

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

CURTIS J. NEELEY JR.,	§	
	§	
PLAINTIFF	§	
	§	
VS.	§	CIVIL ACTION NO. 09-5151
	§	
NAMEMEDIA, INC., NETWORK SOLUTIONS, INC., GOOGLE INC.	§	
	§	
DEFENDANT	§	

**GOOGLE INC.’S REPLY BRIEF IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

Mr. Neeley’s Opposition to Google’s Motion for Summary Judgment offers no basis for this Court to deny that motion. Mr. Neeley fails to submit any evidence or argument that could salvage the undisputed factual and legal flaws in each of his claims. Indeed, he fails to submit any evidence *at all*. As set forth in Google’s opening motion and supporting evidence, summary judgment should thus be entered in Google’s favor.

A. Neeley’s Response Fails to Meet Proof with Proof

Mr. Neeley fails to controvert the undisputed facts set forth in Google’s motion and fails to set out specific facts demonstrating a genuine issue for trial.¹ Neeley’s material lack of evidence warrants judgment as a matter of law. Indeed, in *Philson v. Ark. Dep’t of Human Servs.*, this Court found that such lack of evidence warrants summary judgment, and in reaching

¹ In addition, pursuant to Local Rule 56.1 all material facts set forth in Google’s statement of undisputed facts [Dkt. No. 238] are uncontroverted, and therefore deemed admitted.

that conclusion the Court stated that “the non-moving party may not rest upon the mere allegations or denials of his pleadings” *Philson v. Ark. Dep’t of Human Servs.*, 2010 U.S. Dist. LEXIS 119852, at *16 (W.D. Ark. Nov. 10, 2010) (citing *Ghane v. West*, 148 F.3d 979, 981 (8th Cir. 1998); *Burst v. Adolph Coors Co.*, 650 F.2d 930, 932 (8th Cir. 1981)). In addition, the Court noted that “[w]here the unresolved issues are primarily legal rather than factual, summary judgment is particularly appropriate.” *Id.* (citing *Aucutt v. Six Flags Over Mid-America, Inc.*, 85 F.3d 1311, 1315 (8th Cir. 1996) (quoting *Crain v. Bd. of Police Comm’rs*, 920 F.2d 1402, 1405-06 (8th Cir. 1990))). The Court also noted that even a *pro se* plaintiff must allege more than broad conclusory statements in order to survive dismissal. *Id.* at *17. *See Dunavant v. Moore*, 907 F.2d 77, 80 (8th Cir. 1990); *Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985). Likewise, the absence of evidence supporting Neeley’s allegations warrants granting Google’s motion for summary judgment.

B. Neeley’s Conspiracy Claim Fails

As set forth in Google’s opening brief, Neeley’s conspiracy claim fails because there is no evidence that Google and NameMedia conspired to infringe any of Mr. Neeley’s imagined trademark rights. Moreover, there could not be any such evidence, as there was no relationship between the alleged conspirators until years after the alleged cybersquatting occurred.

In response, Neeley attempts to recast (again) his cybersquatting claims into some sort of unspecified continuing offense, while stating that he is “not aware of the dates being given to continuing actions” Opposition [Dkt. No. 242] at 2. But the cybersquatting act of which Neeley complains, and which he claims forms the underlying basis of his conspiracy claim, is unambiguously alleged to have occurred years before Google ever dealt with NameMedia at all.

As Neeley's prior filings assert as fact (again, without the slightest evidence), the alleged conspiracy is claimed to have occurred between July and September 2003. Dkt. No. 59 at ¶10.

Mr. Neeley's unsupported and ever-changing fantasies cannot substitute for fact, and cannot survive summary judgment. He imagines that he has trademark rights to the names "sleepspot" and "eartheye," but has no evidence of ever having used either in commerce, or having either sought or obtained trademark registrations for either. He imagines that NameMedia knew of those nonexistent rights and nonetheless "cybersquatted" by registering the domains with the requisite bad intent, but has no evidence of any such knowledge or intent. And he imagines that Google was a conspirator in that imagined effort, but has no evidence on that point either: the undisputed evidence is that no such conspiracy existed.

The *only* asserted basis for his claim against Google appears to be that the rightful owner of two domain names—NameMedia—displayed Google advertisements *on their own websites* beginning in 2006. Opposition [Dkt. No. 242] at 2 (alleged "evidence" for "a meeting of the minds" and overt acts as "The AdSense for Domains use for each" domain). But NameMedia was unquestionably free to do so, and Neeley offers no evidence or argument to the contrary. There is no showing of trademark rights, no showing of confusion, no showing of cybersquatting, and—most centrally as to Google—no showing of conspiracy.

C. Mr. Neeley's Outrage Claim Fails

As this Court has recently affirmed in denying Mr. Neeley's motion for preliminary injunction, the Communications Decency Act, 47 U.S.C. §230, preempts Mr. Neeley's state law claims. Dkt. No. 233. Mr. Neeley presents no evidence or caselaw to the contrary, instead merely quoting the caselaw establishing Google's immunity and then urging the Court to ignore

those cases as “irrelevant legal cases.” As set forth in Google’s opening brief, a claim of outrage based on indexing content created and posted by Mr. Neeley himself cannot survive preemption.²

D. Conclusion

Summary judgment cannot be forestalled by invective and speculation. Mr. Neeley has no evidence to support any of the wrongs he imagines, and the undisputed evidence is that no such wrongs occurred. As such, summary judgment should be entered in Google’s favor.

Respectfully submitted,

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² Mr. Neeley also again attempts to describe his outrage claim as arising under section 106A of the Copyright Act. But this Court has repeatedly dismissed Mr. Neeley’s attempts to state a copyright claim; there are no copyright claims remaining in this case.

CERTIFICATE OF SERVICE

I, Joshua R. Thane, hereby certify that on February 11, 2010, I electronically filed the foregoing GOOGLE INC.'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following list:

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and I hereby certify that I have mailed the document by the United States Postal Service to the following non-CM/ECF participants:

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