

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street, Room 256 Denver, Colorado 80202</p> <hr/> <p>THE STATE OF COLORADO, <i>ex rel.</i>, John W. Suthers, Attorney General,</p> <p>Plaintiff,</p> <p>v.</p> <p>AFFINION GROUP, INC., TRILEGIANT CORPORATION, AND WEBLOYALTY.COM, INC.,</p> <p>Defendants.</p>	<p><b>COURT USE ONLY</b></p>
<p>Attorneys for Plaintiff: JOHN W. SUTHERS Attorney General OLIVIA DEBLASIO, 35867* Assistant Attorney General Ralph L. Carr Judicial Center 1300 Broadway, 7<sup>th</sup> Floor Denver, CO 80203 (702) 508-6000 (702) 508-6040 Fax *Counsel of Record</p>	<p>Case No.:</p> <p>Courtroom:</p>
<p align="center"><b>COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF</b></p>	

Plaintiff, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, through undersigned counsel states and alleges against Defendants Affinion Group, Inc., Trilegiant Corporation and Webloyalty.com, Inc., violations of the Colorado Consumer Protection Act, §§ 6-1-101 *et seq.* C.R.S. (2013) (“CCPA”) as follows:

**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 in the City and County of Denver and elsewhere within the State of Colorado. The violations of law described have been and are now being committed in the City and County of Denver and elsewhere within the State of Colorado. 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.

2. This Court has jurisdiction to enforce the CCPA under § 6-1-103 and § 6-1-110, C.R.S. (2013), and to enter appropriate orders prior to and following an ultimate determination of liability.

3. Under C.R.C.P. 98 and § 6-1-103, C.R.S., venue is proper in the City and County of Denver, Colorado because the deceptive trade practice occurred in the City and County of Denver.

### **PARTIES**

4. John W. Suthers is the duly elected Attorney General for the State of Colorado and has express authority under § 6-1-103, C.R.S. (2013) to enforce and prosecute violations of the CCPA.

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 Colorado. 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 Colorado. 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.

### **STATUTORY BACKGROUND**

11. The CCPA prohibits deceptive trade practices as set forth in the statute. § 6-1-105, C.R.S. (2013).

12. The CCPA authorizes the Attorney General under C.R.S. § 6-1-110(1), whenever he has cause to believe that person has engaged in any deceptive trade practice listed in C.R.S. § 6-1-105(1), to obtain injunctive relief and orders or judgments as may be necessary to prevent

the use or employment by such person of any such deceptive trade practice, or which may be necessary to completely compensate or restore to the original position of any person injured by means of any such practice, or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice.

13. The CCPA authorizes civil penalties under C.R.S. § 6-1-112 for violations of the Act for each consumer or transaction involved. Under C.R.S. § 6-1-113(4), the Court shall award attorney fees and costs in all actions where the Attorney General successfully enforces the CCPA.

14. Defendants were at all times relative hereto, engaged in trade or commerce in the State of Colorado, to wit: marketing to consumers and enrolling consumers into membership programs for which they charged an annual fee.

### **DEFENDANTS' BUSINESS PRACTICES**

15. Defendants have together created and carried out a marketing scheme that violates the CCPA, specifically Colo. Rev. Stats. § 6-1-105(1) (c), (l), and (u) (2013). 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 per year, or a monthly fee of \$8.00 to at least \$15.99 per month for membership in these programs.

16. 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.

17. 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.

18. 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.

19. Consumers are not required to affirmatively select a billing option, or take any other meaningful affirmative step that would help to ensure that they knowingly joined one of Defendants' membership programs and knowingly authorized Defendants to bill them for the

membership. Rather, by accepting the offer, consumers unknowingly enroll in and are billed for 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."

20. Furthermore, Defendants' solicitations do not clearly and conspicuously disclose to consumers that they will not receive the incentive automatically, and instead are required to take additional steps to receive the incentive, which has resulted in many consumers never receiving the incentive benefits.

