

**POWELL, TRACHTMAN, LOGAN,
CARRLE & LOMBARDO, P.C.**

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MARK DRESSEL AND
MDGM PARTNERSHIP,
Plaintiffs

VS.

VISA USA, INC.,
Defendant

IN THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

No. 03-06201

CIVIL ACTION

SECOND AMENDED COMPLAINT

Parties

1. Plaintiff Mark Dressel, (“Dressel”) is an adult individual residing at 707 Dover Road, Wynnewood, Pennsylvania, 19096. At all times relevant hereto, Dressel was a resident of the Commonwealth of Pennsylvania.
2. Plaintiff, MDGM Partnership, (“MDGM”) is a Pennsylvania general partnership, with a principal business addresses located at 707 Dover Road, Wynnewood, Pennsylvania, 19096.
3. The Defendant is Visa USA, Inc., (“Visa”) a business entity, with a mailing address located at P. O. Box 194607, San Francisco, California, 94119.

Jurisdiction and Venue

4. Jurisdiction is predicated upon 28 USCA Sections 1331 and 1343, in that this is a civil

action arising under the Constitution, laws, or treaties of the United States. Jurisdiction is further predicated upon the doctrines of ancillary and pendent jurisdiction.

5. Venue in this district is proper pursuant to 28 USCA Section 1391(b).

Facts

6. Prior to February, 2000, after investigation and research, Dressel recognized a need and demand in the restaurant and service industries for a method whereby customers could easily and accurately calculate the amount of gratuities to be paid in conjunction with acquiring goods and services.
7. By way of example, only, publications, including, *inter alia*, the New York Times, published articles respecting the perceived difficulty by, *inter alia*, restaurant patrons to accurately calculate gratuities and complete basic math calculations.
8. Dressel further knew that customers and clients used credit cards to pay for a significant percentage of the goods and services they procured and that the credit card industry earned revenues based upon the amounts charged for the goods and services.
9. Accordingly, Dressel believed that the credit card industry would earn additional revenues if customers could easily and accurately calculate the amount of gratuities to be paid in conjunction with acquiring goods and services.
10. In response to this perceived need, Dressel formulated a confidential and proprietary business and marketing plan to provide an easy way to calculate gratuities.
11. To further his business concept, Dressel entered into MDGM Partnership. MDGM is a Pennsylvania general partnership. MDGM Partnership is the owner of the rights to the business and marketing plan and possesses the exclusive right to license the use of the

patent described herein.

12. In furtherance of his business and marketing plan, Dressel designed, and thereafter sought, a patent from the United States Patent Office, to a “billfold with calculator” and on or about March 8, 1999, Dressel filed patent application No. 29/101,638, seeking the design patent for a “billfold with calculator.”
13. Prior to October 4, 1999, Dressel learned that his application for a design patent for a “billfold with calculator” would be granted and thereafter approached Visa with his business and marketing plan.
14. By way of a letter dated October 4, 1999, Dressel wrote to Carl Pascarella, President, at Visa, advising Pascarella that Dressel had been advised that his Patent was granted and would be officially issued and offering to form a business venture with Visa to utilize the business and marketing plan and patent. A true and correct copy of the correspondence from Dressel to Carl Pascarella, President of Visa is attached hereto, incorporated herein and marked as Exhibit “A.”
15. On February 8, 2000, the United States Patent Office formally issued to Mark Dressel, Patent No. DES.420,382. (“Patent”). A true and correct copy of the Patent awarded to Dressel is attached hereto, incorporated herein and marked as Exhibit “B.”
16. Visa responded to Dressel in a telephone message directing Dressel to forward his “easy check” business and marketing plan to Larry Handback at Visa.
17. In response to the direction from Visa, Dressel prepared and forwarded to Handback his “easy check” business and marketing plan, together with a copy of the Patent. A true and correct copy of the transmitted plan is attached hereto, incorporated herein and marked as

Exhibit "C."

