

CAUSE NO. \_\_\_\_\_

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
<b>Plaintiff,</b>	§	
	§	
v.	§	<b>TRAVIS COUNTY, TEXAS</b>
	§	
<b>AFFINION GROUP, INC.,</b>	§	
<b>TRILEGIANT CORPORATION, AND</b>	§	
<b>WEBLOYALTY.COM, INC.,</b>	§	
	§	
<b>Defendants.</b>	§	_____ <b>JUDICIAL DISTRICT</b>

**PLAINTIFF’S ORIGINAL PETITION**

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott, complains of AFFINION GROUP, INC., TRILEGIANT CORPORATION, AND WEBLOYALTY.COM, INC., Defendants, and for cause of action would respectfully show as follows:

**DISCOVERY CONTROL PLAN**

1. The discovery in this case is intended to be conducted under Level 2 pursuant to Tex. R. Civ. P. 190.3.
2. This case is not subject to the restrictions of expedited discovery under Tex. R. Civ. P. 169 because the relief sought by the State includes non-monetary injunctive relief, and the State’s claims for monetary relief including penalties, consumer redress, and attorneys’ fees and costs are in excess of \$100,000 and could exceed \$1,000,000.00.

**VENUE AND JURISDICTION**

3. This action is brought by Attorney General Greg Abbott, through his Consumer Protection Division, in the name of the State of Texas and in the public interest under the authority granted him by section 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (“DTPA”), upon the grounds that

Defendants have engaged in false, deceptive, and misleading acts and practices in the course of trade and commerce, as defined in, and declared unlawful by, sections 17.46(a) and (b) of the DTPA. Venue of this suit lies in Travis County, Texas pursuant to the DTPA section 17.47(b), because Defendants have done business in Travis County, Texas.

### **DEFENDANTS**

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

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

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

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

8. Whenever reference is made in this Petition to any act of Defendants, that allegation shall mean that each Defendant acted individually and jointly with the other Defendants.

9. 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.

### **PUBLIC INTEREST**

10. Because Plaintiff STATE OF TEXAS has reason to believe that Defendants have engaged in and will continue to engage in the unlawful practices set forth herein, Plaintiff STATE OF TEXAS has reason to believe that Defendants have caused and will cause adverse effects to the residents of the State of Texas and to the legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Consumer Protection Division of the Office of the Attorney General of Texas believes and is of the opinion that these proceedings are in the public interest.

### **TRADE AND COMMERCE**

11. Defendants are engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by section 17.45(6) of the DTPA.

### **NOTICE BEFORE SUIT**

12. The Consumer Protection Division informed Defendants of the alleged unlawful conduct described below at least seven days before filing suit as required by DTPA section 17.47(a).

### **STATEMENT OF FACTS**

13. Defendants have created and carried out a marketing scheme through which Defendants have misled consumers into becoming members of various membership programs without the consumers’ knowledge or consent. Consumers have been charged for these membership programs either annually at approximately \$49.99 to \$139.99 or monthly at approximately \$8.00 to \$15.99.

14. Defendants entered into contracts with retail businesses, merchants and financial institutions (“marketing partners”) that permitted Defendants to solicit the marketing partners’ customers directly on the marketing partners’ websites with a discount or other incentive offer. After the customer made a purchase from the marketing partner, Defendants generally offered a

discount on the customer's current or next purchase from the marketing partners. This offer appeared to come from the marketing partner, but in reality it came from Defendants, and accepting the offer typically resulted in the customer becoming a member of one of Defendants' membership programs. Customers often did not realize the consequences of accepting the offer, because there was only an inconspicuous statement in small print that stated that accepting the offer authorized 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 partnered 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, obligated the consumer to pay for a good or service, unless the consumer canceled the transaction.

18. Customers were enrolled in Defendants' memberships for a free trial period, regardless of the method (Internet or direct mail) of enrollment. If the customer took no steps to affirmatively

cancel the membership during the trial period, the customer was thereafter billed on a continuing periodic basis unless or until the consumer affirmatively canceled. Many consumers did not realize they were being enrolled in a trial membership and thus, were unaware of the need to cancel the membership to avoid being charged.

19. When such consumers discovered the unexpected charges on their credit or debit cards, they typically attempted to contact Defendants. At times the number provided on consumers' billing statements directed the consumer to a pre-recorded message which sometimes asked for additional personal information, which many consumers were reluctant to give. Therefore many consumers were unable to even contact Defendants to cancel.

20. If consumers were able to speak to Defendants' representatives about the unauthorized charges, Defendants typically canceled the consumer's membership without offering a refund for prior months' charges. If the consumer requested a refund, the customer service representative often informed the consumer that he or she was not eligible for a refund. If the consumer persisted, the customer service representative may have offered a partial refund but only rarely was a full refund provided.

### **FALSE, MISLEADING, OR DECEPTIVE ACTS**

21. Plaintiff realleges and incorporates by reference paragraphs 1 - 20 above, as though they are herein set forth in full.

22. Defendants, as alleged above and detailed below, have, in the course of trade and commerce, engaged in false, misleading and deceptive acts and practices declared to be unlawful in sections 17.46(a) and (b) of the DTPA. Such acts include:

A. Engaging in false, misleading and deceptive acts and practices in the course of trade and commerce, in violation of DTPA section 17.46(a).

- B. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA section 17.46(b)(2);
- C. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of DTPA section 17.46(b)(3);
- D. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have, in violation of DTPA section 17.46(b)(5);
- E. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of DTPA section 17.46(b)(12); and
- F. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed in violation of section 17.46(b)(24).

**PRAYER**

23. WHEREFORE, PREMISES CONSIDERED, the State prays that Defendants be cited according to law to appear and answer herein and that a PERMANENT INJUNCTION be issued pursuant to DTPA sections 17.47(a), restraining and enjoining Defendants Affinion Group, Inc., Trilegiant Corporation, and Webloyalty.com, Inc., Defendants' successors, assigns, officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants from engaging in the false, misleading, or deceptive acts and practices alleged above.

24. Plaintiff further prays that this Court order Defendants:

- A. as provided by DTPA section 17.47(d), to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or, in the alternative, to pay damages in an amount within the jurisdictional limits of this Court to compensate for such losses;
  - B. to pay civil penalties in an amount up to \$20,000 per violation as provided by DTPA section 17.47(c); and
  - C. to pay Plaintiff's attorney fees and costs of court under the authority of Texas Government Code Section 402.006(c).
25. The State finally prays that this Court grant all other relief, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

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