

Legal Resources for ISOs
Legal Issues, Association Rules. The Real World.

Anthony L. Ogden, Attorney
BankCardLaw.com
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Industry Dynamics

- Unique Industry: MLS/ISOAcquirer/3PP
- Virtually Self-Regulated: Day-to-Day Operations driven by Trade Practice Rules vs. Law & Regulations
- Recent Bad PR & Government Scrutiny: Data Security Breaches & ID Theft
- Changing nature of industry

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Risks

- Liability that can severely damage or destroy your business. (MLS/ISOAcquirer/3PP)
- Risk of Economic Loss/Failure
- Risk of Litigation (Civil & Criminal)
- Risk of Reputation Damage
- Risk of Card Association Fines, Penalties
- Risk of Government Enforcement Action

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Attorneys

- Limited Knowledge of Acquiring Industry
- Shortage of Independent Attorneys
- How Can I Help You?
 - Clearly Explain Your Legal Needs
 - Educate Attorney Regarding Industry
 - Seek to Reduce Risks
- Cover Important Basics
 - Contracts
 - Legal Compliance
 - Litigation Exposure
 - Dispute Resolution

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Dispute Resolution

- CYA IS NOT THE BEST WAY! (Egos can be very expensive)
- Cooperative Resolution Efforts
- Good Faith Negotiation
- Settlement/Release of Claims
- Litigation (When All Else Fails)

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Legal Compliance

- Federal Laws & Regulations
- State Laws & Regulations
- Contract Provisions
- Data Privacy & Protection
- Deceptive Trade Practices
- Etc.

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Data Security Breach

- Response
- Required Notification
- Laws
- Card Association Rules
- Liability

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Card Association Rules

Account Data Protection

- **PCI** - Payment Card Industry Data Security Standard
- MasterCard SDP - Site Data Protection
- Visa CISP - Cardholder Information Security Program

Example of MasterCard Assessments

- Violation of Data Storage Rules **\$100K** each violation or up to **\$500K** max. for additional or continuing violation
- **\$25K** per day of Acquirer noncompliance

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Card Association Rules

MasterCard MATCH (TMF)

- **All** Must check **before** signing merchant (Bylaws & Rules section 9.2.1)
- **FREQUENTLY VIOLATED!!!!**
- M/C Fraud Control increased enforcement, assessments & arbitration
- Avoid costly "Bust-Out" Merchants
- Legal issues for withholding merchant funds

*Note: "Inquiry MATCH" is not a MATCH listing.
Confusion = Lost time and \$\$

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Deceptive Practices

- The FTC Act, 15 U.S.C. § 45(a)

"Unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful"

"The Federal Trade Commission will find deception if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances to the consumer's detriment."

Source: FTC Website: www.ftc.gov

Polloy: Broad Interpretation in favor of Public/Merchant

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Deceptive Practices

Sales Tactics

- "99.9% Guaranteed Approval"
- Oral representations not placed in Agreement
- Not providing agreement at time of sale
- Bait & Switch Advertising (Insincere offer)
- Deceptive Pricing
- "Free" Offers of Products & Services
- Etc.

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Deceptive Practices

- Contract Issues

- Unclear and Hidden Terms
- Inadequate disclosure of fees
- Signing for Merchant
- Personal Guaranty/Credit Reporting
- Termination Fees (Ripe for Litigation)
- Termination & Retaliation vs. Merchant
- Etc.

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Best Practices

- Sales
- Contracts
- Card Association Rule Compliance
- Law & Regulation Compliance
- Education



Best Practices

- Sales
 - Be familiar with Merchant Agreements for your banks
 - Supervise sales agents and customer service people
 - Make sure merchant signs Agreement
 - Provide Merchant with signed copy of Agreement at time of sale
 - Be clear regarding your offerings
 - Be able to clearly explain agreement terms, services & products
 - Encourage Merchant to read Merchant Agreement
 - Don't make false/misleading claims; or claims you can't substantiate
 - Be Honest



Best Practices

- Contracts
 - Must include all material terms
 - Make sure material terms are clear and conspicuous (e.g., fees, exclusivity, breach, etc.)
 - Don't make oral representations that are not in written contract
 - Make sure contracts comply with card association rules and differing laws & regulations for your geographical area (State & Federal)
 - Make sure all necessary contracts are in place:
 - Merchant Agreements
 - ISOMSP Agreements (BIN & ISO Co-Ops)
 - Third Party Processor Agreements
 - Payment Gateway Agreements
 - Equipment



Best Practices

- Education
 - Required by banking laws & regulations, card associations to educate: Merchants, Sales Agents, ISOs, Acquirer
 - Educate merchants about their responsibilities, risks & fraud control
 - Educate yourself regarding: applicable laws, regulations, card association rules & rule changes
 - Evolving fraud & risk exposure
 - Educate customer service personnel who deal with merchant problems
 - Education is less expensive than ignorance.



Resources*

Card Association Rules & Education Materials

- Visa U.S.A. www.visa.com
- MasterCard International www.mastercardmerchant.com
- American Express www.americanexpress.com
- Discover www.discover.com

Select Laws & Regulations

- Federal Trade Commission www.ftc.gov
- Comptroller of Currency www OCC.gov
- United States Code www.law.cornell.edu
- Code of Federal Regulations www.law.cornell.edu
- State Codes & Regulations www.law.cornell.edu
- Attorneys

* Resources List is not intended to complete or exhaustive.



Conclusion

Protect your merchant sales & the integrity of the acquiring industry through:

- Cooperation
- Education
- Best Practices
- Prudent Use of Attorneys
- Ongoing Compliance Efforts



QUESTIONS?

Anthony L. Ogden, Attorney
BankCardLaw
27943 Smyth Drive, Suite 101
Valencia, CA 91355-4038
(661) 775-8527, ext. 1
(661)775-0327 (fax)
tony.ogden@bankcardlaw.com
www.bankcardlaw.com

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