

CONFORM COPY

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF LOS ANGELES

12 BC524092

13 **PEOPLE OF THE STATE OF CALIFORNIA,**  
14 Plaintiff,  
15 v.  
16  
17 **AFFINION GROUP, INC.; TRILEGIANT**  
**CORPORATION; AND WEBLOYALTY.COM,**  
18 **INC.,**  
19 Defendants.

CASE NO.

**COMPLAINT FOR INJUNCTION,  
CIVIL PENALTIES AND OTHER  
EQUITABLE RELIEF**

21 Plaintiff, the People of the State of California, by its attorney, Kamala D. Harris, Attorney  
22 General of the State of California, by Michele Van Gelderen, Supervising Deputy Attorney  
23 General and Catherine Z. Ysrael, Deputy Attorney General, is informed and believes and  
24 thereupon alleges as follows:

25 ///  
26 ///  
27 ///

CONFORMED COPY  
[EXEMPT FROM ORIGINAL FILED FEES  
Los Angeles Superior Court 103]  
UNDER CIV. CODE SEC. 103]

OCT 10 2013

John A. Clarke, Executive Officer/Clerk  
By SHAUNYA WESLEY, Deputy

1 VENUE AND JURISDICTION

2 1. Defendants Affinion Group, Inc., Trilegiant Corporation, and Webloyalty.com, Inc.,  
3 and each of them, at all times mentioned herein have advertised and transacted business in the  
4 City and County of Los Angeles and elsewhere within the State of California. The violations of  
5 law described have been and are now being committed in the City and County of Los Angeles  
6 and elsewhere within the State of California. Unless enjoined and restrained by an order of the  
7 Court, defendants will continue to engage in the unlawful acts and practices set forth in this  
8 complaint.

9 PARTIES

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

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

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

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

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

23 7. At all relevant times, each defendant committed the acts, caused or directed others to  
24 commit the acts, ratified the acts, or permitted others to commit the acts alleged in this Complaint.  
25 Additionally, some or all of the defendants acted as the agent of the other defendants, and all of  
26 the defendants acted within the scope of their agency if acting as an agent of another.

27 ///

28 ///

**DEFENDANTS' BUSINESS PRACTICES**

1  
2           8. Defendants have together created and carried out a marketing scheme that violates  
3 California Business and Professions Code sections 17500 et seq. (which prohibits the use of  
4 untrue or misleading representations), and 17200 et seq. (which prohibits the use of unfair,  
5 unlawful, or fraudulent business acts or practices or any representations that violate Business and  
6 Professions section 17500). Through this scheme, defendants have misled consumers into  
7 becoming members of various membership programs defendants sell without the consumers'  
8 knowledge or consent. These membership programs include, but are not limited to, AutoVantage,  
9 AutoVantage Gold, Buyers Assurance, Complete Home Enhanced, Complete Savings, Everyday  
10 Cooking at Home, Great Fun, HealthSaver, Identity Theft Protection, LiveWell, Privacy Guard,  
11 Reservation Rewards, Shopper Discounts and Rewards Travelers Advantage, and Value Plus.  
12 Consumers are either charged an annual fees ranging from approximately \$49.99 to at least  
13 \$139.99 yearly or a monthly fee of \$8.00 to at least \$15.99 per month for membership in these  
14 membership programs.

15           9. Defendants have entered into contracts with retail businesses, merchants and financial  
16 institutions ("marketing partners") that permit defendants to solicit the marketing partners'  
17 customers directly on the marketing partners' websites with a discount or other incentive offer.

18           10. After the customer makes a purchase from the marketing partner, defendants  
19 generally offer a discount on the customer's current or next purchase from the marketing partners.

20           11. This offer appears to come from the marketing partner, but in reality it comes from  
21 defendants; accepting the offer typically results in the customer becoming a member of one of  
22 defendants' membership programs. Customers often do not realize the consequences of accepting  
23 the offer, because there is only an inconspicuous statement in small print that states that accepting  
24 the offer authorizes defendants to bill the consumer's credit card or other payment method for  
25 membership in defendants' membership program.

26           12. Consumers were not required to affirmatively select a billing option, or take any other  
27 meaningful affirmative step that would help to ensure that they knowingly were joining one of  
28 defendants' membership programs and authorizing defendants to bill them for the membership.

1 Rather by accepting the offer, consumers unknowingly were billed for and enrolled in one of  
2 defendants' fee-based membership programs using billing information passed from defendants'  
3 marketing partners to defendants. This process is often referred to as "Data Pass."

