

No. 08-0201-CV

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff-Appellant

v.

OLEKSANDR DOROZHKO,
Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of New York

**OPENING BRIEF OF THE
SECURITIES AND EXCHANGE COMMISSION,
APPELLANT**

BRIAN G. CARTWRIGHT
General Counsel

ANDREW N. VOLLMER
Deputy General Counsel

JACOB H. STILLMAN
Solicitor

MARK PENNINGTON
Assistant General Counsel

DAVID LISITZA
Attorney

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-8010
(202) 551-5015 (Lisitza)

JURISDICTION

The district court had jurisdiction pursuant to Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. 78aa, over this civil law enforcement action brought by the Securities and Exchange Commission. The Commission appeals from the district court's order denying its motion for a preliminary injunction and lifting an asset freeze that the court had entered at the beginning of the litigation against defendant Oleksandr Dorozhko. JA998-1051.¹ This Court has jurisdiction pursuant to 28 U.S.C. 1292(a)(1). The district court entered its order on January 8, 2008. The Commission's notice of appeal was timely filed on January 11, 2008. Fed. R. App. P. 4(a)(1)(A).

ISSUES PRESENTED FOR REVIEW

1. Whether defendant employed a "deceptive device or contrivance" within the meaning of the antifraud provisions in Section 10(b) of the Exchange Act when he hacked into a secure computer system in order to obtain material nonpublic information about corporate earnings that he immediately used to trade in securities.

¹ "JA" refers to the Joint Appendix filed with this brief.

