

IN THE MATTER OF  
TRANS WORLD ACCOUNTS, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket 9059. Complaint, Sept. 30, 1975 — Final Order, Oct. 25, 1977*

This order, among other things, requires a Santa Rosa, Calif. debt collection agency to cease misrepresenting the likelihood or imminency of legal action; and to cease using, or placing in the hands of others, materials which simulate telegraphic communications, or which may otherwise mislead debtor recipients as to the nature, import or urgency of such communications.

*Appearances*

For the Commission: *Ralph E. Stone.*

For the respondents: *Kirt F. Zeigler, Spridgen, Barrett, Achor, Luckhardt, Anderson & James, Santa Rosa, Calif.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Trans World Accounts, Inc., a corporation, and Floyd T. Watkins, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Trans World Accounts, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 2800 Cleveland Ave., Santa Rosa, California.

Respondent Floyd T. Watkins is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time in the past have been, engaged in the advertising, offering for sale and sale of a service to assist in the collection of alleged delinquent debts. This service consists of the preparation by the respondents of a [2] series

of form notices and letters to be mailed to alleged delinquent debtors at regular intervals.

Two styles of forms have been used in this series: (1) that which is titled TELEGRAM; and (2) that which bears the letterhead of Trans World Accounts, Inc.

PAR. 3. In the course and conduct of their business, respondents are now, and for some time in the past have been, engaged in sending to and receiving from persons, firms and corporations located in various States of the United States, by means of the United States mail, letters, notices, forms and other material for use in the collection of alleged delinquent debts. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the payment of alleged delinquent debts, the respondents have mailed or caused to be mailed to alleged delinquent debtors various printed forms and other printed material.

Typical and illustrative, but not necessarily all inclusive, of said forms and material are the following:

1. A yellow window envelope on which a return address is printed, with no name. The word TELEGRAM is printed in large black type over the window and on the reverse side.

2. A yellow printed form, styled TELEGRAM designed to be inserted in the envelope described in subparagraph 1 of this paragraph.

PAR. 5. By and through the use of the envelopes and forms described in subparagraphs 1 and 2 of Paragraph Four, the respondents have represented, directly or by implication, that the envelopes and forms are telegraphic communications.

PAR. 6. In truth and in fact, the envelopes and forms referred to in Paragraphs Four and Five are not telegraphic communications. Rather, they are printed form letters mailed to alleged delinquent debtors, which forms by their color and appearance, styling, printing and format simulate telegraphic communications. By [3] virtue of said simulation, these envelopes and forms mislead the recipient as to their nature, import, purpose and urgency.

Therefore, the use by respondents of said envelopes and forms as set forth in Paragraph Four was and is false, misleading and deceptive.

PAR. 7. In the course and conduct of their business and for the purpose of inducing the payment of alleged delinquent debts, respondents have mailed, or caused to be mailed, to alleged

Complaint

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delinquent debtors various printed forms, letters and other printed material containing certain statements and representations.

Among and typical, but not all inclusive, of such statements and representations are the following:

URGENT - - IMMEDIATELY CONTACT OUR CLIENT AND MAKE ARRANGEMENTS FOR PAYMENT. IMPERATIVE TO AVOID FURTHER ACTION WHICH MAY BE TAKEN AGAINST YOU UNDER PROVISIONS OF STATE STATUTES. IF SETTLEMENT IS NOT MADE WITHIN 5 DAYS AFTER RECEIPT OF THIS TELEGRAM YOU MAY WISH TO CONSULT YOUR ATTORNEY REGARDING YOUR LEGAL LIABILITY. . .

\* \* \* \* \*

YOU ARE HEREBY DIRECTED TO APPEAR AT OUR CLIENT'S OFFICE AT 9:00 A.M. NEXT TUESDAY TO PROTEST LIABILITY OF THE ABOVE CLAIM. FAILURE TO COMPLY MAY RESULT IN IMMEDIATE COMMENCEMENT OF LITIGATION BY OUR CLIENT. IF JUDGMENT IS GRANTED, PROPERTY, INCLUDING MONIES, AUTOMOBILES, CREDITS AND BANK DEPOSITS NOW IN YOUR POSSESSION, COULD BE ATTACHED.