4 13. Furthermore, defendants' solicitations did not clearly and conspicuously disclose that  
5 consumers would not receive the incentive automatically and instead would be required to take  
6 additional steps to receive the incentive, which resulted in many consumers never receiving the  
7 incentive benefits.

8 14. In addition to using Internet solicitations with marketing partners, defendants also  
9 partner with their marketing partners to solicit consumers through direct mail solicitations. In a  
10 "Live Check" solicitation, defendants sent a check for a small amount that, upon being cashed by  
11 the consumer, would obligate the consumer to pay for a good or service, unless the consumer  
12 cancels the transaction.

13 15. Customers are enrolled in defendants' memberships for a free trial period, regardless  
14 of the method (Internet or direct mail) of enrollment. If the customer takes no steps to  
15 affirmatively cancel the membership during the trial period, the customer is thereafter billed on a  
16 continuing periodic basis unless or until the consumer affirmatively cancels. Many consumers  
17 do not realize they are being enrolled in a trial membership and thus, are unaware of the need to  
18 cancel the membership to avoid being charged.

19 16. When such consumers discover the unexpected charges on their credit or debit cards,  
20 they typically attempt to contact defendants. Often the number provided on consumers' billing  
21 statements directs the consumer to a pre-recorded message which sometimes asks for additional  
22 personal information, which many consumers are reluctant to give. Therefore many consumers  
23 are unable to even contact defendants to cancel.

24 17. If consumers are able to speak to defendants' representatives about the unauthorized  
25 charges, Defendants typically simply cancel the consumer's membership without offering a  
26 refund for prior months' charges. If the consumer requests a refund, the customer service  
27 representative often informs the consumer that he or she is not eligible for a refund. If the  
28

1 consumer persists, the customer service representative may offer a partial refund but only rarely  
2 will a full refund be provided.

3 **FIRST CAUSE OF ACTION**  
4 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500**  
5 **(FALSE OR MISLEADING REPRESENTATIONS)**

6 18. Plaintiff realleges and incorporates by reference paragraphs 1 - 17 above, as though  
7 they are herein set forth in full.

8 19. Beginning at an exact date unknown to plaintiff, and continuing to the present,  
9 defendants have with the intent to induce members of the public in California to purchase  
10 memberships in their various membership programs, made, disseminated, or caused to be made or  
11 disseminated before the public in California the following untrue or misleading statements which  
12 they knew, or by the exercise of reasonable care should have known, were untrue or misleading at  
13 the time the statements were made or disseminated, in violation of Business and Professions Code  
14 section 17500. Defendants' solicitations have:

15 a. Failed to clearly and conspicuously disclose the actual terms and conditions that  
16 applied to their offers and failed to inadequately disclose the material terms associated with  
17 becoming a member of their membership programs;

18 b. Used misleading language when offering incentives and trial offers;

19 c. Misrepresented, through use of marketing partners' names and logos and  
20 references to the marketing partner in solicitations, that consumers are receiving  
21 solicitations from the marketing partner, and that defendants' products and services are  
22 endorsed, guaranteed or provided by the marketing partner rather than defendants, when in  
23 fact, the solicitations are sent by defendants, not the marketing partner, and the marketing  
24 partner generally disclaims any responsibility for the membership programs;

25 d. Offered nominal checks or rewards to consumers in the form of Live Check  
26 solicitations or internet solicitations without adequately disclosing that accepting these  
27 offers or cashing these checks would automatically enroll a consumer in a membership  
28 program and that the fee for such program will automatically be charged to the consumer's

1 credit card, debit card, or bank account unless the consumer affirmatively takes steps to  
2 cancel the membership;

3 e. Failed to disclose in an adequate manner that defendants' marketing partners  
4 enable and allow defendants to contact the marketing partners' customers and charge  
5 defendants' membership fees to consumers' accounts without the consumer having to  
6 provide any account or billing information directly to defendants;

7 f. Without adequately disclosing that automatic renewal billing would apply if a  
8 consumer joined defendants' membership programs, continued to bill members on an  
9 automatic renewal basis until consumers cancelled membership in the membership  
10 program.

11 g. Represented that consumers can cancel their membership after the trial period,  
12 when in fact, in some instances, consumers cannot even contact defendants and when they  
13 do, cancellation often occurs only after repeated requests by the consumer. Moreover,  
14 membership fees have continued to appear on some consumers' credit card or debit card  
15 bills or bank account statements, even after consumers have called to cancel.

