

## **The Discover Card Game of Deception**

Discover Card has a lot of explaining to do. For the past year this company, along with several other credit card companies including American Express and FirstUSA, have been lying to their customers.

It all began on May 16, 2001 when the number three online retailer, Cyberrebate.com, filed for bankruptcy protection in New York. Cyberrebate had gained this lofty position, right behind Amazon.com and Ebay, by offering rebates of up to 100 percent for purchases made at their website. Hundreds of thousands of online consumers found this offer too tempting to pass up despite the fact that the company was charging up to ten times suggested retail price for their products. Most customers reasoned, “who cares if the product costs ten times as much if in the end it’s free?”

When the company filed for bankruptcy protection they owed over \$83 million in unpaid rebates. Yet they only had \$26 million in assets. That leaves over \$57 million in unpaid rebates.

Most credit card owners thought they were protected under the “Billing Error Resolutions” section of the Fair Credit Billing Act. This act requires that credit card companies give chargebacks to customers who did not receive all of the goods or services for which they contracted for using their credit cards. For instance, if you paid for two pairs of shoes at an online merchant yet they only shipped one pair then you can dispute the charge and get credit for the unshipped amount.

Congress passed this law in order to promote commerce. Congress felt that consumers had to be assured that they had some type of recourse against fraudulent transactions; otherwise, they would not engage in commerce over the phone, through mail order, or on the internet. Congress realized that increased commerce benefits everyone, including the credit card companies, and thus to encourage this commerce they would offer the consumer legitimate protections.

Discover Card does not see things this way. When consumers tried to utilize their chargeback protections against Cyberrebate purchases, Discover refused stating that the rebate was neither a good or service but instead was an “incentive” which was not covered by chargeback rights. They also claimed that the only recourse consumers had was to file a claim against Cyberrebate in the bankruptcy court proceedings.

Despite the fact that CitiBank, Fleet, Capital One and other credit card companies *were* honoring their customer’s chargeback rights, Discover refused to do so. Despite the fact that Regulation Z of the Fair Credit Billing Act subsection 226.12(c) specifically states that consumers can hold credit card issuers responsible for any claims they have against a merchant, Discover claimed they were not responsible. Despite the fact that this same law states that if the merchant is bankrupt the consumer does not have to file in bankruptcy court but can file a claim against the credit card company, Discover continued to mislead cardholders into thinking their only recourse was against the merchant.

Discover, American Express and First USA decided to give their customers a hard time over this issue. Eventually customers began filing lawsuits against these three credit card companies. American Express settled all matters outside of court. FirstUSA simply did not bother to show up in court and thus the consumers won by default and FirstUSA paid all claims. Only Discover has decided to fight this matter in small claims courts around the country, including here in Fulton County. Then, when they inevitably lose their case in small claims court they appeal their case, which forces the case to be heard in Superior Court where the costs to consumers to bring the case is much higher. Discover seems to be hoping they will simply frustrate consumers into giving up.

Discover should be ashamed of itself. The expense of hiring lawyers to defend these claims in courts around the nation is probably more than the total claims they actually owe to consumers. It seems Discover simply does not want to honor their legal obligations to their customers. Considering that Discover, itself, uses cashback rebates as a way to entice

people into using its credit cards, Discover seems to be engaging in the ultimate game of deception.

In a landmark ruling against CitiBank in 1992, the FTC successfully argued that credit card companies can be held liable for aiding and abetting a fraudulent sales scheme when they provide access to the credit card system to a merchant engaged in deceptive acts and practices. Maybe this is the reason CitiBank handled all of its cases against Cyberrebate so promptly. It's time Discover faced up to its responsibilities and did the same.