



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Aristotle International, Inc.) MUR 6334
)

**STATEMENT OF REASONS OF
VICE CHAIRMAN MATTHEW S. PETERSEN
AND COMMISSIONER CAROLINE C. HUNTER**

As the great Yogi Berra once said, “It’s déjà vu all over again.” Nine years ago, the Commission voted to close the file in MUR 5625 (Aristotle International, Inc.) (“Aristotle I”), an enforcement matter with facts strikingly similar to those here. In Aristotle I, National Geographic and Political Software, Inc. (“NGP”), a political compliance and reporting software consultant, filed a complaint alleging that its competitor, Aristotle International, Inc. (“Aristotle”), violated the “sale or use” prohibition of the Federal Election Campaign Act (the “Act”) by gathering individuals’ contributor data from the Commission’s website and offering the data for sale to its customers.¹ The Commission found reason to believe that a violation occurred and to authorize the Commission’s Office of General Counsel (“OGC”) to investigate.² Following the investigation, however, we voted against OGC’s recommendation to find probable cause to believe that a violation occurred and voted to close the file.³

Barely four months after that vote, NGP filed the complaint in this matter, alleging that the same respondent had violated the same provision of the Act by engaging in the same type of conduct as in Aristotle I. Because the complaint and its attachments indicated that

¹ The Act prohibits “any person” from selling or using information copied from reports or statements filed with the Commission “for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.” 52 U.S.C. § 30111(a)(4); *see also* 11 C.F.R. § 104.15(a) (prohibiting information from reports filed with Commission from being “sold or used by any person for the purpose of soliciting contributions or for any commercial purpose, except that the name and address of any political committee may be used to solicit contributions from such committee”).

² Certification of Vote (Dec. 8, 2005), MUR 5625 (Aristotle I).

³ *Id.*, Certification of Vote (Mar. 17, 2010); *see also id.*, Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn (May 14, 2010).

Aristotle’s updated software may have involved a “more far-reaching” use of Commission data than the software at issue in Aristotle I, we voted to find reason to believe that a violation occurred and authorized OGC to investigate. And, after considering the entire record, including the arguments offered by Aristotle in its briefs and oral presentation, we again rejected OGC’s recommendation to find probable cause and voted to close the file. This Statement explains the reasons for our recent vote.

I. Background

Aristotle sells Aristotle 360, an accounting, reporting, compliance, fundraising, and data management software package, to customers around the country. Political committees, for example, use Aristotle 360 to create databases of their contributors, track receipts and disbursements, and file disclosure reports. At issue in this matter is a single feature of Aristotle 360 known as Relationship Viewer. Relationship Viewer allows a customer to enter the name of an individual from the customer’s existing database to see the names of other individuals in the customer’s database with “relationships” to that individual.

Relationship Viewer finds relationships between individuals within the customer’s database based on factors such as where they live, what they buy, where they work, who they vote for, and their political contributions and donations. Relationship Viewer also displays information about the individuals’ contribution histories, which Aristotle obtains from reports and statements filed with the Commission. This is the only Commission data that Relationship Viewer uses.

II. Discussion

We found reason to believe that Aristotle’s use of Commission data in Relationship Viewer violated the Act’s “sale or use” prohibition because of three concerns.

- First, Relationship Viewer appeared to present a “more far-reaching” use of Commission data than did the software program considered in Aristotle I. The software at issue in Aristotle I provided contribution information only about the specific subject of a search, whereas Relationship Viewer automatically displayed information about contributions made by both the subject of a search and by all individuals with whom the software determined that the subject had a relationship.⁴
- Second, Aristotle’s marketing materials suggested that Relationship Viewer focused primarily on solicitation rather than compliance.⁵ In fact, at both the “reason to believe” and “probable cause to believe” stages of this proceeding, OGC’s recommendations relied heavily on Aristotle’s descriptions of Relationship Viewer in materials aimed at potential customers and in a patent application.

⁴ Factual & Legal Analysis at 9-10, MUR 6334 (Aristotle).

⁵ *Id.* at 10.

- Third, Relationship Viewer did not appear to have any safeguards against its customers' use of individuals' displayed contribution histories to solicit those individuals.⁶

Information obtained during OGC's investigation and Aristotle's subsequent changes to how Relationship Viewer uses and displays Commission data have alleviated each of these concerns.

Aristotle addressed our first concern by voluntarily changing Relationship Viewer's initial search results to eliminate the automatic display of contribution information. As currently configured, Relationship Viewer does not display any individual's contribution history unless the user clicks on or hovers over that individual's displayed name, and then only for one individual at a time. This change limits the amount of Commission data that Relationship Viewer makes available to its customers at any given time and puts the onus on each customer to seek it out, individual-by-individual, thereby making Relationship Viewer's use of the data less "far reaching" and more like the software program that the Commission did not find to violate the Act in Aristotle I.

Aristotle addressed our second concern by providing additional information about the context for and accuracy of statements in its marketing materials about Relationship Viewer. For example, screenshots of a Relationship Viewer marketing video on which OGC relied apparently contained erroneous information.⁷ Aristotle's co-founder and chief executive officer informed the Commission under penalty of perjury that the text in the screenshots erroneously indicated that Aristotle's customers could export Relationship Viewer search results to their own databases, which, he said, has never been the case. Nor could he confirm the accuracy of the data points in the marketing video screenshots, the exact origin of the images used, how they came to be used, or whether they came from a version of Relationship Viewer that Aristotle actually sold to its customers.

