FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4056

DATE FILMED 3-29-95 CAMERA NO. 2

CAMERAMAN S.E.G

25043631985

National Republican Senatorial Committee

SENATOR PHIL GRAMM
CHAIRMAN

WILLIAM D HARRIS
EXECUTIVE DIRECTOR

SEP 14 2 32 PM '94
RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

SEP 13 4 49 PM '94
RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

September 12, 1994

MUR 4056

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E street, N.W.
Washington, D.C. 20463

Dear Mr. Noble:

The National Republican Senatorial Committee charges that the Committee to Re-Elect Senator Edward M. Kennedy '94 violated the Federal Election Campaign Act, 2 USC 441b(a), as amended ("FECA") by receiving prohibited corporate contributions in volition of the FECA.

The Kennedy Committee solicited the rock band Aerosmith to provide corporate services at a fundraiser dated September 11, 1994. In addition, the Kennedy Committee used the Aerosmith corporate name and logo on its fundraising solicitation. Aerosmith and the Aerosmith logo are registered trademarks of Svengali Merchandising Incorporated ("Svengali"), a Massachusetts corporation.

Unless the Committee to Re-Elect Senator Edward M. Kennedy '94 pays Svengali the usual and normal charge for Aerosmith concerts (if music was played at the fundraiser), appearances (if music was not played at the fundraiser) and licensing of the Aerosmith name and logo, the amount of such usual and normal charge would constitute an illegal contribution by Svengali to the Kennedy Committee. The National Republican Senatorial Committee requested the Kennedy Committee to pay Svengali the usual and normal charge for all services rendered on behalf of the Kennedy Committee. It is my understanding that the Kennedy Committee does not plan to pay for these corporate services. Svengali corporation does not qualify for the entertainer volunteer exemption because it is limited to unincorporated individual entertainers and not corporate groups.

The National Republican Senatorial Committee respectfully urges the Commission to conduct a prompt and thorough investigation into the allegations in this Complaint, and to declare that the Kennedy Committee has violated the FECA and Commission regulations.

Sincerely,

Edwina Rogers

Edwina Rogers

RONALD REAGAN REPUBLICAN CENTER
425 SECOND STREET N.E. • WASHINGTON D.C. 20002 • (202) 675-6000

PAID FOR AND AUTHORIZED BY THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE

5047631096

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
SEP 14 2 32 PM '94

BEFORE THE
FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

NATIONAL REPUBLICAN SENATORIAL COMMITTEE Ronald Reagan Republican Center 425 Second Street, N.E. Washington, D.C. 20002 (202) 675-6000 v. Complainant, Committee to Re-Elect Senator Edward M. Kennedy '94 P.O. Box 8010 Boxton, MA 02114 Respondent,	**COMPLAINT**

COMPLAINT OF THE
NATIONAL REPUBLICAN SENATORIAL COMMITTEE

1. This complaint charges that the respondent violated the Federal Election Campaign Act, 2 USC 441b(a), as amended ("FECA") (11 CFR 114.2(b)), by receiving prohibited corporate contributions in volition of the FECA.

PARTIES

2. The complainant, the National Republican Senatorial Committee ("NRSC") is a "political committee" registered with the Federal Election Commission ("FEC") in accordance with the law and established by Republican Members of the United States Senate to support incumbent and non-incumbent Republican Senate candidates.

3. The respondent, Committee to Re-Elect Senator Edward M. Kennedy '94, is a principal campaign committee registered at the Federal Election Commission.

APPLICABLE STATUTES AND REGULATIONS

4. The FECA prohibits principal campaign committees from receiving and corporations from making *contributions* or *expenditures* as defined in 114.1(a) in

25043631987

connection with any Federal election. 2 USC 441b; 11 CFR 114.2(b). In defining the term *contribution*, the FECA uses the term *anything of value* to include all in-kind contributions. In addition, it considers the provision of any goods or services without charge or at a charge which is less than usual and normal charge for such goods or services to be a contribution. In-kind contributions must be reported just as monetary contributions are reported to the FEC. 2 USC 431(8); 11 CFR 100.7(a)(1)(iii).

GROUNDS FOR COMPLAINT

5. The respondent solicited the rock band Aerosmith to provide corporate services at a fundraiser dated September 11, 1994. Exhibit 1 - Aerosmith invitation. The use of the Aerosmith corporate name and logo constitutes a violation of FEC regulation.

6. Aerosmith and the Aerosmith logo are registered trademarks of Svengali Merchandising Incorporated ("Svengali"), a Massachusetts corporation. The officers of Svengali are the lead band members of Aerosmith: Anthony J. Perry (President), Joseph M. Kramer (Treasurer) and Brad E. Whitford (Clerk). Svengali's most current corporate address is 5 Bigelow Street, Cambridge, Massachusetts 02139. According to the trademark registration documents, the business of Aerosmith includes "entertainment services rendered by a vocal and instrumental group." Exhibit 2 - trademark and corporate search documents.

7. Federal political committees are forbidden from accepting corporate contributions. 11 CFR 114.2(b). A *contribution* includes any direct or indirect payment, services, or *anything of value* to the federal political committee in connection with the election. 11 CFR 114.1(a)(1). The term *anything of value* includes all in-kind contributions. The provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution. 11 CFR 100.7(a)(iii)(A). "If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for goods or services at the time of the contribution and the amount charged the political committee." Id.

8. On information and belief the Kennedy Committee paid a licensing fee to Svengali for the use of its name and logo in the amount of $350. On further belief $350 is not the usual and normal charge for such license. In addition, the Aerosmith name and logo appeared on an Aerosmith/Kennedy commerorative polo shirt. (Exhibit 3 - Boston Hearald news article).

9. Unless the Committee to Re-Elect Senator Edward M. Kennedy '94 pays Svengali the usual and normal charge for Aerosmith concerts (if music was played at the fundraiser), appearances (if music was not played at the fundraiser) and licensing of the Aerosmith name and logo, the amount of such usual and normal charge would constitute an illegal contribution by Svengali to the Kennedy Committee. The National Republican

Senatorial Committee requested the Kennedy Committee to pay Svengali the usual and normal charge for all services rendered on behalf of the Kennedy Committee. It is my understanding that the Kennedy Committee does not plan to pay for these corporate services.

10. Svengali corporation does not qualify for the entertainer volunteer exemption because it is limited to unincorporated individual entertainers and not corporate groups. FECA provides that the term contribution does not include the value of services provided without compensation by any *individual* who volunteers on behalf of a candidate. 2 USC 431(8)(B)(i). Past advisory opinions of the Federal Election Commission have concluded that the volunteer services exemption is available to entertainers and other artists. This exception is limited to unincorporated individual entertainers and not incorporated groups appearing under their corporate name and logo. In addition, Svengali must be compensated for all expenses incurred for the appearance and entertainment.

RELIEF

11. The National Republican Senatorial Committee respectfully urges the Commission to conduct a prompt and thorough investigation into the allegations in this Complaint, and to declare that the Respondent has violated the FECA and Commission regulations.

Respectfully submitted,

Edwina Rogers

Edwina Rogers
General Counsel
National Republican Senatorial Committee
425 Second Street, N.W.
Washington, D.C. 20002
(202) 675-6000

Date: September 12, 1994

Subscribed and sworn before me this 12 day of Sept, 1994.

Notary Seal

Signature of Notary

My Commission Expires June 14, 1997

Shirley White

Enclosed is my contribution of _____ for _____ ticket(s).

_____ No, I cannot attend the Reception. Enclosed is my contribution of _____ in support of Senator Kennedy.

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of $200 in a calender year.

