

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO**  
 Civil Action No. 2009cv00309 -msk-klm  
 SUZANNE SHELL  
 Plaintiff  
 v.  
 AFRA, *et al*  
 Defendants

**FILED**  
 UNITED STATES DISTRICT COURT  
 DENVER, COLORADO

APR 21 2009

GREGORY C. LANGHAM  
CLERK

**MEMORANDUM in Support of Motion to Dismiss Due to Lack of Personal  
 Jurisdiction, and, Motion to Quash Service of Process**

Comes now Susan Adams Jackson, defendant, *pro se*, and submits her  
 Memorandum in Support of her Motion to Dismiss Due to Lack of Personal  
 Jurisdiction, and, Motion to Quash Service of Process, in the above captioned  
 lawsuit pursuant to Fed.R.Civ.P. 12(b)(2) Lack of Personal Jurisdiction.

**Statement of the Case**

The Plaintiff Shell correctly states that Defendant Jackson resides at 40 Orlando  
 Avenue in Massachusetts. Plaintiff claims that Jackson has committed crimes,  
 including copyright infringement, participation in organised crimes, false  
 advertising, belonging to a cartel, theft of trade secrets, breach of contract, and  
 bringing financial damages upon the Plaintiff, who resides in Colorado. Plaintiff  
 asserts that Jackson conducts competing in business has competing business  
 relationships, providing competing goods and services.

**Standard of Review**

" Every defense to a claim for relief in any pleading must be asserted in the  
 responsive pleading if one is required. But a party may assert the following  
 defenses by motion: ... (2) lack of personal jurisdiction; ..." Fed.R.Civ.P. 12(b)(2)

The following is presented in *Continuing Episcopal Church v Griffith* 02-WM-0117 (10th Cir. 2008), and applicable to Jackson's position:

To determine whether a federal court has jurisdiction in a diversity action over a nonresident defendant, the Court must look to the law of the forum state. *See Taylor v. Phelan*, 912 F.2d 429, 431 (10th Cir. 1990). A plaintiff has the burden of pleading a prima facie showing of personal jurisdiction. *See FDIC v. Oaklawn Apartments*, 959 F.2d 170, 174 (10th Cir. 1992); *Behagen v. Amateur Basketball Ass'n*, 744 F.2d 731, 733 (10th Cir. 1984). When a defendant contests a plaintiff's assertion of personal jurisdiction in an answer or a motion to dismiss, the burden of proving jurisdiction falls on the plaintiff. *See Wenz v. Memery Crystal*, 55 F.3d 1503, 1505 (10th Cir. 1995); *cf. Behagen*, 744 F.2d at 733 ("The allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant's affidavits). When a defendant presents credible evidence through affidavits or other materials suggesting the lack of personal jurisdiction, the plaintiff must come forward with sufficient evidence to create a genuine dispute of material fact on the issue. *See Doe v. National Med. Servs.*, 974 F.2d 143, 145 (10th Cir. 1992). Only if the plaintiff meets his obligation of contesting the credible evidence presented by a defendant does the Court resolve the factual disputes in favor of the plaintiff. *See Wenz*, 55 F.3d at 1505; *Behagen*, 744 F.2d at 733. In this regard, the Court must accept as true only the complaint's well pled facts, and not mere conclusory allegations. *See Wenz*, 55 F.3d at 1505.

#### Traditional Standard for Jurisdiction

The Court's subject matter jurisdiction in this case is predicated on federal questions under the Copyright Act and the Lanham Act. .... Because neither of these statutes include an explicit provision for the exercise of personal jurisdiction, Rule 4(k) of the Federal Rules of Civil Procedure controls the power

of the Court to exercise *in personam* jurisdiction, providing that this Court may exercise personal jurisdiction to the extent that the courts of the State of Colorado would themselves be permitted to obtain jurisdiction. *See* Fed. R. Civ. P. 4(k); *see also Cable/Home Communication Corp. v. Network Prods., Inc.*, 902 F.2d 829, 855 (11th Cir. 1990); *Max Daetwyler Corp. v. R. Meyer*, 762 F.2d 290, 295 (3<sup>rd</sup> Cir. 1985).

