

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Judge John L. Kane

Civil Action No. **1:11-cv-0305-JLK**

RIGHTHAVEN LLC, a Nevada Limited Liability Company

Plaintiff,

v.

MATZOBALL ENTERTAINMENT ONLINE, LLC., a California limited liability company; and
MICHAEL AIRINGTON, an individual,

Defendants.

ORDER

The subject of this lawsuit is a photograph depicting a Transportation Security Administration Agent performing an enhanced pat-down search at Denver International Airport (the “Work”). The Work was originally published in, and the copyright held by, *The Denver Post*, but at some point following its original publication on November 18, 2010, the copyright was transferred to Plaintiff Righthaven LLC. On December 1, 2010, Defendants displayed the Work on their website without seeking or receiving permission to do so from Plaintiff.

Based on these alleged facts, Plaintiff filed suit against Defendants alleging copyright infringement. Defendants have filed a Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(2); accordingly, I must determine whether I may properly exercise personal jurisdiction over them.

I think it most appropriate to hold an evidentiary hearing to resolve significant differences in the parties’ presentation of the jurisdictional facts. *See Ten Mile Industrial Park v.*

Western Plains Service Corp., 810 F.2d 1518, 1524 (10th Cir. 1987). The parties should address the factors articulated in *Calder v. Jones*, 465 U.S. 783 (1984) as described in *Dudnikov v. Chalk & Vermillion Fine Arts, Inc.*, 514 F.3d 1070 (10th Cir. 2008). Specifically, the parties should be prepared to address whether Defendant's alleged infringement was "expressly aimed at [Colorado]. . . with . . . knowledge that the brunt of the injury would be felt in [Colorado]." *Dudnikov*, 514 F.3d at 1074-77 (10th Cir. 2008) (quoting *Calder v. Jones*, 465 U.S. 783, 787-88 (1984)).

In light of the foregoing, it is ORDERED that this matter is set for an evidentiary hearing relating to the jurisdictional issues raised in Defendants' Motion to Dismiss (doc. 16) and Brief in Support of Motion to Dismiss (doc. 16-1), Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss (doc. 17), and Defendants' Reply in Support of their Motion to Dismiss (doc. 24). The parties shall appear on June 20, 2011, at 10:00 a.m. in Courtroom A802, Alfred A. Arraj U.S. Courthouse, 901 19th Street. Furthermore, to the extent Plaintiff's responsive pleading contains a motion for jurisdictional discovery, it is DENIED as procedurally improper. *See D.C.COLO.LCivR 7.1(C)* ("A motion shall not be included in a response or reply to the original motion. A motion shall be made in a separate paper.")

Dated: May 17, 2011

BY THE COURT:

/s/ John L. Kane
Senior U.S. District Judge