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**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

INTELIUS INC., a Delaware  
corporation,

Defendant.

NO.

COMPLAINT FOR INJUNCTIVE  
AND OTHER RELIEF UNDER THE  
CONSUMER PROTECTION ACT,  
RCW 19.86

COMES NOW Plaintiff, State of Washington, by and through its attorneys Robert M. McKenna, Attorney General, and Shannon E. Smith, Assistant Attorney General, and brings this action against the Defendant named herein, alleging as follows on information and belief:

**I. JURISDICTION AND VENUE**

1.1 This Complaint is filed and these proceedings are instituted under the provisions of Chapter 19.86 RCW, the Consumer Protection Act. Plaintiff seeks a permanent injunction and other equitable relief, including restitution, civil penalties, and attorneys' costs and fees based on violations of the Consumer Protection Act.

1.2 The violations alleged in this Complaint have been and are being committed in whole or in part in King County, Washington, by the Defendant. The Attorney General's authority to commence this action is set forth in RCW 19.86.080 and RCW 19.86.140.

1 **II. DEFENDANT**

2 2.1 Defendant Intelius Inc., (“Intelius”) is incorporated in the state of Delaware. Its  
3 principal place of business is in Bellevue, Washington, and it transacts business in the state of  
4 Washington. At all times relevant to this action, Intelius was engaged in the marketing and  
5 sale of membership programs to Washington consumers via Intelius-owned Web sites.

6 **III. NATURE OF TRADE OR COMMERCE**

7 3.1 Intelius operates several Web sites on which it sells various services, including  
8 background reports on individuals, identity protection services, and employee screening. The  
9 main Intelius Web sites are [www.intelius.com](http://www.intelius.com), [www.peoplelookup.com](http://www.peoplelookup.com), and  
10 [www.lookupanyone.com](http://www.lookupanyone.com), although Intelius owns and operates a large number of other Web  
11 sites that are used primarily to drive traffic to its principal sites.

12 **Intelius’ “Post-Transaction Marketing” of Adaptive Marketing, Inc., Programs**

13 3.2 Since July 2007, Intelius has marketed third-party subscription membership  
14 programs to its customers during the customer’s primary transaction process with Intelius.

15 3.3 The third-party memberships have various names, including 24Protect Plus and  
16 Privacy Matters, and purport to offer various benefits such as free credit reports, free credit  
17 monitoring, and 24-hour roadside assistance.

18 3.4 The third-party membership programs are owned and serviced by Adaptive  
19 Marketing, Inc. (“Adaptive”), a subsidiary of Vertrue, Inc. (“Vertrue”), a Connecticut-based  
20 company.

21 3.5 The membership programs are billed by Adaptive on a recurring monthly or  
22 annual basis.

23 3.6 In July 2007, Intelius entered into an agreement with Adaptive (“the  
24 Agreement”) to offer 7-day free trials of Adaptive’s membership programs to Intelius  
25 customers via (1) an interstitial offer within the Intelius purchase path, (2) promotional ads  
26 places on the Intelius purchase confirmation page, and (3) email marketing.

1           3.7    The Agreement provides that all of Intelius' marketing of Adaptive's  
2 membership programs is to be "card-on-file," which means that the consumer does not need to  
3 re-enter his or her billing information on the membership enrollment form after linking from an  
4 advertisement or marketing offer in order for Adaptive to charge the membership fee to the  
5 consumer's credit or debit card.

6           3.8    Intelius' marketing of Adaptive programs is a type of marketing known as  
7 "post-transaction marketing," where the offer for the program is made after the consumer  
8 enters his or her account information to make a purchase with Intelius but before Intelius  
9 shows the consumer his or her report.

10          3.9    Intelius obtains the consumer's billing information during the consumer's  
11 purchase of an Intelius service or product.

12          3.10   Intelius then transmits the consumer's billing information obtained during the  
13 consumer's Intelius purchase to Adaptive in order for Adaptive to charge the applicable  
14 recurring monthly membership fee to the consumer's credit or debit card.

15          3.11   The Agreement requires Intelius to obtain consent from the consumer for the  
16 transmission of his or her billing information to Adaptive.

17          3.12   Under the Agreement, Adaptive is responsible for billing and collecting the fees  
18 for its membership programs from consumers who are enrolled in its programs through  
19 Intelius.

20          3.13   Under the Agreement, Adaptive is responsible for servicing the membership  
21 programs that it offers.

22          3.14   Under the Agreement, Adaptive is responsible for handling customer service  
23 related to its membership programs that are marketed by Intelius.

24          3.15   Under the Agreement, Adaptive is responsible for responding to cancellation  
25 and refund requests from consumers who were enrolled in one of its membership programs  
26 through an Intelius transaction.

1           3.16 Intelius has been selling consumers' credit and debit card information to  
2 Adaptive in the form of receiving a "bounty" of between \$40 and \$59 per consumer who  
3 enrolls in an Adaptive membership program based upon an offer featured on an Intelius Web  
4 site.

5           3.17 Intelius initially approved the form of the offers that Adaptive had created and  
6 presented to Intelius to be shown on Intelius' Web sites, and subsequently, Intelius requested  
7 and Adaptive agreed to modify the offers "to improve the presentation to potential customers,"  
8 according to Intelius.

9           3.18 Intelius uses and tests numerous versions of Adaptive's offers and keeps a  
10 record of the number of consumers who view the offer, number of consumers who "accept" the  
11 offer, and the conversion rates of offers.

12           3.19 The Adaptive offers that Intelius displays have high conversion rates,  
13 sometimes over 80 percent.

14           3.20 The Adaptive offers on the Intelius Web site appear on the screen after the  
15 consumer has paid for the Intelius product but before the consumer is shown the report of his  
16 or her purchase.

17           3.21 Many of the Adaptive offers appearing on Intelius Web sites feature an offer to  
18 customers of "\$10 cash back."

