

Summary Decision

IN THE MATTER OF

TRANS UNION CORPORATION

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FAIR CREDIT REPORTING ACT

Docket 9255. Complaint, Dec. 15, 1992--Final Order, Sept. 28, 1994*

This final order prohibits the Illinois-based credit bureau from distributing or selling target marketing lists based on consumer credit data, except under specific circumstances permitted by federal law. In addition, the final order requires the respondent to deliver a copy of this order to all present and future management officials having responsibilities with respect to the subject matter of this order.

Appearances

For the Commission: *Arthur B. Levin, Stephanie Flanigan and Donald E. D'Entremont.*

For the respondent: *Roger L. Longtin, Stephen L. Agin, Sharon R. Barner and Tracy E. Donner, Keck, Mahin & Cate, Chicago, IL.*

SUMMARY DECISION

BY LEWIS F. PARKER, ADMINISTRATIVE LAW JUDGE
SEPTEMBER 20, 1993

I. HISTORY OF THE PROCEEDING

On December 15, 1992, the Commission issued a complaint charging respondent Trans Union Corporation ("Trans Union") with violating the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681 *et seq.*

The complaint alleges that Trans Union is a consumer reporting agency as defined in Section 603(f) of the FCRA, that it regularly provides consumer reports in the form of prescreened lists to credit grantors, that it fails to require or monitor that credit grantors that receive such lists make a firm offer of credit to each person on the list (para. 3), and that it has therefore violated Sections 604 and 607 of the FCRA by furnishing consumer reports to persons it did not have

* Complaint previously published at 116 FTC 1334 (1993).

reason to believe intended to use the reports for a Permissible Purpose under Section 604 (para. 4).

The complaint also alleges that Trans Union illegally furnishes consumer reports in the form of target marketing lists to persons who do not intend to make a firm offer of credit to all those consumers on the list and who intend to use the information for purposes not authorized by Section 604 of the Act (para. 5).

On June 1, 1993, the portion of this matter relating to Trans Union's prescreening service was certified to the Secretary for withdrawal from adjudication so that the Commission could consider a consent agreement settling the charges in paragraphs three and four of the complaint. The Secretary did so on June 3, 1993.

Complaint counsel have now moved for summary decision as to that portion of the complaint challenging Trans Union's sale of its target marketing lists, and they have filed documents and a memorandum in support of their motion.¹ Respondent has filed a response, together with supporting affidavits, in opposition to this motion.

After analyzing the documents filed by the parties, I find that no genuine issue exists with respect to the findings of fact adopted in this decision. Rules of Practice, Section 3.24.

II. FINDINGS OF FACT

A. *Trans Union's Business*

1. Trans Union is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 555 West Adams Street, Chicago, Illinois (Cplt paragraph 1; Ans paragraph 1).²

2. Trans Union is, and has been, regularly engaged in the practice of procuring and assembling information on consumers for the purpose of furnishing, for monetary fees, consumer reports to subscribers

¹ Although the parties have filed *in camera* versions of their memoranda, I have ignored this designation since the parties did not seek, and I did not grant, *in camera* status to any documents. Rules of Practice, Section 3.45(b). See Order Adopting Respondent's Protective Order dated April 6, 1993.

² Abbreviations used in this decision are:

Cplt:	Complaint
Ans:	Answer
Tr.:	Transcript of testimony given in investigational hearings
HX:	Investigational Hearing Exhibit
Aff.:	Respondent's Affidavits
F.:	Finding

and consumers. Trans Union furnishes these consumer reports through the means and facilities of interstate commerce. Thus, Trans Union is a consumer reporting agency, as defined in Section 603(f) of the FCRA (Cplt paragraph 2; Ans paragraph 2; Botruff Aff., paragraph 4).

3. TransMark is a division of Trans Union and is engaged in the business of target marketing, a field which it entered in 1987 (Frank Tr. 11, 15).

4. In connection with its target marketing business, TransMark rents computer tapes for one-time use which contain computerized data on consumers to users who market goods or services through direct mail or telemarketing. The tapes contain coded information on individual consumers which, when translated by a computer, reveal their names and addresses. TransMark's customers are not permitted to use the computer tapes and the information contained thereon for any other purpose (Frank Aff., paragraphs 6 & 7).

5. The average computer tape leased by TransMark contains the names and addresses of 30,000 customers and TransMark will not lease a computer tape unless there are a minimum of 5,000 consumers who meet the criteria selected by its customers (Frank Aff., paragraphs 15, 17).

6. TransMark's target marketing lists do not involve, as does credit reporting, consumer-initiated transactions; rather, these lists are sold to users who do not intend to make a firm offer of credit to all consumers on the lists (Frank Tr. 15; Trans Union's Response to Complaint Counsel's First Request For Admissions ("First Request") No. 8).

B. Trans Union's Credit Reporting Database

7. Trans Union creates and maintains a consumer reporting database named CRONUS for use in its credit reporting business. CRONUS contains numerous individual files on consumers and the information it contains is reported by credit grantors, collection agencies, governmental agencies and utilities, or is obtained from public records (Botruff Aff., paragraph 6).

8. Credit grantors generally provide credit information on individual consumers to Trans Union in the form of accounts receivable tapes which usually contain the name, address, zip code, social secu-

rity number, account number and account activity for each consumer account (Botruff Aff., paragraph 7).

9. CRONUS compiles identifying information on consumers from multiple files, assigns the information to a new or existing file on the consumer, and adds credit-related information to the file. The account number and credit information appended to this number is called either a "tradeline" or a public record set (Botruff Aff., paragraphs 8, 9, 10).

10. A tradeline is identified in CRONUS by the name of the credit grantor and the account number and has appended to it credit information relating to a particular account; it reveals credit limits, payment patterns, payment history, and the present status of the account, *i.e.*, the balance owing and the amount past due (Botruff Aff., paragraph 11).

11. Trans Union's credit report customers access individual consumer files by providing the name, zip code and address of an individual consumer. Trans Union then transmits the consumer's complete credit report to its customer (Botruff Aff., paragraph 13).

12. A credit report consists of sections containing demographic information (name, address, social security number, etc.), tradeline information, public record information, and inquiries (Botruff Aff., paragraph 14, Ex. A).

13. The tradeline section of the credit report is divided into three parts. The first part includes the following: (a) the credit grantor's name and code; (b) the date the account was opened; (c) the account number; (d) the terms of sale -- number of payments, payment frequency and dollar amount due each payment; (e) ECOA code; and (f) collateral (Botruff Aff., paragraph 16).

14. The second part of the tradeline section of a credit report includes the following information for each tradeline: (a) the high credit amount (highest amount ever owed) and the date it was verified; (b) the maximum amount of credit approved by the creditor; (c) the date the account was closed; (d) the present status of the account, *i.e.*, the balance owing and amount past due; (e) the maximum delinquency -- date, amount and manner of payment; (f) remarks; and (g) type of loan (Botruff Aff., paragraph 17).

15. The third portion of the tradeline section of a credit report includes the following information for each tradeline: (a) the payment pattern, *i.e.*, 1-12 months or 13-24 months; (b) the historical status in number of months, *i.e.*, either 30-59, 60-89 or 90+; and (c) the type

of account and manner of payment, *e.g.*, current, 30 days past due, bankrupt, etc. (Botruff Aff., paragraph 18).

16. The public record section of a credit report includes the following information for each public record: (a) the location of the court where the public record was recorded; (b) the court type; (c) the date the public record was reported; (d) the ECOA code; (e) any assets or liabilities; (f) the type of public record; (g) the date paid, if applicable; (h) the docket number; and (i) the plaintiff and attorney involved in the case (Botruff Aff., paragraph 19).

17. The inquiry section of a credit report includes the following information for each inquiry on a consumer's credit file: (a) the date of the inquiry; (b) the ECOA code; (c) the Trans Union subscriber inquiry code; and (d) the subscriber short name (Botruff Aff., paragraph 20).

C. TransMark's Target Marketing List Databases

18. TransMark creates and maintains a number of separate databases for use in its target marketing business ("list databases"). The information contained in the list databases is derived from CRONUS and outside sources (Frank Aff., paragraph 33) and is moved quarterly from these sources to the target marketing database, although certain "hotline" information is moved monthly (Frank Tr. at 22).

19. The accounts receivable tapes provided by credit grantors to Trans Union for use in its credit reporting business are provided under agreements that do not prevent their use for target marketing (Weckman Aff., paragraph 3).

20. TransMark creates and maintains the following list databases: (a) Base List; (b) Homeowners; (c) Automobile Owners; (d) Students; (e) Puerto Rico; (f) New Issues; (g) New Homeowners; (h) New Movers; and (i) Reverse Append (consumers who have either a bankcard or a travel and entertainment card) (Weckman Aff., paragraphs 5, 54).

