

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

CURTIS J. NEELEY JR.,	§	
	§	
PLAINTIFF	§	
	§	
VS.	§	CIVIL ACTION NO. 09-5151
	§	
NAMEMEDIA, INC., NETWORK SOLUTIONS, INC., GOOGLE INC.	§	
	§	
DEFENDANT	§	

GOOGLE INC.'S OPPOSITION TO RULE 59 MOTION FOR NEW TRIAL

Google Inc. opposes Mr. Neeley's Rule 59 Motion for New Trial [Dkt. No. 270]. A motion for a new trial under Federal Rule of Civil Procedure 59 cannot be made before trial and judgment, neither of which has occurred in this matter. *See* FED. R. CIV. P. 59(a) & (e). Although all claims against Google Inc. and NameMedia, Inc. were disposed of by the Court's June 7, 2011 summary judgment ruling [Dkt. No. 268], counterclaims by NameMedia, Inc. against Mr. Neeley remain, and no judgment can be entered until those claims are tried or otherwise resolved. In addition, granting a new trial is appropriate only when the verdict is against the weight of the evidence and allowing the verdict to stand would result in a miscarriage of justice. *Golden Harvest, Inc. v. Davis*, Civ. No. 4:07-cv-04096, 2009 U.S. Dist. LEXIS 64870, at * 3 (W.D. Ark. July 7, 2009) (citations omitted). Such is not the case in this matter. Simply put, because there has been no first trial, or entry of judgment, which would result in a miscarriage of justice, Mr. Neeley's motion for a new trial should be denied.

Google therefore opposes Mr. Neeley's latest motion.

Respectfully submitted,

/s/ Joshua R. Thane
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**ATTORNEYS FOR DEFENDANT
GOOGLE INC.**

CERTIFICATE OF SERVICE

I, Joshua R. Thane, hereby certify that on June 20, 2011, I electronically filed the foregoing GOOGLE INC.'S OPPOSITION TO RULE 59 MOTION FOR A NEW TRIAL with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following list:

H. William Allen
Brooks White
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212 Center Street
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and I hereby certify that I have mailed the document by the United States Postal Service to the following non-CM/ECF participants:

Curtis J. Neeley, Jr.
2619 N. Quality Lane
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/s/ Joshua R. Thane
Joshua R. Thane