NAME _____

ADDRESS _____

CITY/STATE/ZIP _____

OCCUPATION _____

EMPLOYER _____

BUSINESS ADDRESS _____

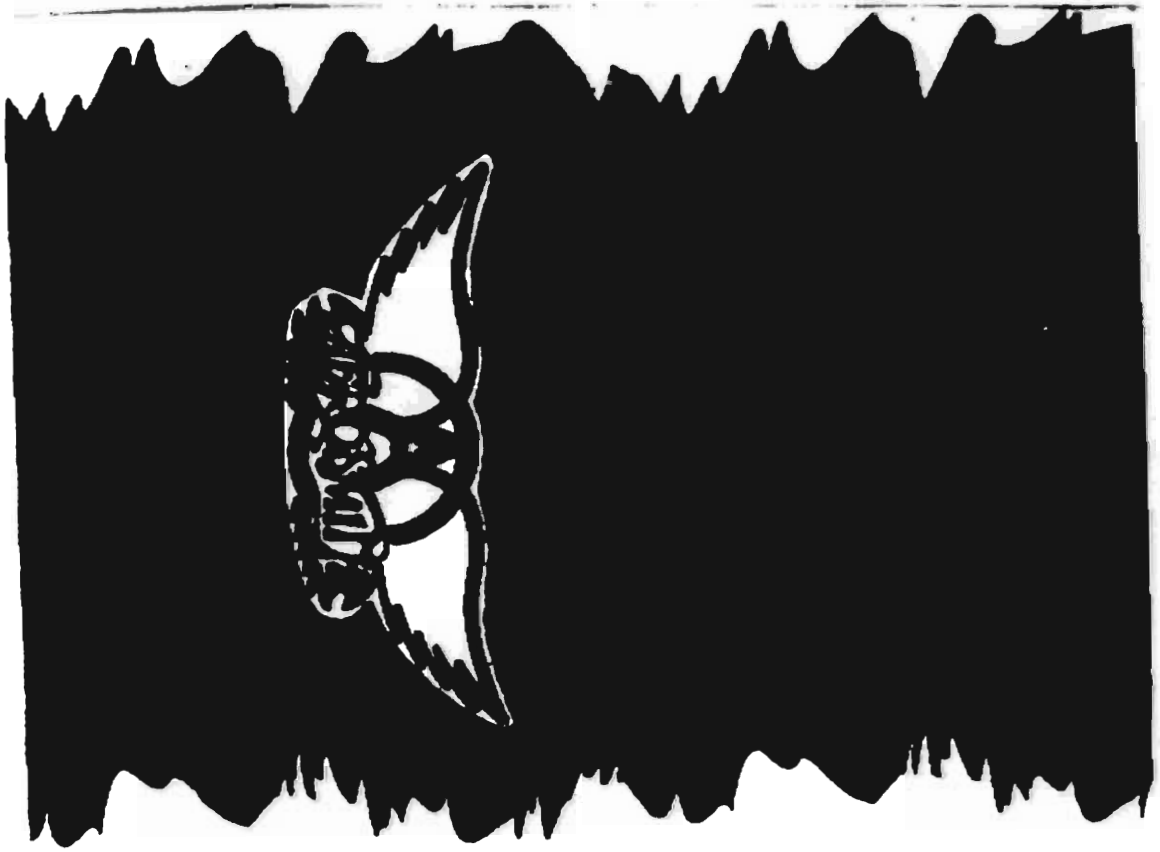
BUSINESS TELEPHONE _____ HOME TELEPHONE _____

Please make checks payable to: Committee to Re-Elect Senator Edward M. Kennedy '94

Contributions are not tax deductible.

Corporate contributions are not permissible by law.

Paid for by the Committee to Re-Elect Senator Edward M. Kennedy '94



Karen Whitford
P.O. Box 588
Norwell, MA 02061

EXHIBIT 1

We've never done this before, so let's get right to the point. Senator Kennedy is running for re-election. We support Senator Kennedy and what he stands for and now it's time for us to step up to the plate.

There are very few Champions in this world. Champions stand up to adversity. Champions stand up for the underdog, the underfed, the underheard, the overworked, the underpaid.

Ted Kennedy has championed the unpopular side for a lot of folks no one wanted to hear. He's taken the fight and won the battle too many times to recount. The war has not been without casualties.

As members of Aerosmith, we know what it's like to fight. We've fought the censors for our creative rights and First Amendment guarantees: the rights of free speech and expression; the right to be heard. When it comes to the First Amendment and the rights it guarantees, Ted Kennedy has always been there.

For us, the choice is simple. Ted Kennedy's legislative record is solid, strong and consistent.

This is not simply a battle for a Massachusetts senatorial seat. Nationwide, conservative forces have banded together to interfere with our local interests, oust our Senator, and install a figurehead compatible with their reactionary agenda: an agenda that does not include women's rights, AIDS research, art, free speech, or basic personal freedoms.

Ted Kennedy is in the fight of his life. He needs your help. We often ask our friends for help. We've never asked for money. We're asking now. This really matters!

Paid for by Steven Tyler, Joe Perry, Brad Whitford, Tom Hamilton and Joey Kramer.

Authorized by Kennedy for Senate.

EXHIBIT 2

F-1

A AEROSMITH

Status: REGISTERED

Goods/Services:

Int'l. Class: 14 (U.S. Class: 28)
COSTUME JEWELRY.
First Use: SEPTEMBER, 1972 In Commerce: SEPTEMBER, 1972

Int'l. Class: 16 (U.S. Class: 38)
MUSICAL GROUP COMMEMORATIVE TOUR BOOKS AND POSTERS.
First Use: SEPTEMBER, 1972 In Commerce: SEPTEMBER, 1972

Int'l. Class: 20 (U.S. Class: 50)
ORNAMENTAL NOVELTY BUTTONS.
First Use: SEPTEMBER, 1972 In Commerce: SEPTEMBER, 1972

Int'l. Class: 25 (U.S. Class: 39)
CLOTHING, NAMELY, T-SHIRTS.
First Use: SEPTEMBER, 1972 In Commerce: SEPTEMBER, 1972

Int'l. Class: 41 (U.S. Class: 107)
ENTERTAINMENT SERVICES RENDERED BY A VOCAL AND INSTRUMENTAL GROUP.
First Use: SEPTEMBER, 1972 In Commerce: SEPTEMBER, 1972

Registration No.: 1,[illegible] Registered: AUGUST [illegible], 1989
Serial No.: 76-[illegible] Filed: MAY 8, 1988
Published: MAY 30, 1989

Description: THE MARK CONSISTS OF THE WORD "AEROSMITH" IN STYLIZED FORM, WITH A STYLIZED LETTER "A" AND WING DESIGN.

Registrant: SVENGALI MERCHANDISING INCORPORATED, (MA CORP.)
[illegible] LINCOLN STREET
ALLSTON, MA 02134

DESIGN OF AEROSMITH LOGO

Mark Searched: DESIGN OF AEROSMITH LOGO
Goods/Services: Musical group

FEDERAL TRADEMARKS

A AEROSMITH (Int'l. Cl.: 14, 18, 28, 25, 41) F-1
RN 1,[illegible] REGISTERED .....

95043631993

Trademark Research

Mark: DESIGN OF AEROSMITH LOGO

Goods/Services: Musical group

Applications filed in the United States Patent and Trademark Office through MAY 23, 1994 have been examined in preparation of this report, except those few not released through the PTO.

Information from the Official Gazette of AUGUST 16, 1994 is included in this report.

Trademark Research Corporation
[illegible] Park Avenue South
New York, NY 10010
Tel 212 [illegible] 4664
[illegible] TRE-MARK
Fax 212 [illegible]

The following search report is not to be construed as a legal opinion as to the registrability of the trademark.

The following search covers [illegible] United States Patent and Trademark Office records of registered, pending and prior applications, [illegible] of [illegible] and the [illegible] of [illegible] [illegible] of [illegible] [illegible] [illegible]

Information last updated 08-10-1994

Correct Corporate Name: SVENGALI MERCHANDISING, INC.
Address: 215 FIRST ST.
CAMBRIDGE, MA 02142

FEIN:
Type: DOMESTIC
Profit/Non-Profit: PROFIT
Date of Incorporation: 08-12-1988
Status: MERGED
Good Standing Status: NOT AVAILABLE
Current End of Fiscal Year: DECEMBER 31
Date of Merger: 12-29-1988
Type of Merger: MERGED CORPORATION
Initial Stock Authorized: 15,000 CNP

Clerk/Resident Agent: BRAD E. WHITFORD
215 FIRST ST., CAMBRIDGE, MA

RETURN=More Information P#=Page E=Exit to Summary

SVENGALI MERCHANDISING, INC.