21. 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 send a check for a small amount that, upon being cashed by the consumer, obligates the consumer to pay for a good or service unless the consumer cancels the transaction.

22. 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.

23. When 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.

24. 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.

**FIRST through FOURTH CLAIMS FOR RELIEF:  
VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT  
§ 6-1-105(1) (c), (l), and (u), and § 6-1-706, C.R.S. (2013).**

(Knowingly makes a false representation as to the affiliation, connection, or association with or certification by another; Makes false or misleading statements of fact concerning the price of goods or services; Fails to disclose material information; and Fails to allow a purchaser of a buyers' club membership to rescind the contract the next business day and disclose the same)

25. Plaintiff re-alleges and incorporates by reference paragraphs 1 - 24 above, as though they are herein set forth in full.

26. 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 Colorado to purchase memberships in their various membership programs, made, disseminated, or caused to be made or disseminated before the public in Colorado 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 § 6-1-105(1) (c), (l), and (u) and § 6-1-706, C.R.S. (2013). Defendants' solicitations have:

- 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 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 be automatically charged to the consumer's credit card, debit card, or bank account unless the consumer takes affirmative 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 memberships 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 or debit card bills or bank account statements, even after consumers have called to cancel.

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

**FIFTH CLAIM FOR RELIEF**  
**VIOLATIONS OF COLORADO CONSUMER PROTECTION ACT**  
**§ 6-1-105(2) C.R.S. (2013)**  
(Injury of competitors and lessening of competition)

28. Plaintiff re-alleges and incorporates by reference paragraphs 1 - 27 above, as though they are herein set forth in full.

29. Evidence that Defendants have engaged in a deceptive trade practice shall be *prima facie* evidence of their intent to injure competitors and to destroy or substantially lessen competition. § 6-1-105(2) C.R.S. (2013). Defendants have:

- a. Violated § 6-1-105(1) (c), (l), and (u) and § 6-1-706, C.R.S. (2013) as set forth in paragraphs 25 and 26 above;
- b. Used Data Pass in marketing to sign up consumers to membership programs the consumer does not know they are joining;
- c. Obtained inadequate consent from consumers prior to and during enrollment in Defendants' membership programs;
- d. Used deceptive billing practices;
- e. Failed to send post-enrollment communications to consumers who enrolled in Defendants' membership program online or via direct mail which properly disclose the material terms of Defendants' membership programs;
- f. 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 for Defendants' membership programs;
- g. Automatically renewed memberships at the expiration of each periodic (annual or monthly) membership period and charged consumers' accounts when the renewals were not actually ordered or requested by the members, without the advance consent of the consumers;
- h. Failed to use adequate notices on third-party billing statements sent to consumers regardless of the method of enrollment in Defendants' membership program;
- i. Failed or refused to remove unauthorized charges from consumers' accounts;  
and

- j. Used inappropriate cancellation, “save” and refund practices and procedures when consumers contacted Defendants to try to cancel their membership in Defendants’ membership programs.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for judgment as follows:

- A. Issuing a permanent injunction prohibiting 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 unfair, deceptive or misleading conduct;
- B. An Order pursuant to C.R.S. § 6-1-112(1)(a) for civil penalties payable to the general fund of this state of not more than two thousand dollars for each such violation of any provision of the CCPA with respect to each consumer or transaction involved not to exceed five hundred thousand dollars for any related series of violations;
- C. Ordering Defendants to pay all reasonable attorney’s fees and costs for the prosecution and investigation of this action, as provided by § 6-1-113(4) of the CCPA; and
- D. An order pursuant to C.R.S. § 6-1-112(1)(c) for civil penalties payable to the general fund of this state of not more than ten thousand dollars for each violation of any provision of the of the CCPA with respect to each elderly person; and
- E. Granting such other and further relief as the Court deems equitable and proper.

DATED: The 10<sup>th</sup> of October, 2013

JOHN W. SUTHERS  
Attorney General

s/ Olivia C. DeBlasio  
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