



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Stu Trevelyan
NGP Software, Inc.
1445 New York Ave., NW, Suite 200
Washington, DC 20005

APR 12 2019

RE: MUR 6334

Dear Mr. Trevelyan:

This is in reference to the complaint you filed with the Federal Election Commission on July 21, 2010, against Aristotle International, Inc. The Commission found that there was reason to believe that Aristotle violated 52 U.S.C. § 30111(a)(4) (then 2 U.S.C. § 438(a)(4)) of the Federal Election Campaign Act of 1971, as amended and commenced an investigation in the matter. Subsequently, on April 9, 2019, the Commission considered the General Counsel's and Aristotle's briefs but was equally divided over whether to find probable cause to believe that Aristotle violated 52 U.S.C. § 30111(a)(4). Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which more fully explains the Commission's reason to believe finding, is enclosed for your information. A Statement of Reasons providing a basis for the Commission's probable cause decision will follow. The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

If you have any questions, please contact Claudio J. Pavia, the attorney assigned to this matter, at (202) 694-1597 or cpavia@fec.gov.

Sincerely,

Peter Blumberg
Acting Deputy Associate General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:** Aristotle International, Inc.

MUR: 6334

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6 **I. INTRODUCTION**

7 This matter was generated by a complaint filed with the Federal Election Commission by
8 NGP Software, Inc. See 2 U.S.C. § 437g(a)(1).

9 **II. FACTUAL AND LEGAL ANALYSIS**

10 **A. Factual Background**

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

21 As one aspect of the larger Aristotle 360 program, the Relationship Viewer can be used
22 "to uncover relationships between someone in [a political committee's] own database, through
23 the voter file, state campaign reports and the Commission's files." Response at 14. The
24 Relationship Viewer essentially acts as a search tool. The political committee can input the

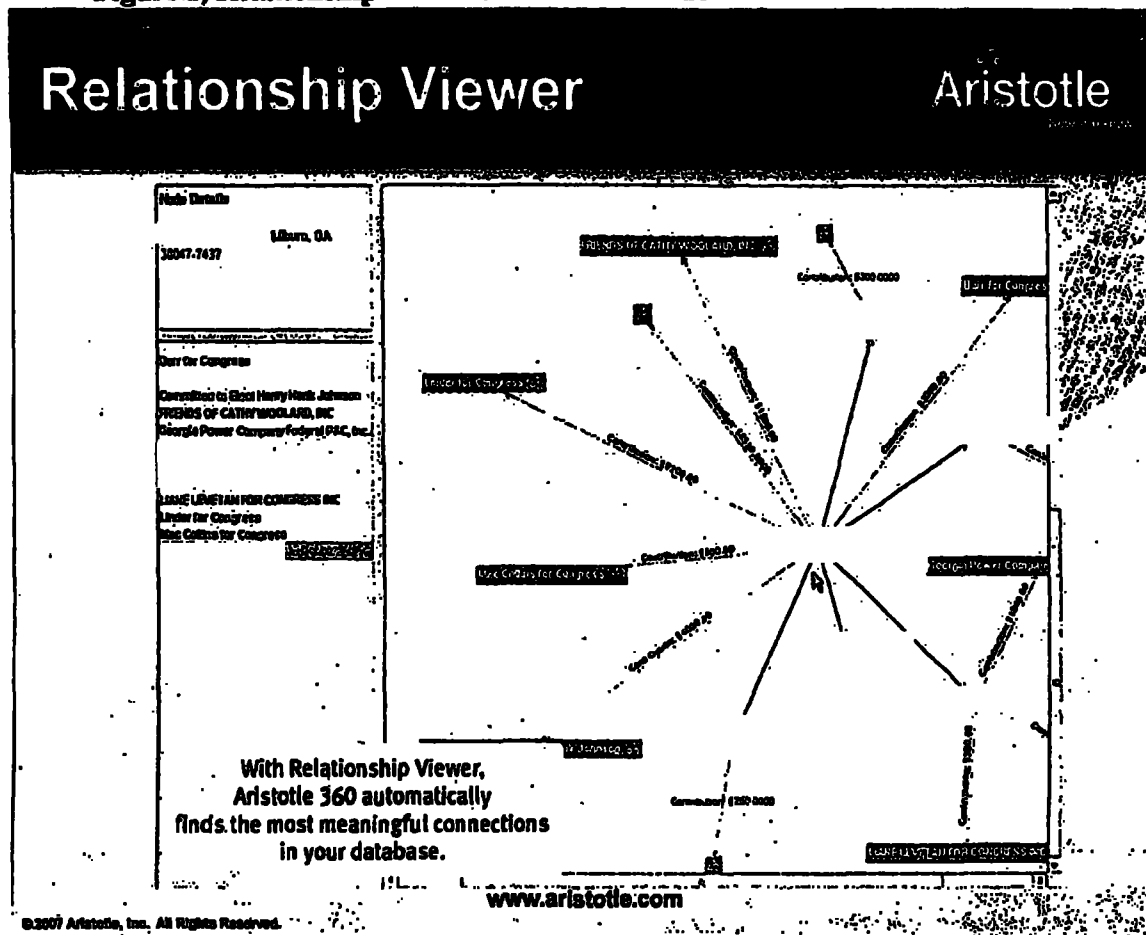
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1 name of an individual. The user would then receive search results of other individuals with
2 whom the original individual has "relationships." Response at 15. Importantly, the user must
3 first have the individual's name. Response at 14.

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

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1 **Figure 1, Relationship Viewer Power Point Slide**



2 ©2007 Aristotle, Inc. All Rights Reserved.

3 As described by Aristotle, the Relationship Viewer's default settings display one "degree

4 of separation" for search results. Response at 15. This means that the program will display the

5 relationships of the individual searched for, and will also display the relationships for any

6 individual as part of the "connection map." *Id.* "The [first] degree of separation results include:

7 the identifying information about the first person, names of the individuals personally or

8 professionally linked to the first person or with addresses in the vicinity of the first person, and

9 committees who received contributions from any of the above, *none of whose names came from*

10 *the FEC database.*" (Emphasis in original.) *Id.*

1 The Relationship Viewer's search results also contain contribution histories of both the
2 individual searched for and the individuals displayed as search results. See Complaint,
3 *Relationship Viewer Screenshot*. For example, in the "connection map" displayed in Figure 1
4 above, the Relationship Viewer shows the contribution history of the person searched for, in this

5 case Through the use of its "connection map," the Relationship Viewer
6 shows that made contributions to six different committees (both federal and
7 state).

8 The "connection map" also displays the contributions of individuals with a connection or
9 relationship to These connections can include "names of individuals personally
10 or professionally linked to the first person or with addresses in the vicinity of the first person,
11 and committees who received contributions from any of the above." Response, Declaration of
12 Dean A. Phillips ¶ 21.b. As shown in Figure 1 above, the Relationship Viewer displays a
13 connection between and an individual named . Additionally, the
14 Relationship Viewer shows a further connection between : and a federal political
15 committee, in this case a contribution to Liane Levetan for Congress. The Relationship Viewer
16 appears to display both the contribution history of the individual searched for, and the
17 contribution history of individuals displayed as a result of the search.

18 In addition to the "connection map," Relationship Viewer also displays a list of the
19 individual's "relationships" on the left-hand side of the screen. This list appears to include both
20 individuals and committees, including the original individual that was searched for. This list also
21 apparently highlights the name of the individual subject to the search. It is not obvious from the
22 screenshot whether this list contains any interactive features, such as the ability to highlight other
23 names.

