

FOR RELEASE: OCTOBER 18, 1994

FTC ORDERS TRANS UNION TO STOP USING CREDIT DATA
TO CREATE TARGET MARKETING LISTS:
Commission Decision Upholds 1992 Charges

The Federal Trade Commission has ordered Trans Union Corporation to stop distributing or selling target marketing lists based on consumer-credit data, except under specific circumstances permitted by federal law. The Commission's decision upholds December 1992 charges and a September 1993 administrative law judge decision that the company violated a federal law governing the privacy of consumer-credit information.

Trans Union is based in Chicago, Illinois, and is one of the three major credit bureaus in the United States. TransMark, the division of Trans Union engaged in the target marketing business, rents for one-time use to its customers computer tapes containing lists of consumers who meet various credit-related and other criteria that are selected by the customers.

• A federal statute called the Fair Credit Reporting Act (FCRA), however, prohibits credit bureaus from furnishing to anyone the consumer-credit data they compile except for certain specified purposes. For example, the law permits credit bureaus to release consumer reports for a client's use in deciding whether to approve an application for credit or a job, and also in response to a court order. The FTC also permits "prescreening" -- providing a list of names based on credit criteria to a credit grantor, so long as the credit grantor gives each person on the list a firm offer of credit. (The FTC's 1992 complaint also contains allegations relating to Trans Union's prescreening practices. The company settled those charges under a November 1993 consent order with the FTC.)

Administrative Law Judge Lewis F. Parker upheld the FTC target-marketing related charges in a September 1993 summary decision. The Commission's decision, written by former Commissioner Dennis A. Yao, affirms the administrative law judge's decision, rejects Trans Union's statutory and First Amendment arguments, and largely adopts Judge Parker's order.

The Commission held that Trans Union's target marketing lists violate the FCRA because, among other reasons, the information used to compile the names on the lists comes from consumer-credit data in Trans Union's consumer reporting database. Trans Union's consumer reporting database contains information derived from credit grantors and other sources and is

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Trans Union Decision--10/18/94)

regularly provided to credit grantors in determining whether a consumer is eligible for, among other things, credit. The Commission held that, as such, this consumer-credit data is protected by the FCRA from disclosure unless the company receiving the information has a purpose permitted under the FCRA.

One Trans Union argument rejected by the Commission was that target-marketing lists do not fall within the definition of "consumer reports" that are protected by the FCRA. Trans Union argued that the FCRA only protects consumer-credit data that is judgmental -- that is of a type used to establish a consumer's eligibility for credit. The Commission disagreed, citing the plain language of the statute, legislative history and other reasons. "There are potentially many...situations in which highly confidential credit-related and other personal information might not be covered by the FCRA under [Trans Union's] standard," the Commission stated.

The Commission also held that target marketers do not have a permissible purpose to obtain consumer-credit data. The FCRA allows, as one of the permissible purposes, a credit bureau to release consumer-credit data to an entity that has a legitimate business need for the information in connection with a business transaction with the consumer. Trans Union argued that this provision should be interpreted broadly to include target marketing. Again, the Commission disagreed. The Commission held that the pertinent provision of the FCRA requires, at least in the context of companies desiring to sell goods or services to consumers, that the consumer have initiated the transaction, and thus have sought the benefits of a relationship with the requester, before the requester has a "legitimate business need" to obtain consumer-credit data. "[U]nder respondent's interpretation," the Commission said, "any person seeking to sell a product or offer a service could obtain consumer reports about individual consumers, resulting in a significant invasion of privacy."

The Commission also rejected Trans Union's claim that it does not actually communicate consumer-credit data to its customers because TransMark sends the computer tape to mailers (who may or may not be divisions of its customers) who do not know the credit-related criteria used in creating the lists. The Commission said that TransMark's customers know the specific credit-related criteria by which names are placed on TransMark's target marketing lists. In addition, employees of the customers, as well as mailers hired by customers as their agents, have actually accessed the names on the lists and, consequently, are aware of those names. "Courts have found that a corporation cannot pigeonhole various bits of information among different departments and claim that it was not aware of all the

(Trans Union Decision--10/18/94)

information," the Commission said.

