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November 16, 2004

VIA FACSIMILE AND COURIER

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 5578—STF Productions, Inc.

Dear Mr. Norton:

We are submitting this letter on behalf of STF Productions, Inc. ("STF") in response to the complaint filed against Patty Wetterling, a candidate for U.S. Congress, by The National Republican Congressional Committee ("NRCC"). We have previously submitted a Designation of Counsel form for this MUR.

This complaint alleges that the Wetterling campaign violated the Federal Election Campaign Act of 1971, as amended, ("FECA") by accepting a corporate in-kind contribution in the form of trademark use. STF is the owner of the trademark at issue. The allegations are without merit, and the complaint should be dismissed.

1. Procedural Deficiencies

As an initial matter, we note that the above-referenced complaint does not meet the standards of specificity and clarity required under Federal Election Commission ("FEC" or "Commission") rules. 11 C.F.R. § 111.4. The complaint fails these standards in a number of regards. First, the complaint does not differentiate between statements based upon personal knowledge and statements based upon information and belief as required by 11 C.F.R. § 111.4(c). Second, the complaint does

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not clearly identify the entities alleged to have committed violations, which violations each is alleged to have committed, and the basis for the allegations, as required by 11 C.F.R. § 111.4(d). Indeed, the complaint is not even lodged against STF. It is lodged only against Ms. Wetterling and her campaign. Although Mr. John Walsh and STF are discussed later in the complaint, the complainant simply includes statutory and regulatory citations that may or may not apply to either of the latter without any further discussion as to whether or not the complaint is directed against them as well as Ms. Wetterling, and if so, on what basis. Other than a copy of the trademark registration, no evidence specific to STF is provided.

Given the deficiency of this complaint, we request that it be dismissed as to STF on procedural grounds alone.

2. Factual Background

In 2004, Patty Wetterling ran for the office of U.S. Representative from the Sixth Congressional District of Minnesota. Ms. Wetterling had previously gained local, regional and even national prominence for her work in child protection advocacy following the 1989 abduction and disappearance of her son, Jacob. Ms. Wetterling has received numerous awards over the years and was endorsed by numerous individuals and entities, including law enforcement.

John Walsh has been a personal friend of Patty Wetterling for nearly 15 years. He is also the host of the FOX television show, "America's Most Wanted: America Fights Back," which is commonly known as "America's Most Wanted." A primary purpose of the show is involving the public in solving crimes and capturing criminals who are on the run. The show grew out of Mr. Walsh's work in child protection and victim advocacy following the 1981 abduction and murder of his son, Adam. Mr. Walsh and Ms. Wetterling became acquainted due to their common work in child and victim advocacy. Mr. Walsh is not an employee of STF.

STF, a FOX subsidiary, owns the trademark for "America's Most Wanted." Attachment A. The trademark includes a logo design and associated text; the word mark is also protected. The logo consists of an eagle surrounded by stars, with boxed text across the eagle and underlined text below the eagle and box.

Boxed text*:

AMERICA'S MOST WANTED

 Underlined text*: "AMERICA FIGHTS BACK"

* Please note that the text style and size in this response do not match the trademark text. See Attachment A for trademark.

LHS Media is the company that the Wetterling campaign used to produce the campaign's television advertisements. LHS Media is not affiliated with STF.

In October 2004, Ms. Wetterling's campaign staff contacted Mr. Walsh about endorsing Ms. Wetterling's campaign. Mr. Walsh agreed to endorse Ms. Wetterling as a personal friend, and volunteered his time for the taping of the endorsement. Mr. Walsh did not seek, and STF did not provide, pre-approval for the use of the name of the show in the advertisement.

In the television advertisement, Mr. Walsh identifies himself as a personal friend of Ms. Wetterling and he does not himself mention the words "America's Most Wanted" or identify himself as host of the show. Rather, the following words are superimposed in plain text over the video image for approximately six seconds at the beginning of the 30-second ad. See Attachment B for a still picture.

John Walsh
Host
America's Most Wanted

The full trademark and logo are not used in the advertisement, and the text used is not in the distinctive font, color and design of that in the trademark.

3. The Identification of Mr. Walsh as Host of "America's Most Wanted" Did Not Violate FECA

The complaint attempts to support its allegation of an illegal in-kind corporate contribution by equating the use of the words "America's Most Wanted" and the presence of police officers in the background of the advertisement to a corporate contribution by STF of the show's trademark and goodwill to Ms. Wetterling. This argument is without merit for at least three reasons:

- Mr. Walsh acted in his individual capacity—there was no corporate endorsement or contribution.
- The purpose of using the words "America's Most Wanted" in the advertisement was to identify Mr. Walsh to viewers, not to use the show's trademark, to invoke or "mimic" the show, or to improperly benefit from the show's goodwill.
- The use of the words "America's Most Wanted" and the identification of Mr. Walsh as the host of the show do not violate FECA or the FEC's regulations.