19           3.22 The "cash back" offer, however, is first displayed on the screen on which the  
20 consumer's search results appear, informing the consumer that if he or she proceeds with the  
21 Intelius transaction, he or she will be offered \$10 cash back. See Figure 1.

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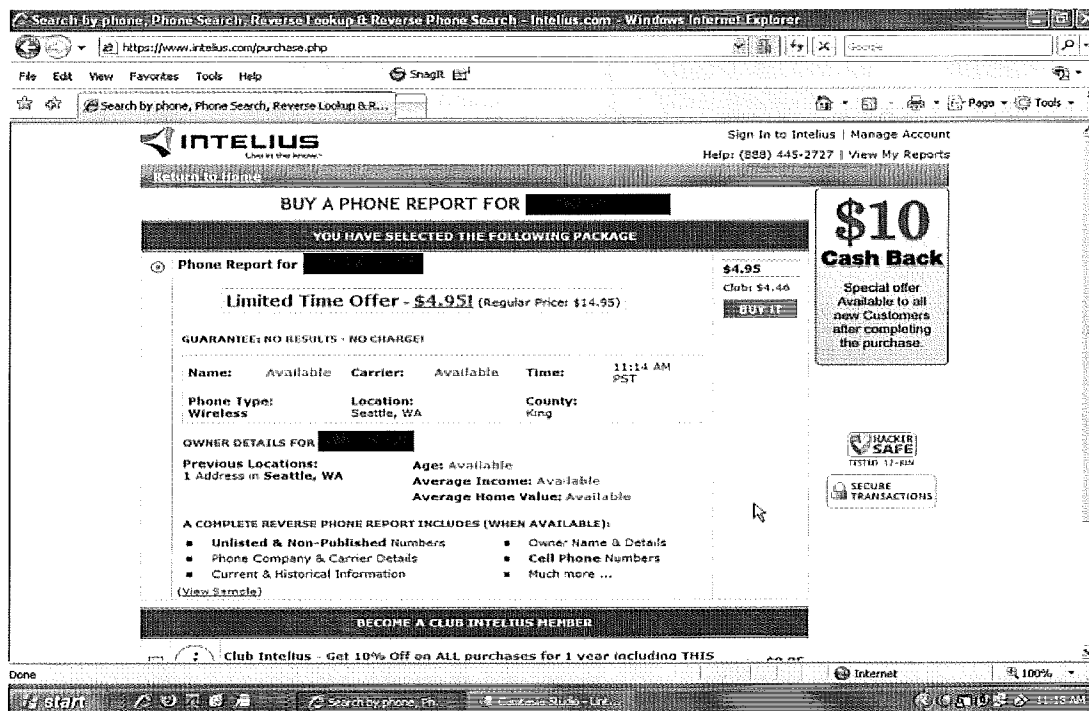
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1 Figure 1.



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14 3.23 There are no terms or conditions disclosed on this initial offer of \$10 cash back.

15 3.24 The "cash back" offer is displayed on one more screen and then finally

16 displayed prominently on the "Thank you" screen after the consumer clicks on the "Buy It"

17 button (see Figure 1) to complete his or her purchase of the Intelivus report. See Figure 2.

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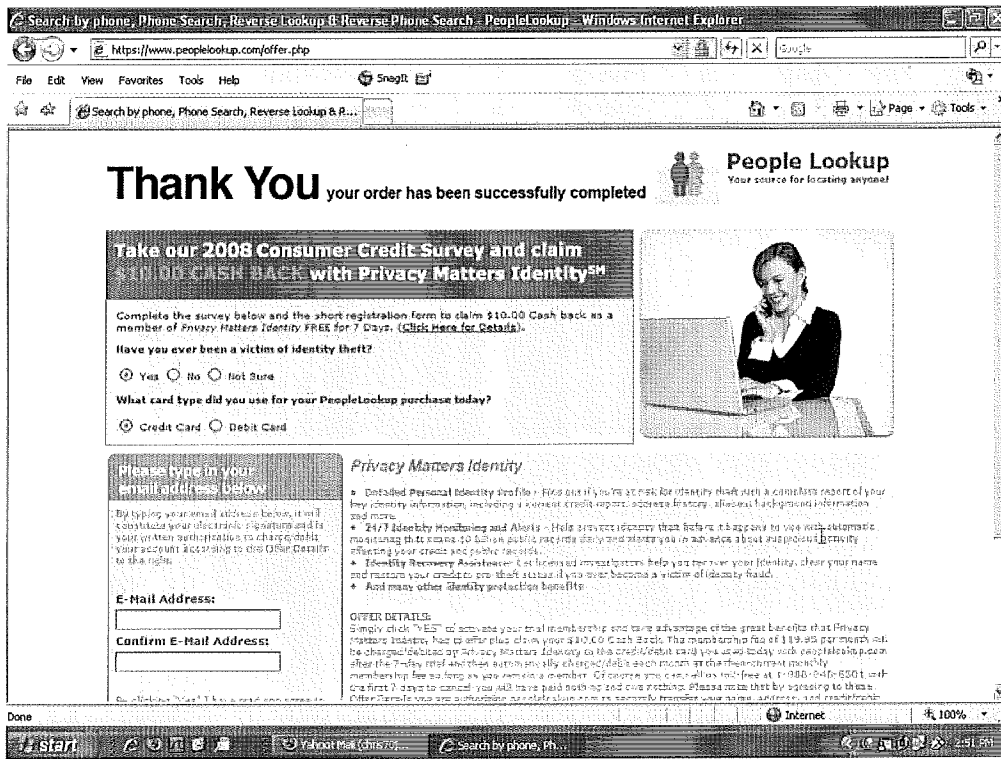
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1 Figure 2.



3.25 Following a prominent display of “Thank You your order has been successfully completed,” the Adaptive advertisement offers the Intelius customer \$10 cash back” for taking a two-question survey.

3.26 The Adaptive offer looks in all respects as though it is being made by Intelius.

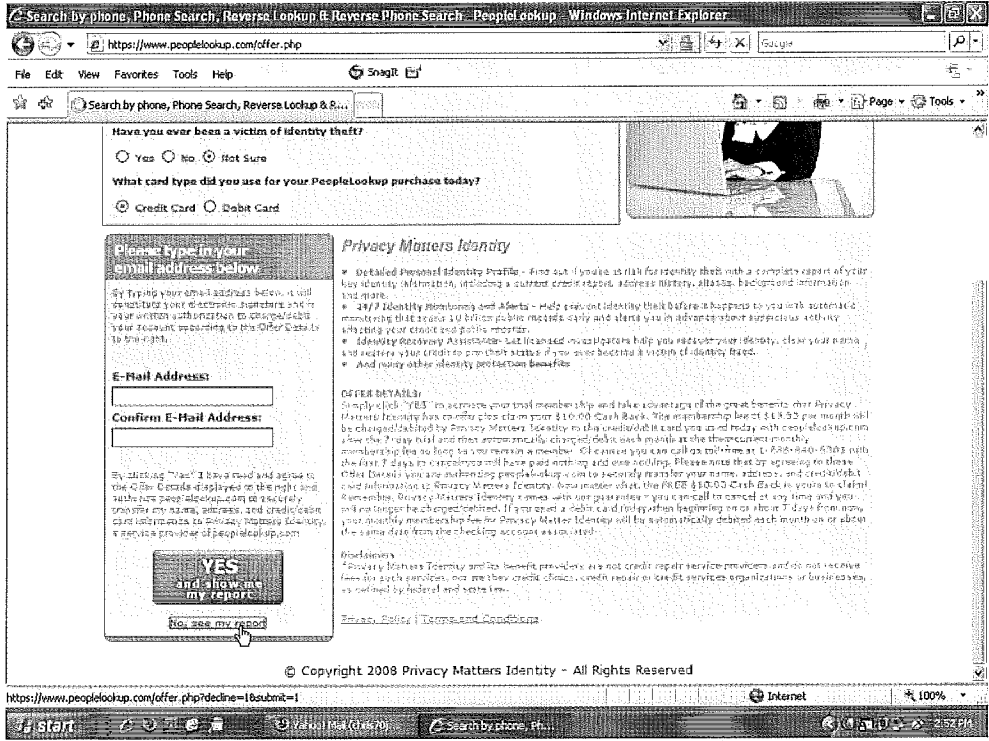
3.27 There is no indication in close proximity to the offer that there are terms and conditions attached to the \$10 cash back.

3.28 The “Click here for details” hyperlink, rather than disclosing the terms and conditions, states that you will get an email telling you how to submit a claim for the \$10.00.

3.29 On the same Web page as the \$10 cash back offer for taking the survey, there is a field in which the customer is asked to type in his or her email address.

3.30 Directly below the instruction to type in the email address is a prominent red button that says “YES and show me my report.” See Figure 3.

1 Figure 3.



14 3.31 Directly below the prominent red button is a tiny text hyperlink stating: “No, see my report.”

15 3.32 In contrast to the dark print and prominent placement of the cash back offer and instructions to input an email address is the small light-gray print covering the Web page.

16 3.33 The small light-gray print includes the “terms and conditions” of the \$10 cash back offer, which include (1) that the consumer must agree to a seven-day trial offer for a membership program, in this case, Privacy Matters Identity; (2) that the consumer is agreeing to be charged for the membership program at the end of the trial period on a recurring monthly basis for whatever the “then-monthly” fee is; (3) that the consumer agrees that Intelius may transmit the consumer’s credit or debit card information to the name of the membership program (Adaptive is not identified); and (4) that the consumer, if he or she used a debit card

1 in his or her Intelius transaction, is agreeing to recurring monthly debits from his or her bank  
2 account.

3 3.34 Nowhere on the offer page is it disclosed that it is Adaptive Marketing making  
4 the offer, not Intelius.

5 3.35 Hundreds of Washington consumers have been enrolled in Adaptive  
6 membership programs by Intelius without their knowledge or consent.

7 3.36 Hundreds of Washington consumers have been charged by Adaptive for  
8 membership programs that they did not knowingly consent to be charged for.

9 3.37 Adaptive's membership programs are billed on consumers' credit and debit  
10 cards using mysterious abbreviations, such as: "MC-PMIDENTITY," "AP9 VPRewardsUs,"  
11 and "IK9 VP Rewards US."

12 3.38 Hundreds of consumers have complained to the Washington Attorney General  
13 about unauthorized charges on their credit or debit cards placed by Adaptive.

14 3.39 Thousands of consumers have complained to the Better Business Bureau about  
15 unauthorized charges on their credit or debit cards placed by Adaptive based upon an Intelius  
16 transaction.

17 3.40 Hundreds of consumers have reported difficulty in discovering what company  
18 was placing the charges, what the charges were for, and where the company obtained the  
19 consumer's credit or debit card information.

20 3.41 Many Washington consumers complained to Intelius about unauthorized  
21 charges for Adaptive programs when Adaptive informed them that Intelius had given them  
22 their financial account information.

23 3.42 Intelius did not refund all consumers who complained about the unauthorized  
24 charges by Adaptive..

25 3.43 When consumers have been able to identify the source of the charges, many  
26 consumers have been unable to obtain full refunds for the membership fees from Adaptive,

1 even though Adaptive represents on its Web site that: “Adaptive Marketing LLC<sup>®</sup> will provide  
2 a full and prompt credit or refund to any consumer who is charged a membership fee but  
3 claims that he or she did not authorize that charge.” See  
4 [http://www.adaptivemarketing.com/about\\_bp.asp](http://www.adaptivemarketing.com/about_bp.asp) <last visited on February 23, 2009>.