Finally, as to Trans Union's First Amendment arguments, the Commission held that the order is constitutional as a narrowly tailored regulation designed materially to protect against the substantial harm to consumer's privacy that would result from the communication, without a permissible purpose, of consumer-credit data in the databases of credit bureaus.

The Commission vote to issue the final order and opinion was 5-0. Commissioner Mary L. Azcuenaga issued a concurring statement in which she said she did not support certain parts of the majority's analysis regarding whether information constitutes a consumer report under the FCRA. In particular, she said the content of the information imparted by a consumer reporting agency on a consumer could be "highly probative" in determining the purpose for which the information was collected, and to the extent that the majority opinion "may suggest that examination of the content of a communication...would be improper or irrelevant in assessing the purpose of the communication," she could not join it. She sees no reason to prohibit its consideration in deciding whether the information imparted constitutes a "consumer report" under the statute. In addition, she said that she did "not join in the analysis of the majority concerning the earlier consent agreement in *FTC v. TRW, Inc.*, except that [she] agree[d] that the TRW order is not controlling in this proceeding." Noting the absence of a Commission opinion regarding the TRW order and the lack of an adjudicative record in that matter, she concluded, "Attempts to explain what the Commission intended in TRW and to compare the two cases...are simply not useful."

Chairman Janet D. Steiger and Commissioner Roscoe B. Starek, III, wrote a separate statement to clarify one portion of the opinion discussed in Azcuenaga's statement. They noted that the Commission "never stated or implied that it was prevented from considering the content of the information imparted when determining the purpose for which that information was collected." Steiger and Starek added that, in fact, the Commission considered the nature of the information at issue in concluding that it had been collected for the purpose of serving as a factor in establishing a consumer's eligibility for credit, insurance or another FCRA-permitted transaction.

The Commission's order will be effective 60 days after it is served on Trans Union. Copies of Commission decision, order, separate statements and other news releases and documents associated with this case, are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue,

N.W., Washington, D.C. 20580; 202-326-2222; TTY for the hearing
impaired 202-326-2502.

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MEDIA CONTACT: Bonnie Jansen, Office of Public Affairs
202-326-2161

(FTC Docket No. 9255) (trans-cd)

FOR RELEASE: SEPTEMBER 24, 1993

FTC CHARGES AGAINST TRANS UNION UPHELD:
Administrative Law Judge Orders Credit Bureau
Stop Using Credit Data to Create Target Marketing Lists

An administrative law judge has prohibited Trans Union Corporation from compiling and selling target-marketing lists based on federally-protected information that bears on the credit habits of consumers, unless the company has a reason to believe the buyer intends to make a firm offer of credit to each consumer on the lists. The order follows Judge Lewis F. Parker's decision upholding Federal Trade Commission charges that Trans Union violated a federal law governing the privacy of the consumer credit information it collects and sells. Judge Parker said that "Trans Union's target marketing lists reveal much more information about the consumer in its database than is allowed under the [applicable FTC] standard."

The law at issue is the Fair Credit Reporting Act (FCRA), which is enforced by the FTC. The FCRA restricts access to data compiled and sold by credit bureaus to certain specified purposes -- for instance, for use in deciding whether to approve an application for credit or a job, or in connection with underwriting insurance. The FTC also permits "prescreening" -- providing lists of consumers meeting certain credit criteria to credit grantors, as long as the credit grantor gives each person on the resulting list a firm offer of credit. (In August, Trans Union agreed to settle FTC allegations in connection with its prescreening practices.)