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- a. *Mr. Walsh Acted in His Individual Capacity; There Was No Corporate Endorsement or Contribution.*

Mr. Walsh endorsed Ms. Wetterling in his personal capacity, not on behalf of "America's Most Wanted," STF, FOX, or any other affiliated companies. As noted above, Mr. Walsh and Ms. Wetterling have been friends for nearly 15 years. When Ms. Wetterling asked Mr. Walsh for his personal endorsement, he agreed to provide it, and did so as a private citizen.

Neither Mr. Walsh nor Ms. Wetterling sought or received a corporate endorsement by STF, FOX, or any affiliated companies. Although a corporate endorsement would have been permissible under Commission regulations under certain circumstances (11 C.F.R. § 114.4(c)(6)), no such endorsement was made. Likewise, there was no corporate approval for the use of the words "America's Most Wanted" in the advertisement.

- b. *The purpose of using the words "America's Most Wanted" in the advertisement was to identify Mr. Walsh to viewers, not to use the show's trademark, to invoke or "mimic" the show, or to improperly benefit from the show's goodwill.*

The use of the words "John Walsh—Host—America's Most Wanted" on screen was simply to identify Mr. Walsh to viewers, not to use the trademark of the show to imply an endorsement by the show or to improperly benefit from its goodwill. Likewise, although the complainant alleges that the presence of police officers in the background was intended to evoke the "tone and feel" of the show in order to reap an improper benefit, Ms. Wetterling has a strong relationship with and endorsement from the law enforcement community and the use of police officers in her advertisements is fully consistent with that support.

- i. *The purpose of using the words "John Walsh—Host—America's Most Wanted" was to identify Mr. Walsh to viewers*

After noting that "America's Most Wanted" is a trademark belonging to STF, the complaint attempts to support its allegation of an in-kind contribution by asserting that, "[t]here is no other reason to put this [the words "John Walsh Host America's Most Wanted"] on the screen, except to try and benefit from the value of the show's trademarked name and good will." MUR 5578 at 2. In fact, the reason the information was put on the screen was simply to identify Mr. Walsh to viewers. The identification is important so that viewers may evaluate who Mr. Walsh is and why they should consider his endorsement of Ms. Wetterling.

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At least two factors support the conclusion that Mr. Walsh's title as host of the show was used merely to identify him to the viewing public, rather than to benefit from the trademark or to suggest that the show, STF, or Fox, were endorsing Ms. Wetterling. First, as you can see in comparing Attachments A and B, the superimposed text did not include the America's Most Wanted logo; nor did it include the full name: "America's Most Wanted: America Fights Back." Also, the font, color and design of the text did not match the distinctive text used in the trademark.

Second, in the opening of the ad Mr. Walsh notes that, "Patty and I have been friends for nearly 15 years," and in closing, he asks viewers, "Please join me in supporting Patty Wetterling. . ." emphasis added. Thus, Mr. Walsh emphasizes that he, as an individual ("join me," not "join us" or "join 'America's Most Wanted'"), is acting as a personal friend in endorsing Ms. Wetterling.

Although Mr. Walsh's identification of himself as the host of "America's Most Wanted" was not intended to use or violate the show's trademark, neither was it pre-approved by STF. Once STF learned of the identification, in order to avoid any appearance of impropriety or potential dilution of its mark, STF immediately contacted LHS Media. As a consequence of that contact, LHS Media removed the identifying statement from the advertisements. However, it appears that at least some of the advertisements that aired did contain the identification of Mr. Walsh as host of "America's Most Wanted." In any case, there was no corporate approval of or intent to make a contribution of trademark use.

- ii. *The use of police officers in the background was not mimicry of "America's Most Wanted"; rather, the use was fully consistent with Ms. Wetterling's support from the law enforcement community and reinforced her ties to law enforcement.*

After the trademark allegation, the complaint goes on to allege that "the Wetterling campaign mimics the tone and feel of the show for almost the complete 30 second ad." MUR 5578 at 2. As stated, STF did not sponsor or authorize the advertisement. However, in any case this allegation is without merit. The inclusion of police officers in a campaign advertisement is fully consistent with Ms. Wetterling's history, campaign and endorsements. For example, Ms. Wetterling was endorsed by the Minnesota Police and Peace Officers Association, Attachment C, and she is widely recognized for her contributions to the passage of laws protecting children from crime (e.g., laws resulting in AMBER alerts). Ms. Wetterling also has a separate advertisement featuring a law enforcement officer. Attachment D. Clearly, the use of police officers in her advertisement is congruent with Ms. Wetterling's overall campaign and does not necessarily indicate "mimicry" of "America's Most Wanted." Also, the

police officers only appear in the background during the opening of the advertisement and near its closing, not for "almost the complete . . . ad," as alleged.

