

**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.**

ANSWER TO NAMEMEDIA INC COUNTERCLAIM

Comes now Plaintiff as a counter-Defendant, respectfully to this court and states for a complete answer as will follow:

1. Curtis J. Neeley Jr admits allegations in paragraph 1 in the Defendant counter-claim.
2. Curtis J. Neeley Jr admits paragraph 2 in the Defendant counter-claim.
3. Curtis J. Neeley Jr admits paragraph 3 in the Defendant counter-claim.
4. Curtis J. Neeley Jr admits paragraph 4 in the Defendant counter-claim.
5. Curtis J. Neeley Jr admits paragraph 5 in the Defendant counter-claim.
6. Curtis J. Neeley Jr admits paragraph 6 in the Defendant counter-claim.
7. Curtis J. Neeley Jr admits paragraph 7 in the Defendant counter-claim
8. Curtis J. Neeley Jr admits NAMEMEDIA INC is distinctive as stated in paragraph 8; however, Curtis J. Neeley Jr states NameMedias.com is used only to express free speech is not confusingly similar. The counter-Plaintiff claim establishes in paragraph 7 of their claim that there is only one NAMEMEDIA INC on Earth and a plural use of the “purported” mark is never used as a result.

9. Curtis J. Neeley Jr admits paragraph 9 of the Defendant counter-claim.

10. NameMedias.com is obviously not identical to NameMedia.com as claimed in

paragraph 10. The uses of the domain, as seen in the NAMEMEDIA INC exhibit B or Plaintiff Ex. NMS alerts all visitors that the domain is not the NAMEMEDIA INC corporate site and nothing is for sale. The use can even be seen describing how to reach the NAMEMEDIA INC corporate site. The Mr Neeley free-speech site is dissimilar by design to the NAMEMEDIA INC site. *See* Ex. NM. The Google and Bing search results for a search of just the word “NameMedia” lists in the link description that it is not the corporate site and suggests the correct site with no clicking.

See Ex. GNM, Ex. YNM, and Ex. BNM.

11. Curtis J. Neeley Jr denies paragraph 11 of NAMEMEDIA INC counter claim and states that it is clear that nothing is for sale. Customers are not sought. *See* Ex. NMS.

12. Curtis J. Neeley Jr admits the part of paragraph 12 of the NAMEMEDIA INC counter claim that was a quote. The use of the domain namemedias.com is a free speech use protected by the First Amendment. The Plaintiff reaffirms the hope that it upsets NAMEMEDIA INC as much as possible because they insulted the Plaintiff first.

13. Curtis J. Neeley Jr admits that many of the statements are negative as stated by NAMEMEDIA INC in paragraph 13. The First Amendment to the US Constitution protects facts and opinions voiced as an expression of free speech. The negative facts are also completely truthful statements and neither slanderous nor libelous and the failure to bring them as a claim should be noted as a waiver.

14. Curtis J. Neeley Jr admits paragraph 14 and re-asserts rights to express free speech as guaranteed by the First Amendment to the US Constitution.

15. Curtis J. Neeley Jr admits paragraph 15 describes “typosquatting” as commonly used to describe uses like NAMEMEDIA INC and other “domain investors” commonly do.

Mr Neeley denies using namemedias.com in any actionable way. Paypals.com, *See* Ex. P, is similar to Paypal.com. The preceding example does not advise a visitor of a potential typing error as namemedias.com does. *See* counter-Plaintiff Ex B. The website Paypals.com is a potential competitor of the trademark owner and the fact that it remains demonstrates the commonly accepted use of a trademark that is different but similar. The preceding example might be actionable pursuant to USC 15 § 1125(d) in the manner NAMEMEDIA INC tries to call the Plaintiff free speech use actionable in error. NAMEMEDIA INC once ran ads on cargills.com that competed with the TM owner directly and refused to recognize a TM with over ten decades prior use until forced by legal action. NAMEMEDIA INC “typosquatted” cargills.com until stopped by the TM owner. USC 15 § 1125(d) was never intended to prevent or limit an expression of speech protected by the First Amendment to the US Constitution and the NAMEMEDIA INC claim should therefore be dismissed with prejudice.

16. Curtis J. Neeley Jr admits paragraph 16 and 17 or repeats answers above.

17. Curtis J. Neeley Jr admits paragraph 16 and 17 or repeats answers above.

18. Curtis J. Neeley Jr denies paragraph 18 of the NAMEMEDIA INC counter claim and re-asserts that USC 15 § 1125(d) was never intended to prevent or limit an expression of speech protected by the First Amendment to the US Constitution and the NAMEMEDIA INC claim therefore should be dismissed with prejudice.

Curtis J Neeley Jr sells nothing and feels “bad-faith” term as used by counter-Plaintiff depends entirely on perspective. *See* Ex. NMS.

