INC Registered Digital Millennium Copyright Agent Hannah Thiem requested the tracking beacon while viewing the request that the nude photographs be deleted again on this day although no longer being listed as the DMCA agent.

Wherefore, the thirty-seven sections above list *uncontestable* facts supporting a Summary Judgment and these material facts leave absolutely no genuine issues to be tried. It requires applying only common logic to law and is similarly clear that NAMEMEDIA INC brought harassing answers as well as a legally frivolous counterclaim while at the same time admitting realizing the claim was frivolous and had no purpose besides further offending, distressing, and outraging the Plaintiff as has been shown evidenced. Plaintiff seeks the frivolous counterclaim be dismissed and the Court award all other proper relief in the Summary Judgment Motion that accompanies this list of *uncontestable* facts. *Uncontestable* is used to describe these facts ironically, since they are all facts. The thirty-seven sections above are facts and not simply contentions of the Plaintiff listed as instructed in Local Rule 56.1(a).

Respectfully submitted,

Curtis J Neeley Jr, MFA

## **CERTIFICATE OF SERVICE**

I hereby certify that, on this \_\_\_ day of \_\_\_\_\_, 2010, I plan to mail 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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