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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RIGHTHAVEN LLC,
Plaintiff,
v.
RICK ALLEC, *et al.*,
Defendants.

Case No. 2:11-CV-00532-KJD-CWH

ORDER

Presently before the Court is Defendant Rick Allec’s Motion to Dismiss Amended Complaint (#14). Plaintiff filed a response in opposition (#16) to which Defendant replied (#18).

I. Background

This dispute arises out of Defendants’ alleged copyright infringing conduct. Beginning November 10, 2010, and ending March 22, 2011, Defendants displayed copyrighted works on the website: <<http://www.therxforum.com/>>. Righthaven alleges that approximately twenty-five copyrighted works (“the Works”) were displayed on Defendants’ website. Righthaven claims that these Works infringe upon its alleged copyright in the articles.

1 Righthaven's claim, now commonplace, has been scrutinized by this Court and other courts
2 in this district on several previous occasions.¹ The basis for Righthaven's claim is the alleged
3 assignment of a copyright from Stevo Design – the alleged original owner of the Works – on May 25,
4 2010. This assignment from Stevo Design mirrored the assignment that Righthaven had allegedly
5 received in other cases involving Stephens Media.

6 In June 2011, Judge Hunt in Righthaven, LLC v. Democratic Underground, LLC, 791 F.
7 Supp. 2d 968, 971 (D. Nev. 2011), ordered the contents of a previously unrevealed agreement
8 between Righthaven and Stephens Media, known as the Strategic Alliance Agreement (“SAA”), to
9 be made public. The SAA, executed on January 18, 2010, governs assignments of future copyrights
10 from Stephens Media to Righthaven. This Court and others dismissed Righthaven lawsuits for lack
11 of standing at the time the complaint was filed. On June 20, 2011, Defendant Allec filed a motion to
12 dismiss the Complaint (#1) for lack of standing.

13 On July 11, 2011, Stevo Design and Righthaven entered into a Clarification and Amendment
14 Agreement which attempted to further clarify the intent of the Agreements and Righthavens standing
15 to sue for past infringement. Plaintiff then filed the present Amended Complaint (#13). Defendant
16 again filed a motion to dismiss the amended complaint for lack of standing asserting that the
17 Clarification and Amendments do not cure the jurisdictional defects.

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21 ¹ The facts of this case are unremarkable and the issues the same as a myriad of other cases
22 initiated by Righthaven. See Righthaven, LLC v. Newsblaze, LLC, 2:11-CV-720-RCJ-GWF, —
23 F.Supp.2d —, 2011 WL 5373785 (D. Nev. Nov. 4, 2011); Righthaven, LLC v. Newman, 2:10-CV-
24 1762 JCM PAL, — F.Supp.2d —, 2011 WL 4762322 (D. Nev. Oct. 7, 2011); Righthaven, LLC v.
25 Hyatt, 2:10-CV-01736-KJD, — F. Supp. 2d —, 2011 WL 3652532 (D. Nev. Aug. 19, 2011);
26 Righthaven, LLC v. Pahrump Life, 2:10-CV-01575-JCM, — F.Supp.2d —, 2011 WL 7442981
(D. Nev. Aug. 12, 2011); Righthaven, LLC v. Pahrump Life, 2:10-CV-01575-JCM, — F.Supp.2d
—, 2011 WL 7442981 (D. Nev. Aug. 12, 2011); Righthaven, LLC v. Mostofi, 2:10-CV-1066-KJD-
GWF, — F.Supp.2d —, 2011 WL 2746315 (D. Nev. July 13, 2011); Righthaven, LLC v. DiBiase,
2:10-CV-01343-RLH, — F.Supp.2d —, 2011 WL 2473531 (D. Nev. June 22, 2011); Righthaven,
LLC v. Hoehn, 792 F. Supp. 2d 1138, 1147 (D. Nev. 2011).

