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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

QED PRODUCTIONS, LLC, et al.,)	CV 07-0225 SVW (SSx)
)	
Plaintiffs,)	ORDER DENYING PLAINTIFFS'
)	MOTION FOR PARTIAL SUMMARY
)	JUDGMENT AS TO STANDING [95,
)	108, 121]
v.)	
)	
JAMES NESFIELD, et al.,)	
)	
Defendants.)	
_____)	

I. INTRODUCTION

Plaintiffs Stan Lee, QED Productions, LLC ("QED"), and POW! Entertainment, Inc. ("POW!") claim that they have interests in the copyrights and trademarks at issue sufficient to confer standing on Plaintiffs to bring this suit.¹ However, because the purported transfer

¹ The intellectual property rights at issue here are copyrights in entertainment projects known as The Accuser, Stan's Evil Clone (Evil Clone), and The Drifter. (SAC, at 40-41.) The trademarks at issue in this case are "Stan Lee Presents," "Excelsior!," "The Accuser (and Accuser)," "The Drifter," "Stan Lee Media," "Stan Lee," and "Stan Lee

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1 of the Properties from the chapter 11 bankruptcy estate of Stan Lee
2 Media, Inc. ("SLMI") was not authorized by the bankruptcy court, any
3 such transfer was void as a matter of law. Thus, Plaintiffs QED and
4 POW! cannot assert an interest in the Properties on this basis.

5 Plaintiffs, however, assert an ownership interest in the
6 Properties on a separate basis. Stan Lee claims that the Properties
7 never entered bankruptcy because he allegedly terminated his employment
8 agreement with SLMI before bankruptcy or, alternatively, that the
9 employment agreement was void under California law. Thus, Plaintiffs
10 contend that they have an interest in the Properties that is not
11 dependent on the transfer from the bankruptcy estate.

12

13 **II. FACTS**

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15 Plaintiff Stan Lee is a renowned comic book writer and creator of
16 a number of established comic book heroes, such as Spider-Man, X-Men,
17 and The Fantastic Four. This dispute dates back to October 13, 1998,
18 when Stan Lee and his associate Peter Paul incorporated Stan Lee
19 Entertainment, Inc., a Delaware corporation ("SLE"). (Second Am.
20 Compl. ("SAC"), at 15.) In April 1999, SLE merged with a Delaware
21 corporation named Stan Lee Media, Inc. ("SLMI-DE"), the resulting
22 company being named SLMI-DE. (Id.) SLMI-DE then entered into a
23 transaction with a Colorado corporation named Stan Lee Media, Inc.
24 ("SLMI-CO"), which resulted in SLMI-DE becoming a wholly-owned

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27 (signature)." (Id. at 14-15.) The domain names involved are
28 "www.stanleemedia.net" and "www.stanleestudios.com." (Id. at 47-49.)
These intellectual properties are hereinafter referred to as the
"Properties."

1 subsidiary of SLMI-CO. (Id. at 15-16.) Both SLMI-CO and SLMI-DE are
2 named as Defendants in this action.²

3 On October 15, 1998, Stan Lee entered into a agreement with SLE,
4 which was titled "Employment Agreement/Rights Assignment." (Pls.' Ex.
5 9 ("Employment Agreement"), at 1.) The Employment Agreement provided
6 that Stan Lee would serve as Chairman and Creative Officer of SLE for
7 life, in return for a salary, stock options, and other employment
8 compensation. (Id.) Furthermore, Stan Lee agreed to "assign, convey
9 and grant to [SLE] forever, all right, title and interest I may have or
10 control, now or in the future" in copyrights and trademarks.³ (Id. at
11 4.)

