

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS**

CURTIS J NEELEY JR, MFA

VS

CASE NO. _____

NameMedia, Inc.

COMPLAINT FOR CYBERSQUATTING AND
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Comes now Plaintiff, respectfully to this court and states for his complaint as will follow.

1. The Defendants created emotional distress to Plaintiff who is a Washington County, AR resident intentionally and after being made aware of the distress. The Defendants were aware, or should have been ware, that they were causing emotional distress to Plaintiff. Erik S. Zilinek, the Defendant's Intellectual Property Matters Manager, stated to the Plaintiff directly via email that the Defendants registered eartheye.com in 2003. Plaintiff was involved in a nearly fatal car wreck in 2002 and Defendant had been advised of this, or should have been advised by Mr Zilinek. They chose to inflict additional distress after being made aware that emotional damages were being caused to the disabled Plaintiff by their cybersquatting. The Plaintiff maintains in support of his claim that the Defendant registered the disputed domain names in bad faith, and used, or are using, the disputed domain names in bad faith in the following respects:

- (1) offering the domain name for sale at a price greatly in excess of any documented out-of-pocket costs directly associated with the domain name to the Plaintiff directly; and
- (2) using the disputed domain name intentionally to attract, for commercial gain, Internet users to the Defendant's websites by capitalizing on residual traffic. They did this by utilizing the Plaintiff's established domain and Plaintiffs existing links to the domain.
2. The domain, eartheye.com, was widely used in an identifying sense in relation to the Plaintiff's photographic art and commercial photography. They cybersquatted the Plaintiff's domains without concerns for the Plaintiff's trademark rights. They were aware of Plaintiffs trademarks, or should have been after measuring the residual traffic that only existed because of Plaintiff's prior use of the domains in commerce.. Evidence will demonstrate the defendants actions to be a malicious and intentional. The Defendant's malicious actions are contrary to United States law and particularly US 15. 1125.
 3. The Defendant registered and used, or were using, the disputed domain names in bad faith. The Defendant has no rights or legitimate interests with respect to the domain names. The domain names were registered and are, or were being, used in bad faith, as evidence will prove.
 4. Mr. Erik S. Zilinek was once Defendant's Intellectual Property Matters Manager and communicated directly with Plaintiff regarding eartheye.com and was aware of his disability, distress, and desire for the domain.
 5. The Defendant offers some of the domain names it acquires for sale through BuyDomains.com. Numerous circumstances will demonstrate the Plaintiff's trademarked domain name was registered or acquired primarily for the purpose of

selling, renting, or otherwise transferring the domain name registration to the plaintiff or another for consideration in excess of the domain name registrant's out-of-pocket costs.

This creates a situation prohibited by USC15 § 1125.

6. The Defendant registered the trademarked domain in order to prevent the Plaintiff from reflecting the mark in a corresponding domain name and the Defendant has engaged in a pattern of such conduct as will be shown in evidence. They measured the residual traffic and utilized the Plaintiff's use of the trademark to establish it as what Defendants call a "premium domain".
7. The Defendant intentionally attempted to attract, for financial gain, Internet users to the website by exploiting traffic based on the Plaintiff 's prior use of the domain name and reputation. This was known to cause emotional distress to the Plaintiff, or should have required only common sense to recognize, as the jury will find.
8. Plaintiff contends that the Defendant never had any legitimate interest in the disputed domain names eartheye.com or sleepspot.com. Evidence will show the Defendant is in the business of selling domain names and has been involved in other arbitrations that often have resulted in adverse panel rulings terminating and transferring domain name registrations. The Defendant have an established pattern of registering domain names that contain others' marks "purely with the intent of selling such domains for profit". The Defendant regularly use the disputed domain names to link to services for which Defendant received "pay-per-click" commissions. The Defendant never made a fair or legitimate use of the domain names and "registered them with the intent to sell it for profit". Defendant has an established pattern of not using domain names in connection

with a bona fide offering of goods or services and should be made an example with exemplary and punitive damages.

- 9.** The sole diversion of Internet traffic by the Defendant to other websites does not represent a use of the domain names in connection with a bona fide offering of goods or services. The prior and current conduct of Defendant creates emotional distress for the Plaintiff and this was done intentionally.
- 10.** Defendant never had a legitimate interest to justify their use of disputed domains.
- 11.** On various previous occasions, as can be seen demonstrated in evidence the Defendant's placeholder websites indicated, the domain names were for sale. This is complimentary evidence of bad faith on the part of the Defendant. The absence of use of the domain name in connection with a bona fide offering of goods and services and the absence of any relevant permission from Plaintiff proves that the Defendant have no rights or legitimate interest in respect to use of the domain names.
- 12.** Defendant communicated that in 2003 NameMedia acquired eartheye.com at an expiry auction in good faith and without notice of any competing claims when the previous registration lapsed. Plaintiff was incapacitated by post-comatose amnesia and unaware the eartheye.com registration had expired. Plaintiff had trademarked domain for over a decade as will be shown in evidence, In an additional insult to this injury, an employee of the Defendant directly contacted Plaintiff and offered the domain to Plaintiff directly in an email several times. Plaintiff received the first such insult while in a hospital and as an incompetent.

13. NameMedia is a huge company with millions of dollars. Their being required to relinquish the domains would not be an adequate remedy and is a common occurrence that they consider trivial. The Plaintiff will have emotional scars that might never fully heal. A trivial remedy would only compound the Plaintiff's distress.

14. Plaintiff prays that the court will value his emotional damages for losing the ability to have a consistent legacy with the website eartheye.com to be in excess of ten million dollars. The Defendant's intentional malicious actions compounded the emotional distress the Plaintiff felt. These emotional damages were done with Defendant's full knowledge of Plaintiff's disability and prior use of the trademarks.

WHEREAS premises herein considered as supported by witnesses and evidence presented in trial, Curtis J. Neeley, Jr. respectfully requests that this court enter an order granting rights to Plaintiff's trademarked domain names. Curtis J. Neeley, Jr. respectfully requests the court additionally award statutory, exemplary, and punitive damages of a minimum of ten million dollars.

Respectfully Submitted,
