The Case of the "Not as Described" Frog: When a Debit Card Purchase Hops Sideways

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When consumers reach for their wallets to pay for goods, they may be faced with a choice: "What is the best way to pay for this item?" What consumers often do not consider are the protections and regulatory regimes that apply to each type of transaction, were they to be transacting with a bad actor. Oftentimes, consumers will approach their financial institutions after a problem presents itself. These institutions will need to consider first and foremost their rights and obligations under applicable regulatory regimes and often must coach their customers on what the implications are after things hop sideways.

We can consider a hypothetical situation where a family, quirky as they are, desires to purchase a pet frog. The family (who wanted a fun, safe, family pet) purchases a frog with a debit card, but when they take the frog home, they quickly realize it is not as described. What recourse does the family have? Is their bank obligated to intervene?

Bank's Guide to "Not as Described" Frog Disputes

Our family in question returned home after purchasing Kermit with a debit card, only to realize after inspection something was *toadally* amiss. Kermit, the family pet friendly frog, is "not as described" but rather a rare highly dangerous venomous frog. Realizing the danger they are in and their frustration from purchasing an as-advertised family-friendly frog, the cardholder demands that the bank should treat the cardholder as a victim of fraud and reverse the debit card transaction to be made whole.

Expecting the bank to *leap* into action, the cardholder was asked an important question by the bank: "How did you pay for this frog?" This is a critical point; as alluded to above, while debit cards are effective payment instruments, they are not legal mechanisms for unwinding merchant quality disputes once a transaction has been

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properly authorized and posted. Parties involved in debit card transactions must consider specific laws and rules which apply to such transactions; these laws and rules provide the framework in which consumers and their banks (issuing banks) operate. The most significant and most relevant here are the Electronic Fund Transfer Act (EFTA), Regulation E, and applicable card network rules.

This framework applies to debit point-of-sale transactions, automated clearing house (ACH) payments, and other electronic funds transfers. While other rules may apply to other means of transacting (for example, the NACHA operating rules, which apply to ACH transactions), we'll focus here on debit card point-of-sale transactions, and the governing legal framework and operational boundaries for issuing banks facing debit card disputes involving allegedly misdescribed goods.

The Big Picture (From the Issuer's Branch)

When a merchant fails to deliver goods consistent with the underlying contract of sale, the cardholder may possess contractual or statutory remedies against the merchant. Those remedies, however, do not automatically translate into rights under the debit card payment system.

- The Electronic Fund Transfer Act (EFTA) **[1]** governs errors related to electronic fund transfers, not disputes over the quality or characteristics of goods or services.
- Regulation E expressly excludes most merchant quality disputes from the definition of a covered "error."**[2]**
- Card network rules provide limited, time bound discretionary remedies, not guaranteed recovery mechanisms.

For issuing banks, the distinction is key. The debit system addresses payment errors, not amphibian disappointment.

Why Timing and Issue Type Matter

EFTA and Regulation E Limits

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Under EFTA, a consumer may bear unlimited liability for an electronic fund transfer if the consumer fails to notify the financial institution within 60 days of the transmission of the periodic statement reflecting the transaction.**[3]**

More importantly, even when notice is timely:

- An "error" under Regulation E is limited to unauthorized transfers, incorrect amounts, duplicate charges, or transfers not credited as agreed.**[4]**
- Merchant disputes over the quality, condition, or description of goods or services do not qualify as errors, even if the consumer is dissatisfied.**[5]**

Accordingly, a "not as described" frog does not constitute an error under EFTA or Regulation E, regardless of timing.

What the Bank Can (and Cannot) Do

(Legal Authority Matters)

The Bank May:

- Investigate whether a claimed transaction error exists under Regulation E.
- Attempt recovery under applicable card network rules on a discretionary basis.**[6]**
- Conduct courtesy or secondary reviews beyond statutory obligations.
- Inform the cardholder of alternative remedies, including direct merchant claims.

The Bank May Not:

- Treat a merchant quality dispute as an EFTA error absent statutory criteria.
- Extend or override card network dispute deadlines.**[7]**
- Compel a merchant refund outside the mechanisms authorized by the network rules.