5 3.44 By January 2008, as an increasing number of Intelius customers were enrolled  
6 in Adaptive membership programs during their Intelius transactions, Intelius began receiving  
7 an increasing number of consumer complaints of unauthorized charges to their credit and debit  
8 cards.

9 3.45 At a certain point, Intelius developed a “warm transfer” system with Adaptive  
10 to transfer consumer calls directly to Adaptive.

11 3.46 Intelius was concerned about how their customers’ experiences with Adaptive  
12 were impacting their own customer relations.

13 3.47 In some cases, Intelius would email to Adaptive the names and account  
14 numbers of consumers who called and requested a refund for an Adaptive program.

15 3.48 However, even as early as September 2007, only two months after Intelius  
16 began featuring the Adaptive offers, Intelius was aware that consumers were complaining of  
17 being enrolled and billed for Adaptive programs without their authorization.

18 3.49 As early as September 2007, Intelius was made aware that there was a  
19 significant increase in complaints to the Better Business Bureau relating to unauthorized  
20 charges made by Adaptive subsequent to the consumer’s purchase of an Intelius report.

21 3.50 Intelius’ executive management, including its Chief Executive Officer, Naveen  
22 Jain, were kept apprised of the trends on consumer calls to customer service relating to  
23 Adaptive programs by regular reports from John Arnold, an Intelius executive vice president.

24 3.51 From July 2007 to July 2008, approximately 19,000 Washington consumers  
25 were enrolled in an Adaptive membership program during a transaction with Intelius.  
26

1           3.52 In many months during 2007 and 2008, Intelius obtained near or over a 50  
2 percent conversion rate, that is, nearly or more than 50 percent of those consumers viewing the  
3 Adaptive offer were enrolled in an Adaptive membership program.

4           3.53 In March 2008 alone, Intelius earned over \$4 million in commissions from  
5 Adaptive for the consumers it enrolled in Adaptive programs.

6           3.54 In its first year of marketing Adaptive's programs, thousands of calls flooded  
7 weekly into Intelius's customer service department complaining about charges for Adaptive  
8 programs.

9           3.55 Of the nearly 19,000 Washington consumers who were enrolled in an Adaptive  
10 program during an Intelius transaction, almost 15 percent clicked on the button "YES and  
11 show me my report" in under thirty seconds after they clicked on the button to complete their  
12 purchase of the Intelius report.

13           3.56 Of the nearly 19,000 Washington consumers who were enrolled in an Adaptive  
14 program during an Intelius transaction, over 50 percent clicked on the button "YES and show  
15 me my report" between thirty and sixty seconds after they clicked on the button to complete  
16 their purchase of the Intelius report.

17           3.57 Of the nearly 19,000 Washington consumers who were enrolled in an Adaptive  
18 program during a transaction with Intelius, approximately 1,769 were enrolled in multiple  
19 Adaptive programs as a consequence of multiple purchases of Intelius products.

20           3.58 Of the thousands of Washington consumers who were enrolled in an Adaptive  
21 program during a transaction with Intelius, only a scant number claimed the \$10 cash back  
22 from Adaptive.

23           3.59 Despite proposing and making numerous changes to Adaptive's offer and  
24 continuously testing different versions of the offer in order to increase the conversion rate,  
25 Intelius proposed no changes to the offer to address the growing number of consumer  
26

1 complaints of unauthorized charges until June 2008, when an article was published online  
2 criticizing Intelius's marketing of Adaptive's programs.

3 3.60 However, the changes Intelius proposed in June 2008 were insufficient to cure  
4 the problem, and Intelius continued to receive complaints from consumers who were being  
5 billed for Adaptive's membership programs.

6 3.61 Eventually, Intelius began displaying Adaptive offers that did not contain the  
7 "consumer survey."

8 3.62 The conversion rates for offers without the survey dropped significantly.

9 **Intelius "Post-Transaction Marketing" of Identity Protect**

10 3.63 In April 2008, Intelius began offering its own membership program, Identity  
11 Protect, to consumers during the consumers' purchase of an Intelius report.

12 3.64 Intelius sells Identity Protect by offering a free trial of the program, and if the  
13 consumer does not cancel the program within the free trial period, Intelius automatically  
14 charges the consumer a recurring monthly subscription fee of \$19.95 to the credit or debit card  
15 the consumer used to purchase the Intelius report.

16 3.65 Intelius modeled its marketing offer of Identity Protect on the Adaptive offers in  
17 most respects.

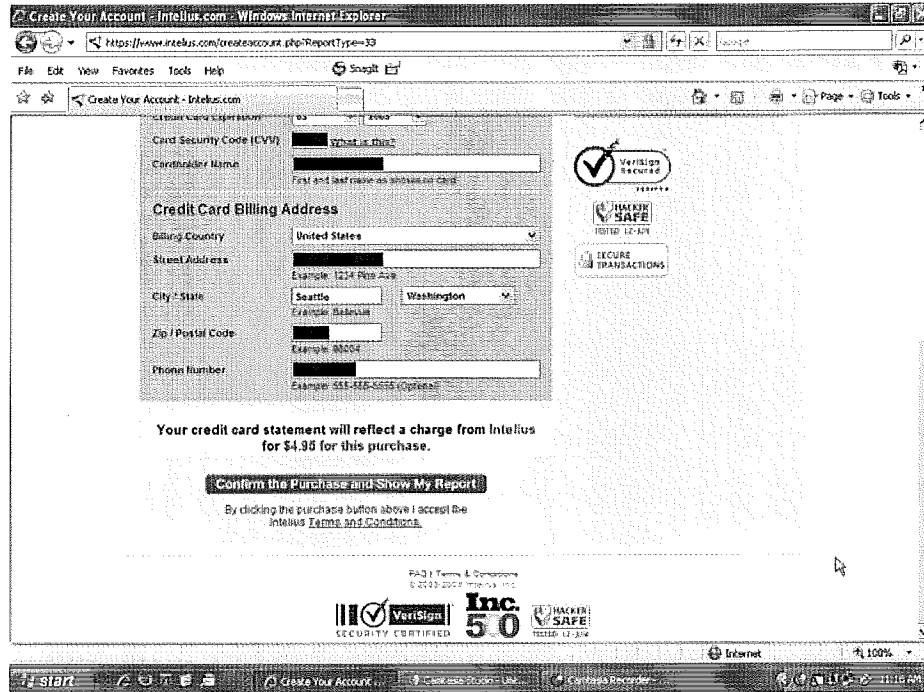
18 3.66 Intelius used and tested numerous versions of Identity Protect offers and tracked  
19 the number of consumers who viewed the advertisement, the number of consumers who  
20 "accepted" the offer, and the conversion rates of offers.

21 3.67 In some versions of the offer, during the consumer's transaction process with  
22 Intelius, an advertisement promising an offer for \$10 cash back appeared on multiple screens.

23 3.68 The \$10 cash back offer did not disclose that there were terms and conditions to  
24 the offer.

1 3.69 The consumer filled in his or her credit or debit card information to complete  
2 his or her purchase of an Intelius report and then clicked on a button that stated: "Confirm the  
3 Purchase and Show My Report." See Figure 4.

4 Figure 4.



16 3.70 Following the consumer's submission of his or her credit or debit card  
17 information to Intelius on the Intelius Web site to purchase an Intelius report, Intelius  
18 displayed an offer for "\$10.00 Off as a member of Identity Protect" rather than the consumer's  
19 report. See Figure 5.

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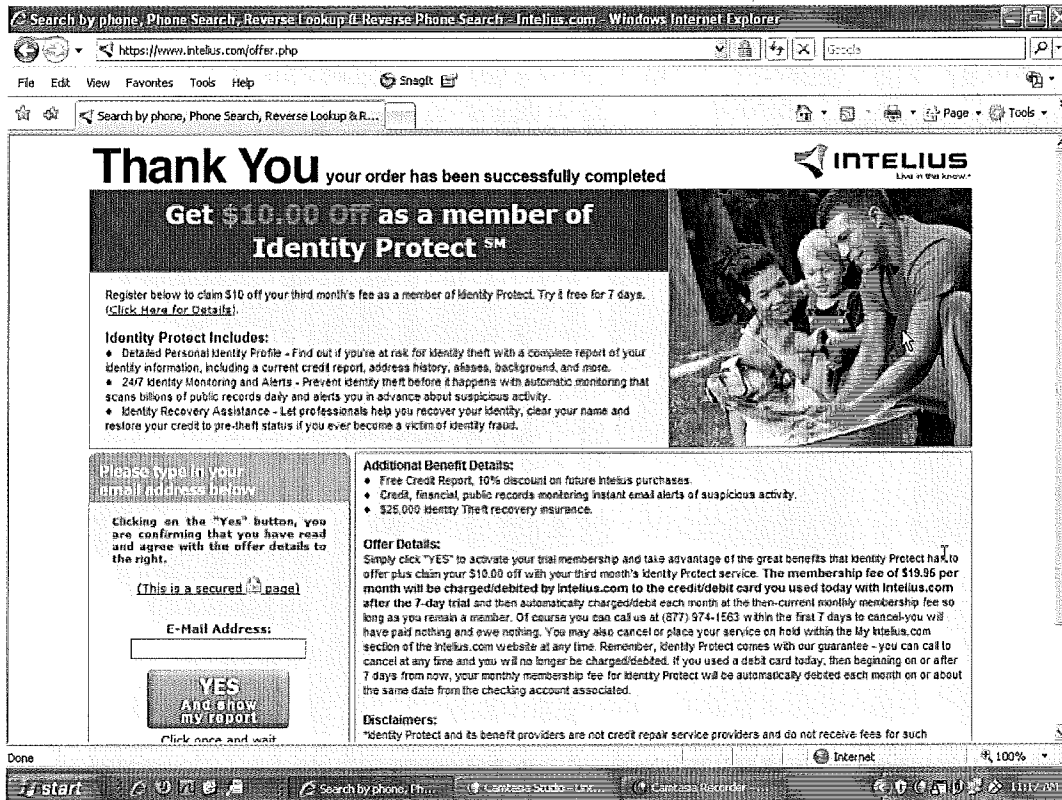
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1 Figure 5.



15 3.71 There was no other means by which a consumer could obtain his or her report  
16 than by taking an action on this offer Web page.

17 3.72 Featured prominently on the page was a large orange button stating “Yes and  
18 show me my report,” along with a field in which to type in an email address.

19 3.73 In fact, if a consumer filled in his or her email address and clicked on “Yes and  
20 show me my report,” he or she would be enrolled in Identity Protect and would be charged  
21 automatically the recurring monthly fee of \$19.95 unless he or she cancelled within seven  
22 days.

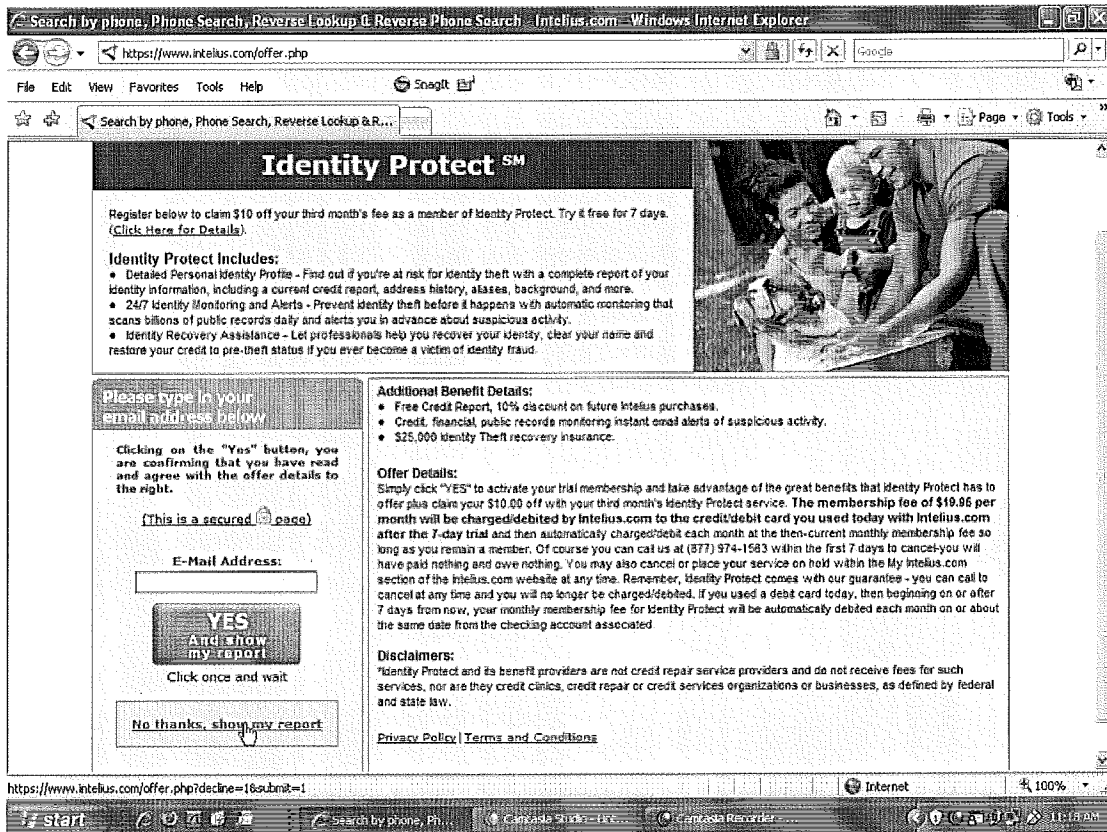
23 3.74 The offer page for Identity Protect in some instances obscured the hyperlink for  
24 consumers to receive their report without being enrolled in the Identity Protect free trial  
25 membership. See Figure 5 above.

26 3.75 The hyperlink stated, “No thanks, show my report.”

1 3.76 On a computer set to a typical screen resolution, the consumer would have to  
2 scroll down the screen to find the hyperlink. See Figure 5 above.

3 3.77 In contrast to the large orange button, the hyperlink was in small light-gray  
4 print. See Figure 6.

5 Figure 6.



19

20 3.78 In other versions of the Identity Protect offer, Intelius used a survey similar to  
21 the one used in Adaptive offers.

22 3.79 Intelius offered \$10 cash back if the consumer filled out a "consumer credit  
23 survey," which contained only two questions.

24 3.80 Intelius admitted that the survey was bogus and the information from the survey  
25 responses was not used for any purpose other than to engage the consumer.

1           3.81    The Intelius offers using the survey had higher conversion rates than the offers  
2 that did not use the survey.

3           3.82    Between April 2008 and January 1, 2009, approximately 378,667 consumers  
4 nationwide were enrolled in Identity Protect during their purchase of an Intelius report.

5           3.83    Of the 378,667 consumers, 241,306 cancelled the service.

6           3.84    The conversion rate for consumers who were shown Identity Protect offers in  
7 the middle of their transactions relating to an Intelius report ranged from 10.6 percent to 87  
8 percent.

9           3.85    Between April 2008 and October 2008, 2,718 Washington consumers were  
10 enrolled in Identity Protect during their purchase of an Intelius report.

11          3.86    Of the approximately 2,718 Washington consumers 23 percent of them clicked  
12 on the "Accept" button to the Identity Protect offer in less than twenty seconds after clicking  
13 on the button to complete their purchase of the Intelius report.

14          3.87    Of the approximately 2,718 Washington consumers who were enrolled in  
15 Identity Protect during their purchase of an Intelius report, 53 percent of them clicked on the  
16 "Accept" button to the Identity Protect offer in less than thirty seconds after clicking on the  
17 button to complete their purchase of the Intelius report.

18          3.88    Of the approximately 2,718 Washington consumers who were enrolled in  
19 Identity Protect during their purchase of an Intelius report, 75 percent of them clicked on the  
20 "Accept" button to the Identity Protect offer in less than forty seconds after clicking on the  
21 button to complete their purchase of the Intelius report.

22          3.89    Of the approximately 2,718 Washington consumers who were enrolled in  
23 Identity Protect during their purchase of an Intelius report, 100 percent of them clicked on the  
24 "Accept" button to the Identity Protect offer in less than sixty seconds after clicking on the  
25 button to complete their purchase of the Intelius report.

1           3.90 Intelius suffered excessively high charge-back rates because of Identity Protect  
2 charge-backs.

3           3.91 In a meeting on October 24, 2008, Intelius management specifically identified  
4 charge-backs for Identity Protect as the culprit in raising Intelius' charge-back rate over the  
5 limit imposed by Visa and Mastercard.

6           3.92 Charge-backs for Identity Protect almost always exceeded one percent of the  
7 billings for the product.

8           3.93 Intelius's customer service department was receiving thousands of calls a week  
9 from consumers complaining about charges for Identity Protect.

10          3.94 Intelius's customer service department was ill-equipped for months to handle  
11 the volume of calls relating to Identity Protect charges.

12          3.95 Consumers experienced wait times of over 20 minutes to reach a customer  
13 service representative.

