



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

**TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
CHIEF COMMUNICATIONS OFFICER
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE**

FROM: ACTING COMMISSION SECRETARY AND CLERK

DATE: SEPTEMBER 22, 2010

**SUBJECT: SUPPLEMENTAL COMMENT
CONCERNING AO 2010-19 (Google)**

A handwritten signature in black ink, enclosed in a circle. The signature appears to be "JRE".

Transmitted herewith is a timely submitted supplemental comment from Michael Toner on behalf of Facebook, Inc., regarding the above-captioned matter.

Proposed Advisory Opinion 2010-19 is on the agenda for Thursday, September 23, 2010.

Attachment



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Michael E. Toner
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2010 SEP 22 AM 11:05

OFFICE OF GENERAL
COUNSEL

September 21, 2010

BY FACSIMILE AND HAND DELIVERY

Mr. Christopher Hughey
Acting General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20004

Re: Supplemental Comment Concerning Advisory Opinion 2010-19 (Google)

Dear Mr. Hughey:

Pursuant to 2 U.S.C. § 437f(d), I submit this additional comment on behalf of Facebook, Inc. ("Facebook") regarding Advisory Opinion Request 2010-19 sought by Google and Drafts A and B of Advisory Opinion 2010-19 ("Draft A" and "Draft B") released by the Commission on September 17, 2010.

For the reasons set forth below, the Commission should reject Draft A because the modified disclaimer requirement contained therein has the potential to grossly mislead Internet users about who is paying for online advertisements. Rather, the Commission should adopt Draft B, which concludes that Google's advertisements are exempt from the Commission's disclaimer requirements under the "impracticable" exception at 11 C.F.R. § 110.11(a)(1)(ii); such a conclusion would further the Commission's recent efforts to facilitate robust political expression on the Internet while also providing online consumers with accurate information about who is paying for online advertisements.

DISCUSSION

Facebook strongly urges the Commission to adopt Draft B, which appropriately concludes that Google's advertisements are exempt from disclaimer requirements under 11 C.F.R. § 110.11(f)(1)(ii) on the grounds of impracticability. See Draft B at 4 (noting that the required candidate committee disclaimer is 57 characters long and, when combined with the full name of a political committee, "could exhaust nearly the entire character limit, leaving few, if any, characters remaining to express a political message."). However, Facebook strongly urges the Commission to reject Draft A, as

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the adoption of the alternative URL disclaimer requirement in many cases would not convey accurate information to online consumers about who is actually paying for online advertisements and therefore would undermine the efficacy of the Commission's disclaimer regulations and requirements.

I. Many URLs in American Politics Today Are Highly Misleading

Google's advisory opinion request states that "[i]f a disclaimer is required, the Commission should consider the requirement satisfied if (1) the text ad displays the URL of the sponsoring website and (2) the landing page contains a full § 110.1 disclaimer." Advisory Opinion Request 2010-19 at 7. After noting that Google's advertisements are not subject to the disclaimer exemption for "small items" at 11 C.F.R. § 110.11(f)(1)(i), Draft A asserts, without any empirical evidence, that a political committee URL "typically contains some form of the candidate or political committee's name." Draft A at 7. Based upon this factual premise, Draft A concludes that "the disclaimer requirement is satisfied if the text ad displays the URL of the political committee's website and the landing page contains a full disclaimer as required by 11 CFR 110.11." *Id.* at 7-8.

However, as was noted in Facebook's initial comments submitted in this matter, a wide variety of political committees and other organizations involved in disseminating public communications in connection with federal elections today use URLs that do not include the name of the sponsoring entity and employ URLs that, far from conveying accurate information about who is sponsoring the URL, actually can be highly misleading. A recent *New York Times* article highlighted the prevalence of this phenomenon in American politics today.¹ A copy of the *New York Times* article is attached hereto as Exhibit 1. Below is a list of URLs that could easily confuse voters as to the identity of the party sponsoring an advertisement (and the organizations actually sponsoring them):

- BobMenendez.com (Sharron Angle);
- BenQuayle.com (Not currently active, previously used by the Democratic National Committee);
- BradEllsworth.org (Indiana Republican Party);
- JoeSestak.org (Currently being used by Toomey for Senate, previously used by a number of organizations that have endorsed Mr. Toomey);
- RalphHall.org (Jim Prindle, Libertarian candidate);

¹ Marc Lacey, "Clicking Candidate.com, Landing at Opponent.com," *N.Y. Times*, September 14, 2010, http://www.nytimes.com/2010/09/15/us/politics/15squatters.html?_r=1&scp=1&sq=clicking%20candidate.com&st=csc

- [TheRealToomeyforSenate.com](#) (Sestak for Senate); and
- [TheRealSharronAngle.com](#) (Nevada State Democratic Party).

