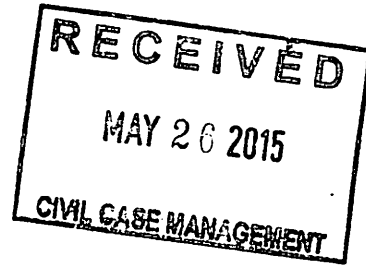


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Division of Law  
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P.O. Box 45029  
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Attorney for Plaintiffs



By: Erin M. Greene (#014512010)  
Deputy Attorney General  
Consumer Fraud Prosecution Section  
(973) 648-4846

JOHN J. HOFFMAN, Acting Attorney  
General of the State of New Jersey, and  
STEVE C. LEE, Acting Director of the New  
Jersey Division of Consumer Affairs,

Plaintiffs,

v.

FLORISTS' TRANSWORLD DELIVERY,  
INC.; and FTD.COM INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, MERCER COUNTY  
DOCKET NO.: MER-C-\_\_\_\_-15

Civil Action

COMPLAINT

Plaintiffs, John J. Hoffman, Acting Attorney General of the State of New Jersey ("Attorney General"), and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs ("Director") (collectively "Plaintiffs") by and through its undersigned attorneys, brings this action to enjoin Defendants Florists' Transworld Delivery, Inc. and its wholly-owned subsidiary FTD.COM Inc. (hereinafter referred to collectively as "Defendants") from engaging in unfair or deceptive practices in the course of offering and selling consumer goods and services, and to obtain relief for consumers victimized by the Defendants' unfair or deceptive practices.

#### PARTIES

1. Plaintiffs are the Attorney General and the Director. The Attorney General is charged with the responsibility of enforcing the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1

et seq. (“CFA”) and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. (“Advertising Regulations”). The Director is charged with the responsibility of administering the CFA and the Advertising Regulations on behalf of the Attorney General. Plaintiffs have commenced 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”).

2. Defendant Florists’ Transworld Delivery, Inc. is a Michigan corporation located at 3113 Woodcreek Drive, Downers Grove, Illinois 60515, that offers and sells flowers and other gifts through its subsidiary, FTD.COM Inc., through the [www.ftd.com](http://www.ftd.com) website that is available to New Jersey consumers.

3. Defendant FTD.COM Inc. is a Delaware corporation with a principal address located at 3113 Woodcreek Drive, Downers Grove, Illinois 60515, that offers and sells flowers and other gifts through its website located at [www.ftd.com](http://www.ftd.com) website, which is available to New Jersey consumers.

#### **JURISDICTION AND VENUE**

4. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, N.J.S.A. 56:8-11, N.J.S.A. 56:8-13 and N.J.S.A. 56:8-19.

5. Venue is proper in Mercer County, pursuant to R. 4:3-2, because it is a county in which Defendant has advertised and/or conducted business.

## ALLEGATIONS

6. The Defendants engage and have engaged in the business of offering and selling consumer goods and consumer services to New Jersey consumers via the Internet through websites controlled by the Defendants.

7. Between 2005 and 2010, the Defendants entered into a number of post-transaction marketing agreements with a Marketing Partner named Webloyalty, Inc. (“Webloyalty” or “Marketing Partner”)

8. Pursuant to the Defendants’ marketing agreements with its Marketing Partner, the Defendants agreed to display advertisements offering free trials in Webloyalty’s membership programs, such as 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.

9. Some of the Marketing Partner’s advertisements were published in the course of consumers’ transactions with the Defendants, while in other cases the advertisements were published immediately following the consumers’ transactions with the Defendants. In other instances, the advertisements were presented to consumers with the Defendants’ logo while they were in the process of completing their transactions with Defendants. This gave consumers the impression that they were still conducting business with the Defendants (as opposed to the Defendants’ Marketing Partner).

10. In some instances, consumers were encouraged to respond to the Marketing Partner’s offers by clicking a “Continue” or “Yes” button in order to claim a discount or cash back reward on the consumer’s purchase with the Defendants, making the advertisement appear as if it

were presented by the Defendants instead of a Marketing Partner. In other instances, consumers needed only to enter their email addresses or check a box in order to accept the Marketing Partner's offer, unaware due to inadequate disclosure that, by doing so, they were agreeing to enroll in a membership program offered by a Marketing Partner.

11. The Defendants did not adequately inform consumers that by responding to the various ads placed by the Defendants' Marketing Partner, consumers were being directed to an entirely different website hosted by a Marketing Partner, 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.

12. 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.

13. In order to facilitate the Marketing Partner's billing practices, the Defendants, without adequately obtaining permission from consumers, electronically passed consumers' credit or debit card account information to their Marketing Partner 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.*

14. The Defendants' privacy policies were misleading, inconsistent or failed to adequately inform consumers that the Defendants shared consumers' personal information with third parties, including the Defendants' Marketing Partner, when consumers enrolled in a membership program.

## VIOLATIONS OF LAW

15. The allegations contained in paragraphs 1-14 are incorporated by reference as if fully alleged herein.

16. The Defendants have engaged in a course of trade or commerce that constitutes unfair or deceptive acts or practices, and is therefore unlawful under the CFA, N.J.S.A. 56:8-2, and/or the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., in that Defendants: (a) made representations, express and implied, concerning their offer and sale of membership programs, that had the capacity, tendency or effect, of misleading consumers; and (b) failed to state material facts in connection with their offer and sale of membership programs and their sharing of consumers' personal information, the omission of which deceived or tended to deceive consumers.

## PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Honorable Court enter Judgment:

A. Permanently enjoining Defendants and its owners, officers, directors, shareholders, members, founders, managers, agents, servants, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under its control, 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., and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq., including, but not limited to, the acts and practices alleged in the Complaint;


B. Ordering Defendants 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;

C. Ordering Defendants to pay investigative costs and fees, including attorneys' fees, against Defendant 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;

D. Ordering Defendants to pay the maximum statutory civil penalties for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13; and

E. Granting such other and further relief as the Court deems equitable and proper.

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


By:   
Erin M. Greene  
Deputy Attorney General

Dated: May 22, 2015  
Newark, New Jersey

**RULE 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. is not the subject of any other action pending in any other court of this State. I further certify, to the best of my information and belief, 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 that should be joined in this action at this time.

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


By:   
\_\_\_\_\_  
Erin M. Greene  
Deputy Attorney General

Dated: May 22, 2015  
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:   
Erin M. Greene  
Deputy Attorney General

Dated: May 22, 2015  
Newark, New Jersey

**DESIGNATION OF TRIAL COUNSEL**

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

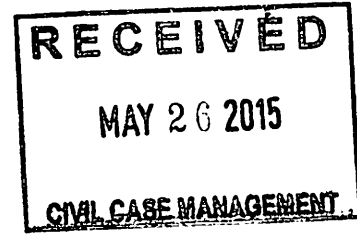
JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Erin M. Greene  
Deputy Attorney General

Dated: May 22, 2015  
Newark, New Jersey



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Attorney for Plaintiffs



By: Erin M. Greene (#014512010)  
Deputy Attorney General  
Consumer Fraud Prosecution Section  
(973) 648-4846

JOHN J. HOFFMAN, Acting Attorney General of the State of New Jersey, and STEVE C. LEE, Acting Director of the New Jersey Division of Consumer Affairs,  Plaintiffs,  v.  CLASSMATES, INC.,  Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION, MERCER COUNTY DOCKET NO.: MER-C-____-15  <u>Civil Action</u>  <u>COMPLAINT</u>
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Plaintiffs, John J. Hoffman, Acting Attorney General of the State of New Jersey (“Attorney General”), and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs (“Director”) (collectively “Plaintiffs”), by and through its undersigned attorneys, bring this action to enjoin Defendant Classmates, Inc. (hereinafter referred to as “Defendant”) from engaging in unfair or deceptive 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 practices.

**PARTIES**

1. Plaintiffs are the Attorney General and the Director. The Attorney General is charged with the responsibility of enforcing the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”) and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq.

("Advertising Regulations"). The Director is charged with the responsibility of administering the CFA and the Advertising Regulations on behalf of the Attorney General. Plaintiffs have commenced this action in connection with a multi-state investigation of the Defendant 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").

2. Defendant Classmates, Inc. is a Washington corporation located at 1501 Fourth Avenue, Suite 400, Seattle, WA 98101. Defendant does business as Classmates.com and operates the Classmates social networking website that is available to New Jersey consumers.

### **JURISDICTION AND VENUE**

3. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, N.J.S.A. 56:8-11, N.J.S.A. 56:8-13 and N.J.S.A. 56:8-19.

4. Venue is proper in Mercer County, pursuant to R. 4:3-2, because it is a county in which Defendant has advertised and/or conducted business.

### **ALLEGATIONS**

5. The Defendant engages and has engaged in the business of offering and selling consumer goods and consumer services to New Jersey 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.

6. 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.

7. 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”).

8. 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.

9. 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).

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

### **VIOLATIONS OF LAW**

15. The allegations contained in paragraphs 1-14 are incorporated by reference as if fully alleged herein.

16. The Defendant has engaged in a course of trade or commerce that constitutes unfair or deceptive acts or practices, and is therefore unlawful under the CFA, N.J.S.A. 56:8-2, and/or the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., in that Defendant: (a) made representations, express and implied, concerning their offer and sale of subscription services and membership programs, that had the capacity, tendency or effect, of misleading 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, the Plaintiffs pray that this Honorable Court enter Judgment:

A. Permanently enjoining Defendant and its owners, officers, directors, shareholders, members, founders, managers, agents, servants, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under its control, 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., and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq., including, but not limited to, the acts and practices alleged in the Complaint;


B. Ordering Defendant 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;

C. Ordering Defendant to pay investigative costs and fees, including attorneys' fees, for the use by 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;

D. Ordering Defendant to pay the maximum statutory civil penalties for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13; and

E. Granting such other and further relief as the Court deems equitable and proper.

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


By:   
Erin M. Greene  
Deputy Attorney General

Dated: May 22, 2015  
Newark, New Jersey

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I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. is not the subject of any other action pending in any other court of this State. I further certify, to the best of my information and belief, 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 that should be joined in this action at this time.

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


By:   
\_\_\_\_\_  
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Erin M. Greene  
Deputy Attorney General

Dated: May 22, 2015  
Newark, New Jersey

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Deputy Attorney General Erin M. Greene 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:   
Erin M. Greene  
Deputy Attorney General

Dated: May 22, 2015  
Newark, New Jersey