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13
14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**

16 RIGHTHAVEN LLC, a Nevada limited-
17 liability company,

18
19 Plaintiff,

20 v.

21 CARL BURRELL, an individual; and FLICK
22 & TEA, an entity of unknown origin and
nature,

23 Defendants.
24

Case No.: 2:10-cv-02151

25
26 **COMPLAINT AND DEMAND**
27 **FOR JURY TRIAL**

28 Righthaven LLC (“Righthaven”) complains as follows against Carl Burrell (“Mr. Burrell”) and Flick & Tea (“Flick & Tea”; collectively with Mr. Burrell known herein as the “Defendants”) on information and belief:

NATURE OF ACTION

1
2 1. This is an action for copyright infringement pursuant to 17 U.S.C. § 501.
3

4 **PARTIES**

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

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

9 4. Flick & Tea is, and has been at all times relevant to this lawsuit, an entity of
10 unknown origin and nature.

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

15 6. Mr. Burrell is, and has been at all times relevant to this lawsuit, the owner of the
16 Internet domain found at <flickandtea.com> (the “Domain”).

17 7. Flick & Tea is, and has been at all times relevant to this lawsuit, the self-
18 proclaimed owner of the copyright(s) in the work(s) posted as part of the content accessible
19 through the Domain, as evidenced by a copyright notice displayed on the Website: “Copyright
20 flick&tea 2008-2010. All rights reserved.”
21

22 **JURISDICTION**

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

25 9. Righthaven is the owner of the copyright in the illustration entitled: “Vdara death-
26 ray” (the “Work”), attached hereto as Exhibit 1.

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

1 11. The Defendants willfully copied, on an unauthorized basis, the Work from a
2 source emanating from Nevada.

3 12. On or about September 30, 2010, the Defendants displayed, and continue to
4 display, an unauthorized reproduction of the Work (the "Infringement"), attached hereto as
5 Exhibit 2, on the Website.

6 13. At all times relevant to this lawsuit, the Infringement has depicted and depicts the
7 original source publication as the *Las Vegas Review-Journal*.

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

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

12 16. At all times relevant to this lawsuit, the Infringement, as publically displayed on
13 the Website was and is accessible in Nevada.

14 17. At all times relevant to this lawsuit, the Infringement occurred and continues to
15 occur in Nevada.

16 18. The Defendants' display of the Infringement was and is purposefully directed at
17 Nevada residents.

18
19 **VENUE**

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

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

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2 21. The Work constitutes copyrightable subject matter, pursuant to 17 U.S.C. §
3 102(a)(5).

4 22. Righthaven is the owner of the copyright in and to the Work.

5 23. The Work was originally published on or about September 25, 2010.

6 24. On November 24, 2010, the United States Copyright Office (the “USCO”)
7 received Righthaven’s official submittal for the registration to the Work, including the
8 application, the deposit copy, and the registration fee (the “Complete Application”), Service
9 Request No. 1-524088592, and attached hereto as Exhibit 3 is the official USCO application
10 submittal for the Work depicting the occurrence of the Complete Application.

11 25. On or about September 30, 2010, the Defendants displayed, and continue to
12 display, the Infringement on the Website.

13 26. The Defendants did not seek permission, in any manner, to reproduce, display, or
14 otherwise exploit the Work.

15 27. The Defendants were not granted permission, in any manner, to reproduce,
16 display, or otherwise exploit the Work.

17
18 **CLAIM FOR RELIEF: COPYRIGHT INFRINGEMENT**

19 28. Righthaven repeats and realleges the allegations set forth in Paragraphs 1 through
20 27 above.

21 29. Righthaven holds the exclusive right to reproduce the Work, pursuant to 17
22 U.S.C. § 106(1).

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

25 31. Righthaven holds the exclusive right to distribute copies of the Work, pursuant to
26 17 U.S.C. § 106(3).

27 32. Righthaven holds the exclusive right to publicly display the Work, pursuant to 17
28 U.S.C. § 106(5).

1 33. The Defendants reproduced the Work in derogation of Righthaven's exclusive
2 rights under 17 U.S.C. § 106(1).

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

5 35. The Defendants distributed, and continue to distribute, an unauthorized
6 reproduction of the Work on the Website, in derogation of Righthaven's exclusive rights under
7 17 U.S.C. § 106(3).

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

11 37. Mr. Burrell has willfully engaged in the copyright infringement of the Work.

12 38. Flick & Tea has willfully engaged in the copyright infringement of the Work.

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

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

20
21 **PRAYER FOR RELIEF**

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

23 1. Preliminarily and permanently enjoin and restrain the Defendants, and the
24 Defendants' officers, agents, servants, employees, attorneys, parents, subsidiaries, related
25 companies, partners, and all persons acting for, by, with, through, or under the Defendants, from
26 directly or indirectly infringing the Work by reproducing the Work, preparing derivative works
27 based on the Work, distributing the Work to the public, and/or displaying the Work, or ordering,
28 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 iDotz.Net, and any successor domain name registrar for the Domain, to
12 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 Rule 38 of the Federal Rules of Civil Procedure.

Dated this tenth day of December, 2010.

RIGHTHAVEN LLC

By: /s/ J. Charles Coons

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