

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

<b>CURTIS J. NEELEY JR.,</b>	§	
	§	
<b>PLAINTIFF</b>	§	
	§	
<b>VS.</b>	§	<b>CIVIL ACTION NO. 09-5151</b>
	§	
<b>NAMEMEDIA, INC., NETWORK SOLUTIONS, INC., GOOGLE INC.</b>	§	
	§	
<b>DEFENDANTS</b>	§	

**GOOGLE INC.'S ANSWER TO SECOND AMENDED COMPLAINT (Docket #53)**

Defendant Google Inc. (“Google”) hereby answers the Second Amended Complaint of Plaintiff Curtis J. Neeley as follows, based on information reasonably available to Google. By order of March 1, 2010, the Court dismissed all claims against Google with the exception of a claim for “conspiracy to cybersquat.” Docket #97. Google herein answers that remaining claim only.

1. Google denies that NameMedia has licensed websites to Google. The remainder of this paragraph contains no allegations related to Google, and thus no responsive pleading by Google is required.

2. Google lacks information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

3. Google denies the allegations of the first two sentences of this paragraph. Google lacks information sufficient to admit or deny the allegations of the final sentence of this paragraph, and on that basis denies them.

4. The first subparagraph of this paragraph contains no allegations related to Google, and thus no responsive pleading by Google is required. The claims of the second subparagraph of

this paragraph have been dismissed.

5. Google denies that NameMedia has licensed domains to Google. Google lacks information sufficient to admit or deny the remaining allegations of this paragraph, and on that basis denies them.

6. This paragraph contains no allegations related to Google, and thus no responsive pleading by Google is required.

7. Google denies that NameMedia has licensed websites to Google. The remainder of this paragraph contains no allegations related to Google, and thus no responsive pleading by Google is required.

8. Google denies that it “violat[ed] Plaintiff’s domains.” Google lacks information sufficient to admit or deny the remaining allegations of this paragraph, and on that basis denies them.

9. Google denies the allegations of this paragraph.

10. Google admits that it has never had any interest in the disputed domain names eartheye.com or sleepspot.com. Google lacks information sufficient to admit or deny the allegations of this paragraph regarding NameMedia, and on that basis denies them. Google denies the remaining allegations of this paragraph.

11. Google admits that its AdSense for Domains product provides advertisements that generate income on a pay-per-click basis. Google lacks information sufficient to admit or deny the remaining allegations of this paragraph, and on that basis denies them.

12. Google denies the allegations of this paragraph.

13. Google denies the allegations of this paragraph.

14. Google denies the allegations of this paragraph, to the extent they relate to this action.

15. Google admits that the provision of advertisement does not constitute a “use of the domain names.” Google lacks information sufficient to admit or deny the remaining allegations of this paragraph, and on that basis denies them.

16. Google admits that it has never had any interest in the disputed domain names eartheye.com or sleepspot.com. Google denies that it used those domain names, and denies the remaining allegations of this paragraph.

17. Google denies that NameMedia has licensed domains to Google. Google lacks information sufficient to admit or deny the remaining allegations of this paragraph, and on that basis denies them.

18. This paragraph contains no allegations related to Google, and thus no responsive pleading by Google is required.

19. Google lacks information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

20. Google admits it is profitable, and that one percent of its net profits for last year would be greater than ten million dollars. Google denies the remaining allegations of this paragraph.

21. This paragraph contains no allegations related to Google, and thus no responsive pleading by Google is required.

22. This paragraph contains no allegations related to Google, and thus no responsive pleading by Google is required.

23. Google denies that NameMedia has licensed domains to Google. Google lacks information sufficient to admit or deny the remaining allegations of this paragraph, and on that basis denies them.

24. The claims of this paragraph have been dismissed.

25. The claims of this paragraph have been dismissed.

26. Google denies all other allegations not expressly admitted herein.

**AFFIRMATIVE DEFENSES<sup>1</sup>**

**FIRST AFFIRMATIVE DEFENSE**

**(Digital Millennium Copyright Act)**

Plaintiff's copyright claims are barred, in whole or in part, by the provisions of the Digital Millennium Copyright Act, 17 U.S. C. §512 *et. seq.*

**SECOND AFFIRMATIVE DEFENSE**

**(Communications Decency Act)**

Plaintiff's state law claims are barred in whole or in part by the provisions of the Communications Decency Act, 47 U.S.C. §230.

