

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, *ex rel.*)
MICHAEL DEWINE,)
ATTORNEY GENERAL)
30 East Broad Street)
State Office Tower – 14th Floor)
Columbus, Ohio 43215)

Plaintiff,)

v.)

AFFINION GROUP, INC.)
c/o Clayton S. Friedman, Esq.)
Manatt, Phelps & Phillips, LLP)
695 Town Center Drive, Floor 14)
Costa Mesa, CA 92626)

and)

TRILEGIANT CORPORATION)
c/o Clayton S. Friedman, Esq.)
Manatt, Phelps & Phillips, LLP)
695 Town Center Drive, Floor 14)
Costa Mesa, CA 92626)

and)

WEBLOYALTY.COM, INC.)
c/o Clayton S. Friedman, Esq.)
Manatt, Phelps & Phillips, LLP)
695 Town Center Drive, Floor 14)
Costa Mesa, CA 92626)

Defendants.)

CASE NO.

JUDGE

**COMPLAINT FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, CIVIL
PENALTIES AND COSTS**

I. JURISDICTION

1. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Michael DeWine, having reasonable cause to believe that violations of Ohio’s consumer laws have occurred, brings this action in the public interest and on behalf of the State of

Ohio under the authority vested in him pursuant to Ohio Revised Code (R.C.) 1345.07 of the Consumer Sales Practices Act.

2. The actions of Defendants AFFINION GROUP, INC. (“Affinion” or “Defendant”), TRILEGIANT CORPORATION (“Trilegiant” or “Defendant”), and WEBLOYALTY.COM, INC. (“Webloyalty” or “Defendant”) – collectively “Defendants,” hereinafter described, have occurred in the State of Ohio, County of Franklin and various other counties, and as set forth below, are in violation of the Consumer Sales Practices Act, R.C. 1345.01 *et seq.*
3. Defendants as described below, are “suppliers” as that term is defined in R.C. 1345.01(C) as Defendants were, at all times relevant herein, engaged in the business of effecting “consumer transactions” by advertising, soliciting, selling, promoting and distributing membership programs to consumers in the State of Ohio for purposes that were primarily for personal, family or household use within the meaning specified in R.C. 1345.01(A) and (D).
4. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the Consumer Sales Practices Act.
5. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), in that some of the transactions complained of herein and out of which this action arose, occurred in Franklin County.

II. PARTIES

6. Defendant Affinion is a privately held corporation and is the parent company of Trilegiant and Webloyalty and has its principal place of business located in the United States at 6 High Ridge Park, Stamford, Connecticut 06905.

7. Defendant Trilegiant is a Delaware corporation, which markets to consumers throughout Ohio. Trilegiant is a wholly-owned subsidiary and operating company of Affinion and has its principal place of business located at 6 High Ridge Park, Stamford, Connecticut 06905.
8. Defendant Webloyalty is a Delaware corporation, which markets to consumers throughout Ohio. Webloyalty is a wholly-owned subsidiary of Affinion and has its principal place of business located at 6 High Ridge Park, Stamford, Connecticut 06905.
9. At all relevant times, each defendant committed the acts, caused or directed others to commit the acts, ratified the acts, or permitted others to commit the acts alleged in this Complaint. Additionally, some or all of the Defendants acted as the agent of the other Defendants, and all of the Defendants acted within the scope of their agency if acting as an agent of another.

III. DEFENDANTS' BUSINESS PRACTICES

10. Defendants have together created and carried out a marketing scheme that violates the Consumer Sales Practices Act, 1345.01 et seq. (which prohibits the use of unfair, deceptive or unconscionable consumer sales acts or practices). Through this scheme, Defendants have misled consumers into becoming members of various membership programs Defendants sell without the consumers' knowledge or consent. These membership programs include, but are not limited to, AutoVantage , AutoVantage Gold, Buyers Assurance, Complete Home Enhanced, Complete Savings, Everyday Cooking at Home, Great Fun, HealthSaver, Identity Theft Protection, LiveWell, Privacy Guard, Reservation Rewards, Shopper Discounts and Rewards Travelers

Advantage, and Value Plus. Consumers are either charged an annual fees ranging from approximately \$49.99 to at least \$139.99 yearly or a monthly fee of \$8.00 to at least \$15.99 per month for membership in these membership programs.

