

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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THE PEOPLE OF THE STATE OF NEW  
YORK, by ELIOT SPITZER, Attorney  
General of the State of New York,

Petitioner,

-against-

**VERIFIED PETITION**

APPLIED CARD SYSTEMS, INC., and  
CROSS COUNTRY BANK, INC.,

Respondents.

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TO: THE SUPREME COURT OF THE STATE OF NEW YORK

The People of the State of New York, by their attorney, Eliot Spitzer, Attorney General of the State of New York, allege upon information and belief:

INTRODUCTION

1 Petitioner brings this summary proceeding to permanently enjoin respondents from engaging in fraudulent and illegal practices in the operation of their consumer credit businesses in violation of Executive Law § 63(12) and General Business Law (“GBL”) Articles 22-A and 29-H. The Attorney General’s investigation into respondents’ business practices revealed that respondents target consumers with poor credit histories and deceptively induce them to enter into onerous and confusing credit card agreements. These credit agreements require that consumers pay high fees and costs for the privilege of receiving only a minimal amount of useable credit, at repayment terms that are difficult--if not impossible--for many consumers to comply with. Respondents also fraudulently induce consumers with whom they enter into credit card agreements to enroll in third party fee based membership programs that

provide little or no benefit to New York consumers. When consumers become delinquent on their account payments, as thousands have, respondents employ harassing, abusive and illegal collection tactics in an attempt to collect payments.

### PARTIES AND JURISDICTION

2. Petitioner is the People of the State of New York, by their attorney, Eliot Spitzer, Attorney General of the State of New York.

3. Petitioner brings this proceeding pursuant to Executive Law § 63(12) under which petitioner is empowered to seek injunctive relief, restitution, damages and costs against any person or business entity which has engaged in repeated fraudulent or illegal acts or otherwise engaged in persistent fraud or illegality in the conduct of business. Petitioner also brings this proceeding pursuant to GBL Articles 22-A and 29-H. GBL § 349, the Deceptive Practices Statute, empowers the Attorney General to seek injunctive relief and restitution when any person or entity has engaged in deceptive acts or practices in the conduct of any business. GBL § 350, the False Advertising Statute, prohibits false advertising in the conduct of any business or in the furnishing of any service. GBL § 350-d empowers the Attorney General to seek civil penalties for each violation of GBL Article 22-A, including violations of GBL §§ 349 and 350. GBL Article 29-H imposes restrictions on the manner in which creditors may collect debts. GBL § 602(2) empowers the Attorney General to seek injunctive relief to restrain and enjoin continuing violations of GBL Article 29-H.

4. Cross Cross Bank (“Cross Country”) is a financial institution chartered by the State of Delaware and insured by the Federal Deposit Insurance Corporation (“FDIC”), whose primary business is issuing credit cards to consumers. Since at least 1997, Cross Country has

issued credit cards to consumers in the County of Albany and elsewhere in the State of New York. Cross Country's principal place of business is 800 Delaware Avenue, Wilmington, DE 19801

5 Applied Card Systems ("ACS") is a Delaware corporation that is under common ownership and control with Cross Country. ACS's primary function is the servicing of Cross Country's credit card accounts. In this capacity, ACS performs billing, payment processing, customer service and collections for Cross Country. ACS's principal place of business is 50 Applied Card Way, Glen Mills, PA 19342. ACS also has offices in Florida, West Virginia and Kentucky.

6 The Attorney General has provided respondents with pre-litigation notice pursuant to GBL §§ 349(c) and 350-c

### FACTS

#### **Respondents' Sub-Prime Credit Cards**

7 Since 1997, Cross Country has offered credit cards targeted at consumers who -- due to events in their credit history -- generally would not qualify for credit under traditional underwriting guidelines and principles. This group of consumers is commonly referred to as the "sub-prime credit market."

8 Cross Country promotes its credit cards as a way for credit-impaired consumers to establish their credit rating. Many consumers find, however, that their credit rating is worse after obtaining a Cross Country credit card. Because Cross Country's credit cards contain terms that make it difficult for consumers to maintain a satisfactory payment history, many account holders find themselves unable to bring their account payments current and default on their debts.