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

18  
19 **SECOND CAUSE OF ACTION**  
20 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**  
21 **(UNFAIR COMPETITION)**

22 21. Plaintiff realleges and incorporates by reference paragraphs 1 - 19 above, as though  
23 they are herein set forth in full.

24 22. Defendants have engaged in unfair competition as defined in California  
25 Business and Professions Code section 17200, in that they have:

26 a. Violated Business and Professions Code section 17500, as set forth in  
27 paragraphs 15 and 16 above.

28 b. Used Data Pass in marketing to sign up consumers to membership programs the  
consumer does not know they are joining;

1 c. Obtained inadequate consent from consumers prior to and during enrollment in  
2 defendants' membership programs;

3 d. Used deceptive billing practices;

4 e. Failed to send post-Enrollment communications to consumers who enrolled in  
5 defendants' membership program via online or direct mail which properly disclose the  
6 material terms of defendants' membership programs;

7 f. Failed to send communications to consumers, regardless of the method of  
8 enrollment in defendants' membership program which properly disclose the benefits  
9 associated with and changes in terms for defendants' membership programs;

10 g. Automatically renewed memberships at the expiration of each periodic  
11 (whether annual or monthly) membership period and charging consumers' accounts for the  
12 renewals when the renewals were not actually ordered or requested by the members, and  
13 without the advance consent of the consumers;

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

16 i. Failed or refused to remove unauthorized charges from consumers' accounts;

17 j. Used inappropriate cancellation, "save" and refund practices and procedures  
18 when consumer contact defendants to try to cancel their membership in defendants'  
19 membership programs; and

20 k. Violated California's Discount Buying Club law, California Civil Code Section  
21 1812.100 *et seq.* as set forth above.

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

23 1. That pursuant to California Business and Professions Code sections 17203 and  
24 17535, Defendants Affinion Group, Inc., Trilegiant Corporation, and Webloyalty.com, Inc., and  
25 each of them, and their successors, agents, representatives, employees, and all persons who act in  
26 concert with any of them be permanently enjoined from committing the acts of unfair competition  
27 and making the untrue or misleading representations alleged in the First and Second Causes of  
28 Action.

1           2.     That pursuant to California Business and Professions Code sections 17203 and  
2 17535, the Court make such orders or judgments as may be necessary to restore to any person in  
3 interest any money or property which may have been acquired by means of untrue or misleading  
4 representations or unfair competition.

5           3.     That pursuant to California Business and Professions Code sections 17206 and  
6 17536, Defendants Affinion Group, Inc., Trilegiant Corporation, and Webloyalty.com, Inc., and  
7 each of them, be ordered to pay civil penalties in the amount of two thousand five hundred dollars  
8 (\$2,500) for each violation of California Business and Professions Code sections 17200 and two  
9 thousand five hundred dollars (\$2,500) for each violation of 17500, as proved at trial.

10          4.     That Plaintiff recovers its costs of suit herein, including costs of investigation.

11          5.     For such other and further relief as the Court may deem just and proper.

12 Dated: October 10, 2013

Respectfully submitted,

13 KAMALA D. HARRIS  
14 Attorney General of California  
15 FRANCES T. GRUNDER  
16 Senior Assistant Attorney General  
17 MICHELE VAN GELDEREN  
18 Supervising Deputy Attorney General  
19 CATHERINE YSRAEL  
20 Deputy Attorney General



21 MICHELE VAN GELDEREN  
22 Supervising Deputy Attorney General

23 *Attorneys for Plaintiff*



**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: PEOPLE OF THE STATE OF CALIFORNIA V. AFFINION GROUP, INC.;  
TRILEGIANT CORPORATION; AND WEBLOYALTY.COM, INC.

No.:

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On October 10, 2013, I served the attached

**COMPLAINT FOR INJUNCTION, CIVIL PENALTIES AND OTHER EQUITABLE RELIEF**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

Clayton S. Friedman  
Manatt, Phelps & Phillips, LLP  
695 Town Center Drive, Floor 14  
Costa Mesa, CA 92626  
*Attorneys for Affinion Group, Inc., Trilegiant Corporation, and Webloyalty.com, Inc.*

Ronald R. Urbach  
Davis & Gilbert, LLP  
1740 Broadway  
New York, NY 10019  
*Attorneys for Affinion Group, Inc., Trilegiant Corporation, and Webloyalty.com, Inc.*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 10, 2013, at Los Angeles, California.

Blanca Cabrera  
\_\_\_\_\_  
Declarant

  
\_\_\_\_\_  
Signature