



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 18, 2020

ADVISORY OPINION 2019-18

Konstantin Goudkov
IDF International Technologies, Inc.
382 NE 191st St., Ste #74906
Miami, FL 33179

Dear Mr. Goudkov:

We are responding to your advisory opinion request on behalf of IDF International Technologies, Inc. (“IDF”), regarding the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to IDF’s activities operating and advertising for an online political discussion forum. The Commission concludes that IDF’s activities are not expenditures, contributions, or electioneering communications under the Act and Commission regulations, and do not require IDF to submit any reports to the Commission or to include disclaimers in its advertising.

Background

The facts presented in this advisory opinion are based on your letter received on November 25 and your emails received on December 9, 2019 and June 12, 2020.

IDF is a for-profit Florida corporation that runs online discussion forums on various topics. Advisory Opinion Request at AOR001. One of these forums, www.OnePoliticalPlaza.com, is a political discussion forum. *Id.*¹ IDF does not take a public position on any political party, candidate, or issue, and all content on the forum is posted by users. *Id.* IDF is not affiliated with any political party, candidate, or political committee, *id.*, and does not have any communication or interaction with candidates or political committees. AOR004. IDF’s business model is to buy advertising for a forum, provide the forum as a communications platform for users, and then sell advertising on the forum to generate revenue for IDF. AOR001. IDF’s only source of revenue is the

¹ Other forums operated by IDF cover fishing, photography, and other hobbies. AOR004.

sale of ad space on its forum websites, through Google and other distributors of online advertising. *Id.* IDF does not control the content of any ads displayed on its forums. *Id.* IDF neither solicits nor makes contributions to candidates, political parties, or other political committees.² AOR005. IDF spends money only on operating expenses like webhosting and server space, and on buying ads to attract new users.

In the ordinary course of its business, IDF buys online advertising for its forums from companies such as Google, in the form of banner ads, pay-per-click ads, and display ads. AOR001. IDF conducts all advertising for its forums online. *Id.* IDF's advertising purchases are solely for the purpose of attracting users to its forum, and not for the purpose of influencing any election. AOR002. IDF's advertising strategy is for its ads to act as the voice of a hypothetical existing user of the forum who is reaching out to potential new users with similar interests or views, to engage them in conversation. *Id.* Because OnePoliticalPlaza focuses on politics and current events, IDF's ads for OnePoliticalPlaza typically follow the format of these examples:

“Do You Hate Trump? Read it before it’s taken down. This is what they aren’t telling you.”

“Do You Hate Biden? Read it before it’s taken down. This is what they aren’t telling you.

“Do You Love Trump? Did you know this? Unbelievable. Nobody is reporting this yet.”

“Do You Love Biden? Did you know this? Unbelievable. Nobody is reporting this yet.”

Id.

IDF's ads may reference various candidates and officeholders of different parties, the Democratic, Republican, and other political parties, current events, and political issues. *Id.* The ads do not mention elections, voting, or the dates of elections, and do not include calls to action involving voting or elections. *Id.*, AOR005. IDF determines which candidates' and parties' names to use in its ads by means of tracking click-through rates, and those names that generate the most traffic to OnePoliticalPlaza are used in the ads; IDF does not use any other process to choose which candidates' or parties' names to use in its ads. AOR005. The design of the ads will be the same or comparable regardless of whose name is referenced in the ad. Advisory Opinion Request Supplement (June 12, 2020).

² It is possible that ads purchased by third parties to be displayed on OnePoliticalPlaza could solicit contributions, but IDF does not control the content of the third party ads displayed on OnePoliticalPlaza.

Questions Presented³

1. *Are the ads described in the request expenditures or contributions?*
2. *Is IDF required to register with the Commission?*
3. *Are the ads described in the request electioneering communications, and is there any time period preceding elections when IDF may not run the ads?*
4. *Is IDF required to file reports of its spending on advertising with the Commission?*
5. *Is IDF required to include disclaimers in its ads?*
6. *Does IDF qualify for the media exemption from the disclosure, disclaimer, and reporting requirements of the Act and Commission regulations?*

Legal Analysis and Conclusion

1. *Are the ads described in the request expenditures or contributions?*

No, payments for the ads described by IDF do not constitute expenditures or contributions under the Act and Commission regulations.

The Act and Commission regulations define the term “contribution” and “expenditure” to include any gift, loan, or payment of money or anything of value for the purpose of influencing a federal election. 52 U.S.C. §§ 30101(8)(A)(i), 30101(9)(A)(i); 11 C.F.R. §§ 100.52(a), 100.111(a).

IDF’s ads do not espouse any public positions on any candidate or political party or contain express advocacy. AOR001. Nor does IDF have any interaction with any candidate or political party, or make any contributions directly to any political committee. AOR004. The Commission concludes that IDF’s payments to advertise its forums online as described in the request do not constitute contributions to any political committee or expenditures.

2. *Is IDF required to register with the Commission?*

No, IDF is not required to register with the Commission, because IDF is not a political committee under the Act and Commission regulations.

The Act and Commission regulations require all political committees to register with the Commission by filing a statement of organization. 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1. A “political committee” is defined as “any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000

³ The questions are set forth here in a different order from the order they were asked in the advisory opinion request, for ease of analysis.

during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 52 U.S.C. § 30101(4); 11 C.F.R. § 100.5(a). The Supreme Court has further construed “political committee” to “only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” *Buckley v. Valeo*, 424 U.S. 1, 79 (1976).

As discussed above, IDF does not make any expenditures. Neither does it receive any contributions; its only source of revenue is the sale of ad space on its discussion forums, which it does for commercial purposes as a for-profit corporation. AOR001, AOR004. Therefore, IDF is not a political committee and need not register with the Commission.

3. *Are the ads described in the request electioneering communications, and is there any time period preceding elections when IDF may not run the ads?*

No, the ads described by IDF do not constitute electioneering communications, and therefore IDF may run them without regard for timing in relation to any election.

The Act defines “electioneering communication” as “any broadcast, cable, or satellite communication which . . . refers to a clearly identified candidate for [f]ederal office” that is made within 30 days before a primary election or 60 days before a general election, and in a geographically targeted area. 52 U.S.C. § 30104(f)(3)(A); *see also* 11 C.F.R. § 100.29(a). Because IDF’s advertising is conducted exclusively on the internet, and does not include any “broadcast, cable, or satellite communications,” the ads do not constitute electioneering communications, regardless of when they run in relation to any election.

4. *Is IDF required to file reports of its spending on advertising with the Commission?*

No, IDF is not required to file any reports of its spending with the Commission, as it is not a political committee and the advertising described by IDF does not constitute electioneering communications or independent expenditures.

The Act and Commission regulations require certain persons to file reports with the Commission. For example, a “treasurer of a political committee shall file reports of receipts and disbursements.” *See* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1. In addition, persons who spend above threshold amounts on independent expenditures or electioneering communications must file reports with the Commission. *See* 52 U.S.C. § 30104(c), (f); 11 C.F.R. §§ 104.20, 109.10.

As discussed above, IDF is not a political committee and thus it will not be subject to the reporting requirements for political committees, and the advertising described by IDF will not constitute electioneering communications and thus it will not subject IDF to the reporting requirements for electioneering communications.

The Act and Commission regulations define an “independent expenditure” as “an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents.” 11 C.F.R. § 110.16(a); *see also* 52 U.S.C. § 30101(17). As discussed above, IDF’s ads do not expressly advocate the election or defeat of any candidate. As such, they are not independent expenditures, and therefore do not subject IDF to the reporting requirements for persons making independent expenditures.

5. *Is IDF required to include disclaimers in its ads?*

No, IDF is not required to include disclaimers in the ads described in the request, as IDF is not a political committee, and these ads are not electioneering communications and do not solicit contributions nor expressly advocate the election or defeat of any candidate.

The Act and Commission regulations require certain communications to contain disclaimers stating who paid for them and whether they were authorized by any candidate. Disclaimers are required for (a) all public communications and mass emails by a political committee, and all political committee websites; (b) all public communications that expressly advocate the election or defeat of a clearly identified candidate; (c) all public communications that solicit contributions; and (d) all electioneering communications. 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a).

The ads IDF describes in its request do not meet any of the criteria that would require disclaimers. As discussed above, IDF is not a political committee, and its ads are not electioneering communications. Further, IDF’s ads, as described in the advisory opinion request, do not expressly advocate the election or defeat of any candidate, nor do they solicit contributions to any candidate. Accordingly, IDF is not required to include disclaimers in such ads.

6. *Does IDF qualify for the media exemption from the disclosure, disclaimer, and reporting requirements of the Act and Commission regulations?*

This question is moot, as the Commission has concluded above that none of the disclosure, disclaimer, or reporting requirements of the Act and Commission regulations are applicable to IDF.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on

this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

A handwritten signature in black ink that reads "J. E. Trainor, III". The signature is written in a cursive style with a prominent initial "J" and "E".

James E. "Trey" Trainor III
Chairman