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

CURTIS J. NEELEY, JR. **PLAINTIFF**

v. **Civil No. 09-5151**

NAMEMEDIA, INC., NETWORK SOLUTIONS, INC.; and GOOGLE, INC. **DEFENDANTS**

O R D E R

Now on this 27th day of October, 2010, come on for consideration **Google Inc.'s Cross Motion For Protective Order** (docket entry #171) and **Network Solutions' Motion for Protective Order** (document #175), and from said motions, and the responses thereto, the Court finds and orders as follows:

1. Plaintiff Curtis Neeley ("Neeley") alleges trademark rights in two internet domain names, eartheye.com and sleepspot.com. He alleges that NameMedia, Inc. (NameMedia) registered these domain names in bad faith, and licensed them to Google, Inc. ("Google") in violation of the anti-cybersquatting provisions of **15 U.S.C. § 1125(d)**. He further alleges that NameMedia and Google conspired to cybersquat the two domain names, and to violate his trademark rights in these domain names.[1]

Neeley also alleges a claim for intentional infliction of emotional distress under Arkansas law.

NameMedia alleges in a counterclaim that Neeley has

[1]Neeley's claims against defendant Network Solutions, Inc., were dismissed with prejudice on May 20, 2010.

"typosquatted" by obtaining a domain name confusingly similar to its own.

2. Neeley, who is acting pro se, has filed multiple motions, many without any discernable merit, many later withdrawn. The moving parties now ask the Court to relieve them from the obligation of responding to further motions filed by Neeley except where the Court directs a responsive briefing.

3. Although Neeley does not object to the pending motions, the Court will not grant them. Network Solutions, Inc. ("Network") has been dismissed as a party, and has no obligation to respond to Neeley's filings regardless of how the Court rules on its motion. Its motion will be denied as moot.

4. The Court will also deny the motion of Google, Inc. ("Google"), while recognizing that Google is in a more difficult position than Network. Google must determine, in each case, whether to respond to any particular motion Neeley files, even if that motion is meritless. This situation results in a waste of litigation resources for Google, and cries out for a remedy, albeit not the remedy sought by Google. The Court believes that the several Orders entered this date will alleviate the problem and get this matter back on track and moving toward trial. If that does not occur, and frivolous motions continue to be filed, the opposing party may seek sanctions pursuant to **F.R.C.P. 11**.

5. On May 20, 2010, the Court issued an Initial Scheduling

Order, tentatively setting this matter for trial during the week of March 21, 2011. Before the parties filed their 26(f) report, Neeley filed a Notice Of Appeal on June 1, 2010. During the time the case was on appeal, this Court had no jurisdiction to issue the Final Scheduling Order which would establish the schedule for discovery and pre-trial preparation. *See, e.g.,* **U.S. v. Queen, 433 F.3d 1076, 1077 (8th Cir. 2006)** (notice of appeal divests the lower court of jurisdiction over aspects of the case subject to appeal).

6. The Eighth Circuit Mandate was handed down on September 3, 2010, reinvesting this Court with jurisdiction, and the Court is this date issuing a Final Scheduling Order with a new trial date. If the Court were to retain the original trial date, there would be virtually no time for the parties to engage in discovery, given that following discovery there must be a period of time for the filing, briefing, and judicial consideration of dispositive motions.

Neeley asserts - in docket entry #163 - that he wants this matter tried as soon as possible, and that he "does not believe discovery . . . will require any additional time." Neither defendant has weighed in to waive its discovery rights, however, and the Court's regular practice is to allow a period of approximately six months for discovery. Unless all parties agree, the Court will not substantially depart from that practice.

Certainly it will not depart to the extent of totally depriving nonconsenting parties of their discovery rights.

For the foregoing reasons, the Final Scheduling Order sets a new date for the trial of this case. While the new trial date allows only five months for discovery, the Court believes that by focusing on discovery and trial preparation - rather than on the filing of redundant and meritless motions - the parties can be prepared for trial on the scheduled date, and it commends this course of action to them.

IT IS THEREFORE ORDERED that **Google Inc.'s Cross Motion For Protective Order** (docket entry #171) is **denied.**

IT IS FURTHER ORDERED that **Network Solutions' Motion for Protective Order** (document #175) is **denied.**

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE