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In re

**DISTRIBUTION OF SATELLITE
ROYALTY FUNDS**

**DOCKET NO. 16-CRB-0010 SD
(2014-17)**

**ORDER GRANTING MULTIGROUP CLAIMANTS’
SECOND MOTION TO AMEND PETITION TO PARTICIPATE
IN DISTRIBUTION PROCEEDINGS AND
DEEMING UNDERLYING CLAIMS WITHDRAWN**

On June 16, 2019, Multigroup Claimants (MC) filed with the Copyright Royalty Judges (Judges) a Motion to Amend Petition to Participate in Distribution Proceedings ([Motion](#)) to remove all references to either “Jefferson Pilot Sports (cka Raycom Sports)” or “Raycom Sports.” Motion at 1-2 and n.1. On July 31, 2019, the Judges denied the motion without prejudice, stating that “based on the record before them, the Judges have insufficient evidence to decide whether to grant or deny the Motion.” [Order Denying Without Prejudice Multigroup Claimants’ Motion to Amend Petition to Participate in Distribution Proceedings at 2.](#) The Judges observed, among other things, that MC had not submitted a redlined petition to show changes from the original petition. The Judges stated further that

Multigroup Claimants may refile the motion. If MC refiles the motion, it must include sufficient evidence to support the assertions MC and its counsel make in the current Motion. Any refiled motion should also discuss what impact, if any, granting the motion would have on the claimant or claimants whose interests would be affected if the Judges were to grant the motion and what efforts MC has made to inform the affected claimants about how the refiled motion might affect their rights to pursue their claims in this proceeding.

Id.

On August 14, 2019, MC filed a Second Motion to Amend Petition to Participate in Distribution Proceedings ([Second Motion](#)). In its Second Motion, which was unopposed, MC again included a proposed amended Petition to Participate, which did not include a redlined version showing changes from the original. MC did not explain why it failed to provide a redlined petition to participate¹ but rather MC, through counsel, represents that “the only difference between MC’s original *Petition to Participate* and its proposed *Amended Petition to*

¹ MC notes that “[r]ecent motions to amend petitions to participate in this and other proceedings have been granted by the Judges without the submission of either a redlined-version of the amended claimant list, or other evidence to support the statements made in such motions.” Second Motion at 2, n.2. MC cites one such instance, which the Judges addressed in their Order Granting MPAA-Represented Program Suppliers’ Motion to Amend Joint Petition to Participate, Docket No. 16-CRB-0010 SD (2014-17) (July 25, 2019). In that instance, the Judges granted MPAA’s motion to add claim numbers to a Petition to Participate to correspond to a revised claims list that the CRB posted after MPAA had filed its original Petition to Participate. *Id.* That instance is inapposite to the current instance, wherein a claimant representative has been informed by a claimant that the representative had no authority to file claims on the claimant’s behalf and has been directed to withdraw those claims, which, purportedly, were improperly filed.

Participate is the removal of reference to the 2015-2017 claims filed on behalf of “Jefferson Pilot Sports (cka Raycom Sports)” and “Raycom Sports.” In lieu of a redlined petition to participate, MC states that it “instead opts to provide evidence supporting its motion.” Second Motion at 3.

That evidence, which was attached as Exhibit 2 to MC’s Second Motion consists of emails between MC’s counsel and Ellenann V. Yelverton, the Deputy General Counsel to Gray Television, parent company to Raycom Sports Network, Inc.² In the first email, dated May 16, 2019, MC’s counsel responds to a May 14, 2019 letter that he received from Ms. Yelverton (“Yelverton Letter”). In her letter (which MC’s counsel attached to his outgoing email), Ms. Yelverton states that “you have publicly held yourself out as counsel to Raycom Sports in federal filings. You must immediately cease and desist any actions that would indicate, expressly or implicitly, your or MC’s representation of Raycom Sports.” *Id.* at 1. Ms. Yelverton references the original petition to participate that MC filed in the captioned proceeding and another petition to participate that MC filed in the 2014 to 2017 cable royalty proceeding. Ms. Yelverton stated that these petitions

came under your signature and alleged that “MC maintains claims with respect to the 2015-2017 cable royalty funds ... for programming initially owned or controlled by [Raycom Sports].” It further states that “MC and its undersigned counsel [Mr. Boydston] certify that they have the authority and consent of [Raycom Sports] in these...proceedings.”

Raycom Sports has *not* given you or MC the authority nor [sic] the consent to file on its behalf in the Proceedings. In fact, you have been on explicit notice to cease all communication with Raycom Sports and/or its employees since my last letter to you in March 2012.

We trust that you will immediately take all appropriate steps to retract the Fraudulent Claims as they relate to Raycom Sports, and will convey the same to MC.

Id.

In his May 16, 2019 email responding to the Yelverton Letter, MC’s counsel stated that he had received the May 14, 2019 letter, and he had “no recollection of receiving a letter from you before.” Email from Brian D. Boydston to Ellenann Yelverton (May 16, 2019). He requested a copy of the March 2012 letter that Ms. Yelverton referenced in her May 14, 2019 letter.

On May 17, 2019, Ms. Yelverton responded, apparently attaching the March 2012 letter that MC’s counsel requested. MC did not include the March 2012 letter in Exhibit 2 to the current motion.

² MC asserts, without evidentiary support, that “such entity” (presumably Raycom Sports) “attempted to contact Independent Producers Group at a long-extinguished IPG address, despite notification from IPG twelve years prior that there had been a change of address for IPG, and despite proximately receiving multiple emails from IPG that it acknowledges to have received.” Second Motion at 1, n.1. *See also* Second Motion at 4, n.3 (“IPG has located several email communications to Raycom Sports personnel subsequent to March 2, 2012 to which no response was forthcoming indicating that a notice of termination had previously been sent.”).

