

**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 Inc.

Google Inc.

Concise List of Undisputable Facts Supporting Judgment

Plaintiff in the above captioned case lists these undisputable facts to comply with Local Rule 56.1(a). The following list of undisputable facts has been organized sequentially from earliest date to last date of occurrence. Dates are bolded and listed first to help quickly stand out in this complicated intellectual properties matter where dates are critical.

1. **December 22, 1997** Plaintiff first registered eartheye.com and first used the domain commercially to sell photography services as well as selling photographic art and establishing copyrights and trademark in the website. *See* Docket #30 Ex.07
2. **July 30, 1999** Plaintiff registered SleepSpot.com and first used SleepSpot.com in commerce marketing reservation software to hotels and other hospitalities needing reservations of day lengths. This established common law TM. *See* Docket #30 Ex.28
3. **March 04, 2000** SleepSpot.com was using Curtis Internet Reservation Software (CIRS) as written by the Plaintiff for distributing hospitality reservations. SleepSpot.com was being used to provide reservation availabilities for Orlando Howard Johnson's in Florida near Disney World. The CIRS and sleepspot.com were better ten years ago than NAMEMEDIA INC website is today *See* Ex. OHOJO, CIRS, Docket #30 Exhibit #21
4. **September 03, 2002** Plaintiff was involved in a full-speed head-on motor vehicle accident and left in a coma for over six weeks on respirators as well as sustaining severe traumatic brain injuries as disclosed previously in this action.
5. **December 12, 2002** A psychiatric evaluation by Dr. Borian B. Matinchev MD found Plaintiff to be suffering posttraumatic amnesia resulting in establishing legal incompetence.

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6. **February 24, 2003** Rachel A. Neeley was made legal guardian for Plaintiff in Washington County Circuit Court due to report of Dr. Borian B. Matinchev MD.
7. **May-June 2003** Network Solutions Inc advertised exclusive listing of eartheye.com while violating the common law TM that was disclosed by a use in commerce that was publicly accessible in the Internet Archive at the time. The service agreement being violated was a fraud and was a fraudulent use of an e-signature by Network Solutions. The fraudulent agreement still asks for “clicking to agree” to a 116 page agreement seven years later by soliciting fraudulent acceptance while advertising a domain as available exclusively through them due to the ICANN registrar requirement that only the prior registrar may register the domain for a short time after expiration. *See* Ex. 116CLICK
8. **April-May-June-2003** Defendants conspired to give an instantaneous process a fraudulently progressive verb use. The term “expiring” is deceptive and publishing a list of domains that are about to expire is violating the common law trademark rights of the respective owners. Network Solutions Inc and NAMEMEDIA INC conspire to use the fraudulent term “expiring domain” eventually promoted by Google Inc selling advertisements triggered by this specifically fraudulent term to Plaintiff.
9. **July 01, 2003** Network Solutions Inc publicized eartheye.com as “pending delete” violating the common law trademark rights that all domains used to sell a good or service create given them pursuant to US Title 17 § 1125 No entity besides the original registrant had any right to advertise anything about the trademark including the expiration date of the registry.
10. **September-October 2003** Network Solutions advertised sleepspot.com as “pending delete” violating the common law trademark rights that all domains used to sell a good or a service create given them pursuant to US Title 17 § 1125. This TM was disclosed and available by simply looking at the non-profit Internet Archive at the time the registration was conducted. No entity besides the initial registrant had any right to advertise anything about the trademark including its expiration date. Defendants each conspire to create a demand for all short domain names and encourage this by licensing them to do nothing but run advertisements like Google Inc does as a principle business under the guise of organizing information.
11. **June 22, 2004** Eartheeye.com was archived while advertising as being only for sale for \$1488 by the Internet Archive Inc as an uninterested third party. This, ironically, violates the same exact statute NAMEMEDIA INC alleged as violated by Plaintiff or US Title 15 § 1125(d) without concern for the Plaintiff Constitutional Right to Free Speech. *See* Docket #30 Ex.08
12. **March 15, 2005** Plaintiff posted on BLOGS for Terri Schiavo site a letter that would report that Plaintiff realized that the Guardian had done DNR orders and removed the respirator to allow nature to take its course. Plaintiff also states that the leading cause of death for paralytics is suicide. Plaintiff was already very expressive via the Internet. In twelve days this Internet expression reaches photo.net. *See* Ex. 2005

