

**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.
and GOOGLE, INC.**

DEFENDANTS

**NAMEMEDIA’S REPLY TO PLAINTIFF’S RESPONSE
TO MOTION TO DISMISS COUNTERCLAIM**

Defendant NameMedia, Inc. (“NameMedia”), for its Reply to Plaintiff’s Response to Motion to Dismiss Counterclaim, states as follows:

“A decision whether to allow a party to voluntarily dismiss a case rests upon the sound discretion of the court.” *See Hamm v. Rhone-Poulenc Rorer Pharms.*, 187 F.3d 941, 950 (8th Cir. 1999), *citing Bodecker v. Local Union No. P-46*, 640 F.2d 182, 186 n.5 (8th Cir. 1981). “In exercising that discretion, a court should consider factors such as whether the party has presented a proper explanation for its desire to dismiss, (citation omitted); whether a dismissal would result in a waste of judicial time and effort(citation omitted); and whether a dismissal will prejudice the defendants (citation omitted). *Id.*

NameMedia wishes to dismiss its counterclaim without prejudice because it will likely decide not to pursue it in the event that the Court’s dismissal of Plaintiff’s claims is upheld on appeal. However, NameMedia wishes to reserve the right to assert the counterclaim in the event that any of Plaintiff’s claims are remanded back to this Court.

As to whether a dismissal would result in a waste of judicial time and effort, dismissing the counterclaim will do the exact opposite. Plaintiff has filed an improper interlocutory appeal which will have to be dismissed due to lack of appellate jurisdiction if the counterclaim is not dismissed.¹

Finally, Plaintiff cannot possibly demonstrate any prejudice he will suffer if the counterclaim is dismissed. Accordingly, his response fails to demonstrate prejudice and instead simply asks that the Court dismiss the counterclaim with prejudice instead of without prejudice.

For these reasons, the Court should grant NameMedia's motion to dismiss the counterclaim without prejudice.

¹ This improper appeal is the latest flagrant disregard of the rules of procedure by Mr. Neeley. Even if Mr. Neeley is granted the benefit of the doubt so that his misconduct is deemed to be the product of ignorance rather than defiance, he has exhibited no inclination to try and learn the proper procedures to follow and thus stop wasting the Courts' and the defendants' time and money. It is difficult, however, to give him the benefit of the doubt when he has on multiple occasions expressed his pleasure that the cost of defending this action has been, in Mr. Neeley's words, "punitive" to the defendants.

Respectfully submitted,

H. WILLIAM ALLEN (ABN 69001)
BROOKS C. WHITE (ABN 2000093)
ALLEN LAW FIRM, P.C.
212 Center Street, 9th Floor
Little Rock, AR 72201
(501) 374-7100
hwallen@allenlawfirmnpc.com
bcwhite@allenlawfirmnpc.com

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

Attorneys for Defendant and
Counterclaimant NameMedia, Inc.

CERTIFICATE OF SERVICE

I, Brooks C. White, hereby certify that on this 28th day of June, 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:

Michael H. Page
Durie Tangri, LLP
217 Leidesdorff Street
San Francisco, CA 94111
mpage@durietangri.com

Jennifer H. Doan
jdoan@haltomdoan.com
Joshua R. Thane
jthane@haltomdoan.com
Haltom & Doan
Crown Executive Center, Suite 100
6500 Summerhill Road
Texarkana, TX 75503

I further certify that, on this 28th day of June, 2011, I e-mailed a copy of the foregoing to the following *pro se* plaintiff:

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

/s/ Brooks C. White
Brooks C. White