****** OFFICERS ******

Name and Address	Title
ANTHONY JOSEPH PERRY 215 FIRST ST., CAMBRIDGE, MA	President
JOSEPH MICHAEL KRAMER 215 FIRST ST., CAMBRIDGE, MA	Treasurer

****** HISTORY ******

Filing Date	Index Number	Transaction
08-15-1989	89074644	1988 ANNUAL REPORT (Domestic & Foreign)
12-29-1988	88290011	MISCELLANEOUS AMENDMENT (Merger)

Number=MoreInfo RETURN=Summary O=OrderDocs P#=Page N=NewSrch E=Exit

****** HISTORY (Cont'd) ******

Filing Date	Index Number	Transaction
05-19-1992	92068764	1991 ANNUAL REPORT (Domestic & Foreign)
05-14-1991	91053613	1990 ANNUAL REPORT (Domestic & Foreign)
03-26-1990	90023850	1989 ANNUAL REPORT (Domestic & Foreign)
10-17-1989	89315715	AMENDMENT-Profit (Restrictions)
09-17-1989	89009160	CHANGE-Profit (Principal Office)
08-16-1989	89075135	1989 ANNUAL REPORT (Domestic & Foreign)
03-02-1989	89002088	CHANGE-Profit (Fiscal Year)

RETURN=More Information P#=Page E=Exit to Summary

****** HISTORY (Cont'd) ******

Filing Date	Index Number	Transaction
02-13-1989	89005359	1988 ANNUAL REPORT (Domestic & Foreign)
12-30-1988	88011286	CHANGE-Profit (Fiscal Year)
12-29-1988	88290011	MISCELLANEOUS AMENDMENT (Merger)
03-02-1988	88015215	1985 ANNUAL REPORT (Domestic & Foreign)
02-03-1988	88015216	1986 ANNUAL REPORT (Domestic & Foreign)
12-30-1987	87096601	1987 ANNUAL REPORT (Domestic & Foreign)
05-17-1985	85003798	CHANGE-Profit (Officers & Directors)

RETURN=More Information P#=Page E=Exit to Summary

****** HISTORY (Cont'd) ******

Filing Date	Index Number	Transaction
06-19-1984	84171064	ARTICLES OF ORGANIZATION (Domestic/Profit)

Information last updated 08-10-1994

Correct Corporate Name: SVENGALI MERCHANDISING INCORPORATED
Address: 5 BIGELOW ST.
CAMBRIDGE, MA 02139

FEIN: 04-2834158
Type: DOMESTIC
Profit/Non-Profit: PROFIT
Date of Incorporation: 06-19-1984
Status: MERGED/ACTIVE
Good Standing Status: GOOD STANDING
Current End of Fiscal Year: DECEMBER 31
Date of Merger: 12-29-1988
Type of Merger: SURVIVING CORPORATION
Initial Stock Authorized: 12,500 CNP

Clerk/Resident Agent: BRAD E. WHITFORD
5 BIGELOW STREET, CAMBRIDGE, MA 02139

RETURN=More Information P#=Page E=Exit to Summary

SVENGALI MERCHANDISING INCORPORATED

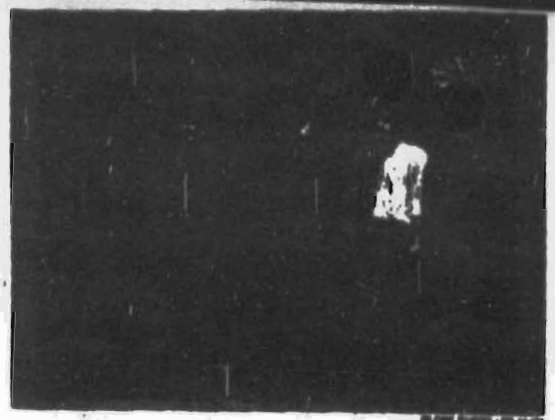
****** OFFICERS ******

Name and Address	Title
ANTHONY J. PERRY 5 BIGELOW STREET, CAMBRIDGE, MA 02139	President
JOSEPH M. KRAMER 5 BIGELOW STREET, CAMBRIDGE, MA 02139	Treasurer

****** HISTORY ******

Filing Date	Index Number	Transaction
03-19-1994	94032093	1993 ANNUAL REPORT (Domestic & Foreign)
03-15-1993	93027286	1992 ANNUAL REPORT (Domestic & Foreign)

RETURN=More Information P#=Page E=Exit to Summary



Sen. Edward M. Kennedy poses with Aerosmith members Brad Whitford, Steve Tyler, band manager Tim Collins, Joe Perry, Joey Kramer and Tom Hamilton at a Norwell fund-raiser.

Boston Globe 9/13/94

Vicki Kennedy had noteworthy role in speech

Exhibit 3

At an Aerosmith fund-raiser on Sunday that netted close to $50,000 for Edward M. Kennedy, the senator's wife demonstrated again why she is invaluable to his campaign.

Kennedy, whose musical tastes lean more to the Boston Pops, relied on Vicki in working up a brief speech that managed to mention several Aerosmith songs.

CAMPAIGN ROUNDUP

According to two of the more than 100 people at the $500-a-person event at guitarist Brad Whitford's home in Norwell, Kennedy said the Republicans down in Washington are "Cryin" all the time, and he wished they would just "Shut Up and Dance." He also said he needed the help of Aerosmith because he wanted to "Walk This Way" down to Washington.

As usual, John F. Kennedy Jr. got more attention than anyone, even Aerosmith lead singer Steve Tyler. In its fund-raising appeal for the event, the band said Kennedy was facing the fight of his life. "This is not simply a battle for Massachusetts' senatorial seat," the band said. "Nationwide, conservative forces have banded together to interfere with our local interests, oust our senator and install a figurehead compatible with their reactionary agenda, an agenda that does not include women's rights, AIDS research, art, free speech or basic personal freedoms."

INSIDE TRACK

LAURA HAR[illegible]A

It was a night that was [illegible]ing short of Amazing. [illegible] one clean-out Ken[illegible]ssing the Flash and Bat(ing) The Rich find with the tatooed Bad Boys of Aerosmith during a $500-a-head fund-raiser the band threw for Sen. Ted Kennedy the other day....

"I was happy to Walk on Down," the desperately-trying-to-be-hip Kennedy said in a little pep talk to the troops. "Ah, politics, you Gotta Love It."

Still, we don't think Ted was coming up with all that Aero-speak all on his own. Because what someone asked the senior senator his favorite song by Steven Tyler & Co. he began groping around for his notes.

"Walk This Way," a helpful aide called out to him. Which Ted apparently took as a directive, because he began to walk toward said aide.

Still, it was a real swell party over there at Brad and Karen Whitford's lovely South Shore mansion. Beanie Tom Brady and the Kennedy Trust A-Rod [illegible] guests he was [illegible] of a Massachusetts institution representing great wealth, power and influence despite years of personal tragedy — [illegible] enough about Aerosmith." Then he did a whole bunch [illegible] things about Ted.

[illegible] the real fun began [illegible] the cameras came out and everyone jockeyed for a photo moment with the Sexiest Man Alive, John F. Kennedy Jr. — including all five of the Aerosmiths.

"John said it was the closest thing he'd ever got to a groupie," said Karen Whitford. Ouch! But we guess Daryl Hannah found that out the hard-way, huh?

Still, the real surprise of the afternoon was that front man Steven Tyler didn't mind not being the center of attention. "My dee-ah, I thought it was love-ly," he imparted to the Track. Well, it's not every day that you can Get A Grip on a garland of Kennedys, including matriarch Ethel; U.S. Rep. Joe, with Beth and his twins, Patrick and Matthew; campaign princess Michael; New York Post scribe Doug; and brother-in-law Paul Hill.

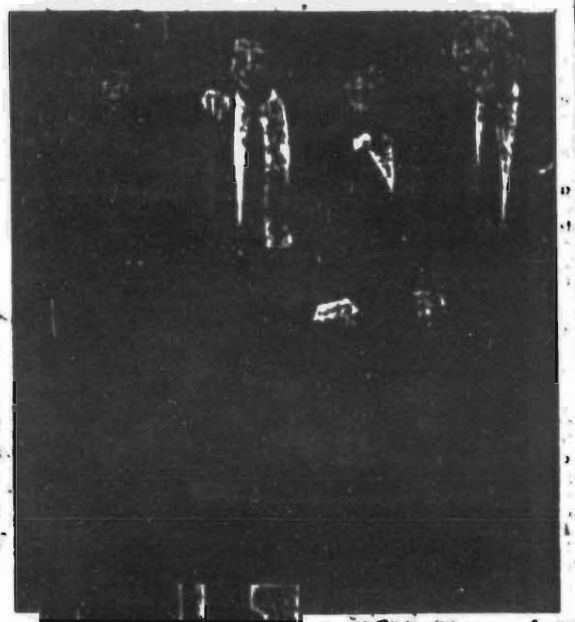
Other faces in the crowd included Boston Garden President Larry Mullin; the self-proclaimed "gracious evening host of our fair city" Patrick Lynn and his pal, Harry Comfort; ex-Extreme drummer Paul Geary; Brookline psychologist Philip Wark and House of Blues honchos Jim Dunne and Mike Cridler.

And the best part was that [illegible] — except the senator himself — made any cheap [illegible] (like Walk This Way — Straight To The Buffet) about the groom Flash Ted's carrying around. An Amazing afternoon all around.

□□□

And speaking of the SMA, we must tell you that John-John returned his Aerosmith/Kennedy commemorative polo shirt to the folks at Rasky & Company because the party organizers gave him a size large.

J.J. needs an XL. For his hunky neck. Of course.



Teresa and Steven Tyler, above left, pose with Sexiest Man Alive John F. Kennedy Jr., and Vicki and Ted Kennedy during Aerosmith's $500-a-head fund-raiser for the Bay State's senior senator. Brad and Karen Whitford, left, hosted the Amazing bash.

BOOKING ON FORGIVENESS

And while we're on the subject of Steven Tyler, seems he and Madonna kissed and made up after their reasonether heated on-air dissing contest during the recent MTV awards.

In case you missed it, Madonna presented the Bad Boys with their Video of the Year Award, at the, er, climax of the festivities. At which point Steven said, "Madonna, baby, I saw your 'Bat' book." Then he launched into a dirty joke — at the Material Girl's expense.

Madonna thought the quip was way over the Borderline and she shot back with a little Hanky Panky of her own.

As they walked off stage, Steven said, he had an attack of the guilts for making Madonna the butt of his humor. So he tried to smooth things over.

Apparently, it worked. Because the conversation ended with the Divine Ms. M confessing that she was once Crazy For Steven. Well, that's what he says, anyway....

CARLY WON'T FLY COOP

Vineyard songbird Carly Simon checked in yesterday to report that she is "still enchanted" with her Lambert's Cove farm and will not be selling it to Michael Jackson and Lisa Marie Presley-Jackson — nor anyone else for that matter.

The Track reported yesterday that rumors were rampant on the island that the newly-weirds were scoping out Carly's Tisbury retreat — much to her neighbors' chagrin.

"I don't want cherry bombs to come over my fence," Simon says.

So for now the house is off the market. Seems like The Right Thing To Do.

WILD TIME FOR PARISH

And finally, ex-Celtic Robert Parish will stop by WILD-AM this morning to bid bye-bye to Boston as he heads south to become a Charlotte Hornet.

But the really BIG Parish news is that Robert is a Grampa. That's right, the Chief's daughter delivered a pint-sized Parish the other day and the new Hornet will be buzzing through Louisiana to check out the new addition to the family tree.

Exhibit 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEPTEMBER 19, 1994

Edwina Rogers, General Counsel
National Republican Senatorial Committee
425 Second Street, N.W.
Washington, D.C. 20002

RE: MUR 4056

Dear Ms. Rogers:

This letter acknowledges receipt on September 14, 1994, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 4056. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure
Procedures

95043632000

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEPTEMBER 19, 1994

Brad E. Whitford, Registered Agent
Svengali Merchandising Incorporated
5 Bigelow Street
Cambridge, MA 02139

RE: MUR 4056

Dear Mr. Whitford:

The Federal Election Commission received a complaint which indicates that Svengali Merchandising Incorporated ("Svengali"), Anthony J. Perry, Joseph M. Kramer, and Brad E. Whitford, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4056. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against Svengali, Anthony J. Perry, Joseph M. Kramer, and Brad E. Whitford in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

95043632001

If you have any questions, please contact Alva E. Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

2 5 0 4 3 6 3 2 0 0 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEPTEMBER 19, 1994

John F. Zamparelli, Treasurer
Kennedy for Senate
P.O. Box 8010
Boston, MA 02214

RE: MUR 4056

Dear Mr. Zamparelli:

The Federal Election Commission received a complaint which indicates that the Kennedy for Senate committee and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4056. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

2504363203

If you have any questions, please contact Alva E. Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

2504363204

COLLINS MANAGEMENT, INC.

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Oct 11 7 41 AM '94

October 5, 1994

Ms. Alva E. Smith, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4056
Svengali Merchandising Incorporated
Anthony J. Perry
Joseph M. Kramer
Brad E. Whitford

Dear Ms. Smith:

This is a request for an extension of time to respond to the complaint filed in the above-referenced matter. The respondents received the Commission's notification on September 22, 1994, making a response due on October 7, 1994. However, due to the travel schedule of the band, the need for additional time to gather information and my own previously set vacation plans, we are requesting a 20-day extension, making a response due on October 27, 1994.

Your assistance will be greatly appreciated in this matter.

Sincerely yours,

Robert A. Felli

Statement of Designation of Counsel

MUR 4056

Name of Counsel: Robert A. Falk
Collins Management, Inc.

Address: 5 Bigelow Street
Cambridge, MA 02139

Telephone: 617 868 3100

The above named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

October 5, 1994

by _____
Brad E. Whitford, Registered Agent

Respondent's Name: Svengali Merchandising, Inc.
Address: 5 Bigelow Street
Cambridge, MA 02139

Phone: 617 868 3100

RECEIVED FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL
Oct 11 7 41 AM '94

2524363206

OLDAKER, RYAN & LEONARD
ATTORNEYS AT LAW
818 CONNECTICUT AVENUE, N.W.
SUITE 1100
WASHINGTON, D.C. 20006

(202) 728-1010
FACSIMILE (202) 728-4044

October 11, 1994

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Oct 11 4 27 PM '94

Ms. Alva E. Smith, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20436

RE: MUR 4056
Kennedy for Senate and
John F. Zamparelli, Treasurer

Dear Ms. Smith:

I am writing to request an extension of time to respond to the complaint in the above-referenced matter. The respondents received the notification of the complaint on October 4, 1994, making a response due on October 19, 1994. However, due to the time needed to gather information, the close proximity of election day and other deadlines facing counsel, we are asking you to grant us a 20-day extension period, making a response due on November 8, 1994.

Thank you for your consideration of this request.

Sincerely,

Lyn Utrecht

Lyn Utrecht

25043632007

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4056

NAME OF COUNSEL: Lyn Utrecht

ADDRESS: 818 Connecticut Avenue NW Suite 1100

Washington, D.C. 20006

TELEPHONE: 202-728-1010

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10/5/94
Date

John F. Zamparelli
Signature

RESPONDENT'S NAME: John F. Zamparelli

ADDRESS: P.O. Box 8010

Boston, Massachusetts 02114

HOME PHONE:

BUSINESS PHONE: 617-338-9494 Mary Wong

2504363208

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 12, 1994

Robert A. Falk
Collins Management Inc.
5 Bigelow Street
Cambridge, MA 02139

RE: MUR 4056
Svengali Merchandising Inc.

Dear Mr. Falk:

This is in response to your letter dated October 5, 1994, requesting an extension until October 27, 1994, to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on October 27, 1994.

If you have any questions, please contact Alva E. Smith at (202) 219-3400.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

95043632099

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 17, 1994

Lyn Utrecht, Esq.
Oldaker, Ryan & Leonard
818 Connecticut Avenue, NW
Suite 1100
Washington, DC 20006

RE: MUR 4056
Kennedy for Senate Committee and
John Zamparelli, as treasurer

Dear Ms. Utrecht:

This is in response to your letter dated October 11, 1994, requesting an extension until November 8, 1994 to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on November 8, 1994.