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- Assume liability for breach of contract claims between the cardholder and merchant.

Importantly, consumer protection statutes do not convert banks into guarantors of merchant performance.

A Brief Detour: If the Frog Were Bought with a Credit Card

(Regulation Z Changes the Pond)

While a cardholder may feel that the protections afforded to debit transactions are all *croak and mirrors* (due to specific requirements that may be difficult to meet), the analysis above looks very different if the same "not as described" frog had been purchased with a credit card rather than a debit card.

While a debit cardholder dealing with disputes would be governed by EFTA and Regulation E, credit card billing disputes fall under the Truth in Lending Act (TILA) and Regulation Z.**[8]** Regulation Z expressly includes certain merchant performance failures within the statutory definition of a billing error, including where property or services were delivered but are materially different from what was agreed upon.**[9]**

Under 12 C.F.R. § 1026.13(a)(3), a billing error includes: "Reflection on a periodic statement of goods or services not accepted by the consumer or not delivered to the consumer as agreed."**[10]**

Goods delivered in a materially different form than promised may therefore qualify as a billing error under certain dollar amount and geographical limitations — placing the issuer under a mandatory obligation to investigate and resolve the claim if timely asserted.**[11]**

In practical terms, a poisonous frog delivered in lieu of a family-friendly pet would present a fundamentally different legal posture on a credit card account than on a debit card account.

A Practical Playbook for Issuers

Good documentation today prevents amphibious litigation tomorrow. We recommend the following risk-mitigation strategies:

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- **Apply Regulation E definitions precisely (12 C.F.R. § 1005.11)** .
- **Track and enforce network timelines strictly**.
- **Document discretionary steps taken beyond statutory requirements.**
- **Communicate early about merchant based remedies.**
- **Train frontline staff to differentiate EFT errors from contract disputes.**

Bottom Line

A debit card facilitates payment; it does not insure satisfaction. When a frog is alleged to be "not as described," and a debit card was used at the point of sale, issuing banks must adhere to EFTA, Regulation E, and network rules, no more and no less. By applying those standards consistently and communicating their limits clearly, banks can resolve disputes lawfully without letting them *jump* into compliance risk.

As discussed above, had the consumer used a credit card, they may have more room to *leap back* from the charge. Using a debit card, on the other hand, resulted in the cardholder having difficulty *hopping out* of the situation.

And if the next delivery is exactly the frog ordered? Everyone can finally leave the pond.

If you have questions about or comments on this article, please contact the authors or any attorney with FBT Gibbons' Data, Digital Assets & Technology practice.

Key References

[1] Electronic Fund Transfer Act (EFTA), 15 U.S.C. §§ 1693 et seq.

[2] 15 U.S.C. 1693l 12 C.F.R. § 1005.2(m); an unauthorized EFT is narrowly defined as "an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit."

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[3] 15 U.S.C. § 1693g(a); 12 C.F.R. § 1005.6(b)(3) (consumer liability limitations based on timing of notice).

[4] 12 C.F.R. § 1005.11(a) (defining "error" for purposes of Regulation E error resolution procedures).

[5] CFPB Official Interpretations, 12 C.F.R. § 1005.11, Comment 11(c)-7; see also Electronic Fund Transfers (Regulation E), 81 Fed. Reg. 83,934 (Nov. 22, 2016).

[6] Visa Core Rules and Visa Product and Service Rules (current ed.); Mastercard Chargeback Guide (current ed.) (setting forth dispute and chargeback procedures and timelines).

[7] Visa Core Rules § 11.1; Mastercard Chargeback Guide § 3 (establishing time limits for initiating disputes).

[8] 12 C.F.R. § 1026.13 (Regulation Z billing error resolution procedures).

[9] 12 C.F.R. § 1026.13(a)(3) (defining billing error to include goods or services not delivered as agreed).

[10] CFPB Official Interpretations, 12 C.F.R. § 1026.13, Comment 13(a)(3)-1 (explaining scope of 'not delivered as agreed' for billing error purposes).

[11] 15 U.S.C. § 1666i (cardholder claims and defenses against card issuer); 12 C.F.R. § 1026.12(c) (Regulation Z preservation of consumer claims).

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