

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Righthaven LLC,

Plaintiff,

v.

Dana Eiser,

Defendant.

Civil Action No. 2:10-CV-3075-RMG

**DEFENDANT’S MOTION
FOR SANCTIONS REGARDING
WEBSITE SEIZURE CLAIM**

The Defendant Dana Eiser hereby serves notice of an intention to move for sanctions by filing this motion at a proper time under Rule 11, Fed.R.Civ.P. The basis of the motion for sanctions is Paragraph 3 of the Prayer for Relief appearing in the Plaintiff’s Complaint. Paragraph 3 requests the Court “[d]irect GoDaddy.com, Inc., and any successor domain name registrar for the Doman, to lock the Domain and transfer control of the Domain to Righthaven[.]” Complaint, Prayer for Relief, ¶ 3.

There are two problems with this relief sought by Righthaven, each fatal and fundamental. The first problem is that GoDaddy.com, Inc. has not been made a party to this litigation and, therefore, would not be subject to any order entered providing this relief sought by Righthaven. The second problem is that this relief is plainly not available in this type of action.

The Plaintiff’s action is—by its own admission—solely an action for copyright infringement pursuant to 17 U.S.C. § 501. Complaint ¶ 1. The United States Code contains specific, explicit remedies for these types of cases. Such remedies are found in the succeeding sections of Title 17 Chapter 5 of the United States Code. No provision there—or anywhere else—allows a copyright infringement plaintiff to take control of a

defendant's website. Where Congress explicitly prescribes a set of specific remedies, other remedies are not available. This common sense result arises from an ancient and frequently-employed canon of statutory construction, inclusio unius est exclusio alterius. Simply put, if Congress had intended to authorize website seizures as remedies for copyright infringement, the law would reflect that intention. It does not.

Accordingly, this website-surrender relief sought by Righthaven is without any basis in law or fact, as a variety of commentators on Righthaven's questionable litigation practices have noted. Further, in papers filed in another action, Righthaven has even admitted the Copyright Act does not provide this relief: "Righthaven concedes that such relief [surrender of a defendant's website] is not authorized under the Copyright Act." Righthaven LLC's Opposition to Thomas A. DiBiase's Motion to Dismiss at 5, Righthaven LLC v. DiBiase, Case No. 2:10-cv-01343-RLH-PAL (D.Nev.).

In fact, Righthaven's sole reason for demanding control of defendant's websites is for leverage in settlement negotiations. Righthaven's business model depends upon leveraging monetary settlements from defendants unable to afford the cost of defending the lawsuit or unwilling to risk the uncertainty of litigation even given the frivolous nature of Righthaven's claims. The vast majority of Righthaven's targets are pro se and unaware that Righthaven's demand for website surrender is improper and wholly unsupported by law. Righthaven's reason for advancing this demand is to take advantage of the legal ignorance of unrepresented individuals so as to aid the Righthaven business model of leveraging cost-of-defense settlements in frivolous lawsuits.

Given the indefensible and legally unsupportable nature of Righthaven's demand for control of the Lowcountry 9/12 Project website, Defendant Eiser seeks an order

finding Righthaven in violation of Rule 11(b)(1-2), Fed.R.Civ.P. and establishing sanctions to include requirements as follows:

1. That Righthaven amend its Complaint in this action and all other actions in which Righthaven is a copyright infringement plaintiff to remove this improper website-surrender demand or otherwise file papers with each and every court in question waiving this demand.

2. That Righthaven refund all settlement funds received from defendants in copyright infringement cases where the improper website-surrender demand appeared in the Complaint and was not removed, dismissed, or stricken prior to settlement.

3. That despite the refund, Righthaven shall continue to be bound by any other terms of any such settlements. Such refund shall not be treated as—and is not—a rescission of any settlement agreement but a punitive measure imposed on Righthaven as a result of its improper litigation conduct.

3. That Righthaven never again assert the improper website-surrender demand in a copyright infringement case or any other case where such demand is improper.

4. That Righthaven pay Defendant's costs associated with asserting this motion, to include reasonable attorney's fees established by affidavit upon granting of the motion, and that such figure be trebled given the severity of Righthaven's conduct.

5. That all attorneys and law firms employed by Righthaven in cases where this improper website-surrender demand was made be held jointly and severally liable with regard to the requirements of this order including but not limited to the payment obligations within the order.

The undersigned certify that this motion is hereby served pursuant to Rules 5 and

11(c)(2), Fed.R.Civ.P., by mail on local counsel Edward Fenno at the address listed on the Complaint on the date below. This service shall constitute consultation, and should Plaintiff amend the Complaint to remove the claim for website surrender—or if a withdrawal of that claim is separately filed—this motion will not be filed or presented to the Court. In the event the Complaint is not satisfactorily amended or a satisfactory withdrawal of the website-surrender claim is not filed within 21 days after service of this motion or within another time set by the Court, the Defendant reserves the right to file this motion and seek the relief requested herein pursuant to Rule 11(c)(2), Fed.R.Civ.P.

s/J. Todd Kincannon
J. TODD KINCANNON, ID #10057
THE KINCANNON FIRM
1329 Richland Street
Columbia, South Carolina 29201
Office: 877.992.6878
Fax: 888.704.2010
Email: Todd@TheKincannonFirm.com

s/Bill Connor
BILL CONNOR, ID #9783
HORGER AND CONNOR LLC
160 Centre Street
Orangeburg, South Carolina 29115
Office: 803.531.1700
Fax: 803.531.0160
Email: bconnor@horgerlaw.com

s/Jared Q. Libet
JARED Q. LIBET, ID #9882
THE KINCANNON FIRM
1329 Richland Street
Columbia, South Carolina 29201
Office: 877.992.6878
Fax: 888.704.2010
Email: Jared@TheKincannonFirm.com

s/Thad T. Viers
THAD T. VIERS, ID #10509
COASTAL LAW LLC
1104 Oak Street
Myrtle Beach, South Carolina 29578
Office: 843.488.5000
Fax: 843.488.3701
Email: tviers@coastal-law.com

February 27, 2011

Attorneys for Defendant