14          3.96 Some weeks, Intelius had an abandoned call rate of over 50 percent.

15          3.97 Despite knowing that a large number of consumers who were calling customer  
16 service were complaining about charges for Identity Protect, Intelius never set up its call-  
17 tracking system to track complaints of unauthorized charges for Identity Protect.

18          3.98 In fact, Intelius had to set up a special customer service line to respond to the  
19 volume of calls from consumers requesting refunds for Identity Protect charges.

20          3.99 Intelius's call-tracking system listed 16 different reasons for a customer's  
21 request for a refund, none of which would describe the consumer who alleged that the charges  
22 were unauthorized.

23          3.100 Initially, Intelius permitted customer service representatives to give consumers  
24 refunds for two months of charges for Identity Protect.

1           3.101 In September 2008, Intelius changed its policy and refused to refund more than  
2 one month's charge for Identity Protect when consumers called to complain about the charges  
3 unless the call was escalated.

4           3.102 In a memo to customer service on September 10, 2008, Intelius cited as its  
5 reasons for changing the policy addressing the way Identity Protect was being offered with a  
6 focus on decreasing the number of consumers who "inadvertently enrolled" in Identity Protect  
7 and increased email communications to consumers about their purchase of the product.

8           3.103 In June 2008, Intelius hired an independent marketing consultant to review  
9 Intelius's Identity Protect offers for areas of potential consumer confusion.

10          3.104 In her report, the independent consultant, Shelli Strand, highlighted the "call-to-  
11 action" button as a source of consumer confusion.

12          3.105 Intelius implemented some changes based on Strand's report.

13          3.106 Intelius did not change the "call-to-action" button.

14          3.107 An Intelius officer suggested that Intelius make the "no thanks" hyperlink into a  
15 button similar to the "yes" button, but CEO Jain rejected the suggestion.

16          3.108 Intelius briefly tested a version of its Identity Protect offer that moved the "No  
17 thanks" hyperlink and the "Yes" button up to the top of the offer and had them side by side of  
18 equal size.

19          3.109 That offer converted at a very low rate compared to the offers that kept the "No  
20 thanks" in a hyperlink below the "Yes" button.

21          3.110 Intelius ran an Identity Protect offer that used buttons for both the "Yes" and  
22 "No thanks" options but Intelius stopped using it because Intelius claimed it confused  
23 consumers.

24          3.111 After two days of running this offer, Intelius pulled it and replaced it with offers  
25 that had the large "Yes" button featured prominently again and the small hyperlink "No  
26 thanks" beneath the button.

1 3.112 The conversion rate returned to its normal range.

2 3.113 In October 2008, Intelius discontinued marketing Identity Protect via post-  
3 transaction offers.

4 **Intelius' "Bundled" Marketing of Identity Protect**

5 3.114 In October 2008, Intelius began using a new method of marketing its trial offers  
6 of Identity Protect.

7 3.115 Intelius called this new form of marketing "bundled" marketing because the  
8 trial of the Identity Protect service was bundled with a discounted price on the product the  
9 consumer wanted to purchase.

10 3.116 On the Intelius Web site [www.intelius.com](http://www.intelius.com), when a consumer does a search for  
11 a background report, whether on a person or a telephone number, Intelius offers the report at its  
12 regular price or a discounted price with Identity Protect.

13 3.117 However, Intelius does not disclose the material terms of the discounted offer at  
14 the point that the consumer has the choice of choosing the discounted price.

15 3.118 The screen on which the consumer must choose between the discounted price  
16 and the regular price does not describe what Identity Protect is nor does it indicate that there  
17 are any terms or conditions to the discounted price. See Figure 7.

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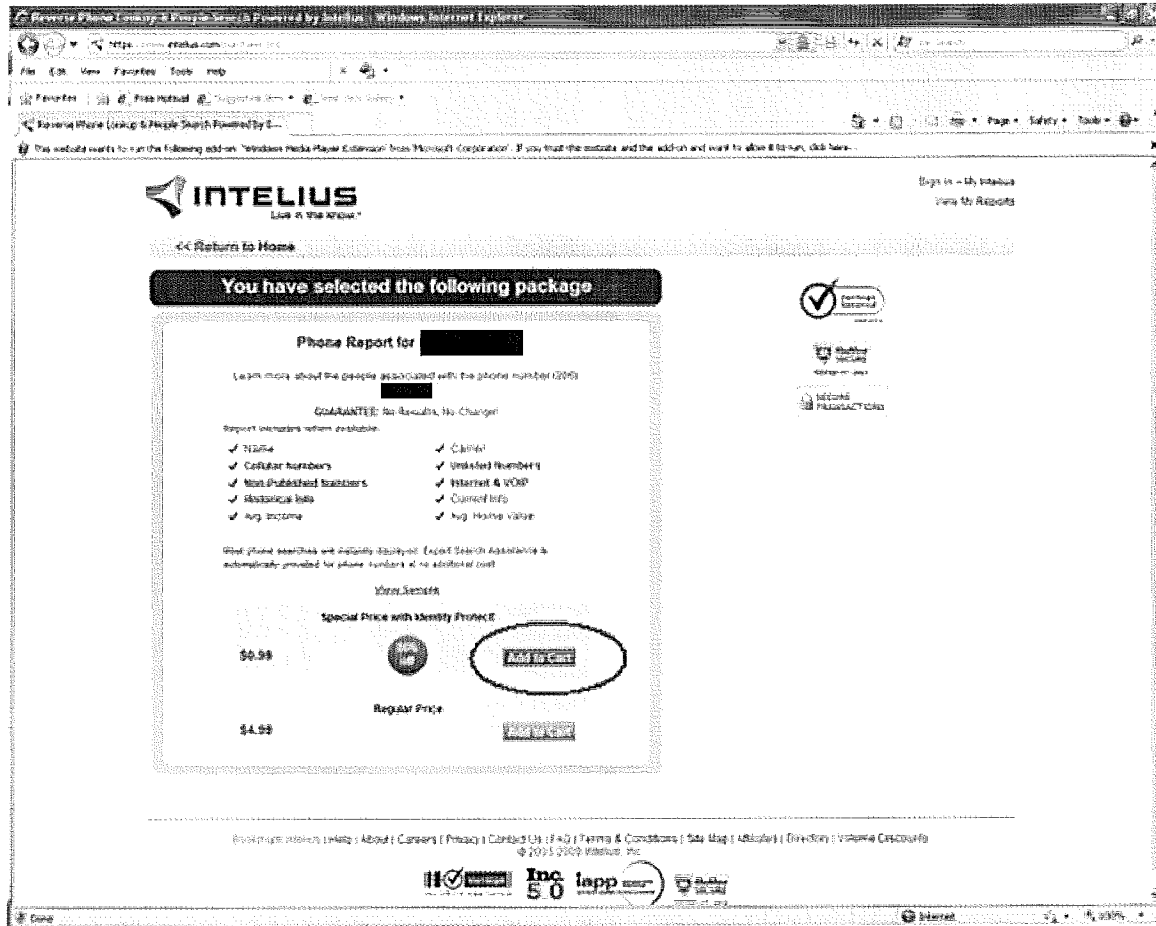
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1 Figure 7.



