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

10 RIGHTHAVEN LLC, a Nevada limited-
liability company,

11 Plaintiff,

12
13 v.

14 HERBALSCIENCE LIMITED, an entity of
unknown origin and nature; THE
15 HIMALAYA DRUG COMPANY, a Delaware
corporation; and NABEEL MANAL, an
16 individual,

17 Defendants.

Case No.: 2:10-cv-01432

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

18
19 Righthaven LLC (“Righthaven”) complains as follows against HerbalScience Limited
20 (“HerbalScience”), The Himalaya Drug Company (“Himalaya Drug”) and Nabeel Manal (“Mr.
21 Manal”; collectively with HerbalScience and Himalaya Drug known herein as the “Defendants”),
22 on information and belief:

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24 **NATURE OF ACTION**

25 1. This is an action for copyright infringement pursuant to 17 U.S.C. § 501.
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PARTIES

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2 2. Righthaven is, and has been at all times relevant to this lawsuit, a Nevada limited-
3 liability company with its principal place of business in Nevada.

4 3. Righthaven is, and has been at all times relevant to this lawsuit, in good standing
5 with the Nevada Secretary of State.

6 4. HerbalScience is, and has been at all times relevant to this lawsuit, an entity of
7 unknown origin and nature.

8 5. Attempts to find evidence of formal organizational status in the respective
9 Secretary of State offices of Delaware, California, Illinois, New York, Texas, Tennessee, and
10 Nevada demonstrate that, at least with respect to these states, HerbalScience is not a formally
11 organized business entity.

12 6. HerbalScience is, and has been at all times relevant to this lawsuit, identified by
13 the current registrar, Network Solutions, LLC (“Network Solutions”), as the registrar,
14 administrative contact, and technical contact for the Internet domain found at
15 <fighthangover.blogspot.com> (the “Domain”).

16 7. At all times relevant to this lawsuit, Network Solutions identified an individual
17 with the electronic mail address of nmanal@himalayausa.com as the administrative contact and
18 technical contact for the Domain.

19 8. At all times relevant to this lawsuit, Mr. Manal’s electronic mail address was
20 nmanal@himalayausa.com.

21 9. Mr. Manal is, and has been at all times relevant to this lawsuit, identified as the
22 president and chief executive officer of Himalaya Herbal Healthcare in the United States by the
23 content found at <himalayahealthcare.com> (the “Himalaya Domain”; the content accessible
24 through the Domain and the Domain itself known herein as the “Himalaya Website”), attached
25 hereto as Exhibit 1.

26 10. At all times relevant to this lawsuit, Himalaya Drug has operated, and continues
27 to operate, under the name Himalaya Herbal Healthcare, as well as the name Himalaya Drug in
28 the United States.

1 11. Himalaya Drug is, and has been at all times relevant to this lawsuit, a Delaware
2 corporation.

3 12. Himalaya Drug is, and has been at all times relevant to this lawsuit, identified by
4 Network Solutions, LLC (“Network Solutions”), as the registrant of the Himalaya Domain.

5 13. At all times relevant to this lawsuit, HerbalScience and Himalaya Drug have been,
6 and continue to be related entities.

7 14. At all times relevant to this lawsuit, HerbalScience and Himalaya Drug have been,
8 and continue to be subject to common ownership.

9 15. HerbalScience is, and has been at all times relevant to this lawsuit, subject to the
10 supervision and control of Himalaya Drug.

11 16. Mr. Manal is, and has been at all times relevant to this lawsuit, subject to the
12 supervision and control of Himalaya Drug.

13 17. At all times relevant to this lawsuit, Mr. Manal, as an officer of Himalaya Drug,
14 has maintained, and continues to maintain control of HerbalScience.

15 18. At all times relevant to this lawsuit, Mr. Manal, as an officer of Himalaya Drug,
16 has operated, and continues to operate HerbalScience for the benefit of Himalaya Drug.
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18 **JURISDICTION**

19 19. This Court has original subject matter jurisdiction over this copyright
20 infringement action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

21 20. Righthaven is the owner of the copyright in the literary work entitled: “Walgreens
22 to add booze to local wares. Analyst doubts decision will affect rivals” (the “Work”), attached
23 hereto as Exhibit 2.

24 21. At all times relevant to this lawsuit, the Work has depicted and depicts the
25 original source publication as the *Las Vegas Review-Journal*.

26 22. The Defendants willfully copied, on an unauthorized basis, the Work from a
27 source emanating from Nevada.
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1 23. On or about June 6, 2010, the Defendants displayed, and continue to display, an
2 unauthorized reproduction of the Work (the "Infringement"), attached hereto as Exhibit 3, on the
3 Website.

4 24. The subject matter, at least in part, of the Work and the Infringement, is that
5 Walgreens intends to start selling beer and wine again at its sixty-three drugstores in the Las
6 Vegas, Nevada valley area.

7 25. At all times relevant to this lawsuit, the Defendants knew that the Work was
8 originally published in the *Las Vegas Review-Journal*.

9 26. At all times relevant to this lawsuit, the Defendants knew that the Infringement
10 was and is of specific interest to Nevada residents.

11 27. The Defendants' display of the Infringement was and is purposefully directed at
12 Nevada residents.

13 VENUE

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15 28. The United States District Court for the District of Nevada is an appropriate
16 venue, pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events giving rise to
17 the claim for relief are situated in Nevada.

18 29. The United States District Court for the District of Nevada is an appropriate
19 venue, pursuant to 28 U.S.C. § 1391(c), because Himalaya Drug is subject to personal
20 jurisdiction in Nevada.

