

**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**

**DECLARATION OF ERIK S. ZILINEK**

I, Erik S. Zilinek, state and declare as follows:

1. I have been Associate General Counsel to Defendant NameMedia, Inc. since January 2010.
2. At all times relevant herein I was Legal Counsel to Defendant NameMedia, Inc.
3. In my position as Legal Counsel, I first became aware in January 2009 that Plaintiff Curtis Neeley claimed a right to the domain eartheye.com when he sent a reply email to an email marketing message from Jason Miner making a claim of ownership which was soon thereafter brought to my attention.
4. Upon further investigation, I learned that Mr. Neeley had previously interacted with Ted Olson in November 2007.
5. Prior to Mr. Neeley's January 2009 contact with NameMedia, I had no knowledge of Mr. Neeley's existence, the existence of any trademark owned or used by him, or any past use made by him of the domains eartheye.com and sleepspot.com.
6. To the best of my information, knowledge, and belief, the November 2007 phone call was the first time that Neeley ever contacted NameMedia about the eartheye.com domain, or anything else, for that matter; therefore, to the best of my information, knowledge, and belief, no



one at NameMedia had any knowledge prior to the November 2007 phone call of Mr. Neeley's existence, or the existence of any trademark owned or used by him, or any past use made by him of the domains eartheye.com and sleepspot.com.

7. To the best of my information, knowledge, and belief, Neeley communicated with no one at NameMedia in any manner whatsoever regarding the sleepspot.com domain prior to an email which he sent to me on February 3, 2009. A true and correct copy of this email appears as Exhibit "N" to the Brief in Support of Motion for Summary Judgment.

8. In response to Neeley's claim of right to the domain eartheye.com, Ted Olson, a Domain Name Consultant in NameMedia's advertising division, sent him an email dated November 29, 2007 requesting that Mr. Neeley submit documents supporting his claim to NameMedia's legal department. A true and correct copy of that email appears as Exhibit "H" to the Brief in Support of Motion for Summary Judgment.

9. NameMedia's legal department never received any documentation from Neeley substantiating his claim of right to eartheye.com.

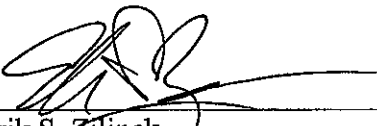
10. On or about January 26, 2009, I was made aware that Mr. Neeley had emailed a response to a mass-mailed advertisement email sent from NameMedia's advertising division announcing a "Winter Sales Event." A true and correct copy of the mass-mailed advertisement email and Mr. Neeley's response appears as Exhibit "D" to the Brief in Support of Motion for Summary Judgment.

11. After reviewing this email, I wrote a letter to Mr. Neeley on January 30, 2009 stating that NameMedia's use of the eartheye.com domain was legitimate and proper and in no way impinged on Mr. Neeley's rights; in this letter I also stated that if Mr. Neeley would like to negotiate the sale of the domain further, to please contact NameMedia's sales team at

BuyDomains.com. A true and correct copy of this letter appears as Exhibit "M" to the Brief in Support of Motion for Summary Judgment.

12. On February 13, 2009, I wrote a second letter to Mr. Neeley reiterating our position. A true and correct copy of this letter appears as Exhibit "O" to the Brief in Support of Motion for Summary Judgment.

13. 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.

  
Erik S. Zilinek