

1 **FEDERAL ELECTION COMMISSION**
2 **999 E Street, N.W.**
3 **Washington, D.C. 20463**

4
5 **FIRST GENERAL COUNSEL'S REPORT**

6
7 MUR: 6334
8 DATE COMPLAINT FILED: 07/28/2010
9 DATE OF NOTIFICATION: 07/29/2010
10 RESPONSE RECEIVED: 09/15/2010
11 DATE ACTIVATED: 10/20/2010

12
13 EXPIRATION OF SOL: 01/01/2010 earliest/
14 09/15/2015 (ongoing)

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FEDERAL ELECTION
COMMISSION

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17 **COMPLAINANTS:** NGP Software, Inc.
18 Stuart Trevelyan, President

19
20 **RESPONDENT:** Aristotle International, Inc.

21
22 **RELEVANT STATUTES**
23 **AND REGULATIONS:** 2 U.S.C. § 438(a)(4)
24 11 C.F.R. § 104.15

25
26 **INTERNAL REPORTS CHECKED:** None

27
28 **FEDERAL AGENCIES CHECKED:** None

29
30 **I. INTRODUCTION**

31 This matter involves a complaint by NGP Software, Inc. against its competitor, Aristotle
32 International, Inc. ("Aristotle"), alleging that Aristotle's software application "Relationship
33 Viewer" violates section 438(a)(4) of the Federal Election Campaign Act of 1971, as amended
34 (the "Act"). Specifically, the complaint alleges that Aristotle's use of FEC data violates section
35 438(a)(4), also known as the "sale and use" provision of the Act, because Aristotle has marketed
36 the Relationship Viewer as a program designed to encourage campaigns to solicit contributions
37 from individuals, and the Relationship Viewer's search function yields names of individuals and
38 other information that is drawn from FEC reports.

1 Aristotle's response to the complaint maintains that the Relationship Viewer does not use
2 FEC data to create lists of solicitation targets in violation of the Act, nor is FEC data able to be
3 exported or downloaded through the Relationship Viewer. Response at 28, 31. Additionally,
4 Aristotle claims that the Relationship Viewer application was not the main focus of its
5 advertisement for its comprehensive 360 software program. Response at 27. Rather, Aristotle
6 uses the Relationship Viewer as a "technological advancement" to "grab people's attention and
7 direct[] them to Aristotle's sales staff." Response at 28. Finally, Aristotle states that the
8 Relationship Viewer has a legitimate purpose in downloading FEC data because that information
9 can be used for compliance and vetting purposes. Response at 32.

10 Based on available information discussed below, we recommend that the Commission
11 find reason to believe that Aristotle International, Inc. violated 2 U.S.C. § 438(a)(4). Further, we
12 recommend that the Commission authorize the use of compulsory process in this matter in order
13 to conduct a limited investigation using both formal and informal methods.

14 **II. FACTUAL AND LEGAL ANALYSIS**

15 **A. Factual Background**

16 Aristotle introduced the Relationship Viewer application as part of its larger Aristotle 360
17 software program in 2005. Response at 6. As described in Aristotle's response, the 360
18 program's "main purpose . . . is to allow political committees to efficiently and accurately
19 manage and account for contributions and disbursements to permit committees to file federal and
20 state compliant financial disclosure reports and to manage their data." Response, Declaration of
21 Dean A. Phillips ¶ 14. In addition, the 360 program includes numerous other functions, some of
22 which include the ability to: perform compliance/vetting of contributions and contributors;
23 check contribution and disbursement limits; create contribution history summaries, that are

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1 displayed in the individuals' full detailed record, including contributions by year or election
2 cycle; and use a Relationship Viewer. See Response, Declaration of Dean A. Phillips ¶16.

3 As one aspect of the larger Aristotle 360 program, the Relationship Viewer can be used
4 "to uncover relationships between someone in [a political committee's] own database, through
5 the voter file, state campaign reports and the Commission's files." Response at 14. The
6 Relationship Viewer essentially acts as a search tool. The political committee can input the
7 name of an individual. The user would then receive search results of other individuals with
8 whom the original individual has "relationships." Response at 15. Importantly, the user must
9 first have the individual's name. Response at 14.