21. The Base List database is created by selecting from CRONUS only those consumers who have at least two tradelines. The information extracted from CRONUS is then separated into various segments in the Base List database (Weckman Aff., paragraph 6).

22. Trans Union promotional material entitled "Direct Marketing Lists" discloses to its clients that it uses two-tradeline selections to compile its target marketing base:

Consumers on each quarterly updated list must possess a minimum of two tradelines and have activity in past 90 days on one account

(HX 1; *see also* Second Response No. 61).

23. The demographic information extracted from CRONUS reveals: a) the consumer's name, address, social security number, date of birth and telephone number (the "standard segment"); b) whether the consumer is the head of household, his or her ethnic background and marital status (the "household segment"); and, c) the consumer's occupation (the "employment segment") (Weckman Aff., paragraphs 6, 7, 8, 9).

24. The tradeline information extracted from CRONUS is separated into five segments in the Base List database: (a) bankcard; (b) premium bankcard; (c) retail; (d) upscale retail; and (e) finance loan (Weckman Aff., paragraph 10; First Response Nos. 11-23).

25. The information extracted from CRONUS and included in each of these five segments of the Base List database is: a) a yes or no indication as to whether the consumer has one or more of the type of accounts included in that segment; b) the open date of the oldest tradeline; and c) the open date of the newest tradeline (Weckman Aff., paragraph 11).

26. The Base List database does not include the identity of the credit grantor, the terms, collateral, the high credit amount, the credit limit, the payment status or pattern, delinquency or derogatory information, or any other comparable information included in CRONUS (Weckman Aff., paragraph 13).

27. The Homeowners, Automobile Owners, Students, Puerto Rico, New Issues, New Homeowners, and Reverse Append databases do not include the identity of the credit grantor, the terms, collateral, the payment status or pattern, delinquency or derogatory information, or any other comparable information included in CRONUS (Weckman Aff., paragraphs 24, 31, 39, 44, 48, 53, 69, 74).

28. TransMark describes the features of its base list and segments in brochures directed to its customers; it notes that the "Bankcard" segment of its base list names 104.4 million consumers who have a bank credit card (HX 2).

29. The "Upscale Retail" segment of the base list, which names 36.2 million consumers, is described in a marketing brochure as offering:

direct marketers the opportunity to reach America's retail shopping elite. The Upscale file has been developed from TransMark's list of retailers that cater to consumers with discriminating taste. These individuals have high discretionary income and are used to paying more than the average consumer to purchase quality products

(HX 2).

30. A customer purchasing a segment can further refine the list by choosing "selects," or additional criteria to select certain characteristics of the consumers on the list (First Response Nos. 26, 34, 43, 51, 59, 68, and 76).

31. Examples of the "selects" offered by Trans Union include: bankcard or retailer; "hotline" consumers; age; estimated household income; children; working women; length of residence; zip code; and persons who have responded to mail order solicitations (Kiska Tr. 37, 59-60; HX 2). Much of the information for selects is derived from Trans Union's consumer reporting database (Frank Tr. 40).

32. For each base list segment, there is a brochure which describes its core population, the available "selects," the file size (the number of consumers on the list), a description of the list, and the list's purchase price. The source of all five segments is identified in the brochure as "Trans Union consumer database" (HX 2; First Response Nos. 15, 17, 19, 21, and 23).

33. Trans Union also offers other target marketing lists from more specific databases. These include "new issues," a monthly compilation of consumers who have responded via mail to a credit card solicitation, "Hispanics," "singles," "college students," "homeowners," "new movers," and "automobile owners" (Weckman Tr. 83-84. *See also* Kiska Tr. 37, 59-60; HX 2).

34. One of the selects offered for many of the base lists is labeled "hotline," a compilation of those consumers who have appeared on a credit grantor's tape within the prior 30-90 days (Respondent's Answers to Complaint Counsel's First Set of Interrogatories No. 10).

35. Trans Union has recently introduced additions to its base lists. One is the TransMark Income Estimator ("TIE"), which is described in one of its brochures:

TIE evaluates individual consumer income based upon a mix of credit data from Trans Union's database and census demographic data TIE . . . is based on the notion that consumer spending and payment behavior is closely related to income.

(HX 1).

