



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Marc Elias, Esq.
Perkins Coie, LLP
700 13th Street, NW
Washington, DC 20005-3960

APR 22 2019

Ben Ginsberg, Esq.
Jones Day
51 Louisiana Avenue, NW
Washington, DC 20001-2113

RE: MUR 7062
RevUp Software, Inc.

Dear Messrs. Elias and Ginsberg:

On May 12, 2016, the Federal Election Commission notified your client, RevUp Software, Inc., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your client at that time.

Upon review of the allegations contained in the complaint, and information supplied by you, the Commission, on April 11, 2019, found there is reason to believe that RevUp Software violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

Please note that your client has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If your client is interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the

Marc Elias, Esq.
 Ben Ginsberg, Esq.
 MUR 7062 (RevUp Software, Inc.)
 Page 2

Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondent. Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Claudio J. Pavia, the attorney assigned to this matter, at (202) 694-1597 or cpavia@fec.gov.

On behalf of the Commission,



Ellen L. Weintraub
 Chair

Enclosures
 Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondent: RevUp Software, Inc. MUR 7062

I. INTRODUCTION

9 This matter was generated by a complaint filed with the Federal Election Commission by
10 Glen Shaffer alleging that RevUp Software, Inc. (“RevUp”) is in violation of the “sale and use
11 provision”¹ of the Federal Election Campaign Act of 1971, as amended (the “Act”), because it
12 sells fundraising software that incorporates information taken from the Commission’s database
13 of reports filed by political committees (“FEC data”). RevUp denies the allegations, and argues
14 that it does not copy or obtain individual contributor names and addresses from FEC reports and
15 limits its sale and use of FEC data to individual contribution histories, and thus does not
16 implicate privacy concerns. For the reasons stated below, the Commission finds reason to
17 believe that RevUp violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a).

18 II. FACTUAL BACKGROUND

19 RevUp, a for-profit corporation based in Silicon Valley, sells web-based fundraising
20 software, which it describes as “a best-in-class data analytics software tool designed to maximize
21 fundraising outreach opportunities.”² Steve Spinner is the company’s founder and CEO.³
22 RevUp’s clients — nonprofit organizations, academic institutions, and political organizations —
23 gain access to the RevUp software by purchasing an organization-wide license.⁴ According to a
24 news article cited in the Complaint,⁵ prices for licenses reportedly start at \$13,500 per year, and
25 RevUp has sold licenses to “congressmen, senators, and governors of both parties, as well as

¹ 52 U.S.C. § 30111(a)(4) (in relevant part); *see also* 11 C.F.R. § 104.15.

MUR 7062 (RevUp Software, Inc.)
 Factual and Legal Analysis
 Page 2 of 8

1 most of the national party committees on both sides.”⁶ A license permits clients to distribute
 2 credentials to multiple users.⁷

3 Clients create an organizational profile which, for a political campaign, might include
 4 information such as the candidate’s background and stances on certain issues.⁸ Individual users
 5 upload their contact lists from an email program, LinkedIn, or a spreadsheet, and they can also
 6 provide additional biographical information about each of the contacts.⁹ The software returns a
 7 ranked list of the individuals who appear on the uploaded contact lists — the names are scored
 8 on a 100-point scale based on their likelihood of contributing to the client organization.¹⁰ Images
 9 displayed on the company’s website suggest that the scores are contained in a box (the color and
 10 shade of which reflect the scores).¹¹ RevUp claims that the scoring and ranking algorithm “gives
 11 you actionable insight into your network, *accurately predicting your best prospects by analyzing*
 12 *their ability and propensity to give.*”¹²

² Press Release, RevUp Software, Inc., *RevUp Announces Major Financing Update* (Mar. 24, 2016); *see* RevUp Resp. (June 28, 2016), Attach. ¶ 2 (Affidavit of Steve Spinner).

³ Spinner Aff. ¶ 1; Joshua Green, *Steve Spinner Just Fixed the Worst Thing About Being a Politician*, BLOOMBERG, Mar. 23, 2016.

⁴ Spinner Aff. ¶¶ 2-3, 7.

⁵ Compl. at 2.

⁶ Green, *supra* note 3; *see* Spinner Aff. ¶ 3.

⁷ Spinner Aff. ¶ 8.

⁸ *Id.* ¶ 7; RevUp Resp. at 2.

⁹ Spinner Aff. ¶ 9; *see also id.* ¶ 11 (“RevUp’s Terms of Use require users to have the right to share the contact information they upload.”).

¹⁰ *Id.* ¶¶ 4, 12-14; RevUp Resp. at 2-3.

