Intelius banked on consumer confusion, says Washington Attorney General

Local News

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Seattle, WA - Hundreds of thousands of consumers may have unknowingly enrolled in membership programs while using Web sites owned by Bellevue, Wash.-based Intelius. A two-year investigation by the Washington Attorney General’s Office alleges that Intelius received thousands of consumer complaints regarding unauthorized enrollment in the programs and that company management including CEO Naveen Jain knew about the complaints but chose to continue the deceptive and tremendously profitable marketing tactics.
“Intelius chose cash over candor,” Attorney General Rob McKenna said. “Despite a continuous stream of complaints from consumers about mysterious charges, despite a consultant’s belief that Intelius’ advertising practices were causing confusion and despite a recommendation from its own staff to make it easier for consumers to opt out of additional purchases, the company wouldn’t change course.”
McKenna said a $1.3 million settlement with Intelius will protect consumers. Filed today in King County Superior Court, the settlement doesn’t require the company to admit any wrongdoing, but significantly restricts its future advertising practices. Intelius will also provide refunds to Washington state residents who were enrolled in the company’s “Identity Protect” program but never used the service.

McKenna’s Consumer Protection High-Tech Unit began investigating Intelius in June 2008. The investigation focused on an Internet sales method commonly referred to as post-transaction marketing, in which additional services are offered to consumers after they’ve submitted their credit card data but before they’ve received the product they intended to purchase.
“Post-transaction marketing plunges you into an online labyrinth where the only way out is to click and click and click,” McKenna said. “One wrong turn and you’re enrolled in a membership program that costs you $20 or more each month. And you’ll never know until you scrutinize your credit-card bill.”
The sales tactic gained notoriety in November 2009 when the U.S. Senate Commerce, Science and Transportation Committee released an investigative report accusing Web companies of duping consumers. McKenna was the only attorney general to submit testimony in connection with the committee’s hearing. He pointed out that investigations suggest more than $50 million has been deceptively obtained from Washington consumers by a handful of businesses.
Washington’s case directly addresses the sort of problems spotlighted by the Senate report. Most notably, the settlement prohibits the company from accepting advertising from Vertrue, Inc., WebLoyalty, Inc., and Affinion. It also prohibits Intelius from transmitting a consumer’s financial information to any third party to enable that party to bill consumers.
The agreement also addresses Intelius’ ability to sell its own products through post-transaction marketing and free-to-pay conversion offers, whereby consumers initially receive a free trial and are charged unless they cancel. Consumers must give their expressed agreement before being enrolled in a membership program and all terms must clearly be communicated.
Approximately $300,000 of the $1.3 million will be used to recover the state’s litigation costs and monitor the restitution program.

Washington consumers are eligible for refunds under the settlement if they 1) enrolled in Identity Protect before Aug. 12, 2009, (the period when the state felt the ads were deceptive), 2) have not received full refunds and 3) have not used any member-enabled benefit. Intelius will contact eligible consumers by mail and e-mail with instructions on how to submit a claim. The settlement does not apply to consumers in other states or those who purchased memberships from any third-party marketer.

McKenna thanked Assistant Attorney General Shannon Smith, investigator Chris Welch, paralegal Talia Zimmerman and forensics investigator Rebecca Henderson for their work on the case.

ADDITIONAL ALLEGATIONS FROM THE STATE’S **COMPLAINT**

A 40-page complaint describes in detail the Attorney General’s allegations (which are not legal findings) concerning Intelius, including:

Relationship with Adaptive Marketing

Intelius partnered with Adaptive Marketing, a subsidiary of Connecticut-based Vertrue, Inc., from at least July 2007 until December 2009. Adaptive runs a variety of membership programs that offer services including credit monitoring, roadside assistance and retail discounts.

Consumers use Intelius to look up phone numbers, addresses and other information about people. After agreeing to purchase search results, consumers were shown a page with an offer to get $10 back for taking a two-question survey. To get the information they paid for, consumers had two choices: Click on the big red rectangle that says "YES, and show my report," or click on a tiny, black link below that says "No, see my report." The survey was just an attention grabber, since neither Intelius nor Adaptive tracked the results.

Yet, only one Washington resident met all requirements to receive a $10 check. For every consumer who enrolled in an Adaptive membership, Intelius received $40-$59. During 2007 and 2008 combined, Intelius earned more than $35 million through Adaptive commissions for consumers nationwide.

Nearly 19,000 Washington consumers enrolled in Adaptive programs during a transaction with Intelius between July 2007 and July 2008. From October 2008 to October 2009, Intelius enrolled approximately 648,860 consumers nationwide.

Marketing of Identity Protect

In April 2008, Intelius began offering its own membership program, Identity Protect. At the end of a free trial, consumers enrolled in the program are charged $19.95 per month.

The company initially modeled its marketing efforts on the Adaptive advertisements. In October 2008, it switched to an approach called “bundled” marketing. By then, 2,718 Washington consumers had been enrolled in Identity Protect with their purchase of an Intelius report.

Under the bundled marketing method, consumers were given the choice to purchase their Intelius report at regular price or receive a discount if they enrolled in Identity Protect. Only after consumers choose the discounted price are they shown a description of Identity Protect and the terms. A prominent “Continue” button encouraged completing the transaction before ever scrolling down to read the offer details.

A consumer, who still hasn’t seen the report he or she purchased, was taken to another screen with instructions to fill in payment information and click on a button that says “Confirm the Purchase and Show My Report.”

The next screen wasn’t the report – but rather an Adaptive offer. Filling out an e-mail address and clicking “Yes, and Show Me My Report” on this screen would enroll the consumer in the Adaptive program, as well as Identity Protect. Clicking “no,” sent the consumer to a confusing screen that describes Identity Protect.

More than 800,000 consumers nationwide were enrolled in Identity Protect during the first year that

Intelius used bundled marketing. Only 54,181 used a membership benefit. Meanwhile, Intelius billed them nearly $62 million.
Knowledge of Complaints

Intelius received numerous complaints from consumers about being billed for Adaptive and Intelius membership programs without their authorization. Consumers also complained about being unable to cancel their memberships due to excessive call hold times and the inability to locate a means to cancel online.
Company officials knew about the complaints since at least September 2007. CEO Jain was made personally aware of the complaints by John Arnold, an executive vice president and Intelius’ co-founder. (Arnold pled guilty in May 2010 to lying to a grand jury in a strip club probe.)
Intelius ultimately set up a special phone line to handle the volume of calls from consumers complaining about charges for Identity Protect. In one e-mail to Intelius management, Chief Marketing Officer Susan Koehler commended customer service for getting the hold times down but commented that now Intelius needed “to concentrate the IDP team on driving more clarity in their offer.”
In June 2008, Intelius hired an independent marketing consultant to review the offers. The consultant highlighted the “call-to-action” button as a source of consumer confusion.
Intelius briefly tested a version of its offer that moved the “no thanks” and “yes” buttons to the top of the offer, side by side and equal size. Fewer consumers purchased Identity Protect during that time.
Intelius management claimed the company stopped using buttons for both “yes” and “no thanks” because it confused consumers.
Consumers initiated charge-backs of charges for Identity Protect at excessive rates. Intelius discussed the high rate of charge-backs for Identity Protect at numerous weekly meetings and acknowledged this as a significant problem.
Despite the complaints and the excessive charge-backs, Intelius management maintained that the ads were very clear.

However, in an e-mail to bankers involved in Intelius’ initial public offering, Jain admitted that he knew there were consumers who were enrolling inadvertently.
Intelius failed to issue refunds for more than a month or two of unauthorized charges for many purchasers of Identity Protect.
DOCUMENTS
Intelius Complaint
Intelius Consent Decree
Web Screenshots