

RECEIVED
FEDERAL ELECTION
COMMISSION
FEC MAIL CENTER
2016 JUN 29 11:02:58

June 28, 2016

OFFICE OF GENERAL
COUNSEL

BY HAND DELIVERY

Jeff S. Jordan
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 7062

Dear Mr. Jordan:

We write as counsel to RevUp Software, Inc., ("RevUp") in response to the complaint in MUR 7062. The Complaint deals almost entirely with matters unrelated to RevUp and its operations, and mentions RevUp only in passing. The scant, baseless claims that the Complaint does make against RevUp rely on an incorrect application of Federal Election Commission ("FEC" or the "Commission") regulations and fail to assert any facts which, if proven true, would constitute a violation of the Federal Election Campaign Act of 1971 (the "Act").

The Complaint's sole assertion against RevUp is the conclusory claim that the Ro Khanna for Congress Inc. Committee retained RevUp to perform data analysis for fundraising purposes in a manner that violates FEC regulations. The Complaint's only support to back up this allegation is a single press article that does not even allege or describe how RevUp may have acted in violation of FEC rules. As fully explained below, RevUp's analysis of information contained in reports filed with the Commission is strictly limited to data analysis of financial information. RevUp does not copy or obtain individual contributor names and addresses from FEC reports. RevUp's services are therefore fully consistent with the Act, Commission regulations, and the Commission's longstanding interpretation of the so-called "sale and use" provision. Accordingly, the Commission should dismiss this baseless complaint and close the file.

FACTUAL DISCUSSION

RevUp is a nonpartisan, for-profit corporation that designs cloud-based tools to help nonprofit organizations, academic institutions and political organizations meet their fundraising goals.

Jeff S. Jordan
 June 28, 2016
 Page 2

RevUp is currently working with dozens of political committees on both sides of the aisle, as well as with a number of educational institutions and other non-political organizations.¹

RevUp's tools are designed to help its clients build a fundraising program that (a) respects the time and efforts of the clients' fundraising personnel, and (b) is courteous and professional to the organizations' supporters. RevUp does this by offering an algorithm that helps clients identify individuals on the clients' own pre-existing contact lists (and on individual volunteers' own lists) who may be most likely to support the client's efforts. RevUp's algorithm simultaneously deprioritizes individuals who are less likely to be supportive. This analysis allows clients to avoid offending the privacy interests of large swaths of their networks by sending repetitive, intrusive and inappropriate solicitations. Instead, clients can engage only those interested, like-minded individuals who are highly likely to contribute, and do so in a limited and respectful way. Because RevUp performs analysis on all of the user's pre-existing contacts, and not just those who may have previously contributed to a political campaign, RevUp also allows campaigns a cutting-edge way to engage new people into the political process in a respectful manner.

Clients gain access to RevUp by entering into an agreement to obtain software licenses. When clients sign up for the service, they create a client profile that describes their organization in detail. For example, a political campaign would enter in the candidate's name; location; office sought; status as an incumbent or challenger; personal educational history; occupation history and other biographical information; issues important to the candidate and the candidate's stances on those issues (as well as the stances of the candidate's opponent); other candidates or organizations the client identifies as holding shared political views; and other information.

Next, clients can distribute RevUp login credentials to their staff and supporters. Each of these users then uploads his or her own pre-existing contact list into the RevUp software platform. RevUp allows users to upload pre-existing contact lists from Gmail, LinkedIn, Microsoft Outlook, or from the user's own spreadsheet. Users can upload the name, employer, occupation, address, phone number, email address and educational background of each individual on their list. **RevUp does not obtain, compile or copy new individuals' names and addresses from FEC reports.** In fact, the software does not even function if a user does not first provide his or her own pre-existing list of contacts, and RevUp's Terms of Use require users to have the right to share the contact information they upload.

Once the user's pre-existing contacts are uploaded, the RevUp algorithm performs an analysis of which individuals on the list are most likely and least likely to be supportive of client organization. The RevUp algorithm that performs this analysis currently includes approximately 100 data point inputs, and RevUp plans to continue to refine its model and continue to add

¹ RevUp's business and operations are explained in the attached affidavit of Steve Spinner, Founder and Chief Executive Officer of RevUp.

