

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

CURTIS J. NEELEY Jr., MFA

PLAINTIFF

VS.

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

**NAMEMEDIA, INC.
AND GOOGLE, INC.**

DEFENDANTS

FORMERLY UNDISPUTED FACTS ADMITTED AND/OR DENIED

Separate defendant NameMedia, Inc. (“NameMedia”), gave 53 *Allegedly* Undisputable Statements of Undisputed Material Facts In Support of the Motion for Partial Summary Judgment, or confessional and stated the following facts¹. The listing of any particular fact herein should not be construed as a belief the admission by NameMedia is sufficient rational that each fact must be undisputed in order for NameMedia to not be entitled to summary justice as can only be granted by a J U R Y. In order to emphasize the factuality of each allegation, they are each paired with an admission denial or a combination of the two as is noted in parenthesis and in **BOLD** text.

1. Plaintiff Curtis Neeley (“Neeley”) first registered the domain eartheye.com on April 17, 1997.

(1.ADMISSION) Plaintiff has no complete memories of 1997 but accepts the year as just before the Plaintiff’s first divorce.

2. NameMedia registered the domain eartheye.com on July 2, 2003.

(2.ADMISSION) Plaintiff has no complete memories of 2003 but accepts the date recorded in publicly accessible data.

¹ The listing of any particular fact herein should not be construed as a belief or admission by NameMedia that the fact must be undisputed in order for NameMedia to be entitled to the Plaintiff’s requested summary justice.

3. At the time it registered the domain eartheye.com on July 2, 2003, Neeley's registration had expired.

(3:ADMISSION) Plaintiff has no complete memories of 2003 but accepts the date recorded in publicly accessible data.

4. At the time it registered the domain eartheye.com on July 2, 2003, no one at NameMedia knew anything of Neeley's existence.

(4:JURY) No J U R Y will believe that NameMedia would market a premium domain without first checking the Internet Archive for a website history.

5. At the time it registered the domain eartheye.com on July 2, 2003, no one at NameMedia knew of any trademarks owned or claimed by Neeley.

(5:JURY) No J U R Y will believe that NameMedia would market a premium domain without first checking the Internet Archive for a website history.

6. At the time it registered the domain eartheye.com on July 2, 2003, no one at NameMedia knew of Neeley's past registration or use of the domain.

(6:JURY) No J U R Y will believe that NameMedia would market a premium domain without first checking the Internet Archive for a website history.

7. NameMedia first learned of Neeley's existence on or about November 29, 2007, when Neeley called NameMedia about the eartheye.com domain.

(7:D E N I E D) NameMedia would market a premium domain without first checking the Internet Archive for a website history.

8. The phone call from Neeley received by NameMedia on or about November 29, 2007 was the first communication of any kind that NameMedia had ever received from Neeley.

(8:JURY) No J U R Y will believe that NameMedia would market a premium domain without first checking the Internet Archive for a website history.

9. NameMedia had never communicated with or to Neeley prior to the phone call on or about November 29, 2007.

(9:D E N I E D) NameMedia would market a premium domain without first checking the Internet Archive for a website history.

10. When he called NameMedia on November 29, 2007, Neeley spoke to Ted Olson, a domain name consultant for NameMedia.

(10:D E N I E D) NameMedia would market a premium domain without first checking the Internet Archive for a website history.

11. In his phone conversation with Mr. Olson, Neeley asserted that he was the rightful owner of the domain name, but told Mr. Olson only that he was the prior registrant and owner of the domain and that his registration of the eartheye.com domain had expired while he was in a coma.

(11: D E N I E D) The severely brain injured Plaintiff believes he would remember speaking to Mr. Olson and has no memory of this alleged event.

12. In his phone conversation with Mr. Olson, Neeley made no mention of any trademarks he owned or claimed.

(12:D E N I E D) NameMedia would market a premium domain without first checking the Internet Archive for a website history.

13. Mr. Olson followed up this phone conversation with an email dated November 29, 2007.

(13:ADMISSION) Plaintiff has no complete memories of 2007 and accepts there is no way to prove conclusively that Mr. Olson exists at all.

14. At the time Mr. Olson wrote the November 29, 2007 email, he knew nothing of any trademarks owned or claimed by Neeley which he claimed to be violated by NameMedia with regard to the domain.

(14:ADMISSION) Plaintiff has no complete memories of 2007 and accepts there is no way to prove conclusively that Mr. Olson exists at all.

15. In the November 29, 2007 email, Mr. Olson requested that Neeley submit documentation substantiating his claim to eartheye.com to NameMedia's legal department.

