

**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**

**SEPARATE DEFENDANT NAMEMEDIA, INC.'S ANSWER TO  
FIRST AMENDED COMPLAINT and COUNTERCLAIM**

Separate defendant NameMedia, Inc. ("NameMedia"), for its Answer to the First Amended Complaint (Docket # 14), states as follows:

1. Admits Mr. Zilinek is an employee of NameMedia; admits Mr. Zilinek corresponded with Plaintiff; admits NameMedia obtained the domain eartheye.com in 2003 after Plaintiff allowed the domain names to expire; and denies the remaining allegations in paragraph 1 of the First Amended Complaint;
2. Denies the allegations in paragraph 2 of the First Amended Complaint;
3. Denies the allegations in paragraph 3 of the First Amended Complaint;
4. Denies the allegations in paragraph 4 of the First Amended Complaint;
5. Admits registering the domain names eartheye.com and sleepspot.com, and denies the remaining allegations in paragraph 5 of the First Amended Complaint;
6. Admits Mr. Zilinek is an employee of NameMedia; admits Mr. Zilinek corresponded with Plaintiff; and denies the remaining allegations in paragraph 6 of the First Amended Complaint;

7. Admits selling domain names through BuyDomains.com and denies the remaining allegations in paragraph 7 of the First Amended Complaint;

8. Admits Plaintiff's purported marks are descriptive terms and denies the remaining allegations in paragraph 8 of the First Amended Complaint;

9. Denies the allegations in paragraph 9 of the First Amended Complaint;

10. Admits selling domain names and denies the remaining allegations in paragraph 10 of the First Amended Complaint;

11. Admits it earns pay-per-click revenue and denies the remaining allegations in paragraph 11 of the First Amended Complaint;

12. Denies any allegations in paragraph 12 of the First Amended Complaint that pertain to NameMedia;

13. Denies any allegations in paragraph 13 of the First Amended Complaint that pertain to NameMedia;

14. Denies any allegations in paragraph 14 of the First Amended Complaint that pertain to NameMedia;

15. Denies the allegations in paragraph 15 of the First Amended Complaint;

16. Denies the allegations in paragraph 16 of the First Amended Complaint;

17. Admits offering the domain names for sale and denies the remaining allegations in paragraph 17 of the First Amended Complaint;

18. Admits NameMedia acquired the registration of the eartheye.com domain name in 2003 after Plaintiff allowed the registration of that domain name to expire; and denies the remaining allegations in paragraph 18 of the First Amended Complaint;

19. Denies the allegations in paragraph 19 of the First Amended Complaint;
20. Denies any allegations in paragraph 20 of the First Amended Complaint that pertain to NameMedia;
21. Denies the allegations in paragraph 21 of the First Amended Complaint;
22. Denies the allegations in paragraph 22 of the First Amended Complaint;
23. Denies the allegations in paragraph 23 of the First Amended Complaint;
24. Admits displaying at Photo.net photographs contributed by Plaintiff and denies the remaining allegations in paragraph 24 of the First Amended Complaint;
25. Denies any allegations contained in the First Amended Complaint not specifically admitted herein.

#### **AFFIRMATIVE DEFENSES**

1. The First Amended Complaint must be dismissed for lack of personal jurisdiction;
2. The First Amended Complaint fails to state a claim upon which relief can be granted;
3. Plaintiff's claims are barred by limitations;
4. Plaintiff's claims are barred by laches;
5. Plaintiff's claims are barred by waiver;
6. Plaintiff's claims are barred by estoppel;
7. Plaintiff's trademark rights, if any, have been abandoned;
8. Plaintiff's claims are barred by the doctrine of unclean hands; and
9. The First Amended Complaint must be dismissed because of defective service.

WHEREFORE, having fully answered, Defendant NameMedia, Inc. prays that the First Amended Complaint be dismissed, for its costs, including its attorney fees, and all other proper relief.

### **COUNTERCLAIM**

NameMedia for its Counterclaim against Plaintiff and Counterdefendant, states:

#### **I. PARTIES**

1. NameMedia is a Delaware corporation with its principal place of business in Waltham, Massachusetts.
2. Counterdefendant is a natural person residing in Washington County, Arkansas.

#### **II. JURISDICTION and VENUE**

3. The Court has original subject matter jurisdiction of this civil action under 28 U.S.C. §§ 1331, 1338 and 1367, in that this is a civil action involving claims arising under the laws of the United States, including an Act of Congress relating to trademarks, and wherein all other claims are so related to claims within the Court's original jurisdiction that they form part of the same case or controversy.
4. Venue is proper in this Court under 28 U.S.C. § 1391, in that Counterdefendant resides in this judicial district and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this judicial district.

#### **III. FACTS**

5. To identify the source, origin and sponsorship of its goods and services, and to distinguish those goods and services from those offered and sold by others, NameMedia has extensively used the trademark NAMEMEDIA.