Jeff S. Jordan
 June 28, 2016
 Page 3

additional inputs. These inputs include all of the profile information described above that is entered by the candidate; each individual's demographic and biographical information as uploaded by users; financial information regarding each individuals' past donations to non-political organizations (if any); and financial information regarding each individuals' past political contributions (if any), which is obtained from reports filed with the FEC; and publicly-available information from various other consumer databases.

Based on these inputs, RevUp assigns a score from 0 to 100 to each individual on a user's list that correlates to how well the individual aligns with the client organization. RevUp provides the individual scores to the user who uploaded that individual, and also allows the user to view the past charitable and political contributions of the individuals on their list (much like those contributions are viewable using the "Individual Contribution Search" on FEC.gov). Displaying past financial contribution information serves the important function of preventing users from soliciting excessive contributions not only to the client organization, but also to any joint fundraising organizations that the client may be a participant in. **Importantly, individuals' names and addresses contained in FEC reports are not imported into RevUp or added to a user's contact list.** In addition, the RevUp screen warns users that "Federal law prohibits using contributor contact information that is obtained from FEC reports for the purpose of soliciting contributions or for any commercial purpose." RevUp does not have any function that allows users to create a new list of prospective contacts, and RevUp is not in the business of selling lists of contributors.

LEGAL ANALYSIS

For the Commission to find reason to believe that a violation occurred, a complaint must set forth sufficient specific facts which, if proven true, would constitute a violation of the law. *See* 11 C.F.R. § 111.4. "Unwarranted legal conclusions from asserted facts ... or mere speculation ... will not be accepted as true." Matter Under Review 4960, Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas (Dec. 21, 2000). Moreover, "[a] mere conclusory accusation without any supporting evidence does not shift the burden of proof to respondents." Matter Under Review 4850, Statement of Reasons of Commissioners Wold, Mason, and Thomas (July 20, 2000). As explained below, the Complaint fails this test and should be dismissed.

The Act requires each political committee to report the name, mailing address, occupation and employer name of any individual who contributes more than \$200 to the committee in a calendar year. *See* 52 U.S.C. § 30104(b)(3)(A). The Act also requires the Commission to make these reports available for public inspection and copying. *See id.* § 30111(a)(4); *see also id.* § 30112 (requiring the Commission to make reports publicly available online). The Act contains also contains the proviso that "any information copied from such reports or statements may not be

Jeff S. Jordan
 June 28, 2016
 Page 4

sold or used by any person for the purpose of soliciting contributions or for any commercial purpose.” *Id.* § 30111(a)(4); 11 C.F.R. § 104.15(a).

RevUp’s use of contribution information from FEC reports is completely consistent with this restriction as it has been interpreted and applied by the Commission and by federal courts. First, RevUp merely allows users to receive an analysis of financial contribution information related to the pre-existing contacts that each user uploads; RevUp does not obtain, display, sell or use contributor names and addresses obtained from FEC reports. Second, RevUp only uses financial contribution information – not identifying contributor names and addresses obtained from FEC reports – as an input in its algorithm or anywhere else on its site. RevUp’s use of FEC data therefore does not implicate the privacy interests that Congress sought to protect in passing the sale and use restriction, and is consistent with the Act’s legislative history and a long line of Commission precedent.

A. History of the sale and use restriction

Congress originally passed the sale and use restriction at 52 U.S.C. § 30111(a)(4) in 1971 as an amendment to the requirement that reports filed under the Act be made public. As Congress explained at the time, “the purpose of this amendment is to protect the privacy of the generally very public-spirited citizens who make a contribution . . .” 117 Cong. Rec. 30,057-58 (1971) (statement of Sen. Bellmon). More specifically, according to the amendment’s sponsor, Congress sought to address the specific concern that the public filing of reports could lead to the selling and brokering of names and contact information included on the reports. “These names would certainly be prime prospects for all kinds of solicitations,” said Senator Bellmon, giving the example of selling “the names of new car buyers to list brokers” as the kind of practice that the sale and use provision is intended to prevent. *Id.* (emphasis added).

