



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

VIA CERTIFIED MAIL. RETURN RECEIPT REQUESTED

APR 24 2006

Mr Tom McGrath, Treasurer
Mr John L Floyd, President
Mr Devery Prince, Registered Agent
Business Alaska, Inc
645 G Street Ste 100-782
Anchorage, Alaska 99501

RE MUR 5534
Business Alaska, Inc

Dear Messrs McGrath, Floyd, and Prince

On September 23, 2004, October 25, 2004, and June 17, 2005, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") Copies of the complaint and supplements were forwarded to you at those times

Upon further review of the allegations contained in the complaint, information provided by your clients, and publicly-available information, the Commission, on April 4, 2006, found that there is reason to believe Business Alaska, Inc violated 2 U S C §§ 433, 434, 441b and 441d, provisions of the Act The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter Statements should be submitted under oath All responses to the enclosed Subpoena To Produce Documents and Order To Submit Written Answers must be submitted to the General Counsel's Office within 30 days of your receipt of this letter Any additional materials or statements you wish to submit should accompany the response to the order and subpoena In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this notification and subpoena and order If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing See 11 C F R § 111.18(d) Upon receipt of the request, the Office of the General

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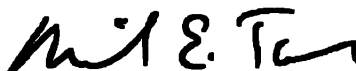
Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U S C §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Alexandra Dumas, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner
Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form
Subpoena and Order

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

Respondent: Business Alaska, Inc

MUR: 5534

I. BACKGROUND

In this matter, it is alleged that Business Alaska, Inc ("BA") is a political committee under the Federal Election Campaign Act of 1971, as amended ("the Act"), and that BA violated the Act by "failing to file with" the Commission, "conspiring to air electioneering communications" and failing to properly report that communication, a television ad, to the Commission, and failing to follow "stand by your ad" disclaimer requirements. Supplements to the complaint alleged that BA made improper corporate expenditures by paying for newspaper advertisements that supported Senator Lisa Murkowski.

In response to the complaint, BA claimed that it was not required to file with the Commission because it was a 501(c)(6) organization. In its response to the electioneering communication allegation, BA claimed that its expenditures were under \$10,000 and claimed that it did not air the television ad within the electioneering communication period identified by the Commission. BA acknowledged that it was required to file an FEC form 5, which non-political committees use to report independent expenditures, but stated that it would be filed "on or before October 15, 2004."¹

For the reasons set forth below, the Commission finds reason to believe that Business Alaska, Inc (1) violated 2 U S C §§ 433, 434(b) and 434(c) by failing to register and file reports with the Commission, (2) in the alternative, if not a political committee, violated 2 U S C

¹ To date, no such form has been filed.

§ 441b by making corporate expenditures outside its restricted class and by making
electioneering communications, and 2 U S C §§ 434(c) and 434(f) by failing to file proper
reports with the Commission, and (3) find reason to believe that BA violated 2 U S C § 441d by
failing to include adequate disclaimers in its communications

II. FACTUAL AND LEGAL ANALYSIS

This matter concerns three newspaper advertisements supporting Alaska's incumbent
Senator Lisa Murkowski and one television advertisement opposing former Alaska Governor
Tony Knowles, Senator Murkowski's opponent in the Senate race

A. Business Alaska

BA is a 501(c)(6) nonprofit organization incorporated in Alaska in March 2004. A
501(c)(6) organization consists of business leagues, chambers of commerce, real-estate boards,
and boards of trade not organized for profit. 26 U S C § 501(c)(6). According to the IRS, such
an organization must be

primarily engaged in activities or functions that are the basis for its exemption. It
must be primarily supported by membership dues and other income from
activities substantially related to its exempt purpose. A business league, in
general, is an association of persons having a common business interest, the
purpose of which is to promote that interest and not to engage in a regular
business of a kind ordinarily carried on for profit.

Dept. of the Treasury, IRS, "Tax-Exempt Status for Your Organization," Publication 557 (March
2005). Trade associations and professional associations are considered business leagues. The
organization must be "devoted to the improvement of business conditions of one or more lines of
business as distinguished from the performance of particular services for individual persons. It
must be shown that the conditions of a particular trade or the interests of the community will be

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advanced " *Id* ² Dues are not tax exempt if used to participate or intervene in a political campaign for or against any candidate for public office *Id*

BA's February 2004 application with the IRS for an employer identification number ("EIN") stated that its "services provided" were "political advocacy and public education " In its response to the complaint, BA stated that its purpose was "encouraging effective government in Alaska and our local communities" and its goals were "to provide a storehouse of information, advice and means for those who share our view of trustworthy leadership " BA has not registered with the Commission nor does it appear to be affiliated with a registered political committee

B. The Advertisements

During the 2004 election season, BA paid for at least three published ads in the Anchorage Daily News and one television ad relating to the Alaska Senate race between Senator Lisa Murkowski and former Governor Tony Knowles All three newspaper ads were full-page ads picturing Senators Murkowski and Ted Stevens, Senator Stevens was not running for re-election at that time One of the ads also pictured Representative Don Young, who like Senator Stevens, was also not on any ballot at the time The newspaper ads expressly advocated the election of Senator Murkowski The television ad, however, featured only Governor Knowles and did not contain express advocacy for or against Governor Knowles

The first newspaper ad ran in the Anchorage Daily News on August 21, 2004 (the "August 21st ad") It listed the respective Senate or House committees on which Senators

² A line of business refers to an entire industry or all components of an industry within a geographic area *Id* Examples provided by the IRS of activities that illustrate a common business interest include promotion of higher business standards, encouragement of the use of goods and services of an entire industry, establishment and maintenance of the integrity of a local commercial market, and operation of a trade publication intended to benefit an entire industry *Id*

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1 Murkowski and Stevens and Representative Young served and their seniority on those
2 committees The ad discussed in greater detail Senator Murkowski's seniority in the Senate
3 The ad continued, "*This is great news for Alaskans!* [emphasis in original] Continuing our
4 seniority and committee chairmanships in Congress is highly important when it comes to
5 protecting Alaska's economy, resource development, jobs and home values Strong and growing
6 stronger, seniority to protect Alaska " The ad ended with the statement, "Please support Alaska
7 and Senator Lisa Murkowski," listed the date of the primary election (August 24, 2004), and
8 listed the times the polls would be open

9 The second ad, run on September 6, 2004 (the "September 6th ad"), compared Senator
10 Murkowski's and Stevens' backgrounds including the facts that both were initially appointed to
11 their positions, both were previously elected to the Alaska State House of Representatives, and
12 both were former Alaska State House of Representatives Majority Leaders The ad then stated,

13 Many Alaskan [sic] have already noticed how much Senator Lisa Murkowski and
14 Senator Ted Stevens have in common *This can be very good news for Alaska*
15 Beginning from a similar strong base, Alaska is in a good position to build on our
16 strengths of seniority and strong committee chairmanships for many years to
17 come Strong and growing stronger, seniority to protect Alaska!

18
19 (emphasis in original) The ad ended with the statements, "Please support Alaska and Senator
20 Lisa Murkowski Looking Forward for Our Future - Strong Leadership to Build On "

21 The third newspaper ad, run on October 16, 2004 (the "October 16th ad"), pictured
22 Senators Murkowski and Stevens and included the same comparison of their backgrounds as
23 seen in the September 6th ad The ad then stated that Alaska seems

24 to benefit from good things that happen - - even if it's not always apparent at first
25 For example, as far as Alaska's economy and seniority in Congress are concerned,
26 history has shown that there are clear benefits from appointing a young, smart,
27 experienced, former State House Majority Leader to the U S Senate
28

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1 The ad finally stated, "Setting aside our differences and doing what's best for Alaska, please vote
2 November 2 "

3 The television advertisement featured former Governor Knowles, Senator Murkowski's
4 opponent in the general election. It opened by showing a picture of Governor Knowles, which
5 remained on the screen as the commercial discussed Governor Knowles' past participation in the
6 "Pew Commission."³ The ad described the Pew Commission as a group dominated by "outside
7 liberals," "bureaucrats" and "extreme environmental groups" that targeted certain fishing areas in
8 Alaska. The ad further stated that Governor Knowles endorsed the Pew Commission
9 recommendations and showed a man, described as a sport-fishing captain, saying that he did not
10 know why Governor Knowles would agree to the recommendations. The ad ended by stating,
11 "If you want to find out more, call Tony Knowles and ask what he was thinking when he
12 endorsed the Pew Commission recommendations." The screen read, "To find out more, call
13 Tony Knowles and ask about his Pew Commission recommendations." The television ad in
14 question did not picture or discuss Senator Murkowski.