This is reflected in the high percentage of Cross Country's loans--which consist almost exclusively of credit card accounts--reported to the FDIC as charge-offs--21.53% in 2002, and 27.88% in 2001

9. Cross Country represents in direct mail solicitations and telephone solicitations that the consumer has been approved for a credit limit of up to \$2,500. In fact, Cross Country's credit cards are unique in that they typically provide consumers with a low credit limit--often less than \$400--and require advance payment of high "origination" or processing fees, and annual membership fees. Indeed, these fees often consume half or more of the consumer's already minimal credit limit. For example, Cross Country Bank has offered consumers a credit card with credit limits as low as \$250 to \$350, for a \$100 application fee and a \$50 annual membership fee. For other cards, Cross Country Bank charges a \$10 monthly maintenance fee in lieu of the up-front application fee. Cross Country fails to disclose to consumers that the exorbitant fees charged to the account will leave many account holders with less than \$150 in available credit.

10. After an account is opened, Cross Country continues to impose charges and fees for most customer assistance types services which Cross Country or ACS are asked to provide. For example, account holders are charged fees for requesting and receiving copies of billing statements, automated account information, and for processing payments over the phone through an Automated Clearing House (ACH) system.

11. In addition, Cross Country charges a late fee of approximately \$30 every month in which an account holder fails to make his or her total minimum monthly payment by the due date set forth in their billing statement, and charges an over-the-limit fee of approximately \$30 every month in which an account holder's balance exceeds his or her credit limit. These fees are added

to the account holder's minimum monthly payment, which must be paid on time and in full. Failure to do so results in the imposition of additional late fees and over-the-limit fees (if the balance of the account--including the additional late fee-- continues to exceed the credit limit)

12. After an account is opened, Cross Country continues to impose charges and fees for most customer assistance types services which Cross Country or ACS are asked to provide. For example, account holders are charged fees for requesting and receiving copies of billing statements, automated account information, and for processing payments over the phone through an Automated Clearing House (ACH) system.

13. In addition to the credit card charges, Cross Country often tacks on enrollment fees for third-party membership benefit programs, including a "Credit Account Protection" program and an "Applied Advantage" program. Many consumers unwittingly enroll in these programs when they complete Cross Country's credit card applications.

14. Cross Country's fees are applied against the consumers' accounts immediately upon approval of the consumers' applications, and Cross Country sends these consumers billing statements reflecting these charges, irrespective of whether the consumer has used his or her credit card to make any purchases or cash advances.

15. Cross Country credit agreements do not provide a grace period by which account holders can make a payment without incurring finance charges. Instead, finance charges are applied daily against every transaction (including all fees charged by Cross Country) from the date the transaction is posted to the account until it is paid in full, no matter when the consumer pays off his or her balance. As a result, account balances continuously fluctuate, making it difficult, if not impossible, for account holders to keep track of the amount they owe and the

amount of credit they have available.

16. Many consumers are unaware of the exorbitant fees charged to them upon the issuance of their credit card, the limited amount of credit available to them after Cross Country's fees are assessed, and the onerous manner in which finance charges and penalties are applied against their accounts. These consumers quickly find that their account balances have increased exponentially, despite making few -- if any -- purchases with their credit cards.

17. The cumulative effect of these limited credit lines and compounding fees and finance charges is to trap these unwary consumers in a vicious cycle of pyramiding debt from which they cannot escape.

#### **Respondents' "Secured" Credit Cards**

Cross Country also offers consumers in the sub-prime market a second type of credit card with interest rates over 20%, in which no real credit is issued to the consumers. These "secured" credit card agreements require that consumers deposit the amount of money they wish to borrow into a secured savings account maintained by Cross Country before that money can become available to the consumer.

19. Upon issuance of the secured credit card, Cross Country charges a \$50 account origination fee to the account and a \$10 monthly maintenance fee. Consequently, the amount of credit available to consumers is less than the amount they deposit with the bank.

20. Consumers who accept Cross Country's secured credit card are subject to much of the same terms and fees applied to Cross Country's unsecured credit card accounts. For example, there is no grace period, and consumers are subject to late and over-the-limit fees.

Cross Country's secured credit card advertisement contains a number of

misleading statements. For example, the first page of Cross Country's secured credit card advertisement states in large bold type near the top of the page, "NO collections calls\*" and "NO late fees.\*" In fact these statements are completely contradicted by the following statement, which is set forth in small type and located near the bottom of the page:

"Late Fees may apply and you may receive collection calls if payments are past due on your credit account and charges or fees incurred cause your credit balance to exceed its credit line (overlimit) or any portion of your credit line becomes unsecured..."

22. Furthermore, the terms of the secured credit card agreement, including the high interest rate, \$10 monthly maintenance fee, \$50 annual fee, and \$30 late and over-the-limit fees, are inconspicuously buried on the fifth page of the advertisement and application in the "Terms and Conditions" chart and not otherwise referred to in the advertisement and application.

#### **Fraudulent and Illegal Sale of Fee Based Services**

23. In connection with its credit card offers, Cross Country offers consumers an opportunity to enroll in fee based programs administered by third parties, including the "Credit Account Protection" ("CAP") program and the "Applied Advantage" ("AA") program. In many cases, Cross Country mandates that consumers purchase and enroll in the AA program in order to get a credit card.

#### **CAP Program**

24. Cross Country advertises the CAP program as "a credit card protection plan that gives you peace of mind in the knowledge that your credit card obligations will be fulfilled should death, disability, unemployment, or family leave occur." Cross Country charges account holders a monthly fee based upon the balance of the account for enrollment in the CAP program.

25 Consumers can enroll in the CAP program merely by signing their name at a designated space on the credit card application. Indeed, it is easy to confuse the CAP program signature line with that reserved for the credit application.

26. The CAP program provides virtually no benefit to New York consumers. Although the program is advertised to help consumers affected by unemployment, disability, dismemberment, unpaid leave of absence, or death, the CAP program excludes virtually all coverage for New York consumers:

“Spousal benefits are not available in...NY”

“[Unemployment] benefits are not available in...NY”

“Family leave benefits are not available in...NY”

“Dismemberment is not covered in...NY”

“Disability benefits are not available in NY”

27. The CAP program’s exclusions pertaining to New York consumers are not conspicuously disclosed, but rather are set forth in fine print on the last page of the application, and are difficult and confusing to read.

Despite the fact that most of the advertised services of the CAP program are unavailable to New York consumers, Cross Country repeatedly enrolls New York consumers into this program and charges them fees for this misleading and useless service.

Those New York consumers who knowingly enroll in the CAP program are led to believe that they will receive the advertised protections and are surprised and dismayed when they learn that the protections for which they paid are not available to them.

Applied Advantage Program

30. Cross Country advertises that membership in the Applied Advantage program entitles account holders to a variety of benefits, such as emergency services, auto rental insurance and credit card registration services.

31. Many consumers who apply for and receive a Cross Country credit card are automatically enrolled in the Applied Advantage program, unless they affirmatively and expressly opt-out of the Applied Advantage program on their application form. The automatic opt-out mechanism of the Applied Advantage program is confusing and misleading.

32. For many other consumers, however, membership in Applied Advantage is mandatory and, indeed, is expressly made a “condition of acceptance of this credit offer.” These consumers must enroll in the Applied Advantage program to obtain a credit card.

33. The cost of Applied Advantage membership is \$34.95 per year, and is billed automatically to the consumer’s Cross Country account upon credit approval and issuance of the credit card. Thereafter, unless the consumer cancels within 60 days of initial enrollment in the program, membership is automatically renewed and all subsequent annual fees are billed automatically to the consumer’s credit card account. There is no provision in Cross Country’s solicitation or brochure that consumers be given advance written notice of automatic renewal nor, upon information and belief, does Cross Country give consumers such notice.

34. The 60-day cancellation provision, which enables consumers to avoid automatic renewal of AA membership, is not clearly and conspicuously disclosed and appears in miniscule print towards the end of the solicitation.

## Abusive Collection Practices

35. Although Cross Country represents that its associates strive to provide “superior customer service that, in every instance, professional, courteous and attentive,” respondents treatment of delinquent account holders is persistently marked by harassment, abuse and misstatements.

36. ACS employs over 4,000 individuals at four collection sites to collect delinquent payments from Cross Country account holders. ACS’s collectors contact account holders over the telephone through the use of a predictive dialing machine, which dials telephone numbers contained in a stored database.

37. ACS collectors must complete a training program before they begin calling account holders. During the first part of the training program, collectors are taught, in a classroom setting, to obey the spirit of the federal Fair Debt Collections Act and to avoid abusive debt collection practices.

38. After a week or so in the classroom, the new collectors are assigned to work with experienced collectors on actual collection calls, during which they observe and learn various tactics or tricks designed to induce account holders into making a payment. During this “on-the-floor” training, the new collectors are instructed to disregard much of their earlier training and to pursue payments from account holders aggressively.

39. ACS continues to foster this aggressive behavior in its collectors through an incentive program, in which a collector’s salary--and the salary of his or her supervisor--is largely based upon the amount of money they collect, and by setting performance quotas that the collectors are required to meet.

40. Through their aggressive pursuit of payments, ACS collectors routinely engage in abusive collection practices. For example, once an account holder becomes delinquent in paying their Cross Country account, ACS collectors begin harassing the account holder with repeated, frequent and disruptive telephone calls, intended to intimidate the consumer into making a payment.

41 In addition, ACS collectors routinely misrepresent their identity in order to get an account holder to speak with them. For example, ACS collectors regularly pretend that they are personally acquainted with the account holder, or that they are calling for some purpose other than collecting a debt.

42. ACS collectors also try to reach account holders at their places of employment, and repeatedly call them at work, even after being told that the account holder is not permitted to accept such calls at work.

43 In addition, once they have an account holder on the phone, ACS collectors often use rude, insulting and/or obscene language in an attempt to collect a payment.

44. ACS collectors also make false and improper threats to induce account holders into making payments.

45 ACS collectors routinely disregard account holders' requests to stop calling them and often state that they will continue to call until they receive payment.

46. If an account holder "hangs up" on an ACS collector, the collector often punishes the account holder by making repeated and successive calls to that account holder.

47. Many account holders enter into payment plans with ACS in order to stop the collection calls. ACS, however, continues to call, even after receiving payments under a plan.

48. Respondents also bill consumers and engage in collection activities even though the consumer never opened a credit card account or received a credit card from Cross Country.

#### **Unauthorized Debits**

49. Since at least July 2002, ACS has repeatedly engaged in a practice which their collectors refer to as “assumptive pay-by-phones,” which is designed to lure account holders into authorizing payments they did not wish to make. This practice entails the ACS collector telling an account holder--who had not authorized any payment to Cross Country or ACS--that the purpose of the call is to confirm that the account holder had authorized a particular payment (to be made electronically by debiting the account holder’s checking account) on a particular date. The collector then tells the account holder to get a pen and paper so that they can take down an authorization number for their records.

50. Some collectors have taken this practice a step further and processed payments merely by leaving authorization numbers on account holders’ answering machines, without ever having spoken with the account holder about the payment.

51. Account holders and other consumers whose checking accounts are debited by ACS without their knowledge or consent often do not learn that their accounts had been debited until they receive notice from their banks.

#### **Misrepresenting Re-Payment Plans**

52. From time to time, ACS offers account holders whose accounts are seriously delinquent and in danger of being charged-off an opportunity to have their account taken out of ‘delinquent’ status by making certain payments for a period of months. If the account holder complies with the agreement, the account will be considered current and ACS will cease

imposing late fees. ACS refers to this process as “Re-Aging.”

53. In explaining the re-aging process and offer to account holders, collectors routinely fail to disclose the fact that, while the account is being re-aged, ACS will continue to impose over-the-limit fees, and that once the account has been re-aged and is current, the account holder will need to pay the full amount due--including that portion of the balance attributable to over-the-limit and previously imposed late fees in order to remain current.

54. Because most account holders owe a significant amount of late and over-the-limit fees before they are given the opportunity to re-age their account, their balances often exceed their credit limit and must be paid in full, or substantially reduced, in order to avoid additional over-the-limit and late fees. Thus, unless these account holders receive credit line increases, from which they can pay down their balance, they will usually be unable to pay the balance due at the expiration of the re-aging process, and will remain delinquent

#### **Misrepresenting Pay-Off Amounts**

55 Many account holders, frustrated by ACS’s continuous and aggressive collection efforts, choose to close out their accounts by paying off their account balances

56. Because Cross Country’s credit card agreements do not provide for a grace period, and finance charges are imposed on a daily basis, account balances increase every day. Consequently, an account holder can only pay off their account by paying the amount which is due on the date the payment is posted to the account.

57 ACS collectors routinely fail to disclose to account holders who wish to close out their accounts that, unless payment is actually received on that day, either by telephone or wire, they will need to pay a greater amount than that currently due, and also fail to disclose what that

amount is.

58 ACS collectors have also failed to disclose fees which will be charged to the account in connection with the close-out payment, such as a transaction fee if the payment is made over the phone.

59. Consequently, many account holders mail in a payment that is less than the balance owed on the date the payment is received, and, as a result, their accounts remain open and continue to accrue late charges, and finance and other charges.

60. These account holders often do not find out that their accounts are still open until they receive subsequent billing statements or collection calls from ACS

61. Some collectors misrepresent an account holder's payoff amount by inflating the amount of money due. For example, some collectors will tell an account holder that, in order to close out their account, they will need to pay an amount equal to the current balance due plus the finance charges which were assessed the previous month, and a \$30 late fee and \$30 over-the-limit fee, even though some of those charges have yet to be imposed.

#### **Check Truncation**

62. Cross Country has entered into many credit card agreements that contain a term which authorizes Cross Country to convert a check or other payment instrument into an electronic debit transaction that will be processed through the Automated Clearing House system ("ACH") and electronically debited from the account on which it was drawn. Cross Country refers to this process as check "truncation."

63. Truncation allows Cross Country to immediately withdraw funds from the customer's account without having to present the check or other instrument for payment to the

customer's bank and wait for it to clear. Consequently, a payment that might take a few days if processed by check, can be processed electronically within a few minutes. Consumers may opt out of the truncation provision by sending a letter to Cross Country's customer service department stating their desire to do so.

64. Cross Country's truncation provisions are generally located in small print in the middle of Cross Country's credit agreements. They are not set apart from other terms and there is no heading which would draw attention to it.

65. Most account holders are unaware of the truncation provision and do not understand that their payment checks will be turned into ACH withdrawals which can be processed immediately upon receipt. As a result, many account holders make a payment by check believing they will have sufficient time to cover the check by making a deposit into their checking account, only to find out later that the amount of the check was immediately debited from their account before they could cover it. This has caused many consumers to be overdrawn on their checking accounts for which they were billed returned check fees by their banks.

**FIRST CAUSE OF ACTION  
PURSUANT OT EXECUTIVE LAW  
§ 63(12)--FRAUD**

66. Executive Law § 63(12) defines "fraud" or "fraudulent" to include" any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions."

67. By reason of the acts and practices described in paragraphs 7 through 22, respondent Cross Country repeatedly and persistently engages in fraud in the marketing and sale of credit card services.

68. By reason of the acts and practices described in paragraphs 22 through 34, respondent Cross Country repeatedly and persistently engages in fraud in the marketing and sale of third party membership programs.

69. By reason of the acts and practices described in paragraphs 35 through 65, respondent ACS repeatedly and persistently engages in fraud in the billing and collection of credit card services.

70. Respondents' conduct constitutes repeated and persistent fraudulent conduct in violation of Executive Law § 63(12).

**SECOND CAUSE OF ACTION  
PURSUANT TO EXECUTIVE LAW § 63(12)--  
VIOLATION OF GENERAL BUSINESS LAW § 349  
DECEPTIVE BUSINESS PRACTICES**

71. General Business Law (GBL) Article 22-A, § 349 declares unlawful any deceptive acts or practices in the conduct of any business, trade or commerce in this state.

72. By reason of the acts and practices described in paragraphs 7 through 22, respondent Cross Country repeatedly and persistently engages in deceptive business practices in the marketing and sale of credit card services.

73. By reason of the acts and practices described in paragraphs 23 through 34, respondent Cross Country repeatedly and persistently engages in deceptive business practices in the marketing and sale of third party membership programs.

74. By reason of the acts and practices described in paragraphs 35 through 65, respondent ACS repeatedly and persistently engages in deceptive business practices in the billing and collection of credit card services.

75. Consequently, respondents' engage in repeated and persistent illegality in violation of Executive Law § 63 (12).

**THIRD CAUSE OF ACTION  
PURSUANT TO EXECUTIVE LAW § 63(12) --  
VIOLATION OF GENERAL BUSINESS LAW § 350  
FALSE ADVERTISING**

76. GBL Article 22-A, § 350 declares unlawful any false advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state.

77. By reason of the acts and practices described in paragraphs 7 through 22, respondent Cross Country repeatedly and persistently engages in false advertising in the marketing and sale of credit card services.

78. By reason of the acts and practices described in paragraphs 23 through 34, respondent Cross Country repeatedly and persistently engages in false advertising in the marketing and sale of third party membership programs.

79. By reason of the acts and practices described in paragraphs 35 through 65, respondent ACS repeatedly and persistently engages in false advertising in the billing and collection of credit card services.

80. Consequently, respondents' engage in repeated and persistent illegality in violation of Executive Law § 63 (12).

**FOURTH CAUSE OF ACTION  
PURSUANT TO EXECUTIVE LAW § 63(12) --  
VIOLATION OF GENERAL BUSINESS LAW ARTICLE 29-H  
UNLAWFUL COLLECTION PRACTICES**

81. GBL § 601 prohibits any creditor, or its agent, from, inter alia, engaging in the following practices:

- a. Knowingly collecting, attempting to collect, or asserting a right to any collection fee, attorney's fee, court cost or expense unless such charges are justly due and legally chargeable against the debtor;
- b. Communicating or threatening to communicate the nature of a consumer claim to the debtor's employer prior to obtaining final judgment against the debtor;
- c. Disclosing or threatening to disclose information concerning the existence of a debt known to be disputed by the debtor without disclosing that fact;
- d. Communicating with the debtor or any member of his family or household with such frequency or at such unusual hours or in such a manner as can reasonably be expected to abuse or harass the debtor;
- e. Threatening any action which the principal creditor in the usual course of his business does not in fact take; or
- f. Claiming, or attempting or threatening to enforce a right with knowledge or reason to know that the right does not exist.

82. Respondent Cross Country is a principal creditor and respondent ACS an agent of a principal creditor. Accordingly, respondents are subject to GBL § 601.

83. By reason of the acts and practices described in paragraphs 35 through 54, respondents repeatedly and persistently engage in unlawful collections prohibited by GBL § 601.

84. Consequently, respondents' engage in repeated and persistent illegality in violation of Executive Law § 63 (12).

WHEREFORE, petitioner requests that the Court grant relief pursuant to Executive Law

§ 63(12) and GBL Articles 22-A, and 29-H by issuing an order and judgment as follows:

1. Permanently enjoining respondents and any other entity through which they may act, from engaging in the fraudulent, deceptive and illegal practices alleged herein;
2. Directing respondents to make full monetary restitution and pay damages to aggrieved consumers, known and unknown;
3. Directing respondents to pay a civil penalty in the sum of \$500.00 to the State of New York for each instance of violation of GBL Article 22-A, pursuant to GBL § 350-d;
4. Awarding petitioner the costs and disbursements of this action, including additional costs in the amount of \$2,000.00 pursuant to CPLR § 8303(a)(6); and
5. Granting petitioner such other and further relief as this Court deems just and proper.

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Dated: March 28, 2003

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