Based in Chicago, Illinois, Trans Union is one of the three major credit bureaus in the United States. TransMark is the division of Trans Union engaged in the target-marketing business. TransMark rents for one-time use computer tapes which, on average, contain the names and addresses of 30,000 consumers who meet the criteria selected by TransMark's customers, according to Judge Parker's decision. The FTC alleged in a January 1993 complaint that, in so doing, Trans Union has illegally used the credit-related information it maintained in its consumer reporting data-base to compile lists of consumers that then have been used by some of Trans Union's clients for purposes not permitted under the FCRA. The FTC noted that Trans Union has advertised its lists in direct-marketing publications.

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Trans Union--09/24/93)

Judge Parker rejected Trans Union's argument that the information in its lists is not credit-related and, thus, is not protected by the FCRA. For one thing, the judge said, TransMark's target-marketing lists are "consumer reports" because they contain only the names of consumers with at least two or more credit accounts. Thus, the judge found, the lists reveal to Trans Union's customers information that "bears on the consumer's 'credit worthiness, credit standing, [or] credit capacity.'" Indeed, Judge Parker noted, Trans Union's description of its list of "upscale retail" consumers implies that these consumers are credit worthy.

Judge Parker also rejected Trans Union's argument that the FCRA protects only that information which is "judgmental" or which provides a consumer's "credit rating," noting that the definition of the information protected by FCRA is not so restricted.

Finally, the judge rejected arguments that Trans Union's lists are protected by the First Amendment, citing both the government's substantial interest in protecting consumers' right to privacy and the fact that the FCRA advances this interest without being unduly restrictive.

Thus, Judge Parker concluded, Trans Union's target marketing lists are protected by the FCRA, and selling them without reason to believe its customers will use them for permissible purposes violates the FCRA. The judge's order, then, would prohibit Trans Union from compiling or selling consumer reports in the form of target-marketing lists to anyone without having a reason to believe the buyer intends either to make a firm offer of credit to each person on the list or to use the lists for other purposes permissible under the FCRA.

Judge Parker made his findings in the case in a summary decision -- without conducting a trial -- stating that there was no real dispute as to the facts in the case. Specifically, the judge said that Trans Union had not challenged the accuracy of the facts offered by the FTC staff in support of the staff's motion for summary decision.

The judge's order is subject to review by the full Commission on its own motion or at the request of either Trans Union or the FTC staff. If the order is not appealed within 30 days, it will become binding on Trans Union as the final Commission order.

Trans Union--09/24/93)

Copies of Judge Parker's decision and order, as well as other news releases associated with this case, are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-2222; TTY for the hearing impaired 202-326-2502.

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MEDIA CONTACT: Bonnie Jansen, Office of Public Affairs
202-326-2161

(Docket No. D-9255)
(tu-id)

FOR RELEASE: JANUARY 12, 1993

FTC CHARGES TRANS UNION WITH VIOLATING CREDIT PRIVACY LAW
BY USING CREDIT DATA TO CREATE TARGET MARKETING LISTS;
TRW Agrees to Settlement Prohibiting Similar Practices

The unauthorized use of vast volumes of sensitive, federally-protected information bearing on the credit habits of nearly 200 million Americans to create targeted telemarketing and direct mail lists was challenged by the Federal Trade Commission in two separate actions announced today. Access to this data, which is compiled and sold by credit bureaus, is restricted by federal law to certain, specified purposes -- for instance, for use in deciding whether to approve an application for credit or a job, or in connection with underwriting insurance.

The FTC today charged Trans Union Corporation, one of the three major credit bureaus in the United States, with violating that law -- the Fair Credit Reporting Act (FCRA) -- by illegally using the credit-related information it maintains in its consumer reporting database to compile lists of consumers that are then used by some of Trans Union's clients for purposes not permitted under the law. Trans Union's clients include credit grantors, and it has advertised its lists in direct marketing publications.

