DREHER TOMKIES LLP

ALERT

FOR CLIENTS AND FRIENDS OF DREHER TOMKIES LLP

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CFPB AND CITIBANK ENTER CONSENT ORDER REGARDING CREDIT CARD PRACTICES

The Consumer Financial Protection Bureau ("CFPB") and Citibank, N.A., Department Stores National Bank ("DSNB") and Citicorp Credit Services, Inc. ("CCSI") (collectively, "Citi"), recently entered into a Consent Order for alleged violations of Sections 1031 and 1036(a)(1)(B) of the Consumer Financial Protection Act ("CFPA"), and of Sections 310.3(a) and 310.4(a)(7) of the Telemarketing Sales Rule ("TSR"), with respect to (i) deceptive marketing, sales and retention practices for credit card add-on products, (ii) unfair billing and administration practices for such products and (iii) assessment of an expedited telephone payment fee in collecting on accounts.

Sections 1031 and 1036(a)(1)(B) of the CFPA relate to prohibiting "unfair, deceptive, or abusive" acts or practices. Section 310.3(a) of the TSR relates to deceptive telemarketing acts or practices. Section 310.4(a)(7) of the TSR relates to abusive telemarketing practices, including causing billing information to be submitted for payment without the express informed consent of the customer.

The facts alleged in the 57-page Consent Order include that Citi sold certain add-on products, including debt protection, identity theft monitoring and wallet protection. These products were marketed through inbound and outbound telemarketing, online and at "point-of-sale." Alleged misrepresentations included those as to costs, terms and benefits of the products. Approximately 14 pages (Part V) of the Consent Order detail the CFPB's findings and conclusions. Examples of asserted deceptive acts and practices violating the CFPA included:

- Failing to enumerate or misleading the cardholder as to costs;
- Using the term "free" trial period, but charging cardholders for that period if they did not cancel within the trial period;
- Failing to disclose ineligibility for certain benefits;
- Misrepresenting that fraud alerts were at the transaction level when they were not;
- Misrepresenting that credit scores were from all three credit reporting bureaus when they were not;
- Failing to disclose the per month cost of identity theft monitoring after the 30-day trial period and the fact that billing would continue until affirmative cancellation by the cardholder; and
- Intentionally and systematically misrepresenting terms and conditions by (i) knowing which calls would be reviewed for quality assurance and (ii) for calls that it knew would not be reviewed, encouraging agents to create their own misleading scripts and failing to adequately monitor and correct such practices.

Examples of asserted practices violating the TSR included enrolling cardholders during telemarketing calls (i) using leading questions to obtain billing authorization, (ii) without any billing authorization and (iii) by construing ambiguous responses to requests for authorization as permission for enrollment.

The CFPB asserted that approximately 1.8 million delinquent DSNB cardholders paid $24M through the expedited telephone payment fee, the purpose of which was to ensure that the payment would post on the same day it was made. Asserted deceptive practices in connection with the fee included (i) during collection calls, failing to disclose the purpose of the fee or misrepresenting the fee as a "processing" fee, (ii) in the written credit card agreement, misrepresenting the purpose of the fee as allowing payment by phone, (iii) suggesting to cardholders that they pay by phone and then setting the payment to post the same day, thereby triggering the fee, (iv) failing to disclose no-cost payment alternatives and (v) charging the fee even though same-day posting almost was never in the cardholder's financial interest.

Parts VI through XI of the Consent Order set forth orders regarding (i) conduct provisions, (ii) an add-on product compliance plan, (iii) a compliance committee and action plan, (iv) the role of the CFPB, (v) redress and (vi) civil money penalties.

The order to pay redress includes payment of at least $700M in restitution to approximately 8.8 million cardholders. The order to pay civil penalties includes a civil money penalty of $35M to the CFPB. The CFPB also coordinated with the Office of the Comptroller of the Currency, which is separately ordering a $35M civil penalty against Citibank and DSNB. The CFPB's press release notes that this is the tenth action the CFPB has taken against companies for illegal practices in the marketing or administration of add-on products and services and that the CFPB remains vigilant for similar conduct. ❑

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