

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH

DANE COUNTY

2013 OCT 10 PM 2: 52

STATE OF WISCONSIN,

CIRCUIT COURT
DANE COUNTY, WI

Plaintiff,

v.

Case No. 2013 CV

13CV3239

Unclassified - Civil: 30703

AFFINION GROUP, INC.,
TRILEGIANT CORPORATION, and
WEBLOYALTY.COM, INC.,

THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

Defendants.

CARLO ESQUEDA
CLERK OF CIRCUIT COURT

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

The State of Wisconsin, by its attorneys, J.B. Van Hollen, Attorney General, and Lara Sutherlin, Assistant Attorney General, on behalf of the Wisconsin Department of Justice and the Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") brings this action against Defendants AFFINION GROUP, INC., TRILEGIANT CORPORATION, and WEBLOYALTY for violating Wis. Stat. §§ 100.18(1), 100.20, Wisconsin Administrative Code §§ ATCP 127.34 and 127.44, and 100.195(2), as follows:

JURISDICTION AND VENUE

1. This action is brought pursuant to Wis. Stat. § 100.18(11)(d) to enforce and restrain violations of Wis. Stat. § 100.18(1), and to recover pecuniary losses suffered by Wisconsin consumers.

2. This action is brought pursuant to Wis. Stat. § 100.20(6) to enforce and restrain violations of Wis. Admin. Code ch. ATPC 127, and to recover pecuniary losses suffered by Wisconsin consumers.

3. This action is brought pursuant to Wis. Stat. § 100.195(5m)(c) to enforce and restrain violations of Wis. Stat. § 100.195(2), and to recover pecuniary losses suffered by Wisconsin consumers.

4. Venue is proper in Dane County because at least one consumer affected by defendants' unlawful acts as described below is located in Dane County.

PARTIES

5. Defendant Affinion Group, Inc. ("Affinion") is a privately held corporation and is the parent company of Trilegiant Corporation ("Trilegiant") and Webloyalty.com, Inc. ("Webloyalty").

6. Defendant Trilegiant is a Delaware corporation, headquartered in Stamford, Connecticut, which markets to consumers throughout Wisconsin. Trilegiant is a wholly-owned subsidiary and operating company of Affinion.

7. Defendant Webloyalty.com, Inc., is a Delaware corporation, headquartered in Stamford, Connecticut, which markets to consumers throughout Wisconsin. Webloyalty.com, Inc., is a wholly-owned subsidiary of Affinion.

8. Defendants Affinion Group, Inc., Trilegiant Corporation, and Webloyalty.com, Inc., are hereafter referred to collectively as "defendants."

9. Whenever reference is made in this Complaint to any act of defendants, that allegation shall mean that each defendant acted individually and jointly with the other defendants.

10. 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.

DEFENDANTS' BUSINESS PRACTICES

11. Defendants have together created and carried out a marketing scheme that violates Wis. Stat. §100.18(1) (which prohibits the use of untrue or misleading representations), and Wis. Stat. § 100.20 and Wis. Admin. Code §§ ATCP 127.34 and 127.44 (which prohibit the use of unfair, unlawful, or deceptive business acts or practices or any representations in a direct mail solicitation) and Wis. Stat. § 100.195 (which prohibits billing a consumer for consumer goods or services that the consumer has not agreed to purchase or lease). 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 fee 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.

12. 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.

13. 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.

14. 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.

15. 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.”

16. 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.

17. 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 by the consumer, would obligate the consumer to pay for a good or service, unless the consumer cancels the transaction.

18. 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.

19. 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.

20. 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.

COUNT I

Fraudulent Misrepresentations Wis. Stat. § 100.18

21. Plaintiff realleges and incorporates all preceding paragraphs, as though they are herein set forth in full.

22. Wisconsin Stat. § 100.18 states:

(1) No person, firm, corporation or association, or agent or employee thereof, with intent to sell, distribute, increase the consumption of or in any wise dispose of any real estate, merchandise, securities, employment, service, or anything offered by such person, firm, corporation or association, or agent or employee thereof, directly or indirectly, to the public for sale, hire, use or other distribution, or with intent to induce the public in any manner to enter into any contract or obligation relating to the purchase, sale, hire, use or lease of any real estate, merchandise, securities, employment or service, shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper, magazine or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, letter, sign, placard, card, label, or over any radio or television station, or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public relating to such purchase, sale, hire, use or lease of such real estate, merchandise, securities, service or employment or to the terms or conditions thereof, which advertisement, announcement, statement or representation contains any assertion, representation or statement of fact which is untrue, deceptive or misleading.

23. Beginning at an exact date unknown to plaintiff, and continuing to the present, defendants have with the intent to induce members of the public in Wisconsin to purchase memberships in their various membership programs, made, disseminated, or caused to be made or disseminated before the public in Wisconsin the following untrue or misleading statements which they knew, or by the exercise of reasonable care should have known, were untrue or

misleading at the time the statements were made or disseminated, in violation of Wis. Stat. § 100.18(1). Defendants' solicitations have:

- a. Used misleading language when offering incentives and trial offers;
- b. 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; and
- c. 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.

24. Unless enjoined and restrained by order of the Court, defendants will continue to engage in such violations.

COUNT II

Misrepresentations – Direct Mail Sales

Wis. Stat. § 100.20 and Wis. Admin. Code §§ ATCP 127.34 and 127.44.

25. Plaintiff realleges and incorporates all preceding paragraphs, as though they are herein set forth in full.

26. Wisconsin Administrative Code § ATCP 127.34(1), Disclosures prior to sale, requires that:

In a mail transaction, a seller shall disclose all of the following to a consumer, in writing, before the consumer enters into a purchase contract and before the seller takes the consumer's credit card number or accepts any payment from the consumer:

- (a) The nature and quantity of consumer goods or services included in the sale.
- (b) The total cost to purchase and receive the consumer goods or services.
- (c) All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any.
- (d) The name and mailing address of the principal seller.
- (e) The seller's policy related to refunds, cancellations, exchanges or repurchases if any of the following apply:
 1. The seller has a policy that prevents or substantially limits refunds, cancellations, exchanges or repurchases.
 2. The seller makes any claim or representation regarding refunds, cancellations, exchanges or repurchases.

27. Wisconsin Administrative Code § ATCP 127.44, Misrepresentations, states that no seller may do any of the following, directly or by implication, in a mail transaction:

- (1) Misrepresent a seller's identity, affiliation, location or characteristics.
- (2) Misrepresent the nature or purpose of a mail solicitation.
- (3) Misrepresent the nature or terms of a mail transaction, or any document related to that transaction.
- (4) Misrepresent the cost of goods or services offered or promoted by a seller, or fail to disclose material costs payable by the consumer.
- (5) Misrepresent the nature, quantity, material characteristics, performance or efficacy of the goods or services offered or promoted by a seller.
- (6) Misrepresent or fail to disclose material restrictions, limitations or conditions on the purchase, receipt, use or return of goods or services offered or promoted by a seller.

(7) Misrepresent the material terms of a seller's refund, cancellation, exchange, repurchase or warranty policies.

(8) Misrepresent that a seller is offering consumer goods or services free of charge or at a reduced price.

.....

(10) Misrepresent that the seller has specially selected the consumer.

(11) Misrepresent that the seller is conducting a special sales promotion, is making a special offer limited to a few persons, is making a special offer for a limited period of time, or is authorized to place the offered goods or services in a limited number of homes.

....

(14) Fail to disclose, in connection with every purported offer of free goods or services in a mail transaction, any costs which the consumer must incur and any conditions which the consumer must meet in order to receive those free goods or services. This does not prohibit a combination offer that is covered by, and complies with, s. 100.18 (2), Stats.

(15) Make any false, deceptive or misleading representation to a consumer.

28. In the course of marketing to Wisconsin consumers through direct mail solicitations, defendants failed on numerous occasions to accurately disclose all material terms and conditions affecting the sale of goods and services prior to entry into purchase contracts, in violation of Wis. Admin. Code §§ ATCP 127.34 and 127.44, to wit:

- a. Failed to clearly and conspicuously disclose the actual terms and conditions that applied to their offers and failed to adequately 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.

29. Unless enjoined and restrained by order of the Court, defendants will continue to engage in such violations.

COUNT III

Unfair Billing Wis. Stat. § 100.195

30. Plaintiff realleges and incorporates all preceding paragraphs, as though they are herein set forth in full.

31. Wis. Stat. § 100.195(2)(a) provides that no seller may:

(a) Bill a consumer for consumer goods or services that the consumer has not agreed to purchase or lease.

32. Defendants have violated Wis. Stat. § 100.195(2)(a) 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 deceptive billing practices;
- d. 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;

e. Failed to use adequate notices on third-party billing statements sent to consumers regardless of the method of enrollment in defendants' membership program; and

f. Failed or refused to remove unauthorized charges from consumers' accounts.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the State of Wisconsin, demands relief against Defendants Affinion Group, Inc., Trilegiant Corporation and Webloyalty.com, Inc., as follows:

- A. Finding that defendants have violated Wis. Stat. §§ 100.18, 100.195(2), and 100.20 and Wis. Admin. Code § ATPC 127, subchs. III, IV, and V.
- B. Enjoining defendants, their successors, assigns, officers, directors, agents, dealers, servants, employees, representatives, solicitors, and all persons acting or claiming to be acting in its behalf, pursuant to Wis. Stat. §§ 100.18(11)(d), 100.95(5m)(c), and 100.20(6) from conducting business operations in violation of Wis. Stat. §§ 100.18(1) and 100.195(2), and Wis. Admin. Code §§ ATPC 127.34 and 127.44.
- C. Ordering defendants to restore any pecuniary losses suffered by any person because of the defendants' acts or practices in violation of Wis. Stat. §§ 100.18(1), 100.195, and 100.20 and Wis. Admin. Code §§ ATPC 127.34 and

127.44, under authority of Wis. Stat. §§ 100.18(11)(d), 100.195(5m), and 100.20(6).

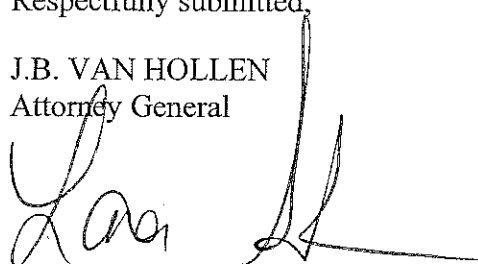
D. Awarding the State, pursuant to Wis. Stat. §§ 93.20 and 100.263, the expenses of investigation by Department of Agriculture Trade and Consumer Protection and the Department of Justice, the expenses of prosecution, including attorneys fees, relating to enforcement of defendants' violations of Wis. Stat. §§ 100.18(1), 100.195, 100.20 and Wis. Admin. Code ch. ATCP 127.

E. Providing such other and further equitable relief as justice and equity may require.

Dated this 10 day of October, 2013.

Respectfully submitted,

J.B. VAN HOLLEN
Attorney General



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