In addition, the FTC authorized its staff to file in federal court proposed settlement language with a second major credit bureau, TRW Inc., that would permit TRW to use only identifying information -- not information bearing on the credit relationships, credit worthiness, or other behavior of consumers -- to create lists of consumers to be used for target marketing purposes.

Trans Union is based in Chicago, Illinois, and TRW is headquartered in Cleveland, Ohio.

At issue in these cases are provisions of the FCRA that set out the specific purposes for which a credit reporting agency or credit bureau can release consumer information maintained in its data base. Generally, the FCRA imposes the responsibility on credit bureaus to protect both the privacy and the accuracy of the data they collect and sell. Specifically, with regard to these cases, the FCRA requires credit bureaus to employ "reasonable procedures" to ensure that their data is used only for the permissible purposes. Those purposes are:

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Trans Union/TRW--01/12/93)

- in response to a court order;
- in accordance with the consumer's written instructions;
- in connection with the extension of credit or a loan to the consumer or the collection of his or her account (the FTC has interpreted this provision to permit prescreening, which is the creation or editing of a list of consumers based on credit-related characteristics, when each person on the final list is given a firm offer of credit);
- for employment purposes;
- to underwrite insurance for the consumer;
- to determine the consumer's eligibility for a government license or benefit; or
- to an entity that otherwise has a legitimate business need for the information in connection with a business transaction initiated by the consumer (for example, an application to rent an apartment).

The Trans Union Allegations:

According to the FTC complaint detailing the agency's allegations against Trans Union, the company regularly provides lists of consumers who meet certain criteria to credit grantors (a process known as prescreening), but fails to require that, and monitor whether, those credit grantors make a firm offer of credit to each person on the list, as required by the FCRA. Moreover, according to the complaint, Trans Union creates lists of consumers that are based, at least in part, on the credit information contained in its consumer reporting database, and then provides those lists to clients that intend to use the information for purposes not permitted under the FCRA.

If the FTC's charges against Trans Union are upheld following trial by an administrative law judge, the Commission said it could require Trans Union to monitor clients to ensure they use lists of prescreened consumers in accordance with the law. The Commission also said it could prohibit Trans Union from compiling and selling any target marketing lists to clients unless Trans Union has reason to believe its clients intend to make a firm offer of credit or to use the lists for a permissible purpose.

Trans Union/TRW--01/12/93)

NOTE: The Commission issues a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The issuance of a complaint is not a finding or ruling that the respondent has violated the law. The complaint marks the beginning of a proceeding in which the allegations will be ruled upon after a formal hearing.

The TRW Settlement:

The settlement with TRW entails adding a provision to an existing consent order, filed in federal district court last December, that settled previous FTC charges against TRW regarding the accuracy of its credit data. (That settlement was announced in conjunction with two cases collectively brought by 19 state Attorneys General. The states' settlements incorporated all of the FTC's substantive provisions, as well as other provisions addressing violations of state laws.)

The new provision, already agreed to by TRW but still requiring court approval, would prohibit TRW from using anything other than the following information from its consumer reporting database to create marketing lists: name, telephone number, mother's maiden name, address, zip code, year of birth, age, any generational designation, Social Security number, or substantially similar identifiers. Among other things, the existing order already mandates that TRW require purchasers of its pre-screened lists to make a firm offer of credit to every person whose name appears on the list.

The amended consent order will be filed shortly in U.S. District Court for the Northern District of Texas, in Dallas.

NOTE: A consent order is for settlement purposes only and does not constitute an admission by the defendant of a law violation. Consent orders have the force of law when signed by the judge.

The Commission votes to announce the charges against Trans Union and to accept the additional proposed settlement provision with TRW were both 5-0. Commissioner Deborah K. Owen issued a statement in connection with the TRW case, in which Commissioner Roscoe B. Starek, III, joined. In the statement, Owen noted that, while she concurred with prohibiting TRW from furnishing credit reports without a permissible purpose, she dissented in another aspect. According to her statement, she believes that the amendment should have allowed certain "opt-in" procedures "that otherwise would be permissible under the FCRA, in my judgment."

