

AGENDA DOCUMENT NO. 10-61-D



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AGENDA ITEM

October 7, 2010

For Meeting of 10-7-10

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Christopher Hughey *CH (RCS)*
Acting General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Robert M. Knop *RMK (RCS)*
Assistant General Counsel

Anthony Buckley *AB*
Attorney

Subject: Draft AO 2010-19 (Google) – Revised Draft C

Attached is proposed Revised Draft C of the subject advisory opinion. We have been asked to place this draft on the agenda for October 7, 2010.

Attachment

1 ADVISORY OPINION 2010-19

2

3 Marc E. Elias, Esq.

REVISED DRAFT C

4 Jonathan S. Berkon, Esq.

5 Perkins Coie LLP

6 607 Fourteenth Street, N.W.

7 Washington, D.C. 20005-2003

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9 Dear Messrs. Elias and Berkon:

10 We are responding to your advisory opinion request on behalf of Google, Inc.
11 (“Google”) concerning the application of the Federal Election Campaign Act of 1971, as
12 amended (the “Act”), and Commission regulations to Google’s proposal to sell text ads to
13 candidates, their authorized committees, and other political committees. Google, Inc. asks
14 whether disclaimers are required on text ads generated when Internet users use Google’s
15 search engine to perform searches.

16 ***Background***

17 The facts presented in this advisory opinion are based on your letter received on
18 August 5, 2010.

19 Google, Inc. is a corporation that creates programs and applications that allow persons
20 to search for and collect information on the Internet. Google’s AdWords program generates
21 text ads in conjunction with keywords chosen by the advertiser. Text ads have a headline
22 which can consist of up to 25 characters, and two lines of text and a display Uniform
23 Resource Locator (“URL”) which can consist of up to 70 characters. This format applies to
24 all advertisers, regardless of whether they are political committees. When a user enters search
25 terms that coincide with the chosen keywords into the Google Internet search engine,
26 AdWords generates text ads that appear alongside the search results. Additionally, Google
27 has partnered with other websites to participate in Google’s AdWords program. Using the

1 chosen keywords, Google can match an advertiser's ads to websites in Google's partner
2 network that are most relevant to the advertiser's message.

3 The primary purpose of a text ad is to attract customers to an advertiser's web page or
4 "landing page" so that customers may learn more about what the advertiser has to offer.
5 Accordingly, advertisers pay Google, Inc. for a text ad based upon the number of times a user
6 clicks on the ad and is taken to the advertiser's website. Advertisers do not pay Google, Inc.
7 based on the number of times a text ad appears on a search page. Google wishes to sell text
8 ads to candidates, their authorized committees, and other political committees under the
9 AdWords program. These text ads would not display a disclaimer indicating who authorized
10 or paid for the ad; rather, a full disclaimer would appear on the landing page that appears
11 when a user "clicks through" a text ad.

12 ***Questions Presented***

13 1. *Google seeks confirmation that "text ads" generated by Google's AdWords program*
14 *are exempt from the disclaimer requirements of 11 CFR 110.11, under the "small items"*
15 *exception.*

16 2. *If a disclaimer is required, Google seeks confirmation that displaying the URL of the*
17 *ad sponsor's website in the text ad and requiring the sponsor's website to include a full*
18 *110.11 disclaimer satisfies the requirement.*

19 ***Conclusion***

20 The Commission could not reach a response to the questions presented by the required
21 four affirmative votes. 2 U.S.C. 437c(c) and 11 CFR 112.4(a). Nonetheless, the Commission
22 is able to confirm that under the circumstances described in the request (including a hyperlink
23 to the ad sponsor's website in the text ad and the sponsor's website includes a full 110.11

1 disclaimer) does not violate the Act or Commission regulations. Further explanation is
2 provided in the Commissioners' concurring opinions.

3 The Commission expresses no opinion regarding the application of State law or the
4 Internal Revenue Code to the proposed activities, because those questions are not within the
5 Commission's jurisdiction.

6 This response constitutes an advisory opinion concerning the application of the Act
7 and Commission regulations to the specific transaction or activity set forth in your request.
8 *See 2 U.S.C. 437f.* The Commission emphasizes that, if there is a change in any of the facts
9 or assumptions presented and such facts or assumptions are material to a conclusion presented
10 in this advisory opinion, then the requester may not rely on that conclusion as support for its
11 proposed activity. Any person involved in any specific transaction or activity which is
12 indistinguishable in all its material aspects from the transaction or activity with respect to
13 which this advisory opinion is rendered may rely on this advisory opinion. Please note that
14 the conclusion in this advisory opinion may be affected by subsequent developments in the
15 law including, but not limited to, statutes, regulations, advisory opinions and case law.

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On behalf of the Commission,

Matthew S. Petersen
Chairman