

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
BERND BILDSTEIN, On behalf of himself  
and all others similarly situated,

Index No. O3 Civ. 9826 (WHP)

Plaintiff

SECOND AMENDED COMPLAINT

- against -

(Class Action)

MASTERCARD INTERNATIONAL  
INCORPORATED,

Defendant.  
----- x

Plaintiff, by his undersigned attorneys, suing on behalf of himself and all others similarly situated, pursuant to C.P.L.R. Article 9, alleges upon information and belief, except as to paragraph 1, which is alleged upon knowledge:

1. Plaintiff is a resident of Queens, New York. He has continuously been, at least since September 1, 1997, a Mastercard Debit Card holder, which was acquired from one of the constituent members of defendant Mastercard International Incorporated ("Mastercard" hereinafter). Plaintiff has used said card from time to time for purchases and currency transactions abroad.

2. Mastercard is a non-stock membership corporation, incorporated under the laws of the State of Delaware, with its principal place of business in Purchase, New York. Mastercard was established in 1966 when a group of banks with proprietary or regional card systems formed a domestic card program and through various name changes and development of a global network eventually changed the name to "Mastercard International".

3. Mastercard is a global company with 1500 principal members located in the United States and around the world who are its shareholders and owners and who have equity interests and voting rights. It is also comprised of approximately 13,500 affiliate members who compete with one another in the issuance of credit cards. There are between 6,000 to 8,000 members in the United States alone issuing Mastercard-branded cards.

4. Mastercard is structured as an open joint venture association, open to any eligible financial institution and is often referred to as a "credit card network". Its members are licensed to issue payment cards carrying the Mastercard brand.

5. Mastercard adopts operating rules applicable to its members in areas where common procedures and standards are needed to ensure the smooth, equitable and secure functioning of the system. Its members are required to comply in all respects with all bylaws, rules, regulations and published policies promulgated by Mastercard, including the payment of all fees, dues and assessments.

6. Mastercard has spent millions of dollars promoting its Mastercard brand credit card for use in the United States and all over the world. Mastercard's promotion efforts include substantial efforts directed to the New York consumer.

7. Mastercard holders making purchases in the United States, and in New York, specifically, pay only the actual price of the services or goods charged to the card, Mastercard does not charge a transaction fee. However, Mastercard determined that users of Mastercard making purchases and other transactions in foreign currencies, would be charged a Foreign Currency Transaction Fee ("FCTF") for converting those transactions into American dollars. Mastercard determined that said FCTF should be at least one percent, and that it would be assessed as part of the currency conversion rate to all cardholders as part of its currency conversion business.

8. Thereafter, Mastercard began applying the FCTF to all transactions in which the transaction currency differs from the billing currency, i.e., foreign transaction. It retains the FCTF.

9. Mastercard determined that the FCTF would not be separately itemized, but would instead be imbedded in and made a part of the currency conversion rate charged to the cardholder using the card for foreign purchases in which the transaction currency differs from the billing currency, and there would be no separate disclosure of the imposition of the FCTF in the promotional material directed to the New York consumer or in the billing statement sent to its credit card holders. No disclosure is thus made that Mastercard has its members and affiliates charge

United States cardholders for foreign transactions more than the currency conversion rate applicable to that particular country and currency involved in the transaction. Mastercard did not and does not disclose that the FCTF was imbedded in the currency conversion. It goes to great efforts to conceal the FCTF by making it appear as part of the exchange rate.

10. There is no rational relationship between the cost to Mastercard of a foreign charge to a Mastercard and the embedded levy. Whatever costs to Mastercard were involved are trivial. The embedded levy is an unjust attempt to profit at the expense of the cardholders.

11. Mastercard was fully aware that disclosing the FCTF as a separate fee would cause the consumer not to use the Mastercard credit card, and to seek other methods of payments, including competing charge cards. Indeed, no other fee is similarly imbedded in the transaction amount or concealed in the billing statements sent to its cardholders. Thus, Mastercard discloses late fees, over the credit line fees, interest rates, annual fees, cash advance transaction fees, among others. But, in internal memoranda, Mastercard officers acknowledged that cardholders would be turned off if the FCTF were separately disclosed.

