

## 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

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\* 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.<sup>1</sup> 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).<sup>2</sup>

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

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<sup>1</sup> 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.

<sup>2</sup> 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).

36. The information created by the TIE model is based in whole or in part on information contained in Trans Union's consumer reporting database. TIE contains information on consumers who have at least two tradelines (First Response Nos. 90, 92).

37. Another enhancement recently introduced by TransMark is "SOLO," described in a brochure, along with a companion program known as SILHOUETTE (offered only for prescreened lists (Kiska Tr. 51; Frank Tr. 32-33)), as follows:

Both products provide a consistent and effective way to develop qualified prospects based upon similar credit behavior (SILHOUETTE) and credit behavior overlaid with demographic data (SOLO) . . . [T]he products evaluate individual behavior and establish tendencies.

(HX 1).

38. SOLO is based upon information contained in Trans Union's consumer reporting database (First Response No. 96).

39. TransMark sends its target marketing lists directly to its clients. TransMark does not require its clients to use third party mailers although it sometimes sends the lists to third party mailers on behalf of its clients (First Response Nos. 110, 112).

40. TransMark advertisements emphasize that its lists are: "Not just ordinary lists but lists of people who are active users of credit." (DM News, May 18, 1992, at p. 12. *See also* Second Response No. 65.) Nevertheless, Mr. Hopfensperger, TransMark's Director of Marketing, Central Region, has filed an affidavit asserting that he is familiar with the type of information on consumers which is contained in TransMark's list databases and that they do not contain any information upon which a credit grantor can make a judgment as to a consumer's eligibility for credit (Hopfensperger Aff., paragraph 7).

41. The computer tapes leased by TransMark are rented for one-time use--to produce mailing labels to mail the customer's material to consumers. TransMark's customers are not allowed to put the computerized information into a database to access the information contained on the tape, or use the tape for any other purpose (Frank Aff., paragraph 6, 7).

42. TransMark does not allow access to its list databases to anyone seeking information on identified individual consumers (Frank Aff., paragraph 8).

43. Prior to sending out a computer tape, TransMark deletes the name and address of each consumer who satisfies the criteria selected



by the customer but whose name and address appears in the Opt Out Database to ensure that each consumer who has chosen not to have his or her name and address used for target marketing purposes does not receive a mail piece (Frank Aff., paragraph 18).

44. The process used to mail the materials of TransMark's customers is automated. The computer tape is sent to either an independent mailing house or one run by TransMark's customer. Approximately 90% of the computer tapes leased by TransMark are sent directly to mail houses that are independent of its customers (Frank Aff., paragraph 20).

45. TransMark's customers use the computer tapes to mail offers to consumers to enter into credit, insurance or business transactions. For example, TransMark has leased computer tapes to:

(a) Colonial Penn Auto Insurance, to mail consumers material about "The Experienced Driver Program";

(b) Citibank, to mail consumers an offer to apply for home equity financing;

(c) Publishers Clearing House, to mail consumers notification of their Finalist status in its Ten Million Dollar Sweepstakes;

(d) Columbia House, to mail consumers an offer to become a member of the Columbia House Video Club;

(e) Ross-Simons, to mail its catalog to consumers;

(f) Fingerhut, to mail its catalog to consumers; and

(g) Phillips Publishing, to mail consumers the Better Retirement Report.

(Frank Aff., paragraph 21, Exhibits D-J).

46. TransMark also leases computer tapes containing names and addresses of consumers to customers who promote their product or services through telemarketing. Approximately 2% of TransMark's revenue is derived from the rental of computer tapes for telemarketing purposes. When a customer orders a computer tape for telemarketing purposes from TransMark, the tape is sent to a company that provides telemarketing services for TransMark's customer. The telemarketing company is not made aware of the criteria chosen by TransMark's customer to select the names and addresses appearing on the tape (Frank Aff., paragraph 24).

47. TransMark has several competitors such as Donnelley Marketing, Metromail and R.L. Polk, who have generated much more

revenue from the rental of consumer lists than has TransMark (\$4,700,000 in 1992).

<u>Name</u>	<u>Revenue</u>
Donnelley Marketing	\$60-100 million
Metromail	\$40-60 million
R.L. Polk	\$50 million

(Frank Aff., paragraph 26, Exhibit K).

### III. CONCLUSIONS OF LAW

#### A. *Summary Decision Is Appropriate In This Case*

The Rules of Practice, Section 3.24(2), authorize summary decision when “there is no genuine issue as to material fact and . . . the moving party is entitled to such decision as a matter of law.”

The existence of unimportant or peripheral disputed issues of fact does not rule out summary disposition as long as material facts are not seriously challenged. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-49 (1986).

Trans Union’s response to the motion for summary decision does not challenge the accuracy of those facts which complaint counsel offer in support of their motion for summary decision, nor does it point to substantial unresolved factual disputes; rather, Trans Union cites other facts--unchallenged by complaint counsel--which it claims support its argument that its target marketing operation does not violate the FCRA.

Thus, there is no genuine issue of material fact presented in the motion and response thereto; only legal disputes remain and summary decision is therefore appropriate.

#### B. *The Purpose Of The FCRA*

In enacting the FCRA, Congress found that “there is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy” Sec. 602(a)(4), and, in Section 602(b) of the Act, it required:

consumer reporting agencies [to] adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information. . . .

### *C. The Complaint Allegations*

There is no dispute that Trans Union is a consumer reporting agency as defined in Section 603(f) of the FCRA (F. 2). The remaining issues raised by the complaint in this proceeding are whether its target marketing lists are “consumer reports” under the FCRA<sup>3</sup> and, if so, whether those reports are sold to its customers for a permissible purpose under Section 604.<sup>4</sup>

### *D. Trans Union’s Target Marketing Lists Are Consumer Reports Under Section 603 Of The FCRA*

Section 603(d) of the FCRA defines a consumer report as the communication of any information by a consumer reporting agency such as Trans Union bearing on “a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.”

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<sup>3</sup> Section 603(d) of the FCRA defines a consumer report as: any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes or (3) other purposes authorized under section 604.

<sup>4</sup> Section 604. Permissible purposes of reports:  
A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

- (1) In response to the order of a court having jurisdiction to issue such an order.
- (2) In accordance with the written instructions of the consumer to whom it relates.
- (3) To a person which it has reason to believe--
  - (A) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or
  - (B) Intends to use the information for employment purposes; or
  - (C) Intends to use the information in connection with the underwriting of insurance involving the consumer; or
  - (D) Intends to use the information in connection with a determination of the consumer’s eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant’s financial responsibility or status; or
  - (E) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

In January 1993, the Commission approved a consent order with TRW Inc. which allowed it to use only the following identifying information from its consumer reporting database to compile target marketing lists of consumers for sale to its customers: name, telephone number, mother's maiden name, address, zip code, year of birth, age, any generational designation, social security number, or substantially similar identifiers, or any combination thereof.

Since TRW can use only the listed identifying information to create its target marketing lists, the Commission, by accepting the TRW consent agreement, has established a standard for determining what types of information are not credit-related for the purposes of defining a consumer report under the FCRA.

Trans Union's target marketing lists reveal much more information about the consumer in its database than is allowed under the TRW standard.

When Trans Union generates its target marketing database and lists, it lists only those consumers from its credit reporting database who have two or more tradelines (F. 21). Since tradelines are reports of accounts by credit grantors (F. 8, 9, 10), they reveal to Trans Union's customers that at least two credit grantors found consumers on the list to be credit worthy (F. 22), and this information therefore bears on the consumer's "credit worthiness, credit standing, [or] credit capacity" (Sec. 603(d), FCRA). Even the fact that a consumer possesses a credit card (F. 24, 28) reveals, to some extent, a consumer's credit worthiness, credit standing, or credit capacity because it "conveys the information that each consumer named meets certain criteria for credit worthiness." FTC Commentary on the FCRA, 55 Fed. Reg. 18804 at 18815 (1990) ("FCRA" Commentary) (*re* pre-screened lists).

Other Trans Union lists such as "Upscale Retail" (F. 29) or its "selects" (F. 30) bear on a customer's credit worthiness, credit standing or capacity. Indeed, the implication of Trans Union's description of "Upscale Retail" is that consumers on this list are credit worthy (F. 29).

I reject Trans Union's claim that if the information in its target marketing lists is not, as the complaint alleges, used for permissible purposes, it is therefore not credit-related. *See St. Paul Guardian Insurance Co. v. Johnson*, 884 F.2d 881, 884-85 (5th Cir. 1989):



*F. Trans Union's Clients Have No Permissible Purpose To Receive Consumer Reports In The Form Of Target Marketing Lists*

The Commission has taken the position that all of the permissible purposes for obtaining a consumer report listed in Section 604 of the FCRA relate to transactions initiated by the consumer by applying for credit, employment, insurance, government benefits, a lease, or check cashing privileges.

For example, the Commission has interpreted Section 604(3)(A) of the FCRA as allowing creditors to obtain prescreened lists of consumers; however, it has done so only with the understanding that consumers on the list would be given credit as a result.

Prescreening is permissible under the FCRA if the client agrees in advance that each consumer whose name is on the list after prescreening will receive an offer of credit. In these circumstances, a permissible purpose for the prescreening service exists under this section, because of the client's present intent to grant credit to all consumers on the final list, with the result that the information is used "in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to . . . the consumer."

FCRA Commentary at 18815.

On the other hand, the Commission has recently rejected the claim that target marketing is legal under the FCRA:

List sellers and those who sell consumer goods and services are always eager to obtain personal information about consumers' finances and lifestyles for marketing purposes. When they obtain such information from sources other than consumer reporting agencies, the FCRA is inapplicable. When credit bureaus supply such information on consumers from their consumer reporting databases, however, the privacy protections of Section 604 come into play because the Commission views such lists as a series of consumer reports.

Prepared Statement of the FTC before the Senate Banking Committee (May 27, 1993) at 16.

Another Commission statement to Congress took the same position:

There is no apparent legal rationale for this [the industry] position under the existing law. The desire to market goods or services to consumers does not constitute a permissible purpose for obtaining a consumer report under any of the provisions of Section 604, and the Commission has never interpreted the Act to permit reports to be obtained for such purposes, whether in their entirety or in the form of prescreened lists.

