

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

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July 28, 2009

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

Dear Mr. Johnson,

I am writing to inform you that the Senate Committee on Commerce, Science, and Transportation has issued a subpoena to you for information related to your company's online business practices.

The Committee first requested this information on May 27, 2009, more than eight weeks ago. Similar request letters have been sent to two other companies. The purpose of the May 27 request was to learn more about the allegedly deceptive marketing practices your company uses to enroll consumers in various discount clubs. At that time, a spokesman for your company, George Thomas, was quoted as saying that Vertrue was "extremely confident" that once Committee staffers reviewed the company's information, "they will see that we not only meet the applicable law but exceed it."¹

While Mr. Thomas' public comments suggested that your company was willing to voluntarily provide the requested information to the Committee, your company has failed to produce information responsive to a number of the Committee's requests. In an effort to impress upon you the need to provide this information, Committee staff met with your lawyers on June 15, 2009, and had extensive telephone conversations related to the requests on June 26, 2009, July 9, 2009, July 16, 2009, and July 17, 2009.

In spite of these discussions, it has unfortunately become clear that Vertrue is not willing to cooperate with the Committee on a number of the requests made in the May 27 letter. While Vertrue has provided some information regarding its business structure and practices, it has provided no information documenting your company's internal discussions about the large volumes of consumers who complain about the unauthorized Vertrue charges on their credit card bills. Nor have you provided any information documenting your company's discussions with your business partners and credit card companies about unauthorized credit card charges. You have provided some information about the thousands of consumer complaints Vertrue receives

¹ *U.S. Senator Seeks Data on Mystery Credit Card Charges*, Dow Jones News Wire (May 27, 2009).

every year from the Better Business Bureau and state attorneys general, but you have withheld basic information about the complainants, including their names and addresses. You have withheld this information over Committee staff's repeated objections, in an apparent attempt to prevent Committee staff from verifying and learning more about dissatisfied consumers' experiences with your company.

Although the May 27 letter explained in detail why the Commerce Committee initiated this investigation, an additional explanation of my concerns might help you understand why you have received this subpoena today.

A number of state attorneys general, consumer advocacy groups, and individual consumers have alleged that your company charges consumers for membership in discount programs, "even though consumers don't know they are members, aren't aware that they are being charged membership fees, and don't make any use whatsoever of the supposed benefits of membership."² The Committee has reviewed a number of media reports, online sources, and surveys suggesting that these allegations are credible and deserve further investigation. For example, when the Iowa Attorney General's office conducted a survey of Iowa consumers enrolled in your clubs in 2006, it found that two-thirds of the consumers did not even know they were enrolled in your clubs. No Iowa consumer who responded to the survey reported that he or she was satisfied with your company's services.³

While it remains an open question how many internet consumers actually know they are enrolled in your clubs, and whether they receive anything of value from their club memberships, Vertrue's 2006 public filings showed that, in one year alone, your company generated more than half a billion dollars worth of revenue from the membership fees you charge to consumers' credit cards.⁴ It is also a matter of public record that you award a monetary "bounty" to your e-retailing partners when their customers enroll in your clubs.⁵

In these difficult economic times, American consumers are struggling more than ever to keep up with their mortgages, bills and other financial obligations. Allegations that your company is making this situation worse by charging consumers for services they do not want or

² *State of Iowa v. Vertrue, Inc. (formerly known as Memberworks, Inc.)*, IA Dist. Ct. for Polk Co. (Equity No. EQ53486) (May 15, 2006) (online at http://www.iowa.gov/government/ag/images/pdfs/MemberWorks_Vertrue_PETITION_5_06.pdf) (accessed July 21, 2009).

³ *Id.*

⁴ Vertrue, Inc., *Vertrue, Inc. (VTRU) Form 10-K Annual Report for Period Ending June 30, 2006* (Sep. 12, 2006) (online at <http://www.sec.gov/Archives/edgar/data/1020996/000115752306009132/a5222137.txt>) (accessed July 21, 2009).

⁵ Intelius, Inc., *Intelius, Inc. Form S-1, Exhibit 10.10: July 10, 2007 Marketing Agreement with Adaptive Marketing LLC* (January 10, 2008) (online at <http://www.sec.gov/Archives/edgar/data/1255691/000089102008000014/v28895orexv10w10.htm>) (accessed July 21, 2009).

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use are extremely troubling. This Committee will continue to actively investigate your company and other companies in your industry that engage in similar practices.

While I regret that the Committee has to resort to compulsory process against Vertrue, the millions of American consumers potentially affected by these practices deserve answers. Please contact Erik Jones or John Williams of the Committee staff at (202) 224-1300 to make arrangements for your compliance with this subpoena. Please note that your personal appearance before the Committee on Tuesday, August 18, 2009, will be unnecessary if the subpoenaed materials are provided by that date.

Sincerely,



John D. Rockefeller IV
Chairman

Enclosure

cc: Kay Bailey Hutchison
Ranking Member