11. Defendants have entered into contracts with retail businesses, merchants and financial institutions (“marketing partners”) that permit Defendants to solicit the marketing partners’ customers directly on the marketing partners’ websites with a discount or other incentive offer.
12. After the customer makes a purchase from the marketing partner, Defendants generally offer a discount on the customer’s current or next purchase from the marketing partners.
13. This offer appears to come from the marketing partner, but in reality it comes from Defendants; accepting the offer typically results in the customer becoming a member of one of Defendants’ membership programs. Customers often do not realize the consequences of accepting the offer, because there is only an inconspicuous statement in small print that states that accepting the offer authorizes Defendants to bill the consumer’s credit card or other payment method for membership in Defendants’ membership program.
14. Consumers were not required to affirmatively select a billing option, or take any other meaningful affirmative step that would help to ensure that they knowingly were joining one of Defendants’ membership programs and authorizing Defendants to bill them for the membership. Rather by accepting the offer, consumers unknowingly were billed for and enrolled in one of Defendants’ fee-based membership programs

using billing information passed from Defendants' marketing partners to Defendants.

This process is often referred to as "Data Pass."

15. Furthermore, Defendants' solicitations did not clearly and conspicuously disclose that consumers would not receive the incentive automatically and instead would be required to take additional steps to receive the incentive, which resulted in many consumers never receiving the incentive benefits.
16. In addition to using Internet solicitations with marketing partners, Defendants also partner with their marketing partners to solicit consumers through direct mail solicitations. In a "Live Check" solicitation, Defendants sent a check for a small amount that, upon being cashed or deposited by the consumer, would obligate the consumer to pay for a good or service, unless the consumer cancels the transaction.
17. Customers are enrolled in Defendants' memberships for a free trial period, regardless of the method (Internet or direct mail) of enrollment. If the customer takes no steps to affirmatively cancel the membership during the trial period, the customer is thereafter billed on a continuing periodic basis unless or until the consumer affirmatively cancels. Many consumers do not realize they are being enrolled in a trial membership and thus, are unaware of the need to cancel the membership to avoid being charged.
18. When such consumers discover the unexpected charges on their credit or debit cards, they typically attempt to contact Defendants. Often the number provided on consumers' billing statements directs the consumer to a pre-recorded message which sometimes asks for additional personal information, which many consumers are

reluctant to give. Therefore many consumers are unable to even contact Defendants to cancel.

19. If consumers are able to speak to Defendants' representatives about the unauthorized charges, Defendants typically simply cancel the consumer's membership without offering a refund for prior months' charges. If the consumer requests a refund, the customer service representative often informs the consumer that he or she is not eligible for a refund. If the consumer persists, the customer service representative may offer a partial refund but only rarely will a full refund be provided.

IV. CAUSES OF ACTION

COUNT ONE

UNFAIR OR DECEPTIVE CONSUMER SALES PRACTICES

20. Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 19 as if fully set forth below.
21. Beginning at an exact date unknown to plaintiff, and continuing to the present, Defendants have with the purpose to induce consumers in Ohio to purchase memberships in their various membership programs, made, disseminated, or caused to be made or disseminated before consumers in Ohio the following untrue or misleading statements which were deceptive in violation of R.C. 1345.02(A). Defendants' solicitations have:
 - a. Failed to clearly and conspicuously disclose the actual terms and conditions that applied to their offers and failed to inadequately disclose the material terms associated with becoming a member of their membership programs;
 - b. Used misleading language when offering incentives and trial offers;