18. Visa did not immediately respond to Dressel, and on November 10, 2000, Dressel again forwarded to Larry Handback at Visa his "easy check" business and marketing plan utilizing the Patent. A true and correct copy of the transmittal letter from Dressel to Larry Handback of Visa is attached hereto, incorporated herein and marked as Exhibit "D".
19. Visa again did not respond, and thereafter provided Dressel with no information regarding Visa's intentions to utilize the Patent or the business and marketing plan developed by Dressel.
20. While searching the Internet in September, 2002, Dressel visited the Visa website, and discovered that Visa was then offering to its businesses customers a product Visa identified as the "Visa Check Presenter With Tip Calculator." A true and correct copy of a printout of the Visa Internet website with the "Visa Check Presenter With Tip Calculator" displayed as an item for acquisition by Visa's business customers is attached hereto, incorporated herein and marked as Exhibit "E".
21. Upon discovery of Visa's unauthorized use of the his business and marketing plan and the Patented device, Dressel, through his counsel Gerald J. Muller, Esquire, contacted Visa, identified the prior business relations between Visa and Dressel, and demanded an immediate cessation of the unauthorized use of Patent.
22. Although Visa steadfastly denied that it had taken or utilized the proprietary business and marketing plan and Patent proposed by Dressel, in February, 2003, Visa withdrew and upon information and belief, no longer offers to its business clientele the "Visa Check Presenter With Tip Calculator."

23. Plaintiffs aver, upon information and belief that Visa has substantially and financially benefitted from the use of the business and marketing plan and patent.
24. By virtue of Visa's conduct, Dressel and MDGM have suffered harm and damages and are entitled to and request the relief set forth below.

COUNT I - PATENT INFRINGEMENT

25. The foregoing and following paragraphs are incorporated as if set forth in full herein.
26. The Patent was issued on February 8, 2000.
27. Thereafter, without Dressel's authority or permission, Visa did make, use and/or sell Dressel's patented invention, within the United States during the term of the Patent therefor in violation of, *inter alia*, 35 U.S.C. § 271(a).
28. Upon information and belief, Visa manufactured the Patent devises it has furnished to its customers throughout the United States and perhaps internationally.
29. Visa has purposefully infringed the patent rights of Dressel.
30. Dressel further requests the multiplication of damages under 35 U.S.C. § 284 and counsel fees pursuant to 35 U.S.C. § 285.
31. Dressel further requests that Visa be permanently enjoined from further use of the patent, that it be required to retrieve all devises furnished to customers and clients, and that it account for all benefits derived from the use of the Patent.

WHEREFORE, Dressel demands judgment against Visa, in an amount of damages to be computed by the jury or court, the multiplication of damages under 35 U.S.C. § 284, costs, counsel fees pursuant to 35 U.S.C. § 285, and as otherwise permitted by law, injunctive relief, and such other relief as the Court may deem appropriate.

COUNT II - CONVERSION

32. The foregoing and following paragraphs are incorporated as if set forth in full herein.
33. At all times relevant hereto, the intellectual property rights in the “easy check” business and marketing plan, that incorporated the use of the Patent were owned by Dressel and MDGM.
34. The “easy check” business and marketing plan proposed to Visa included the use of the Patented devices as a means for Visa to advertise its name and trademark at the point of sale by having the device placed before customers and business patrons by waiters, waitresses and businesses.
35. Waiters, waitresses and businesses would be motivated to use the device with Visa’s name and trademark as a means of having their tips and gratuities calculated.
36. Upon information and belief, Visa agreed with the value of the “easy check” business and marketing plan and began to implement the plan by way of having the patented device manufactured with Visa’s trademarked logo and offering the device “free” to its customers as a part of the advertising of Visa nationally and internationally.
37. Visa converted to its own use the intellectual property rights of Dressel and MDGM, known as the “easy check” business and marketing plan, without Dressel’s or MDGM’s knowledge, consent or the lawful justification.
38. The activity by Visa was purposeful, malicious, wanton, wilful and oppressive and outrageous conduct warranting the imposition of punitive damages.
39. Visa has received the financial and other benefits derived from the unauthorized use of Dressel’s and MDGM’s business and marketing plan and efforts by way of its unlawful

conversion of the intellectual and other property rights owned by Dressel and MDGM, without their knowledge, permission or consent.

40. As a result of the conduct by Visa, the value of Dressel's and MDGM's "easy check" business and marketing plan has been taken and diminished and likely left unmarketable to other credit card companies, including those who had previously articulated an interest in the business and marketing plan and acquisition of rights to the plan.

41. Dressel and MDGM have suffered damages in an amount in excess of \$75,000.00.

WHEREFORE, Dressel and MDGM demand judgment in an amount in excess of \$75,000.00, punitive damages, costs, counsel fees as permitted by law and such other relief as the Court may deem appropriate.

