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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-CV-01546-REB-CBS

The Direct Marketing Association,  
Plaintiff,

v.

Roxy Huber, in her capacity as Executive  
Director, Colorado Department of Revenue,  
Defendant.

DEPOSITION OF **KEVIN LANE KELLER** taken at Norwich,  
Vermont, on October 21, 2010.

APPEARANCES:

Matthew P. Schaefer, Esquire  
Brann & Isaacson  
184 Main Street, Fourth Floor  
P.O. Box 3070  
Lewiston, Maine, 04243-3070, on behalf of the  
Plaintiff, The Direct Marketing Association.

Jack Wesoky, Esquire  
Senior Assistant Attorney General  
1525 Sherman Street, 7th Floor  
Denver, Colorado, 80203, on behalf of the Roxy  
Huber in her capacity as Executive Director,  
Colorado Department of Revenue.

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1 A I believe it might have been someone from Chicago,  
2 from their Chicago office.

3 Q Does the name Nelson Whipple ring a bell?

4 A It's an unusual name. So I mean I would, I'm not  
5 sure, I'm not sure if that's the person. I'm not  
6 sure. Sorry.

7 (Off-the-record discussion)

8 EXHIBIT 23 MARKED FOR IDENTIFICATION

9 Q I give you what's been marked as Exhibit 23 and it  
10 looks like it's a copy of an e-mail chain dated  
11 the 30th of June of this year, and it's attaching  
12 a copy of the Complaint that was filed by Messrs.  
13 Isaacson and Schaefer in Federal Court in Denver.  
14 So would that be the date, the 30th of June, that  
15 you received a copy of the Complaint that you've  
16 already testified about that you received?

17 A That would be consistent with that, yes.

18 Q Okay. It says there's a three-page summary of the  
19 Complaint that was distributed to the DMA Steering  
20 Committee and the DMA Press Release. Did you keep  
21 those?

22 A I believe so. I believe they would be in my file.

23 Q Those were not --

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1 MR. SCHAEFER: For the record, we produced  
2 the press release. I know that's --

3 MR. WESOKY: I think I've seen that.

4 MR. SCHAEFER: The summary of complaint,  
5 unlike material that might have been otherwise  
6 work product which we have not withheld, we  
7 withheld nothing on work product grounds, that is  
8 an attorney/client communication. So for the time  
9 being because frankly I don't think it's a summary  
10 of a complaint that he received, so for the moment  
11 it's withheld on the grounds that it's an  
12 attorney/client communication.

13 MR. WESOKY: We'll cross that bridge when we  
14 get to it.

15 Q But if you retained it, it would be in your files,  
16 I assume?

17 A That's correct.

18 Q Did you read it or just read the Complaint?

19 A I believe I read everything that was probably sent  
20 to me.

21 Q Do you remember what it said?

22 A I don't remember specifically what it said.

23 Q This is to test your memory. How much time if you

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1 can recall did you spend reading the Complaint  
2 that was sent to you?

3 A How many times did I --

4 Q How much time did you spend reading it?

5 A I think the copy of the complaint, I have to think  
6 about it, but my guess is that's on the order of  
7 30, 40 minutes maybe.

8 Q Did you read it once, twice, three times?

9 (Off-the-record discussion)

10 A I believe it would be, it certainly would have  
11 been multiple times since that first time.

12 Correct.

13 Q So the 30 to 40 minutes would be the first time or  
14 all the times that you read the Complaint?

15 A The 30 or 40 minutes would probably be the initial  
16 time. I think subsequent times would not take  
17 nearly as long to go through.

18 Q And from your earlier testimony, I take it you  
19 made no notes on your copy of the Complaint or no  
20 separate notes about the Complaint?

21 A I'm almost certain that's the case but I'm not,  
22 you know, I'm almost certain that's the case.

23 EXHIBIT 24 MARKED FOR IDENTIFICATION

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