15 B. Analysis Of BA's Status And Its Advertisements

16 The Commission found reason to believe that BA was a political committee under the
17 Act. In the alternative, if BA is not a political committee, the Commission found reason to
18 believe that BA's disbursements for the advertisements constituted prohibited corporate
19 expenditures by BA.

20

³ The "Pew Commission" is formally titled the "Pew Oceans Commission," a self-described "bipartisan, independent group of American leaders" charged with charting "a new course for the nation's ocean policy." It was funded by the Pew Charitable Trusts. The Pew Commission identified policies and practices necessary to restore and protect living marine resources throughout the United States and recommended reforms to national ocean policy. Members included current and former political officials, such as Leon Panetta and Governor George Pataki, as well as scientists and leaders from the worlds of fishing, conservation, education, business, and philanthropy. Its final report with recommendations was issued in May 2003.

1. Political Committee Status

The complaint alleged that BA was a political committee required to file reports with the Commission, but that it has not filed any. BA did not respond to that allegation, other than to state, without explanation, that it was a 501(c)(6) organization and that the only form it was required to file with the Commission was a Form 5, which non-political committees use to report independent expenditures.

The fact that BA filed with the IRS as a 501(c)(6) organization does not negate the possibility that it is a political committee. The Act defines a "political committee" as any committee, club, association or other group of persons that receives contributions or makes expenditures for the purpose of influencing a federal election that aggregate in excess of \$1,000 per calendar year. 2 U.S.C. § 431(4). Therefore, if the disbursements made by BA to fund the ads at issue were expenditures that exceeded \$1,000, then BA may have triggered political committee status.

It appears that BA placed at least three newspaper advertisements expressly advocating the election of Senator Murkowski during the period preceding the primary and general election in which she was running for re-election, and at least one television ad regarding Governor Knowles during the time he was running for election to the Senate. BA states in its response that its "expenditures" for these ads totaled approximately \$8,300. Under the Act, an expenditure is any purchase, payment, distribution, or anything of value made by any person for the purpose of influencing any federal election. 2 U.S.C. § 431(9)(A).⁴ Even under the most stringent application of the term expenditure (i.e., express advocacy), it appears that the costs incurred to

⁴ It is unclear from the response whether BA used the term "expenditures" as a term of art conceding that it spent nearly \$8,300 for the purpose of influencing an election for federal office, or if it simply meant that its disbursements totaled approximately \$8,300.

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1 produce and purchase the ads constituted expenditures that exceed the \$1,000 statutory threshold
2 for political committee status

3 a The Newspaper Ads Contain Express Advocacy

4 The three newspaper ads contain express advocacy under 11 C F R § 100 22(a) and (b)
5 "Expressly advocate" means any communication that either (a) uses certain phrases such as
6 "vote for," "re-elect," "cast your ballot for," "support," "Smith for Congress," "Bill McKay in
7 '94," "vote Pro-Life" accompanied by a list of clearly identified candidates described as Pro-
8 Life, "defeat," or "reject," or communications or words which in context can have no other
9 reasonable meaning than to urge the election or defeat of a clearly identified candidate or (b)
10 when taken as a whole and with limited reference to external events, could only be interpreted by
11 a reasonable person as containing advocacy of the election or defeat of a clearly identified
12 federal candidate because (1) the electoral portion of the communication is unmistakable,
13 unambiguous and suggestive of only one meaning and (2) reasonable minds could not differ as to
14 whether it encourages actions to elect or defeat a clearly identified candidate or encourages some
15 other kind of action 11 C F R § 100 22(a)-(b)

16 The August 21st and September 6th newspaper ads explicitly asked the readers to "support
17 Senator Lisa Murkowski " Because the ads used a phrase that is specifically listed in the
18 regulation as an example of express advocacy, any money spent on these ads should be
19 considered expenditures under the Act

20 The October 16th ad contains express advocacy under both sections 100 22(a) and (b)
21 The ad contained a picture of Senators Stevens and Murkowski, compared Senator Stevens' and
22 Murkowski's background, and explained that a background such as Senator Stevens' had

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1 provided "clear benefits" to Alaska in the past Furthermore, the ad exhorted voters to take a
2 specific action, to vote on November 2, 2004

