

## Jury rejects fraud claim against Irvine marketing firm

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A jury has rejected allegations that an Irvine-based marketing firm charged the Costa Mesa Conference and Visitors Bureau hundreds of thousands of dollars for advertising services it never performed.

In a lawsuit last year, the bureau accused HyperDisk Marketing Inc. of fraud, breach of contract and unjust enrichment.

After a nine-day trial, a jury in Orange County Superior Court found in favor of HyperDisk on all counts on Oct. 3, a court clerk said.

Kim Glen, the visitors bureau's marketing manager, said the lawsuit stemmed from the bureau's inability to account for money it had spent. She said the bureau paid HyperDisk more than \$1 million over 4 1/2 years for various services, including website design and buying online ads on the bureau's behalf.

"We did not see the (Web) traffic that we should have seen based on the amount that we were spending," Glen said.

The bureau asked for documentation of where the money went, but never got it until the case was already in court, she said. Glen said the bureau could only account for about \$400,000 of the money, leaving a gap of \$600,000.

HyperDisk's lawyer, Alan A. Greenberg, said the bureau mischaracterized its deal with the company. Greenberg said the bureau paid HyperDisk a flat monthly fee, which at one time was \$14,800, for all its services.

So there was no way to account for every dollar spent, Greenberg said, but HyperDisk gave the bureau all the information it could.

There was no written contract because neither side felt the need for one when they started working together in 2006, Greenberg said. He said the relationship deteriorated only when new leaders took over the visitors bureau in 2010.

In a court filing, HyperDisk criticized the bureau's "shakedown tactics," saying it publicized the lawsuit in the media to "bully" the company into settling. The first complaint asked for \$5 million in punitive damages, in violation of state law, which specifically bars plaintiffs from seeking specific amounts of punitive damages.

Glen said the bureau's lawyer, Albert S. Israel, made a mistake in including the amount and quickly filed an amended complaint that omitted it. But in the meantime, the \$5 million figure garnered a headline on OC Weekly's website. Israel declined to comment.

Glen said she did not know how much money was spent in pursuing the lawsuit. The bureau gets no money directly from the city of Costa Mesa, but it's funded by a 3 percent tax on overnight hotel stays.

“And so in a sense, they're using other people's money to pursue the case,” Greenberg said. “It's tax money that they're squandering.”

Greenberg said HyperDisk, founded in 1994, works with “blue-chip” companies across the country. He said the company had never been sued before and did not consider settling.

“It's a lot for the company to deal with,” Greenberg said of fighting the case. “But the company was not going to back down because it was being unfairly accused of fraud, and it needed to clear its name no matter what it was going to take. And it did it.”

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