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1 Some of Relationship Viewer's functions are immediately apparent from the web-based
2 demonstration (*i.e.* the "relationship map" and contribution histories), and Aristotle has
3 explained, in general terms, where it obtains the information that forms the database behind the
4 Relationship Viewer. For example, Aristotle has stated: "The 360 Relationship Viewer does not
5 obtain the identity of individuals from the FEC files. . ." Response at 4. Aristotle further
6 explains that "the 360 Relationship Viewer only searches the FEC files for contribution
7 information for individuals already in the committee's databases; *i.e.*, the 360 Relationship
8 Viewer does not extract the names of individuals from the FEC files." Response at 14. Rather
9 than use a contributor's name, address, employment, and other information available through
10 FEC reports, Aristotle states "the Viewer [operates] through the voter file, state campaign reports
11 and the Commission's files." *Id.*

12 The complaint identifies three different ways that Aristotle has marketed its 360 software
13 program. First, Aristotle has marketed the software through a web-based demonstration that
14 contains text on each frame that states:

15 It's not science fiction. It's data mining taken to the next level. Our powerful web-based
16 system quickly uncovers relationships that can be targeted for votes, *dollars*, or grass-
17 roots support. Imagine the possibilities. Use it to *access Fat Cats*, elected officials,
18 corporate board members, or ordinary voters. It's just one of the ways Aristotle gives
19 you a much-needed edge, via our innovative software, accurate databases and seasoned
20 staff. But don't take our word for it, take the Aristotle challenge.

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22 (Emphasis added.) Complaint, *Relationship Viewer Screenshot*. In addition, the demonstration
23 features a narrative that appears in the bottom-left corner in each frame. The narrative states, in
24 successive frames:

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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.” See 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.

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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.

17
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 data

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1 from reports from being "sold or used by any person for the purpose of soliciting contributions or
2 for any commercial purpose, except that the name and address of any political committee may be
3 used to solicit contributions from such committee." 11 C.F.R. § 104.15(a). However, the
4 regulations provide for an exception from the prohibition against using FEC data and allows the
5 use of such data in "newspapers, magazines, books or other similar communications . . . as long
6 as the principal purpose of such communications is not to communicate any contributor
7 information listed on such reports for the purpose of soliciting contributions or for other
8 commercial purposes." 11 C.F.R. § 104.15(c).

9 Like the text of the statute and the regulation, the legislative history also focuses on
10 preventing both the specific act of soliciting contributions and the general use of FEC data for
11 commercial purposes. An amendment to what would later be enacted as the Federal Election
12 Campaign Act of 1971 introduced the "sale and use" provision of the Act, 2 U.S.C. § 438(a)(4).
13 During debate of this amendment on the Senate floor, the amendment's sponsor, Senator
14 Bellmon, indicated several times that "the matter of selling lists and list brokering" was the
15 amendment's prime focus. 117 Cong. Rec. 20,057-58 (daily ed. Aug. 5, 1971 *reprinted in*
16 *Legislative History of the Federal Election Campaign Act of 1971* at 581). Senator Bellmon also
17 addressed the amendment's more general purpose: "to protect the privacy of the generally very
18 public-spirited citizens who make a contribution to a political campaign or a political party" and
19 to prevent "open[ing] up the citizens who are generous and public spirited enough to support our
20 political activities to all kinds of harassment." *Id.*

21 The Commission has addressed the statute and regulations' application to the use of FEC
22 data in software programs that may be used in soliciting contributions. In Advisory Opinion
23 2004-24, NGP Software asked whether inclusion of information about contributions that the

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1 client's donors may have made to other candidates, PACs, and party organizations, "regardless
2 of intended purpose," and "where we might reasonably expect [such information] to be used to
3 assist in soliciting contributions," would violate the Act and Commission regulations. Advisory
4 Opinion 2004-24 (NGP), Request at 1-2.¹ In concluding that the sale and use of such
5 information would be prohibited under the Act, the Commission explained that "[t]he inclusion
6 of such information in [the commercially available software product], whether sold as a separate
7 service or as part of a client's purchase of the [software] upgrade, would be a prohibited use of
8 contributor information obtained from the FEC's public records." Advisory Opinion 2004-24
9 (NGP) at 3.