6. NameMedia has continuously used the trademark NAMEMEDIA in interstate commerce in connection with the promotion and sale of the services and products it offers, since at least June 30, 2006.

7. NameMedia obtained a federal registration for the trademark NAMEMEDIA with the United States Patent and Trademark Office. *See* Ex. A.

8. The NAMEMEDIA trademark was distinctive prior to Plaintiff's registration and use of a confusingly domain name.

9. Plaintiff obtained registration of the domain name namemedias.com. *See* Ex. B.

10. The domain name namemedias.com is identical or confusingly similar to the NAMEMEDIA trademark.

11. Plaintiff selected this domain name in an attempt to capture consumers wishing to find NameMedia at the domain name namemedia.com. *Id.*

12. Plaintiff stated his bad faith intent in operating this website: "I hope the namemedias.com domain causes [NameMedia] as much distress as possible." *Id.*

13. Plaintiff's website contains numerous negative statements regarding NameMedia.

14. Plaintiff directly requests and accepts donations from this website. *See id.*

15. Plaintiff's conduct is known as typosquatting and is actionable under 15 U.S.C. § 1125(d).

#### **VIOLATION OF 15 U.S.C. § 1125(d)**

16. NameMedia realleges paragraphs 1 – 15.

17. NameMedia is the owner of the NAMEMEDIA trademark.

18. Plaintiff had a bad faith intent to profit from the NAMEMEDIA trademark.

19. Plaintiff registered a domain name that is identical or confusingly similar to the NAMEMEDIA trademark.

20. The NAMEMEDIA trademark was distinctive at the time Plaintiff registered the offending domain.

21. NameMedia elects to recover statutory damages pursuant to 15 U.S.C. § 1117(d).

WHEREFORE, NameMedia prays the following relief:

- (a) A permanent injunction under 15 U.S.C. § 1116 to prevent future violations of 15 U.S.C. § 1125(d);
- (b) Statutory damages in the amount of \$100,000.00 pursuant to 15 U.S.C. § 1117(d);
- (c) An award of reasonable attorney's fees and expenses, pursuant to 15 U.S.C. § 1117(a);
- (d) Pre-judgment and post-judgment interest; and
- (e) All other proper relief.

Respectfully submitted,

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By: /s/ H. William Allen  
H. William Allen

By: /s/ Kevin M. Lemley  
Kevin M. Lemley

Attorneys for Defendant and Counterclaimant  
NameMedia, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of December, 2009, I mailed a copy of the foregoing Answer to First Amended Complaint and Counterclaim to the following *pro se* plaintiff:

Mr. Curtis J. Neeley, Jr.  
2619 N. Quality Lane, Apt. 123  
Fayetteville, AR 72703

/s/ Kevin M. Lemley  
Kevin M. Lemley



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## Trademarks &gt; Trademark Electronic Search System (TESS)

TESS was last updated on Fri Dec 4 03:59:36 EST 2009

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	BOTTOM	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

Please logout when you are done to release system resources allocated for you.

List At: 

OR

to record: **Record 2 out of 2***( Use the "Back" button of the Internet Browser to return to TESS)*

# NAMEMEDIA

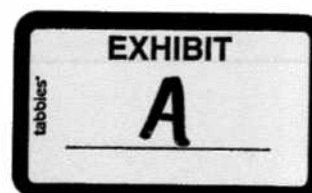
**Word Mark****NAMEMEDIA****Goods and Services**

IC 035. US 100 101 102. G & S: Dissemination of advertising for others on a global computer network; brokerage in the field of Internet domain names, namely, matching buyers and sellers of Internet domain names; providing on-line directory information services regarding a wide variety of subjects, also featuring hyperlinks to other web sites; on-line advertising and marketing services, namely, direct online marketing for the purpose of acquiring customers for others via global computer networks' and services relating to the analysis, evaluation, creation and brand establishment of domain names. FIRST USE: 20060630. FIRST USE IN COMMERCE: 20060630

IC 042. US 100 101. G & S: Computer services, namely, hosting of web sites for others; web site development for others; computer services, namely, developing and hosting Internet portals featuring a wide array of information and advertising content. FIRST USE: 20060630. FIRST USE IN COMMERCE: 20060630

**Standard Characters Claimed****Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Serial Number** 78859683**Filing Date** April 12, 2006**Current Filing Basis** 1A**Original Filing Basis** 1B



**Published for  
Opposition** September 4, 2007

**Registration  
Number** 3568651

**Registration  
Date** January 27, 2009

**Owner** (REGISTRANT) IGUIDE, INC. CORPORATION MASSACHUSETTS 230 Third Avenue Waltham  
MASSACHUSETTS 02451

(LAST LISTED OWNER) NAMEMEDIA, INC. CORPORATION DELAWARE 230 THIRD AVENUE  
WALTHAM MASSACHUSETTS 02451

**Assignment  
Recorded** ASSIGNMENT RECORDED

**Attorney of  
Record** John L. Welch

**Type of Mark** SERVICE MARK

**Register** PRINCIPAL

**Live/Dead  
Indicator** LIVE

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TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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# CurtisNeeley.com

