



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Anne E. Beaumont
Friedman Kaplan Seiler & Adelman
1633 Broadway
New York, New York 10019

MAR 25 2009

RE: MURs 6053 and 6065
HuffingtonPost.com

Dear Ms. Beaumont:

On August 25, 2008, and September 11, 2008, the Federal Election Commission notified your client, HuffingtonPost.com, of complaints alleging a violation of the Federal Election Campaign Act of 1971, as amended. On March 10, 2009, the Commission found, on the basis of the information in the complaints, and information provided by you, that there is no reason to believe HuffingtonPost.com violated 2 U.S.C. § 438(a)(4). Accordingly, the Commission closed its files in these matters.

Documents related to the cases will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Elena Paoli, the attorney assigned to this matter at (202) 694-1548.

Sincerely,

A handwritten signature in black ink, appearing to read "Ana Pena-Wallace".

Ana Pena-Wallace
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: HuffingtonPost.com

MURs: 6053 and 6065

These matters were generated by complaints filed with the Federal Election Commission by Victoria Coryelle and Charisse C. Wilson. *See* 2 U.S.C. § 437g(a)(1).

I. Factual Summary

Complainants made federal political contributions such that their names and other information are required to be disclosed by the recipient political committees in their publicly available FEC disclosure reports. *See* 2 U.S.C. §§ 432(c) and 434(b)(3)(A) and 11 C.F.R. § 104.8(a). Complainants allege that HuffingtonPost.com is using contributor information from the Federal Election Commission campaign finance disclosure database for commercial purposes, in violation of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15 of the Federal Election Campaign Act, as amended (“the Act”), and the Commission’s implementing regulation, respectively.

Respondent HuffingtonPost.com is a news and opinion website. It does not charge a fee or require users to subscribe to see the contributor information. HuffingtonPost.com accepts advertisements. HuffingtonPost.com offers coverage of politics, media, business, entertainment, living and style, and has been on-line for three years. Staff writers and bloggers provide original content.

HuffingtonPost.com obtains its data from the Commission’s disclosure database and manipulates it to offer more ways to search it than available on the Commission website. For example, HuffingtonPost.com offers users the ability to search federal political contributions by

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occupation, address, employer, and name. In addition, the website provides a mapping feature, which pinpoints and displays a contributor's address and location on a map.

Complainants allege that respondent's posting of their personal information violates the Act and makes them "prime prospects" for receiving solicitations. Complainants also allege that by publishing contributors' names, addresses, employers, and contribution amounts, HuffingtonPost.com's contributor information pages achieve a high search ranking on Google when using a person's name as the search term, and because the price for the banner ads on those web pages is based on the search ranking, the respondent is receiving revenue by using contributor information in a commercial manner. Finally, complainants allege that their privacy has been violated, and they request that HuffingtonPost.com be disabled from using the FEC contributor information.

II. Legal Analysis

The Act and the Commission's regulations require that the Commission "make [reports and statements filed with it] available for public inspection, and copying, at the expense of the person requesting such copying, except that any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes." 2 U.S.C. § 438(a)(4). "The § 438(a)(4) prohibition is . . . violated by a use of FEC data which could subject the 'public-spirited' citizens who contribute to political campaigns to 'all kinds of solicitations'." *Federal Election Comm'n v. Political Contributions Data, Inc.*, 943 F.2d 190, 197 (2d Cir. 1991) ("PCD").

The regulations, however, articulate a media exemption from the prohibition for the use of FEC data in "newspapers, magazines, books or other similar communications . . . as long as

the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes.” 11 C.F.R. § 104.15(c). In the *PCD* case, the court likened PCD’s data collection service to a media organization’s information disclosure function. *PCD*, 943 F.2d at 195. The court found that the information distributed by PCD was not organized in a manner designed to facilitate solicitations for contributions, and that there was no evidence that any of its customers were using it for that purpose. *Id.* at 196-97. Respondent claims that it comes within the media exemption for newspapers, magazines and books and other similar communications. It argues that as a news and opinion website, publishing contributor information is not its principal purpose, much less a commercial purpose, and thus, it is not violating the Act.

