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 RESPONSE AND BRIEF IN OPPOSITION TO MOTION REQUESTING RECONSIDERATION (Re: Docket #97)

By its order of March 4, 2010, this Court correctly dismissed Mr. Neeley's copyright, invasion of privacy, and direct and contributory trademark claims against Google Inc. Mr. Neeley now seeks reconsideration of those rulings. Mr. Neeley does not, however, offer any colorable basis to revisit or alter those rulings, and his motion should be denied.[1]

I. There is No Basis to Reconsider the Court's Dismissal of Mr. Neeley's Copyright, Trademark, and Privacy Claims

Mr. Neeley's arguments for reconsideration merely rehash those already considered and rejected by this Court. *See Woody v. Dirani*, 243 F.R.D. 319, 320-321 (W.D. Ark. July 31, 2007) (citing *Terra Intern., Inc. v. Robinson*, 113 Fed. Appx. 723, 725 (8th Cir. 2004); *Broadway v. Norris*, 193 F.3d 987, 990 (8th Cir. 1999)) (stating that a motion for reconsideration is "not a vehicle for simple reargument on the merits"). Mr. Neeley confirms both that he has no copyright registration and that he refuses to seek one. Neither does he offer any basis to

[1] Mr. Neeley's pleading also seeks, yet again, leave to amend his complaint. Google opposes that motion by a separate pleading.

conclude that his online photographs qualify as original works of art under Section 106A: they plainly do not. His copyright claims therefore fail. He appears not to challenge the Court's ruling on his invasion of privacy claim. And his argument for reconsideration of the Court's ruling on his contributory trademark infringement claims consists entirely of a claim that the court in *Vulcan v. Google* reached a contrary result—on dramatically different alleged facts.[2]

None of these arguments provides a basis to revisit the Court's prior ruling.

CONCLUSION

Neeley has offered no basis for the Court to reconsider its dismissal of his copyright, privacy, and trademark claims, and the Court should not disturb its rulings.

Respectfully submitted,

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[2] Mr. Neeley argues that it "is outrageous that [Google's] Counsel has not even skimmed over the case in Illinois." Though plainly irrelevant to this motion, Google's counsel here is also Google's lead counsel in the *Vulcan* matter, and has done considerably more than "skim" those pleadings. In that case, class plaintiffs alleged (incorrectly) that Google licensed, hosted, and operated thousands of infringing websites. Here, by contrast, there are no such allegations; as the Court notes, NameMedia, not Google, is alleged to own and operate the site in question. In *Vulcan*, class certification has been denied, and Google's motion for summary adjudication of plaintiff's ACPA claims is under submission.

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ATTORNEYS FOR DEFENDANT GOOGLE INC.

CERTIFICATE OF SERVICE

I, Joshua R. Thane, hereby certify that on March 11, 2010, I electronically filed the foregoing GOOGLE INC.'S RESPONSE AND BRIEF IN OPPOSITION TO MOTION REQUESTING RECONSIDERATION (Re; Docket #97) with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following list:

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