12 On February 12, 2001, both SLMI-CO and SLMI-DE (collectively
13 "Debtors") filed for chapter 11 bankruptcy in the United States
14 Bankruptcy Court for the Central District of California. (See Pls.'
15 Ex. 1.) Just days before the bankruptcy filing, however, Stan Lee
16 wrote to Ken Williams, President of SLMI informing him that Stan Lee
17 considered SLMI to be in material breach of the October 15, 1998
18 Employment Agreement. (See Pls.' Ex. 10.) Stan Lee claimed that the
19 Employment Agreement had been "terminated" and claimed "rights and
20 ownership in the Properties" including trademarks and copyrights.
21 (Id.)

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23
24 ² At certain points in this Order, the Court refers to both SLMI-CO
25 and SLMI-DE as "SLMI." This is because both companies entered
26 bankruptcy together, and at certain points in the record the parties
do not make a distinction between the two. The Court makes a
distinction between the two whenever legally relevant.

27 ³ Although the Court does not decide the issue at this time, the
28 parties appear do not dispute that the Employment Agreement remained
binding on Stan Lee and SLMI, as SLE's successor in interest.

1 In bankruptcy, the parties in interest negotiated a deal in order
2 to capitalize on the Debtors' intellectual property rights. This
3 resulted in the bankruptcy court approving the sale of the properties
4 to a company called SLC, LLC, a California corporation ("SLC"). In
5 their Motion for Order to Approve Sale of Assets Free and Clear of
6 Liens, the Debtors noted a potential dispute regarding whether the
7 Employment Agreement was terminated prior to bankruptcy, but noted that
8 any litigation would "likely . . . be time consuming, expensive and may
9 result in 'bad blood' which will jeopardize future exploitation of the
10 Creative Assets." (Pls.' Ex. 3, at 3.) Thus, in order to maximize the
11 return to all parties in interest, they agreed to have the properties
12 sold to "an entity creatively controlled by Stan Lee." (Id.)

13 On April 11, 2002, the bankruptcy court issued an order approving
14 the sale of assets to SLC, LLC ("Sale Approval Order"). (Pls.' Ex. 5.)
15 The Sale Approval Order incorporated by reference the Asset Purchase
16 Agreement ("APA") dated November 19, 2001. (Id. at 2.) The APA was
17 entered into by Debtors and "SLC, LLC, a California limited liability
18 company to be formed and controlled by Stan Lee."⁴ (Pls.' Ex. 6, at 1.)
19 The APA provided a mechanism whereby the Debtors' creditors would be
20 paid back in full through the exploitation by Stan Lee and SLC of the
21 assets. (See id. at 4-5.) Stan Lee explicitly represented in the APA
22 that the purchaser was "a duly formed limited liability company
23

24 ⁴ The APA purportedly transferred the rights in (1) the Stanlee.NET
25 web site and portal; (2) The Accuser; (3) The Drifter; (4) Stan's
26 Evil Clone; (5) the Backstreet Project; (6) Gene Roddenberry's
27 Starship; (7) Mary J. Blige; (8) X-Treme Heroes; (9) Police Force
28 2220; (10) Chrysallis; (11) The Stone Giant; (12) Stan Junior; (13)
interest in a joint venture call the Lee Schultz Partnership; (14) DC
Comics; (15) Toon Boom; (16) Cyberworld; (17) Mobius; and (18)
Hollywood Christmas Parade.

1 organized under the laws of California." Stan Lee signed the APA on
2 behalf of SLC. (Id. at 6.) The bankruptcy case was finally dismissed
3 on December 6, 2006.

4 The properties were never transferred to SLC, however, because SLC
5 was never actually formed. Rather, Plaintiffs claim that the
6 properties were transferred to QED, a Delaware limited liability
7 company wholly owned and controlled by Stan Lee. (SAC, at 28.) Stan
8 Lee contends that he transferred the assets to QED rather than to SLC
9 because Stan Lee did not want his name associated with the new company
10 that was going to exploit the assets. (Id. at 27.)

11 In November 2006, Plaintiffs assert that Defendants Nesfield,
12 Galloway, and Cogan attempted to revive SLMI-CO. (Id. at 29.) These
13 three defendants allegedly conducted a special shareholders meeting and
14 were elected the controlling officers of SLMI-CO. (Id.) They then
15 allegedly began using the Properties and allegedly violated Plaintiffs'
16 asserted copyrights and trademarks. (Id.)

