



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

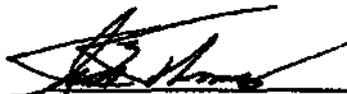
**CONCURRING OPINION**  
**OF**  
**COMMISSIONER SCOTT E. THOMAS**  
**ADVISORY OPINION 2004-42**

In considering Advisory Opinion 2004-42, I continue to believe that under 2 U.S.C. § 441e, a wholly owned subsidiary and its foreign national parent corporation should be treated as one entity. *See, e.g.*, Dissents in Advisory Opinions 1989-29, 1992-16, 1999-28 and 2000-17 at Fed. Elec. Camp. Fin. Guide (CCH) ¶¶ 5976, 6059, 6305 and 6334 respectively; and Statement for the Record in Advisory Opinion Request 1996-6, Fed. Elec. Camp. Fin Guide (CCH) ¶ 6994. Section 441e broadly prohibits a foreign national (which includes a foreign corporation) from making a political contribution “directly or indirectly” 2 U.S.C. § 441e (emphasis added). Just as a domestic corporation and its subsidiaries are seen as one entity in order to prevent a parent corporation from making excessive contributions through its subsidiaries’ political committees (*see, e.g.*, 2 U.S.C. § 441a(a)(5); 2 U.S.C. § 441b(b)(4)(A)(i); 11 C.F.R. 114.5(g)(1)), so too a foreign national parent corporation and its subsidiaries should be seen as one entity to prevent the foreign national corporation from making prohibited contributions indirectly through its subsidiaries.

Pharmavite is a limited liability company whose sole member is Otsuka America, Inc. (“OAI”). OAI is a wholly-owned corporate subsidiary of a Japanese corporation, Otsuka Pharmaceutical Company, Ltd. *See* Advisory Opinion 2004-42 at 2, n.2. Because Pharmavite is, in effect, a wholly-owned subsidiary of a foreign national corporation, I believe Pharmavite should not be allowed to make contributions through a political action committee to candidates for offices in the United States.

I cast a courtesy vote in favor of this Advisory Opinion, however, in order to complete Commission action on this matter before the end of the year. Commissioner Toner (who was unavoidably absent) would have voted in favor of the Opinion, and thus it made little sense to hold up this matter unnecessarily over the holiday break.

12/17/04  
Date

  
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Scott E. Thomas  
Commissioner