Based on this legislative history, the Commission has long concluded “that the principal, if not sole, purpose of restricting the use of information compiled from reports was to protect individual contributors from having their names used for commercial purposes, or from inclusion on contributor lists that are used for commercial purposes.” Advisory Opinion 1981-05 (Findley) (citing Advisory Opinions 1980-101, 1980-78, 1977-66) (emphasis added); *see also* Advisory Opinion 1989-19 (Johnson) (“the principal purpose of this restriction is the protection of individuals who make contributions to political committees from having their names used for commercial purposes, not the suppression of financial information.”) (emphasis added).

The Commission has observed that “[t]his view is further reinforced by subsequent legislative history.” Advisory Opinion 1981-38 (Campac Publications). Specifically, “it appears from the history of the 1979 Amendments to the Act, that a commercial vendor may compile information from FEC reports for the purpose of selling that information but the prohibition on the copying and use of names and addresses of individual contributors is crucial and so was maintained.” *Id.*

Jeff S. Jordan
June 28, 2016
Page 5

(citing H.R. Rep. No. 422, 96th Cong., 1st Sess. 23 (1979)) (emphasis original to Advisory Opinion 1981-38). One of the clearest statements of the scope of the sale and use restriction is found on FEC.gov, which instructs the public that “Reports and statements filed by political committees may be inspected and copied by anyone. The names and addresses of individual contributors, however, may not be sold or used for any commercial purpose or to solicit any type of contribution or donation . . .”²

B. There is no *per se* bar on the commercial or solicitation use of FEC data

At the outset, it is important to note that Section 30111(a)(4) does not bar every conceivable commercial or solicitation use of any information whatsoever obtained from FEC reports. See *Fed. Election Comm’n v. Political Contributions Data, Inc.*, 943 F.2d 190, 194 (2d Cir. 1991) (“FEC admits . . . that a literal application of the statute ‘would obviously impede, if not entirely frustrate, the underlying purpose of the disclosure provisions of FECA. . . .’”). Rather, Congress intended (and the Commission has applied) the sale and use restriction to apply differently to the use of contributor information obtained from FEC reports and financial contribution information contained in reports. In one of its most recent pronouncements on the scope of the sale and use provision, the Commission reiterated that there is “a long line of advisory opinions in which the Commission has approved proposals to sell or use information from reports filed with the Commission where that information did not include the names and addresses of individual contributors.” Advisory Opinion 2014-07 (Crowdpac).

Given this distinction between contributor information and financial information, two bright-line rules can be drawn from the FEC precedent:

- First, the sale and use restriction does not prevent a committee, vendor or individual from using a pre-existing list of contacts or list compiled from any source other than FEC reports to solicit contributions or for a commercial purpose.
- Second, certain information from FEC reports – including financial contribution information – can be used for a solicitation purpose provided that use does not disclose the names or addresses of individual contributors from FEC reports.

As explained below, every aspect of RevUp’s functionality complies with these two rules, and the Complaint is totally absent of any evidence to the contrary.

² Fed. Election Comm’n, Sale and Use of Campaign Information, <http://www.fec.gov/pages/brochures/saleuse.shtml> (last accessed June 16, 2016) (emphasis added).

Jeff S. Jordan
June 28, 2016
Page 6

1. RevUp clients and users may solicit names on their own lists

It is beyond dispute that there is no restriction on a campaign or individual using its own contributor information or information compiled from any source other than FEC reports to solicit contributions or for a commercial purpose. *See* Advisory Opinion 1991-16 (Feigenbaum) (“The Commission has contrasted the use of a committee’s own list of previous contributors with the use of reports filed by a committee with the Commission.”); Advisory Opinion 1979-03 (CSFC) (use of lists compiled by the donor from its own records and not copied from reports filed under the Act to solicit contributions is not prohibited). Thus, for example, the Commission has found that the sale and use provision does not prohibit a vendor from offering technology that analyzes, organizes or researches a user’s own contributor data or lists “since, again, no FEC contributor information would pass to the client.” Advisory Opinion 1998-04 (White Oak Technologies).

