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New settlement may mean credit card surcharges

By Jonathan T. Hasebe



On September 12, a New York federal court held a fairness hearing to review a class-action settlement involving a number of retailers, banks, Visa, and MasterCard. The result of this fairness hearing could affect whether retailers may add surcharges to their customer's bills to cover credit-card processing fees.

The fairness hearing reviewed a November 2012 settlement approval for the case *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*. This settlement ended a seven-year suit brought by several merchants against Visa, MasterCard and a number of their respective member banks.

Visa and MasterCard were accused of fixing prices of processing fees paid by merchants. As part of the settlement, beginning January 27, Visa and MasterCard allowed merchants to add additional surcharges for credit-card transactions.

Prior to this 2012 settlement, both Visa and MasterCard prohibited retailers from transferring the costs of the credit-card processing fee directly to their customers. Since the beginning of the year, some

retailers have begun adding these surcharges to customers who choose to use a Visa or MasterCard credit card while others have been waiting for the result of this fairness hearing to determine whether the settlement will be upheld.

In light of the Visa and MasterCard settlement, some states have indicated an interest in adopting laws to prohibit the use of surcharge fees. Currently, 10 states have adopted such laws including California, Colorado, Connecticut, Florida, Kansas, Maine, Massachusetts, New York, Oklahoma and Texas.

Nevertheless, most of these state statutes provide a loophole allowing retailers to implement a credit-card surcharge for the purpose of inducing payments by means other than a credit card (e.g. cash, check or debit card) provided such a discount is offered to all prospective customers.

As part of the settlement, Visa and MasterCard implemented strict rules on retailers who wished to adopt these credit-card surcharges in their billing practice. Specifically, as part of the settlement, surcharges may only be applied to credit-card transactions and not debit card or prepaid card transactions.

Further, the surcharge may be no higher than the average fee paid by the merchant for accepting the credit card and, in no case, may it be higher than 4 percent. Additionally, ample notice must be provided to customers of a retailer who chooses to adopt the surcharge. A retailer must provide notice of the surcharge to its customers at the point of entry, the point of sale, and all receipts.

Also, merchants must add surcharges on customers using Visa or MasterCard credit cards on the same terms and conditions as any equal or higher cost competitor that imposes limits on surcharging. In other words, if the retailer accepts another brand of credit card that prohibits surcharge fees, it may not implement them for its Visa or MasterCard customers.

Because of the strict formal requirements retailers must abide by when administering credit-card processing fees to their customers, business owners should be wary before deciding whether or not to adopt the surcharges.

Similarly, consumers who prefer to pay with credit cards should be on the lookout for retailers improperly adding surcharges.

Jonathan Hasebe, an associate at Gallagher & Kennedy, P.A, practices general commercial litigation as well as transactional law.