

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

CURTIS J. NEELEY, JR.

PLAINTIFF

v.

Civil No. 09-5151

NAMEMEDIA, INC.

DEFENDANT

ORDER

Plaintiff filed this trademark infringement or “cybersquatting” and intentional infliction of emotional distress case. Before the undersigned is the issue of whether the complaint should be served. In order to assist the court in making such determination, it is necessary that plaintiff provide additional information.

Accordingly, it is ordered that plaintiff, Curtis J. Neeley, Jr., complete and sign the attached addendum to his complaint, and return the same to the court **by October 30, 2009**. **Plaintiff is advised that should he fail to return the completed and executed addendum by October 30, 2009, his complaint may be dismissed without prejudice for failure to prosecute and/or for failure to obey an order of the court.**

IT IS SO ORDERED this 14th day of October 2009.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE

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NAMEMEDIA, INC.

DEFENDANT

ADDENDUM TO COMPLAINT

TO: CURTIS J. NEELEY, JR.

This form is sent to you so that you may assist the court in making a determination as to the issue of whether the complaint should be served upon the defendant. Accordingly, it is required that you fill out this form and send it back to the court **by October 30, 2009**. Failure to do so will result in the dismissal of your complaint.

The response must be legibly handwritten or typewritten, and all questions must be answered completely in the proper space provided on this form. If you need additional space, you may attach additional sheets of paper to this addendum.

RESPONSE

In your complaint, you allege that at the defendant purchased the domain name eartheye.com at auction when the "previous registration lapsed." You indicate you had used the domain name in connection with your photographic art and commercial photography. You allege defendant was aware of your trademarks, or should have been aware of your trademarks, after defendant measured the residual traffic that existed because of your prior use of the domain in commerce.

You indicate defendant's sole reason for purchasing it was to sell the domain name. In fact, you state an employee of the defendant contacted you directly by e-mail and offered to sell you the domain name directly.

1. When did your registration of the domain name eartheye.com expire?

Answer: It expired while Curtis Neeley was an incompetent and in a hospital. Publicly accessible records indicate it was July 02, 2003.

2. When did defendant purchase the domain name?

Answer: Publicly accessible records indicate it was also July 02, 2003. The expiration date and purchase dates are identical because had the Defendants not violated Curtis Neeley's trademark on eartheye.com the domain would have simply stopped resolving or ceased to exist until Curtis Neeley restored them.

3. When did you first learn the domain name had been sold?

Answer: Plaintiff was first made aware that the Defendants were offering the domain eartheye.com for sale. Plaintiff had used eartheye.com since the 1997 for his photo studio. The Defendants were doing nothing but offering the domain for sale in 2003. Plaintiff has no specific record of the first date he became aware of the offering by the Defendants of the sale of his trademarked domain. The Plaintiff was in a hospital and on a borrowed notebook computer. The Plaintiff has no evidence to prove the date of Plaintiff's first encountering the cybersquatting or of his first protest to the Defendants. Evidence will support the fact that the Plaintiff complained and advised the Defendants of his incapacity due to the Defendant's response to Plaintiffs claim of being the rightful owner of the domain on Nov. 29, 2007.

Continued from page three answer three

Ted Olson, a domain consultant for the Defendants, advised the Plaintiff to either contact their legal staff with documents supporting the claim or himself if the Plaintiff would rather purchase the domain. On Jan. 29, 2009 Jason Minor of NameMedia contacted the Plaintiff as VP of sales and advised Plaintiff that there was a great chance to save on eartheye.com due to a winter sale. Plaintiff again contacted Jason Minor and Erik Zilinek. Mr. Zilinek responded on Feb. 13, 2009 as the legal council for NameMedia and replied, "NameMedia is evaluating your concerns and will revert to you once we have considered the matter further.". This reply is indisputable evidence that NameMedia's legal council was aware of Plaintiffs distress and should have been aware of Plaintiffs disability. After further considering the Plaintiff's claim and distress, NameMedia legal council Erik Zilinek responded, "Upon further consideration and review of the circumstances surrounding NameMedia's registration and use of the subject domain name, NameMedia is maintaining its position as previously stated. NameMedia's use of the domain name has been legitimate and proper and in no way impinges on your rights", which is why this lawsuit now exists. This is proof of the Defendant intentional infliction of emotional distress after having a lawyer consider the Plaintiffs distress.