1 II. Discussion

2 Recently this Court determined that Righthaven lacked standing to pursue copyright
3 infringement claims based on assignments made under the SAA because the SAA prevents
4 subsequent assignments from transferring “the exclusive rights necessary to maintain standing in a
5 copyright infringement action.”² Righthaven, LLC v. Hyatt, 2:10-CV-01736-KJD, — F.Supp.2d
6 —, 2011 WL 3652532 *5 (D. Nev. Aug. 19, 2011); Righthaven, LLC v. Mostofi, 2:10-CV-1066-
7 KJD-GWF, — F.Supp.2d —, 2011 WL 2746315 *5 (D. Nev. July 13, 2011). Because the issues
8 are the same, the reasoning in Hyatt and Mostofi on the issue of standing controls here. Similar to
9 Hyatt and Mostofi, Righthaven alleges that the Amendment and Clarification further clarify and
10 effectuate to the extent not already accomplished, what has at all times been the intent of the parties -
11 to transfer full ownership in copyright to Righthaven. However, the Amendment and Clarification
12 cannot create standing because “[t]he existence of federal jurisdiction ordinarily depends on the facts
13 *as they exist when the complaint was filed.*” Lujan v. Defenders of Wildlife, 504 U.S. 555, 571 n.4
14 (1992) (quoting Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 830 (1989)) (emphasis in
15 Lujan). Although a court may allow parties to amend defective allegations of jurisdiction, it may not
16 allow the parties to amend the facts themselves. Newman-Green, 490 U.S. at 830. Here, as the
17 Court stated in Mostofi and Hyatt, Righthaven and Stevo Design attempt to impermissibly amend the
18 facts to manufacture standing. Therefore, the Court will not consider the amended language of the
19 SAA or the Clarifications, but the actual assignment and language of the SAA as it existed at the

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22 ² Section 501(b) of the 1976 Copyright Act (“Act”) establishes who is legally authorized to
sue for infringement of a copyright:

23 The legal or beneficial owner of an exclusive right under a copyright is
24 entitled. . .to institute an action for an infringement of that particular right
committed while he or she is the owner of it.

25 17 U.S.C. § 501(b). Therefore, to be entitled to sue for copyright infringement, the plaintiff must
26 be the “legal or beneficial owner of an exclusive right under a copyright.” See Silvers v. Sony
Pictures Entm’t, Inc., 402 F.3d 881, 884 (9th Cir. 2005).

1 time the Complaint (#1) was filed.³ Because the SAA prevents Righthaven from obtaining any of the
2 exclusive rights necessary to maintain standing in a copyright infringement action, the Court finds
3 that Righthaven lacks standing in this case. Accordingly, the Court dismisses Righthaven's
4 complaint.

5 III. Conclusion

6 Accordingly, **IT IS HEREBY ORDERED** that Defendant Rick Allec's Motion to Dismiss
7 Amended Complaint (#14) is **GRANTED**;

8 **IT IS FURTHER ORDERED** that Plaintiff's Amended Complaint is **DISMISSED as to all**
9 **parties.**

10 DATED this 16th day of March 2012.

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14 Kent J. Dawson
15 United States District Judge

16 ³ The SAA expressly denies Righthaven any right from future assignments other than the
17 bare right to bring and profit from a copyright infringement action. This notion is clearly expressed
18 in Section 7.2 of the SAA:

18 7.2 Despite any such Copyright Assignment, Stephens Media shall retain
19 (and is hereby granted by Righthaven) an exclusive license to Exploit the
20 Stephens Media Assigned Copyrights for any lawful purpose whatsoever
21 and **Righthaven shall have no right or license to Exploit or**
22 **participate in the receipt of royalties from the Exploitation of the**
23 **Stephens Media Assigned Copyrights other than the right to**
24 **proceeds in association with a Recovery.** To the extent that Right
25 haven's [sic] maintenance of rights to pursue infringers of the Stephens
26 Media Assigned Copyrights in any manner would be deemed to diminish
Stephens Media's right to Exploit the Stephens Media Assigned
Copyrights, Righthaven hereby grants an exclusive license to Stephens
Media to the greatest extent permitted by law so that Stephens Media
shall have **unfettered and exclusive** ability to Exploit the Stephens
Media Assigned Copyrights ...

It is clear from this section that Righthaven is prevented from obtaining, having, or otherwise
exercising any right other than the bare right to sue, which is expressly forbidden pursuant to
Silvers.