

EXHIBIT 4

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6

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA
9

10 RIGHTHAVEN LLC, a Nevada limited-
liability company,
11

12 Plaintiff,
13

14 v.

15 NATIONAL ORGANIZATION FOR THE
REFORM OF MARIJUANA LAWS, a
16 District of Columbia domestic nonprofit
corporation; MEDIA AWARENESS
17 PROJECT (MAP), INC., a Delaware non-
profit corporation,
18

19 Defendants.
20

Case No.: 2:10-cv-0351-LDG-PAL

**JOINT STIPULATION AND ORDER TO
EXTEND TIME FOR PLAINTIFF TO
OPPOSE DEFENDANT'S MOTION TO
DISMISS FOR LACK OF SUBJECT
MATTER JURISDICTION AND LACK
OF PERSONAL JURISDICTION AND TO
WITHDRAW THE CONTEST OF LACK
OF SUBJECT MATTER JURISDICTION
FROM DEFENDANT'S MOTION**

21 Righthaven LLC ("Righthaven") and the National Organization for the Reform of
22 Marijuana Laws ("NORML"), by and through their attorneys of record, hereby stipulate to
23 extend the time for Righthaven to oppose NORML's Motion to Dismiss for Lack of Subject
24 Matter Jurisdiction and Lack of Personal Jurisdiction ("NORML's Motion;" Docket No. 12)
25 until Wednesday, June 2, 2010.

26 Righthaven and NORML also hereby stipulate that the provisions of NORML's Motion
27 contesting the absence of subject matter jurisdiction and Righthaven's standing before this Court
28 are hereby withdrawn, without prejudice, including the section of NORML's Motion

1 commencing on page six (6), line seven (7), through page seven (7), line twelve (12). The
2 provisions in NORML's Motion regarding lack of personal jurisdiction shall remain at issue
3 before this Court and the docketed dates, amended by this stipulation, will remain unchanged as
4 well. This stipulation has been made in good faith and not for the purpose of delay.

5
6 DATED this twentieth day of May, 2010.

7
8 IT IS SO ORDERED.

9
10
11 _____
12 UNITED STATES DISTRICT JUDGE

13 Dated: _____
14
15

16 Submitted by:

17 RIGHTHAVEN LLC

18 WATSON ROUNDS

19 /s/ J. Charles Coons
20 J. Charles Coons, Esq.
21 9960 West Cheyenne Avenue, Suite 210
22 Las Vegas, Nevada 89129-7701

23 /s/ Cassandra P. Joseph
24 Cassandra P. Joseph, Esq.
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26 Reno, NV 89511

27 Attorney for Plaintiff

28 Attorney for Defendant

EXHIBIT 5

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5 Attorneys for Defendant
MAJORWAGER.COM, INC.

6
7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 RIGHTHAVEN, LLC, a Nevada limited liability
company,

11
12 Plaintiff,

13 vs.

14 MAJORWAGER.COM, INC., a Canadian
corporation,

15 Defendant.

Case No. 2:10-cv-00484-RCJ-LRL

**DEFENDANT'S REPLY IN SUPPORT
OF ITS MOTION TO DISMISS**

16 Defendant MAJORWAGER.COM, INC., ("MajorWager"), hereby submits its reply in
17 support of its motion to dismiss for failure to state a claim and lack of personal jurisdiction. This
18 reply is supported by the accompanying supplemental declarations of Russ Hawkins (the "Supp.
19 Hawkins Decl.") and Nikkya Williams (the "Williams Decl."), the exhibits attached thereto, and
20 any oral argument the Court may allow.

21 **PRELIMINARY STATEMENT**

22 It is not an exaggeration to say that this case borders on being frivolous. In fact, that has
23 been the consensus of the substantial media coverage given to the now 47 Righthaven lawsuits
24 currently pending before this Court. (*See, e.g.* Ex. 1 to Williams Decl.) (attaching articles). These
25 lawsuits are based upon the posting of Las Vegas Review-Journal ("RJ") articles on websites
26 often, as in this case, by third parties, to further their own personal interest in an online discussion
27 about a particular topic. Also in many cases, including this one, the allegedly infringing posts
28 either give credit to the RJ or link right back to it. In addition, most of these suits, again, including

1 In sum, the alleged infringement was technical and, because it only involved one
2 copyrighted work, *de minimis*, at best. The alleged infringement was not committed by
3 MajorWager, but rather, by a former employee who has not been associated with MajorWager for
4 years, and who acted independently to further his own personal interest in an ongoing online
5 dialog concerning sports and sports wagering. Because the RJ offered the article at issue for free,
6 encouraged visitors to its website to download or email the article to others for free, and because
7 the article continues to be available online from the RJ's own website for free, Plaintiff has
8 suffered no damages whatsoever.