3 The ad contains express advocacy under section 100 22(a) because it provides "in effect"
4 an explicit directive to vote for a candidate whose background is identified as being positive for
5 Alaska In *FEC v Massachusetts Citizens for Life ("MCFL")*, 479 U S 238, 249 (1986), the
6 Supreme Court held that a newsletter that set out the positions of the candidates and then urged
7 voters to "VOTE PRO-LIFE!" contained express advocacy The Court reasoned that the
8 newsletter "provide[d] in effect an explicit directive" to vote for candidates favored by MCFL
9 because it not only urged voters to vote for "pro-life" candidates, but also "identify[d] and
10 provide[d] photographs of specific candidates fitting that description " *Id* Here, BA's ad
11 discusses Senator Murkowski's background as consistent with BA's opinion of an appropriate
12 candidate for federal office, and suggested that readers vote on November 2nd As in *MCFL*, the
13 ad's message is "marginally less direct than vote for" Senator Murkowski, but that "does not
14 change its essential nature " *MCFL*, 479 U S at 249

15 The October 16th ad also contains express advocacy under section 100 22(b) because
16 reasonable minds could not differ in interpreting the message of the ad if you like what Senator
17 Stevens has done for Alaska, Senator Murkowski has a similar background and will provide
18 similar benefits to Alaska if elected, and exhorted the readers to vote on November 2, 2004
19 Senator Stevens was not on any ballot on November 2, 2004 By explicitly asking the readers to
20 "vote on November 2," the only possible interpretation of that ad would be to vote for Senator
21 Murkowski on that day

b **BA Appears To Have Expended More Than \$1,000 And Would Qualify As A Political Committee Under the Act**

BA made certain disbursements for the advertisements that constitute expenditures

Neither BA nor the complainant provided information regarding the cost of the newspaper ads

However, the Anchorage Daily News' media kit suggests that the aggregate cost for all three ads

likely exceeded \$1,000⁵ Therefore, it appears likely that BA made more than \$1,000 in

expenditures and, thus, was a political committee required to file reports with the Commission⁶

c **As a Political Committee, BA Was Required To Register And File Disclosure Reports With The Commission**

If BA was a political committee, then it was subject to a number of registration and reporting requirements under the Act, including filing a statement of organization within ten (10) days of making expenditures in excess of \$1,000 per year, filing reports of all receipts, disbursements and expenditures, and filing quarterly reports *See, e.g.*, 2 U S C §§ 431(4)(A),

⁵ The Anchorage Daily News' publicly available media kit lists only some ad costs, including cost per column inch ranging from \$71.05 for retail sales, to \$47.25 for non-profits and \$41.57 for charity organizations, and \$590 for a full-page color ad. At this time, it is known that at least three full-page newspaper ads were paid for by BA, but it is not known if they were color or black and white. Assuming BA was charged the listed price for non-profits of \$47.25 per column inch, approximately 22 column inches worth of ad space would exceed the \$1,000 threshold (\$47.25 x 22 = \$1,039.50). A full-page ad is 126 column inches (6 columns wide and 21 inches high), therefore one full-page newspaper ad alone cost more than \$1,000.

⁶ To address overbreadth concerns, the Supreme Court has held that only organizations whose major purpose is campaign activity can be political committees. *See, e.g., Buckley v Valeo*, 424 U.S. 1, 79 (1976)), *FEC v Massachusetts Right to Life*, 479 U.S. 238, 262 (1986). BA acknowledges that it paid for the newspaper and television ads at issue here — ads that constitute campaign activity. BA's response states that its purpose was to "encourag[e] effective government in Alaska and our local communities" and to share information with those who share their view of "trustworthy leadership." However, BA's president, Devery Prince, apparently believes that, while BA was initially set up to "effectuate change at a local level" [I]t has since morphed into something beyond the original intended scope." (Sean Cockerham, "Ad Bashes Knowles Link to Pew Report," Anchorage Daily News, Sept. 9, 2004). Mr. Prince apparently resigned his position because of that shift and, at the time the newspaper and television ads were run, stated that he had "no knowledge that the group had decided to become involved in the US Senate race" and "it did not make sense for [him] to remain involved when the group has moved in a significantly different direction without having solicited my input or support." *Id.* The newspaper claimed to be quoting emails and a copy of Mr. Prince's resignation letter, as supplied by Mr. Prince. Finally, BA does not claim, nor does review of public records support an inference, that BA engaged in any activity other than payment of the newspaper and television ads at issue here. Therefore, while it appears that BA meets the statutory requirements for being a political committee, it also appears that its major, if not only, purpose was to pay for the ads regarding the Senate election.

