

***PERFECT 10 v. VISA INTERNATIONAL SERVICE ASS'N***

*No. C 04-0371 JW, 2004 U.S. Dist. LEXIS 15895 (N.D. Cal. Aug. 5, 2004)*

The district court dismissed the plaintiff's claims that credit card companies that provided financial services to websites that allegedly infringed its copyrights and trademarks were liable for contributory and vicarious infringement, where the plaintiff's complaint did not adequately allege the elements of these claims.

Plaintiff Perfect 10 provides adult entertainment services, including a magazine and website displaying nude models. Perfect 10 owns copyrights in most of its images, many of which are labeled with the registered trademark "Perfect 10." The defendant financial institutions provide credit card transactional services to various websites and other entities. Perfect 10 requested that defendants stop providing credit card processing services to websites that allegedly infringed their copyrights and trademarks. Defendants did not comply, and Perfect 10 sued.

The court granted the defendants' motion to dismiss for failure to state a claim because the plaintiff did not plead facts which supported its claims of contributory and vicarious copyright infringement. As to the contributory infringement claim, while defendants did not dispute knowledge of the infringing activity, the court held that they did not materially contribute to the infringing activity. The court reasoned that the defendants' provision of content-neutral credit card processing services did not bear a direct relationship to the infringing acts. Distinguishing between a material contribution to the functioning and to the infringing activities of said websites, the court found that while the latter qualifies as contributory infringement, the former does not. On the vicarious copyright infringement claim, the court found that while defendants might have received a direct financial benefit from the infringing activity, the claim must be dismissed because defendants did not have the right and ability to control the conduct of the infringers.

The court also granted defendants' motion to dismiss the plaintiff's claims for contributory and vicarious trademark infringement, its state trademark claim, and its claims for right of publicity, unfair competition, and false advertising. Claims of libel and intentional interference with economic relations were time-barred by statute.