IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

The Right Reverend Charles G. vonRosenberg, et al., Plaintiffs, The Episcopal Church, Plaintiff-in-Intervention v. The Right Reverend Mark J. Lawrence, Defendant.	Civil Action No. 2:13-587-RMG **ORDER**

This matter is before the Court on Defendant's motion to dismiss Count II of the second amended complaint. Defendant asserts that Bishops vonRosenberg and Adams lack standing to bring federal trademark infringement claims regarding certain trademarks relating to the "Diocese of South Carolina" because they are not the owners or exclusive licensees of those trademarks. The Court has already ruled that Bishop vonRosenberg has standing to assert infringement claims. (Dkt. No. 30 at 6 ("Bishop vonRosenberg alleges harm to both the expressed and inferred Lanham Act interests recognized by the Fourth Circuit.").); *see also VonRosenberg v. Lawrence*, 781 F.3d 731, 733 (4th Cir. 2015), *as amended* (Apr. 17, 2015) ("The district court held that Bishop vonRosenberg had constitutional and prudential standing to assert individual injuries against Bishop Lawrence for trademark infringement."). That ruling necessarily applies to Bishop vonRosenberg's successor in office, Bishop Adams. Defendant's challenge to standing is precluded by the law of the case. *See Sejman v. Warner-Lambert Co., Inc.*, 845 F.2d 66, 69 (4th Cir. 1988) (holding earlier decisions of a court become law of the case and must be followed unless "(1) a subsequent trial produces substantially different evidence, (2) controlling authority has since

made a contrary decision of law applicable to the issue, or (3) the prior decision was clearly erroneous and would work manifest injustice." (internal quotation marks omitted)).

The law of the case doctrine, however, is a discretionary, not mandatory. *CNF Constructors, Inc. v. Donohoe Const. Co.*, 57 F.3d 395, 397 n.1 (4th Cir. 1995). "The ultimate responsibility of the federal courts, at all levels, is to reach the correct judgment under law." *Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 515 (4th Cir. 2003). As a discretionary doctrine, the law of the case has lessened force when applied to subject matter jurisdiction and especially when applied to standing. *Id.* at 515–16. In this case, however, the owner of the trademarks at issue, The Episcopal Church in South Carolina, has a pending motion to intervene. (Dkt. No. 126.) The intervention of The Episcopal Church in South Carolina would moot the standing issue. If Defendant were to succeed on the present motion for reconsideration of standing, he would likely be judicially estopped from any meaningful challenge to the motion to intervene because he would have prevailed essentially by arguing The Episcopal Church in South Carolina is the proper plaintiff. The Court therefore **DENIES WITHOUT PREJUDICE** Defendant's motion to dismiss (Dkt. No. 121). After the Court rules on the motion to intervene, if Defendant believes he has colorable argument for reconsideration of the Court's ruling on standing, he may then move for reconsideration.

AND IT IS SO ORDERED.

Richard Mark Gergel
United States District Court Judge

March 7, 2018
Charleston, South Carolina