17 Plaintiffs Stan Lee, QED, and POW! initiated this action on
18 January 9, 2007. Plaintiffs filed a First Amended Complaint on April
19 16, 2007. (See Docket No. 13.) In an Order issued February 19, 2008,
20 the Court ruled that Defendants Nesfield, Galloway, and Cogan did not
21 properly revive SLMI-CO under Colorado corporate law and, therefore,
22 had not right to use any of SLMI's assets. (See Docket No. 63, at 12.)
23 Thereafter, on August 25, 2008, Plaintiffs filed a Second Amended
24 Complaint. (Docket No. 79.)

25 The SAC alleges claims arising under federal law for (1) copyright
26 infringement; (2) trademark infringement pursuant to 15 U.S.C. §
27 1125(a); (3) trademark infringement pursuant to 15 U.S.C. § 1114; (4)
28

1 trademark dilution, 15 U.S.C. § 1125(c); (5) cybersquatting, 15 U.S.C.
2 § 1125(d); and (6) declaratory relief, 28 U.S.C. § 2201. (SAC, at 38-
3 50.) Plaintiffs also allege nine other state law claims. With regard
4 to copyright infringement, Plaintiffs allege that they are the owners
5 of The Accuser, Stan's Evil Clone, and The Drifter, and that Defendants
6 used, or aided and abetted the others to use, these properties without
7 Plaintiffs' authorization. (Id. at 38.) With regard to the federal
8 trademark claims, Plaintiffs allege that Defendants unauthorizedly used
9 the terms "Stan Lee Presents," "Excelsior!," "The Accuser (and
10 Accuser)," "The Drifter," "Stan Lee Media," "Stan Lee," and "Stan Lee
11 (signature)." (Id. at 41-47.) With regard to the claim for
12 cybersquatting, Plaintiffs allege that Defendants registered and used
13 the domain names "www.stanleemedia.net" and "www.stanleestudios.com,"
14 without prior authorization.⁵ (Id. at 47.)

15 On November 5, 2008, the Court held a status conference in this
16 matter at which time the Court ordered Plaintiffs to file a new Motion
17 for Summary Judgment in order to resolve the issue of who owns the
18 properties at issue here.

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26 ⁵ In the SAC, Plaintiffs added the individual defendants Peter Blumen,
27 Christopher Belland, Peter F. Paul, and John Petrovitz. The
28 allegations regarding these four defendants are primarily based on
aiding and abetting the other alleged violations. (SAC, at 68-70.)

1 **III. ANALYSIS**

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3 **A. Legal Standard**

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5 Rule 56(c) requires summary judgment for the moving party when the
6 evidence, viewed in the light most favorable to the nonmoving party,
7 shows that there is no genuine issue as to any material fact, and that
8 the moving party is entitled to judgment as a matter of law. See Fed.
9 R. Civ. P. 56(c); *Tarin v. County of Los Angeles*, 123 F.3d 1259, 1263
10 (9th Cir. 1997).

11 The moving party bears the initial burden of establishing the
12 absence of a genuine issue of material fact. See *Celotex Corp v.*
13 *Catrett*, 477 U.S. 317, 323-24 (1986). That burden may be met by
14 "'showing' - that is, pointing out to the district court - that there
15 is an absence of evidence to support the nonmoving party's case." Id.
16 at 325. Once the moving party has met its initial burden, Rule 56(e)
17 requires the nonmoving party to go beyond the pleadings and identify
18 specific facts that show a genuine issue for trial. See id. at 323-34;
19 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1968). "A
20 scintilla of evidence or evidence that is merely colorable or not
21 significantly probative does not present a genuine issue of material
22 fact." *Addisu v. Fred Meyer*, 198 F.3d 1130, 1134 (9th Cir. 2000). Only
23 genuine disputes - where the evidence is such that a reasonable jury
24 could return a verdict for the nonmoving party - over facts that might
25 affect the outcome of the suit under the governing law will properly
26 preclude the entry of summary judgment. See *Anderson*, 477 U.S. at 248;
27 *Aprin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir.
28

1 2001) (the nonmoving party must identify specific evidence from which a
2 reasonable jury could return a verdict in its favor).

