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September 21, 2022

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By Office of General Counsel at 9:53 am, Sep 22, 2022

BY ELECTRONIC MAIL DELIVERY

Office of General Counsel

Attn: Lisa J. Stevenson, Esq.

Acting General Counsel Federal Election Commission

1050 First Street NE

Washington, DC 20463

RECEIVED

By Office of the Commission Secretary at 3:22 pm, Oct 03, 2022

Re: Advisory Opinion Request

Dear Ms. Stevenson:

Pursuant to 52 U.S.C. § 30108, we seek an advisory opinion from the Federal Election Commission (“Commission”) on behalf of DataVault Holdings Inc. (“DataVault”) to confirm that DataVault may license its US patented inaudible tone to political committees to utilize in campaign advertisements.

I. FACTUAL DISCUSSION

DataVault has developed and patented a technology called Adio Tones. The technology allows a mobile phone of an end user equipped with an Audiomobile app to listens for inaudible tones. These Adio Tones can be embedded within any audio broadcast or file that is delivered via television, radio, satellite, or streaming. The mobile phone running Adio's patented software receives Adio tones through the device's microphone, when the app is downloaded and authorized by the end user of the phone to listen for certain tones. Upon hearing a programmed tone (that is imperceptible to humans), the phone's browser would send a notification to the end user. The end user will never be charged a fee for utilizing Adio’s technology or from any transaction that might result from it.

DataVault proposes to license its Adio Tones to political committees, which would include them in their political advertisements. DataVault’s app would be available at no charge. Whenever

someone who has downloaded DataVault’s app viewed or listened to a political committee’s advertisement containing an Adio Tone, that person’s phone would receive a notification that would include the political committees’ mobile donation website. The statements and disclaimers that political committees use on their mobile donation websites will satisfy the disclaimer and best efforts statement provisions under 2 U.S.C. 441d(a), 11 CFR 110.11, and 11 CFR 104.7. The end user will not be charged any fee for the notification it receives or a transaction fee if s/he decides to make a contribution to a political committee utilizing Adio’s technology.

DataVault’s licensing fee on political committees using Adio technology will be offered in a commercially reasonable manner as it would with other non-political committee clients and at a usual and normal industry charge. Political committees will report to the Commission fees paid to DataVault as fundraising expenditures. DataVault would provide the NFTs to political committees in the same manner and normal course of business as other non-political committee clients. DataVault would operate as a commercial vendor under 11 C.F.R. § 116.1(c), by “providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease, or provision of those goods and services.”¹

II. QUESTION PRESENTED

Is DataVault proposal to utilize Adio technology to engage in fundraising on behalf of political committee permissible under the Federal Election Campaign Act (“the Act”) and Commission regulations?

III. LEGAL ANALYSIS

As the Commission held in AO 2021-09, vendors engaged by political committees to send fundraising solicitations may do so consistent with the Act and the regulations promulgated thereunder.² The Act and Commission regulations prohibit corporations, including limited liability companies that have elected to be treated as corporations for federal tax purposes, from

¹ 11 C.F.R. § 116.1(c),

² Fed. Election Comm’n, Adv. Op. 2021-09 (Certified Voter, LLC)(Company's provision of sponsored advertisement services to political committees).

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making a “contribution,” which includes “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any [federal] election.”³ “[A]nything of value” includes all in-kind contributions, such as the provision of goods and services without charge or at less than the “usual and normal charge.”⁴

Commission regulations define “usual and normal charge” as the price of goods in the market from which they ordinarily would have been purchased at the time of the contribution, or the commercially reasonable rate prevailing at the time the services were rendered.⁵ Because DataVault will provide its services to client committees at a “commercially reasonable” fee, it is not providing goods or services at less than the “usual or normal charge” and is not making an in-kind contribution to its political committee customers.

For these reasons, we ask the Commission to confirm that DataVault may utilize Adio to engage in campaign fundraising on behalf of political committees.

Very truly yours,



Elliot S. Berke

Counsel to DataVault

³ 52 U.S.C. § 30118(a), (b)(2); 11 C.F.R. § 114.2(b); 11 C.F.R. § 110.1(g)(3); *see also* 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

⁴ *See* 11 C.F.R. § 100.52(d)(1).

⁵ *See* 11 C.F.R. § 100.52(d)(2)