c. *The Use of the Words "America's Most Wanted" and the Identification of Mr. Walsh as Host of the Show Do Not Violate FECA or the FEC's Regulations*

The Commission has already debated the regulation of corporate logos and trademarks in campaign fundraising and endorsements and has declined to issue regulations prohibiting their use. The Commission has also declined to prohibit the use of an official title in identifying persons who are individually endorsing a candidate. In fact, endorsements of federal candidates are often made by well-known persons and the corporate or employment affiliation of such persons is routinely provided (e.g., Curt Schilling, pitcher for the Boston Red Sox, endorsing Mr. Bush for President). One important benefit of such identification is to allow the public to determine the bona fides of the endorser and to decide how much weight or value to give to the endorsement.

Under current Commission regulations, the identification of an endorser as being from a specific corporation or trade association or the use of a corporate logo or trademark in such an endorsement is neither explicitly prohibited nor a *per se* in-kind contribution. In fact, at least two Commission advisory opinions have allowed such identification. See, e.g., AO 1984-43; AO 1978-77. This is not because such a prohibition or *per se* classification have not been considered. In fact, from 1992-1995 the Commission addressed the corporate trademark and identification issue (proposed rules 11 C.F.R. §§ 114.1 and 114.4), along with numerous other issues, in a proposed rulemaking process involving both written commentary and public hearings. The Commission ultimately declined to issue the trademark regulations because it could not reach a majority in favor of any proposed regulation on the subject.

In 1992, the Commission issued a "Notice of Proposed Rulemaking" that invited comments on two proposed rules regarding the use of corporate logos, trademarks, and letterhead. 57 Fed. Reg. 33548 (Jul. 29, 1992). The first alternative would have treated logos, trademarks and letterhead as a "thing of value" that would comprise a contribution or expenditure if provided at less than fair market value or without charge. Proposed Rule 114.1(a)(1); *id.* at 33554. The second alternative would have prohibited such use altogether, even if the corporation were reimbursed, with very limited exceptions. Proposed Rule 114.4(b)(1); *id.* In addition, the proposed regulations would have applied to communications by an individual on personal stationery or in a campaign advertisement where the person identified him- or herself as acting on behalf of the corporation or labor organization, or even where the person simply identified him- or herself by an official organization title. *Id.* at 33554.

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In the Explanation and Justification ("E&J") for the final rules issued in 1995, the Commission noted that it had received comments supporting and opposing both proposed alternatives. 60 Fed. Reg. 64260, 64268 (Dec. 14, 1995). With regard to the options of treating logo or trademark use as a thing of value or flatly prohibiting such use, the Commission noted that concerns included the difficulty of ascertaining its value of a logo, trademark or letterhead, among other issues. Id. Because the Commission could not reach a majority decision, it did not include either proposed alternative in the final rules. Id.

With regard to a possible prohibition of a person's use of his or her official title in individual communications or advertisements on behalf of a candidate, the Commission noted in the E&J that there had been a number of objections from commenters, including: that a corporate title is part of an individual's identity; that the use of a title enhances disclosure of the individual making the communication and may prevent fraud; and that such a prohibition might inhibit speech. Id. at 64269. Because the Commission could not reach a majority decision, it did not include the proposed language in the final rules. Id.

It is clear from the regulatory history and Commission guidance that mere identification of a person's corporate title (e.g., host of XYZ television show; CEO of XYZ corporation) does not violate FECA or its regulations. Neither would the imitation of the "tone and feel" of a show do so. Similarly, although the use of a corporate trademark without compensation might, in some circumstances, constitute an in-kind contribution, that is not the case here, and such use is not deemed to be a *per se* contribution under current Commission regulations.

For the foregoing reasons, the Commission should find no reason to believe that STF violated the law.