\* \* \* \* \*

YOU HAVE NOT SATISFIED OUR CLIENT CONCERNING THE ABOVE DEBT AS WE REQUESTED A FEW DAYS AGO. WE STRONGLY URGE YOU TO MAKE PAYMENT DIRECT TO OUR CLIENT WHILE YOU STILL HAVE THE OPPORTUNITY. OUR CLIENT MAY REFER THIS MATTER TO LEGAL COUNSEL WHICH COULD BE TURNED INTO AN IMMEDIATE COURT SUIT. . .

\* \* \* \* \*

YOU HAVE RECEIVED THE BENEFIT OF EARLIER NOTICES FROM THIS OFFICE AND HAVE FAILED TO DISCHARGE YOUR OBLIGATION. WE HEREBY REQUEST VERIFICATION AS TO EMPLOYER'S NAME AND ADDRESS, BANKS WITH WHICH YOU DO BUSINESS, MORTGAGE HOLDER ON HOME, AND LEGAL OWNER OF AUTOMOBILE. THIS INFORMATION IS NECESSARY [4] WHEN FILING SUIT AND IS TO BE FORWARDED IMMEDIATELY TO OUR CLAIMS OFFICE FOR THEIR RECORDS. . .

\* \* \* \* \*

URGENT - - - CONTACT OUR CLIENT IMMEDIATELY AND MAKE ARRANGEMENTS FOR PAYMENT. IMPERATIVE TO AVOID FURTHER ACTION BY THIS OFFICE. IF FULL SETTLEMENT IS NOT MADE WITHIN 48 HOURS AFTER RECEIPT OF THIS NOTICE, OUR CLIENT SUGGESTS YOU CONSULT YOUR ATTORNEY REGARDING LEGAL LIABILITY. MAKE PAYMENT DIRECT TO OUR CLIENT, NOT TO CLAIMS OFFICE OF TRANS WORLD ACCOUNTS, INC.

\* \* \* \* \*

PAR. 8. By and through the use of the aforesaid statements and

representations, and others of similar import and meaning not expressly set out herein, respondents have represented, directly or by implication, that legal action with respect to an alleged delinquent debt is about to be, or may be, initiated during the course of the aforesaid series of form notices and letters.

PAR. 9. In truth and in fact, legal action with respect to an alleged delinquent debt is neither about to be, nor will it be, initiated during the course of the aforesaid series of form notices and letters. On the contrary, while respondents' letter writing service was being used, no legal proceedings were being or would be initiated on the basis of the alleged debtor's failure to respond to respondents' communications.

Therefore, the statements and representations set forth in Paragraphs Seven and Eight were and are false, misleading and deceptive.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been and are now in substantial competition, in commerce, with corporations, firms and individuals engaged in providing services of the same general kind and nature as those provided by respondents.

PAR. 11. The use by respondents of the envelopes and forms as set forth in Paragraph Four hereof, has had the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that said envelopes and forms are [5] telegraphic communications. Furthermore, the use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had the tendency and capacity to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and to induce the payment of substantial sums of money by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

Initial Decision

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INITIAL DECISION BY DANIEL H. HANSCOM, ADMINISTRATIVE  
LAW JUDGE.

APRIL 7, 1977

## I

## STATEMENT OF THE CASE

*Allegations of Complaint*

The complaint in this proceeding alleged that respondents Trans World Accounts, Inc., and Floyd T. Watkins engaged in the sale of a service to assist in the collection of delinquent debts, and charged respondents with using misrepresentations in a series of form notices and letters sent to debtors as part of their service to induce payment. Essentially the complaint charged respondents with sending dunning [2] communications to debtors in a "yellow window envelope" with the work "TELEGRAM" printed in large black type over the window and on the reverse side. The notice inside was alleged to be a "yellow printed form, styled TELEGRAM." The complaint charged that these communications were not telegrams, but simulated telegrams, and because of such simulation, the envelopes and forms misled recipients as to their nature, import, purpose and urgency.

The complaint also alleged that statements in the messages sent to delinquent debtors misrepresented that legal action "is about to be, or may be" taken against the recipient by his creditor, when in actuality legal action with respect to the debt was not initiated during the course of the aforesaid series of form notices and letters. The following are alleged to be typical representations made by respondents in form letters sent to debtors:

Urgent — Immediately contact our client and make arrangements for payment. Imperative to avoid further action which may be taken against you under provisions of state statutes. . .

You are hereby directed to appear at our client's office at 9:00 A.M. next Tuesday to protest liability of the above claim. Failure to comply may result in immediate commencement of litigation by our client. . .

Our client may refer this matter to legal counsel which could be turned into an immediate court suit. . .

Urgent — Contact our client immediately and make arrangements for payment. Imperative to avoid further action by this office. . .

The complaint charged that the above statements, and others of

similar import, had the tendency to mislead the public as to their truth, and thus to induce payment of substantial sums of money. [3]

*Respondents' Answer*

Respondents filed answer admitting most of the factual allegations of the complaint, denying most of the substantive allegations, and raising several affirmative defenses. Respondents Trans World Accounts, Inc., and Floyd T. Watkins, admitted that they advertise and sell a service to assist in the collection of delinquent debts, and that part of their service includes the preparation by respondents of a series of form notices and letters to be mailed to delinquent debtors.

Respondents admitted they have mailed to delinquent debtors various printed forms and that the examples of their forms, set forth in the complaint, although incomplete in their descriptions, do describe to some extent the forms and materials used by them. They further admitted that one of their form notice and envelope styles included in its title the word TELEGRAM. However, respondents deny that by using such form they have represented, directly or by implication, that the messages are telegraphic communications. Respondents admitted that the notices to debtors are not telegraphic communications, and denied that they simulate such communications, or mislead recipients as to the nature, import, purpose and urgency of the messages.

Although respondents admitted that the excerpts of messages sent to debtors as set forth in the complaint are typical, but not inclusive, of representations appearing on printed materials prepared and mailed by them, they denied that they have represented, directly or by implication, that legal action is about to be, or may be initiated during the series of letters. In the alternative, respondents denied that, during the course of their letter mailing service, there is no possibility legal proceedings would be initiated if the debtor failed to respond to a communication.

Respondents denied that their service injures the public, or constitutes unfair methods of competition or unfair or deceptive acts or practices [4] in violation of Section 5 of the Federal Trade Commission Act. They denied that their printed forms and letters have the tendency and capacity to mislead the public into believing the notices are telegraphic communications, or to induce the public into payment of substantial sums because of representations in the mailed messages which they denied were false.

Respondents urged the value of their service and asserted that they have never advertised, offered for sale or sold a service to assist

in the collection of anything but actual, due and owing delinquent debts. Nor, they claimed, had their service been used for any purpose but to collect lawful, just and delinquent debts.

In their answer, respondents admitted that they are now and have in the past engaged in sending and receiving materials from persons located in various states by means of the United States mail and that they engage in substantial competition, in commerce, with like firms.

#### *History of the Proceeding*

Complaint was served at the end of October 1975. An initial hearing which had been set in the complaint for November 24, 1975 was cancelled. On December 16 the law judge issued an order directing counsel to attempt agreement on a timetable for completion of prehearing matters and a date and place for hearings on the merits. A timetable was agreed upon and established by the law judge's order of January 22, 1976. Hearings on the merits were set for May 10.

Thereafter, discovery was conducted according to the agreed upon timetable with the exception that complaint counsel requested and was granted a week's extension to file final exhibit lists.