3
4 **B. Ownership of the Properties**

5
6 The issue before the Court is what interests, if any, Plaintiffs
7 have in the copyrights and trademarks at issue, and whether those
8 interests are sufficient to afford Plaintiffs standing to bring the
9 claims alleged. Standing of course is a threshold requirement for any
10 case brought in federal court. See Clark v. City of Lakewood, 259 F.3d
11 996, 1006 (9th Cir. 2001) (noting that the requirements for standing
12 are an injury in fact traceable to the conduct of the defendant, and
13 the possibility that the injury will be redressed by a favorable
14 decision). However, where as here, "the jurisdictional issue and
15 substantive issues are so intertwined that the question of jurisdiction
16 is dependent on the resolution of factual issues going to the merits,
17 the jurisdictional determination should await determination of the
18 relevant facts on either a motion going to the merits or at trial."
19 Augustine v. United States, 704 F.2d 1074, 1077 (9th Cir. 1983); see
20 also Data Disc, Inc. v. Systems Tech. Assocs., Inc., 557 F.2d 1280,
21 1285 n.2 (9th Cir. 1977).

22 Under any of Plaintiffs' theories of relief, Plaintiffs must have
23 some legitimate interest in the Properties at issue. For example,
24 federal copyright law limits the right to bring suit to the "legal or
25 beneficial owner of an exclusive right under a copyright." 17 U.S.C. §
26 501(b); see also Cavalier v. Random House, Inc., 297 F.3d 815, 822 (9th
27 Cir. 2002). Thus, copyright law requires the plaintiff to be the owner
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1 or an exclusive licensee. See Campbell v. Board of Trustees, 817 F.2d
2 499, 504 (9th Cir. 1987). Plaintiffs' claims for trademark
3 infringement similarly require the plaintiff to have at least some
4 discernible interest in the mark. See, e.g., 15 U.S.C. § 1125(a); 15
5 U.S.C. § 1125(d) ("A person shall be liable in a civil action *by the*
6 *owner* of a mark" (emphasis added)); 15 U.S.C. § 1125(c)(1)
7 (indicating that the plaintiff must be the "owner of a famous mark that
8 is distinctive."); Waits v. Frito Lay, Inc., 978 F.2d 1093, 1109 (9th
9 Cir. 1992) (holding that standing pursuant to 15 U.S.C. § 1125(a)
10 exists if a party has a commercial interest in a product wrongfully
11 identified with another's mark, or in the misused mark); Shonac Corp.
12 v. AMKO Intern., Inc., 763 F. Supp. 919, 929 (S.D. Ohio 1991) (holding
13 that the plaintiff must have "some discernible interest in the mark").

14 Accordingly, the Court must determine whether Plaintiffs have
15 rights in the subject properties sufficient to confer standing.

16 17 **1. Transfer from Bankruptcy Estate**

18
19 As an initial matter, the Court finds no merit to Plaintiffs'
20 claim that they acquired rights in the Properties from the transfer of
21 the assets from the bankruptcy estate. In the April 12, 2002 Sale
22 Approval Order, the bankruptcy court approved the sale of certain
23 assets from the estate of the debtors, SLMI-CO and SLMI-DE, to a third
24 party named SLC, LLC. However, that transfer never took place.
25 Rather, Plaintiffs contend that the assets were validly transferred to
26 Plaintiff QED.

