

**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

MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant NameMedia, Inc. (“NameMedia”), for its Motion for Partial Summary Judgment, states as follows:

1. There is no genuine issue of material fact as to Plaintiffs’ claims under the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. §1125(d) (the ACPA), and NameMedia is entitled to judgment as a matter of law on these claims;
2. Specifically, as to Plaintiff’s ACPA claims, Plaintiff has no evidence sufficient to create a genuine issue of fact as to whether NameMedia acted with a bad-faith intent to profit from any trademark owned by Neeley with regard to either eartheye.com or sleepspot.com; since the ACPA requires proof of a bad-faith intent to profit by the defendant from a trademark owned by the plaintiff, NameMedia is entitled to complete summary judgment on all of Plaintiff’s ACPA claims.
3. Additionally, as to sleepspot.com, as a matter of law the name “Sleep spot” is merely descriptive, and Plaintiff has no evidence of any secondary meaning attached to his use of “Sleep spot;” therefore as a matter of law “Sleep spot” as used by Plaintiff is not distinctive, and since

the ACPA requires any trademark to be distinctive in order to be entitled to protection, NameMedia is in any event entitled to summary judgment on Plaintiff's ACPA claim as to sleepspot.com;

4. Additionally, as to eartheye.com, the undisputed facts establish that Plaintiff has abandoned any trademark he may have once had in the name "Eartheye;" therefore Plaintiff has no current ownership of any trademark as to which the domain eartheye.com is identical or confusingly similar, and for this independent reason NameMedia is entitled to summary judgment on Plaintiff's ACPA claim as to eartheye.com.

5. Additionally, Plaintiff is entitled to at least partial summary judgment on Plaintiff's claim for damages on his ACPA claims; Plaintiff admitted he has suffered no actual damages as a result of any action taken by NameMedia with regard to the domains; therefore in any event NameMedia is entitled to complete summary judgment in the event Plaintiff elects actual damages on his ACPA claims, and a limitation as a matter of law to the statutory minimum of \$1,000 per violation in the event Plaintiff elects statutory damages.

6. The bases for this motion are more particularly set forth in a brief in support filed simultaneously herewith.

7. The Statement of Undisputed Material Facts is also being filed simultaneously herewith.

8. NameMedia intends to file a second motion for summary judgment as to all of Plaintiff's non-ACPA claims.

WHEREFORE, NameMedia requests that the requested summary judgment be granted, and for all other relief to which it may be entitled.

Respectfully submitted,

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

By: /s/ Brooks C. White
Brooks C. White

Attorneys for NameMedia, Inc.

CERTIFICATE OF SERVICE

I, Brooks C. White, hereby certify that on this 27th day of April, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following attorneys of record:

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I further certify that, on this 27th day of April, 2011, I mailed a copy of the foregoing to the following *pro se* plaintiff:

Mr. Curtis J. Neeley, Jr.
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/s/ Brooks C. White
Brooks C. White