

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

EVERY PENNY COUNTS, INC.	)	
Plaintiff	)	
	)	
v.	)	CASE NO: 8:07CV1255-T27 MAP
	)	
AMERICAN EXPRESS COMPANY	)	
MASTERCARD INTERNATIONAL	)	
INCORPORATED	)	
VISA U.S.A., INC.	)	
AND GREEN DOT CORPORATION	)	
Defendants	)	JURY TRIAL DEMANDED
	)	

**SECOND AMENDED COMPLAINT SEEKING DAMAGES AND  
PERMANENT INJUNCTIVE RELIEF FOR PATENT INFRINGEMENT**

Comes now, Plaintiff, Every Penny Counts, Inc., and for its complaint seeking damages and permanent injunctive relief against Defendants, American Express Company, MasterCard International Incorporated, VISA U.S.A., Inc., and Green Dot Corporation respectfully states as follows:

**I. INTRODUCTION**

This is an action seeking the recovery of significant damages sustained by Plaintiff, Every Penny Counts, Inc. ("EPC") as a direct result of the knowing and willful infringement of its patents by Defendants, American Express Company, MasterCard International Incorporated, VISA USA, Inc., and the infringement of the same patents by Green Dot Corporation. As more fully detailed below, EPC is holder of United States Patent Number 5,621,640 ("the '640 Patent"), Patent Number 6,112,191 ("the '191

Patent”), Patent Number 6,088,682 (“the ‘682 Patent”), Patent Number 6,876,971 (“the ‘971 Patent”), and Patent Number 7,171,370 (“the ‘370 Patent”). Over a period of several years, Defendants have introduced products and processes which use the invention(s) embodied in the above-cited patents. EPC now seeks recovery of those damages together with treble damages, attorney’s fees and permanent injunctive relief.

## II. PARTIES, JURISDICTION AND VENUE

1. Plaintiff, EPC, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the City of Sarasota, Sarasota County, Florida.

2. Upon information and belief, Defendant American Express Company (“AMEX”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

3. Upon information and belief, Defendant MasterCard International Incorporated (“MASTERCARD”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Purchase, New York.

4. Upon information and belief, Defendant VISA, U.S.A., Inc. (“VISA”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in San Francisco, California.

5. Upon information and belief, Defendant Green Dot Corporation (“GREEN DOT”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Monrovia, California.

6. Defendants AMEX, MASTERCARD, VISA, and GREEN DOT have engaged in systematic activities within this judicial district. This Court enjoys subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States. This Court also enjoys jurisdiction pursuant to 28 U.S.C. § 1338(a).

7. This Court has venue pursuant to 28 U.S.C. § 1391(b) as AMEX, MASTERCARD, VISA, and GREEN DOT are subject to personal jurisdiction in this judicial district. Alternatively, venue is proper pursuant to 28 U.S.C. § 1400(b) because all of the Defendants have committed acts of infringement within this judicial district and have regular and established business activities within the district including, but not limited to, the advertisement and sale of products which infringe the '640 Patent, the '191 Patent, the '682 Patent, the '971 Patent, and/or the '370 Patent. ("Patents-in-Suit").

### III. GENERAL ALLEGATIONS

8. The '640 Patent issued to Every Penny Counts, Inc., a corporation formed under the laws of the State of New Jersey ("OLD EPC") on April 15, 1997. A copy of the '640 Patent is attached hereto as Exhibit "A."

9. The '640 Patent has claims directed towards a payment method and system for apportioning excess cash payments amongst various predetermined accounts, e.g., a prepaid card.

10. The '191 Patent issued to OLD EPC on August 29, 2000. A copy of the '191 Patent is attached hereto as Exhibit "B."

11. The '191 Patent has claims directed towards a method and system to apportion excess funds from consumer spending transactions into one or more accounts (e.g., a prepaid card) determined by the consumer.

12. The '682 Patent issued to OLD EPC on July 11, 2000. A copy of the '682 Patent is attached hereto as Exhibit "C."

13. The '682 Patent has claims directed towards a method and system to apportion excess funds from consumer spending transactions into one or more accounts wherein the identity of the consumer is linked to said account(s).