COUNT III - IMPLIED CONTRACT/UNJUST ENRICHMENT

42. The foregoing and following paragraphs are incorporated as if set forth in full herein.

43. At the times relevant hereto, Visa knew and understood that Dressel had made a business and marketing plan proposal and reasonably relied upon Visa to finalize a contract and business agreement prior to the use of the business and marketing plan and Patent.

44. As a direct result of the recommendations, advice and business and marketing plan known as the "easy check" provided by Dressel, Visa realized the benefit of the business and marketing plan and upon information and belief, accrued substantial gains and profits.

45. Upon information and belief, Visa used the "easy check" business and marketing plan furnished by Dressel and provided to its clients and customers Dressel's patented device with Visa's logo and advertising notwithstanding its knowledge of its unlawful conduct as pleaded herein.

46. Upon information and belief, Visa has made no efforts to recall and retrieve the devices, but instead Visa will continue to enjoy the benefits of the use of the device indefinitely into the future.
47. Despite receiving and utilizing Dressel's business and marketing plan, Visa has failed to compensate Dressel and MDGM for same.
48. Because Visa utilized the business and marketing plan and Patent without notice, the fair and reasonable value of the rights of Dressel and MDGM used by Visa is not currently known.
49. Defendant will be unjustly enriched if it is permitted to retain the benefit of the business and marketing plan and Patent provided by Dressel without compensating Dressel and MDGM for same.

WHEREFORE, Dressel and MDGM demand judgment in an amount in excess of \$75,000.00, punitive damages, costs, counsel fees as permitted by law and such other relief as the Court may deem appropriate.

COUNT IV - MISAPPROPRIATION OF CONFIDENTIAL INFORMATION/FRAUD

50. The foregoing and following paragraphs are incorporated as if set forth in full herein.
51. Dressel avers, upon information and belief, that Visa's direction to Dressel to forward to his business and marketing plan and information to Larry Handback was intended to induce Dressel to disclose his business and marketing plan, provide information respecting his intellectual property rights in the Patent and disclose confidential, proprietary information owned by Dressel and MDGM to Visa.
52. Visa fraudulently induced Dressel to further reveal his proprietary business and marketing

plan by directing him to discuss the business and marketing plan and Patent with Visa's representatives, all the while concealing its intention not to contract with Dressel and MDGM or take a license to the Patent, but rather, fraudulently concealed from Dressel and MDGM the fact that Visa would and thereafter did implement Dressel's business and marketing plan and manufactured the Patented device with Visa's own logo and trademark.

53. Upon information and belief, Visa knew that unless Dressel was the owner of a business that utilized Visa credit cards, that neither Dressel nor MDGM would learn of Visa's conduct.
54. Visa acted with full knowledge that the Patent and "easy check" business and marketing plan was first disclosed to them by Dressel.
55. Visa understood that Dressel considered the "easy check" business and marketing plan as a confidential trade secret.
56. At all material times, there was an implied confidentiality agreement between Dressel and Visa.
57. In response to Dressel's October 4, 1999, letter, Visa thereafter actively solicited further disclosure of the "easy check" business and marketing plan from Dressel and then made use of the disclosed material and the Patent awarded to Dressel.
58. Dressel reasonably relied upon the directions and communications with Visa, and Visa's obligations to engage in good faith and fair dealing, and not convert to its own use, without permission, the intellectual property and proprietary information owned by Dressel and MDGM.

59. As a direct and proximate result of the conduct by Visa, Dressel and MDGM have suffered damages.

60. The activity by Visa was purposeful, malicious, wanton, wilful and oppressive and outrageous conduct warranting the imposition of punitive damages.

WHEREFORE, Dressel and MDGM demand judgment in an amount in excess of \$75,000.00, punitive damages, costs, counsel fees as permitted by law and such other relief as the Court may deem appropriate

**POWELL, TRACHTMAN, LOGAN,
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Date: December , 2003

By: _____

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CERTIFICATE OF SERVICE

I, Paul A. Logan, counsel for Plaintiffs certify that on December 17, 2003, a true and correct copy of the foregoing Second Amended Complaint was served upon the following by U.S. Mail, postage prepaid, at the address below.

Deborah Prisinzano Mikkelsen, Esquire
Morgan Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19103-2921

Theodore T. Herhold, Esquire
Townsend and Townsend and Crew LLP
379 Lytton Ave.
Palo Alto, CA 94301

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