(15:ADMISSION) Plaintiff has no complete memories of 2007 and accepts there is no way to prove conclusively that Mr. Olson exists at all.

16. Neeley never complied with Mr. Olson's request for documentation contained in the November 29, 2007 email.

(**16:ADMISSION**) Plaintiff has no complete memories of 2007 and accepts there is no way to prove conclusively that Mr. Olson exists at all.

17. At the time Mr. Olson sent the November 29, 2007 email, no one at NameMedia knew about any trademarks owned or claimed by Neeley.

(**17:ADMISSION**) Plaintiff has no complete memories of 2007 and accepts there is no way to prove conclusively that Mr. Olson ever was employed by NameMedia at all.

18. After the phone call on or about November 29, 2007, NameMedia received a communication from Neeley via email on January 26, 2009.

(**18:ADMISSION**)

19. On January 26, 2009, Neeley emailed NameMedia's advertising department in response to a mass-mailed advertisement email announcing a "Winter Sales Event" being held by NameMedia's advertising department.

(**19:ADMISSION**) Plaintiff has no complete memories of 2009 and believes there is also no way to prove conclusively this at all.

20. The mass-mailed advertisement email bore the name and email address of Jason Miner, Vice President of Sales for BuyDomains, the name of NameMedia's domain sales division, but was automatically generated to thousands of recipients in NameMedia's sales database. Neeley received the email because he had on February 7, 2008 registered with NameMedia via its online interface to receive information regarding the eartheye.com domain.

(**20:ADMISSION**) Plaintiff has no complete memories of 2009 and believes there is also no way to prove conclusively this at all.

21. At the time the mass-mailed advertisement email was sent, Jason Miner knew nothing of Neeley's existence.

(**21:ADMISSION**) Plaintiff has no complete memories of 2009 and believes there is also no way to prove conclusively this at all.

22. At the time the mass-mailed advertisement email was sent, Jason Miner knew nothing of any trademarks owned or claimed by Neeley.

(**22:ADMISSION**) Plaintiff has no complete memories of 2009 and believes

there is also no way to prove conclusively this at all.

23. At the time the mass-mailed advertisement email was sent, no one at NameMedia knew of any trademarks owned or claimed by Neeley.

(23:ADMISSION) Plaintiff has no complete memories of 2009 and believes there is also no way to prove conclusively this at all.

24. In his email dated January 26, 2009, Neeley set forth no assertion of fact except that his registration of eartheye.com expired while he was in a coma.

(24:ADMISSION) Plaintiff has no complete memories of 2009 and believes there is also no way to prove conclusively that his “coma” begun when his car accident occurred at all.

25. In his email dated January 26, 2009, Neeley made no mention of any trademark owned or claimed by him.

(25:DENIED) NameMedia would market a premium domain without first checking the Internet Archive for a website history.

26. On January 30, 2009, in response to Neeley’s January 26 email, Erik Zilinek sent a letter to Mr. Neeley setting forth the applicable law of cybersquatting under the ACPA, and stating that in evaluating Neeley’s claim that NameMedia would consider any evidence of any registration of an “eartheye” trademark by Neeley, or any evidence of a distinctive or famous “eartheye” mark owned by Neeley.

(26:Admitted) Is it admitted or denied when an honest man is forced to practice law.

27. On February 3, 2009, Neeley wrote an email to Mr. Zilinek.

(27:Admitted) Is it admitted or denied when an honest man is forced to practice law.

28. In the email, Mr. Neeley gave no information regarding any distinctive or famous trademark owned or claimed by him.

(28:Admitted) Is it admitted or denied when an honest man is forced to practice law.

29. In the email, Mr. Neeley made no mention of any goods or services as to which he was using a mark identical to or confusingly similar to either domain.

(29:DENIED) NameMedia would market a premium domain without first

checking the Internet Archive for a website history.

30. On February 13, 2009, Mr. Zilinek wrote a letter to Neeley stating NameMedia's position that according to the evidence before NameMedia, Neeley's claim to the domain was without merit.

(28:Admitinied) Is it admitted or denied when an honest man practices law.

31. Mr. Zilinek also stated that if Neeley wanted to negotiate a mutually agreeable price for the domain registration, he should contact NameMedia's sales team.

(31:Admitting) Here NameMedia admitted that an invitation to bid on a NameMedia owned item is actually an **O F F E R** from NameMedia.

32. NameMedia sold the eartheye.com domain on April 6, 2009 to a Florida company named "eartheye" which is in the business of, among other things, topography mapping and aerial photography, and which currently uses the domain to advertise its business.

