IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION, Petitioner, v. THE WESTERN UNION COMPANY, and LONNIE KEENE, MONITOR, STATE OF ARIZONA v. WESTERN UNION FINANCIAL SERVICES, INC., KEENE CONSULTING ARIZONA, LLC, Respondents.	Misc. No. (Nature of Case M 18-304: Administrative Subpoena Proceedings)

PETITION OF THE FEDERAL TRADE COMMISSION
FOR AN ORDER ENFORCING CIVIL INVESTIGATIVE DEMANDS ISSUED
IN FURTHERANCE OF A LAW ENFORCEMENT INVESTIGATION

Preamble

Petitioner, the Federal Trade Commission (FTC or Commission), by its designated attorneys and pursuant to Section 20 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 57b-1, petitions this Court for an Order requiring Respondents The Western Union Company (Western Union), and Lonnie Keene, Esq., of Keene Consulting Arizona, LLC (Monitor), to comply with the civil investigative demands (CIDs) issued to them by the FTC. The CIDs seek documents and information relevant to an ongoing Commission law enforcement investigation. The Commission issued the CIDs to obtain information about the perpetrators and victims of telemarketing fraud, and about the effectiveness of Western Union's programs, policies, and procedures to reduce the instances of money transfers connected with such fraud in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

The Declaration under penalty of perjury of Todd M. Kossow, which verifies the allegations of this Petition, is attached hereto as Petition Exhibit (Pet. Exh.) 1. Additional exhibits are as follows:

Pet. Exh. 2	Resolution Directing Use of Compulsory Process in a Nonpublic Investigation of Telemarketers, Sellers, Suppliers or Others, April 11, 2011 (FTC File No. 0123145);
Pet. Exh. 3	Civil Investigative Demand to Lonnie Keene, Monitor, State of Arizona v. Western Union Financial Services, Inc., Keene Consulting Arizona, LLC, November 5, 2012;
Pet. Exh. 4	Civil Investigative Demand to Western Union Company, December 12, 2012;
Pet. Exh. 5	The Western Union Company's Petition to Quash Civil Investigative Demands, January 31, 2013;
Pet. Exh. 6	Federal Trade Commission Order Denying Petition to Quash Civil Investigative Demands, March 4, 2013; and
Pet. Exh. 7	Correspondence between the Federal Trade Commission and Western Union following March 18, 2013.[1]

Petition Allegations

To support this Petition, the Commission alleges the following:

1. The Commission is an administrative agency of the United States government, organized and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.* The Commission is authorized and directed by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prevent the use of

[1] Petition Exhibit 6 contains nonpublic information. Accordingly, the Commission is filing a redacted version of this exhibit with the petition and has separately submitted an unredacted version under seal.

unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. The Commission is also authorized by the Telemarketing Sales Rule to prevent deceptive or abusive telemarketing acts or practices. 16 C.F.R. pt 310.

2. Section 3 of the FTC Act, 15 U.S.C. § 43, empowers the Commission to prosecute any inquiry necessary to its duties in any part of the United States. Section 6 of the Act, 15 U.S.C. § 46, empowers the Commission to gather and compile information concerning, and to investigate from time to time, the organization, business, conduct, practices and management of, any person, partnership or corporation engaged in or whose business affects commerce, with certain exceptions not relevant here. Section 20 of the FTC Act, 15 U.S.C. § 57b-1, empowers the Commission to require by CID the production of documents or other information relating to any Commission law enforcement investigation.

3. This Court has jurisdiction to enforce the Commission's duly issued CIDs, including the CIDs issued to respondent, under Section 20(e) of the FTC Act, 15 U.S.C. 57b-1(e), which provides, in pertinent part:

> Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Commission, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

Both respondents reside, are found, or transact business in this district. Pet. Exh. 1, ¶¶ 3-4.

4. Western Union is a public company, incorporated in Delaware, with its principal place of business in Englewood, Colorado. Western Union offers a number of financial services, including money transfers. The company operates through a global network of 510,000 agents in

200 countries. It has numerous agents in New York City. Western Union is engaged in, and its business affects "commerce," as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44. Pet. Exh. 1, ¶ 3.

5. Lonnie Keene resides in New York City and is an attorney admitted to practice before New York State courts. His limited liability company, Keene Consulting Arizona, LLC, was appointed to serve as a Monitor pursuant to a settlement agreement between the Attorney General for Arizona and Western Union. *See State of Arizona v. Western Union Fin. Servs., Inc.*, No. CV-2010-005807 (Ariz. Super. Ct. Maricopa Cnty. Feb. 24, 2010). Keene Consulting Arizona, LLC's business address is also in New York City. Pet. Exh. 1, ¶ 4.

6. On April 11, 2011, the Commission issued a Resolution Directing Use of Compulsory Process in a Nonpublic Investigation of Telemarketers, Sellers, Suppliers or Others (FTC File No. 0123145). Pet. Exh 1, ¶ 5; Pet. Exh. 2. The Resolution authorized all compulsory process available to the Commission to be used in connection with an investigation into possible violations of Section 5 by "telemarketers, sellers, or others assisting them . . . including but not limited to the provision of substantial assistance or support . . . to telemarketers engaged in unlawful practices." Pet. Exh. 2.

7. The present inquiry concerns telemarketing fraud and Western Union's programs, policies, and procedures to reduce fraud-based money transfers connected with such fraud. Pet. Exh. 1, ¶¶ 6-9.