10 The Commission recently addressed the use of FEC data in a more specific context. In
11 MUR 5625 (Aristotle), the Commission did not approve recommendations to find probable cause
12 that a previous version of Aristotle's software program, Campaign Manager 5, violated 2 U.S.C.
13 § 438(a)(4). See Certification in MUR 5625, dated March 17, 2010 (Vice Chair Bauerly and
14 Commissioners Walther and Weintraub voted in favor of the recommendations; Chairman
15 Petersen and Commissioners Hunter and McGahn voted against the recommendations). See also
16 MUR 5625, Statement of Reasons of Chairman Matthew S. Petersen and Commissioners
17 Caroline C. Hunter and Donald F. McGahn II; Statement of Reasons of Vice Chair Cynthia L.
18 Bauerly and Commissioners Steven L. Walther and Ellen L. Weintraub.

19 Aristotle's Relationship Viewer in this matter presents a more far-reaching use of FEC
20 data than the Campaign Manager 5 software program addressed in MUR 5625. Specifically, the
21 program at issue here allows a committee to view the contribution histories of both the subject of

¹ The requestor did not detail how such data would actually be used. See Request by NGP Software, Inc. in AO 2004-24

1 the search and other individuals with whom the software determines that the original subject has
2 a "one degree of separation" relationship.

3 In addition, the Relationship Viewer appears to focus primarily on solicitation rather than
4 compliance purposes, as evidenced by Aristotle's marketing materials. Specifically, Aristotle
5 claimed in its web-based demonstration of Relationship Viewer that the program "quickly
6 uncovers relationships that can be targeted for votes, dollars, or grass-roots support. Imagine the
7 possibilities. Use it to access Fat Cats, elected officials, corporate board members, or ordinary
8 voters" See Complaint, *Relationship Viewer Screenshot*. Aristotle's press release
9 announcing its patent application also has focused on the incorporation of "detailed state
10 contributor and voter lists with highly accurate consumer databases to illuminate exactly how
11 much a donor has given, how much they can give, and to suggest the maximum they might agree
12 to contribute where allowed by law." Complaint, *Aristotle's Press Release*. Similarly,
13 Aristotle's ad in *Politics Magazine* states, "It not only tells you which permissible donors are
14 giving to like-minded causes, it can tell you if a person is close to maxing out, the correct amount
15 to ask for and the name of their spouse and their birthday." Complaint, *Politics Magazine Ad*
16 (March 10, 2010). By focusing on the additional donors a committee could access and how large
17 of a contribution to ask for, Aristotle apparently intended its new technology to be used to aid in
18 making solicitations. Although, as Aristotle points out, its press release focuses on the use of
19 state contributor lists to help determine the identities and contribution histories of individuals to
20 solicit for maximum contributions, the Relationship Viewer apparently uses FEC data, including
21 those individuals' federal contribution histories, for the purpose of making solicitations.

22 Aristotle has explained that the Relationship Viewer contains an on-screen disclaimer
23 warning users "that the use of FEC data for solicitation purposes is illegal," and that its

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1 marketing website warns prospective customers that "Any information copied, or otherwise
2 obtained, from any FEC report or statement, or any copy, reproduction, or publication thereof,
3 filed under the Act, shall not be sold or used by any person for the purpose of soliciting
4 contributions" However, these disclaimers may be insufficient to convey that the use of the
5 Relationship Viewer itself for the solicitation purposes touted by Aristotle's own marketing
6 materials would be impermissible. Response at 10 and 17. The disclaimers may be confusing if
7 considered in conjunction with Aristotle's claim about its Relationship Viewer that "The only
8 other way to raise as much money could land you in jail." Complaint, *Politics Magazine Ad*
9 (March 10, 2010). Taken together, the disclaimers and marketing claim could be understood to
10 suggest that, while directly accessing FEC data would be illegal, solicitations made using data
11 from the Relationship Viewer would be permissible.

12 Moreover, although Aristotle explained that the contribution histories cannot be
13 "exported" to a spreadsheet or other format, nothing prevents end-users from using the
14 contributor list displayed on the results page to solicit those individuals. Indeed, a committee
15 may be more likely to decide to solicit an individual because his or her contribution history is
16 immediately known.

17 Accordingly, the Commission has determined to find reason to believe that Aristotle
18 International, Inc. violated 2 U.S.C. § 438(a)(4).

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