

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No.: 1:09-CV-01346-RPM

SERGIO BALLIVIAN,

Plaintiff,

vs.

MOUNTAIN TRAVEL,

Defendant.

ORDER FOR TRANSFER

The plaintiff brought this action for copyright infringement claiming that at least four of his copyrighted photographs have been used by the defendant Mountain Travel in brochures and other promotional material for its tour and travel related services. The defendant has moved to dismiss because it is not subject to personal jurisdiction in Colorado and because venue is inappropriate under either 28 U.S.C. § 1391 or § 1400. The thrust of the plaintiff's basis for jurisdiction is that the defendant operates an interactive website which may be accessed by Colorado residents who can then obtain the offending materials. The defendant has its place of business in California and operates the website from that location. The plaintiff speculates about the likelihood of access by Colorado residents to claim that infringing activity takes place in this state. That is not a basis for personal jurisdiction. The plaintiff has failed to establish such contacts with the State of Colorado by the defendant as to warrant a finding of jurisdiction.

The defendant has asserted that the appropriate forum for this action is Panama but that contention depends upon proof of facts that go to the merits of the dispute.

The defendant is subject to jurisdiction in California and has, alternatively, asked for a transfer of this civil action pursuant to 28 U.S.C. § 1404. Such a transfer would avoid litigation which goes to the plaintiff's speculation about facts which might support specific jurisdiction and venue under § 1400. It is apparent that a transfer to California would avoid those questions and promote fair adjudication of this dispute. It is now

ORDERED that this civil action is transferred to the United States District Court for the Northern District of California.

DATED: January 19th, 2010

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge