

Competition Close-Up

The Mirage within the MDL: The Unusual Journey of *Mirage Wine + Spirits*

October 1, 2025 | Issue No. 2



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Earlier this summer, an Illinois federal court dismissed the antitrust complaint in *Mirage Wine + Spirits, Inc. v. Apple, Inc. et al.* for failure to state a claim. *Mirage Wine + Spirits, Inc. v. Apple Inc.*, No. 3:23-cv-3942-DWD, 2025 U.S. Dist. LEXIS 130571 (S.D. Ill. July 9, 2025). The *Mirage* case is noteworthy, separate from the merits of its dismissal, because of the unusual path it took to get there. That path highlights the complex, and sometimes controversial, federal system of multi-district litigation (“MDL”) and what some see are its statutory and practical limitations.

In 2023, *Mirage* brought a class-action complaint in Illinois. The complaint alleged that payment card merchants MasterCard and Visa colluded with each other and with Apple. According to *Mirage*, the companies agreed to give Apple a cut of the fees from Apple Pay point of sale (“POS”) transactions, but only if Apple agreed not to establish its own payment network and to protect MasterCard and Visa’s payment networks by blocking competitors’ access to Apple Wallet. *Mirage Wine + Spirits*, 2025 U.S. Dist. LEXIS 13057.

MasterCard and Visa were separately defendants to numerous cases consolidated into *In re Payment Card Interchange Fee*, an MDL formed in New York that involved allegations of collusive overcharges paid by merchants at POS. The *Payment Card* MDL was formed in 2005 and has been active for over 20 years. At the time of the *Mirage* complaint, the *Payment Card* MDL was winding down, with the only remaining matters involving ongoing disputes regarding certification of a class settlement and an expert-related motion specific to one plaintiff.

The Judicial Panel on Multi-District Litigation (“JPML”), which is the body empowered to form MDLs and centralize related federal cases into them for purposes of efficiency, decided that *Mirage* should be consolidated into the *Payment Card* MDL for discovery and other pre-trial proceedings. *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.* 2024 U.S. Dist. LEXIS 120541, No. MDL No. 1720, 2024 U.S. Dist. LEXIS 120541 (J.P.M.L. June 5, 2024). The statutory requirement for consolidation is very low. Under 28 U.S.C. § 1407(a), the JPML need only find that there is but one common question of fact to effectuate a transfer. That factual question need not predominate or determine the outcome; it simply must exist. Parties are not allowed to opt out of MDL centralization but may be remanded back to their home jurisdictions for purposes of trial following MDL proceedings. See 28 U.S.C. § 1407(a); *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 118 S.Ct. 956 (1998).

Here, on a motion by Visa, the JPML determined that centralization of *Mirage* was appropriate because of the allegation that Visa and MasterCard had colluded with respect to POS payments. *In re Payment Card*, MDL No. 1720, ECF 534. The JPML maintained this position over objection from *Mirage* and defendant Apple that *Mirage*’s POS allegations differed substantively from those in the MDL.

In the first unusual turn of events, the few remaining parties to the MDL unsuccessfully attempted to vacate the JPML's original preliminary transfer order. The interested parties argued that because the MDL Court already had completed that minimal aspect of the MDL that could be said to overlap with *Mirage*, there were no efficiencies or advantages to consolidation. The JPML was unmoved, but slipped into its transfer order the unusual language that if the MDL Court agreed there were no common proceedings to benefit *Mirage*, then the MDL Court simply could remand the case to Illinois.

Upon transfer, the MDL Court wasted no time in *sua sponte* remanding *Mirage* back to Illinois. *Mirage Wine + Spirits, Inc. v. Apple, Inc. (In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.)* 2024 U.S. Dist. LEXIS 115823, No. 24-CV-4053 (MKB), 2024 U.S. Dist. LEXIS 115823 (E.D.N.Y. July 1, 2024). The MDL statutory framework, however, lacks a mechanism by which a court can refuse a transfer or not conduct pre-trial proceedings. In a lengthy order, the MDL Court observed, among other things, that the iPhone and Apple Pay at issue in *Mirage* had not yet even been invented when the MDL, and its differing allegations of collusion, began 20 years prior. The MDL Court declared that the MDL was essentially "over" as to *Mirage*. It then asserted its power under 28 U.S.C. § 1407 to remand for trial, under the fiction that pre-trial MDL proceedings concerning *Mirage* were complete and ready for remand.

Upon transfer, the Illinois Court dismissed the *Mirage* complaint, holding that it did not allege the same collusion previously found to state a claim in the *Payment Card* MDL. *Mirage Wine + Spirits*, 2025 U.S. Dist. LEXIS 13057.

The unusual procedural history of *Mirage*'s remand by the MDL Court is likely to remain a historical quirk and not a trend. That *sua sponte* remand and the JPML's invitation to consider that option stands in contrast to those numerous MDLs where late-consolidated actions are transferred and litigated in MDLs, despite the fact that other parties have substantially completed discovery and other common issues. In those cases, the later centralized parties are typically given the benefit of common discovery and rulings despite the absence of the prior parties.

Mirage is arguably at the outer bound of what qualifies for statutory centralization. Furthermore, the fact that centralization occurred in a 20-year-old MDL as it was winding down was certainly a factor in the JPML's decision to invite the MDL Court to determine efficiencies, and in the MDL Court's ultimate decision that there were none.

Mirage's path does, however, highlight the low statutory bar for centralization of cases by the JPML, and the high bar of overcoming the statutory presumptions of the efficiency of centralization. It moreover underscores the JPML's inherent limitations where, as here, the parties offered disputed characterizations and assertions of fact regarding the nature of the claim, disputes that the JPML is empowered neither to assess nor to adjudicate. *Mirage* should serve as a lesson to all litigants filing potentially related cases of the benefits of understanding and knowing how to litigate within the MDL system.