United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

May 27, 2009

Mr. Gary A. Johnson
President and Chief Executive Officer
Vertrue, Inc.
20 Glover Ave.
Norwalk, CT 06850

Dear Mr. Johnson,

The Senate Committee on Commerce, Science, and Transportation is examining the business and marketing practices of e-commerce retailers and the impact these practices have on internet consumers. In the course of its inquiry into these areas, the Committee has learned that Vertrue, Inc., its subsidiaries, including Adaptive Marketing LLC, and their business partners have engaged in business and marketing practices on the internet that generate a high volume of consumer complaints. I am writing to request more information about these controversial practices.

According to the Better Business Bureau, a number of media reports, and other online sources, consumers regularly complain that your company charges their credit card or debit card on a monthly basis for services they are not aware they have purchased.[1] These complaints largely stem from Vertrue's practice of acquiring consumers' personal information, including their credit card or debit card account numbers, while they are purchasing products or services at the websites of retailers who have contracted to be a business partner of a Vertrue company.[2]

It appears your company and its subsidiaries' marketing practices have a wide reach, as they has partnered with some of the most well-known e-commerce retailers.[3] These websites have apparently entered into business agreements with Vertrue or one of its subsidiaries and have profited from transferring their customers' credit card or debit card account information to a

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[1] *See e.g.,* Better Business Bureau, *Company Reliability Report*: *Vertrue, Inc.* (accessed on May 12, 2009); *Firm Sued Over Unauthorized Charges*, Connecticut Post Online (Aug. 21, 2008); *Can It All Be In the Cards?*, The Boston Globe (July 11, 2008); *Investigate: Discount Deal's Sting in the Tail; Mysterious Charges on Credit Cards,* The Mirror (July 10, 2008); *A Scam Pops Up*, The Seattle Times (May 21, 2006); *Same Old Scam, Every Month*, The Washington Post (May 7, 2006).

[2] *Id.*

[3] *Id.*

Vertrue company. In marketing its services to e-commerce retailers, one of Vertrue's subsidiaries has stated, "Your company receives a handsome commission, and your customers are motivated through the $10 cash back premium to return to your website for additional purchases."[4]

For consumers, this business arrangement means a "pop-up" window or hyperlink appears after they complete a purchase from the website of a Vertrue business partner. These "pop-up" or hyperlinked windows offer consumers "$10 Cash Back on your next purchase!", if they "Click Here Now!".[5] If they click the button and sign up for an online membership service or discount club offered by a Vertrue company, their debit card or credit card account number is automatically forwarded to Vertrue from the website where they completed their purchase. Until the consumer contacts Vertrue to cancel the service, they are indefinitely charged a fee on a monthly or quarterly basis.

Thousands of consumers have complained that they did not intend to authorize Vertrue or one of its subsidiaries to make regular charges to their credit or debit cards. Based on the practice described above, the Better Business Bureau has reported your company as having an "unsatisfactory record with the Bureau due to a pattern of complaints concerning unauthorized charges to consumers' credit cards."[6]

In order to help the Senate Commerce Committee better understand this practice and its impact on internet consumers, please provide the following information and documents:

1. Describe all the ways internet consumers have been able to sign up for online membership services or discount clubs offered by Vertrue or a Vertrue subsidiary ("Vertrue or a Vertrue subsidiary" is referenced herein as a "Vertrue company").

2. Identify every e-commerce retailer or website a Vertrue company has entered into a business relationship with to market a Vertrue company's online membership services or discount clubs (also referenced herein as "partner"). For each of these business relationships, provide the following information and documents:

    a. the length of the relationship, whether it is ongoing, the amount of revenue the relationship generated for a Vertrue company and its partner on a yearly basis; and
    b. copies of all contracts or agreements and all amendments to the contracts or agreements with the website or e-commerce retailer.

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[4] Adaptive Marketing LLC, How Internet Direct Marketing Campaigns Work (online at www.adaptivemarketing.com/adaptive_marketing_b2b.asp) (accessed May 12, 2009).

[5] *Id.*

[6] Better Business Bureau, *Company Reliability Report*: *Vertrue, Inc.* (May 12, 2009).