On February 23, 1976, counsel supporting the complaint filed a motion for summary decision and respondents were granted time to respond to the motion. Complaint counsel's motion was founded on respondents' admitted use of the telegram format for its series of [5] letters and admitted use of language alleged in the complaint, thus according to complaint counsel, eliminating all factual issues in dispute. Respondents filed their response on March 17 and included a request for oral argument on the motion. They argued that although the language was used as charged, there remained disputed issues of material fact including whether legal action against the debtor as allegedly depicted in the letters was accurate or a misrepresentation. Respondents charged as vague the wording in the proposed order which prohibited the use of materials which "misrepresented the nature, import, purpose or urgency of any communication," and urged the need for oral argument to obtain more specific guidance as to what forms would be acceptable, including such possible formats as "Speedogram," "Lettergram," and "Transogram." Additionally, respondents objected to the disclaimer required by the proposed order to appear on notices sent to debtors to the effect that there would be no suit filed against the debtor until the end of the series of letters. Respondents argued the disclaimer

would be inaccurate, would be confusing to debtors, and would destroy the efficacy of their service.

A pretrial hearing was scheduled and held on March 25. As a result of this oral argument, the law judge concluded there were genuine issues of material fact in dispute. Therefore, the motion for summary decision was denied and the date for evidentiary hearings was reinstated for May 10, 1976.

On April 30, a joint motion was made by the parties to withdraw this matter from adjudication so that the Commission could consider a consent agreement which had been negotiated. The law judge certified the agreement to the Commission and the matter was withdrawn from adjudication on May 18, the hearings scheduled for May 10 having been cancelled. However, the Commission did not accept the proposed consent order and returned the matter for adjudication on September 28.

On receiving notification of this action the undersigned immediately issued an order directing both sides to submit a proposed timetable for further proceedings including a trial date. Hearings on the [6] merits began on January 10, 1977, the earliest date respondents' counsel was available, and concluded after three days of proceedings. Eight witnesses testified including the individual respondent, and the testimony of others was stipulated. The record, consisting of 78 exhibits, many of them multi-paged, and 355 pages of transcript was closed by order of the law judge on January 17, 1977.

This matter is now before the undersigned for decision based upon the allegations of the complaint, the answer, the evidence and the proposed findings of fact, conclusions and briefs filed by all parties. All proposed findings of fact, conclusions and arguments, not specifically found or accepted herein, are rejected. The law judge having considered the entire record, and all the contentions of the parties, makes the following findings and conclusions and issues the order set out at the end hereof:

## II

### FINDINGS OF FACT

#### *Respondents' Business Activities and Sales in Commerce*

1. Respondent Trans World Accounts, Inc.<sup>1</sup> is a California corporation with its office and principal place of business located at 2800 Cleveland Ave., Santa Rosa, California (Ans. TWA, ¶1). TWA

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<sup>1</sup> Hereinafter referred to as TWA.



was incorporated in California on November 5, 1970 and is a licensed full service collection agency engaged in the sale of debt collection services (CX 2a, b, 40-41).

2. Individual respondent Floyd T. Watkins formulates, directs and controls the acts and practices of the corporate respondent (admitted Ans. TWA, ¶1) including the drafting and review of the forms challenged in the complaint (Watkins, Tr. 98, 105, 331, 333-35). He now owns the majority of the outstanding shares of stock of TWA (CX 40-41; Watkins, Tr. 55).<sup>2</sup> He has been an officer and [7] director of the corporation since its beginning (Watkins, Tr. 53-54; CX 40-41; Ans. TWA, ¶1, CX 2a). Mr. Watkins has been the vice-president or president and general manager of TWA since January 1971 and he is currently the president (Watkins, Tr. 53-54; CX 40-41; Ans. TWA ¶1, CX 2a).

3. TWA is currently operating and marketing debt collection services in California, Washington, Arizona, and Hawaii. Previously, TWA sold its services in South and North Dakota, Minnesota, Montana, Massachusetts, Alaska, Utah and Nevada (CX 2, 40-41; Watkins, Tr. 83).

In addition to the main office in Santa Rosa, TWA has had branch offices in Seattle, Los Angeles, Oakland, Dallas and Hawaii (Watkins, Tr. 83). As an example of the size of each branch office, Mr. Watkins testified that approximately 10 or 11 people work at the Los Angeles office (Watkins, Tr. 129-30). There are about 35 employees at the main office in Santa Rosa (Watkins, Tr. 82).

