

IN THE UNITED STATES COURT WESTERN DISTRICT OF ARKANSAS

CURTIS J NEELEY JR, MFA

VS

CASE NO. 5:09-cv-05151-JLH

NameMedia Inc.
Network Solutions LC.
Google Inc.

BRIEF SUPPORTING MOTION REQUESTING RECONSIDERATION OF DOCKET #126 GRANTING DISMISSAL OF Network Solutions LLC

1. Plaintiff asks the Court to reconsider Docket #126 regarding the immanent violation of the Lanham Act regarding <SleepSpot.org>. Plaintiff used Network Solutions LLC as his registrar. The 116-page click to agree contract does not contain a transfer of the registration or agreement to license it. When the Plaintiff does not renew his registration the current business policy of Network Solutions LLC is to traffic in all “expiring domains” as can be seen in the record.

See Docket #112 Exhibit # 2 NS-TM-Traffic

See in color <curtisneeley.com/NameMedia/docketPDFs/NS-TM-Traffic.pdf >

2. Network Solutions LLC trafficked <sleepspot.org> to the Plaintiff already by offering an opportunity to make a certified offer for it in addition to every domain owned by the Plaintiff registered elsewhere. The prior offers when listed were mentioned in Docket 125 at the top of page 9 and considered an offer or negotiations but were illustrations of owned domains being trafficked to the Plaintiff. The Defendant’s history with the Plaintiff establishes standing for both the current and the impending violations of the registration of <sleepspot.org> when it expires on April 1, 2011 as was demonstrated by Network Solutions LLC prior and continuous Lanham Act violations first affecting the Plaintiff with <sleepspot.com> and <eartheye.com> in 2003. This was ruled as protected by Limitations but it remains cumulative grounds for the standing the Plaintiff obviously has but has not yet alleged sufficiently.

3. Network Solutions LLC has a business policy of trafficking in all domains and are the current registrars of the Plaintiff's domain <sleepspot.org> and trafficked the domain as can be seen in the record along with five other domains they trafficked since this action started. *Id, See Ex. SSORG*. Title 15 § 1125 (d) in the relevant section states:

(VI) the person's offer to transfer, sell, or otherwise assign the domain name to the mark owner or any third party for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services, or the person's prior conduct indicating a pattern of such conduct;

This above statute section gives a reasonably clear description of the Network Solutions LLC business policy and describes their offer of the opportunity to make a certified offer for the Plaintiff's domains as being "bad faith" uses to be considered by the Courts. "Otherwise assign" easily makes certified offers a prohibited "bad faith" use and prior conduct is specifically included with no limitations whatsoever. The Plaintiff requests a Court ordered attorney to aid him because this intellectual property litigation is obviously beyond the Plaintiff's intellectual abilities and have been since the start. The Plaintiff is not able to afford counsel but believes the Statutory Damages and attorney fees will be born by Network Solutions LLC when this portion of the action resolves. Tutoring expenses will be treated as a lien on the settlement just as the costs to proceed thus far already are. The entire docket is accessible online as a mirror of PACER except exhibits may there be accessed in color or access to the actual PDFs that were printed. *See <curtisneeley.com/5-09-cv-05151/Docket>* Whether or not the Court now rules the 2003 Lanham actions still subject to limitation the current actions listed in the Replacement Complaint of Docket #111 sustain a lawsuit and are timely once provisionally approved. If Docket #111 is not approved at least provisionally and Network Solutions LLC does not remain a Defendant the Plaintiff, Curtis J Neeley Jr., MFA, intends to appeal to the Eighth Circuit Court of Appeals as equitable tolling was found to be an issue for a jury. "[i]t should be undisputed, however, that federal courts do not automatically apply the doctrine of equitable tolling..." In *Ott v. Midland Ross Corp.*, 600 F.2d 24, 31 (6th Cir. 1979), an ADEA action, the court held that the jury should decide whether the plaintiff is entitled to equitable tolling.

Respectfully and humbly submitted,

Curtis J Neeley Jr, MFA