



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 112 3195]

Filiquarian Publishing, LLC; Choice Level, LLC; and Joshua Linsk; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before February 11, 2013.

ADDRESSES: Interested parties may file a comment at

<https://ftcpublishcommentworks.com/ftc/filiquarianconsent> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Filiquarian, File No. 112 3195" on your comment and file your comment online at <https://ftcpublishcommentworks.com/ftc/filiquarianconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jessica Lyon (202-326-2344), FTC, Bureau of

Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 10, 2013), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm> . A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 11, 2013. Write “Filiquarian, File No. 112 3195” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any

sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/filiquarianconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “Filiquarian, File No. 112 3195” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW,

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 11, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Filiquarian Publishing, LLC; Choice Level, LLC; and Joshua Linsk, individually, and as an officer of the companies.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The Commission's proposed administrative complaint alleges that the companies were operating as consumer reporting agencies without any procedures or policies in place to comply with the Fair Credit Reporting Act ("FCRA").

The respondents sold background screening reports containing criminal records through mobile applications ("apps") available in the iTunes and Google Android store (now GooglePlay) and through a website. Filiquarian developed and marketed apps that sold for \$0.99 each and

allowed purchasers to conduct unlimited searches of criminal history information within a specific geographic area, such as a state or county. Each app included an express representation that purchasers could use the reports for employment purposes. Choice Level provided the underlying records accessed by purchasers of the Filiquarian apps. Joshua Linsk is the owner and sole officer of Filiquarian and Choice Level. During all times material to this complaint, Linsk, individually or in concert with others, formulated, directed, or controlled the policies, acts, or practices of the companies.

According to the complaint, despite Filiquarian clearly promoting its background reports for use in employment screening, both Filiquarian and Choice Level included disclaimers in their terms and conditions stating that their reports were not to be considered a screening product for insurance, employment, or credit, and that they were not compliant with the FCRA. Such disclaimers contradicted and failed to counteract the express representations made in Filiquarian's advertising, urging the use of the reports to screen potential employees. Marketing and selling background screening reports to potential employers without implementing any of the accuracy or dispute safeguards required by the FCRA potentially exposes a large number of consumers to harm to their reputations and employment prospects.

The complaint alleges that the reports produced by respondents were consumer reports under the FCRA and that respondents lacked any policies or procedures to comply with the FCRA. Specifically, the complaint alleges that respondents failed to adhere to three key requirements of the FCRA: to maintain reasonable procedures to verify who their users are and that the information would be used for a permissible purpose; to ensure that the information they provided in consumer reports was accurate; and to provide notices to users and to those who furnished proposed respondents with information that was included in consumer reports. The

complaint further alleges that by their violations of the FCRA, as stated above, proposed respondents have engaged in unfair and deceptive acts and practices, in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

The proposed consent order contains provisions designed to prevent the respondents from engaging in the future in practices similar to those alleged in the complaint.

Part I of the order includes injunctive relief requiring respondents to comply with the relevant provisions of the FCRA. Parts II through VI are reporting and compliance provisions. Part II requires respondents to retain documents relating to their compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that respondents submit a compliance report to the FTC within 60 days, and periodically thereafter as requested. Part VI is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Richard C. Donohue
Acting Secretary.

[FR Doc. 2013-00744 Filed 01/15/2013 at 8:45 am; Publication Date: 01/16/2013]