4. The corporate respondent offers a number of different debt collection services such as collection of accounts for a percentage of the remittance, personal contact of debtors, and the preparation of a series of form notices and letters to be mailed to delinquent debtors at regular intervals (Ans. TWA, ¶2, CX 2b). The series of form letters are purchased by creditors for a "flat rate" (CX 3b, 4; Watkins, Tr. 61). The charges in this case are related primarily to the acts and practices which occurred in the operation of TWA's flat rate debt collection service (Motion for Summary Decision, Tr. 44-45).

5. Respondents are one of the largest debt collection agencies in California and, as estimated by Mr. Watkins, have the largest flat rate service in the state (Watkins, Tr. 84-85). TWA attempts to collect about \$40 million of delinquent debts per year and annually contacts about 130,000 individual debtors (Tr. 345-46).

[8] 6. In the course and conduct of their business, TWA and Floyd T. Watkins have been and now are in substantial competition in or

<sup>2</sup> There are six other stockholders with percentage interests ranging from 2 1/2 percent to 13 percent (Watkins, Tr. 55).

affecting commerce (as "commerce" is defined in the Federal Trade Commission Act) with other corporations, firms and individuals in the sale of debt collection services (Ans. TWA, ¶3, ¶10).

7. The corporation, TWA, is made up of three divisions, Trans World Accounts, Credit Management Services, and Trans World Computer Services. The Trans World Accounts division is a full service debt collection agency with both flat rate and percentage of remittance services. The primary responsibility, however, for this division of the corporate respondent is the preparation and mailing of the flat rate letter series (Watkins, Tr. 57-58; 67).

About a year after TWA was formed, respondents developed the Credit Management Services (CMS) division (Watkins, Tr. 65). CMS is also a full service collection agency, but it normally handles the percentage fee accounts after the letter series has been mailed to the debtor and failed to evoke response and the creditor has assigned the account to TWA for "hardcore" collection (Watkins, Tr. 67, 74-75).

The third division of TWA is a computer services division which provides computer services for the other divisions and to outside entities. The computer division prints TWA's debtor contact letters (Watkins, Tr. 81).

8. Respondents' services are sold to clients by independent commissioned sales representatives (Watkins, Tr. 83). The client using the flat rate service purchases four-part transmittal forms from the sales representatives. The form is filled out by the client with the debtor's name and address and other pertinent information and is sent to TWA. Upon receipt of the transmittal, the letter series is begun by respondents. The client, either because it has received payment or made payment arrangements with the debtor, may send the respondents the second part of [9] the transmittal form and stop the letter series. If the debtor should make a commitment to pay on a certain schedule but fail to meet it, the client could send the third part of the transmittal form to TWA to resume the letter series. The fourth part of the form can be used to indicate payment and to generate a "Thank-you" letter to be sent to the debtor (CX 7i; Watkins, Tr. 89, 91-93; Stark, Tr. 176; Morris, Tr. 201).

9. TWA charges its clients between \$3.92 and \$8.00 to activate a letter series to a debtor (Watkins, Tr. 122). All of the flat rate letters originate from TWA's Santa Rosa office, but a local return address may be on the envelope if required by state law where the letter is sent (Watkins, Tr. 102).

A flat rate series of six letters is sent to the debtor over a period of from 85 to 90 days. A five letter series would be mailed over a 60 or

70 day period. The letters are sent to the debtors approximately 10 to 14 days apart (Watkins, Tr. 336).

The respondents guarantee to purchasers of the flat rate service that they will "contact the debtor over a period of 85 to 90 days so many times, depending upon the type of business that's involved" (Watkins, Tr. 62). Respondents also offer to their creditor-clients, a guarantee that the client will collect from their debtors at least two times their investment to purchase the flat rate service transmittals (CX 8b; Watkins, Tr. 122).

10. In general, an agency which sells only a flat rate letter service does not obtain an assignment of the debt from the creditor. The collection agency's only obligation with respect to the debt is to send the series of letters to the debtor (Brouillette, Tr. 267). A collection agency which pursues a debt beyond a letter series and is paid a percentage of the monies collected normally obtains an assignment of the debt from the creditor.