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13. January 26, 2006 Incompetent Plaintiff was taken as demanded via motorized wheelchair to Court in Washington County to appear at the regular competency hearing. Incompetence of Plaintiff was allowed to expire with no witness testimony as expected by process of law. Plaintiff was completely unable to pursue the normal activities of life because the foggy mirror called the mind was unable to be held and seen reflecting due to extreme physical disabilities. Plaintiff was still completely unable to pursue the normal activities of life because the foggy mirror called the mind was still not seen dimly reflecting because the mirror of the mind could not be held properly. Both physical and mental disabilities conspired to create equitable tolling. Plaintiff was unable to do actions as simple as driving or defecating without aid. The immense shattered mental abilities of the Plaintiff were still chained inside the great disabilities of the body preventing the dim reflection in the mirror of the mind from being seen although Plaintiff could describe reflecting better than most could describe reflecting. Plaintiff was not able to defecate or urinate without assistance and was not able to acquire basic transportation and often forgetting to lie in a bed to sleep to prevent pressure wound injuries. The disability that the language in the Arkansas law Ark 16-56-116 (1987) uses was altered to prevent offensive terms like “idiot”, “dimwit” or “insane” from being used and offending, however, Council for NAMEMEDIA INC wishes this Court now constrain the term “disability” to these offensive meanings. The inability to conduct the normal regular activities of life due to an extreme physical disability is another condition intended to establish equitable tolling. The adjunct law professor of the Defendant NAMEMEDIA INC misapplied this law as is now likely ironically realized.

14. April 24, 2006 Plaintiff had infected tissue and pelvic bones removed due to a large pressure wound at UAMS by Dr Yuan. This was an obvious failure to conduct the normal activities of life because the mirror called the mind was too dimly reflected. Obviously normal activities like sleeping in a bed were obviously absent the dimly reflecting mirror called the mind. This wound was so severe that a pressure sore this bad is usually fatal like the infection that killed Christopher Reeves. *See Ex. WOUND.*

15. May 01 2006 Plaintiff had a flap surgery at UAMS to complete the surgical process begun by Dr. Yuan in preceding paragraph and was all done for the amount that Medicaid would pay.

16. May 11, 2006 Plaintiff writes in an email from the nursing home advising that he was first able to handle doing bowels without aid. Quoting from that note as follows: “Today I actually did my bowels 100% by my self. I only asked the nurse's aid to throw it away. I can do it now with no trouble as long as it is not too soft”, and see this as a momentous day that might compare to successful potty training that the Plaintiff was excited to have done. This might be called a regular activity of life. This “regular activity of life” that Plaintiff proudly announced accomplishing during confinement to bed while paralyzed, most people would feel perhaps still too much a disability to overcome for pursuing a federal lawsuit *Pro Se* regardless of whether the disabled appeared an idiot or a genius.

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- 17. July 07, 2006** Plaintiff was able to maneuver from a hospital bed to a motorized wheelchair completely without assistance although paralyzed mid-back and suffering a hemispherical stroke leaving one fully mobile limb. Legally competent Plaintiff accomplished this but was still unable to pursue the normal activities of life because the mirror that was the mind was still too inconsistently reflecting although the physical disability precluded viewing the dimly reflecting mirror anyway. Extreme physical disability the Defendant NAMEMEDIA INC wants the Courts to dismiss as not being disabled quite badly enough. *See Ex. STSFR.*
- 18. Sept 22 2006** Plaintiff was admitted to Washington Regional Medical Center for bilateral above-the-knee amputations. This makes it an ironically accurate statement as a result to say, “Plaintiff does not have a leg to stand on” while pursuing this action. This lawsuit is against one of the biggest domain name dealers who report fifty to sixty million dollars of yearly income thereby enticing domain investors to continue investing in worthless domains. “Domain investors” create “portfolios” of “internet real estate” given value by the Google Inc attempt to license all “type-in” traffic for e-billboards. *See Ex. AdWords*
- 19. January 01, 2007** Plaintiff rejoiced in a BLOG post and described an amazing accomplishment as follows. Quoting the BLOG post as, *“I got my shower-chair positioned next to my bed then got in bed by MYSELF and got undressed by MYSELF. Then I moved the shower-chair to beside the bed and tied it there with my last pair of shoe-strings so it couldn’t tip or roll back when pushed as a transferred by MYSELF with no Hoyer! I then got in the shower-chair by MYSELF and then with BOTH of my own arms struggled the chair into the shower completely by MYSELF! I had a nice warm shower and emptied my bowels into the pan in the shower. Then I ‘pedaled’ the shower-chair back to the bed and got back in bed by MYSELF. I put on a fresh diaper and dressed MYSELF completely. I then got back in my electric chair by MYSELF and cleaned the pan in the shower and the shower and returned the shower-chair to the shower by MYSELF. MYSELF MYSELF MYSELF MYSELF MYSELF I have a key for a person like MYSELF who is a little stuck on MYSELF ! Ha!”*, and we must question how accomplished a small set of everyday tasks could seem. NAMEMEDIA INC wishes this to demonstrate no disability worthy of tolling the claim of outrage like they desire this Court to do.
- 20. November 29, 2007** NAMEMEDIA INC offered eartheye.com to Plaintiff and Ted Olson, s an agent of NAMEMEDIA INC, acknowledged being made aware of Plaintiff desire and the distress created by the NAMEMEDIA INC cybersquatting and advised Plaintiff to contact legal. Ted Olson then provided only a physical address to complicate contacting Erik Zilinek after Plaintiff disclosed being extremely disabled publicly. *See Docket #30 Ex.#30*
- 21. Feb 17. 2008** Plaintiff initially paid Defendant Google Inc for AdWords advertising. Plaintiff was not living independently but Defendant NAMEMEDIA INC already was capitalizing by conspiring with Defendant Google AdWords by selecting AdSense for Domains by default in the AdWords interface. *See Ex. AdWords*

