

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

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| STATE OF OHIO, <i>ex rel.</i> |) | CASE NO. |
| MICHAEL DEWINE, |) | |
| ATTORNEY GENERAL |) | JUDGE |
| 30 East Broad Street |) | |
| State Office Tower – 14 th Floor |) | |
| Columbus, Ohio 43215 |) | |
| |) | |
| Plaintiff, |) | <u>COMPLAINT FOR</u> |
| |) | <u>DECLARATORY JUDGMENT,</u> |
| v. |) | <u>INJUNCTIVE RELIEF, CIVIL</u> |
| |) | <u>PENALTIES AND COSTS</u> |
| CLASSMATES, INC. |) | |
| 1501 Fourth Avenue, Suite 400 |) | |
| Seattle, Washington 98101 |) | |
| |) | |
| Defendant. |) | |

COMPLAINT

1. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Michael DeWine and his Consumer Protection Section brings this action to enjoin Defendant Classmates, Inc. (hereinafter “Defendant”) from engaging in unfair or deceptive trade practices in the course of offering and selling consumer goods and services, and to obtain relief for consumers victimized by the Defendant’s unfair or deceptive trade practices.

PARTIES

2. Plaintiff is the State of Ohio, by and through the Attorney General of Ohio, Michael DeWine and his Consumer Protection Section, who 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.
3. Plaintiff has brought this action in connection with a multi-state investigation of the

Defendants conducted by the Attorneys General of Alabama, Alaska, Delaware, Florida, Idaho, Illinois, Kansas, Maryland, Maine, Michigan, Nebraska, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Texas, Vermont, Washington and Wisconsin (hereinafter collectively referred to as the “Attorneys General”).

4. Defendant is a Washington corporation, which markets to consumers throughout Ohio. Defendant’s principal place of business is located at 1501 Fourth Avenue, Suite 400, Seattle, WA 98101.
5. At all relevant times, 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.

JURISDICTION AND VENUE

6. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Michael DeWine and his Consumer Protection Section, 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 R.C. 1345.07 of the Consumer Sales Practices Act.
7. The actions of Defendant, 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.
8. Defendant, is a “supplier” as that term is defined in R.C. 1345.01(C) as Defendant was, at all times relevant herein, engaged in the business of effecting “consumer transactions” by advertising, soliciting, selling, promoting and operating the

Classmates social networking website 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).

9. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the Consumer Sales Practices Act.
10. 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.

ALLEGATIONS

11. The Defendant engages and has engaged in the business of offering and selling consumer goods and consumer services to Ohio consumers via the Internet through websites controlled by the Defendant. The consumer goods and consumer services that the Defendant offers and sells include subscription services to the Defendant's social networking website.
12. Consumers who enroll in Defendant's subscription services agree to pay a subscription fee and enroll for initial or trial terms of three months, one year or two years. In most cases, at the conclusion of the initial or trial term, unless the consumer has elected to cancel or previously has set his/her renewal option to "Manual" mode, his/her subscription renews automatically and the credit or debit card that the consumer used to first enroll in the subscription service(s) is automatically charged the then-current full price for the renewal. The Defendant does not adequately disclose to consumers at the time they enroll that the subscription services automatically renew.

13. Between 2003 and 2010, the Defendant entered into a number of post-transaction marketing agreements with marketing partners named Affinion Group, Trilegiant Corporation, Webloyalty, Inc., Vertrue, Inc. and Jackpot Rewards, Inc. (hereinafter “marketing Partners”).
14. Pursuant to the Defendant’s marketing agreements with its marketing partners, the Defendant agreed to display advertisements offering free trials in its marketing partners’ membership programs, which included discount clubs, travel rewards programs, and insurance-type products. At the conclusion of the free trials, if the consumers did not cancel their memberships, the free trial converted to subscription-based programs that charged consumers monthly fees (a practice known as negative option marketing), a fact that was not adequately disclosed to consumers.
15. Some of the marketing partners’ advertisements were published in the course of consumers’ transactions with the Defendant while in other cases the advertisements were published immediately following the consumers’ transactions with the Defendant. In other instances, the advertisements were presented to consumers with the Defendant’s logo while they were in the process of completing their transactions with Defendant. This gave consumers the impression that they were still conducting business with Defendant (as opposed to the Defendant’s marketing partners).
16. In some instances, consumers were encouraged to respond to the marketing partners’ offers by clicking a “Continue” or “Yes” button in order to claim a discount or cash back reward on the consumer’s purchase with Defendant, making the advertisement appear as if it were presented by Defendant instead of a marketing partners. In other instances, consumers needed only to enter their email addresses or check a box in

order to accept the marketing partners' offer, unaware due to inadequate disclosure that, by doing so, they were agreeing to enroll in a membership program offered by the Defendant's marketing partners.

17. The Defendant did not adequately inform consumers that by responding to the various ads placed by Defendant's marketing partners, consumers were being directed to an entirely different website hosted by one of Defendant's marketing partners, where they entered into separate transactions for trial memberships, which consumers did not understand would result in their being billed for the services if the memberships were not cancelled.
18. As a result of the above-described practices, many of the consumers who enrolled in membership programs did so without knowing they were agreeing to enroll in a membership program that could cost them money they did not intend to spend. Many consumers also never availed themselves of the membership programs' purported benefits.
19. In order to facilitate the marketing partners' billing practices, the Defendant, without adequately obtaining permission from consumers, electronically passed consumers' credit or debit card account information to its marketing partners when the consumers enrolled in membership programs. This practice has more recently been made illegal under the Restore Online Shoppers' Confidence Act, 15 U.S.C. §8401, et seq.
20. The Defendant's privacy policies were misleading, inconsistent or failed to adequately inform consumers that the Defendant shared consumers' personal information with third parties, including Defendant's marketing partners, when consumers enrolled in a membership program.

CAUSE OF ACTION

COUNT ONE

UNFAIR OR DECEPTIVE CONSUMER SALES PRACTICES

21. Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 20 as if fully set forth below.
22. The Defendant has engaged in transactions that constitute unfair or deceptive acts or practices, and is therefore unlawful under R.C. 1345.02(A). Defendant has:
 - a. made representations, express and implied, concerning their offer and sale of subscription services and membership programs, that mislead consumers; and
 - b. failed to state material facts in connection with their offer and sale of subscription services and membership programs and their sharing of consumers' personal information, the omission of which deceived or tended to deceive consumers.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Adjudge and decree that Defendant has 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 Defendant from engaging in unfair or deceptive consumer sales practices set forth herein and from violating the Consumer Sales Practices Act.
3. Adjudge and decree that the Defendant is liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendant's actions.
5. Assess, fine and impose upon Defendant a civil penalty pursuant to R. C. 1345.07(D)

of Twenty-Five Thousand Dollars (\$25,000.00) for each unfair or deceptive act or practice alleged herein.

6. Order that all costs in this cause be taxed against Defendant.
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
866/404-4121 (facsimile)
michael.ziegler@ohioattorneygeneral.gov

Counsel for Plaintiff