Courts have also recognized this distinction. *See Fed. Election Comm’n. v. Int’l Funding Institute, Inc.*, 969 F.2d 1110, 1113 (D.C. Cir. 1992) (observing that a committee can use a list to solicit if it did not obtain the list from FEC reports). In an opinion concurring that the sale and use provision was constitutional, then-circuit judge Ruth Bader Ginsberg argued that the constitutionality of section 30111(a)(4) hinges on the fact that organizations can solicit “the very individuals whose names appear on the FEC lists” as long as those names “are obtained from an independent source.” *Id.* at 1119. It is not the case, she observed, “that the Commission, in its role as clearinghouse for donor lists, hulks so large that potential or pre-existing channels for obtaining contributor information have been, as a practical matter, sealed off.” *Id.* (internal citations omitted).

RevUp’s services are consistent with this precedent. RevUp’s software does not even function unless a user uploads his or her own pre-existing list of individual names and contact information. Even after a user uploads his or her contact list for analysis, no information regarding an individual contributor’s name and address is taken from the FEC report and added to the user’s list or otherwise used or displayed on RevUp. **RevUp provides no means by which new contributor names and addresses pass from FEC reports to users or clients.** In addition, RevUp does not sell or broker lists of contributor information from FEC reports. In short, 52 U.S.C. § 30111(a)(4) does not prohibit RevUp, its clients or its users from soliciting contributions from individuals on users’ own, pre-existing contact lists uploaded to the RevUp platform.

2. Information from FEC reports that does not identify individual contributors may be used for solicitation purposes

Uses of data obtained from FEC reports “without identifiable contributor information ... do not implicate the privacy concerns that the solicitation and commercial use prohibitions in section

Jeff S. Jordan
 June 28, 2016
 Page 7

[30111(a)(4)] are intended to mitigate.” Advisory Opinion 2014-07 (Crowdpac). In fact, the FEC has found that “except for information identifying individual contributors, any of the information found in FEC documents or documents filed with the Commission may be used” for a commercial or solicitation purpose. Advisory Opinion 1980-101 (Weinberger) (emphasis added).

A long line of precedent confirms that campaigns and vendors can permissibly sell or use, for commercial or solicitation purposes, information from FEC reports that does not include identifiable contributor information. For example, “a commercial vendor may compile information from FEC records for the purpose of selling that information” as long as there is no “copying and use of names and addresses of individual contributors...” Advisory Opinion 1981-38 (CAMPAC) (emphasis in original). Similarly, a vendor may sell “a directory of comprehensive information concerning Political Action Committees” using data taken from FEC reports, as long as the directory “would not ... identify individuals who made contributions to the listed PACs.” Advisory Opinion 1980-101 (Weinberger).

The FEC has also allowed a commercial entity to use expenditure information from FEC reports – including the names and addresses of campaign workers, consultants, and other payees – to solicit business because this information “generally does not contain information relating to individual contributors...” Advisory Opinion 1981-38 (CAMPAC). A vendor can also solicit candidates as potential clients using information from FEC records because the limited “purpose of this section was to protect contributor information and lists from being used for commercial purposes.” Advisory Opinion 1983-44 (Cass Communications) (emphasis in original). The Commission has even allowed a vendor to sell “unaltered copies of pages” from FEC reports as long as the vendor “will only market copies of report pages that do not contain the names of individual contributors.” Advisory Opinion 1989-19 (Johnson). *See also* Advisory Opinion 1980-78 (Richardson) (“The express legislative intent of the provision does not seem to encompass the use of financial information ... particularly where, as here, no information relating to the identify of contributors is given.”).

As explained above, RevUp only incorporates financial contribution information from FEC reports into its services; it does not copy, use or sell the names and addresses of individual contributors that were not already known to RevUp’s users. RevUp is therefore materially similar to the other companies discussed above that the Commission has long allowed to use non-identifying data from FEC reports.

C. FEC financial contribution data may be used in fundraising analytics

Analysis of financial contribution data taken from FEC reports is also permissible. The Commission recently instructed that a for-profit corporation can permissibly “use data derived from Commission reports in its algorithm, provided that doing so does not entail disclosing

Jeff S. Jordan
 June 28, 2016
 Page 8

individual contributors' contact information." Advisory Opinion 2014-07 (Crowdpac). Notably, the Commission's analysis in that opinion did not rest on the "media exemption" in section 30111(c). Rather, "consistent with a long line of advisory opinions" the Commission reasoned that "[p]ermitting analysis of Commission data without public identification of contact information for individual contributors accomplishes 'FECA's broader aim of full disclosure' and 'furthers first-amendment values.'" *Id.* (citing *FEC v. Political Contributions Data*, 943 F.2d. 190, 196-197 (2d. Cir. 1991)).