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- 22. June 30 2008** Diana Hausam, and Brian Neeley assisted Plaintiff with moving to a handicap accessible apartment thereby successfully moving out and living as independently as possible although extremely disabled both physically and mentally. This date the Plaintiff feels should apply as absolutely the earliest point the equitable tolling toll the limitations period for bringing a claim of outrage. On 30 June 2008 at 9:59 pm Plaintiff wrote in a BLOG post titled (New HOME) "Home is where the heart is. I discovered that is absolutely NOT close to true. I am in an apartment in town and my physical heart is here but my son, who is the love of my life, is in home with my wife. I enjoy almost everything SO much more here by myself than I thought possible, but I miss him enough to keep it from being perfect" and here longing for youngest son of Plaintiff is demonstrated. *See Ex. MISSE*
- 23. April 01, 2009** Curtis J Neeley Jr. and Rachel A. Neeley are granted a divorce after almost a decade of marriage. The stress Plaintiff felt because of the malicious cybersquatting and copyright violations contributed greatly although it would be difficult to quantify or prove.
- 24. April 17, 2009** DomainNameNews.com reports that NAMEMEDIA INC dba AfternicDLS.com listed selling eartheye.com for \$2,300. *See Ex. 2300*
- 25. July 02, 2009** the domain eartheye.com was finally listed with EDATS.com as the new registered owner.
- 26. July 22, 2009** Plaintiff filed current lawsuit IFP. *See Docket #1.*
- 27. Oct 15, 2009** Plaintiff registered NAMEMEDIAS.COM and first used it to express anger towards NAMEMEDIA INC in a constitutionally protected free speech use that is allowed specifically as a bona fide noncommercial fair use of the mark accessible under the domain name. Bad faith intent described under US Title 17 § 1125 shall not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.
- 28. November 09, 2009** Network Solutions Inc was advised of Plaintiff intention to file this action and offered an opportunity to settle out of court for two million dollars for their advertising availability of expiration dates of domain registries although not registering it when lapsing.
- 29. November 10, 2009** Krista Quintell from the Network Solutions Executive Office replied that after reviewing my email they had determined not registering the domain and advised being mandated by ICANN to follow guidelines, as were all registrars. This statement was after listing the ICANN guidelines after further research and finding them as follows. "*ICANN requires accredited registrars to collect and provide free public access to the name of the registered domain name and its name servers and registrar, the date the domain was created and when its registration expires, and the contact information for the Registered Name Holder, the technical contact, and the administrative contact.*" Ms Quintrell thereby implied ICANN mandated they advertise the information with no concern whatsoever about copyrights or trademarks. *See Ex. KQ*

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30. November 12, 2009 Maria Burke from the Network Solutions Executive Office wrote to Plaintiff and suggested placing a certified offer for the domain and sent a link to a Network Solutions Certified Offer Service website whereby Plaintiff would be solicited for an offer of trafficking in the domain as is prohibited by US Title 15 1125(d).
See Ex. MB

31. Jan 25, 2010 Separate Defendant Network Solutions signed for certified mail for receiving the Second Amended Complaint at 1:06 PM in Herndon, VA 20171. This defendant has not yet appeared but acceptance of the service of certified mail of the second complaint has been made. See 3800T

32. February 13 & 14, 2010 Separate Defendant Network Solutions Inc trafficked in the domain names sleepspot.com and eartheye.com as well as seven additional spam domains for an offer of \$13,088 to the Plaintiff as is now shown in the record.

Law is either logical or it is wrong. Plaintiff believes that it was illogical that Defendant Network Solutions Inc needed to see this much outrage before they respond. This short list of paragraphs and exhibits will give Network Solutions Inc and Google Inc a chance to spend money to accomplish nothing if they wish. NAMEMEDIA INC already illustrated how NOT to answer. The list of issues not needing trial will now be shorter for each separate defendant and Network Solutions will eventually answer. Legal fees will have the affect of being punitive.

This lawsuit will end the “domain Name Ponzi scheme” and most of Namemedia and Network solutions as well as stopping kids from seeing vulgarity with a search engine!

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Curtis J Neeley Jr, MFA