- c. Misrepresented, through use of marketing partners' names and logos and references to the marketing partner in solicitations, that consumers are receiving solicitations from the marketing partner, and that Defendants' products and services are endorsed, guaranteed or provided by the marketing partner rather than Defendants, when in fact, the solicitations are sent by Defendants, not the marketing partner, and the marketing partner generally disclaims any responsibility for the membership programs;
- d. Offered nominal checks or rewards to consumers in the form of Live Check solicitations or internet solicitations without adequately disclosing that accepting these offers or cashing these checks would automatically enroll a consumer in a membership program and that the fee for such program will automatically be charged to the consumer's credit card, debit card, or bank account unless the consumer affirmatively takes steps to cancel the membership;
- e. Failed to disclose in an adequate manner that Defendants' marketing partners enable and allow Defendants to contact the marketing partners' customers and charge Defendants' membership fees to consumers' accounts without the consumer having to provide any account or billing information directly to Defendants;
- f. Without adequately disclosing that automatic renewal billing would apply if a consumer joined Defendants' membership programs, continued to bill members on an automatic renewal basis until consumers cancelled membership in the membership program.

- g. Represented that consumers can cancel their membership after the trial period, when in fact, in some instances, consumers cannot even contact Defendants and when they do, cancellation often occurs only after repeated requests by the consumer. Moreover, membership fees have continued to appear on some consumers' credit card or debit card bills or bank account statements, even after consumers have called to cancel.
22. Defendant committed unfair or deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A) by misrepresenting the enumerated aspects of Defendant's membership programs in its marketing practices.

COUNT TWO

UNCONSCIONABLE SALES PRACTICES

23. Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 19 as if fully set forth below.
24. Defendants have engaged in unconscionable sales practices as set forth in the Consumer Sales Practices Act, R.C. 1345.03 et seq., in that they have:
- a. Used Data Pass in marketing to sign up consumers to membership programs the consumer does not know they are joining;
 - b. Obtained inadequate consent from consumers prior to and during enrollment in Defendants' membership programs;
 - c. Used unconscionable billing practices;
 - d. Failed to send post-Enrollment communications to consumers who enrolled in Defendants' membership program via online or direct mail which properly disclose the material terms of Defendants' membership programs;

- e. Failed to send communications to consumers, regardless of the method of enrollment in Defendants' membership program which properly disclose the benefits associated with and changes in terms for Defendants' membership programs;
 - f. Automatically renewed memberships at the expiration of each periodic (whether annual or monthly) membership period and charging consumers' accounts for the renewals when the renewals were not actually ordered or requested by the members, and without the advance consent of the consumers;
 - g. Failed to use adequate notices on third-party billing statements sent to consumers regardless of the method of enrollment in Defendants' membership program;
 - h. Failed or refused to remove unauthorized charges from consumers' accounts; and,
 - i. Used inappropriate cancellation, "save" and refund practices and procedures when consumers contact Defendants to try to cancel their memberships in Defendants' membership programs.
25. Defendant committed unconscionable sales acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.03(A) by committing the enumerated acts or practices in the sale of Defendant's membership programs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- 1. Adjudge and decree that Defendants have engaged in acts or practices in violation of

- the Consumer Sales Practices Act., R. C. 1345.01 *et seq.*, as previously set forth.
2. Permanently enjoin and restrain the Defendants from engaging in unfair, deceptive, or unconscionable consumer sales practices set forth herein and from violating the Consumer Sales Practices Act.
 3. Adjudge and decree that the Defendants are liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendants' actions.
 5. Assess, fine and impose upon Defendants a civil penalty pursuant to R. C. 1345.07(D) of Twenty-Five Thousand Dollars (\$25,000.00) for each unfair, deceptive, or unconscionable act or practice alleged herein.
 6. Order that all costs in this cause be taxed against Defendants.
 7. Grant Plaintiff such other and further relief as this Court deems just, equitable and appropriate.

Respectfully Submitted,

MICHAEL DeWINE
Attorney General

/s/ Michael S. Ziegler
MICHAEL S. ZIEGLER
Ohio Sup. Ct. Atty. No. 0042206
Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215-3428
614/644-9618
614/466-8898 (facsimile)
michael.ziegler@ohioattorneygeneral.gov

Counsel for Plaintiff