If you have any questions, please contact Alva E. Smith at (202) 219-3400.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

25043632010

COLLINS MANAGEMENT, INC.

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
OCT 27 12 51 PM '94

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4056

Dear Mr. Noble:

This response is filed on behalf of Svengali Merchandising, Inc. ("Svengali"), Anthony J. Perry, Joseph M. Kramer, and Brad E. Whitford in response to the complaint filed in the above-referenced matter. For reasons set forth below, this complaint, filed by the National Republican Senatorial Committee ("NRSC"), is totally without merit and should be dismissed immediately.

The NRSC, without any evidentiary support, alleges that a September 11, 1994 fund-raiser hosted by individual members of the band Aerosmith, somehow resulted in a corporate contribution to the Kennedy for Senate Committee ("Committee"). The NRSC does not even know the facts surrounding the event, and, in this complaint is taking a shot in the dark hoping the event was not handled correctly. Because of their total lack of knowledge regarding the facts, the complaint provides no evidence of any violation, but rather alleges alternative hypothetical scenarios, none of which occurred.[1]

For example, the complaint asserts that "if" music was played at the September 11 event, the Committee should have paid the usual and normal charge for an Aerosmith concert. While this allegation is legally without merit for the reasons set forth below, there was in fact no performance by the band. Similarly, while acknowledging that the Committee paid Svengali (the holder of the Aerosmith logo trademark) for the use of that logo, the NRSC alleges, without any support, that the amount paid for this use was less than the usual and normal charge. This allegation also is legally and factually incorrect. As explained in further detail below, the individual band members are entitled to use the logo as they see fit, but, precisely in order to ensure that there was no possibility of a prohibited corporate

[1] This complaint does not even meet the standard for proper complaints. 11 C.F.R. §111.4. It is based on hypothetical and not real facts, and it does not set forth a clear and concise recitation of any facts describing a violation of the Federal Election Campaign Act ("FECA" or the "Act").

5 Bigelow Street
Cambridge, MA 02139
617 • 868 • 1100
FAX 617 • 868 • 3400

contribution, they charged the Committee the amount of the usual and normal charge for the use of the logo.

The facts of this event are as follows:

1. The individual members of the band, Aerosmith, who support the re-election of Senator Edward M. Kennedy, hosted this fundraising event as individuals. (Affidavits from each of the five members of Aerosmith are attached.)

Under 2 U.S.C. § 431 (8)(B)(i) and 11 C.F.R. § 100.7(b)(3), individuals are free to engage in volunteer activity on behalf of the candidates of their choice. As supporters of Senator Kennedy, the individuals of the band, Aerosmith, offered to host a fundraising event on his behalf. That event occurred on September 11, 1994. At the event, two members of the band spoke on behalf of the Senator's re-election, but there was no performance by the band[2] Thus, there was no corporate involvement, expenditure or contribution in connection with the hosting of this event and the complaint's hypothetical allegation to the contrary is utterly baseless.

2. The use of the Aerosmith logo on the fundraising invitation and commemorative shirt was permissible and did not result in any corporate contribution to the Committee.

11 C.F.R. § 100.7(a)(1)(iii)(B) requires that candidates pay the usual and normal charge for goods and services provided to their campaign. Because of this rule, the individual members of Aerosmith and Svengali made substantial efforts to ensure that there would be no corporate contribution as a result of the band members' individual volunteer activity.

The trademark for the Aerosmith logo is held by Svengali, a corporate entity established by the individual band members. Svengali generally has the right to license the use of that logo, except that pursuant to a stockholders' agreement (a copy of which is attached to this response), the individual band members reserved to themselves the right to use the logo for personal purposes with permission of their fellow band members. When the logo is used by an individual band member, there is no

---

[2] Even had there been a performance, there would be no violation of the FECA. The complaint incorrectly alleges that only individual entertainers who have not established corporate entities can perform volunteer services on behalf of campaigns. That is incorrect. Any individual, whether employed by a corporation or not, can perform volunteer personal services on behalf of a campaign, provided that the individual is not compensated for those services. 11 C.F.R. § 100.7(b)(3). Since most entertainers operate through some type of corporate structure for tax, estate and other reasons, it is surprising that the NRSC would make this allegation. Many Republican candidates have benefited from the volunteer services of entertainers who are "incorporated" in the same way as Aerosmith. The fact that entertainers may be hired to perform through a corporate entity does not deprive these individuals of the right to volunteer their uncompensated personal services.

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band decided as individuals to assist Senator Kennedy's re-election effort by volunteering to serve as host for a fundraising event, they could have freely and without charge made use of the Aerosmith logo in connection with their own personal activity.

Notwithstanding the fact that they could have used the logo as individuals, without charge, the band members, in consultation with the Committee, determined the fair market value for this particular use of the logo and charged the Committee for that use as though the band members themselves had not been involved. They sought and obtained an opinion, prior to the event, regarding the value of the use of the logo on a fundraising solicitation that was sent to 500 individuals and on a limited number (250) of commemorative shirts produced for that event. (A copy of the opinion is attached.) Based on the very limited distribution of the materials, and the extremely short duration of the use, that value was determined to be $350. The Committee paid that amount on August 26, 1994. That charge amounted to a licensing fee of $.70 per individual who received an invitation or shirt, and amount that is, in fact, in excess of normal licensing fees. Thus the complaint's allegation that the charge for the use of the logo was not the usual and normal charge is meritless.

For the reasons described above, this complaint is totally without merit and should be dismissed.

Sincerely yours,

Robert A. Falk

2504363201 3

Affidavit

I, Thomas W. Hamilton, under oath, hereby depose and state as follows:

1. I am a resident of the Commonwealth of Massachusetts, one of five members of the band "Aerosmith" and one of five shareholders of the closely held corporations which own the corporate assets of "Aerosmith."

2. On or about July 5, 1994 and on other occasions thereafter, I personally met with other members of "Aerosmith" and others to organize and support a fund-raiser for the re-election of Ted Kennedy as a U.S. Senator from the Commonwealth of Massachusetts.

3. In connection with the organization of the fund-raiser and in furtherance of my personal support of Ted Kennedy's bid for re-election, I consented, pursuant to an Agreement by and among the band members and the closely held corporations of Aerosmith and as authorized by that Agreement, to the personal use by one or more band members of the Aerosmith logo on the invitation to the Ted Kennedy fund-raiser, the commemorative shirts to be distributed at the fund-raiser, and such other items that may be distributed before, during or after the fund-raiser in connection with the September 1994 fund-raiser.

4. I attended the fund-raiser on September 11, 1994 in support of Ted Kennedy in my personal capacity as a resident of the Commonwealth of Massachusetts.

Signed under the pains and penalties of perjury this 25 day of October, 1994.

County of King
State of Washington

Then appeared the above named Thomas W. Hamilton and acknowledged the foregoing to be his free act and deed before me.

Regena L Falling
Notary Public

My commission expires: 7/1/96

REGENA L. FALLING
STATE OF WASHINGTON
NOTARY — PUBLIC
My Commission Expires 7-1-96

Affidavit

I, Anthony Joseph Perry, under oath, hereby depose and state as follows:

1. I am a resident of the Commonwealth of Massachusetts, one of five members of the band "Aerosmith" and one of five shareholders of the closely held corporations which own the corporate assets of "Aerosmith."

2. On or about July 5, 1994 and on other occasions thereafter, I personally met with other members of "Aerosmith" and others to organize and support a fund-raiser for the re-election of Ted Kennedy as a U.S. Senator from the Commonwealth of Massachusetts.

3. In connection with the organization of the fund-raiser and in furtherance of my personal support of Ted Kennedy's bid for re-election, I consented, pursuant to an Agreement by and among the band members and the closely held corporations of Aerosmith and as authorized by that Agreement, to the personal use by one or more band members of the Aerosmith logo on the invitation to the Ted Kennedy fund-raiser, the commemorative shirts to be distributed at the fund-raiser, and such other items that may be distributed before, during or after the fund-raiser in connection with the September 1994 fund-raiser.