**THIRD AFFIRMATIVE DEFENSE**

**(Copyright Preemption)**

Plaintiff's non-copyright claims are preempted in whole or in part by the doctrine of copyright preemption.

**FIFTH AFFIRMATIVE DEFENSE**

**(Innocent Publisher)**

Plaintiff's trademark claims are barred in whole or in part by the innocent publisher provisions of 15 U.S.C. §1114(2)(B).

**SIXTH AFFIRMATIVE DEFENSE**

**(Nominative Use)**

Plaintiff's trademark claims are barred in whole or in part pursuant to the doctrine of nominative use.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

By virtue of his own conduct and statements, Plaintiff is estopped from recovering for the claims alleged in Plaintiff's Complaint.

---

<sup>1</sup> Google includes herein affirmative defenses to claims that have been dismissed but are subject to a pending motion for reconsideration, as well as claims that are included in two separate pending motions for leave to amend.

**NINTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

**TENTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

Plaintiff's claims are barred to the extent he has failed to mitigate damages.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Contributory Negligence)**

Plaintiff's alleged damages were caused, in whole or in part, by his own negligence.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Assumption of Risk)**

Plaintiff assumed the risk of the harms alleged in his Complaint.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(License)**

Plaintiff's claims are barred, in whole or in part, due to Plaintiff having expressly or impliedly licensed the complained of conduct.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Acquiescence/Abandonment)**

Plaintiff's claims are barred, in whole or in part, due to Plaintiff's acquiescence in the alleged infringing conduct and abandonment of the asserted rights.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Laches)**

Plaintiff's claims are barred in whole or in part by the doctrine of laches.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Statute of Limitations)**

Plaintiff's claims are barred in whole or in part by the applicable statutes of limitations, including 17 U.S.C. 507, Cal. Code Civ. Proc. 338(d) and/or other similar, related, or analogous statutes.

**PRAYER FOR RELIEF**

WHEREFORE, Google prays for the following relief:

- A. That judgment be entered against Plaintiff and in favor of Google on all causes of action,
- B. That Plaintiff take nothing by his Complaint,
- C. That Google be awarded its attorney's fees and costs, and
- D. For such other and further relief as equity and justice may require.

Respectfully submitted,

/s/ Joshua R. Thane  
Jennifer H. Doan  
Arkansas Bar No. 96063  
Joshua R. Thane  
Arkansas Bar No. 2008075  
HALTOM & DOAN  
Crown Executive Center, Suite 100  
6500 Summerhill Road  
Texarkana, TX 75503  
Telephone: (903) 255-1000  
Facsimile: (903) 255-0800  
Email: [jdoan@haltomdoan.com](mailto:jdoan@haltomdoan.com)  
Email: [jthane@haltomdoan.com](mailto:jthane@haltomdoan.com)

Michael H. Page  
Durie Tangri, LLP  
217 Leidesdorff Street  
San Francisco, CA 94111  
Telephone: 415-362-6666  
Email: [mpage@durietangri.com](mailto:mpage@durietangri.com)

**ATTORNEYS FOR DEFENDANT  
GOOGLE INC.**

**CERTIFICATE OF SERVICE**

I, Joshua R. Thane, hereby certify that on March 18, 2010, I electronically filed the foregoing GOOGLE INC.'S ANSWER TO SECOND AMENDED COMPLAINT with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following list:

H. William Allen  
Brooks White  
Allen Law Firm, P.C.  
212 Center Street  
Ninth Floor  
Little Rock, AR 72201

and I hereby certify that I have mailed the document by the United States Postal Service to the following non-CM/ECF participants:

Curtis J. Neely, Jr.  
2619 N. Quality Lane  
Apartment 123  
Fayetteville, AR 72703

/s/ Joshua R. Thane  
\_\_\_\_\_  
Joshua R. Thane