

IN THE MATTER

TRANS UNION CORPORATION

Docket 9255. Interlocutory Order, March 12, 1997

ORDER DIRECTING GENERAL COUNSEL TO
ENFORCE THIRD-PARTY SUBPOENA

In early November 1996, respondent Trans Union Corporation ("Trans Union") served a non-party, Experian Information Solutions Inc. ("Experian"), with a *subpoena duces tecum*. On January 24, 1997, Experian, which competes with Trans Union in providing services at issue in this case, filed a motion to quash this subpoena, which the Administrative Law Judge denied by order of February 19, 1997. On March 5, 1997, Trans Union filed a Motion for Enforcement of a Subpoena Duces Tecum Issued to Experian Information Solutions, Inc. On March 6, 1997, the Administrative Law Judge certified Trans Union's motion for enforcement of the subpoena to the Commission with a recommendation that the Commission seek enforcement.

The subpoena to Experian seeks documents falling into two categories: those relating to the source and makeup of Experian's target-marketing lists, and those relating to consent orders entered in 1991 and 1993 against Experian's predecessor, TRW. Trans Union and Experian have agreed, in a document signed on December 13, 1996, to limit the scope of the subpoena. The limitations agreed to reflect the objections and concerns later raised in Experian's Motion To Quash. After this agreement was reached, Experian produced certain documents in response to the subpoena.

The current dispute does not concern documents. The issue is whether, in further response to the subpoena, Experian will produce a representative for an oral deposition who can "authenticate any documents Experian produced in response to the Subpoena and . . . explain general background information that [is] either not contained in the documents or [is] not self-evident from the documents." Trans Union's Response to Motion To Quash at 7. Experian acknowledges that "negotiations ha[ve] broken down due to an impasse on [the] single issue . . . whether Experian voluntarily would produce a witness to testify regarding the documents requested in the Subpoena." Motion To Quash at 2.

The motion to quash takes the position that "an unrestrained oral deposition would endanger Experian's confidential business strategies and proprietary trade secrets. . . ." Motion To Quash at 2-3. For the most part, however, Experian's motion appears to be an effort to argue to the Administrative Law Judge issues that were largely resolved in negotiations with Trans Union over the scope of the subpoena. Although Trans Union has offered to meet with the deponent and Experian's counsel before conducting the deposition to discuss the scope of questioning, Experian has declined, arguing that unless Trans Union is willing to accept alternative discovery in the form of a sworn declaration or an oral deposition on written questions, it will not produce the requested representative in response to the subpoena.

The Administrative Law Judge refused to quash the subpoena, ruling that "Trans Union's refusal to accept the alternative discovery offered by Experian is not unreasonable, and its offer of a meeting before a deposition is conducted is acceptable." Order at 3. He also observed that "[s]ince Experian and Trans Union have agreed on the information which will be produced pursuant to the subpoena, there is no need to consider any arguments raised by Experian except that involving the proposed deposition." *Id.*

The Commission agrees with the ruling of the Administrative Law Judge on the motion to quash. In addition, the Commission has a strong interest in ensuring the integrity of its adjudicative process. In his certification, the Administrative Law Judge concludes that "[t]he information sought by Trans Union is relevant and Experian's refusal to comply with my order justifies Trans Union's request for court enforcement of the subpoena." *Id.* at 1. The Commission agrees that enforcement of the subpoena is warranted. The Commission notes, however, that by producing its representative in response to the subpoena, Experian, of course, would not waive its right to limit the information provided in response to questions proffered on grounds of privilege, or to request the Administrative Law Judge to issue an appropriate protective order limiting access to the information provided. Accordingly,

It is ordered, That the General Counsel be, and he hereby is directed promptly to take appropriate action to enforce Trans Union's subpoena to Experian.

Complaint

123 F.T.C.

IN THE MATTER OF

CIBA-GEIGY LIMITED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3725. Complaint, March 24, 1997--Decision, March 24, 1997

This consent order requires, among other things, the licensing of specified gene therapy technology and patent rights to Rhone-Poulenc Rorer, Inc., to put Rhone-Poulenc in a position to compete against the combined firm. The consent order also requires divestiture of the Sandoz U.S. and Canadian corn herbicide assets to BASF and its flea control business to Central Garden & Pet Company or another Commission-approved buyer.

Appearances

For the Commission: *William Baer, Howard Morse and Morris Bloom.*

For the respondents: *Kenneth Prince, Shearman & Sterling, New York, N.Y. and Michael Malina, Kaye, Scholer, Fierman, Hays & Handler, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (the "Commission"), having reason to believe that respondents Ciba-Geigy Ltd., a corporation including its wholly-owned subsidiary, Ciba-Geigy Corporation, (collectively, "Ciba"), and Sandoz Ltd., a corporation, including its wholly-owned subsidiary, Sandoz Corporation, (collectively, "Sandoz"), corporations subject to the jurisdiction of the Commission, have agreed to merge into Novartis Ltd. ("Novartis"), a corporation, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows: