

Exhibit 5



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Lazarenko declared guilty on 29 counts

Despite seeing nearly half of case tossed, government wins on remaining charges

By Jeff Cherney
RECORDER STAFF WRITER

Former Ukrainian Prime Minister Pavlo Lazarenko was found guilty on 29 counts of extortion, money laundering and other charges Thursday, even though a federal judge had tossed half the government's case midway through trial.

The jury verdict stunned Lazarenko's defense team, which plans to appeal. Lazarenko himself said the trial was flawed.

"There were so many serious judicial mistakes that the Ninth Circuit will put everything right," Lazarenko said through a translator after the verdicts were read.

U.S. District Judge Martin Jenkins had emboldened the defense last month when he threw out more than 20 counts, ruling that the government had not proved its case.

Led in trial by Assistant U.S. Attorney Martha Boesch, government prosecutors alleged Lazarenko used his position as a public official to extort and defraud tens of millions of dollars from the people of his home country, Lazarenko, who was prime minister in 1996-97, allegedly wired the money through banks in San Francisco.

Lazarenko's defense team includes Weinberg & Wilder's Doron Weinberg, Riordan & Hogan's Dennis Riordan and

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GUILTY:
Former Ukrainian Prime Minister Pavlo Lazarenko, right, and his son leave federal court in San Francisco after hearing the verdict.
LOW RESOLUTION/NEWS.COM

Strange Bedfellows

Suit claims porn thieves aided by credit card companies

By Brenda Sandburg
RECORDER STAFF WRITER

How do you stop a charging porn thief? Take away his credit card.

That's what a Beverly Hills pornographer is asking for in filing a copyright and trade-



says hundreds of Web site operators around the world are selling its trademarked images. While Perfect 10 has sued many of these outfits, its biggest beef is trademark liability far beyond any published case ever," said Mark Jansen, a partner at Townsend and Townsend and Crew who is representing Visa.

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Strange Bedfellows

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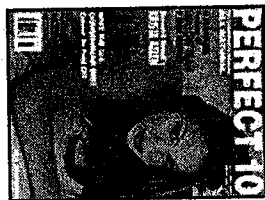
By Brenda Sandburg
RECORDER STAFF WRITER

How do you stop a charging porn thief? Take away his credit card.

That's what a Beverly Hills pornographer is aiming to do in filing a copyright and trademark suit against Visa International Service Association and MasterCard International Inc.

Perfect 10 Inc., which publishes an adult magazine and operates an adult Web site,

NOBODY'S POLICEMAN: Winston & Strawn partner Andrew Bridges says his client, MasterCard, should not be held liable for processing transactions for adult Web sites that may have stolen images.



says hundreds of Web site operators around the world are selling its trademarked images.

While Perfect 10 has sued many of these outfits, its biggest beef is with the credit card companies that process the infringers' transactions.

The porn company says that without the support of these financial institutions, infringers wouldn't be able to steal their stuff.

The credit card companies say requiring them to enforce the property rights of a third party is unheard of and would have ramifications for all service providers.

"It's an attempt to enforce copyright and

trademark liability far beyond any published case ever," said Mark Janssen, a partner at Townsend and Townsend and Crew who is representing Visa.

"If the court were to impose liability in that context and make companies subject to contributory liability on the basis of aiding and abetting infringement, that would extend across commerce," he added. "It would convert financial institutions into judges, juries and policemen."

Perfect 10's attorney, Howard King, of Los Angeles' King, Holmes, Paterno & Berliner, agrees that the suit is treading new territory.

"It's a seminal lawsuit," he said. "It's the first time someone has gone to the heart of the financial system and big entities that are

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JASON DOV

Plum program survives — so do court's doubts

By Mike McKee
RECORDER STAFF WRITER

The California Supreme Court on Thursday once again struggled with the issue of commercial speech rights under the First Amendment while continuing to uphold state programs that require growers to fund generic agricultural advertising.

The court's justices split on whether they needed to reconsider their own 4-year-old ruling on the issue in light of subsequent U.S. Supreme Court rulings. But they unanim-

See PLUM page 9

Looking for quick fame? Reality show wants you

By Alexei Oreskov
RECORDER STAFF WRITER

Forget about hourly billing requirements, tedious document review, and sucking up to pompous partners.

Now first-year lawyers with the right stuff can skip all the unpleasantness of a nascent legal career and proceed directly to the courtroom floor.

If that doesn't sound like the practice of a reputable law firm, that's because it's not. The organization that's interviewing and hiring the newly minted lawyers is the same group responsible for "Joe Mil-

lionaite" and "My Big Fat Obnoxious Fiance."