A. Respondent is Similar to Newspapers and Magazines

Respondent claims to be a news and opinion website because it publishes articles, commentary and other original content. First, HuffingtonPost.com is similar to traditional media in that much like an online newspaper, it offers small advertisements, photographs and video, and “breaking news” posts. 11 C.F.R. § 104.15(c). *Cf.* MUR 5928 (Kos Media, LLC) (Commission found no reason to believe respondent violated expenditure limitations of the Act because DailyKos “qualifies as a media entity ... DailyKos is available to the general public and is the online equivalent of a newspaper, magazine, or other periodical publication. Additionally, DailyKos is precisely the type of online media presence the Commission contemplated when revising the media exemption”).¹

¹ In its “Internet Communications” Explanation and Justification, the Commission expanded the scope of the “expenditure” media exemption to include “media entities that cover or carry news stories, commentary, and editorials on the Internet.” 71 Fed. Reg. 18589, 18608 (April 12, 2006).

Second, the respondent's principal purpose in communicating the information appears to be informational. 11 C.F.R. § 104.15(c). As discussed below, HuffingtonPost.com is not selling any service in connection with the data, and it does not charge users to view the data. Further, there is no information that HuffingtonPost.com is publishing the FEC information for the purpose of soliciting contributions or for another commercial purpose.

B. Respondent is not Selling Contributor Information

HuffingtonPost.com does not appear to be using the contributor information for a commercial purpose. *See* 2 U.S.C. § 438(a)(4). Respondent does not charge users a fee to view political contributor information on its website. This distinguishes HuffingtonPost.com from *FEC v. Legi-Tech*, 967 F. Supp. 523 (D.D.C. 1997) (selling donor information in list form for solicitation purpose violates Act). Also, there is no indication that respondent is soliciting contributions on its website.

In a similar situation, the Commission found that an analogous use of FEC data did not violate the Act. In MUR 5155 (*Friends for a Democratic White House et al.*), the Commission considered whether the Political Money Line website, which like HuffingtonPost.com, provided a free contributor search function on its website, was making commercial use of contribution data. The Commission determined that although Political Money Line did charge users for some services, the information available for a fee did not include any additional information with respect to individual donors that was not also readily available on the non-subscription side of the website.² It follows, therefore, that merely copying the FEC contributor information and letting users view it without charge is not a commercial purpose. *See also PCD*, 943 F.2d at 196

² After an investigation, the Commission took no further action as to TRKC, Inc., the operator of Political Money Line.

(even though PCD is selling information, its stated purpose – to further research and reporting on patterns of political contributions – is not a commercial use).

The complainant in MUR 6065 alleges that the posting of her address makes her a prime prospect for various solicitations such as cars, credit cards, magazine subscriptions and vacation trips. Complainant does not say whether she in fact received solicitations as a result of the information on respondent's website and, if so, how she knows the website was the source. Numerous on-line sources, including the FEC's website itself, and off-line sources, such as the Commission's Public Records Office, also allow users to view and obtain complainants' addresses.³ Moreover, although complainants point specifically to the mapping function on respondent's website as particularly disturbing, the map does not provide additional personal or otherwise useful information that is not available elsewhere.

Complainants also allege that HuffingtonPost.com's advertisements are viewed by more people because the contributor information pages achieve a high Google search ranking. They argue that the high search ranking generates more advertising revenue for HuffingtonPost.com, and thus, the use of the contribution information is commercial. Respondent states that its for-profit nature does not convert the use of contributor data into a commercial use. Complainants have not offered any support for the claimed relationship between the contribution data pages and advertising revenue, and we have not located any information regarding such a relationship. Moreover, complainants are basically arguing that the for-profit status of HuffingtonPost.com makes its use of FEC contributor information a *per se* commercial use. Such an argument has

³ In its response, HuffingtonPost.com cites to several other websites that allow users to search for contributor information. However, none include contributors' addresses, although one, Congressional Quarterly, hyperlinks to the FEC disclosure report page where the contributor's address is found.

already failed. *See PCD*, 943 F.2d at 196 (commercial use media exemption available to for-profit companies).

C. Conclusion

In sum, HuffingtonPost.com is similar to a newspaper or magazine and its principal purpose in displaying the contributor information appears to be informational. *See PCD*, 943 F.2d at 196-97. Therefore, HuffingtonPost.com comes within the exemption at 11 C.F.R. § 104.15(c) for using FEC contribution information. In addition, it does not appear that respondent uses FEC contributor information “for a commercial purpose,” as that term has been interpreted by the Commission and the U.S. Court of Appeals for the Second Circuit in the *PCD* case.

Therefore, there is no reason to believe that HuffingtonPost.com violated 2 U.S.C. § 438(a)(4).