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 REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, AND OPPOSITION TO MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT

Enough is enough. We are now approaching seventy docket entries, accompanied by scores of scattershot exhibits, all in aid of imagined and unrecognizable claims. *Pro se* litigants are entitled to more leeway than represented parties, but there comes a point where the resources of the Court and the other parties should no longer be wasted on responding. That point has come.

Mr. Neeley offers no cognizable opposition to Google's motion to dismiss. He cannot bring a copyright claim because he has not registered a copyright. In response, he states that he will "never" do so, apparently believing the Copyright Act to be unconstitutional. He offers no response to the obvious proposition that Google cannot be liable for violating Title 5, because Google is not a governmental agency. And although it is still impossible to discern from his opposition what theory of contributory trademark infringement he now asserts, as best as we can tell he now appears to be inventing a tort of "conspiracy to cybersquat the Plaintiff's domains."

There is no such cause of action. Cybersquatting—the practice of bad faith registration of domain names infringing the trademarks of others—is subject to liability under the Anticybersquatting Consumer Protection Act, 15 U.S.C. §1125(d) ("ACPA"). But the ACPA is expressly limited to the domain name registrant and others who "traffic in" the domain name. *See, e.g., Ford Motor Co. v. GreatDomains.com, Inc.*, 177 F. Supp. 2d 635, 645 (E.D. Mich. 2001) ("the phrase 'traffics in' contemplates a direct transfer or receipt of ownership interest in a domain name to or from the defendant"). Mr. Neeley, even were he able to plead ownership of a protectable mark to begin with, does not and cannot allege that Google has bought, sold, or registered either of the domain names at issue. He affirmatively pleads out of such a claim, alleging that NameMedia, not Google, registered the domains at issue. Thus, even were the Court to read an ACPA claim into Mr. Neeley's Complaint, that claim cannot be stated against Google.

Finally, Mr. Neeley seeks leave to amend his claims yet again, proffering his Third Amended Complaint. That Complaint is virtually indistinguishable from the prior iterations, save for adding three more defendants and a few irrelevant paragraphs about the unconstitutionality of the Copyright Act and the pending settlement of litigation concerning Google Books. The operative portions of the Complaint are unchanged and suffer the same defects as before; thus, leave to file the Third Amended Complaint should be denied.

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
Email: jthane@haltomdoan.com

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

ATTORNEYS FOR DEFENDANT GOOGLE INC.

CERTIFICATE OF SERVICE

I, Joshua R. Thane, hereby certify that on February 11, 2010, I electronically filed the foregoing GOOGLE INC.'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, AND OPPOSITION TO MOTION FOR LEAVE TO FILE THIRD 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
Kevin M. Lemley
Allen Law Firm, P.C.
212 Center Street
Ninth floor
Little Rock, Arkansas 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