The following additional examples further illustrate the prevalence of URLs that provide no meaningful indication as to the sponsor of a public communication:

- [WrongWayReid.com](#) (National Republican Senatorial Committee);
- [TrashTalkingLinda.com](#) (Connecticut Democratic State Committee);
- [RubberStampRobin.com](#) (Friends of Roy Blunt);
- [LeaveItToGreene.com](#) (Kendrick Meek for Florida);
- [HeinrichFacts.com](#) (National Republican Congressional Committee); and
- [MrPortmansMakeBelieveNeighborhood.com](#) (Democratic Senatorial Campaign Committee).

While Draft A asserts that many campaign committee URLs include some portion of the sponsoring entity's name, it would be shortsighted of the Commission to grant the requested alternative disclaimer requirement on the assumption that campaigns will always use URLs containing the name of the candidate. As the examples above suggest, many well-funded, national campaign committees already use URLs that are misleading or provide no meaningful information. This practice is likely to become more common – not less – as smaller campaigns adopt the tactics of the larger committees.

It is important to note that there is nothing wrong or inappropriate with any of this Internet activity; it is an important part of online American political debate. However, there is no question that online viewers who rely on the URL names for information about who is paying for the URLs will frequently be grossly misled. The Commission should not enshrine this phenomenon into its disclaimer requirements for online advertising; doing so would potentially harm the Commission's interest in promoting accurate public disclosure of who is paying for online advertising. In light of the foregoing, the Commission should reject Draft A.

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II. Exempting Google's Advertisements from the Disclaimer Requirements Will Not Deprive Online Viewers of Information Concerning Who is Paying for the Advertisements

As is noted in both Draft A and B, an Internet user that clicks on a Google advertisement paid for by a campaign committee can be taken to the campaign's website, which can include all required disclaimers. See Draft A at 2 and Draft B at 2. Facebook urges the Commission to determine that disclaimers on a landing page satisfy the requirements of 11 C.F.R. § 110.11 as outlined in Draft B.

Commission regulations require that public communications that contain express advocacy or constitute solicitations for federal funds contain certain disclaimers. See 11 C.F.R. § 110.11. If a communication is paid for by a campaign committee, the disclaimer must indicate that "the communication has been paid for by the authorized political committee." 11 C.F.R. § 110.11(b)(1). Communications paid for by another person or political committee must include "the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication." 11 C.F.R. 110.11(b)(3). These communications must also indicate whether they were authorized by a campaign committee. See 11 C.F.R. § 110.11(b)(2) and (3).

Because a landing page must include the full disclaimers outlined above, the Commission should consider the disclaimers on the landing page sufficient to satisfy the disclaimer requirements of 11 C.F.R. § 110.11. If a political committee fails to include the required disclaimers on the landing page, the political committee will be in violation of Commission regulations. This legal requirement provides additional incentive for the sponsoring political committee to display a full and legally compliant disclaimer on the landing page, which will provide online consumers with accurate and useful information about who is sponsoring the website. As was noted in Facebook's initial comments submitted in this matter, the ability to link short-form communications like Google's text advertisements to longer-form communications like a campaign website marks an important development in the technology of disclosure. While some other media commonly used in public communications – such as small buttons or stickers – cannot be linked to a full disclaimer statement, online advertisements can easily be linked to a variety of disclaimed content.

For all of the foregoing reasons, Facebook strongly urges the Commission to reject Draft A and adopt Draft B in connection with Advisory Opinion 2010-19.

Sincerely,



Michael E. Toner
Counsel for Facebook, Inc.

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PRINTER-FRIENDLY FORMAT
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September 14, 2010

Clicking Candidate.com, Landing at Opponent.com

By **MARC LACEY**

PHOENIX — One might think that BobMenendez.com would be the Web site of Senator Robert Menendez of New Jersey, chairman of the Democratic Senatorial Campaign Committee. But no. Sharron Angle, the Republican candidate for the Senate in Nevada, has the site, which her campaign uses to bash Democrats.

Likewise, BenQuayle.com has nothing to do with the candidacy of former Vice President Dan Quayle's son, Ben, who is running for Congress in Arizona. Among the advertisers that have used the site is the Democratic National Committee, which promoted the accomplishments of President Obama, whom Ben Quayle has called history's worst president.

At BradEllsworth.org, there are no kind words for Representative Brad Ellsworth, an Indiana Democrat who is running for the Senate. The site forwards visitors to BadforIndiana.com, run by the Indiana Republican Party, which criticizes Mr. Ellsworth as a "reliable rubber stamp for liberal policies."

A survey by the Coalition Against Domain Name Abuse, a Washington-based trade group, has found that lawmakers are not as conscious of their online images as they ought to be.