“In enacting the long arm statute, the Colorado legislature intended to extend the jurisdiction of Colorado courts to the fullest extent permitted by the due process clause of the United States Constitution.” *Behagen*, 744 F.2d at 733 (quoting *Waterval v. District Court*, 620 P.2d 5, 8 (Colo. 1980)); *see also* Colo. Rev. Stat. § 13-1-124(1); *Safari Outfitters, Inc. v. Superior Court*, 167 Colo. 456, 459 448 P.2d 783, 784 (Colo. 1968); *Mr. Steak, Inc. v. District Court*, 574 P.2d 95, 96 (Colo. 1978). As a result, the Court’s jurisdictional analysis in this case collapses into a single inquiry of whether the exercise of personal jurisdiction over [Jackson] comports with the requirements of due process. *See OpenLCR.com, Inc.*, 112 F. Supp. 2d at 1227.

In order for the Court to exercise personal jurisdiction over a defendant, the defendant must have “certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Where those contacts with the forum are unrelated to the controversy, such ‘general jurisdiction’ over the defendant is constitutional only where the defendant has maintained “continuous and systematic” contacts with the forum. *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. 408, 415-16 (1984).

Where a defendant’s contacts with the forum are more sporadic, the Court may still exercise ‘specific’ jurisdiction over the defendant if the defendant has purposefully availed itself of the privilege of conducting activity there, “such that he should reasonably anticipate being haled into court there.” *World-Wide*

*Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). Such purposeful availment will not be found where the contacts are random, fortuitous, or attenuated, but only if they are “purposefully directed” at the forum state and the injuries claimed arise out of or relate to those contacts. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985); *Doe*, 974 F.2d at 145. If such fortuitous contacts were sufficient, “[e]very seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to suit would travel with the chattel.” *World-Wide Volkswagen*, 444 U.S. at 566. Moreover, as the Supreme Court has held, “The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.” *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *Doe*, 974 F.2d at 145.

[Jackson is affiliated with AFRA, which has an] Internet site [that] clearly does not offer any commercial services, or noncommercial services for that matter, over the Internet. ... Quite clearly, the activity that [Jackson] conducts over the Internet, and any interactive characteristics of [AFRA's] site, are completely non-commercial in nature. *See Soma Med.*, 196 F.3d at 1296; *Zippo*, 952 F. Supp. at 1124. [Therefore Jackson in no way competes with Plaintiff's Colorado-based business].


[End of citations from *Continuing Episcopal Church v Griffith* 02-WM-0117 (10th Cir. 2008), a defensive dispute based in part upon lack of personal jurisdiction.]

## CONCLUSION

The exercise of personal jurisdiction in this case over Jackson does not comport with the Fifth Amendment mandate of Due Process or traditional notions of fair

play and substantial justice. As a result, this Court should grant the motion by Jackson under Fed.R.Civ.P. 12(b)(2) to quash the service of process upon her and dismiss Plaintiff's complaint against her for lack of personal jurisdiction.

RESPECTFULLY SUBMITTED,

 April 17, 2009  
SUSAN ADAMS JACKSON, DEFENDANT

Niane M Benoit  
exp 5-15-09

### Certificate of Service

I hereby certify that on the 17<sup>th</sup> day of April, 2009, I served a true and correct copy of this Memorandum in Support of Motion to Dismiss Due to Lack of Personal Jurisdiction, and, Motion to Quash Service of Process, upon the Plaintiff and upon each of the Defendants named as follows:

Suzanne Shell [Plaintiff]  
 14053 Eastonville Road  
 Elbert, Colorado 80106

via: USPS, with delivery confirmation.

And on the following Defendants:

William O. Tower	American Family Rights Association
Ann Tower	Families at Risk Defense Alliance
Leonard Henderson	Illinois Family Advocacy Coalition
Dorothy Baez-Kernaghan	Georgia Family Rights, Inc.
Cletus Kiefer	National Association of Family Advocates
Francine Renee Cygan	Connecticut DCF Watch
Mark Cygan	Wiseman Studios
Dennis Hinger	CPS Watch, Inc.
Aimee Dutkiewicz	
Thomas Dutkiewicz	
William Wiseman	
Ann Durand	
Brenda Swallow	
Kathy Tilley	
Dee Contreras	
Randall Blair	

Lloyd Phillips  
Ringo Kamens  
Cheryl Barnes  
Desere' Clabo

via: fax, email, or other mutually agreed upon electronic means.

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Susan Adams Jackson

Defendant

Dated: April 17, 2009

Deane M Benoit  
exp 5-15-09