14. On February 5, 2001, the inventor Bertram V. Burke assigned to Every Penny Counts, Inc., a corporation formed under the laws of the State of New Jersey ("OLD EPC"), the improvements disclosed in Application Number 09/609,777 (which issued as the '971 Patent) as well as all divisional, continuing, substitute, renewal, reissue, and all other applications which have been or shall be filed on any of said improvements. A copy of the assignment is attached hereto and made a part hereof as Exhibit "D."

15. On September 2, 2004, OLD EPC reformed as EPC, the Plaintiff in this action, and EPC acquired all rights and title to all issued patents and any pending patent applications (as well as all divisional, continuing, substitute, renewal, or reissue applications thereof), including the '640 Patent, the '191 Patent, and the '682 Patent. A copy of the pertinent Asset Acquisition Agreement between OLD EPC and EPC is attached hereto as Exhibit "E."

16. The '971 Patent issued to EPC on April 5, 2005. A copy of the '971 Patent is attached hereto as Exhibit "F."

17. The '971 Patent has claims directed towards an automated method for extending point of sale transactions to allow customers to save change or transfer discretionary funds into other accounts.

18. United States Patent Application Number 11/098,651, which issued as the '370 Patent, is a continuation of United States Patent Application Number 09/609,777, which issued as the '971 Patent.

19. The '370 Patent issued to EPC on January 30, 2007. A copy of the '370 Patent is attached hereto as Exhibit "G."

20. The '370 Patent has claims directed towards an automated method and system for extending point of sale transactions to allow customers to save change or transfer discretionary funds into other accounts.

#### **IV. INFRINGEMENT BY THE DEFENDANTS IN VIOLATION OF 35 U.S.C. § 271(a)**

21. Each of the Defendants is engaged in the provision of financial services to the public at large. A portion of each of the Defendants' financial services offerings includes the control of systems, methods and networks which offer, distribute, market or otherwise oversee the operation of prepaid cards which can be utilized at a plurality of merchants. Such prepaid cards are referred to as "open" prepaid cards.

22. The ability to utilize "open" prepaid cards at various merchants is a distinguishing feature from "closed" prepaid cards which typically can only be used at

one merchant. By way of example, a VISA branded “open” prepaid card can be used by a consumer at any location where VISA branded cards are accepted, whereas a Sears® branded “closed” prepaid card can only be used at the issuing merchant, in this example, Sears® stores.

23. Upon information and belief, AMEX offers, distributes, markets and controls a program for the operation of individually branded “open” prepaid cards which can be utilized by consumers at retail locations which accept the AMEX’s other branded cards.

24. Upon information and belief, AMEX’s distribution, marketing and sale of its “open” prepaid cards utilizes the technology and inventions taught in at least one of the Patents-in-Suit.

25. Upon information and belief, AMEX offers branded “open” prepaid cards for sale and use throughout the United States.

26. Upon information and belief, AMEX licenses, co-brands or otherwise cooperates with third parties (including, but not limited to, banks, merchants, credit unions, etc.) to distribute, market and sell “open” prepaid cards which utilize AMEX’s financial services infrastructure to practice at least one of the inventions contained in the Patents-in-Suit.

27. Upon information and belief, MASTERCARD offers, distributes, markets and controls a program for the operation of individually branded “open” prepaid cards which can be utilized by consumers at retail locations which accept MASTERCARD’s other branded cards.

28. Upon information and belief, MASTERCARD's distribution, marketing and sale of its respective "open" prepaid cards utilizes the technology and inventions taught in at least one of the Patents-in-Suit.

29. Upon information and belief, MASTERCARD offers branded "open" prepaid cards for sale and use throughout the United States.

30. Upon information and belief, MASTERCARD licenses, co-brands or otherwise cooperates with third parties (including, but not limited to, banks, merchants, credit unions, etc.) to distribute, market and sell "open" prepaid cards which utilize the MASTERCARD financial services infrastructure to practice at least one of the inventions contained in the Patents-in-Suit.

31. Upon information and belief, VISA offers, distributes, markets and controls the program for the operation of individually branded "open" prepaid cards which can be utilized by consumers at retail locations which accept VISA's other branded cards.

32. Upon information and belief, VISA's distribution, marketing and sale of its respective "open" prepaid cards utilizes the technology and inventions taught in at least one of the Patents-in-Suit.

33. Upon information and belief, VISA offers branded "open" prepaid cards for sale and use throughout the United States.

34. Upon information and belief, VISA licenses, co-brands or otherwise cooperates with third parties (including, but not limited to, banks, merchants, credit unions, etc.) to distribute, market and sell "open" prepaid cards which utilize the VISA

financial services infrastructure to practice at least one of the inventions contained in the Patents-in-Suit.