9 As set forth more fully below, Plaintiff has failed to sufficiently allege a *prima facie* case
10 for the exercise of personal jurisdiction over MajorWager, a Canadian website operator that has
11 had no contacts with the State of Nevada. And, while teeming with outrage over a technical and,
12 at best, *de minimis* infringement that resulted in no damages, Plaintiff's opposition was not
13 supported by any sworn testimony or authenticated evidence. It fails to provide the facts the
14 Complaint is sorely missing. Rather, Plaintiff's opposition brief wastes pages upon pages
15 presenting bald assumptions, unsupported conclusions, and specious chains of false logic in an
16 attempt to convince the Court that personal jurisdiction exists over MajorWager. Plaintiff has also
17 failed to identify a single act of infringement that occurred in the United States and, therefore, fails
18 to state a claim upon which relief can be granted.¹

19 Under these circumstances the Court should not subject MajorWager to the substantial
20 burden and expense of jurisdictional discovery, but should instead dismiss this meritless suit
21 outright.

22 ///
23 ///
24 ///

25 _____
26 ¹ MajorWager does not contest, at this time, that Righthaven has standing to sue but must
27 point out that its motion to dismiss for lack of subject matter jurisdiction was entirely proper based
28 on the absence of facts pled in the Complaint. Defendant was well within its rights to bring this
deficiency to the Court's attention.

EXHIBIT 6

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

2010 JUN 24 P 3:52

CLERK OF DISTRICT COURT
DISTRICT OF NEVADA

RIGHTHAVEN LLC, a Nevada)
limited liability company,)
)
Plaintiff,)

BY _____ DEPUTY

Case No.: 2:10-cv-0794

) DEFENDANT'S MOTION TO
) DISMISS FOR LACK OF SUBJECT
) MATTER JURISDICTION AND
) LACK OF PERSONAL
) JURISDICTION

TUFF-N-UFF PRODUCTIONS, INC., a)
Nevada domestic corporation; and BARRY)
MEYER, an individual,)

Defendants.

Pursuant to Local Rule of Civil Practice 7-2, Defendant Tuff-N- Uff Productions, Inc. ("Tuff-N-Uff"), and Barry Meyer ("Meyer") appearing pro se, hereby moves this Court to Dismiss Plaintiff's Complaint for Lack of Subject Matter Jurisdiction.

Tuff-N-Uff submits this Memorandum of Points and Authorities in support of its Motion to Dismiss for Lack of Subject Matter Jurisdiction.

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Righthaven LLC alleges that Tuff-N-Uff and Meyer have infringed its copyright in a news article. Tuff-N-Uff and Meyer respectfully submit, however, that this Court lacks jurisdiction over the subject matter of this case because Righthaven LLC is without standing to prosecute the alleged infringement.

I. STATEMENT OF UNDISPUTED FACTS

broken arm heals,” at the time alleged infringement of those rights occurred. In fact, Righthaven may not even be the current owner of the copyrights in question. Accordingly, the Court is without discretion to adjudicate Righthaven’s claims against Tuff-N-Uff.

IV. ARGUMENT

A. The Court Lacks Subject Matter Jurisdiction in this Case.

1. Righthaven lacks standing to prosecute its claims of copyright infringement.

As a general rule, “[t]he legal or beneficial owner of an exclusive right under a copyright is entitled to bring actions for infringements of the right occurring *during the period of its ownership*.” *ABKCO Music, Inc. v. Harrisongs Music, Ltd.*, 944 F.2d 971, 980 (2d Cir. 1991) (quoting 17 U.S.C. section 501 (b)) (emphasis added); *Pye v. Mitchell*, 574 F.2d 476, 479 (9th Cir. 1978) (“Only the proprietor of statutory copyright at the time of acts of infringement is entitled to damages under 17 U.S.C. section 101.”). “Ownership of a copyright may be transferred in whole or in part by any means of conveyance,” and “[t]he owner of any particular exclusive right is entitled, to the extent of that right, to all the protection and remedies accorded to the copyright owner.” 17 U.S.C. sec. 201 (d) (1)-(2).

A plaintiff who fails to show ownership of a valid copyright at the time of infringement lacks standing to sue for any infringement that occurred prior to assignment of the copyright. *See Silvers v. Sony Pictures Entertainment, Inc.*, 402 F.3d 881, 885 (9th Cir. 2005) (outlining the requirements for standing to sue for copyright infringement). “Standing to assert a copyright claim is a jurisdictional requirement, and the Court must dismiss an action for lack of subject matter jurisdiction if it determines the plaintiff lacks

standing.” *Giddings v. Vision House Productions, Inc.*, 584 F. Supp.2d 1222, 1229 (D. Ariz.2008) (citing *Lewis v. Casey*, 518 U.S. 343, 349 n. 1 (1996)).

In this case, while Righthaven has adduced evidence that it is now the owner of a valid copyright in “Kowalski seeks rematch while broken arm heals,” that evidence shows that Righthaven is not the original owner, but rather an assignee of that copyright. (Pl.’s Compl. Ex. 4 (“Transfer: By written agreement.”).) Righthaven has failed, however, to show that it was the owner of the copyright in “-Kowalski seeks rematch while broken arm heals” when the alleged infringement occurred, and it has not submitted any proof whatsoever that it has *ever* owned the copyrights in “-Kowalski seeks rematch while broken arm heals” The copyright notice on each of these articles, as shown in Righthaven’s Exhibits 1, 2, 3, and 5, indicates that LVRJ was the copyright owner at the time the articles were made.. Under these circumstances- and absent more- the Court cannot satisfy itself that Righthaven has standing to prosecute its claim of copyright infringement against Tuff-N-Uff; nor can it, therefore, satisfy itself of subject matter jurisdiction.

Wherefore, Defendants requests that the motion to dismiss be granted and they be awarded fees and costs.

Respectfully submitted,

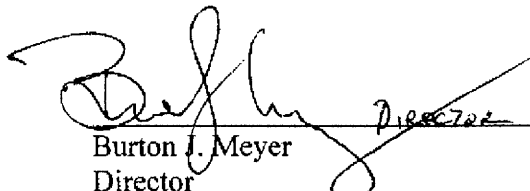

Burton J. Meyer
Director
Tuff-N-Uff, Inc.

EXHIBIT 7

EXHIBIT 7

Joe Chu

From: cmecf@nvd.uscourts.gov
Sent: Tuesday, August 31, 2010 3:26 PM
To: cmecfhelpdesk@nvd.uscourts.gov
Subject: Activity in Case 2:10-cv-00794-PMP-PAL Righthaven LLC v. Tuff-N-Uff Productions, Inc., et al. Order on Motion to Dismiss

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

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United States District Court

District of Nevada

Notice of Electronic Filing

The following transaction was entered on 8/31/2010 at 3:25 PM PDT and filed on 8/31/2010

Case Name: Righthaven LLC v. Tuff-N-Uff Productions, Inc., et al.

Case Number: 2:10-cv-00794-PMP-PAL

Filer:

Document Number: 19(No document attached)

Docket Text:

MINUTES OF PROCEEDINGS - Motion Hearing held on 8/31/2010 before Judge Philip M. Pro. Crtrm Administrator: Donna Andrews; Pla Counsel: Steven A. Gibson, John Charles Coons; Def Counsel: Barry Meyer, Pro Se, Also Present: Burton Meyer; Court Reporter/FTR #: Summer Rivera; Time of Hearing: 1:30 p.m.; Courtroom: 7C; RE: Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Lack of Personal Jurisdiction [10]; Defendant's Motion in Opposition to Default [12]; Defendant's Motion for Rule 16 Pretrial Conference [17]. The Court hears the representations of Mr. Gibson and Mr. Burton Meyer. IT IS ORDERED Defendant's Motion to Dismiss [10] is DENIED. IT IS FURTHER ORDERED the Clerk's Default entered as to Barry Meyer is set aside. After a brief recess by the parties to engage in settlement negotiations, Mr. Gibson advises the Court the parties have reached a settlement. The parties are instructed to file the Stipulation for Dismissal by 9/7/2010. In light of the settlement reached by the parties, IT IS FURTHER ORDERED the Defendant's Motion for Rule 16 Pretrial Conference is DENIED as moot. (Copies have been distributed pursuant to the NEF - DMA)

2:10-cv-00794-PMP-PAL Notice has been electronically mailed to:

Steven A. Gibson sgibson@gibsonlowry.com, jdubocq@gibsonlowry.com, lwilliams@gibsonlowry.com, rgibson@gibsonlowry.com

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jchu@righthaven.com, rgibson@righthaven.com, sganim@righthaven.com, sgibson@righthaven.com

Joseph C. Chu jchu@righthaven.com

2:10-cv-00794-PMP-PAL Notice has been delivered by other means to:

Barry Meyer
38883 Trinidad Circle
Palm Springs, CA 92264