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**Aristotle**

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205 Pennsylvania Avenue, S.E.  
Washington, D.C. 20003

August 17, 2010

*Comment on AOR 2010-19*

Thomasenia Duncan, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

**RE: Advisory Opinion Request 2010-19 (Google): Comment and Request for Expedition**

Dear Ms. Duncan:

Pursuant to 2 U.S.C. § 437f(d) Aristotle International submits this comment urging the Commission to grant Google's request to confirm that text ads generated by Google's AdWords program are exempt from the disclaimer requirements of 11 C.F.R. §110.11 under the "small items" exemption. Further, in light of the significance and time sensitivity of this request, Aristotle urges the Commission to act on the request within 30 days.<sup>1</sup>

**I. ARISTOTLE'S INTEREST**

**A. WhereIVote.com**

Aristotle created and operates WhereIVote.com, the leading geographical database of U.S. voting locations. Offered as a service to the public, voters can type in any address in the United States and WhereIVote.com will identify the corresponding polling place and provide a map and directions from the voter's address to the polling place. Aristotle invests significant efforts in collecting and updating accurate voting district and polling location information, matching this information with state of the art geographical mapping tools. To defray the cost of this service, Aristotle sells ads on WhereIVote.com through Google's ad network. WhereIVote.com advertising includes

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<sup>1</sup> See Notice of New Advisory Opinion Procedures and Explanation of Existing Procedures, 74 Fed. Reg. 32,160, 32,162 (July 7, 2009).

display ads, which have adequate space for and include full FECA disclaimers and text ads on which disclaimers cannot be conveniently printed and are impracticable.<sup>2</sup>

As Google notes in its request, Internet text ads provide an unparalleled combination of low cost and highly efficient targeting for campaigns, political committees, and other advertisers. WhereIVote.com allows campaigns to reach exactly and only those voters who can vote for their candidate at the precise time when the voter is beginning to engage in the voting process.

### **B. Aristotle Professional Services to Political Committees**

Aristotle provides a variety of professional services relevant to this AOR, including web site design and hosting services, to political committees. Aristotle seeks to ensure that political committee web sites and related activities such as ads driving traffic to those sites are fully compliant with requirements of the Federal Election campaign Act and Commission regulations.

## **II. REQUEST FOR EXPEDITION**

Though Google did not explicitly seek expedited treatment for this request, the timing and subject matter are of the type the Commission has treated on an expedited basis in the past. The Commission should attempt to respond to this request within 30 days because the legal principles are clear and because of the widespread impact of the response in the pending election season.

In Advisory Opinion 2002-09 (Target Wireless) the Commission addressed a factually similar request, applying the “small items” exemption<sup>3</sup> to text messages with a 160 character limit. As discussed further below, Google’s request is more compelling, based on size or practicability and disclosure grounds, than the Target Wireless request. Google text ads are plainly the equivalent of electronic buttons or bumper stickers with “limits on both the size and length of information that can be conveyed.”<sup>4</sup> The Commission should be able to issue such a straightforward and well-supported interpretation of its regulation in far less than the 60 days allotted in the statute.<sup>5</sup>

The request should also be expedited because advertising hosts and campaigns are already making firm plans for pre-election advertising. Advertising hosts such as Google and Aristotle are already designing and offering ad placements for the peak campaign season. By the time the 60-day statutory clock on this request runs in early October many campaigns will have made ad buying decisions for the final weeks of the campaign. If, contrary to the plain reading of the “small items” exemption and Commission precedent, text ads will require disclaimers, candidates and advertising hosts should be spared an early October surprise.

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<sup>2</sup> 11 C.F.R. § 110.11(f)(1)(i) and (ii).

<sup>3</sup> 11 C.F.R. § 110.11(a)(6)(i).

<sup>4</sup> Advisory Opinion 2002-09 at 4.

<sup>5</sup> 2 U.S.C. § 437f(a)(2).

### **III. LEGAL DISCUSSION**

Aristotle generally concurs in the points made in Google's legal discussion, but offers three points of emphasis:

- The size and character limitations of Google text ads are even more restricted than the "SMS" advertising exempted in Target Wireless (2002-09).
- The disclosure objective of the disclaimer regulations is fully met by disclaimers on sponsor's websites to which the links in the texts ads themselves direct interested viewers.
- For these reasons it is unnecessary for the Commission to reach the alternative disclaimer issue.

Advisory Opinion 2002-09 involved "SMS" technology limited to 160 characters per screen. The Commission concluded this size and length limitation fit under the "small items" exemption. Google text ads, in contrast, are limited to only 95 characters, including a headline and URL. This limit provides only 60% of the length available in the ads addressed in AO 2002-09. If the SMS ads fit within the "small items" exemption, ads limited to 40% fewer characters clearly fit under the same exemption.

Further, like the Target Wireless ads, Google text ads are limited by standard technological and marketing practices. Millions of such ads appear hourly through Google and other ad networks placed by non-political advertisers. The length and space limitations are integral to the message form and not adopted simply to avoid FECA disclaimer requirements. Requiring disclaimers on Google text ads would require a redesign of the fundamental ad format, effectively placing this ubiquitous advertising format off limits to Federal candidates and political committees.

Google text ads are designed specifically to attract interest in and drive traffic to the advertiser's web site. Clicking on either the ad headline or the integrated URL will take the viewer to the advertised site. Political committee web sites must include a complete disclaimer.<sup>6</sup> Thus, the entire purpose of a Google text ad is to attract a web user to a site which will include a full disclaimer. This combination could be interpreted, as Google suggests in the alternative, as a substitute means of satisfying the disclaimer requirement. More fundamentally, exempting text ads from the disclaimer requirement does not frustrate public disclosure because the very purpose of the ad is to attract a web user to a site which will include a full FECA disclaimer. Unlike SMS ads, which were a dead end in terms of reader information, text ads encourage and entice viewers to click through to a site with a disclaimer. Thus, the text advertising format and technology directly promote the public interest in knowing who is behind a message.

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<sup>6</sup> 11 C.F.R. § 110.11(a)(1).

Because Google text ads plainly qualify for the small item exemption and because the web sites promoted in the ads (when purchased by political committees) will contain FECA disclaimers there is no necessity for the Commission to reach the alternate disclaimer basis for granting Google's request.<sup>7</sup> Though we agree that this alternate argument is valid, granting the request based simply on the small item exemption would provide a more straightforward, economical, and likely speedier means of addressing this meritorious and timely request.

We urge favorable and expedited treatment of this request.

Respectfully,

*David M. Mason*

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Aristotle International

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<sup>7</sup> See, e.g., the Commission's declination to address alternate grounds in Advisory Opinion 2002-09 (Target Wireless) at 4.