4. I attended the fund-raiser on September 11, 1994 in support of Ted Kennedy in my personal capacity as a resident of the Commonwealth of Massachusetts.

Signed under the pains and penalties of perjury this 25 day of October, 1994.

County of King
State of Washington

Then appeared the above named Anthony Joseph Perry and acknowledged the foregoing to be his free act and deed before me.

Regena L. Falling
Notary Public

My commission expires: 7/1/96

REGENA L. FALLING
STATE OF WASHINGTON
NOTARY PUBLIC
My Commission Expires 7-1-96

Affidavit

I, Brad E. Whitford, under oath, hereby depose and state as follows:

1. I am a resident of the Commonwealth of Massachusetts, one of five members of the band "Aerosmith" and one of five shareholders of the closely held corporations which own the corporate assets of "Aerosmith."

2. On or about July 5, 1994 and on other occasions thereafter, I personally met with other members of "Aerosmith" and others to organize and support a fund-raiser for the re-election of Ted Kennedy as a U.S. Senator from the Commonwealth of Massachusetts.

3. In connection with the organization of the fund-raiser and in furtherance of my personal support of Ted Kennedy's bid for re-election, I consented, pursuant to an Agreement by and among the band members and the closely held corporations of Aerosmith and as authorized by that Agreement, to the personal use by one or more band members of the Aerosmith logo on the invitation to the Ted Kennedy fund-raiser, the commemorative shirts to be distributed at the fund-raiser, and such other items that may be distributed before, during or after the fund-raiser in connection with the September 1994 fund-raiser.

4. I attended the fund-raiser on September 11, 1994 in support of Ted Kennedy in my personal capacity as a resident of the Commonwealth of Massachusetts.

Signed under the pains and penalties of perjury this 25 day of October, 1994.

County of King
State of Washington

Then appeared the above named Brad E. Whitford and acknowledged the foregoing to be his free act and deed before me.

Notary Public

My commission expires: 7/1/96

REGENA L. FALLING
STATE OF WASHINGTON
NOTARY — PUBLIC
My Commission Expires 7-1-96

Affidavit

I, Joseph M. Kramer, under oath, hereby depose and state as follows:

1. I am a resident of the Commonwealth of Massachusetts, one of five members of the band "Aerosmith" and one of five shareholders of the closely held corporations which own the corporate assets of "Aerosmith."

2. On or about July 5, 1994 and on other occasions thereafter, I personally met with other members of "Aerosmith" and others to organize and support a fund-raiser for the re-election of Ted Kennedy as a U.S. Senator from the Commonwealth of Massachusetts.

3. In connection with the organization of the fund-raiser and in furtherance of my personal support of Ted Kennedy's bid for re-election, I consented, pursuant to an Agreement by and among the band members and the closely held corporations of Aerosmith and as authorized by that Agreement, to the personal use by one or more band members of the Aerosmith logo on the invitation to the Ted Kennedy fund-raiser, the commemorative shirts to be distributed at the fund-raiser, and such other items that may be distributed before, during or after the fund-raiser in connection with the September 1994 fund-raiser.

4. I attended the fund-raiser on September 11, 1994 in support of Ted Kennedy in my personal capacity as a resident of the Commonwealth of Massachusetts.

Signed under the pains and penalties of perjury this 25 day of October, 1994.

Joseph M. Kramer

County of King
State of Washington

Then appeared the above named Joseph M. Kramer and acknowledged the foregoing to be his free act and deed before me.

Regena L. Falling
Notary Public

My commission expires: 7/1/96

REGENA L. FALLING
STATE OF WASHINGTON
NOTARY PUBLIC
My Commission Expires 7-1-96

2504763201 7

Affidavit

I, Steven V. Tallarico, under oath, hereby depose and state as follows:

1. I am a resident of the Commonwealth of Massachusetts, one of five members of the band "Aerosmith" and one of five shareholders of the closely held corporations which own the corporate assets of "Aerosmith."

2. On or about July 5, 1994 and on other occasions thereafter, I personally met with other members of "Aerosmith" and others to organize and support a fund-raiser for the re-election of Ted Kennedy as a U.S. Senator from the Commonwealth of Massachusetts.

3. In connection with the organization of the fund-raiser and in furtherance of my personal support of Ted Kennedy's bid for re-election, I consented, pursuant to an Agreement by and among the band members and the closely held corporations of Aerosmith and as authorized by that Agreement, to the personal use by one or more band members of the Aerosmith logo on the invitation to the Ted Kennedy fund-raiser, the commemorative shirts to be distributed at the fund-raiser, and such other items that may be distributed before, during or after the fund-raiser in connection with the September 1994 fund-raiser.

4. I attended the fund-raiser on September 11, 1994 in support of Ted Kennedy in my personal capacity as a resident of the Commonwealth of Massachusetts.

Signed under the pains and penalties of perjury this 25 day of October, 1994.

County of King
State of Washington

Then appeared the above named Steven V. Tallarico and acknowledged the foregoing to be his free act and deed before me.

Regena L. Falling
Notary Public

My commission expires: 7/1/96

REGENA L. FALLING
STATE OF WASHINGTON
NOTARY — PUBLIC
My Commission Expires 7-1-96

AGREEMENT

Agreement made effective as of September 7, 1990 by and among Steven V. Tallarico, Anthony Joseph Perry, Brad E. Whitford, Thomas W. Hamilton and Joseph M. Kramer all with offices at 5 Bigelow Street, Cambridge, Massachusetts (collectively referred to herein as the "Stockholders" and individually as a "Stockholder") and Vindaloo Music, Inc. formerly known as Nahor Music, Inc. ("Vindaloo"), Svengali Merchandising Incorporated ("Svengali"), Diogenes Productions, Inc. ("Diogenes"), Aero Dynamic Music Publishing, Inc. ("Aero Dynamic") and Swag Song Music, Inc. ("Swag Song"), all with offices at 5 Bigelow Street, Cambridge, Massachusetts (collectively referred to herein as the "Corporations" and individually as the "Corporation").

WHEREAS it is agreed in a Stockholders Agreement and Employment Agreements by and among the Stockholders and Corporations of even date that the Corporations are the owners of the name "Aerosmith" and the logo related thereto as agreed among the corporations; and

WHEREAS the Stockholders are all of the stockholders of the Corporations; and

WHEREAS the Corporations and Stockholders desire to grant the right to the Stockholders, subject to certain restrictions, to personally use the name and logo "Aerosmith" as they so agree.

NOW THEREFORE in consideration of the mutual promises herein the parties hereby agree as follows:

Upon the prior unanimous consent of all of the other Stockholders, any one or more Stockholder may personally use the name "Aerosmith" and the related logo for any purpose as approved by the other Stockholders.

IN WITNESS WHEREOF, the Stockholders and the Corporations have executed this agreement under seal effective September 7, 1990.

CORPORATIONS:

VINDALOO MUSIC, INC.

By: _____
Anthony Joseph Perry, President

SVENGALI MERCHANDISING INCORPORATED

BY: _____
Anthony Joseph Perry, President

DIOGENES PRODUCTIONS, INC.

By: _____
Anthony Joseph Perry, President

STOCKHOLDERS:

_____
Steven V. Tallarico

_____
Anthony Joseph Perry

_____
Brad E. Whitford

_____
Thomas W. Hamilton

_____
Joseph M. Kramer

AERO DYNAMIC MUSIC PUBLISHING, INC.

By: _____
Anthony Joseph Perry, President

SWAG SONG MUSIC, INC.

By: _____
Anthony Joseph Perry, President

LAW OFFICES
PRYOR, CASHMAN, SHERMAN & FLYNN
410 PARK AVENUE
NEW YORK, N.Y. 10022-4441

TELEPHONE (212) 421-4100
TELECOPIER (212) 326-0806

CABLE "PRYCOURT, N.Y."
TELEX 640321

WESTERN'S DIRECT DIAL

(212) 326-0100

RECEIVED
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COMMISSION
OFFICE OF GENERAL
COUNSEL
OCT 27 12 51 PM '94

August 9, 1994

via Facsimile

Lynn Utrecht, Esq.
Oldaker, Ryan & Leonard
818 Connecticut Avenue, N.W.
Suite #1100
Washington, D.C. 20006

Re: Aerosmith - Use of Logo

Dear Lynn:

This will confirm, following consultations with Aerosmith's professional advisors and upon the group's concurrence, that it has been determined the fair value for a one-time use of the Aerosmith logo in connection with the invitations for the fundraising event for Senator Kennedy scheduled for Sunday, September 11, is $350.