(32:F A L S E) NameMedia sold the eartheye.com domain to EDATA or some similar company who then trademarked "eartheye" and rebranded themselves..

33. In selling the domain to the Florida company, NameMedia did not act with any intent to profit from any trademark owned or claimed by Neeley;

(33:F A L S E HOOD = CONFSSIONAL)

34. At no time has NameMedia taken any action with regard to the eartheye.com domain with the intent to profit from any trademark owned or claimed by Neeley.

(34:F A L S E HOOD = CONFSSIONAL)

35. At no time has NameMedia taken any action with regard to the eartheye.com domain with the bad faith intent to profit from any trademark owned or claimed by Neeley.

(35:F A L S E HOOD = CONFSSIONAL)

36. Neeley first registered sleepspot.com on July 30, 1099.

(36:F A L S E HOOD = CONFSSIONAL) July 30, 1099 predates NameMedia and Mr. Neeley by roughly 900 years. July 30, 1999 is reported elsewhere and is much more believable.

37. NameMedia registered sleepspot.com on October 15, 2003, at a time when Neeley's registration of the domain had expired.

(37:ADMISSION) The Plaintiff may or may not have been in a coma but had been declared an incompetent.

38. At the time it registered sleepspot.com, NameMedia knew nothing of Neeley, any trademarks of his, or his past registration or prior use of the domain.

(38:DENIED) NameMedia would market a premium domain without first checking the Internet Archive for a website history.

39. Neeley did not communicate with NameMedia with regard to the sleepspot.com domain until February 3, 2009, when he sent an email that date to Erik Zilinek.

(39:Admitted) Who knows.

40. In the February 3, 2009 email, the only content of the email related to sleepspot.com was the following statement: "I was the original registrant of <sleepspot.com> also. NameMedia now owns this also. Is this a coincidence?"

(40:Admitted) Who knows.

41. At no time has NameMedia taken any action with regard to the sleepspot.com domain with the intent to profit from any trademark owned or claimed by Neeley.

(41:DENIED) NameMedia would market a premium domain without first checking the Internet Archive for a website history.

42. At no time has NameMedia taken any action with regard to the sleepspot.com domain with the bad faith intent to profit from any trademark owned or claimed by Neeley.

(42:DENIED) NameMedia would market a premium domain without first checking the Internet Archive for a website history. Just search to see.

43. Neeley's only alleged use of "Sleep spot" is for an online hotel reservation service.

(43:ADMITTED)

44. In Neeley's own words, his use of the name "Sleep spot" was intended to convey the message that the service provided a "spot to sleep."

(44:ADMITTED)

45. As allegedly used by Neeley, the name "Sleep spot" is descriptive of the service which it was used to identify or advertise.

(45:ADMITTED)

46. As allegedly used by Neeley, the name "Sleep spot" has no secondary meaning.

(46:D E N I E D) SleepSpot.com will soon replace ALL online sources to book hotels instead of being an alias for Google.com.

47. Neeley is not currently using the name "eartheye" or any related name or logo in connection with the identification, marketing, or advertising of any goods or services.

(47:D E N I E D) Look online or in filed exhibits.

48. Neeley has no future plans to use the name "eartheye" in commerce in connection with the identification, marketing, or advertising of any goods or services.

(48:D E N I E D) Look online or in filed exhibits.

49. Neeley has abandoned any trademark rights he may have once had in "eartheye."

(49:D E N I E D) Look online or in filed exhibits.

50. Neeley has sustained no actual damages as a result of any action taken by NameMedia with regard to either eartheeye.com or sleepspot.com.

(50:D E N I E D) Look online or in exhibits for ("5:09-cv-05151")

51. NameMedia never approached Neeley in any manner about eartheeye.com prior to Neeley's approaching NameMedia about the domain.

(51:D E N I E D) Hogs bathe in mud and create hogwash also.

52. NameMedia never approached Neeley in any manner about sleepspot.com prior to Neeley's approaching NameMedia about the domain.

(52:D E N I E D) Hogs bathe in water and create hogwash also.

53. NameMedia never offered to sell either eartheye.com or sleepspot.com to Neeley.

(53:ADMITTED) Especially IF you do not consider an offer to bid on an auction for a domain name that is owned by NameMedia to not be an offer to buy the domain name from NameMedia. This is often caused by drinking too much improperly filtered hogwash while craving water.

Respectfully Submitted,

Curtis J. Neeley Jr., MFA