TWA, however, sells its flat rate debt collection services to creditors on both an assignment and a non-assignment basis (Watkins, Tr. 70-71). The percentage of flat rate services sold on an assignment [10] basis by TWA has increased steadily since its incorporation. Currently, TWA receives an assignment of the debt before the first letter in the series is mailed in about 80-90 percent of all flat rate sales. TWA's flat rate letter series service is the same whether or not the creditor-client has assigned the debt. Respondents obtain the assignment in the first instance so that if all letters in the series have been sent and there has been no response from the debtor, the account can be transferred to the CMS division for "hardcore" collection on a percentage fee basis. CMS employs methods other than letters such as telephone calls and conceivably law suits. Nevertheless, even in "hardcore" collection cases, CMS sends several "pre-treatment" letters over a period of 15 days (Watkins, Tr. 74-75). The principal difference between the letters sent as part of the flat rate service and the "pre-treatment" letters is that in the former the debtor is instructed to pay the creditor while the latter requests payment directly to respondents (Watkins, Tr. 75-76).

11. TWA has used different letters in different states and has changed its forms for the flat rate series at various times, albeit somewhat infrequently (Watkins, Tr. 103-104). Principally, TWA's letters are from one of three series, intensive (see, *e.g.*, CX 21b, 22b, 23c, 24c, 25c); diplomatic (see, *e.g.*, CX 21a, 22a, 23b, 24b, 25b); and bad check (see, *e.g.*, CX 21c, 22e, 23d, 24d, 25d). Only the first letter in each of the three series differs.

*Telegram Format*

12. The complaint alleges and respondents admit that they have mailed through United States mail, as one form of their letter series to delinquent debtors, "A yellow window envelope on which a return address is printed, with no name. . . The work TELEGRAM is printed in large black type over the window and on the reverse side," and "A yellow printed form, styled TELEGRAM designed to be inserted in the envelope. . . ." The forms used by the respondents are reproduced as follows (CX 36a-b)<sup>3</sup>:

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<sup>3</sup> The name of the alleged debtor has been deleted in the reproduction herein.

Initial Decision

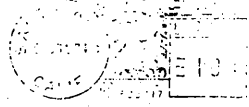
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TELEGRAM			
No Words	Pd or Coll	Charge to the Account of	<input checked="" type="checkbox"/> Over Night Telegram Unless box above is checked this Message will be sent as a Telegram
66	PAID	TRANS WORLD ACCOUNTS, INC.	
05940 BALDWIN PARK COMMUNITY HOSP		DEBTOR NO. 01405904 C	
14148 FRANCISQUITC		REF.	
001	BALDWIN PARK CA	91706	
AMT DUE			\$72.10
17444 HOLLY DR		12/31/74	
FONTANA CA		92335	
<p>ABOVE CLAIM IS STILL UNSATISFIED. INVESTIGATION MAY DISCLOSE UNPAID CHATTELS, LIENS OR OTHER OUTSTANDING CLAIMS AGAINST YOU. SETTLE ABOVE ACCOUNT WITHIN 48 HOURS BY MAKING FULL PAYMENT DIRECT TO OUR CLIENT WHO WILL ADVISE US TO CEASE FURTHER ACTIVITY. DO NOT CONTACT CLAIMS OFFICE OF TRANS WORLD ACCOUNTS, INC., 2800 CLEVELAND AVENUE, SUITE 1, SANTA ROSA, CALIF., OR ANY OF OUR HUNDREDS OF ASSOCIATE OFFICES NATIONWIDE.</p>			
			CX-369

Trans World Accounts, Inc., et al.  
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Message Enclosed in Foregoing CX-36b.

P. O. BOX 1854  
SANTA ROSA, CALIF. 95403



**TELEGRAM**



*CX-36b*

Trans World Accounts, Inc., et al.  
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Front Side of CX-36b

# Telegram

Reverse Side of CX-36b

[13] As the complaint charges, the respondents have represented directly or by implication that the envelopes and forms pictured above are telegraphic communications when in fact they are form letters printed by a computer and sent by United States mail (Watkins, Tr. 109; CX 40-41, Adm. No. 30).

13. The Communications Act of 1934, Section 214, gives the Federal Communications Commission authority to approve all entry into public message telegraphic service. Telegrams are messages forwarded by telegraphic service.<sup>4</sup> Electricity is used to transmit a telegraphic message or telegram.

The Western Union Telegraph Company is the only "carrier" duly licensed by the Federal Communications Commission to conduct a public message telegraphic service. For over thirty years, Western Union has been the sole licensee for this service in the United States. The people in this country associate the term "telegram" with messages sent by telegraphic transmission and also with Western Union.

14. Western Union telegrams are printed on different forms but the different forms are quite similar. One such format used by Western Union is in the record. See attachment to affidavit, CX 43, of M. Borsella, patent attorney for Western Union. For respondents' stipulation of the admissibility of this affidavit, see CX 42a, No. 4.

15. The similarities between the respondents' simulated telegram and the Western Union telegram are obvious.

(a) Both forms are yellow (see CX 4 in complaint counsel's Motion for Summary Judgment).

(b) The forms are relatively the same size, *i.e.*, smaller than an 8 1/2" x 11" standard business letter.

(c) Both forms have a dark band across the top which bears the word "telegram." [14]

(d) Both forms have the following notations which would be extraneous to respondents' forms were they not simulating a Western Union message:

(1) the box on the extreme right with the notations "Over Night Telegram" and "Unless box above is checked, this Message will be sent as a Telegram."

(2) the box in the center which says, "Charge to the Account of."

(3) on the left, the notation for "No. words."

(4) Both forms have a box to indicate whether the message is "Pd. or Coll."

(e) Both forms are delivered in a yellow envelope of nearly

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<sup>4</sup> Webster's Seventh New Collegiate Dictionary defines telegram as a "telegraphic dispatch."

identical size, both of which have a transparent window for the address.

16. Respondents' "telegram," sent through ordinary United States mail, is sufficiently similar to a genuine telegram to have the tendency and capacity to deceive members of the general public, and lead debtors to believe that respondents' message has been transmitted telegraphically by Western Union.

17. Clearly respondents' use of the yellow "telegram" (CX 35) misrepresented that the message was a telegram, and thus, misrepresented the nature of communication. Respondents argue that they developed the telegram format, believing that the word "telegram" was in the public domain because of an alleged notice to that effect from the attorney general's office for the State of California (RX 4, but see also CX 39). Even if the word "telegram" is in the public domain, and it is not for this hearing to decide whether it is or is not, respondents went further than just using the word "telegram." They attempted both with color and format to make their debtor contact look very much like a Western Union telegraphic communication. [15] This form did then misrepresent the nature of the communication. It appeared to be a Western Union telegram and it was not. At the least, respondents' "telegram," as stated, had the tendency and capacity to deceive recipients into the mistaken belief that they were receiving a telegraphic communication, and thus had also the tendency and capacity to mislead delinquent debtors or allegedly delinquent debtors as to the nature of the communication received.

18. Western Union charges, or at one time charged, the sender of a telegram \$7.95 for a basic delivered 15-word message. Thereafter, the cost increased at the rate of 8 cents per word. A Western Union Mailgram<sup>5</sup> now costs the sender about \$2.75 for a single message. Presently a first class message sent by United States mail costs \$.13 per ounce. A reasonable person who sends a message using the Western Union telegram or mailgram must have a particular reason for spending considerably more to use the telegraphic system than the mail. The sender either wants the message to reach the recipient quickly or wants the recipient to regard the message as so important to the sender that extra money was spent to send it, or both. Examples of possible uses for telegraphic messages include notices of personal tragedy, confirmation of contracts, and myriads of others.

19. In everyday life, because of the expense of sending telegraph-

<sup>5</sup> Western Union presently offers the public an alternative to the telegram, called the Mailgram, which is partially sent by telegraphic communication and partially by mail. The message is telegraphed from the sender to the recipient's general location and is then delivered by regular mail. A Mailgram is printed on blue and white paper (RX 1).