Not quite half of United States senators and 40 percent of representatives own what the report called their FullName.com domain names. The numbers were lower — 32 percent of senators and 22 percent of representatives — when it came to their FullName.org names. The report also looked into permutations like FullNameforCongress.org, and found similar results.

Only one lawmaker in Washington, Senator Jon Tester, Democrat of Montana, owns at least six different Web sites associated with his name, along with the .gov site given to him by the government, the study found. One of those sites, however, JonTester.cnn, was bought for an undisclosed sum this year from an individual who had grabbed it up before the senator did.

"If folks are looking for basic information about Senator Tester's record, what he stands for and the good he does serving Montana, it'd be a darn shame for them to be redirected to some blank page — or worse," a spokesman, Aaron Murphy, said in an e-mail.

The report is aimed at focusing lawmakers' attention on a practice known as cybersquatting, in which individuals buy up domain names and then use them to extract money or engage in mischief.

"Some political campaigns are more organized than others," said Josh Bourne, the coalition president. "I've been amazed on how many congressmen don't have the same sense of brand as businesses have."

JoeSestak.org, for instance, features a changing mix of political ads, some of which have endorsed Pat Toomey, the Republican opponent of Representative Joe Sestak, Democrat of Pennsylvania, who is running for the Senate. Records show that JoeSestak.org is registered to Tim Kelly, Mr. Toomey's press secretary, who signed up for a number of domain names at the start of the campaign but said he did not recall specifically purchasing JoeSestak.org.

What can be a frustration for politicians and political hopefuls is not necessarily illegal.

"It can be a form of political activism," said Corynne McSherry, staff attorney with the Electronic Frontier Foundation, which promotes civil liberties online. "People may register a site to criticize policies. I think that's a good thing."

But motives vary.

"They do it for profit," Matthew Sanderson, the counsel for Senator John McCain's 2008 presidential campaign, wrote last year in the Election Law Journal. "They do it for spite. They do it to broadcast criticisms. They do it out of egotism or to indulge their idea of fun."

Mr. Sanderson cited the case of a Florida private investigator named Joseph Culligan who owned more than 500 political domain names, including PresidentBillClinton.com and ReelectPresidentBush.com. He said that Mr. Culligan had offered PresidentHatch.com to Senator Orrin G. Hatch, Republican of Utah, for \$45,000. Another squatter is said to have sold Forbes2000.com to Steve Forbes, the presidential candidate, for more than \$10,000.

In the current election cycle, numerous sites are not linked to the politicians whose names they bear. RalphHall.org routes to the campaign site of Jim Prindle, a Libertarian who is challenging Representative Ralph M. Hall, Republican of Texas. "The Prindle campaign has explored many strategies in marketing and campaigning to help bridge the advantage that incumbents share," Mr. Prindle said in an e-mail.

BobLatta.com, which bears the name of a Republican congressman from Ohio, falls into a different, more innocuous category. It was taken up long ago by Beb Latta, who shares a name with the lawmaker and rents homes in the Mexican colonial town of San Miguel de Allende.

"All I'm doing is trying to rent some property," he said.

It is possible for companies, politicians, celebrities and others to sue to get hold of sites linked to their names, but such challenges are not always successful. The best solution, said Christine Jones, general counsel for Go Daddy, a domain site registrar based in Scottsdale, Ariz., is to sign up for sites before someone else snatches them up. "It is a fact that if you don't register your name, there is a chance someone else will register it and maybe say something bad about you," she said.

The executive branch is similarly affected by wayward sites. Whitehouse.gov is the official site, but Whitehouse.org forwards viewers to a site poking fun at former President George W. Bush. Whitehouse.com used to be a pornographic site but now advertises college financial aid.

In 2005, Hillary Rodham Clinton, who was then a New York senator with presidential aspirations, went to arbitration and won rights to Hillaryclinton.com from an Italian cybersquatter. Former President Bill Clinton had less luck in 2009 when his lawyers sought to recover WilliamClinton.com, WilliamJClinton.com and PresidentBillClinton.com from Mr. Culligan. An arbitrator said there was insufficient evidence of bad faith, even though the sites were being forwarded to the Republican National Committee.

Even the Fourth Estate can find Web sites appropriated. Last week, Phoenix New Times, an alternative newspaper, filed suit against a former employee, accusing him of improperly registering the domain names bestofphoenix2011.com and bestofphoenix2012.com. The paper publishes an annual list of the best restaurants, spas and other attractions, which it publishes on the Web using bestofphoenix and the year in question.

The employee, Ty Liebig, who worked at the paper for a few months in 2008, the suit says, could not be reached for comment. But in e-mail correspondence included in the lawsuit, Mr. Liebig wrote to a representative for Village Voice Media, which owns the paper, seeking compensation for the sites. "I am open to and willing to sell those domains," he wrote. "I still have not received an offer or what you said you considered 'fair value.' "

Kitty Bennett contributed research.