¹¹ FUNDRAISING METHODOLOGY – REVUP SOFTWARE, <http://www.revup.com/our-methodology> (last visited Dec. 17, 2016) (“RevUp Methodology”); POLITICAL FUNDRAISING – REVUP SOFTWARE, <http://www.revup.com/political> (last visited Dec. 17, 2016) (“RevUp Political Fundraising”).

¹² RevUp Methodology, *supra* note 11 (emphasis added).

MUR 7062 (RevUp Software, Inc.)
 Factual and Legal Analysis
 Page 3 of 8

1 One factor that goes into generating an individual's score is his or her contribution
 2 history — that is, the dates, amounts, and recipients of past contributions — taken from the
 3 Commission's database of reports filed by political committees.¹³ The scoring and ranking
 4 algorithm analyzes that information, along with about 100 other pieces of data (assuming all data
 5 is available for a given individual).¹⁴ A related feature enables users to click on a name and view
 6 that person's contribution history.¹⁵ It also shows other types of donation histories, and a text
 7 box apparently pops up that states whether (and why) the selected name is a solicitation target
 8 worth pursuing.¹⁶

9 Organizations, including political campaigns, have reportedly used the RevUp software
 10 to enhance their fundraising efforts.¹⁷ Spinner demonstrated to a reporter how the RevUp
 11 software can enhance a campaign's fundraising efforts, specifically, by identifying prospects
 12 who might have been dismissed using traditional fundraising methods, because they associate
 13 with the opposite party:

14 Spinner . . . uploads his own 6,933 contacts and optimizes them for an imaginary
 15 Republican congressional candidate. Within minutes, the software merges 605
 16 duplicate entries, then ranks the 6,328 people on a 100-point scale. Hundreds of
 17 Spinner's contacts are shaded red or pink, including several prominent venture
 18 capitalists who are major Democratic donors. Another click reveals the
 19 Republican candidates or causes to which Spinner's contacts have given, which
 20 the software correlates with our own (fictitious) Republican. Were he real, it

¹³ RevUp Resp. at 2-3; *see* Spinner Aff. ¶ 12. RevUp maintains that the software includes a disclaimer regarding the sale and use provision. *Id.* ¶ 18 ("Federal law prohibits using contributor contact information that is obtained from FEC reports for the purpose of soliciting contributions or for any commercial purpose."); *see* RevUp Resp. at 3.

¹⁴ *See* Compl. at 2; Green, *supra* note 3; Spinner Aff. ¶ 12.

¹⁵ Spinner Aff. ¶ 14; RevUp Resp. at 3.

¹⁶ RevUp Political Fundraising, *supra* note 11. RevUp states on its website that "[h]aving information about past giving patterns puts you in a great position to suggest giving amounts that are appropriate, giving you the edge when making your ask." *Id.* The Response states that displaying individual contribution histories serves the function of preventing client organizations from soliciting excessive contributions. RevUp Resp. at 3.

¹⁷ Green, *supra* note 3.

MUR 7062 (RevUp Software, Inc.)
 Factual and Legal Analysis
 Page 4 of 8

1 would alert us if a prospective donor had already given the legal maximum or
 2 given to the opposing candidate, so we would know not to embarrass him with a
 3 phone call.¹⁸

4 Besides enabling clients to “maximize their fundraising efforts,” RevUp claims that its
 5 software provides other benefits.¹⁹ For instance, clients “are able to avoid sending repetitive,
 6 intrusive and inappropriate solicitations” to uninterested individuals.²⁰ In addition, by using the
 7 software to streamline fundraising efforts, “[p]ublic officials can spend less time fundraising and
 8 more time governing and legislating.”²¹ RevUp states that the software “simultaneously
 9 deprioritizes individuals who are less likely to be supportive.”²²

10 III. LEGAL ANALYSIS

11 The Act requires political committees to report to the Commission the identification of
 12 each person whose aggregate contributions exceed \$200 within the calendar year (or election
 13 cycle, in the case of an authorized committee), along with the date and amount of any such
 14 contribution.²³ Correspondingly, the Act requires the Commission to make all statements and
 15 reports available for public inspection and copying.²⁴ Information copied from those statements
 16 and reports, however, “may not be sold or used by any person for the purpose of soliciting
 17 contributions or for commercial purposes, other than using the name and address of any political

18 *Id.*

19 REVUP SOFTWARE – REVOLUTIONIZE YOUR FUNDRAISING, <http://www.revup.com> (last visited Dec. 17, 2016); *see* RevUp Resp. at 8; Spinner Aff. ¶ 2.

20 Spinner Aff. ¶ 5.

21 RevUp Political Fundraising, *supra* note 11; *see* Green, *supra* note 3; RevUp Resp. at 2.

22 RevUp Resp. at 2.

23 52 U.S.C. § 30104(b)(3)(A). The term “identification,” in the case of an individual, is defined as the contributor’s name, mailing address, occupation, and employer. *Id.* § 30101(13)(A).

24 *Id.* § 30111(a)(4).

MUR 7062 (RevUp Software, Inc.)
 Factual and Legal Analysis
 Page 5 of 8

1 committee to solicit contributions from such committee.”²⁵ Congress enacted the sale and use
 2 provision “to protect the privacy of the generally very public-spirited citizens who may make a
 3 contribution to a political campaign or a political party.”²⁶

4 Based on the legislative history, and the Congressional objective of protecting the privacy
 5 of individual contributors, the Commission has consistently interpreted the provision to prohibit
 6 the sale and use of individual contribution information — including the names and addresses of
 7 individual contributors, as well as their contribution histories — for the purpose of soliciting
 8 contributions.²⁷ The Commission has approved the sale and use of individual contribution
 9 information only in “narrow circumstances” where the activities were informative in nature and
 10 unrelated to solicitation.²⁸

²⁵ *Id.*; *see also* 11 C.F.R. § 104.15. The Commission’s implementing regulation provides that “*soliciting contributions* includes soliciting any type of contribution or donation, such as political or charitable contributions. 11 C.F.R. § 104.15(b) (emphasis in original).

²⁶ 117 Cong. Rec. 30,057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon), *reprinted in* Legislative History of the Federal Election Campaign Act of 1971 at 581 (1981) (“These names would certainly be prime prospects for all kinds of solicitations, and I am of the opinion that unless this amendment is adopted, we will open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harassment, and in that way tend to discourage them from helping out as we need to have them do.”).

²⁷ *See, e.g.*, Advisory Op. 2004-24 (NGP) (“AO 2004-24”); Advisory Op. 1985-16 (Weiss) (“AO 1985-16”); *cf.* MURs 6053 & 6065 (HuffingtonPost.com) (permitting the sale and use of individual contribution information by a commercial entity where the principal purpose was informational, and there was no indication that the entity published the FEC data for the purpose of soliciting contributions); Advisory Op. 2015-12 (Ethiq) (same); Advisory Op. 2014-07 (Crowdpac) (“AO 2014-07”) (same). The Commission has “filled the gap left by Congress while accommodating [] competing policy objectives,” which include, on the one hand, promoting the disclosure of information to inform the electorate where campaign money comes from (to deter corruption and enforce the Act’s limitations and prohibitions), and, on the other, protecting the privacy of individual contributors (such that they will not become prime prospects for all kinds of solicitation). *FEC v. Legi-Tech, Inc.*, 967 F. Supp. 523, 529-30 (D.D.C. 1997); *see FEC v. Political Contributions Data, Inc.*, 943 F.2d 190, 191 (2d Cir. 1991); (citing *Buckley v. Valeo*, 424 U.S. 1, 66-68 (1974)); 117 Cong. Rec. 30,057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon), *reprinted in* Legislative History of the Federal Election Campaign Act of 1971 at 581 (1981).

²⁸ Advisory Op. 1988-02 at 2 (Chicago Board of Options Exchange II) (posting FEC data on bulletin boards located in area accessible only by members of separate segregated fund); *see, e.g.*, Advisory Op. 2013-16 (PoliticalRefund.org) (informing contributors of their right to seek a refund); Advisory Op. 2009-19 (Club for Growth) (informing contributors that a candidate changed party affiliation); Advisory Op. 1995-09 (NewtWatch) (publishing information on Internet forum about select public officials); Advisory Op. 1984-02 (Gramm) (informing contributors that a committee with a misleading name was not connected to the authorized committee); Advisory Op. 1981-05 (Findley) (informing contributors about allegedly defamatory statements).

MUR 7062 (RevUp Software, Inc.)
Factual and Legal Analysis
Page 6 of 8

1 The available information indicates that RevUp impermissibly sells and uses FEC data
2 because its software incorporates individual contribution histories obtained from the
3 Commission's database to enhance its clients' solicitation efforts. RevUp markets the software
4 as a tool that can "accurately predict[] your best prospects by analyzing their ability and
5 propensity to give."²⁹ This contravenes the purpose of the sale and use provision which, as noted
6 above, was enacted to protect the privacy of individual contributors so that they will not become
7 prime prospects for solicitation, and thus constitutes a clear violation of the Act.

