112 3195

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

In the Matter of	)	
FILIQUARIAN PUBLISHING, LLC;	)	
CHOICE LEVEL, LLC; and	)	
	)	**DOCKET NO.**
JOSHUA LINSK,	)	
individually and as an officer of the companies,	)	
Respondents.	)	

COMPLAINT

The Federal Trade Commission ("FTC" or "Commission"), having reason to believe that Filiquarian Publishing, LLC, Choice Level, LLC, and Joshua Linsk, individually, and as an officer of the companies, have violated the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq*., and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Filiquarian Publishing, LLC ("Filiquarian") is a Minnesota company with its principal office or place of business at 3722 Las Vegas Boulevard S. #2807E, Las Vegas, NV 89158.

2. Respondent Choice Level, LLC ("Choice Level") is a Minnesota company with its principal office or place of business at 3722 Las Vegas Boulevard S. #2807E, Las Vegas, NV 89158.

3. Respondent Joshua Linsk is the owner and sole officer of the corporate respondents. During all times material to this complaint, Joshua Linsk, individually or in concert with others, formulated, directed, or controlled the policies, acts, or practices of the companies. His principal office or place of business is the same as that of Filiquarian and Choice Level.

4. The acts and practices of respondents as alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

RESPONDENTS' BUSINESS PRACTICES

5. Since at least 2010, respondent Filiquarian has operated a series of mobile applications ("apps") that it advertised consumers could use to conduct a "quick criminal background check for convictions" in specific states. Mobile apps offered by respondent Filiquarian include Alaska Criminal Records Search, Arizona Criminal Records Search, Arkansas Criminal Records Search, Connecticut Criminal Records Search, Indiana Criminal Records Search, Iowa Criminal Records Search, Minnesota Criminal Records Search, Orange County Criminal Records Search, Texas Criminal Records Search, Utah Criminal Records Search, Virginia Criminal Records Search, and Wisconsin Criminal Records Search.

6. Respondent Filiquarian represented that the apps could access hundreds of thousands of criminal records, and that users could conduct a search on potential employees. For example, respondent Filiquarian's mobile app, Texas Criminal Record Search, included the following representation:

> "Are you hiring somebody and wanting to quickly find out if they have a record? Then Texas Criminal Record Search is the perfect application for you."

Respondent Filiquarian's mobile apps for other states included identical language, other than the name of the app.

7. Since at least 2010, respondent Filiquarian distributed and sold its mobile apps through two online stores, iTunes and Google Android store, now GooglePlay. Consumers were charged $0.99 to download the app. After downloading the app, users could conduct an unlimited number of searches for criminal record reports within a specific geographic location such as a state or county.

8. As of May 2012, respondent Filiquarian sold at least 6,879 copies of its mobile apps offering criminal record reports.

9. Respondent Choice Level provided the criminal records to respondent Filiquarian that were accessed by Filiquarian's mobile apps. In light of the common ownership and control of respondents Choice Level and Filiquarian, and respondent Filiquarian's representations that its mobile apps could be used to access criminal records for hiring purposes, respondent Choice Level was aware that the criminal records it provided would be used for employment purposes.

10. Both respondents Filiquarian and Choice Level included a disclaimer in their "terms and conditions" stating that their respective products were not to be considered screening products for insurance, employment, loans, and credit applications, among other things. Respondents' disclaimer also stated that respondents were not compliant with the FCRA and any person using respondents' information for FCRA purposes "assumes sole responsibility for compliance with the Fair Credit Reporting Act and all/any other applicable laws."

APPLICATION OF THE FCRA

11. Under Section 603(f) of the FCRA, 15 U.S.C. § 1681a(f), a company is a consumer reporting agency ("CRA") if it assembles or evaluates information on consumers for the purpose of furnishing "consumer reports" to third parties. According to Section 603(d) of the FCRA, 15 U.S.C. § 1681a(d)(1), consumer reports are communications that include information relating to an individual's character, reputation, or personal characteristics and are used or expected to be used for employment, housing, credit, or other similar purposes.