1 This argument is entirely without merit because any such transfer
2 performed was in violation of the automatic stay and, therefore, void
3 as a matter of law. The Ninth Circuit has made clear that "violations
4 of the automatic stay are void, not voidable." Schwartz v. United
5 States, 954 F.2d 569, 571 (9th Cir. 1992). As a result, any purported
6 sale or transfer of assets belonging to the bankruptcy estate has no
7 effect. Id. at 572; see also 40235 Washington Street Corp. v. Lusardi,
8 329 F.3d 1076, 1080 (9th Cir. 2003) (finding a tax sale conducted to
9 enforce a tax lien on real property was void because it was in
10 violation of the automatic stay and not approved by the bankruptcy
11 court). Here, the bankruptcy judge approved the sale of the assets to
12 SLC, LLC, but never approved such sale to QED. (See Pls.' Exs. 5, 6.)
13 Thus, any transfer of the assets to QED, or to any other entity for
14 that matter, was void and had not effect. See Lusardi, 329 F.3d at
15 1080.

16 Plaintiffs argue that there was no material difference between SLC
17 and QED, and that Plaintiffs substantially complied with the Sale
18 Approval Order, because the only important fact was that the company to
19 which the assets were transferred was controlled by Stan Lee. This
20 argument fails, however, because there are other material differences
21 between SLC and QED. First, Stan Lee represented to the bankruptcy
22 court that SLC was a corporation registered under the laws of the state
23 of California. (See Pls.' Ex. 6, at 6.) However, QED is incorporated
24 under the laws of the state of Delaware. (See SAC, at 1.) This is not
25 a difference in name only; QED was an entirely different corporation
26 operating under different state laws of incorporation.

1 Second, an essential aspect of the APA approved by the bankruptcy
2 court was the fact that SLC, as controlled by Stan Lee, would make
3 payments to SLMI's creditors until the creditors were paid in full.
4 (See Pls.'s Ex. 6, at 4-5.) As an entirely different entity, QED would
5 likely not be bound by the terms of the APA, and QED would essentially
6 be relieved from the obligation to pay back the creditors. Indeed,
7 there is no evidence in the record that QED has performed under the APA
8 to make payments to SLMI's creditors.¹

9 Moreover, QED was formed in November of 2001, before the motion
10 for approval of the transfer of assets was filed with the bankruptcy
11 court. (See Pls.' Ex. 8.) QED's stated purpose was to exploit the
12 assets transferred from SLMI's bankruptcy. (See Pls.' Ex. 18.)
13 Plaintiffs do not explain why, if they simply decided to use a
14 different name, they did not changed the name on the APA before it was
15 submitted to the bankruptcy court for approval.

16 Plaintiffs also assert that if Defendants take umbrage to the sale
17 of assets to QED allegedly in violation of the Agreement, they must
18 bring the action in front of the Bankruptcy Court. Plaintiffs view any
19 argument concerning the validity of the transfer as a collateral attack
20 on the bankruptcy court's April 11, 2001 Order. Plaintiffs, however,
21 misconstrue the nature of Defendants' actions in this case. Defendants
22 are not asserting, as a collateral matter, that the bankruptcy court's
23 Sale Approval Order is void and cannot be enforced. Indeed, under such
24 circumstances the prudent course of action would be to return to the
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26 ¹ The only evidence that Plaintiffs have offered in this regard are
27 declarations from Junko Kobayashi and Gill Champion stating that they
28 paid approximately \$7,500.00 to SLMI. There is no evidence, however,
that any amount was paid to SLMI's *creditors*.

1 bankruptcy court and nullify the sale order. Instead, Defendants argue
2 that Plaintiff QED was never granted rights in the intellectual
3 property as a result of the sale order and, accordingly, there is no
4 basis for its claims in the present action. Defendants make use of the
5 Sale Approval Order only inasmuch as it establishes that Plaintiff QED
6 is not the rightful owner of the properties at dispute. Accordingly,
7 the Court finds that Defendants' actions in this case do not constitute
8 an improper collateral attack.