1 433(a), 434 (a)(1), 434(a)(4)(A)(i), and 434(b) BA has not filed a statement of organization or
2 any other reports with the Commission Therefore, the Commission found reason to believe BA
3 violated 2 U S C §§ 433(a), 434(a)(1), 434(a)(4), and 434(b)

4 **2. Corporate Status**

5 In the alternative, if BA is not a political committee, BA was still subject to certain
6 requirements and prohibitions under the Act as a corporate entity It did comply with these
7 provisions, and therefore, in the alternative, the Commission found reason to believe BA violated
8 those provisions of the Act

9 a **BA Made Prohibited Corporate Electioneering**
10 **Communications With The Newspaper Advertisements**
11

12 If BA is not a political committee, BA still may have violated the Act because it made
13 prohibited corporate independent expenditures by financing communications that expressly
14 advocate the election of a federal candidate in the newspaper ads 2 U S C § 441b(a), *see supra*
15 pp 7-8

16 BA is a nonprofit organization, incorporated and registered with the State of Alaska and
17 the IRS The Act prohibits a corporate entity from making any independent expenditures in
18 connection with a federal election 2 U S C § 441b(a) An independent expenditure is any
19 expenditure that expressly advocates the election or defeat of a clearly identified candidate and is
20 not made in concert with a candidate, a political party committee, or their respective agents
21 2 U S C § 431(17) Although certain nonprofit corporations may make independent
22

1 expenditures pursuant to 11 C F R § 114 10, BA has not claimed to be such a corporation ⁷

2 Therefore, in the alternative, the Commission found reason to believe BA violated 2 U S C

3 § 441b

4 b BA Made Prohibited Corporate Electioneering
5 Communications With the Television Ad
6

7 An electioneering communication is any broadcast communication which (1) refers to a
8 clearly identified candidate for federal office, (2) is made within 60 days of a general election or
9 30 days before a primary election, and (3) is targeted to the relevant electorate, meaning it is
10 capable of being received by 50,000 or more individuals in the state the candidate seeks to
11 represent in the Senate 2 U S C §§ 434(f)(3)(A), (C)

12 The television ad issued by BA referred to a clearly identified federal candidate because
13 it presented a picture of Governor Tony Knowles on the screen throughout the ad Evidence
14 submitted by the complainant also shows that the ad also may have been aired after September 3,
15 2004, the start of the 60-day pre-election electioneering communication period ⁸ BA
16 acknowledged that it aired the ad from August 31, 2004 through and including September 3,
17 2004, and therefore the ad was aired for at least one day of the electioneering communication
18 period ⁹ The complainant also claimed that the television ad was run on more than one television

⁷ A qualified nonprofit corporation can make independent expenditures and electioneering communications without violating the prohibitions against corporate expenditures, but must report any such expenditure in excess of \$250 or \$10,000, respectively, and certify that it is eligible for an exemption from the prohibitions against corporate expenditures 11 C F R §§ 114 10(d)-(e) BA has not made any such reports or certifications to the Commission Even if BA asserted this as a defense, it is unclear whether BA could be considered a qualified nonprofit corporation because it is unknown whether BA was established by a "business corporation" or accepted "business corporate" money, was formed for the express purpose of promoting political ideas without engaging in business activities, and/or that it had no shareholders or others with claims on its assets 11 C F R § 114 10

⁸ The documents provided by the complainant suggest that BA purchased time to air the ad through September 5, 2004

⁹ BA's response to the complaint claims that it aired the television ad outside the 60-day pre-election electioneering communication period However, BA also acknowledges that it paid to air the ad from August 31, 2004 through and

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1 station, press reports indicated that at least two ads were run on at least four television stations
2 According to the Federal Communications Commission database, three television stations on
3 which the ad reportedly aired are capable of being received by 50,000 or more individuals
4 Thus, the ad was not made solely for viewing by the corporation's stockholders or executive and
5 administration personnel Based on the above, the Commission found reason to believe that BA
6 violated 2 U S C § 441b(b)(2)

7 c Reporting Violations

8 In addition to the other allegations in the complaint, the gravamen of the complaint was
9 BA's alleged failure to file proper reports with the Commission and alleged electioneering
10 communications Furthermore, BA explicitly noted in its response that it would file with the
11 Commission a Form 5 disclosing its expenditures Therefore, the Commission also analyzed
12 BA's failure to file proper reports with the Commission