12. Plaintiff, in the year 2000 to the present has had transactions in Mexico, using his Mastercard Debit Card and acquired Mexican Peso charges. Those Mexican Peso charges were converted in his billing statements to U.S. Dollars with a conversion rate, unknown to him, to include the Mastercard FCTF. He has thus paid thousands of dollars.

13. Mastercard's failure to disclose the FCTF was a material omission. Plaintiff was unaware of the FCTF at the time of the transaction. He was deprived of free choice. Since the amounts paid by reason of such fee were significant to him, he would have chosen to pay for the purchases in American currency and pay only the foreign exchange rate, avoiding the Mastercard imbedded extra charge for conversion. He would also have converted American currency into pesos before arriving in Mexico, and paid only the exchange rate. Plaintiff would also have researched other credit cards to ascertain if they had an embedded FCTF in their exchange rate and a lower rate than Mastercard, or, possibly have found a credit card that did not charge a FCTF at all. He would

have then used those cards to effect the foreign purchases. As a result of Mastercard's deception, plaintiff has unknowingly paid Mastercard thousands of dollars which he would not have otherwise paid.

14. Plaintiff brings this action on behalf of himself and all other persons who utilize Mastercard credit and/or debit cards for foreign purchases and currency transactions. Such users were subjected to hidden transaction charges which were buried in the "conversion rate" and not disclosed to them. These charges could have, and would have, been avoided.

15. The class presently numbers at least thousands and it is therefore impracticable to bring them all before the Court. There are questions of law and fact common to the class which predominate over any questions affecting only individual members. Plaintiff's claims are typical of the claims of the class. Plaintiff will fairly and adequately protect the interests of the class and a class action is superior to other available methods for fair and efficient adjudication of the controversy.

16. Members of the class used Mastercard in foreign purchases and currency transactions and have unknowingly paid millions of dollars for the FCTF, when such charges could have been avoided.

17. Plaintiff and all members of the class similarly situated have sustained the same damage.

#### **AS AND FOR A FIRST CAUSE OF ACTION**

18. Defendant's concealment of its FCTF violated §349 of the General Business Law in that it never disclosed to its customers the existence of the FCTF in the conversion rate, and such non-disclosure was material, and could have been avoided by the consumer. It has received millions of dollars of revenue from the imbedded and concealed FCTF, which it would otherwise not have received.

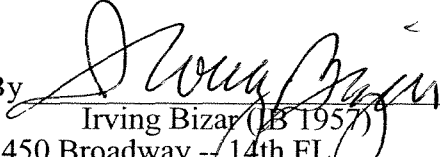
#### **AS AND FOR A SECOND CAUSE OF ACTION**

19. Defendant has been unjustly enriched at the expense of plaintiff and the Class members.

WHEREFORE, plaintiff, on behalf of himself and other members of the Class, demands judgment, as follows:

- A. Declaring this action to be a Class Action;
- B. Awarding the actual damages incurred to be determined at a trial upon an accounting;
- C. Awarding plaintiff attorneys' fees, reimbursement of disbursements, accounting and expert fees; and
- D. Such other and further relief as this Court may deem just and proper.

BALLONSTOLLBADER & NADLER, P.C.  
Attorneys for Plaintiff

By   
Irving Bizar (B 1957)  
1450 Broadway -- 14th FL  
New York, New York 10018-2268  
(212) 575-7900

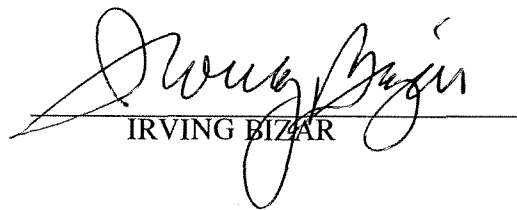
Dated: New York, New York  
August 23, 2004

O:\BIZAR\MASTERCAR\2ND AMENDED.COM

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that he caused a true and correct copy of the foregoing *Second Amended Complaint* to be served by depositing a true copy of same enclosed in a post-paid, properly addressed wrapper, upon the following attorneys at the addresses designated for that purpose in an official depository for the United States Postal Service within the State of New York.

Theo Allegaert, Esq.  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
(212) 310-8000

  
IRVING BIZAR

MASTERCARD