35. Upon information and belief, GREEN DOT offers, distributes, markets and controls the program for the operation of GREEN DOT “open” prepaid MASTERCARD-branded and VISA-branded cards which can be utilized by consumers at retail locations which accept MASTERCARD-branded and VISA-branded cards.

36. Upon information and belief, GREEN DOT’s distribution, marketing and sale of its respective “open” prepaid cards utilizes the technology and inventions taught in at least one of the Patents-in-Suit.

37. Upon information and belief, GREEN DOT offers GREEN DOT “open” prepaid MASTERCARD-branded and VISA-branded cards for sale and use throughout the United States.

38. Upon information and belief, GREEN DOT licenses, co-brands or otherwise cooperates with third parties (including, but not limited to, banks, merchants, credit unions, etc.) to distribute, market and sell “open” prepaid cards which utilize the GREEN DOT financial services infrastructure to practice at least one of the inventions contained in the Patents-in-Suit.

39. Upon information and belief, at least as early as February 1, 2001, AMEX was aware of the existence of the ’640 Patent, the ’191 Patent, and the ’682 Patent and knew or should have known that EPC was the lawful owner of such patents.

40. Despite knowledge of the Patents-in-Suit, AMEX continued, and continues to willfully infringe the Patents-in-Suit.



41. Upon information and belief, at least as early as February 2, 2001, MASTERCARD was aware of the existence of the '640 Patent, the '191 Patent, and the '682 Patent and knew or should have known that EPC was the lawful owner of such patents.

42. Despite knowledge of the Patents-in-Suit, MASTERCARD continued, and continues to willfully infringe the Patents-in-Suit.

43. Upon information and belief, at least as early as February 8, 2001, VISA was aware of the existence of the '640 Patent, the '191 Patent, and the '682 Patent and knew or should have known that EPC was the lawful owner of such patents.

44. Despite knowledge of the Patents-in-Suit, VISA continued, and continues to willfully infringe the Patents-in-Suit.

45. AMEX is not authorized or licensed by EPC to practice the inventions encompassed by the Patents-in-Suit.

46. MASTERCARD is not authorized or licensed by EPC to practice the inventions encompassed by the Patents-in-Suit.

47. VISA is not authorized or licensed by EPC to practice the inventions encompassed by the Patents-in-Suit.

48. GREEN DOT is not authorized or licensed by EPC to practice the inventions encompassed by the Patents-in-Suit.

49. As a result of the infringing acts committed by AMEX, EPC has suffered and continues to suffer damages which will continue unless this Court enjoins such acts of infringement.

50. As a result of the infringing acts committed by MASTERCARD, EPC has suffered and continues to suffer damages which will continue unless this Court enjoins such acts of infringement.

51. As a result of the infringing acts committed by VISA, EPC has suffered and continues to suffer damages which will continue unless this Court enjoins such acts of infringement.

52. As a result of the infringing acts committed by GREEN DOT, EPC has suffered and continues to suffer damages which will continue unless this Court enjoins such acts of infringement.

#### **PRAYER FOR RELIEF**

WHEREFORE, Every Penny Counts, Inc. respectfully prays that, after due proceedings, there be judgment in its favor and against Defendants, AMEX, MASTERCARD, VISA, and GREEN DOT, and that Every Penny Counts be granted the following relief:

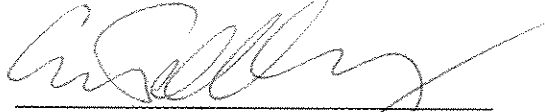
- (a) permanent injunctive relief prohibiting the Defendants, their agents, employees, officers, directors, licensees and all of those in privity with any of the Defendants from continuing to engage in acts of infringement of the '640 Patent, the '191 Patent, the '682 Patent, the '971 Patent, and/or the '370 Patent;
- (b) an award of all damages recoverable under the United States Patent laws;
- (c) an award of treble damages for the willful infringement of AMEX, MASTERCARD and VISA;

- (d) an award of interest, costs and reasonable attorneys' fees; and
- (e) such other relief as may be just and equitable.

EPC demands a trial by jury.

Respectfully submitted,

**PHELPS DUNBAR LLP**



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