Reality television has found a new premise, and the legal profession is slated for the starring role.

Beginning this weekend, San Francisco attorneys admitted to the bar after April 2003 will have a chance to audition for a spot on the forthcoming small-screen extravaganza with a working title of "The Legal Show."

"We feel that reality TV has been just waiting to merge with the legal world," says Tyler Ramsey, the casting supervisor

See CASTING page 9

Today's C.D.O.S.

Civil Litigation and Procedure

■ **KILROY v. STATE OF CALIFORNIA:** Federal court suppression order could not be used in California court proceeding as evidence establishing truth of federal court judge's factual findings. C.A. 3rd

■ **MCCALLA v. ROYAL MACCABEES LIFE INSURANCE COMPANY:** Motion to revise district court judgment to include mandatory prejudgment interest must be filed no later than 10 days after entry of judgment. 9th Cir.

■ **UNITED STATES v. ALISAL WATER CORPORATION:** Allegation of impaired ability to collect judgments rising from past claims did not, without more, sup-

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After the verdict came in Thursday, the government moved to have Lazarenko taken back into custody, saying he's a flight risk. The defense wants him to stay under house arrest and indicated it would move for a new trial.

Jenkins put off ruling on both issues until later this summer, saying Lazarenko will stay out of custody for now.

The case is *United States v. Lazarenko*, 00-0248.

Reporter Jeff Chorney's e-mail address is jchorney@therecorder.com. An Associated Press report was used in preparing this story.



CUT DOWN: Halfway through the government's prosecution of Pavlo Lazarenko, U.S. District Judge Martin Jenkins tossed 20 counts against him.

JASON DOY.

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PERFECT 10

Continued from page 1

drawing huge profits from funding illegal activities. We may fail; we may win. It's a novel question."

King likened the case to the litigation against Napster, whose file-sharing software enabled consumers to swap music over the Internet.

"It is the same general idea," said King, who represented Metallica and Dr. Dre in their suit against Napster. "Napster wasn't distributing [music] but providing the means to infringe copyrights."

Perfect 10 Inc. v. Visa International, 040371, was filed in San Jose federal court in January. A hearing on the defendants' motion to dismiss is set for June 28 before Judge James Ware.

Perfect 10 doesn't limit its complaint to the theft of its own copyrighted images. The publisher claims the financial institutions are also abetting the theft of supermodel photos from other magazines and "the most treasured film clips (usually nude scenes of top actresses) ever created by motion picture studios."

The porn publisher claims that since January 2003, it has notified the credit card companies that specific Web sites were infringing its content. Since these financial institutions know about the infringement and financially benefit from it, Perfect 10 says they are liable for contributory and vicarious infringement.

King said the credit card transaction fees are much higher for porn sites because of the shady nature of the business, "which is why we believe they haven't turned off processing for the sites we've showed them are breaking the law."

One of the legal questions raised by the suit is how close a third party must be to an infringer to bear some responsibility for the infringement.

Perfect 10 argues that the credit card companies have a "special relationship" with the infringing Web site operators since they have enhanced requirements for processing the transactions of such high-risk merchants and impose higher fees for disputed charges on them.

This relationship, the porn company said, distinguishes its suit from *Emery v. Visa International Service Association*, 95 Cal. App. 4th 952. In that case — which involved Internet companies soliciting gambling across state lines — the court found that the credit card company could not be forced to be a "global policeman."

Andrew Bridges, a partner at Winston & Strawn's San Francisco office who is representing MasterCard, said there is a difference between providing general business services and providing support for infringing activity.

"There's no reason to believe the law imposes, or should impose, liability for providing general business support [to a company] just because it is alleged to be engaged in infringing conduct," Bridges said.

Michael Page, a partner at Kecker & Van Nest who is representing First Data Corp., Cardservice International Inc. and Humboldt Bank in the case, said Perfect 10 is trying to put the onus on others to protect its rights.

"It's a wild theory," he said. It means someone "could send a notice to the electric company supplying power to people infringing its rights and say 'shut them off.'"

Perfect 10 said in its complaint that it has spent more than \$8 million in attorneys fees to try to stop the theft of its intellectual property.

Perfect 10 won a preliminary injunction against one Web site that was using its images. In *Perfect 10 Inc. v. Cybernet Ventures Inc.*, 213 F. Supp. 2d 1146, the Central District of California found that Cybernet was likely to be found liable for contributory and vicarious copyright infringement. But Townsend's Jansen said Cybernet, which verifies the age of Web site users, had a direct relationship with the infringing Web sites and approved their content.

Credit card companies process "14 million transactions a day," Jansen said. "There's no way a bank or financial institution can perform that kind of monitoring service."

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