Continued from previous page answer to question three.

After this action NameMedia sold eartheye.com to EDS Inc. on July 27, 2009 for \$2,300 because in part the domain had over a decade of prior use.

Question three answer summary:

1. NameMedia purchased eartheye.com on July 02, 2003 from a business subsidiary.
2. Curtis Neeley discovered the cybersquatting and sent his first protest in an indeterminate date between 2003 and 2006 when the Plaintiff's distress was acknowledged by the Defendant..
3. The plaintiff has a severe traumatic brain injury and has extreme difficulty with memories. Curtis Neeley does not feel that this disability gives the Defendant a free-pass to take advantage of the Plaintiffs common-law trademark. This is especially malicious after the Plaintiff made the defendants aware of his prior trademark use of both domains sleepspot.com and eartheye.com in commerce.

4. In paragraph twelve of your complaint, you allege that in 2003 defendant communicated to you that it had acquired the domain name eartheye.com. You state you were "incapacitated by post-comatose amnesia and unaware the eartheye.com registration had expired." Please state: (a) the date of your accident that you allege caused you to become incapacitated; (b) the injuries you suffered; and (c) how long you were incapacitated.

Answer:

(a) Sept. 03, 2002

(b) Both of Plaintiff's fibulas and tibias had compound fractures. His left leg's femur was shattered. The Plaintiff's pelvis was broken in six places. The Plaintiff's left arm humerus was shattered and his left scapula was broken. All seven left ribs were broken. The broken ribs punctured the left lung and tore the descending aorta from his heart. The surgery to repair the aorta left the Plaintiff paralyzed mid-back. The Plaintiff suffered a severe brain injury in his frontal lobe and was non-responsive and comatose for over six weeks. Around 2005 the Plaintiff had his legs amputated above the knee. The brain injury allowed NameMedia to cybersquat in the first place.

(c) A psychiatric evaluation on Dec. 12, 2002 by Dr. Borian B.

Matinchev MD found Plaintiff to be an incompetent suffering from post-traumatic amnesia. Plaintiff was ruled an incompetent person and Rachel Neeley was made Plaintiff's guardian in Washington County Circuit Court on Feb. 24, 2003. Plaintiff regained guardianship as of Jan. 25, 2006 in Washington County Circuit Court. There was a total of two years and eleven months that Plaintiff was an incompetent.

5. Defendant is in the business of acquiring and selling domain names.

Answer: Yes ☒ No ☐.

6. Defendant had nothing to do with your becoming incapacitated and was not responsible for your failure to re-new your registration of the eartheye.com domain in a timely manner.

Answer: Yes ☐ No ☒.

If you answered no, please explain. Defendants were the reason the Plaintiff was not able to keep the domains eartheye.com and sleepspot because they registered the domains immediately as the became available due to the Plaintiffs incompetence. NameMedia then continued to prevent the Plaintiff from having eartheye.com and sleepspot.com after considering his claim and complaint with an advised legal council Erik Zilinek. Had NameMedia not cybersquatted in eartheye.com and sleepspot.com the plaintiff would have recovered them both while still an incompetent with the aid of his wife who was his guardian at the time. Plaintiff's guardian did not want to pursue legal action in regards to the domains because she was over-stressed enough with several unrelated legal issues. Once the Plaintiff had gone to court and recovered his guardianship he attempted to recover the domains outside of legal action by dialoguing with NameMedia's attorney Erik Zilinek. He was then advised that NameMedia was confident that they could justify their cybersquatting and that is exactly why Plaintiff is now before this District Court. Trademark law is extremely difficult and the severely brain damaged Plaintiff is now doing his best.

7. Anyone could have purchased the domain name eartheye.com at the auction.

Answer: Yes _____ No ☒.

Paragraph twelve of the Plaintiffs complaint mentions the Defendants acquiring eartheye.com at an expiry auction in error. The domain was never available to the public at any time. There never was any auction. The defendants purchased the domain the second it lapsed due to the plaintiffs incapacity. This is exactly the same way the trademarked domain name sleepspot.com was violated. The Defendants have demonstrated a pattern of malicious cybersquatting on two of the Plaintiffs trademarked domains.

Please see included summary of facts

I CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS COVERED BY
THE VERIFICATION MADE BY ME ON MY INITIAL COMPLAINT.

CURTIS J. NEELEY, JR.

DATE