



P.O. Box 29920
San Francisco, CA 94129-0920

September 25, 2009

Mr. Michael Brey, TPC Board Representative for Oracle Corporation
Oracle Corporation
90 South Cascade Avenue, Suite 600
Colorado Springs, CO 80920

Cc: Ms. Dorian Daley, General Counsel
Oracle Corporation
500 Oracle Parkway
Redwood Shores, CA 94065

Re: Violation of the TPC's Fair Use Policies

Dear Michael,

The Transaction Processing Performance Council (TPC) is a non-profit corporation founded to define transaction processing and database benchmarks and to disseminate objective, verifiable TPC performance data to the industry. The TPC has rules governing fair use of TPC results. In particular, the TPC does not allow TPC-related claims to be used in publicity unless those claims are substantiated by benchmark results that have been registered with the TPC and made available to the general public. Oracle, as a member of the TPC, is required to abide by the fair use rules.

Recently, Oracle ran an advertisement in The Wall Street Journal and The Economist making unsubstantiated superior performance claims about an Oracle/Sun configuration relative to an official TPC-C result from IBM. The ad ran twice on the front page of The Wall Street Journal (August 27, 2009 and September 3, 2009) and once on the back cover of The Economist (September 5, 2009). The ad references a web page that contained similar information and remained active until September 16, 2009. A complaint was filed by IBM asserting that the advertisement violated the TPC's fair use rules.

On September 17, 2009, the TPC's Board of Directors reviewed the complaint and determined that the advertisement violates the following TPC policies (excerpted):

8.2 Fair Use of TPC Results

When **Results** are used in publicity, the use is expected to adhere to basic standards of fidelity, candor, and due diligence, the qualities that together add up to, and define, Fair Use of **Results**.

- Fidelity: Adherence to facts; accuracy
- Candor: Above-boardness; needful completeness
- Due Diligence: Care for integrity of **Results**
- Legibility: Readability and clarity

8.2.2 Unfair Use

It is unfair use for publicity to:

- 8.2.2.1 Use estimated results that refer to the **TPC** or **TPC** workloads, or to compare them to **Results**.
- 8.2.2.2 Use results, metrics, or terminology which are not based upon official **Results**, but which could be reasonably inferred to refer to the **TPC** or **TPC** workloads, or to be comparable to **Results**.
- 8.2.2.4 Make **TPC**-related claims or lead the reader to **TPC**-related conclusions which are untrue or cannot be substantiated by the entire body of **Results**.

Comment: the intention of this policy is to prohibit: 1) false or misleading **TPC**-related marketing claims; 2) publicity that encourages the average reader to make false or untrue inferences based upon **TPC** data, but not generic, innocuous marketing claims (e.g. "we are the best").
- 8.2.2.10 Show **Results** with non-**Results** in a manner that may cause the reader to believe that non-**Results** are in fact **Results**.

The TPC Policies are available at <http://www.tpc.org/information/about/documentation/doc.asp>.

Required Actions

The TPC's Board of Directors has determined the following actions are required.

1. Oracle is required to pay a fine of \$10,000.
2. Oracle is required to take all steps necessary to ensure that the ad will not be published again.
3. Oracle is required to remove the contents of the page www.oracle.com/sunoraclefaster.
4. Oracle is required to report back to the TPC on the steps taken for corrective action and the procedures implemented to ensure compliance in the future.

Your prompt attention to this matter is requested.

Sincerely,



Michael Majdalany
TPC Administrator