RevUp's use of financial contribution information in its algorithm is consistent with the past precedent. RevUp's analysis does not use contributor names and addresses taken from FEC reports. The analysis also does not provide any result or output that contains any contributor names and addresses from FEC reports that the client or user did not already possess.

Accordingly, RevUp poses no risk that individuals' names on FEC reports will become "prime prospects for all kinds of solicitations." 117 Cong. Rec. 30,057-58 (1971) (statement of Sen. Bellmon). Rather than having no option but to repeatedly and intrusively solicit every individual on their lists, RevUp provides clients and users a tool that allows them to reduce their total number of solicitations by not contacting individuals who do not rate well in the analysis. This allows political organizations and other clients and users to maintain respectful, professional relationships with "the generally very public-spirited citizens" who might make political contributions, while decreasing the risk that non-interested individuals may be harassed with repetitive and intrusive communications. It also provides a means for campaigns to harness the power of emerging technology to draw new people into the political process (i.e., by analyzing individuals on the pre-existing list who may have not previously contributed to a political campaign) in a respectful way.

D. RevUp's services are materially different from cases where the Commission or the courts have found a violation of the sale and use provision

RevUp's services do not resemble the past situations where the Commission has found an impermissible use of FEC data. One similar but materially distinguishable example is Advisory Opinion 1985-16, where the FEC said that the requestor's proposal to match names on his list to the names of past contributors on FEC reports violated section 30111(a)(4). Unlike RevUp, the requestor in Advisory Opinion 1985-16 was an admitted list broker who used names from FEC reports to increase the commercial value of a list. RevUp uses financial contribution data – not names and addresses – from FEC reports, and its analysis does not increase the commercial value of any list because RevUp is not a list broker.

Other instances in which the Commission has found an impermissible use are similarly distinguishable. In Advisory Opinions 1995-05 and 2003-24; MURs 5590, 6290 and 5469; and

Jeff S. Jordan
 June 28, 2016
 Page 9

pre-MUR 489, the requestors or respondents used, obtained and/or sold personally identifying contributor information taken from FEC reports in plain violation of the privacy interests that the sale and use provision seeks to protect. Likewise, the only examples of a court finding a violation of the sale and use provision are inapposite here, since the defendants in those cases were in the business of selling the names and address of contributors on FEC reports for list brokering and prospecting purposes. *See Fed. Election Comm'n v. Am. Int'l Demographic Serv., Inc.*, 628 F. Supp. 317, 318 (E.D. Va. 1986); *Fed. Election Comm'n v. Legi-Tech, Inc.*, 967 F. Supp. 523, 525 (Dist. D.C. 1997). Unlike these examples, RevUp's limited use of FEC financial data in an analysis of a client's or user's pre-existing list poses no privacy threat of the sort Congress sought to protect when passing the restriction.

RevUp is also different from the proposed activities of NGP that the Commission analyzed in Advisory Opinion 2004-24. NGP proposed a software function that, somewhat similar to RevUp's, obtained donor contribution histories from FEC records. However, portions of NGP's proposal specifically sought to (a) allow its users to sort and organize FEC data to build new contact lists and (b) sell data obtained from FEC reports, and NGP did not describe how it would limit its users from accessing names obtained from FEC reports. Request by NGP Software, Inc. at 2 (AOR 2002-24). Despite stating in Advisory Opinion 2004-24 that the sale and use provision is a "broad prophylactic measure to protect the privacy of contributors about whom information is obtained in FEC public records," the Commission also correctly stated that "the purpose of restricting the sale or use of information obtained from FEC reports is to protect contributors from having their names sold or used for commercial purposes." Advisory Opinion 2004-24 (NGP) (emphasis added).