Trans Union/TRW--01/12/93)

"Specifically, I do not read the FCRA to prohibit TRW from furnishing a consumer report (by virtue of including a consumer's name on a targeted marketing list) if TRW first obtains the consumer's written permission, as provided in . . . the statute," Owen said, adding that she sees "no restriction in the language of the statute on the ability of a consumer reporting agency to choose which consumers it wishes to ask for such permission."

Copies of the Trans Union complaint and notice order, the provision to be added to the TRW consent order, Commissioner Owen's statement, and the news release of last December announcing the first settlement with TRW, are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-2222; TTY 202-326-2502.

A consumer fact sheet titled "Fair Credit Reporting," and answering some of consumers' most commonly-asked questions about the FCRA is available free from the same address.

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MEDIA CONTACT: Bonnie Jansen, Office of Public Affairs
202-326-2161

STAFF CONTACT: David Medine, Bureau of Consumer Protection
202-326-3224

FTC File Nos.: -- Trans Union 922 3036
-- TRW 912 3149

TRW Civil Action No.: 3-91-CV2661-H

(TU-TRW)

EMBARGOED UNTIL 12:00 NOON, DECEMBER 10, 1991

TRW AGREES TO SETTLE FTC AND STATE CHARGES OF ALLEGED
VIOLATIONS OF THE FAIR CREDIT REPORTING ACT

TRW Inc. -- which, as one of the nation's largest credit bureaus, maintains credit information on approximately 170 million consumers -- has agreed to settle Federal Trade Commission charges that it has violated the Fair Credit Reporting Act ("FCRA"), a federal law that regulates the privacy and accuracy of consumer reports. The FTC has charged TRW with failing to assure the maximum possible accuracy of the consumer credit information it compiles and sells to credit grantors and employers nationwide, among other alleged FCRA violations.

The consent order settling these charges, filed today in federal district court in Dallas, Texas, is designed to improve the accuracy of the information TRW compiles. It requires the company, among other things, to institute new accuracy monitoring systems and to enhance procedures for handling consumer disputes.

The FTC's settlement with TRW comes in conjunction with the settlement of two cases collectively brought by 19 state attorneys general. The Commission particularly acknowledges the cooperation of the state attorneys general of Texas, California, New York, Missouri, Arkansas, and New Mexico. The states' settlement, also announced today, incorporates all of the FTC's substantive provisions, as well as a number of provisions addressing alleged violations of state laws.

According to the FTC complaint, TRW has violated the Fair Credit Reporting Act by:

- failing to maintain and follow reasonable procedures to assure maximum possible accuracy of the information contained in its consumer reports;

- failing, within a reasonable period of time, to reinvestigate information in credit reports that has been disputed by the consumer and to disclose to consumers their rights and obligations concerning reinvestigation;

- failing to promptly delete inaccurate or unverified information from consumer reports;

- furnishing consumer reports to persons TRW did not have a reason to believe intended to use the information for a permissible purpose; and

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TRW Inc.--12/10/91)

-- failing, when providing consumer reports containing adverse public-record information to third parties for resale to employers, to maintain procedures to ensure that the public-record information is complete and up to date, or, as the law alternatively requires, that consumers are notified that such a report was made and told the name and address of the recipient.

Under the consent order settling these charges, TRW is required to adopt procedures to prevent the occurrence of mixed-file errors -- that is, reports that contain credit or other information about someone other than the subject of the report (for example, parents with children with similar names). These procedures include modifying TRW's computer software system to enable the system to use more complete consumer-identifying information from credit grantors before adding credit data on consumers to TRW's credit reporting database. When consumers' disputes indicate that an error may result from a mixed-file error, TRW must employ special reinvestigation procedures specifically designed to address such errors. In addition, by July 31, 1992, TRW must implement a system to prevent the recurrence of specific mixed-file errors, once they have been identified.

Under the consent order, TRW also is required to reinvestigate information disputed by a consumer in his or her credit report within 30 days. If TRW does not verify the information within that time period, it must delete it. Also, when reinvestigating disputed information, TRW is required to convey the nature and substance of the consumer's side of the story to the credit grantor that had provided the information. And, when a consumer provides TRW with documentation from a credit grantor confirming the consumer's version of a dispute, TRW is required to accept that documentation unless it has reason to doubt its authenticity. TRW also is required to clearly and fully disclose to consumers, in accordance with the FCRA, their rights and TRW's obligations with respect to disputed information.
(TRW Inc.--12/10/91)

In addition, the consent order requires TRW to implement procedures to assure that no seriously derogatory information which has been deleted after being disputed by the consumer reappears on the consumer's credit report unless (1) the information has been reverified, and (2) TRW advises the consumer in writing that the information has been reinserted in the credit file. TRW must meet the same requirements for any disputed and subsequently deleted information -- seriously derogatory or otherwise -- by the end of 1992.

Concerning the practice of compiling information from consumers' reports for specified credit-related characteristics, a process known as prescreening, the consent order mandates that TRW require purchasers of these prescreened lists to make a firm offer of credit to every person who appears on the list. This requirement reflects the Commission's interpretation of the limits that the FCRA places on the dissemination of consumer report information.

With respect to consumer reports that TRW sells to third parties -- such as brokers or other consumer reporting agencies -- for resale to employers for employment decisions, the consent order requires TRW to ensure that such third-party purchasers specify that the reports will be used for employment purposes when obtaining the report from TRW. Under this provision, TRW is required to notify the consumer whenever it issues a report for employment purposes containing public-record information that is likely to adversely affect the consumer's ability to obtain employment, and to provide the consumer with the name and the address of the third party that, in turn, can identify the employer seeking the report. The FCRA requires consumer reporting agencies to provide such notice to consumers unless they maintain strict procedures to ensure that public record information in employment reports is complete and up to date --an alternative form of compliance that is available to TRW under the order.

The consent provides as "fencing-in" relief that TRW must disclose to consumers who request credit reports after Dec. 31, 1992, any risk score associated with their credit report. A risk score is a numerical value based on credit information and derived from statistical models that are used by creditors to predict the creditworthiness of consumers. This provision will help prevent, in the future, the kinds of inaccuracies in consumer reports that the complaint alleges.

The consent order specifically preserves the FTC's right to bring an enforcement action against TRW based on practices related to the sale to clients of lists of consumers with certain credit-related characteristics that are not developed through prescreening.

Finally, TRW is required under the order to establish a five-year monitoring system to determine whether and how well the above procedures and changes it makes to its system reduce the incidence of mixed files. TRW must propose such a system for FTC approval within 180 days. As an additional measure to assist the FTC in monitoring the effect of the order, TRW is required to submit, on an annual basis for five years, detailed information about the total number of consumer credit reports it issues to consumers and how many of them are disputed.

(TRW Inc.--12/10/91)

In a separate statement, Commissioner Mary L. Azcuenaga said, "Although I generally support the Commission's action, I dissent from the inclusion of a 'good faith' limitation on the respondent's liability for compliance with portions of the order."

The complaint and consent order were filed in U.S. District Court for the Northern District of Texas, in Dallas, this morning. The settlement was approved by the court.

NOTE: This consent order is for settlement purposes only and does not constitute an admission by the defendant of a law violation. Consent orders have the force of law when signed by the judge.

Copies of the complaint and consent order are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-2222; TTY 202-326-2502.

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MEDIA CONTACT: Brenda A. Mack, Office of Public Affairs
202-326-2182

STAFF CONTACT: David Medine, Bureau of Consumer Protection
202-326-3224

(Civil Action No. 3-91-CV2661-H)

(TRW)