Further, Aristotle explained that its patent application for Relationship Viewer described the broadest possible use of the software without distinguishing between state and federal applications. Since many states do not have the equivalent of a sale or use restriction, state-level campaign committees in those states would not be subject to a sale or use restriction.⁸

Aristotle also explained that Relationship Viewer has many potential uses that do not include soliciting contributions. At the Commission hearing on this matter, Aristotle's counsel explained that the clientele for Aristotle 360 includes political committees, candidates, trade associations, corporations, entities responsible for complying with the Act, and entities engaged

⁶ *Id.* at 11.

⁷ *Id.* at 6.

⁸ Letter from David M. Mason, Senior Vice President, Aristotle, and Jason Torchinsky and Michael Bayes, Counsel to Aristotle, Holtzman Vogel Josefiak Torchinsky PLLC, to Commission Secretary, Federal Election Commission (Feb. 15, 2019).

in grassroots lobbying activities.⁹ These customers may use Relationship Viewer to keep track of contributions made to joint fundraising committees, to understand better their own donors or members, to prepare a briefing paper for a candidate or prepare a candidate for a meeting, or otherwise to enhance the user's understanding of his or her audience. Aristotle has indicated that its customers may find information about the contribution histories of individuals in its database to be useful, for example, in voter persuasion efforts, because "shared interest links tend to show voters who may be persuaded by other linked voters, or who may respond to similar types of appeals." Aristotle also indicated that pay-to-play rules create compliance uses for Relationship Viewer that are separate and apart from any Commission regulations.¹⁰

Aristotle addressed our third concern by providing information about the many safeguards against its customers' possible misuse of Commission data in Relationship Viewer. Although customers can electronically view individuals' contribution histories in Relationship Viewer, the information stays on Aristotle's server and cannot be electronically manipulated by customers for any purpose. This means that customers cannot sort, save, download, export, or otherwise integrate the information into their own databases. Nor can customers use Relationship Viewer to search Commission data, to conduct searches based on Commission data, to generate lists of prospects for solicitation, or to enhance existing lists by appending Commission data. Further, Relationship Viewer does not display any contact information for any of the individuals whose names and contribution histories are displayed, and Aristotle 360 provides customers with a written warning about the prohibited sale or use of Commission data before allowing them to access Relationship Viewer. These limitations on the use of Commission data in Relationship Viewer provide reasonable assurances against misuse of the data by Aristotle's customers.

Moreover, even if Aristotle had technically violated the Act, further pursuit of this matter would have been an unwise use of Commission resources. The Commission has already sunk years into trying to conciliate this matter voluntarily before reaching the probable cause stage. Given those efforts' marked lack of success, any further pursuit of this matter by the Commission likely would have required litigation, with its attendant additional drain on Commission resources as well as an uncertain outcome. Even a successful outcome would have provided little benefit in terms of monetary penalty or deterrent effect, given that Relationship Viewer is almost never used and has been modified since the reason-to-believe finding.¹¹

⁹ Transcript of Proceedings in Probable Cause Hearing at 22 (Sept. 5, 2018).

¹⁰ Unfortunately, the current Commission Chair refused to approve Aristotle's request to provide additional information about how its customers may use Relationship Viewer to help ensure compliance with pay-to-play rules.

¹¹ During OGC's investigation, Aristotle analyzed the number of times its Aristotle 360 customers accessed Relationship Viewer. Between December 31, 2010 and October 11, 2011, it found 47,358,065 page requests by Aristotle 360 users, of which only 177 were for Relationship Viewer page. This constitutes .00037 %, or 37/10,000ths of the pages in Aristotle 360 that were accessed during this time. Moreover, only 45 distinct IP addresses accessed Relationship Viewer page during this time. This incidence of use includes *any* access to Relationship Viewer page, including irrelevant uses such as training, or inadvertent access for a few seconds.

Finally, the Commission's ability to enforce the Act and regulations has not been impaired as a result of this dismissal. The volume of complaints before the Commission is at record levels, which should afford the Commission ample opportunity to address the legal issues raised here in another matter and based on a stronger record. Under these circumstances, dismissing this matter as an exercise in ordering Commission enforcement priorities was not only reasonable, but proper.¹²

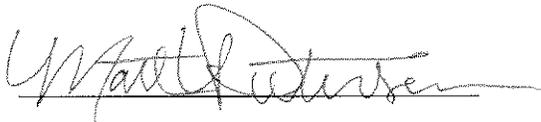
III. Conclusion

For these reasons, we did not vote to find probable cause to believe Aristotle violated the Act.

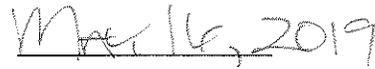
May 16, 2019

Indeed, many of the log entries by the same IP address show multiple hits a few seconds apart, which indicates that no information was assessed. Even if information was accessed, it was not possible to determine whether the information related to a federal contribution or campaign. *See* Email from Stephen Hershkowitz, Counsel, Aristotle, to W. Powers, Attorney, Federal Election Commission (Nov. 1, 2011). OGC's investigation did not uncover any information indicating that Aristotle's clients actually use contribution information viewed through Relationship Viewer in a prohibited manner.

¹² *Heckler v. Chaney*, 470 U.S. 821 (1985); *CREW v. FEC*, 892 F.3d 434 (D.C. Cir. 2018).



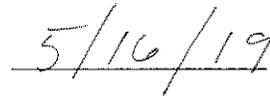
Matthew S. Petersen
Vice Chairman



Date



Caroline C. Hunter
Commissioner



Date