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Stephens Media, LLC

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RIGHTHAVEN LLC, a Nevada limited-liability company,

Plaintiff,

v.

DEMOCRATIC UNDERGROUND, LLC, a District of Columbia limited-liability company; and DAVID ALLEN, an individual,

Defendants.

DEMOCRATIC UNDERGROUND, LLC, a District of Columbia limited-liability company,

Counterclaimant,

v.

RIGHTHAVEN LLC, a Nevada limited-liability company; and STEPHENS MEDIA LLC, a Nevada limited-liability company,

Counterdefendants.

Case No.: 2:10-cv-01356-RLH-GWF

COUNTER-DEFENDANT STEPHENS MEDIA LLC'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF THE COURT'S JUNE 14, 2011 ORDER [Dkt No. 116]



1 On June 28, 2011, Counter-Defendant Stephens Media LLC (“Stephens Media”) moved
2 to reconsider the Court’s June 14, 2011 Order in which His Honor denied Stephens Media’s
3 motion to dismiss the counterclaim filed by Defendant Democratic Underground, LLC (“DU”).
4 [Dkt. No. 126]. The basis for Stephens Media’s request for reconsideration is that it does not
5 own the copyright at issue in this action (the “Work”) and has only a non-exclusive license to
6 use the copyright, as set forth in the Clarification and Amendment to Strategic Alliance
7 Agreement (“Amendment”) executed with Righthaven, LLC (“Righthaven”) on May 9, 2011.
8 [Id. at 4; 10-14]. As a non-exclusive licensee, Stephens Media lacks standing to pursue an
9 infringement claim against Defendants. *Id.* at 7-9. Stephens Media, therefore, contends that
10 DU’s counterclaim seeking a declaration of non-infringement should be dismissed as to
11 Stephens Media since no genuine case or controversy exists between these parties. [Id].

14 While Stephens Media maintains that the Amendment was sufficient to confer standing
15 on Righthaven to pursue the instant action, Stephens Media and Righthaven recently amended
16 the Strategic Alliance Agreement once more to address concerns raised in *Righthaven LLC v.*
17 *Hoehn*, where the Court found that Righthaven lacked standing to sue under the Amendment.
18 [Dkt. No. 28, Case No. 2:11-cv-00050-PMP-RJJ (D.Nev.) (Pro, J.)]. A true and correct copy of
19 the Amended and Restated Strategic Alliance Agreement (“Amended and Restated SAA”)
20 executed by Stephens Media and Righthaven on July 7, 2011 is attached hereto as Exhibit 1.
21 Because Stephens Media does not gain any ownership interest in the subject copyrights and
22 remains a non-exclusive licensee under the Amended and Restated SAA, the arguments set forth
23 in the motion for reconsideration remain unaltered.

25 Nevertheless, Stephens Media wishes to make the Court aware of the Amended and
26 Restated SAA so that it has the most current information regarding the contractual relationship
27 between the parties. As explained in the supplemental memorandum [Dkt. No. 134] filed by
28



1 Righthaven on July 11, 2011 in support of its application to intervene, Righthaven provided
2 Defendants with a copy of the Amended and Restated SAA shortly after it was executed.
3 Defendants have indicated that they wish to address the Amended and Restated SAA in their
4 respective responses to Righthaven's application to intervene and Stephens Media's motion for
5 reconsideration. The parties have submitted a stipulated briefing schedule for the foregoing
6 motions to address this development. [Dkt. No. 135].
7

8 Dated this 13th day of July, 2011.

9 Respectfully submitted,

10 CAMPBELL & WILLIAMS

11 By /s/ J. Colby Williams

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing was served on the 13th day of July, 2011 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ J. Colby Williams
An employee of Campbell & Williams



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