When read in conjunction with the long line of advisory opinions (issued both prior and subsequent to AO 2004-24) that expressly allow the commercial and/or solicitation use of FEC data other than contributor identifying information, Advisory Opinion 2004-24 is best understood as an effort by the Commission to protect against the sale or use of names of contributors in response to (a) the general and ambiguous description of NGP's operations provided in its advisory opinion request; (b) NGP's lack of a description as to how or whether it would prevent users from obtaining new names from FEC reports; and (c) NGP's speculation in its request that it might act as a list broker. A similarly broad application of section 30111(a)(4)'s restrictions is not necessary or proper where, as in this case, RevUp has described in detail the technological limitations it will place on clients and users being able to obtain any contributor name and address information not already known to the user from FEC reports, and has stated that it will not act as a list broker.

Jeff S. Jordan
June 28, 2016
Page 10

CONCLUSION

As described above, the Complaint fails to allege specific facts that would constitute a violation of the Act or Commission regulations as implemented by the Commission. We therefore respectfully request that the Commission dismiss this matter and take no further action.

Very truly yours,

Handwritten signature of Marc E. Elias, followed by the initials TJH.

Marc E. Elias
Benjamin J. Ginsberg
Counsel to RevUp Software, Inc.

BEFORE THE FEDERAL ELECTION COMMISSION

In re MUR 7062

AFFIDAVIT OF STEVE SPINNER

I, Steve Spinner, do depose and state as follows:

1. My name is Steve Spinner. I am the Founder and Chief Executive Officer at RevUp Software ("RevUp"), located at 805 Veterans Blvd Suite 300, Redwood City, CA 94063.
2. RevUp is a bipartisan, for-profit corporation that designs cloud-based tools to help nonprofit organizations, academic institutions and political organizations meet their fundraising goals.
3. RevUp provides services to dozens of political committees on both sides of the aisle, as well as with a number of educational institutions and other non-political organizations.
4. RevUp offers these clients an algorithm that helps them identify individuals on their contact lists (and on individual volunteers' own lists) who are most and least likely to support the client's efforts.
5. RevUp's clients are able to avoid sending repetitive, intrusive and inappropriate solicitations. Instead, they can engage only those individuals who are likely to contribute to the client.
6. RevUp also allows campaigns a cutting-edge way to engage new people into the political process in a respectful manner.
7. Clients gain access to RevUp by entering into an agreement to obtain software licenses. When clients sign up for the service, they create a client profile that describes their organization in detail.
8. Clients can distribute RevUp login credentials to their staff and supporters. Each of these users then uploads his or her own pre-existing contact list into the RevUp software platform.
9. RevUp allows users to upload pre-existing contact lists from Gmail, LinkedIn, Microsoft Outlook, or from the user's own spreadsheet. Users can upload the name, employer, occupation, address, phone number, email address and educational background of each individual on their list.

10. RevUp does not compile, copy or in any way use or display individuals' names and addresses not already known to the user from FEC reports. The software does not function if a user does not first provide his or her own pre-existing list of contacts.
11. RevUp's Terms of Use require users to have the right to share the contact information they upload.
12. The RevUp algorithm performs an analysis of which individuals on the list are most likely and least likely to be supportive of client organization. The algorithm currently includes around 100 data point inputs, including the client's profile information, each individual's demographic and biographical information as uploaded by users; financial information regarding each individuals' past donations to non-political organizations; and financial information regarding each individuals' past political contributions; and publicly-available information from various other consumer databases.
13. Based on these inputs, RevUp assigns a score from 0 to 100 to each individual on a user's list that correlates to how well the individual aligns with the client organization.
14. RevUp provides the individual scores to the user who uploaded that individual, and allows the user to view the past charitable and political contributions of the individuals on their list (much like those contributions are viewable using the "Individual Contribution Search" on FEC.gov).
15. During this process, no individuals' names and addresses not already known to the user are imported into RevUp, displayed anywhere on the RevUp screen, or added to a user's contact list from FEC reports.
16. RevUp does not have any function that allows users to create a new list of prospective contacts.
17. RevUp is not in the business of selling lists of contributors.
18. RevUp warns users that "Federal law prohibits using contributor contact information that is obtained from FEC reports for the purpose of soliciting contributions or for any commercial purpose."

I declare under penalty of perjury that the foregoing is true and correct. Executed on June

28, 2016.



Steve Spinner