If you were searching for NameMedia's corporate website you should not type the "s" on the end. Type it correctly yourself! They have a history of cybersquatting on domains involving TMs. I hope the NameMedias.com domain causes them as much distress as possible. NameMedia once cybersquatted Cargills.com but lost the name in a tribunal. Read their arguments supporting their cybersquatting of a plural or possessive trademark. **Before a TRIBEnal HERE.**

*Cargill Inc.* once argued that it had a legitimate interest in <cargills.com>, which NameMedia was cybersquatting, because the domain name was comprised of no more than the plural or possessive form of their TM.

However, the question in assessing bad faith is whether the formation of a plural or possessive form of the mark which under some circumstances could be legitimate becomes illegitimate when its use creates a likelihood of confusion with the Complainant's trademark. Applying the principle – it is the use to which the name is put and the Cargill revealed that the Respondent NameMedia Inc. did not operate the domain name as a vanity e-mail or other service but used it to display third-party click-through links, including advertisements for Complainant's business competitors.

## Nothing is for sale here!

Justice should **never** be for sale!

Want to **DISMISS** this \*disclaimer\* and view ONLY the information relative to **NameMedia's** cybersquatting click **DISMISS**.

If you want to see the NameMedia Inc. website type in NameMedia and then a period and com.

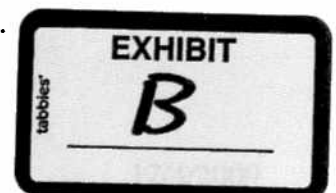
And yes, Mr Zilinek, I realize I am making a Federal Case out of this!

***Neeley v. NameMedia, Inc. - 5:2009cv05151 -***  
**Justia Federal**

## NameMedia's malicious cybersquatting.

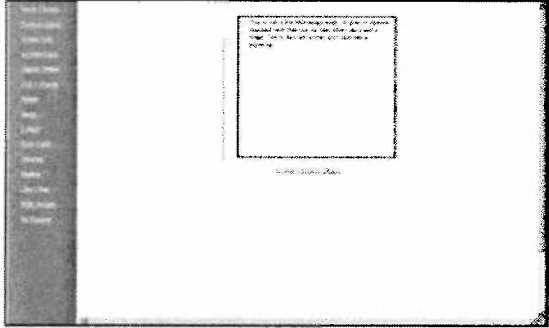


Donations are appreciated and will be used to offset the expenses involved with

ending NameMedia's malicious cybersquatting.



\$ Donation  
\$ 1.00 \$\$  
\$

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004,  
2005, 2006, 2007 2008, 2009

<p><b>1997</b>  <u>Eartheye Dec 22</u></p>		<p>The Internet Archive v Eartheye was archived  It had been around for  Curtis Neeley had just Images doing internati  photography business  like Wal-Mart</p>
<p><b>1998</b>  <u>Eartheye Dec 5</u></p>		<p>Curtis redid Eartheye v commercial photograp  particularly difficult tim  because of a divorce.</p>
<p><b>1999</b>  <u>Eartheye Apr 23, 1999</u></p>		<p>The Eartheye site was during this time as Cur a battle and moved his studio Here you see Cu incorporating his fine a Eartheye with a <u>warnir</u> looks back at these <u>nuc</u> much erotica by himse development as an arti</p>
<p><b>1999</b>  <u>Eartheye</u></p>		

I am very angry and want to punish the people who I found responsible for my domain with a prison term. Money will only mitigate this and help me build a foundation for my legacy.

My domains were active for six years or more. It is recorded in the Internet back a dozen years or 1997! See the time line above.

NameMedia took MY trademarked domains! My consistent legacy was stolen by NameMedia! NameMedia kidnapped my domains and asked me for money for domains they licensed to Google because Network Solutions advertised.

When I could not pay what NameMedia said it was worth, they sold the domains that then started to use the domain to begin their business.

NameMedia cybersquatted both my domains AFTER BEING ASKED to return them to death!

I am suing and asking for a ....at least THIRTY MILLION DOLLAR

I am not wanting to look into a domain dispute **tribunal** like their attorney referred to using. They are very familiar with that **tribe**. The primary method for resolving disputes is simply another part of the problem.

The Supreme Court needs to finally clean up these underhanded domain kidnappers. I filed in the Western District of Arkansas United States Federal Lawsuit for my peers to decide! Grrr! Not a tribe!

I demand a JURY! Read the suit as initially filed or after Google and I have added.

Lawsuit

Amended Lawsuit

I am suing as a poor, legless, brain injured, and paralyzed, pauper! I

without paying. I was provisionally approved! I forgot to sign the thi  
injuries are a bother.

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YOU ARE MY COURT OF PUBLIC OPINION!

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