12. Respondents regularly assembled criminal records into reports that they provided to third parties in interstate commerce via mobile apps distributed by respondent Filiquarian. Despite the disclaimer discussed in Paragraph 10, respondent Filiquarian's mobile apps advertised that their reports, which were assembled from criminal records provided by Choice Level, could be used by customers for employment purposes, thus reflecting that respondents expected their reports to be used for employment purposes. Such reports are consumer reports as defined by the FCRA because they bear on a consumer's character, general reputation, personal characteristics, or mode of living and/or other attributes listed in Section 603(d) of the FCRA, 15 U.S.C. § 1681a(d)(1) and they were "used or expected to be used . . . in whole or in part" as a factor in determining a consumer's eligibility for employment.

13. In providing "consumer reports" respondents are now and have been a "consumer reporting agency" as that term is defined in Section 603(f) of the FCRA, 15 U.S.C. § 1681a(f).

VIOLATIONS OF THE FCRA

14. Respondents did not comply with or maintain any procedures related to the FCRA, as described below.

15. Section 604(a) of the FCRA, 15 U.S.C. § 1681b(a), prohibits a CRA from furnishing consumer reports to persons who the consumer reporting agency does not have a reason to believe have a "permissible purpose." According to Section 604(a) of the FCRA, 15 U.S.C. § 1681b(a), permissible purposes include use in credit transactions, insurance underwriting, employment purposes, investment purposes, and other uses specified in the FCRA.

16. Respondents have regularly furnished consumer reports to third parties without procedures to inquire into the purpose for which the user is buying the report. Thus, respondents have violated Section 604(a) of the FCRA, 15 U.S.C. § 1681b(a).

17. Section 607(a) of the FCRA, 15 U.S.C. § 1681e(a), requires every CRA to maintain reasonable procedures to limit the furnishing of consumer reports for permissible purposes. These procedures require that the CRA, prior to furnishing a user with a consumer report, require the prospective users of the information to identify themselves to the CRA, certify the purpose for which the information is sought, and certify that the information will be used for no other purpose. The CRA must make a reasonable effort to verify the identity of each new prospective user and the uses certified prior to furnishing such user a consumer report. In addition, Section 607(a) prohibits a CRA from furnishing a consumer report to any person it has reasonable grounds to believe will not use the consumer report for a permissible purpose.

18. Respondents failed to maintain reasonable procedures to limit the furnishing of consumer reports for permissible purposes. For example, respondents failed to require that prospective users of their reports identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. By failing to limit the furnishing of reports to those who had a permissible purpose to use such a report, respondents have violated Section 607(a) of the FCRA, 15 U.S.C. § 1681e(a).

19. Section 607(b) of the FCRA, 15 U.S.C. § 1681e(b), requires CRAs to follow reasonable procedures to assure maximum possible accuracy of information concerning the individual about whom the report relates.

20. Respondents maintained no procedures to assure maximum possible accuracy of information in the reports it provided. Accordingly, respondents have violated Section 607(b) of the FCRA, 15 U.S.C. § 1681e(b).

21. Section 607(d) of the FCRA, 15 U.S.C. § 1681e(d), requires CRAs to provide notices to all users of respondents' consumer reports; and to all persons who regularly furnish consumer report information to respondents.

22. Respondents failed to provide such notices. Accordingly, respondents have violated Section 607(d) of the FCRA, 15 U.S.C. § 1681e(d).

23. By their violations of Sections 604(a), 607(a), 607(b), and 607(d) of the FCRA, 15 U.S.C. §§ 1681b(a), 1681e(a), 1681e(b), and 1681e(d), and pursuant to Section 621(a) thereof, 15 U.S.C. § 1681s, respondents have engaged in unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission this __ day of _____, 2013, has issued this complaint against respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL