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VERDICTS & SETTLEMENTS

Strange bedfellows

VOIRDIRE

HOW DO YOU STOP a charging porn thief? Take away his credit card.

That's what a Beverly Hills, Calif., 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, claims that 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 said that without the support of these financial institutions, infringers wouldn't be able to steal their stuff.

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



'SEMINAL' SUIT: Attorney Howard King has sued credit card companies.

"It's an attempt to enforce copyright and trademark liability far beyond any published case ever," said Mark Jansen, a partner at San Francisco's 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 drawing huge profits from funding: illegal activities. We may fail; we may win."

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, No. 040371, was filed in San Jose, Calif., federal court in January. A hearing on the defendants' motion to dismiss is set for June 28 before Judge James Ware.

Perfect 10 also claims the financial institutions are abetting the theft of supermodel photos from other magazines and nude scenes of movie actresses.

—AMERICAN LAWYER MEDIA