21 30. The United States District Court for the District of Nevada is an appropriate
22 venue, pursuant to 28 U.S.C. § 1400(a), because the Defendants are subject to personal
23 jurisdiction in Nevada.

24 FACTS

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26 31. The Work constitutes copyrightable subject matter, pursuant to 17 U.S.C. §
27 102(a)(1).

28 32. Righthaven is the owner of the copyright in and to the Work.

1 33. The Work was originally published on June 5, 2010.

2 34. On August 16, 2010, the United States Copyright Office (the “USCO”) granted
3 Righthaven the registration to the Work, copyright registration number TX0007190973 (the
4 “Registration”) and attached hereto as Exhibit 4 is evidence of the Registration from the official
5 USCO database record depicting the occurrence of the Registration.

6 35. The Infringement replaced the Work’s original title: “Walgreens to add booze to
7 local wares. Analyst doubts decision will affect rivals,” with a new title: “Walgreens to add
8 booze to local wares”.

9 36. On or about June 6, 2010, the Defendants displayed, and continue to display, the
10 Infringement on the Website.

11 37. The Defendants did not seek permission, in any manner, to reproduce, display, or
12 otherwise exploit the Work.

13 38. The Defendants were not granted permission, in any manner, to reproduce,
14 display, or otherwise exploit the Work.

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16 **CLAIM FOR RELIEF: COPYRIGHT INFRINGEMENT**

17 39. Righthaven repeats and realleges the allegations set forth in Paragraphs 1 through
18 38 above.

19 40. Righthaven holds the exclusive right to reproduce the Work, pursuant to 17
20 U.S.C. § 106(1).

21 41. Righthaven holds the exclusive right to prepare derivative works based upon the
22 Work, pursuant to 17 U.S.C. § 106(2).

23 42. Righthaven holds the exclusive right to distribute copies of the Work, pursuant to
24 17 U.S.C. § 106(3).

25 43. Righthaven holds the exclusive right to publicly display the Work, pursuant to 17
26 U.S.C. § 106(5).

27 44. The Defendants reproduced the Work in derogation of Righthaven’s exclusive
28 rights under 17 U.S.C. § 106(1).

1 45. The Defendants created an unauthorized derivative of the Work in derogation of
2 Righthaven's exclusive rights under 17 U.S.C. § 106(2).

3 46. The Defendants distributed, and continue to distribute, an unauthorized
4 reproduction of the Work on the Website, in derogation of Righthaven's exclusive rights under
5 17 U.S.C. § 106(3).

6 47. The Defendants publicly displayed, and continue to publicly display, an
7 unauthorized reproduction of the Work on the Website, in derogation of Righthaven's exclusive
8 rights under 17 U.S.C. § 106(5).

9 48. HerbalScience has willfully engaged in the copyright infringement of the Work.

10 49. Himalaya Drug has willfully engaged in the copyright infringement of the Work.

11 50. Mr. Manal has willfully engaged in the copyright infringement of the Work.

12 51. The Defendants' acts as alleged herein, and the ongoing direct results of those
13 acts, have caused and will continue to cause irreparable harm to Righthaven in an amount
14 Righthaven cannot ascertain, leaving Righthaven with no adequate remedy at law.

15 52. Unless the Defendants are preliminarily and permanently enjoined from further
16 infringement of the Work, Righthaven will be irreparably harmed, and Righthaven is thus
17 entitled to preliminary and permanent injunctive relief against further infringement by the
18 Defendants of the Work, pursuant to 17 U.S.C. § 502.

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20 **PRAYER FOR RELIEF**

21 Righthaven requests that this Court grant Righthaven's claim for relief herein as follows:

22 1. Preliminarily and permanently enjoin and restrain the Defendants, and the
23 Defendants' officers, agents, servants, employees, attorneys, parents, subsidiaries, related
24 companies, partners, and all persons acting for, by, with, through, or under the Defendants, from
25 directly or indirectly infringing the Work by reproducing the Work, preparing derivative works
26 based on the Work, distributing the Work to the public, and/or displaying the Work, or ordering,
27 directing, participating in, or assisting in any such activity;

1 2. Direct the Defendants to preserve, retain, and deliver to Righthaven in hard copies
2 or electronic copies:

3 a. All evidence and documentation relating in any way to the Defendants'
4 use of the Work, in any form, including, without limitation, all such evidence and
5 documentation relating to the Website;

6 b. All evidence and documentation relating to the names and addresses
7 (whether electronic mail addresses or otherwise) of any person with whom the
8 Defendants have communicated regarding the Defendants' use of the Work; and

9 c. All financial evidence and documentation relating to the Defendants' use
10 of the Work;

11 3. Direct Network Solutions and any successor domain name registrar for the
12 Domain to lock the Domain and transfer control of the Domain to Righthaven;

13 4. Award Righthaven statutory damages for the willful infringement of the Work,
14 pursuant to 17 U.S.C. § 504(c);

15 5. Award Righthaven costs, disbursements, and attorneys' fees incurred by
16 Righthaven in bringing this action, pursuant to 17 U.S.C. § 505;

17 6. Award Righthaven pre- and post-judgment interest in accordance with applicable
18 law; and

19 7. Grant Righthaven such other relief as this Court deems appropriate.
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DEMAND FOR JURY TRIAL

Righthaven requests a trial by jury pursuant to Fed. R. Civ. P. 38.

Dated this 24th day of August, 2010.

RIGHTHAVEN LLC

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