- 19.** Curtis J. Neeley Jr re-asserts paragraph 10 above in answering paragraph 19 and again holds USC 15 § 1125(d) was never intended to prevent or limit expression of speech protected by the First Amendment to the US Constitution. The NAMEMEDIA INC claim should therefore be dismissed with prejudice.
- 20.** Curtis J. Neeley Jr admits paragraph 20 of the NAMEMEDIA INC counter claim and states again that Counter-Defendant is glad NAMEMEDIA INC has finally recognized how distressed they are making Curtis J Neeley by violating Plaintiff rights and finally having no option remaining besides addressing the issue. The domain is not offensive to viewers who believe NAMEMEDIA INC should stop their malicious acts towards the Plaintiff.
- 21.** The NAMEMEDIA INC counter claim paragraph 21 is denied except for the noted acknowledgement that statutory damages are allowed in USC 15 § 1125(d) This will support the statutory damages portion of the Judgment in favor of Curtis J Neeley Jr in the action that this counterclaim is related to.

AFFIRMATIVE DEFENSES TREATED AS COUNTER-CLAIMS

1. NAMEMEDIA INC made offers to Plaintiff personally in this jurisdiction and assert is as correct in Defendant counter in ¶ 3. No court has yet to deny jurisdiction for any case for an action across the Internet and this case should not be the first. See Ex. Z, Ex. 2,788.
2. Plaintiff stated several claims for relief for outrage and has several others that have not been filed at this time that were caused by the same issues now before the court. The Court should not dismiss any *Pro Se* litigant for legal errors surrounding

an issue as can be seen on the record. The forced endorsement and outrage claims were shown already to slander the Plaintiff.

3. “Limitations” is not a valid affirmative defense. The time for bringing action was tolled by Plaintiff disability as can be seen in the record. *See* Ex. R, DMH.

4. “Latches” is not a valid affirmative defense. The time for bringing action was tolled by the Plaintiff disability as can be seen in the record. *Id.*

5. “Waiver ”is not a valid affirmative defense since the Plaintiff never surrendered any rights as can be seen in the record. *See* Ex. L, M.

6. “Estoppel” is not a valid affirmative defense because Plaintiff never gave Defendant permissions to violate or distort as seen in the record. *Id.*

7. “Abandonment” of a trademark was not done as can be seen in the record.

8. “Unclean Hands” is not a valid affirmative defense because the Plaintiff attempted many times to resolve this issue out-of-court as can be seen in the record. *See* Ex. Z, Ex. X. The First Amendment allows the venting done by Plaintiff.

9. “Defective Service” is not a valid affirmative defense because dismissing the case will result only in further costs to taxpayers. The filed counterclaim, answer, and motions are all admissions that service was acceptable.

AFFIRMATIVE DEFENSES AGAINST NAMEMEDIA CLAIM

1. The Defendant NAMEMEDIA INC counter claim is barred by waiver since the Defendant knew of the domain name use and recognized it as a free speech use for several months. Allowing the Plaintiff to proceed unmolested or without even a complaint was a tacit granting of the continuous free speech use. *See* Ex, IP

2. The Defendant NAMEMEDIA INC counter claim is barred by estoppel because the refusal to complain to the Plaintiff was a tacit granting of permission. *Id.*
3. The Defendant NAMEMEDIA INC counter claim is barred by the Doctrine of unclean hands because the acts of the Plaintiff were completely instigated by Defendant NAMEMEDIA INC actions and Defendant refused several offers as demonstrated in the record now. See Ex. Z, Ex. X. The Plaintiff wonders how filthy the hands of Defendants need to be to support the applicability of this doctrine.
4. The First Amendment of the US Constitution bars the Defendant NAMEMEDIA INC counter claim by making the Plaintiff immune to their claim.

CONCLUSION

A Judgment without a lengthy and expensive legal process could only benefit the Defendant NAMEMEDIA INC. Besides; if the Plaintiff asked for Judgment again, The request would only result in another attempt by a severely brain injured Pro Se pauper to ask the Court to apply logic. Plaintiff repeats the assertion that laws are either logical or they are wrong and the brain injured Pro Se Plaintiff hopes the other two Defendants enjoy their legal roasting or take this process more seriously than Defendant NAMEMEDIA INC has done and more seriously than Defendant Google Inc has treated the Vulcan Golf suit while noting that every admission or rejection by Defendant Google Inc on the record there has already been read and will be used. Trademarks are too individual for a class certification and the Plaintiff trademarks existed as can now be seen on the record and as could be seen publicly until Defendant NAMEMEDIA INC in another act of outrageous malice hid sleepspot.com.

WHEREFORE; Counter-Defendant has fully answered the NAMEMEDIA INC frivolous counter claim and illustrated the inapplicability of affirmative defenses, the premises herein considered support a dismissal of the NAMEMEDIA INC counter claim and affirmative defenses with prejudice. This will be additionally supported by witnesses and evidence presented in a jury trial as required. Curtis J. Neeley Jr prays that the NAMEMEDIA INC counter claim be prejudicially denied or dismissed and for all other proper relief. Curtis J. Neeley Jr states that the counter claim serves only to compound the damage claims of the First Amended Complaint and demands a jury trial to determine a judgment required to punish these additional intentional acts that no civilized person should face. The maximum statutory damages award that was sought by NAMEMEDIA INC to their frivolous Claim was obviously sought to frighten a Pro Se Plaintiff proceeding as a pauper. There exists no question of law now to be tried, however, the Plaintiff will never seek a Summary Judgment again.

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

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 answer to the NAMEMEDIA INC counter claim to the attorney representing NAMEMEDIA INC at the following address:

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Curtis J Neeley Jr, MFA
/s/Curtis J Neeley Jr, MFA