

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MASTERCARD INTERNATIONAL
INCORPORATED,

Plaintiff,

v.

FÉDÉRATION INTERNATIONALE DE
FOOTBALL ASSOCIATION,

Defendant.
-----X

06 Civ. 3036 (LAP)

**AMENDED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Introduction

Fédération Internationale de Football Association (“FIFA”) is the worldwide governing body of soccer and the organizer of the FIFA World Cup, a once-every-fourth-year tournament that its president calls “the world’s largest and most beloved sporting event.” As befits a sporting organization of this stature and renown, FIFA’s slogan is “fair play.”

MasterCard, the payment card services provider, has sponsored the World Cup in the financial services category for the last four cycles or sixteen years. Section 9.2 of MasterCard’s most recent sponsorship contract with FIFA gave MasterCard the first right to acquire the FIFA World Cup sponsorship for the next cycle. As is set out in detail below, FIFA breached its obligation under Swiss contract law to give MasterCard the first right to acquire the next round of sponsorship. In addition, **FIFA’s conduct in performing its obligation and in**

negotiating for the next sponsorship cycle was anything but "fair play" and violated the heightened obligation of good faith imposed by the applicable Swiss law (as well as FIFA's own notion of fair play as explained by its president). For example:

FIFA's negotiators lied repeatedly to MasterCard, including when they assured MasterCard that, consistently with MasterCard's first right to acquire, FIFA would not sign a deal for the post-2006 sponsorship rights with anyone else unless it could not reach agreement with MasterCard.

FIFA's negotiators lied to VISA when they repeatedly responded to the direct question of whether MasterCard had any incumbency rights by assuring VISA that MasterCard did not.

FIFA's negotiators provided VISA with blow-by-blow descriptions of the status of the FIFA-MasterCard negotiations while concealing from its long-time partner MasterCard both the fact of the FIFA-VISA negotiations as well as the status of those negotiations – an action FIFA's president admitted would not be "fair play."

FIFA's marketing director lied to both MasterCard, FIFA's long-time partner, and to VISA, its negotiating counterparty, to both of which FIFA, under Swiss law, owed a duty of good faith. When, pursuant to his engineering, VISA raised its bid to the same level as MasterCard's, he declined his subordinates' suggestion to give MasterCard the opportunity to submit a higher bid based on his concern for his own reputation with the FIFA Board. He also declined his subordinates' recommendation that he recommend to the FIFA Board that it continue with its prior approval of MasterCard as the post-2006 sponsor. Instead, he told the board it was difficult for him to make a recommendation and never mentioned MasterCard's first right to acquire the post-2006 sponsorship.

On the morning of the first of March 2006 FIFA board meetings and after all three FIFA boards had previously approved MasterCard as the post-2006 sponsor, FIFA's marketing director called VISA to say that if VISA increased its cash bid by \$30 million to the level of MasterCard's bid, VISA "would be the partner."

Even after MasterCard had signed the "FINAL version" of the post-2006 sponsorship agreement and returned it to FIFA, FIFA's negotiators delayed telling MasterCard that the FIFA Board had chosen VISA; instead they waited for the VISA board to ratify the VISA agreement.

After the FIFA boards had approved MasterCard as post-2006 sponsor and after MasterCard had agreed to FIFA's asking price and agreement had been reached on all other terms and after FIFA's in-house counsel had solicited FIFA members for items that might be used to claim that MasterCard breached the Agreement, FIFA pointed to a trademark issue that had been present since 2000 or 2001 to justify granting the post-2006 sponsorship to VISA and sent a letter to MasterCard -- after the commencement of this lawsuit -- purporting to terminate the Agreement and thus MasterCard's first right to acquire.

After MasterCard and FIFA waived, under Swiss law, both the 90-day time periods set out in section 9.2 by their "conclusive conduct," FIFA now seeks retroactively to revive one of the 90-day periods, but not the other, to justify its choice of VISA for the post-2006 sponsorship.

While the FIFA witnesses at trial boldly characterized their breaches as "white lies," "commercial lies," "bluffs," and, ironically, "the game," their internal emails discuss the "different excuses to give to MasterCard as to why the deal wasn't done with them," "how we (as FIFA) can still be seen as having at least some business ethics" and how to "make the whole f***-up look better for FIFA." They ultimately confessed, however, that "[I]t's clear somebody has it in for MC."

Thus, as set out in detail below, FIFA has breached its obligation under section 9.2 to give MasterCard the first right to acquire the post-2006 sponsorship, both under the applicable Swiss contract law and the applicable Swiss law requiring good faith. Because section 22 of the parties' Agreement permits the Court to grant equitable relief upon a finding of breach, the only equitable result is that FIFA be prohibited from proceeding with the subsequent FIFA-VISA agreement and be required to proceed with the 2007-2014 MasterCard Agreement that the parties agreed to and MasterCard signed and returned to FIFA.

The Parties

1. MasterCard is a corporation organized under the laws of the State of Delaware and having its principal place of business in Purchase, New York. (Complaint ¶ 5; Answer ¶ 5). MasterCard provides an inter-face for credit, deposit, electronic cash, business-to-business and other payment transactions between the over 25,000 financial institutions in its