3. Identify and describe every online membership service or discount club any Vertrue company has offered. For each of these online membership services or discount clubs, please provide the following information:

   a. The number of customers who have signed up for the service;
   b. The number of customers who signed up for the service through "pop-up" windows or hyperlinks displayed on websites that have partnered with any Vertrue company;
   c. The number of customers who received a "cash back award" and the total amount of "cash back awards" distributed to customers;
   d. The number of customers who were charged for at least one month of the service;
   e. The number of customers who are currently signed up for the service;
   f. The number of customers who have cancelled their membership;
   g. The number of customers who, at any time, have been enrolled in the service for longer than 6 months;
   h. The number of customers who, at any time, have been enrolled in the service for longer than 1 year;
   i. The number of customers who, at any time, have been enrolled in the service for longer than 5 years; and
   j. The number of customers who have logged into the website for the Vertrue company membership service or discount club for each year the online membership service or discount club has been in existence.

4. All documents and communications related to internal discussions regarding internet consumers accidentally or unknowingly signing up for an online membership service or discount club offered by any Vertrue company, including, but not limited to, documents and communications related to any Vertrue company's efforts to minimize this problem.

5. All documents and communications related to customer complaints or inquiries about charges by any Vertrue company to their credit card or debit card, including, but not limited to, documents and communications related to any compilation of the number of complaints in aggregate form.

6. All communications between any Vertrue company and any of their partners regarding:

   a. customer complaints;
   b. customer cancellations;
   c. transferring consumer credit card or debit card account information from the Vertrue company's partner to the Vertrue company, including instructions about how to transfer the data;
   d. the post-transaction marketing techniques used to promote any Vertrue company's products or services, including the use of a cash back award or a "pop-up" window; and
   e. if applicable, the termination of the business relationship.

7. Documents sufficient to show every marketing practice, "pop-up" window, or piece of information any Vertrue company has displayed to internet consumers on websites that have partnered with any Vertrue company, including screen shots showing the computer screens as the internet consumers saw them.

8. All communications between any Vertrue company and any payment processing company, bank, credit card company, or debit card company regarding unauthorized charges, including, but not limited to, cardholder complaints or inquiries about unauthorized charges by Vertrue.

9. All scripts, policies, manuals, or procedures that have been provided to any Vertrue company employee to use in preparation for or during communications with any Vertrue company customer, including, but not limited to, scripts, policies, manuals, or procedures for handling customer complaints, and all documents and communications related to evaluations of any Vertrue company employee's ability to handle customer complaints.

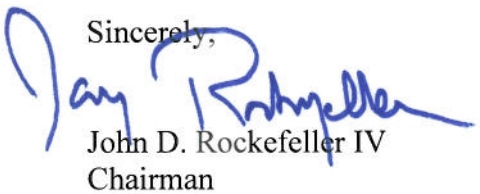
10. Identify all subsidiaries, affiliates, or programs in which Vertrue has a financial stake.

11. Copies of all articles of incorporation, annual or other periodic reports, and audited financial statements for Vertrue for every year since its formation, including for any entity listed in response to question #10.

Please provide the requested information and documents by Wednesday, June 17, 2009.

The Committee is conducting this investigation under the authority of Senate Rules XXV and XXVI. An attachment to this letter provides additional information about how to respond to the Committee's request. If you have any questions, please contact Erik Jones or John Williams with the Committee staff at (202) 224-1300.

Sincerely,



John D. Rockefeller IV
Chairman

Enclosure

cc: Kay Bailey Hutchison
Ranking Member

United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, documents that you have a right to copy or have access to, and documents that you have placed in the temporary possession, custody, or control of any third party.

2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.

3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.

4. Each document should be produced in a form that renders the document susceptible of copying.

5. When you produce documents, you should identify the paragraph or clause in the Committee's request to which the documents respond.

6. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.

7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.

8. It is not a proper basis to refuse to produce documents that any other person or entity also possesses non-identical or identical copies of the same document.

9. The Committee accepts electronic documents in lieu of paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

11. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

12. The request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

13. All documents should be bates-stamped sequentially and produced sequentially. In the cover letter, you should include a total page count for the entire production, including both hard copy and electronic documents.

14. The documents should be delivered to Room 516 of the Dirksen Senate Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.

15. In the event that a responsive document is withheld on any basis, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document.

16. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

17. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee, as described in (15) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (e-mail), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory

cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of acts, ideas, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.