

**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.;

NETWORK SOLUTIONS, INC.;

and GOOGLE, INC.

DEFENDANTS

OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff Curtis J. Neeley Jr. MFA (“Neeley”), for his Motion for Partial Summary Justice, states as follows:

1. There have never been any genuine issues 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 justice as a matter of law on these claims as well as the 17 U.S.C. § 106A claims the Plaintiff believed were brought but never properly recognized;
2. Specifically, as to Plaintiff’s ACPA claims, no evidence remains that is insufficient 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 justice on all of Plaintiff’s ACPA and VARA claims.
3. Additionally, as to sleepspot.com, as a **matter of law** the name “Sleep spot” is currently merely descriptive, and Plaintiff has no evidence of any secondary meaning already attached to his use of “Sleep spot;” therefore as a matter of law “Sleep spot” as used by Plaintiff is not-yet distinctive, and since the ACPA requires any trademark to be distinctive in order to be entitled to protection, therefore, NameMedia is in any event entitled to summary justice on the Plaintiff’s ACPA claim as to sleepspot.com;

4. Additionally, as to eartheye.com, the disputed undisputed facts establish that Plaintiff will never abandoned any trademark he may have once had in the name "Eartheye;" therefore, the Plaintiff has current ownership of a common law trademark as to which the domain eartheye.com is identical or confusingly similar, and for this independent reason NameMedia is entitled to summary justice on Plaintiff's ACPA claim as to eartheye.com.
5. Additionally, Plaintiff is entitled to at least partial summary justice on Plaintiff's claim for damages on the 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 summary justice in the event Plaintiff elects damages on his ACPA claims, and a limitation as a matter of law to the punitive minimum of \$1 per violation in the event Plaintiff elects to recover damages.
6. The bases for this motion are more particularly set forth in a brief in support filed simultaneously herewith.
7. The Formerly Undisputed 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 and should be ordered not to.

WHEREFORE, NameMedia requested that the Plaintiff's requested summary "justice" be granted, and the severely brain damaged, pro se Plaintiff prays for all other relief to which Curtis J. Neeley Jr. MFA may be entitled and especially that relief granted by prayers for grace sufficient to withstand all allowed temptations sent by humanity as is generally described in James chapter one in the Bible as well as statutorily in I Corinthians 10:13. This reveals the FCC or the ("Federal Communications Commission") is the O N L Y party who could have prevented this litigation if not malfeasant.

Respectfully Submitted,

Curtis J. Neeley Jr. MFA