10 The search results are displayed both graphically and in list form. Once the user
11 "searches" for a name, the Relationship Viewer produces a graphical display with the person
12 searched for appearing at the center of a diagram. For example, in the "connection map" shown
13 below in Figure 1, "branches" stem from the original individual to other individuals with whom
14 the original individual has a relationship, as determined by the Relationship Viewer. See
15 Complaint, Attachments *Aristotle 360 Relationship Viewer Demo Screenshots* (hereinafter
16 "*Relationship Viewer Screenshot*"); see also *Data-centric Grassroots Organizing*, displayed
17 below as Figure 1.

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1 With Relationship Viewer, Aristotle 360 automatically finds the most meaningful
2 connections in your database – In the interactive connection map, you can determine the
3 links between your supporters . . . – and their co-workers . . . – their neighbors . . . – and
4 more. – The Relationship Viewer allows you to build your connection map with up to six
5 degrees of separation. – You can use the record listing to automatically drill-down on the
6 individual organization of your interest – You can also export your connection map to
7 many different standard formats for customized use.

8
9 *Id.*

10 Second, Aristotle issued a press release announcing its application to patent its political
11 data mining technology. In the release, Aristotle referred to its 360 software “as the most
12 powerful political data mining tool and campaign software.” *Sae Complaint, Press Release:*
13 *Aristotle Files Patent on Political Data Mining Technology; Boosts Compliance and*
14 *Fundraising* (Feb. 25, 2010) (hereinafter “*Aristotle Press Release*”). The press release describes
15 several ways in which the Aristotle 360 software uses the new technology, including enabling
16 “users to access, mine and harness contribution disclosure records in a manner consistent with
17 the law and for compliance purposes.” *Id.* The press release further states: “Aristotle’s platform
18 incorporates detailed state contributor and voter lists with highly accurate consumer databases to
19 illuminate exactly how much a donor has given, how much they can give, and to suggest the
20 maximum they might agree to contribute where allowed by law.” *Id.* Finally, the relevant
21 portion of the press release states:

22 While Aristotle’s technology delivers significant advantage in terms of solicitation, the
23 software was designed to allow campaigns to comply with Federal Election Commission
24 restrictions and state laws impacting campaigns and contributor databases. Breakthrough
25 features show a supporter’s employer and occupation, as well as age and family member
26 names, if the information is not already known.

27
28 *Id.* In its response, Aristotle further explains the functions of its 360 software described in the
29 press release, explaining “There is no increased fee for inclusion or per record usage of such

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1 data, and Aristotle's FEC contributor data look-up feature also is available at no charge on
2 Aristotle's website at www.Aristotle.com." Response at 13.

3 Finally, Aristotle ran a print advertisement in *Politics Magazine*. See Complaint, *Politics*
4 *Magazine Ad* (March 10, 2010). The advertisement states: "The only other way to raise as much
5 money could land you in jail." *Id.* It also features a series of mug shots, and lists a number of
6 Aristotle's products on the right-hand side, including a "Relationship Finder." *Id.* The
7 advertisement also includes the statement:

8 Only Aristotle can provide the data needed to point the way to the thousands of donors
9 predisposed to contributing to your campaign, PAC or grassroots group. Our powerful
10 web-based system tells you everything you need to know about a prospect or contributor.
11 It makes the names, addresses, phone numbers and family member names of millions of
12 contributors to state campaigns instantly available. *It not only tells you which permissible*
13 *donors are giving to like-minded causes, it can tell you if a person is close to maxing out,*
14 *the correct amount to ask for and the name of their spouse and their birthday.* You'll
15 learn if they give passionately to religious, environmental, child welfare, gun owner,
16 property rights, antiwar, civil rights, Democratic or Republican causes.

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18 *Id.* (Emphasis in original.) Further, the advertisement also states: "While raising more money,
19 you can have the peace of mind knowing that only Aristotle guarantees your donations are
20 processed are reported in a manner that is 100% FEC and state compliant. To learn more visit
21 http://www.fec.gov/pdf/record/2004/oct04.pdf and to go AO 2004-24 "Use of Contributor
22 Information" or go to www.aristotle.com/FECdecision." *Id.*

23 **B. Analysis**

24 In relevant part, 2 U.S.C. § 438(a)(4) provides that the Commission shall provide reports
25 and statements filed with it to the public, "except that any information copied from such reports
26 or statements may not be sold or used by any person for the purpose of soliciting contributions or
27 for commercial purposes, other than using the name and address of any political committee to
28 solicit contributions from such committee." In addition, Commission regulations prohibit the use

1 that the use of such information would be prohibited under the Act, the Commission explained
2 that "[t]he inclusion of such information in [the software], whether sold as a separate service or
3 as part of a client's purchase of the [software] upgrade, would be a prohibited use of contributor
4 information obtained from the FEC's public records. Such use is for a commercial purpose."

