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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION,  
MERCER COUNTY  
DOCKET NO. \_\_\_\_\_

JOHN J. HOFFMAN, Acting Attorney General  
of the State of New Jersey, and ERIC T.  
KANEFSKY, Director of the New Jersey  
Division of Consumer Affairs

Plaintiff,

v.

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

Defendants.

**COMPLAINT**

Plaintiffs, John J. Hoffman, Acting Attorney General of the State of New Jersey (“Attorney General”), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Eric T. Kanefsky, Director of the New Jersey Division of Consumer Affairs (“Director”) (collectively, “Plaintiffs”), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Complaint state:

**VENUE AND JURISDICTION**

1. Defendants Affinion Group, Inc., Trilegiant Corporation, and Webloyalty.com, Inc., and each of them, at all times mentioned herein have advertised and transacted business within the State of New Jersey (“New Jersey” or “State”) and elsewhere throughout the country. The

violations of law described have been and are now being committed in the State and elsewhere throughout the country. Unless enjoined and restrained by an order of the Court, Defendants will continue to engage in the unlawful acts and practices set forth in this Complaint.

### **PARTIES**

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

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

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

5. Defendants Affinion Group, Inc., Trilegiant Corporation, and Webloyalty.com, Inc., are hereafter referred to collectively as “Defendants.”

6. 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.

7. 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**

8. Defendants have together created and carried out a marketing scheme that violates the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”). 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.

9. 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.

10. 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.

11. 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.

12. 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."

13. 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.

14. 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.

15. 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.

16. 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.

17. 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

**VIOLATION OF THE CFA DEFENDANTS  
(FALSE PROMISES AND MISREPRESENTATIONS)**

18. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 17, as if more fully set forth herein.

19. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[ ] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise . . .

20. Beginning at an exact date unknown to Plaintiffs, and continuing to the present, Defendants have with the intent to induce members of the public in New Jersey to purchase memberships in their various membership programs, made, disseminated, or caused to be made or disseminated before the public in New Jersey 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 the CFA. 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; and

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.

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

22. Each false promise and/or misrepresentation by Defendants constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

**COUNT II**

**VIOLATION OF THE CFA BY DEFENDANTS**  
**(UNCONSCIONABLE COMMERCIAL PRACTICES AND DECEPTION)**

23. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 22, as if more fully set forth herein.

24. Defendants have engaged in unconscionable commercial practices and deception, 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. 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 charged 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 membership in Defendants’ membership programs.

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

26. Each unconscionable commercial practice and/or act of deception by Defendants constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.


### **PRAYER FOR RELIEF**

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment:

- (a) Finding that the acts and omissions of Defendants constitute multiple instances of unlawful practices in violation of the CFA. N.J.S.A. 56:8-1 et seq.;
- (b) Permanently enjoining and restraining Defendants, their agents, employees and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., including, but not limited to, the acts and practices alleged in this Complaint;
- (c) Directing the assessment of restitution amounts against Defendants, jointly and severally, to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Assessing the maximum statutory civil penalties against Defendants, jointly and severally, for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Directing the assessment of costs and fees, including attorneys’ fees, against Defendants, jointly and severally, for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (f) Granting such other relief as the interests of justice may require.



JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
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Jah-Juin Ho  
Deputy Attorney General


Dated: 10/9/13  
Newark, New Jersey

**RULE 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter in this action involving the aforementioned violations of the CFA, N.J.S.A. 56:8-1 et seq., is not the subject of any other action pending in any other court of this State. I am aware that private actions have been brought against the Defendants, but have no direct information that any such actions involve consumer fraud allegations. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: \_\_\_\_\_


  
Jan-Juin Ho  
Deputy Attorney General

Dated: 10/9/13  
Newark, New Jersey

**RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE**

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

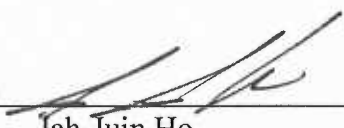
By:   
\_\_\_\_\_  
Jah-Juin Ho  
Deputy Attorney General

Dated: 10/9/13  
Newark, New Jersey

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Deputy Attorney General Jah-Juin Ho is hereby designated as trial counsel for the Plaintiffs in this action.

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
\_\_\_\_\_  
Jah-Juin Ho  
Deputy Attorney General

Dated: October 9, 2013  
Newark, New Jersey