

**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 BRIEF IN OPPOSITION TO THIRD MOTION FOR LEAVE
TO FILE THIRD AMENDED REPLACEMENT COMPLAINT**

Mr. Neeley has now filed a third request to file yet another new, wildly expanded complaint, this one describing itself as a "Complaint for Outrageous Torts Including Trademark, Copyright, and Privacy Violations Resulting in Several Intentional Defamations and Other Torts." Dkt. No. 111-1.

This Court on March 4, 2010 granted the bulk of Google's motion to dismiss Mr. Neeley's Second Amended Complaint, as well as NameMedia's motion for partial summary judgment. Dkt. No. 97. Mr. Neeley has moved for reconsideration of that order.¹ Dkt. No. 99. In the same pleading, Mr. Neeley again asked for leave to replead his claims.² *Id.* He repeats that same request here.

Mr. Neeley's latest in his seemingly endless series of complaints begins by simply ignoring this Court's prior rulings, restating *ad nauseum* the trademark, privacy, and copyright claims that have already been plead and dismissed. *See Stricker v. Union Planters Bank, N.A.*,

¹ Google opposed that motion, and cross-moved for reconsideration. Those motions remain pending.

² Prior to this motion, Mr. Neeley filed a Complaint, a First Amended Complaint, and a Second Amended Complaint. He also filed, and then withdrew, a proposed Third Amended Complaint and request for leave to file it. He then renewed his request to file a Third Amended Complaint on March 4, making this the third motion to file a third amended complaint.

436 F.3d 875, 878 (8th Cir. 2006) (citing *Migliaccio v. K-tel Int'l, Inc. (In re K-tel Int'l, Inc. Sec. Litig.)*, 300 F.3d 881, 899 (8th Cir. 2002)) (noting that leave to amend may be denied if the amendment would be futile). The trademark and privacy claims were dismissed with prejudice, and cannot be replead. The copyright claims were dismissed without prejudice, based on Mr. Neeley's failure to plead a valid copyright registration. Mr. Neeley still does not plead—or have—a registered copyright, and thus still does not plead—or have—a copyright claim.

Having replied his dismissed claims, Mr. Neeley then wanders off into a disjointed recitation of all manner of “Other Generally Outrageous Acts” that have nothing to do with him, Google, or this lawsuit. He describes at length his concern that Microsoft displays links to copyrighted pornographic works featuring an actress named Teri Weigel, apparently assuming that Ms. Weigel (a) owns the copyrights to those works and (b) objects to their commercial exploitation. Neither assumption is likely true, and neither explains what business any of it is of Mr. Neeley's. Proposed Third Amended Complaint at 17. He demands to know “how much did Microsoft pay to license the ACLU?” *Id.* He devotes a page to the pending Google Books settlement, to which he is not a party. *Id.* at 18. He ruminates on the former Child Online Pornography Act, apparently arguing (despite its adjudged unconstitutionality) that it criminalizes the act of *others* allowing minors to view Mr. Neeley's *own works, posted to the internet by him.* *Id.* at 13. He demands “a child friendlier Google Inc. *alternative* that will use its profits to rescue Social Security, reduce taxes, and subsidize the cost of Internet services to those with lower incomes.” *Id.* at 19. He seeks a “non-profit quasi-governmental Google Inc. alternative to massively reduce taxes while simultaneously respecting privacy and copyright attribution.” *Id.* And he asks that “Search Engine Defendants be ordered never to allow image searches to return photos not allowed to be broadcast by the FCC,” (*id.* at 20), apparently in order to make illegal the display of his own photographs.

In service of these rantings, Mr. Neeley also seeks to add five more rings to the circus, naming additional defendants Yahoo, AOL, Microsoft, IAC, and ICANN. Nothing in the proposed Third Amended Complaint cures any of the prior defects of Mr. Neeley's claims, and

nothing states a new claim against Google or anyone else. The Court should deny leave to amend.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT
GOOGLE INC.**

CERTIFICATE OF SERVICE

I, Joshua R. Thane, hereby certify that on March 24, 2010, I electronically filed the foregoing GOOGLE INC'S BRIEF IN OPPOSITION TO THIRD MOTION FOR LEAVE TO FILE THIRD AMENDED REPLACEMENT COMPLAINT 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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and I hereby certify that I have mailed the document by the United States Postal Service to the following non-CM/ECF participants:

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