Payment of this licensing fee should be made to: Svengali Merchandising Inc. c/o Burton Goldstein & Co., Suite 1803, 156 West 56th Street, New York, NY 10019.

Please do not hesitate to call if you have any questions or comments.

Many thanks and all the best.

Cordially,

Howard Siegel

HS:lg

cc: Aerosmith
Mr. Tim Collins
Mr. Keith Garde
Burton Goldstein, CPA

OLDAKER, RYAN & LEONARD
ATTORNEYS AT LAW
818 CONNECTICUT AVENUE, N.W.
SUITE 1100
WASHINGTON, D.C. 20006

(202) 728-1010
FACSIMILE (202) 728-4044

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Nov 8 4 44 PM '94

November 8, 1994

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4056
Kennedy for Senate and
John F. Zamparelli, Treasurer

Dear Mr. Noble:

This response to the complaint in the above-referenced matter is filed on behalf of Kennedy for Senate (the "Committee") and John F. Zamparelli, Treasurer. The complaint filed by the National Republican Senatorial Committee (the "NRSC") alleges that a fundraiser hosted by individual members of the band, Aerosmith, on September 11, 1994, resulted in prohibited corporate contributions to the Committee. The complaint is based on hypothetical and incorrect information, and should be dismissed immediately.

The complaint incorrectly alleges that corporate contributions occurred in two ways: through the appearance (or performance) of the individual band members at the fundraising event, and through the use of the band's logo on the invitation and commemorative T-shirts. The theory put forth in the complaint is that the individual members of the band, Aerosmith, who hosted a fundraising event for the Committee are not entitled to the volunteer personal services exemption. Since the NRSC did not even have the facts concerning the event, the complaint alleges alternative hypothetical facts and puts forth the novel proposition that entertainers who operate through a management corporation, unlike other corporate executives and employees, are not permitted to volunteer their uncompensated personal services on behalf of federal candidates. Further, although conceding that the Committee paid for the use of the Aerosmith logo, the NRSC alleges, without any evidence, that the amount paid for the use of the logo was less than the usual and normal charge. This is incorrect.

The individual members of Aerosmith are supporters of Senator Kennedy. They volunteered to host a fundraising event for his re-election campaign on September 11, 1994. Under 2 U.S.C. §431 (8)(B)(i) of the Federal Election Campaign Act, as amended ("FECA" or the "Act"),

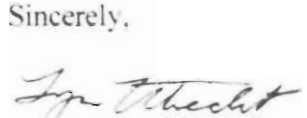
all individuals, regardless of their occupation or the manner in which they conduct their business, are free to volunteer their personal, uncompensated individual services to a federal candidate.* At the September 11 event, the individual band members acted only as hosts. There was no musical performance, and the band members did not receive any compensation from anyone for their volunteer time. Contrary to the complaint's assertion, there is absolutely no requirement that anyone pay for an "appearance" by Aerosmith, when the members of the band, as individuals, host a fundraising event. The band members, as any other individuals, are permitted under Section 431 (8)(B)(i) to volunteer on behalf of a federal candidate.

As to the unsupported allegations regarding the valuation of the Aerosmith logo, the complaint is simply wrong. The individual members of the band are specifically permitted to use the logo for individual purposes. No payment would be required under these circumstances. However, in order to ensure that there could be no question as to whether the use of the logo by the individual band member could in any way be construed as a corporate contribution, the Committee paid Svengali Management, the holder of the trademark, the amount of the usual and normal charge for the use of the trademark. That amount was set by attorneys for Svengali based on the usual and normal charge, and the Committee paid this amount. The assertion that this amount was too low is incorrect. If anything, because of the limited use to which the logo was put, the amount paid was too high.

Thus, it is clear that the Committee and the individual Aerosmith members made every effort to comply with the requirements of the FECA and that there was no corporate contribution resulting from the individual hosting of this event or the use of the Aerosmith logo.

For the foregoing reasons, this complaint is totally without merit and should be dismissed.

Sincerely,



Lyn Utrecht

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* The complaint makes the unsupported assertion that entertainers who are "incorporated" cannot volunteer their services as performers to a candidate. There is absolutely no support for this conclusion. Any individual may provide uncompensated voluntary services on behalf of a candidate.

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
'95

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of) Enforcement Priority
)
)

GENERAL COUNSEL'S MONTHLY REPORT

I. INTRODUCTION

This report is the General Counsel's Monthly Report to recommend that the Commission no longer pursue the identified lower priority and stale cases under the Enforcement Priority System.

II. CASES RECOMMENDED FOR CLOSING

A. Cases Not Warranting Further Pursuit Relative to Other Cases Pending Before the Commission

A critical component of the Priority System is identifying those pending cases that do not warrant the further expenditure of resources. Each incoming matter is evaluated using Commission-approved criteria and cases that, based on their rating, do not warrant pursuit relative to other pending cases are placed in this category. By closing such cases, the Commission is able to use its limited resources to focus on more important cases.

Having evaluated incoming matters, this Office has identified 22 cases which do not warrant further pursuit relative to the other pending cases.[1] A short description of

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1. These matters are: PM 305; MUR 3976; MUR 4023; MUR 4026; MUR 4031; MUR 4032; MUR 4036; MUR 4050; MUR 4051; MUR 4052; MUR 4055; MUR 4056; MUR 4058; MUR 4063; MUR 4068; MUR 4072; MUR 4073; MUR 4075; MUR 4078; MUR 4081; MUR 4082; and MUR 4083.

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each case and the factors leading to assignment of a relatively low priority and consequent recommendation not to pursue each case is attached to this report. See Attachments 1-22. For the Commission's convenience, the responses to the complaints for the externally-generated matters and the referral for the internally-generated matter are available in the Commission Secretary's office.

B. Stale Cases

Investigations are severely impeded and require relatively more resources when the activity and evidence are old. Consequently, the Office of General Counsel recommends that the Commission focus its efforts on cases involving more recent activity. Such efforts will also generate more impact on the current electoral process and are a more efficient allocation of our limited resources. To this end, this Office has identified 9 cases that have remained inactive and assigned to the Central Enforcement Docket for one year and which it believes do not warrant further investment of significant Commission resources.[2] Since the recommendation not to pursue the identified cases is based on staleness, this Office has not prepared separate narratives for these cases. However, for the Commission's convenience, the responses to the complaints for the externally-generated matters and the referrals for the internally-generated matters are also available in the

2. These matters are: MUR 3828; MUR 3829; RAD 93L-73; RAD 93L-75; RAD 93L-78; RAD 93L-83; RAD 93L-84; RAD 93L-88; and RAD 93L-91.

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Commission Secretary's office.

This Office recommends that the Commission exercise its prosecutorial discretion and no longer pursue the cases listed below effective February 21, 1995. By closing the cases effective February 21, 1995, CED and the Legal Review Team will respectively have the additional time necessary for preparing the closing letters and the case files for the public record for these cases.

III. RECOMMENDATIONS

A. Decline to open a MUR and close the file effective February 21, 1995 in the following matters:

1) RAD 93L-73
2) RAD 93L-75
3) RAD 93L-78
4) RAD 93L-83
5) RAD 93L-84
6) RAD 93L-88
7) RAD 93L-91

B. Decline to open a MUR, close the file effective February 21, 1995 and approve the appropriate letter in PM 305.

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C. Take no action, close the file effective February 21, 1995, and approve the appropriate letter in the following matters:

1) MUR 3828
2) MUR 3829
3) MUR 3976
4) MUR 4023
5) MUR 4026
6) MUR 4031
7) MUR 4032
8) MUR 4036
9) MUR 4050
10) MUR 4051
11) MUR 4052
12) MUR 4055
13) MUR 4056
14) MUR 4058
15) MUR 4063
16) MUR 4068
17) MUR 4072
18) MUR 4073
19) MUR 4075
20) MUR 4078
21) MUR 4081
22) MUR 4082
23) MUR 4083

2/13/95
Date

Lawrence M. Noble
General Counsel

95043632027

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document
Enforcement Priority	)	#X95-14

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on February 28, 1995, do hereby certify that the Commission took the following actions with respect to Agenda Document #X95-14:

1. Decided by votes of 6-0 to

   A. Decline to open a MUR and close the file effective February 28, 1995 in the following matters:

      1) RAD 93L-75
      2) RAD 93L-78
      3) RAD 93L-84

   B. Take no action, close the file effective February 28, 1995, and approve appropriate letters in the following matters:

      1) MUR 3828
      2) MUR 4026
      3) MUR 4031
      4) MUR 4032
      5) MUR 4056
      6) MUR 4058

(continued)

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7) MUR 4068
8) MUR 4083

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively on the decision with respect to each of these matters.

