

STATE OF OREGON
Marion County Circuit Courts
DEC 11 2006
FILED

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DEC 11 2006

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

STATE OF OREGON,
Plaintiff,

v.

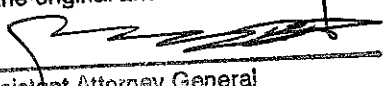
TRILEGIANT CORPORATION and TRL
GROUP, INC.

Defendants.

Case No. 06C21808

COMPLAINT

CLAIM NOT SUBJECT TO ARBITRATION

Certified to be a true and correct copy
of the original and of the whole thereof

Assistant Attorney General
Of Attorneys for Plaintiff

INTRODUCTION

1.

This action is brought by the State of Oregon (the "State") against defendants TRL Group, Inc. and Trilegiant Corporation (collectively, "Defendants") under the Unfair Trade Practices Act, ORS 646 *et seq.* (hereinafter "UTPA").

2.

Defendants solicit Oregon consumers to sign up for "free" trial memberships in programs that Defendants represent will provide consumers monetary discounts on the purchase of various goods and services, such as travel, car rentals, pet products, home improvements and others.

3.

Defendants mail solicitations to consumers' homes. The solicitations appear to come from financial institutions with which consumers have accounts, for example, their credit card issuers, or from other businesses with which consumers have previously done business, such as motor fuel retailers or hotel/motel chains. These financial institutions and other business are Defendants' "business partners."

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4.

The solicitations include a check made payable to the consumer in a nominal amount, and often refer to the offer as being an “award” or “reward” for the consumer’s past business with the “business partner.” By cashing the check, the consumer is agreeing to the “free” trial offer.

5.

The “free” offer gives rise to annual charges of amounts ranging from \$69.99 to \$119.99, or from \$6.99 to \$9.99 monthly, to the consumer’s account if the consumer fails to cancel within the “free” trial period -- usually 30 days, and then are repeated year after year, or month after month, to the consumer’s account. Defendants impose the charge without having to obtain from the consumer the consumer’s account number, because Defendants obtain the number from their “business partners” which already possess number.

6.

Defendants’ disclosure to consumers that they will be charged if they fail to cancel during the “free” trial period is not clear and understandable. The disclosure is on the back of the checks consumers cash and, therefore, designed not to be retained by consumers. The disclosure may be in other solicitation materials that accompany the check, but are not reasonably visible and understandable to consumers.

7.

Defendants thus mislead consumers by providing them a check described as a “reward” for past business, by describing the offer as “free” and a “trial,” and by designing the solicitation in a manner that does not effectively disclose the charge to consumers, and the fact that the charge is recurring.

8.

In essence, Defendants sell consumers a service that the vast majority of consumers do not know they had purchased, or had specifically rejected, and for which defendants continued to

1 impose annual or more frequent charges until the consumers finally discovered the charge and
2 cancel, if they discover the charge at all.

3 **PARTIES**

4 9.

5 Plaintiff, the State, brings this suit pursuant to the UTPA.

6 10.

7 Defendant TRL Group, Inc. ("TRL Group") is a Delaware corporation not authorized to
8 do business in Oregon.

9 11.

10 Defendant Trilegiant Corporation is a Delaware corporation not authorized to do business
11 in Oregon.

12 12.

13 From approximately July 2, 2001 to approximately January 30, 2004, the name of TRL
14 Group was "Trilegiant Corporation" and under that name, TRL Group marketed various
15 membership programs to Oregon consumers. On or about January 30, 2004, TRL Group changed
16 its name from Trilegiant Corporation to TRL Group, Inc. and ceased marketing memberships to
17 new members. At or near the same time, Cendant Corporation, which had held an ownership
18 stake in TRL Group, changed the name of one of its other subsidiaries to Trilegiant Corporation.
19 This newly named Trilegiant Corporation took over from TRL Group the marketing of the
20 membership programs.

21 **FACTS**

22 13.

23 The acts and practices alleged herein occurred in connection with the sale or
24 advertisement of goods and services in the State of Oregon.

1 14.

2 Whenever an allegation in this Complaint refers to any act or practice of a Defendant, the
3 allegation shall be deemed to mean that the Defendant's principals, officers, directors,
4 employees, brokers, agents or representatives did, or authorized, the act or practice, on behalf of
5 the Defendant, while actively engaged in the scope of their duties.

6 15.

7 At all relevant times, Defendants have been in the business of marketing, selling, and
8 providing membership programs for goods and services, including alleged discounts on
9 automobile maintenance, car rentals and car-related services; travel services; shopping discounts;
10 discounts on pet products; and discounts on home improvement and maintenance products and
11 services.

12 16.

13 The programs marketed, sold and provided by Defendants include, but are not limited to
14 the following:

- 15 A. AutoVantage
- 16 B. AutoVantage Gold
- 17 C. Travelers Advantage, sometimes known as Chase Travelers Advantage
- 18 D. CompleteHome
- 19 E. Shoppers Advantage
- 20 F. Buyers Advantage
- 21 G. Pet Privileges

22 17.

23 On more than one occasion, Defendants marketed these programs by means of direct mail
24 and by telemarketing. This Complaint directly addresses their practices regarding direct mail
25 solicitations.

1 18.

2 Many consumers who were enrolled in and charged for these various programs did not
3 sign an application, consent directly to a purchase, or provide their account information for
4 billing purposes. Instead, in direct mail solicitations, Defendants urged consumers to cash a
5 nominal check in a specific amount, for example, \$2.50, to obtain a “free” credit report, to
6 respond to a consumer survey, or to submit a form for a “free” savings bond, and by these and
7 other means, were enrolled in a “free” trial membership for one of the Defendants’ programs
8 “with absolutely no obligation to continue.”

9 19.

10 On more than one occasion, Defendants disguised the scheme as a “reward” or “rebate”
11 for being a valued or loyal customer. In other instances, Defendants urged consumers to accept a
12 “free” trial membership through direct mail solicitation.

13 20.

14 Unless consumers affirmatively contacted the Defendants to cancel their memberships
15 within the trial-offer period, generally 30 days, Defendants automatically charged consumers’
16 accounts for the monthly, or one-year membership fees, at the expiration of the “free” trial
17 period, without consumers having provided Defendants their account numbers or any other
18 billing information. In some instances, Defendants charged the membership fee to a consumer’s
19 credit card or other account without clearly identifying the particular membership program or the
20 nature of the charge. At the end of each membership billing period, Defendants automatically
21 renewed the memberships and automatically billed the consumers’ credit card accounts for
22 successive membership periods, in perpetuity, unless consumers took affirmative steps to cancel
23 the memberships.

24 21.

25 On more than one occasion, Defendants failed to clearly and conspicuously disclose the
26 terms of their trial offer, choosing instead to disclose the automatic imposition of their

1 membership fees and the automatic renewal of consumers' memberships on later pages of their
2 solicitations or on the back of the check or solicitation, in a smaller print size. In some instances,
3 Defendants failed to provide consumers with the complete terms and conditions, as well as the
4 method of cancellation, of the trial offer and any other informational material until after the
5 consumers' credit card accounts had been charged for the membership program.

6 22.

7 On more than one occasion, Defendants transferred the unauthorized annual membership
8 program fee from consumers' original credit card accounts to other of the consumers' credit card
9 accounts when consumers canceled their original credit cards. Defendants did not provide notice
10 to consumers that the charges would be rolled over and continued on the other credit card
11 accounts.

12 23.

13 Defendants expressly and prominently represent in their solicitations that by cashing or
14 depositing the checks, by completing the surveys, or by submitting the savings bond request
15 forms:

- 16 (a) consumers are participating in a "free" offer and will be enrolled in a "free trial"
17 of one of the defendants' membership programs; and
18 (b) consumers will have "absolutely no obligation to continue" in the membership
19 programs.

20 24.

21 In truth and in fact, when consumers cash or deposit the checks, or complete the surveys
22 or submit the savings bond request forms:

- 23 (a) Defendants automatically charge consumers' accounts for the fees for the
24 Defendants' membership programs upon the conclusion of the trial period; and
25 (b) Defendants automatically renew consumers' memberships in the Defendants'
26 programs.

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25.

On more than one occasion, Defendants represented to consumers that they could cancel their memberships during the trial period without incurring any membership fees or other charges, and that they could cancel their memberships at any other time without incurring any additional charges.

26.

On more than one occasion, Defendants failed or refused to cancel consumers' memberships after receiving timely and proper notice of cancellation from consumers, thereby causing consumers to be billed for subsequent annual or monthly billing cycles.

27.

On more than one occasion, Defendants failed or refused to reimburse consumers for the unauthorized membership charges billed to their credit cards or other accounts which were incurred after Defendants received timely and proper notice of the consumers' requests to cancel and in some instances only reimbursed consumers for those unauthorized charges after being prompted by a regulatory agency to do so.

28.

Defendants omitted to disclose to consumers, prior to the start of the trial offer, that the consumers had a right to cancel their obligations prior to the end of the trial period and of the specific procedures for effecting cancellation. These omissions were made with intent that others rely on the omissions.

29.

The State reasonably believes that the delay caused by complying with the provisions of ORS 646.632(2) and (5) would cause immediate harm to the public health, safety and welfare..

1 **CLAIMS FOR RELIEF**

2 **First Claim for Relief**

3 **(Violation of UTPA, ORS 646.607(1))**

4 30.

5 The State adopts by reference all of its allegations above.

6 31.

7 Defendants' acts and practices, as alleged, were unconscionable tactics in violation of
8 ORS 646.607(1).

9 32.

10 Defendants deprived consumers of their monies by means of those acts and practices.

11 33.

12 Defendants engaged in those acts and practices willfully, in that they knew or should
13 have known that their conduct was in violation of ORS 646.607(1).

14 **Second Claim for Relief**

15 **(Violation of UTPA, ORS 646.607(2))**

16 34.

17 The State adopts by reference all of its allegations above.

18 35.

19 Defendants, upon the requests of consumers, failed to refund monies they had received
20 from those consumers that were for the purchase of Defendants' undelivered services, in
21 violation of ORS 646.607(2).

22 36.

23 Defendants deprived consumers of their monies by means of their failure to refund.

24 37.

25 Defendants failure to refund was willful, in that they knew or should have known that
26 their failure was in violation of ORS 646.607(2).

1 **Third Claim for Relief**

2 **(Violation of UTPA, ORS 646.608(1)(b))**

3 38.

4 The State adopts by reference all of its allegations above.

5 39.

6 Defendants' acts and practices caused likelihood of confusion and of misunderstanding as
7 to the source, sponsorship, and approval of its solicitations and membership programs, in
8 violation of ORS 646.608(1)(b).

9 40.

10 Defendants deprived consumers of their monies by means of those acts and practices.

11 41.

12 Defendants engaged in those acts and practices willfully, in that they knew or should
13 have known that their conduct was in violation of ORS 646.608(1)(b).

14 **Fourth Claim for Relief**

15 **(Violation of UTPA, ORS 646.608(1)(c))**

16 42.

17 The State adopts by reference all of its allegations above.

18 43.

19 Defendants' acts and practices caused likelihood of confusion and of misunderstanding as
20 to affiliation, connection, or association with another, in violation of ORS 646.608(1)(c).

21 44.

22 Defendants deprived consumers of their monies by means of those acts and practices.

23 45.

24 Defendants engaged in those acts and practices willfully, in that they knew or should
25 have known that their conduct was in violation of ORS 646.608(1)(c).

1 **Fifth Claim for Relief**

2 **(Violation of UTPA, ORS 646.608(1)(d))**

3 46.

4 The State adopts by reference all of its allegations above.

5 47.

6 Defendants' acts and practices caused likelihood of confusion and of misunderstanding as
7 to affiliation, connection, or association with another, in violation of ORS 646.608(1)(d).

8 48.

9 Defendants deprived consumers of their monies by means of those acts and practices.

10 49.

11 Defendants engaged in those acts and practices willfully, in that they knew or should
12 have known that their conduct was in violation of ORS 646.608(1)(d).

13 **Sixth Claim for Relief**

14 **(Violation of UTPA, ORS 646.608(1)(e))**

15 50.

16 The State adopts by reference all of its allegations above.

17 51.

18 In their solicitations, Defendants represented that their membership programs have
19 sponsorships, approvals, characteristics, uses, benefits and qualities that they do not have, and
20 that Defendants had sponsorships, approvals, status, qualification, affiliations, and connections
21 they did not have, in violation of ORS 646.608(1)(e).

22 52.

23 Defendants deprived consumers of their monies by means of those misrepresentations.

24 53.

25 Defendants' misrepresentations were willful, in that they knew or should have known
26 that their misrepresentations were in violation of ORS 646.608(1)(d).

1
2 **Seventh Claim for Relief**
3 **(Violation of UTPA, ORS 646.608(1)(p))**

4 54.

5 The State adopts by reference all of its allegations above.

6 55.

7 In their solicitations, Defendants made false and misleading statements about their
8 promotions used to publicize their membership programs, in violation of ORS 646.608(1)(p).

9 56.

10 Defendants deprived consumers of their monies by means of those statements.

11 57.

12 Defendants' made those statements willfully, in that they knew or should have known
13 that their statements were in violation of ORS 646.608(1).

14 **PRAYER FOR RELIEF**

15 The State prays for judgment as follows:

16 1. permanently enjoining, under ORS 646.632(1), Defendants, their successors,
17 agents, representatives, employees, and all persons who act in concert with them, from engaging
18 in the unlawful trade practices alleged in this Complaint;

19 2. ordering, under ORS 646.636, Defendants to restore to all persons in interest all
20 monies of which those persons were deprived by Defendants by means of the unlawful trade
21 practices alleged in this Complaint;

22 4. imposing, pursuant to ORS 646.642(3), civil penalties not to exceed \$25,000 per
23 violation, per defendant, on Defendants, in an amount to be determined at trial, but not less than
24 \$50,000;

25 5. awarding, under ORS 646.632(8), the State its attorneys' fees;

26 6. awarding the State its prevailing party costs and disbursements; and