On May 20, 2019, MC's counsel responded, stating that he "had completely forgotten about this [March 2012 letter]." Email from Brian D. Boydston to Ellenann Yelverton (May 20, 2019). He informed Ms. Yelverton that MC could withdraw the claims but warned that "once that is done it cannot be undone, *i.e.*, they would be forfeit [sic] by statute." *Id.*

On May 21, 2019, Ms. Yelverton responded by email "[y]es, please withdraw any claims you assert for Raycom Sports and provide proof of such withdrawal." Email from Ellenann Yelverton to Brian D. Boydston (May 21, 2019).

MC's counsel responded later that day:

please confirm whether there was subsequent correspondence relating to this matter, and if so forward that correspondence? As I stated, I have no record or recollection of this, nor does my client, but it seems likely that there could have been subsequent correspondence.

Although we will promptly withdraw any claims in the 2014-2017 proceedings based solely on your current contention that you sent a notice of termination in 2012 -- not an acknowledgment that the notice of termination was actually provided -- I am obliged to ask whether Raycom Sports (or any affiliated entity) is making claim for those 2014-2017 royalties?

Email from Brian D. Boydston to Ellenann Yelverton (May 21, 2019).

On May 30, 2019, Ms. Yelverton responded: "You have been provided with the [sic] all written correspondence in my possession. Please confirm you have withdraw [sic] any and all Raycom Sports related claims." Email from Ellenann Yelverton to Brian D. Boydston (May 30, 2019).

On June 7, 2019, MC's counsel responded: "Thank you for that. Could you please provide me with the correspondence you said informed WSG on several occasions that Raycom Sports did not control the rights to ACC Basketball. Also, could you please confirm whether Raycom Sports (or any affiliated entity) is making claim for 2014-2017 royalties?" Email from Brian D. Boydston to Ellenann Yelverton (Jun. 7, 2019).

Ms. Yelverton responded by email later that day: "Please confirm you have withdrawn the unauthorized claims. I do not need to provide you anything further. You have no documentation to make these claims, so please provide withdrawals Monday." Email from Ellenann Yelverton to Brian D. Boydston (Jun. 7, 2019).

On June 16, 2019, MC's counsel responded by email: "We filed a motion to amend our claims to remove Raycom." Email from Brian D. Boydston to Ellenann Yelverton (Jun. 16, 2019).

Analysis

A claimant representative's authority to represent a claimant "turns on a factual inquiry into 'whether the claimant intended for its claim to be filed on its behalf by another.' Such intent must be expressed prior to the filing of the relevant claim." *Settling Devotional Claims v. Librarian of Congress*, 797 F.3d 1106, 1115 (Aug. 14, 2015), quoting the Judges' *Memorandum Opinion and Order*, Docket No. 2008-2 CD 2000-2003, at 4 (Mar. 21, 2013). Based on the evidence in

the record, the Judges conclude that Raycom Sports did not intend for its claims in the current proceeding to be filed on its behalf by MC and that Raycom Sports has advised MC to withdraw any claims MC filed on its behalf in the current proceeding and has been made aware of the consequences of withdrawing those claims.³

As discussed, the only evidence on the record before us are the emails between MC's counsel and Ms. Yelverton, Deputy General Counsel to Raycom Sports Network's parent, which included a letter Ms. Yelverton sent to MC's counsel. According to Ms. Yelverton: "Raycom Sports has *not* given you or MC the authority nor [sic] the consent to file on its behalf in the Proceedings. In fact, you have been on explicit notice to cease all communication with Raycom Sports and/or its employees since my last letter to you in March 2012." Yelverton Letter at 1. Based on this unambiguous expression of intent and the subsequent emails from Ms. Yelverton directing MC to withdraw its claims on Raycom's behalf, the Judges conclude that Raycom did not intend for MC to file claims on its behalf in the current proceeding. Therefore, the Judges **GRANT** MC's request to remove those claim references from MC's original Petition to Participate and the claims shall be deemed withdrawn.⁴

SO ORDERED.

Jesse M. Feder
Chief Copyright Royalty Judge

DATED: September 12, 2019

³ MC asserts that the claims it filed on behalf of Raycom Sports and its affiliates "were submitted with the good faith belief that such filings were authorized by Raycom Sports." Second Motion at 4, n.3. For purposes of addressing the current Motion, however, the Judges need not and do not decide the issue of whether MC knew or reasonably should have known at the time it filed the claims on behalf of Raycom Sports and its affiliates that Raycom Sports did not intend for it to file those claims on its behalf in the current proceeding.

⁴ Because MC did not provide a redlined version of its Petition to Participate, the Judges accept as its amended Petition to Participate the original petition MC filed in this proceeding modified by striking all references to "Jefferson Pilot Sports (aka Raycom Sports)" and "Raycom Sports." Although the Second Motion does not request that the claims that MC filed on behalf of Raycom Sports and its affiliates be withdrawn, the Judges find that MC did not have the authority to file those claims and that Raycom Sports directed MC to withdraw the claims. Second Motion, Exhibit 2, email dated May 21, 2019 from Ellenann Yelverton to Brian D. Boydston ("please withdraw any claims you assert for Raycom Sports."). MC appears to concede that such claims are invalid. *See* Second Motion at 3-4 ("any filings made pursuant to the then-terminated agreement with IPG for calendar years 2013 and forward would have been, according to Raycom Sports, without authorization and invalid at the time or their making."). Therefore, the Judges dismiss the claims because they were filed without the requisite authority. *See* 37 CFR 360.4(b)(2)(vi) (joint claims must include a declaration of authority to file the claim).