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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510–6125

WEB SITE: http://commerce.senate.gov

December 3, 2009

Robert W. Selander
Chief Executive Officer
MasterCard WorldWide
2000 Purchase Street
Purchase, NY 10577

Dear Mr. Selander,

The Senate Commerce Committee is investigating a group of companies that use aggressive online sales tactics to sell club memberships to American consumers. One of these tactics involves passing a consumer's credit or debit card information from an online merchant to a third-party company, without requiring the consumer to re-enter his or her credit or debit card number. I am writing for information about your company's awareness of these practices and the number of "chargeback" requests and other inquiries you receive from cardholders in connection with these practices.

On November 17, 2009, the Committee held a hearing on "Aggressive Sales Tactics on the Internet and Their Impact on American Consumers." This hearing, along with a Committee staff report released the prior day, provided significant new information about three Connecticut-based companies that sell unfamiliar club membership programs to consumers who are in the process of purchasing familiar products offered by trusted websites. The Committee found that these companies' tactics are intentionally designed to mislead online shoppers and that they have caused millions of consumers to inadvertently enroll in these companies' membership clubs. Until consumers cancel these memberships, the three companies charge consumers' credit or debit cards on a monthly basis.

The Committee's investigation found that a key component of these aggressive online sales tactics is the use of a so-called "data pass" process. The data pass process enables a website where a consumer has just made a purchase to transfer the consumer's billing information, including the consumer's credit or debit card number, to a third party. The use of data pass in the online "post-transaction environment" has allowed certain third-party companies to present misleading enrollment offers to consumers and has led to significant consumer confusion.

Based upon documents obtained from the three companies that have been the subject of the Committee's investigation – Affinion Group, Inc., Vertrue, Inc., and Webloyalty.com, Inc. – the Committee has learned that many consumers enrolled through these misleading sales tactics contacted MasterCard or banks that issue your company's credit or debit cards to challenge the charges from Affinion, Vertrue, and Webloyalty and to request refunds. I understand that

MasterCard has resolved many of these complaints by processing customer refunds or merchant "chargebacks."

Online commerce is a rapidly growing retail channel. It provides consumers exciting new ways to compare products and prices, and to save time and money. But consumers will only shop online if they are confident that their billing information will be used only for purposes they have authorized. It concerns me greatly that the companies we are investigating have been able to acquire the credit and debit card numbers of millions of American consumers and bill them every month for services the consumers do not realize they have purchased.

Because MasterCard processes millions of payments generated through these misleading sales practices, I request that you provide information responsive to the following requests and questions:

1. Describe your company's definition of a chargeback and its policies and procedures for handling chargeback requests from cardholders. If your company has additional policies and procedures for chargeback requests stemming from recurring charges, please explain those as well.

2. For the last five years, provide the following information broken down by year for the following three entities: 1) Affinion Group, Inc., and its subsidiary Trilegiant Corp., and the various membership clubs they operate, including but not limited to, "Great Fun," "Privacy Guard," and "Buyers Advantage" (hereinafter "Affinion"); 2) Vertrue, Inc., and its subsidiary, Adaptive Marketing, LLC, and the various membership clubs they operate, including but not limited to, "ValueMax Shopping Service," "Privacy Matters," and "Passport to Fun" (hereinafter "Vertrue"); and 3) Webloyalty.com, Inc., and the various membership clubs it operates, including but not limited to, "Reservation Rewards," "Shopper Discount & Rewards," and "Travel Values Plus" (hereinafter "Webloyalty"):

    a. The dollar value of transactions your company processed for Affinion, Vertrue, and Webloyalty;
    b. The number of transactions your company processed for Affinion, Vertrue, and Webloyalty;
    c. The number of chargeback requests made by your cardholders for charges from Affinion, Vertrue, or Webloyalty and, of these requests, the number that were declined by your company;
    d. The dollar value of chargeback requests made by your cardholders for charges from Affinion, Vertrue, or Webloyalty and, of these requests, the dollar value that were declined by your company;
    e. The number of refund transactions your company processed for Affinion, Vertrue, and Webloyalty that were initiated by Affinion, Vertrue, or Webloyalty;
    f. The dollar value of refund transactions your company processed for Affinion, Vertrue, and Webloyalty that were initiated by Affinion, Vertrue, or Webloyalty;

g. The chargeback rate for transactions your company processed for Affinion, Vertrue, and Webloyalty and a comparison of these chargeback rates to the average chargeback rate for all of your company's merchants; and
h. A list of the chargeback "reason codes" your company used to categorize chargeback requests made by your cardholders for charges from Affinion, Vertrue, and Webloyalty and the number of occasions each "reason code" was used.

3. Describe any merchant monitoring programs for chargebacks that your company has developed. For each of these chargeback monitoring programs, please provide:

   a. The reason a merchant is placed into the monitoring program;
   b. How your company determines whether a merchant must remain in the program;
   c. How your company determines to end a relationship with a merchant due to an unacceptably high level of chargeback requests;
   d. The percentage of your merchants that have been in the chargeback monitoring program for each of the last five years; and
   e. Whether your company requires the merchant to provide additional compensation to your company for being in the monitoring program. If so, please provide a breakdown of these payments for each monitoring program.

4. Are Affinion, Vertrue or Webloyalty currently in, or have they ever been in, a chargeback monitoring program? If the answer is yes, please provide the following information:

   a. The reason each company was in the program;
   b. The date each company entered the program and the length of time each company remained in the program;
   c. The corrective steps each company took to reduce chargebacks after it was placed in the program; and
   d. The amount of money each company paid to your company for being part of the program.

5. Describe any rules your company has put in place for merchants that charge your cardholders' accounts without the card present, also known as "card-not-present" merchants, and explain whether Affinion, Vertrue, and Webloyalty are in compliance with these rules.

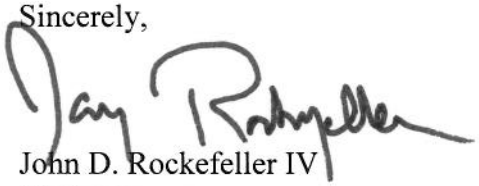
6. Describe any rules your company has put in place for merchants that pass cardholders' billing information, including credit card or debit card numbers, to third party companies and explain whether the e-commerce companies that have partnered with Affinion, Vertrue, and Webloyalty are in compliance with these rules.

7. Describe any other merchant monitoring programs your company has established for fraud, deception, and unfair or unlawful conduct.

Please provide the requested information and documents by Tuesday, December 22, 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

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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.