2. Decided by a vote of 5-1 to decline to open a MUR and close the file effective February 28, 1995 with respect to RAD #93L-91.

Commissioners Aikens, Elliott, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner McDonald dissented.

Attest:

3-2-95
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

95043632029

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 6, 1995

Lyn Utrecht, Esquire
Oldaker, Ryan & Leonard
818 Connecticut Avenue, N.W.
Suite 1100
Washington, DC 20006

RE: MUR 4056
Kennedy for Senate Committee and John F. Zamparelli, as treasurer

Dear Ms. Utrecht:

On September 19, 1994, the Federal Election Commission notified your clients of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against your clients. See attached narrative. Accordingly, the Commission closed its file in this matter on February 28, 1995.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact the Central Enforcement Docket at (202) 219-3400.

Sincerely,

Mary L. Taksar (HES)

Mary L. Taksar
Attorney

Attachment
Narrative

95043632030

MUR 4056
COMMITTEE TO RE-ELECT SENATOR EDWARD M. KENNEDY '94

The National Republican Senatorial Committee filed a complaint alleging that the Committee to Re-Elect Senator Edward M. Kennedy '94 ("Kennedy Committee") received prohibited corporate contributions when it received corporate services from the band Aerosmith at a September 11, 1994, fundraiser and because it used the Aerosmith corporate name and logo, registered trademarks of Svengali Merchandising Incorporated, on its fundraising solicitation and a commemorative shirt. The complaint indicates that the Kennedy Committee is required to pay all usual and normal charges for the services provided and its failure to do so results in corporate contributions.

In response to the complaint, the Kennedy Committee states that there was no musical performance at the fundraiser and the individual band members acted only as volunteer hosts. The Committee states that the individual band members are specifically permitted to use the logo for individual purposes and no payment is required when a member does so. According to the Committee, in order to ensure that the use of the logo by the individual band members would not be construed as a corporate contribution, the Kennedy Committee paid Svengali Merchandising the amount of the usual and normal charge for the use of the trademark, an amount set by attorneys for Svengali Merchandising based on the usual and normal charge.

The Svengali Merchandising, Inc., Anthony J. Perry, Joseph M. Kramer, and Brad E. Whitford state that the individual band members of Aerosmith are entitled to use the logo but that in order to ensure that the use of the logo would not constitute a corporate contribution, the Committee was paid the usual and normal charge for the use of the logo. The respondents states that in spite of the fact that the band members could have used the logo without charge, the band members, in consultation with the Kennedy Committee, determined the fair market value for this particular use of the logo and charged the Committee for that use.

This matter is less significant relative to other matters pending before the Commission.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 6, 1995

Robert A. Falk
Collins Management, Inc.
5 Bigelow Street
Cambridge, MA 02139

RE: MUR 4056
Svengali Merchandising, Inc., Anthony J. Perry, Joseph M. Kramer, and Brad E. Whitford

Dear Mr. Falk:

On September 19, 1994, the Federal Election Commission notified your clients of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against your clients. See attached narrative. Accordingly, the Commission closed its file in this matter on February 28, 1995.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact the Central Enforcement Docket at (202) 219-3400.

Sincerely,

Mary L. Taksar (HSB)

Mary L. Taksar
Attorney

Attachment
Narrative

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MUR 4056
COMMITTEE TO RE-ELECT SENATOR EDWARD M. KENNEDY '94

The National Republican Senatorial Committee filed a complaint alleging that the Committee to Re-Elect Senator Edward M. Kennedy '94 ("Kennedy Committee") received prohibited corporate contributions when it received corporate services from the band Aerosmith at a September 11, 1994, fundraiser and because it used the Aerosmith corporate name and logo, registered trademarks of Svengali Merchandising Incorporated, on its fundraising solicitation and a commemorative shirt. The complaint indicates that the Kennedy Committee is required to pay all usual and normal charges for the services provided and its failure to do so results in corporate contributions.

In response to the complaint, the Kennedy Committee states that there was no musical performance at the fundraiser and the individual band members acted only as volunteer hosts. The Committee states that the individual band members are specifically permitted to use the logo for individual purposes and no payment is required when a member does so. According to the Committee, in order to ensure that the use of the logo by the individual band members would not be construed as a corporate contribution, the Kennedy Committee paid Svengali Merchandising the amount of the usual and normal charge for the use of the trademark, an amount set by attorneys for Svengali Merchandising based on the usual and normal charge.

The Svengali Merchandising, Inc., Anthony J. Perry, Joseph M. Kramer, and Brad E. Whitford state that the individual band members of Aerosmith are entitled to use the logo but that in order to ensure that the use of the logo would not constitute a corporate contribution, the Committee was paid the usual and normal charge for the use of the logo. The respondents states that in spite of the fact that the band members could have used the logo without charge, the band members, in consultation with the Kennedy Committee, determined the fair market value for this particular use of the logo and charged the Committee for that use.

This matter is less significant relative to other matters pending before the Commission.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 6, 1995

Edwina Rogers, General Counsel
National Republican Senatorial Committee
425 Second Street, N.W.
Washington, DC 20002

RE: MUR 4056

Dear Ms. Rogers:

On September 14, 1994, the Federal Election Commission received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the Kennedy for Senate Committee and John F. Zamparelli, as treasurer, and Svengali Merchandising Incorporated. See attached narrative. Accordingly, the Commission closed its file in this matter on February 28, 1995. This matter will become part of the public record within 30 days.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Mary L. Taksar (428)

Mary L. Taksar
Attorney

Attachment
Narrative

25043632074

MUR 4056
COMMITTEE TO RE-ELECT SENATOR EDWARD M. KENNEDY '94

The National Republican Senatorial Committee filed a complaint alleging that the Committee to Re-Elect Senator Edward M. Kennedy '94 ("Kennedy Committee") received prohibited corporate contributions when it received corporate services from the band Aerosmith at a September 11, 1994, fundraiser and because it used the Aerosmith corporate name and logo, registered trademarks of Svengali Merchandising Incorporated, on its fundraising solicitation and a commemorative shirt. The complaint indicates that the Kennedy Committee is required to pay all usual and normal charges for the services provided and its failure to do so results in corporate contributions.

In response to the complaint, the Kennedy Committee states that there was no musical performance at the fundraiser and the individual band members acted only as volunteer hosts. The Committee states that the individual band members are specifically permitted to use the logo for individual purposes and no payment is required when a member does so. According to the Committee, in order to ensure that the use of the logo by the individual band members would not be construed as a corporate contribution, the Kennedy Committee paid Svengali Merchandising the amount of the usual and normal charge for the use of the trademark, an amount set by attorneys for Svengali Merchandising based on the usual and normal charge.

The Svengali Merchandising, Inc., Anthony J. Perry, Joseph M. Kramer, and Brad E. Whitford state that the individual band members of Aerosmith are entitled to use the logo but that in order to ensure that the use of the logo would not constitute a corporate contribution, the Committee was paid the usual and normal charge for the use of the logo. The respondents states that in spite of the fact that the band members could have used the logo without charge, the band members, in consultation with the Kennedy Committee, determined the fair market value for this particular use of the logo and charged the Committee for that use.

This matter is less significant relative to other matters pending before the Commission.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

THIS IS THE END OF MUR # 4056

DATE FILMED 3-29-95 CAMERA NO. 2

CAMERAMAN S.E.G

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