5 *Id.* at 3. Specifically, the proposed software at issue in Advisory Opinion 2004-24 appeared to
6 use FEC data to assist clients with soliciting contributions, but the requestor did not detail how
7 such data would actually be used.¹

8 The Commission recently addressed the use of FEC data in a more specific context. In
9 MUR 5625 (Aristotle), the Commission did not approve recommendations to find probable cause
10 that Aristotle's Campaign Manager 5 software program violated 2 U.S.C. § 438(a)(4). The
11 Commissioners who declined to find probable cause that Aristotle violated the Act indicated that
12 one reason for their vote was that they considered Aristotle's Campaign Manager 5 software
13 program distinguishable from the software at issue in Advisory Opinion 2004-24. *See* MUR
14 5625, Statement of Reasons of Chairman Petersen and Commissioners Hunter and McGahn.
15 Distinguishing between the two programs, the Commissioners noted: "[T]his feature is the only
16 software feature that provides access to any FEC data. And that access is limited to a restricted,
17 non-downloadable subset of data that can be accessed only with respect to individuals whose
18 names and addresses are already a part of the end-user's pre-existing database." *Id.* at 5.
19 Additionally, the Statement of Reasons concluded that the Campaign Manager 5 software served
20 as a compliance or vetting program, rather than a program that could be used to facilitate

¹ The requestor proposed to "sort and organize [the downloaded] data, and match them into a client's database based on the client's needs . . . We seek guidance from the Commission as to whether we may include this individual contributor data under circumstances where we might reasonably expect them to be used to assist in soliciting contributions. We also seek guidance as to whether our own sale (or inclusion) of these data, regardless of their intended use, would be a prohibited commercial use." Advisory Opinion 2004-24, Request at 2.

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1 solicitations, because “[t]he feature only permits a committee to view how much someone
2 already in its database has given to other campaigns and committees.” *Id.* at 9.

3 **1. Aristotle’s Relationship Viewer Software is Distinguishable from the**
4 **Campaign Manager 5 Software Considered in MUR 5625**
5

6 The Relationship Viewer in this matter presents a much more far-reaching use of FEC
7 data than the Campaign Manager 5 application addressed in MUR 5625. For example, while the
8 contributor history feature of Campaign Manager 5 was the only software feature of Campaign
9 Manager 5 that accessed any FEC data, the Aristotle 360 program appears to utilize FEC data in
10 several ways. Not only does the Aristotle 360 program use the FEC contributor history in its
11 Relationship Viewer application, but the 360 software accesses FEC data to help comply with
12 the Lobbying Disclosure Act of 1995, MRSB Rule G-37, SEC Rule 206(4)-5, and state and local
13 “pay-to-play” laws. *See* Response at 7. Moreover, the 360 software appears to provide “an
14 individual’s full detailed record” of contributions that is separate and apart from the Relationship
15 Viewer. *See* Response at 24. Although Aristotle has not detailed exactly how it uses FEC data
16 in each of the 360 software’s applications, it is apparent from its response that the Relationship
17 Viewer may not be the only software feature that accesses and utilizes FEC data.²

18 The 360 software package can also be distinguished from the Campaign Manager 5
19 program because the Relationship Viewer displays FEC contributor data, namely contribution
20 histories, that appear as a search result. These contribution histories are not just limited to
21 individuals that the committee manually enters into the search function. Aristotle has not
22 explained precisely where all of the information associated with the search results is drawn from.

² In its response, Aristotle states that the Relationship Viewer “only searches the FEC files for contribution information for individuals already in the committee’s databases . . .” Response at 14. Even if Aristotle had obtained the information about individuals’ contributions from a source that publishes the information pursuant to the exception under 11 C.F.R. § 104.15(c), such as www.opensecrets.org, the restrictions of 2 U.S.C. § 438(a)(4) “apply regardless of where the FEC report is displayed.” *Cf.*, Advisory Opinion 1988-02 (Chicago Board Options Exchange, Inc.) n.2.

1 Although Aristotle has explained it does not draw the names of individuals from FEC data that
2 appear as search results, those individuals' federal contribution histories reflect information
3 derived from FEC reports.

4 In addition, whereas the Campaign Manager 5 only allowed committees to view how
5 much an existing contributor had given to other campaigns, the Relationship Viewer allows a
6 committee to view the contribution history of both the subject of the search and the individuals
7 that appear as search results. Accessing contributor histories of a committee's own donors to re-
8 solicit those individuals appears to be permissible under 2 U.S.C. § 438(a)(4). See Advisory
9 Opinion 2004-24 (NGP) at 3 n.1. The limited nature of the Campaign Manager 5 software may
10 have only had the capacity to provide contribution histories of single individuals who had
11 already donated to a campaign. The Relationship Viewer, on the other hand, appears to access
12 individuals' contributor histories, even if the individuals do not already appear as contributors to
13 that specific committee.

14 Finally, it is doubtful whether the Relationship Viewer could serve a bona fide
15 compliance function. Because the Relationship Viewer appears to display the aggregate
16 contribution amounts that individuals have given over multiple elections, the Relationship
17 Viewer would not be able to assist committees in determining whether the individuals have
18 already contributed the maximum amounts to those committees. See Response at 24. Moreover,
19 the Relationship Viewer does not differentiate between the types of committees to which
20 individuals make contributions. Because federal independent expenditure only committees
21 accept contributions that do not count towards the individual biennial contribution limit, the
22 aggregate contributions displayed by Relationship Viewer would not enable a committee to
23 effectively alert an individual if he or she was approaching the biennial contribution limit.

1 **2. Aristotle's Relationship Viewer Software Appears to Violate 2 U.S.C.**
2 **§ 438(a)(4)**

3
4 Against this backdrop, Aristotle appears to have violated 2 U.S.C. § 438(a)(4) because it
5 incorporated FEC data into a program that can be used to solicit contributions. Aristotle's web-
6 based demonstration and power point slides clearly depict that the Relationship Viewer can be
7 used to facilitate the solicitation of contributions. For example, once a name is searched, the
8 Relationship Viewer accesses the relevant databases to display the "connection map." The
9 Relationship Viewer program potentially could have accessed non-FEC databases to obtain
10 information to display the names, addresses, occupations, and other relationship-based
11 information. *Federal* contribution histories, however, must originate from FEC data.

12 Further, the federal contribution history is not just displayed for the one individual that
13 the end-user searches for. Rather, the information is displayed for both the individual searched
14 for and every individual who appears as a search result. Thus, the Relationship Viewer accesses
15 FEC data in order to display the contribution histories of both the individual whose name is
16 manually entered into the search function and the individuals whose names appear as a search
17 result. The contribution histories displayed by the "connection map" contain information about
18 the amount of the contributions that individuals have made to other federal committees,
19 information that is obtained from FEC reports. These contribution histories, whether related to
20 an individual who is the subject or the result of a Relationship Viewer search, provide
21 committees with valuable information that it can use to solicit contributions.

22 Finally, the Relationship Viewer provides a list of "relationships" on the left-hand side of
23 the screen, which corresponds to the "connection map" graphics. Although Aristotle has
24 explained that this information cannot be "exported" to a spreadsheet or other format, nothing
25 prevents end-users from using the contributor list displayed on the results page to solicit those

1 contributed to Federal election campaigns . . . [although] no new names or other information
2 would be added to [the] list from Commission records." Advisory Opinion 1985-16 (Weiss)
3 at 1. Despite the fact that the only information that was obtained from Commission records was
4 whether an individual had previously contributed to a federal political committee, the
5 Commission concluded that "the use of information gained from examining reports filed with the
6 Commission would allow [the requestor] to purge the non-contributors from [the] list or to
7 otherwise identify the contributors on [the] list. [The] list would have special commercial value
8 because it had been produced as a result of cross verification with contributor information
9 contained in reports filed with the Commission." Advisory Opinion 1985-16 (Weiss) at 2.

10 Like the requestor in Advisory Opinion 1985-16, Aristotle's use of contributor
11 information to enhance the contributor lists in the committees' databases violates 2 U.S.C.
12 § 438(a)(4). Through the 360 program and Relationship Viewer application, Aristotle not only
13 enables committees to collect information about whether individuals have contributed to federal
14 campaigns, Aristotle also enables committees to collect information about the amount and
15 recipient of each individual's contributions. The fact that Aristotle sells the technology that
16 allows committees to enhance their contributor and prospective-contributor lists, and does not
17 sell the enhanced contributor list itself, does not change the fact that Aristotle is using FEC data
18 for commercial purposes. Indeed, the Relationship Viewer's ability to instantly enhance a
19 committee's pre-existing list appears to be at least as commercially valuable as providing a list of
20 individuals who have contributed to federal campaigns, as was the case in Advisory Opinion
21 1985-16.

22 Finally, even if the Relationship Viewer is not the most utilized feature of the Aristotle
23 360 software program, Aristotle itself boasts that the 360 software program is "the most

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1 powerful political data mining tool and campaign software." Complaint, *Aristotle Press Release*.
2 By using the advanced technology of the Relationship Viewer to market the complete 360
3 software package as the most technologically advanced, Aristotle has utilized Commission data
4 for its general commercial purposes. Without incorporating FEC data into the Relationship
5 Viewer, Aristotle would not be able to make the same extensive claims about its data-mining
6 capabilities in its advertisements and press releases.³

7 Accordingly, we recommend that the Commission find reason to believe that Aristotle
8 International, Inc. violated 2 U.S.C. § 438(a)(4).⁴

9 **III. PROPOSED INVESTIGATION**

10 We plan a targeted investigation that will request documents relating to the development,
11 marketing and sales of the 360 software program at issue. The development and marketing
12 information will provide evidence regarding whether Aristotle developed the software to help
13 facilitate solicitations and whether Aristotle intended its customers to use the program to solicit
14 donors. We may also conduct limited interviews with individuals who use the Relationship
15 Viewer application within the larger 360 software to determine whether those campaigns have
16 used the software to solicit contributions and the scope of the activity. Therefore, we

³ Even though Aristotle provides an individual's contribution history for free on its website, it does not appear to provide this information in the same format that it is displayed in the Relationship Viewer, *i.e.* in a fully integrated format. Providing federal contributor histories is not a commercial use in and of itself. In fact, such contribution histories are readily available on the website of the Commission and many other non-profit organizations. Providing federal contribution history in a format useful for soliciting contributions, contacting potential supporters, or increasing a committee's number of volunteers is, however, for a commercial purpose.

⁴ Although Aristotle's comments on the Draft Advisory Opinion in AO 2004-24 and references to that opinion in its marketing material demonstrate that Aristotle knew of 2 U.S.C. § 438(a)(4)'s prohibitions, we do not have enough information at this point to recommend that the violation in connection with Aristotle 360 was knowing and willful. See *AFL-CIO v. FEC*, 628 F.2d 97, 98, 101-02 (D.C. Cir.), *cert. denied*, 449 U.S. 982 (1980) (noting that a "willful" violation includes "such reckless disregard of the consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of the Act," but concluding on the facts before it that this standard was not met) (*cited in National Right to Work Comm. v. FEC*, 716 F.2d 1401, 1403 (D.C. Cir. 1983)). Aristotle has repeatedly asserted that it considered itself to be in compliance with 2 U.S.C. § 438(a)(4), a factor that would weigh against a knowing and willful violation. See *id.* at 101. However, if the proposed investigation uncovers information suggesting that Aristotle knowingly and willfully violated the Act, we will make additional recommendations to the Commission at the appropriate time.

1 recommend that the Commission authorize compulsory process in this matter, including the
2 issuance of interrogatories, document subpoenas, deposition subpoenas and orders.

3 **IV. RECOMMENDATIONS**

- 4 1. Find reason to believe that Aristotle International, Inc. violated 2 U.S.C. § 438(a)(4).
5
6 2. Approve the attached Factual and Legal Analysis.
7
8 3. Authorize the use of compulsory process in this matter, including the issuance of
9 interrogatories, document subpoenas, deposition subpoenas and orders.
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11 4. Approve the appropriate letters.
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P. Christopher Hughey
Acting General Counsel

18 1-18-11
19
20 Date

BY:

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