17 3.119 It is only after the consumer chooses the discounted price of the report that the

18 consumer is shown a description of the report the consumer is purchasing and a description of

19 the “benefits” of Identity Protect; however, the prominent red button saying “Continue”

20 encourages the consumer to simply click through to complete his or her transaction before ever

21 scrolling down to read the “offer details.” See Figure 8.

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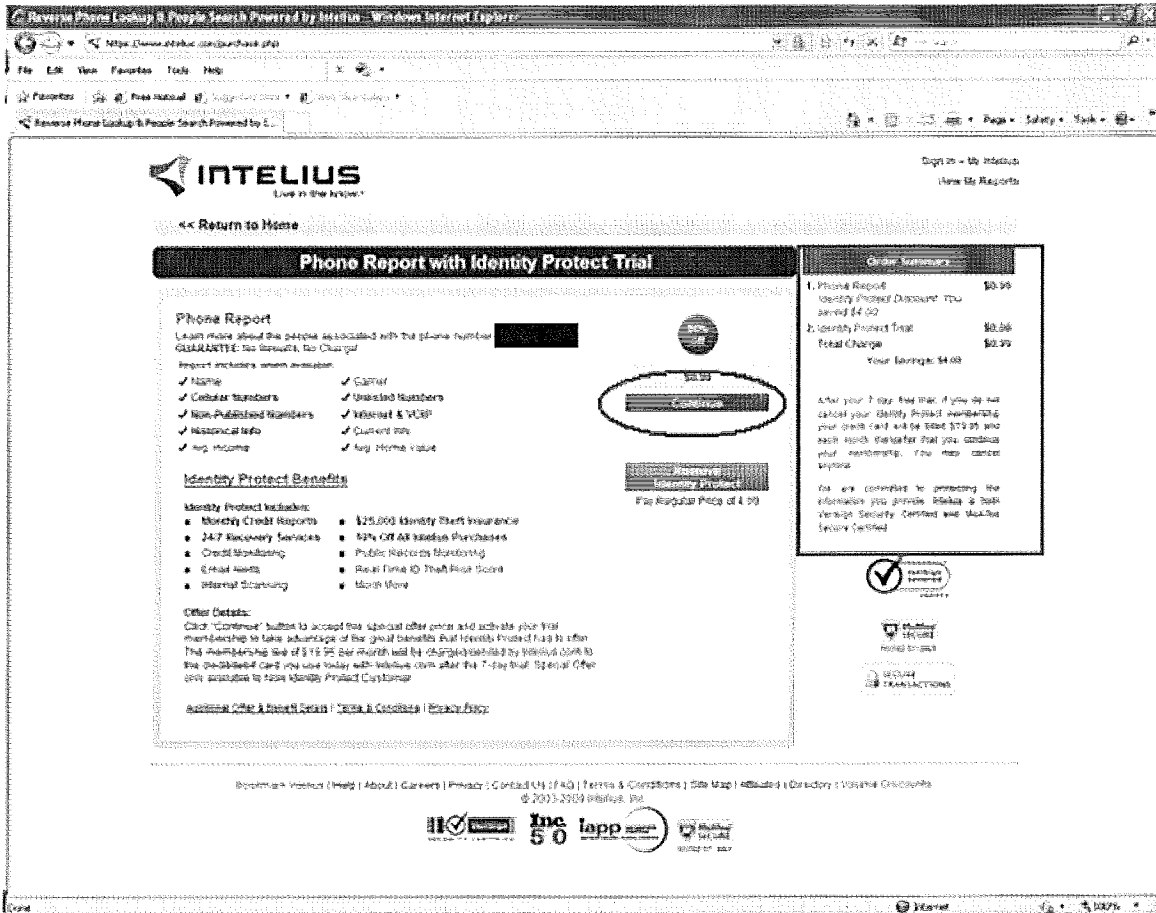
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1 Figure 8.



17 3.120 In addition, in the “Order Summary” area there is “\$0.00” listed next to  
18 “Identity Protect Trial.”

19 3.121 Furthermore, in the “Order Summary” on the payment-submission page, the  
20 “savings” on the report is shown as attributable to being a “Club Savings,” a term not  
21 previously used. See Figure 9.

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1 Figure 9.

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18 3.122 After filling in his or her credit or debit card information, the consumer clicks  
19 on the button that says: "Confirm the Purchase and Show My Report." See Figure 10.

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