13 The Act requires entities or persons other than political committees that make
14 independent expenditures aggregating in excess of \$250 during a calendar year to report those
15 independent expenditures by filing Form 5 with the Commission 2 U S C § 434(c), 11 C F R
16 § 109 10(b) Thus, under this alternative theory, if the aggregate cost of the newspaper ads
17 exceeded \$250, BA was required to disclose those independent expenditures by filing a Form 5
18 with the Commission ¹⁰ While it is unknown at this time exactly how much BA spent to create
19 and run the newspaper ads, publicly available information, as discussed *supra* p 9, n 5, indicates

including at least September 3, 2004 The electioneering communication 60-day period began on September 3, 2004

¹⁰ BA states that it intended to file a Form 5 with the Commission, but to date, has failed to do so While this admission is not completely dispositive of this issue, considering that BA may be a political committee and therefore would not have been required to file a Form 5, it is indicative of the fact that BA knew it was required to file something with the Commission and still failed to fulfill its obligation

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1 that the aggregate cost would have exceeded \$250 Therefore, the Commission also found
2 reason to believe that BA violated 2 U S C § 434(c)

3 Finally, the Act requires that any entity making a disbursement for the costs of producing
4 and airing an electioneering communication in aggregate amount in excess of \$10,000 during
5 any calendar year shall file within 24 hours a statement with the Commission 2 U S C § 434(f)
6 Therefore, if BA aired its television ad on September 3, 2004, or later and the costs exceeded
7 \$10,000, as alleged by the complainant, then BA was required to file a report with the
8 Commission Although the complaint merely speculated regarding the total amount BA spent on
9 the television ad, and BA denied spending more than \$10,000 on the television ad, there is,
10 according to press reports, the possibility that a second television ad was aired by BA, and the
11 cost to produce and air that second ad within 60 days of the November election (if it was so
12 aired) is unknown at this time If the second ad constituted an electioneering communication,
13 BA's aggregate disbursements for electioneering communications could easily have exceeded
14 \$10,000 BA, however, has not filed an electioneering report with the Commission Therefore,
15 there is reason to believe BA violated 2 U S C § 434(f)

16 **C. Disclaimers**

17 The Act requires that political committees and persons making certain communications
18 provide a disclaimer as specified in the statute and regulations 2 U S C § 441d If a political
19 committee, BA was required to place a disclaimer pursuant to section 441d on the newspaper and
20 television ads, if not a political committee, BA was required to place a disclaimer pursuant to
21 section 441d on the express advocacy newspaper ads and any electioneering communications
22 BA placed disclaimers on its advertisements, however, they did not fully comply with the
23 requirements set forth in the Act and the corresponding regulations

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1 The newspaper ads contain disclaimers on the bottom of the ad that provide most of the
2 information required by the Act, including the name of the entity paying for the ad, the address
3 of the entity paying for the ad, and a statement that the ad was not paid for by any candidate
4 2 U S C § 441d(a)(3), 11 C F R §§ 110 11(b)(3), (c) However, the newspaper disclaimers
5 failed to state that they were not paid for by any candidate's political committee and were not
6 contained in a box, as required by the Act 2 U S C §§ 441d(a)(3), (c)(2) Furthermore, the font
7 used arguably is not "clearly readable" by the recipient of the communication, as it is written in
8 extremely small font on the bottom of the full-page ad 2 U S C § 441d(c)(1), 11 C F R
9 § 110 11(c)(2)(i)

10 The television ad contained a voiceover stating that BA paid for the ad and that the ad
11 was not paid for by any candidate It also contained written text on the screen that stated BA
12 paid for the ad, BA's address, and a statement that the ad was not paid for by any candidate The
13 ad did not, however, contain the audio statement specified in the Act, that "_____ is responsible
14 for the content of this advertising " 2 U S C § 441d(d)(2), 11 C F R § 110 11(c)(4)(i), (ii)

15 Because BA did not follow the specific disclaimer requirements as explicitly set forth in
16 the Act and regulations, the Commission found reason to believe that BA violated
17 2 U S C §§ 441d(a)(3) and 441(d)(2)

18 Therefore, based on the foregoing, there is reason to believe that BA (1) violated 2 U S C
19 §§ 433, 434(a) and 434(b) by failing to register and file reports with the Commission, (2) in the
20 alternative, if not a political committee, violated 2 U S C § 441b by making corporate
21 expenditures outside its restricted class and by making electioneering communications, and
22 2 U S C §§ 434(c) and 434(f) by failing to file proper reports with the Commission, and
23 (3) violated 2 U S C § 441d by failing to include adequate disclaimers in its communications

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