

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

CURTIS J. NEELEY, Jr.

PLAINTIFF

VS.

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

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

DEFENDANTS

**REPLY BRIEF IN SUPPORT OF NAMEMEDIA'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

I. Plaintiff's Claim for Outrage is Barred by Limitations.

To toll the three-year limitations period, Plaintiff must prove he was insane. *See* Ark. Code Ann. § 16-56-116(a). Disabilities alone will not suffice. *See id.* The Arkansas Supreme Court defines insanity as “such unsoundness of mental condition as, with regard to any matter under action, modifies or does away with individual legal responsibility or capacity.” *Schuman v. Westbrook*, 207 Ark. 495, 498, 181 S.W.2d 470, 471 (1944). “An insane person is one who is of unsound mind, and our statute provides that a person of unsound mind includes every person who is a lunatic, idiot or deranged.” 207 Ark. at 498-99, 181 S.W.2d at 471. Repressed memory cannot amount to insanity; Plaintiff must show proof that he has lost the power to reason. *Barre v. Hoffman*, 2009 Ark. 373, p. 9.

Plaintiff offers no evidence that he was insane. Instead, Plaintiff relies on the affidavits of Terrie Myers, Diana Hausam and Rachel Neeley. These affiants state three basic propositions: (1) Plaintiff has physical disabilities and needs assistance; (2) Plaintiff suffered memory loss; and (3) other matters in Plaintiff's life took priority over pursuing a lawsuit against NameMedia.

None of these affiants state that Plaintiff was insane as defined by the Arkansas Supreme Court. There is no evidence that Plaintiff was a lunatic, idiot, deranged, or lost the power to reason. The only possible evidence that Plaintiff was at any time insane is that an Arkansas court appointed a guardian for Plaintiff. Plaintiff admits that same court declared him legally competent on January 26, 2006.

NameMedia is certainly sympathetic to Plaintiff's physical disabilities and understands that other matters in Plaintiff's life took priority over filing this lawsuit. However, these conditions do not justify insanity, which is required to suspend the three-year limitations period. *See* Ark. Code Ann. § 16-56-116(a). Limitations has expired on any claim that Plaintiff may have for outrage, and that claim is now barred by limitations.

II. Plaintiff's Claims Under the Copyright Act are Barred for Lack of Registration.

Plaintiff bases his argument primarily upon 17 U.S.C. § 410(c). Plaintiff misinterprets this subsection, which only affects the burden of proof as to the validity of a claimed copyright. *Id.* This subsection does not create the right to file suit for copyright infringement without obtaining a valid registration. *Id.*

The controlling law is that registration is a condition to bringing suit to enforce a copyright. *Action Tapes, Inc. v. Mattson*, 462 F.3d 1010, 1013 (8th Cir. 2006); *Blair v. World Tropics Prods.*, 502 F.Supp.2d 828, 833 (W.D. Ark. 2007). Plaintiff concedes that he does not hold a valid copyright registration.

III. Punitive Damages and Emotional Distress Damages are not Permitted Under Trademark Law or Copyright Law.

Plaintiff's only cited authority is Ark. Code Ann. § 16-55-206, which applies to certain state law claims. This section does not apply to claims brought under the Lanham Act or the

Copyright Act. Plaintiff cites no authority for the proposition that punitive damages or emotional distress damages are permitted under the Lanham Act or Copyright Act. Indeed, no such authority exists. Plaintiff simply cannot have a claim for punitive damages or emotional distress damages under the Lanham Act or the Copyright Act.

CONCLUSION

For the foregoing reasons, NameMedia is entitled to summary judgment against Plaintiff's claims for outrage, copyright infringement, punitive damages, and emotional distress damages.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 29th day of December, 2009, I mailed a copy of the foregoing to the following *pro se* plaintiff:

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/s/ Kevin M. Lemley
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