10 **2. Plaintiffs' Other Ownership Theory**

11
12 Plaintiffs assert that they obtained rights in the Properties by
13 virtue of the fact that the Properties were never property of the
14 bankruptcy estate. Plaintiffs assert two alternate bases for this
15 theory. First, Plaintiffs claim that Stan Lee's Employment Agreement
16 was unenforceable or void because it was an agreement for personal
17 services for a term in excess of that allowed under California Labor
18 Code § 2855. (See Pls.' Mot., at 4.) Secondly, Plaintiffs argue that
19 Stan Lee properly terminated the Employment Agreement by letter on
20 January 30, 2001, and that, therefore, Stan Lee's rights in the
21 Properties automatically reverted back to him on that date. (See id.,
22 at 3-4.) Under either theory, Plaintiffs contend that the Properties
23 were never property of the bankruptcy estate.²

24
25 ² Plaintiffs may also have a sufficient interest in the trademarks at
26 issue here because they may not have been involved in the sale of
27 assets from the bankruptcy court. However, the rights in the
28 trademarks may be affected by Stan Lee's apparent assignment of
rights in the Employment Agreement. Thus, Plaintiffs' claims for
trademark infringement may also depend on the outcome of the
litigation surrounding the Employment Agreement.

1 It appears, however, that resolution of these issues will
2 necessarily involve SLMI in the litigation. For example, if Stan Lee
3 asserts his claim based on ownership of the properties due to Stan
4 Lee's termination of the employment contract, this dispute will have to
5 be litigated between Stan Lee and SLMI. At this time, however, SLMI
6 does not have anyone to speak on its behalf. SLMI-CO is currently
7 going through a procedure in the Colorado courts to elect a board of
8 directors. Because any further litigation will necessarily depend on
9 the result of that election, this case should be stayed and placed on
10 the Court's inactive calendar pending the outcome of that proceeding.
11 The companion case, Stan Lee Media, Inc. v. Stan Lee, et al., CV 07-
12 4438 SVW (SSx), is also stayed and placed on the Court's inactive
13 calendar in the interim. Once SLMI has a representative who is
14 authorized to speak on its behalf, the parties should notify this court
15 and the cases will be returned to the active calendar so that these
16 further issues can be resolved.

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18 **D. Motions to Withdraw as Counsel**

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20 As indicated at the hearing, having received no opposition,
21 O'Donnell & Associates' Motion to Withdraw as Counsel is GRANTED. (See
22 Docket No. 95.) The Andersen Firm, P.C.'s Motion to Withdraw as
23 Counsel is DENIED. The Andersen Firm is currently representing several
24 of the individual defendants and SLMI in this action, and they have
25 indicated their opposition to the Andersen Firm's withdrawal. The
26 Andersen Firm may renew this request once SLMI has a elected a duly
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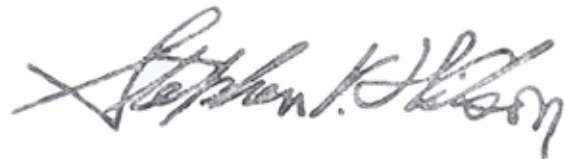
1 authorized board of representatives, but any withdrawal by the Andersen
2 Firm is not appropriate at this time.

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4 **IV. CONCLUSION**

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6 The Court finds that Plaintiff QED did not acquire an interest in
7 the Properties by virtue of a transfer from the bankruptcy court
8 because any such transfer was done in violation of the automatic stay,
9 and was therefore void as a matter of law. As factual issues
10 potentially remain regarding whether Plaintiffs have interests in the
11 Properties sufficient to confer standing, Plaintiffs' Motion for
12 Partial Summary Judgment on the issue of standing is DENIED. With
13 regard to Plaintiffs' alternative theory of ownership, these cases are
14 STAYED pending the outcome of the proceedings in Colorado, which will
15 result in Defendant SLMI-CO having a representative that is duly
16 authorized to speak on its behalf. The parties are ordered to inform
17 the Court, in writing, when the stay should be lifted.

18
19 IT IS SO ORDERED.

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21 DATED: January 20, 2009



22 STEPHEN V. WILSON
23 UNITED STATES DISTRICT JUDGE
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