

Update Bulletin

Letters to Grocers regarding Patent Number 6,032,859

December 4, 2007

Many retailers have received a form letter suggesting that their store operations could conflict with U.S. Patent 6,032,859. The letter further proposes that the retailer may pay a license fee to continue operating, or (pay attorneys to) analyze their situation and respond with a position so the patent holders, Card Activation Technologies, a subsidiary of MedCom USA, Inc., can decide on further steps they may wish to take against the retailer. A copy of the patent is normally attached to the letter.

The '859 patent is a "process patent," claiming a "method for processing debit purchase transactions" – a description that could be interpreted as true debit transactions or alternately gift or phone card transactions. *The patent does not relate to any hardware or software*, and of course, many different products and services are required to complete an entire transaction. Nonetheless, dealers will likely be asked by their customers if the dealer has provided systems, software or hardware in violation of the patent. No product or product type is at issue however. It is the *process* used by the store, and this is what CAT is attempting to target. It is also why the merchants are being contacted instead of product resellers or vendors.

At least seven major merchants have found themselves in court. Aeropostale, Barnes & Noble, McDonald's, Office Max, Sears, TJX and Walgreen reportedly examined the patent, rejected it as invalid, refused to pay and were all served with lawsuits. McDonald's settled in March of 2007 for a chain-wide \$45,000 license fee, but has since reversed course and sued CAT for allegedly knowingly misrepresenting the validity of the patent, in part using the very low settlement amount as evidence. Meanwhile, CAT claims that the value of their patent exceeds \$3.7 billion.

Any retailer receiving a letter from CAT's attorneys should read the "claims" portion of the patent itself (starting in text column #7, on the 12th page of the patent document) and determine whether they are using the process claimed under this patent. Most merchants are likely to agree with the large retailers and judge that their operations do not fall under the claims, in part because the language of the claim describes that it covers "a method for processing debit purchase transactions" which is legally unclear:

- If the patent's claim intends to pertain to PIN debit transactions, the 1997 patent filing only came after such transaction processes were in common use for almost a decade.
- If the claim intends to pertain to gift cards or other pre-paid transaction media, then the claim's process calls for both the purchaser and the clerk to enter an "authorization code" – neither of which takes place in current gift card transactions.

[Click here for an on-line copy of the patent.](#) Court rulings from some open cases and points of the patent's legal interpretation are due this month.

To Your Success,



Anthony van Seester

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