8. As part of this inquiry, the FTC asked Western Union to produce voluntarily reports prepared by the Monitor pursuant to the settlement in *State of Arizona v. Western Union Financial Services, Inc.* This settlement resolved criminal charges against Western Union

relating to money laundering in connection with human smuggling and drug trafficking in the southwest border area. The Monitor's reports related to Western Union's development and implementation of an anti-money laundering (AML) program consistent with the terms of the settlement. These reports are relevant to assessing Western Union's anti-fraud program and efforts to reduce fraud-based money transfers because of substantial overlaps between the AML program and the anti-fraud program. Though the FTC requested these reports in June 2012, Western Union did not provide them. Pet. Exh 1, ¶¶ 10-11; Pet. Exh. 5, at Exhs. B, C, D.

9. After the FTC requested the reports from Western Union, the Arizona Attorney General sought permission from the Arizona Superior Court to disclose the reports to the FTC under the terms of the settlement. The court denied permission without prejudice, without commenting on the FTC's authority to compel the reports through compulsory process. Pet. Exh 1, ¶ 12; Pet. Exh. 5, at Exhs. E, F.

10. Accordingly, on November 5, 2012, the Commission issued the CID to the Monitor. This CID contained only one specification and requested all documents related to the Monitor's reports, including drafts, reviews, and correspondence with Western Union. This CID was authorized by Resolution No. 0123145. Pet. Exh. 1, ¶ 13; Pet. Exh. 3.

11. On December 12, 2012, the Commission issued the CID to Western Union, also authorized by Resolution No. 0123145. This CID contained two specifications. The first called for all documents referring or relating to complaints by consumers worldwide relating to fraud-induced money transfers. The second CID specification requested all documents referring or relating to communications with the Monitor, including, but not limited to, all information

Western Union provided to the Monitor and, any reports, reviews or other documents prepared by the Monitor. Pet. Exh. 1, ¶ 14; Pet. Exh. 4.

12. Western Union has represented that they maintain in the United States all of the worldwide consumer complaints sought by the Commission. As discussed in the attached Declaration from Todd M. Kossow, the consumer complaint information is directly relevant to identifying the perpetrators and victims of telemarketing fraud, and to assessing the effectiveness of Western Union's anti-fraud program because numbers and patterns of consumer complaints provide information on the company's success in policing its own operations and protecting consumers from sending fraud-based money transfers. Pet. Exh. 1, ¶ 15.

13. After receiving the CID, the Monitor filed a motion in the settled Arizona case asking leave to share his reports with the FTC. On January 28, 2013, the Arizona court denied the motion, but explicitly stated that it did not determine the enforceability of the FTC's CID. Pet. Exh. 1, ¶ 16; Pet. Exh. 5 at Exh. G.

14. Meanwhile, Western Union and staff of the Midwest Region Office attempted to negotiate terms by which Western Union would provide the Monitor's reports and other information specified in the CID directed to Western Union. When those negotiations proved unsuccessful, Western Union filed on January 31, 2013, a petition to quash both the CID issued to Western Union and the CID issued to the Monitor. Pet. Exh. 1, ¶ 17; Pet. Exh. 5.

15. The Commission ruled on the petition on March 4, 2013, denying it in its entirety and ordering Western Union to comply by March 18, 2013. Pet. Exh. 1, ¶ 18; Pet. Exh. 6.

16. Western Union did not comply as directed. Instead, in correspondence following the March 18, 2013 deadline, the company has expressed a desire to comply but reiterated many

of the arguments and positions advanced and rejected by the Commission's March 4, 2013, ruling. In addition, Western Union also raised new arguments that had not been raised in its petition to quash the CIDs. The company also requested that Commission staff engage in further discussions or negotiations regarding compliance. Despite several discussions, Western Union declined to produce any of the information specified in the CID. Pet. Exh. 1, ¶ 19; Pet. Exh. 7.

17. The Monitor did not himself file a petition to limit or quash the CID. As such, the Commission's March 4, 2013, ruling did not address his obligation to comply. Relying on the Arizona Superior Court's ruling of January 28, 2013, the Monitor has not produced any of the information called for by the Commission's CID. Instead, on January 31, 2013, the Monitor responded by objecting to the CID pursuant to Section 2.11 of the FTC's Rules of Practice, claiming that the Monitor Engagement Letter incorporated in the settlement prevented his compliance absent a federal court enforcement order. Pet. Exh. 1, ¶ 20; Pet. Exh. 6.

18. The CID directed to Western Union and the Monitor are within the Commission's statutory authority, the information and documents sought are reasonably relevant to the Commission's investigation, and the CIDs do not impose an unreasonable burden on either respondent. Further delays in the Commission's investigation caused by respondents' failure to comply impede the Commission's investigation and are contrary to the public interest. Pet. Exh. 1, ¶ 21. Therefore, the CIDs should be enforced in full.

19. No previous application for the relief sought herein has been made to this Court or any other.

Prayer for Relief

WHEREFORE, the Commission invokes the aid of this Court and prays:

a. For the immediate issuance of an order directing Western Union and the Monitor to show cause why they should not comply in full with the CIDs;

b. For a prompt determination of this matter and an order requiring Western Union and the Monitor to fully comply with the CIDs within ten (10) days of such order;

c. For such other relief as the Court deems just and proper.

Respectfully submitted,

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