Respectfully submitted,



Kenneth A. Gross
Christine E. Kirk
Skadden, Arps, Slate, Meagher &
Flom LLP

Attorneys for STF

Enclosures

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Attachment A



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AMERICA'S MOST WANTED

Word Mark

AMERICA'S MOST WANTED AMERICA FIGHTS BACK

Goods and
Services

IC 041. US 100 101 107. G & S: production and distribution of an on-going television crime series. FIRST USE: 19961019. FIRST USE IN COMMERCE: 19961019

Mark Drawing
Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search
Code

010103 010110 031501 260102 261102 261120 261121 261713

Serial Number

75214893

Filing Date

December 17, 1996

Current Filing
Basis

1A

Original Filing
Basis

1A

Published for
Opposition

November 18, 1997

Registration
Number

2135529

Registration Date

February 10, 1998

Owner (REGISTRANT) STF Productions, Inc. CORPORATION DELAWARE 10201
West Pico Boulevard Los Angeles CALIFORNIA 90035

Attorney of Record JON DEL BARRIO

Prior Registrations 1791699;1795329;1795330

Type of Mark SERVICE MARK

Register PRINCIPAL-2(F)

Affidavit Text SECT 15. SECT 8 (6-YR).

Live/Dead Indicator LIVE

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE LIST	TOP	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				

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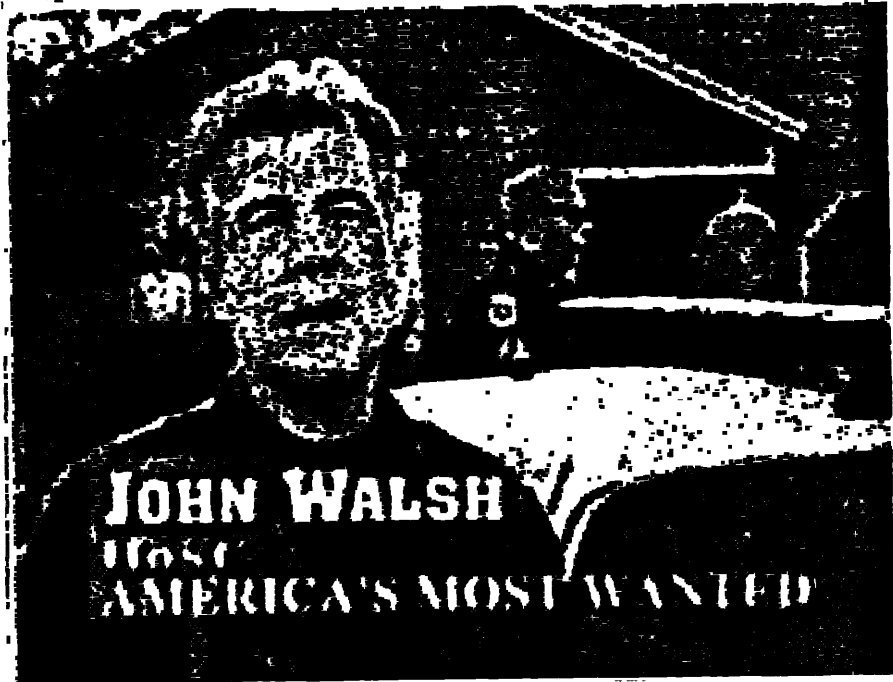
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Attachment B

26044134189

Opening Frame of

WETTERLING CAMPAIGN ADVERTISEMENT WITH JOHN WALSH
-(prior to removal of text overlay at STF request)



"John Walsh"

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Attachment C

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MPPOA

Minnesota Police and Peace Officers Association

327 York Ave, St. Paul, MN 55101-4090
Phone: 651.291.1119 or 800.652.9799
E-mail: mppoainfo@mppoa.com
Updated: 10.22.04

Latest MPPOA News

*** Please note that you will need the Adobe Ac



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as of 10.12.04

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as of 7/13/04

[Minnesota Community Foundation Vision Grants](#)



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MPPOA BULLETIN

October, 2004

**EDITOR: BILL GILLESPIE –
EXECUTIVE DIRECTOR**

POLITICAL EDUCATION

The Patty Wetterling campaign is having a press conference on October 18th at 1:30pm at the Police Memorial on the Capitol grounds in St. Paul. ***They would like as many police officers of all ranks as possible to attend for a backdrop to the event.*** Patty Wetterling is the MPPOA's endorsed candidate in the Sixth District Congressional seat presently held by Congressman Mark Kennedy. Mr. Kennedy was previously endorsed by the MPPOA in his earlier election efforts.

The theme of the press release is Patty Wetterling's plan to assist local law enforcement with support of the COP's program funding, and the restoration of the cuts to both the Law Enforcement Block Grant and the Byrne Grant programs. She will also speak to Congressman Kennedy's failure to listen to the needs of local law enforcement during his two terms in office.

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Attachment D

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Opening Frame of
WETTERLING CAMPAIGN ADVERTISEMENT WITH NEIL NEDDERMEYER



"Work"

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