8 RevUp claims that it may legally sell and use FEC data to help clients maximize their
9 fundraising because it does not copy or obtain names and addresses from the Commission's
10 database.³⁰ However, the Commission has prohibited the sale of individual contribution histories
11 where, as here, that data was displayed within fundraising-related software, and has prohibited
12 the use of such data where, as here, the purpose was to enhance a pre-existing list of names by
13 determining who among listed individuals was a political contributor.

14 In Advisory Opinion 1985-16 (Weiss), the Commission concluded that it was
15 impermissible to compare the names on a pre-existing list, which the requestor intended to
16 market for solicitation purposes, with the names of individual contributors contained in the
17 Commission's database.³¹ This prohibited matching technique is a rudimentary example of an
18 algorithm that uses FEC data to identify individuals who are more likely to make a contribution,
19 akin to RevUp's scoring and ranking algorithm. Further, in Advisory Opinion 2004-24 (NGP),
20 the Commission concluded that it was impermissible to add a feature to political and reporting

²⁹ RevUp Methodology, *supra* note 11.

³⁰ RevUp Resp. at 1-2; *see* Spinner Aff. ¶¶ 10, 15.

³¹ AO 1985-16 at 2.

MUR 7062 (RevUp Software, Inc.)
 Factual and Legal Analysis
 Page 7 of 8

1 software that would have enabled the requestor's clients to view the contribution histories of
 2 individuals in their own database for the purpose of soliciting contributions.³² That feature was
 3 fundamentally the same as the component of the RevUp software that displays contribution
 4 histories, but far less sophisticated.

5 RevUp contends that two recent advisory opinions — Advisory Opinion 2015-12 (Ethiq)
 6 and Advisory Opinion 2014-07 (Crowdpac) — support the notion that individual contribution
 7 histories may be used in the context of fundraising analytics.³³ However, unlike RevUp, the
 8 requestors there did not propose to use FEC data for solicitation purposes but sought to analyze
 9 FEC data in order to glean insights about candidates and corporations to help users obtain
 10 information about like-minded entities.³⁴ Further, the information was presented in an aggregate
 11 form (no contact information was disclosed).³⁵

12 RevUp's arguments elide the fact that its software matches the *names* of individuals on
 13 the uploaded contact lists to the *names* of contributors in the Commission's database. The
 14 relevant contribution histories are then copied and paired with the *names* on the contact lists.
 15 These actions directly implicate the privacy concerns that Congress sought to mitigate, and
 16 RevUp's own materials show it uses individual contributors' names for the purpose of soliciting
 17 contributions (which RevUp concedes is a violation).³⁶ And that privacy concern is amplified

³² AO 2004-24 at 2-3.

³³ RevUp Resp. at 7-8.

³⁴ For instance, the requestor in Advisory Op. 2015-12 ("AO 2015-12") sought to analyze contributions made by corporate executives to determine whether the user's ideology was consistent with a given corporation as represented by its leadership. The purpose was not to solicit those executives and they were not individually identified to the user. AO 2015-12 at 2, 4.

³⁵ *Id.* at 2; AO 2014-07 at 9-11.

³⁶ RevUp Resp. at 9.

MUR 7062 (RevUp Software, Inc.)
Factual and Legal Analysis
Page 8 of 8

1 where, as here, the data is not only used to identify who is a past contributor, but also to score
2 and rank those individuals based on their likelihood of making a contribution.

3 The fact that the RevUp software contains a disclaimer regarding usage of FEC data for
4 solicitation purposes does not defeat the allegation.³⁷ A disclaimer warning about misuse of FEC
5 data may be confusing if considered in conjunction with the solicitation purposes touted by the
6 company's marketing materials. Taken together, the disclaimers and marketing claim could be
7 understood to suggest that, while directly accessing FEC data would be illegal, solicitations
8 made using data from the software would be permissible. Moreover, the RevUp disclaimer
9 indicates that the sale and use provision applies only to names and addresses, not contribution
10 histories, which might further confuse clients.

11 In conclusion, the Commission has prohibited the sale and use of individual contribution
12 histories for the purpose of soliciting contributions. In addition, it is clear that the RevUp
13 software uses FEC data in a manner that directly implicates the privacy concerns that Congress
14 sought to mitigate. Therefore, the Commission finds reason to believe that RevUp violated
15 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a).

³⁷ Spinner Aff. ¶ 18 (“Federal law prohibits using contributor contact information that is obtained from FEC reports for the purpose of soliciting contributions or for any commercial purpose.”); *see* RevUp Resp. at 3.