



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 8 2010

Kevan J. Blanche
Kevan J. Blanche, Attorney at Law
P. O. Box 1251
La Canada Flintridge, California 91012

RE: MUR 6269
Danny Tarkanian
Tarkanian for Senate and Chrissie Hastie,
in her official capacity as Treasurer

Dear Mr. Blanche:

On April 13, 2010, the Federal Election Commission (the "Commission") notified your above-referenced clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On October 5, 2010, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that Danny Tarkanian or Tarkanian for Senate and Chrissie Hastie, in her official capacity as Treasurer, violated 2 U.S.C. §§ 441a or 441b of the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case 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) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Roy Q. Lockett".

Roy Q. Lockett
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Tarkanian for Senate and Chrissie Hastie, **MUR: 6269**
in her official capacity as Treasurer

Danny Tarkanian

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Sam Lieberman, alleging violations of the Federal Election Campaign Act of 1971 ("the Act"), as amended by the Bipartisan Campaign Reform Act of 2002 ("BCRA"), by Tarkanian for Senate and Chrissie Hastie, in her official capacity as Treasurer, and Danny Tarkanian.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The complaint alleges that on or about March 18, 2010, Mike Montandon for Governor ran an Internet advertisement opposing a federal candidate. Complaint, pp. 2-3. The advertisement includes a picture of Senator Harry Reid, an incumbent candidate for the United State Senate from Nevada, along with his son, a Nevada gubernatorial candidate, and the following sentence: "Put an end to the Reid dynasty." Complaint, Attachment A. Below the sentence is a "Donate Now" button, followed by the disclaimer: Paid for by Montandon for Governor. *See Id.*

The complaint asserts Senator Reid's then-potential general election opponent, Danny Tarkanian and Tarkanian for Senate, received, an in-kind contribution from Montandon for Governor that may have been paid for with funds that did not comply with the limitations and prohibitions of the Act because the advertisement was coordinated through the use of a common vendor. Complaint, p. 4. Specifically, the complaint asserts that an individual named Steve

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Wark, political consultant and president of Image and Design, works for both the Tarkanian and the Montandon campaigns, and that "it is likely that even if [Wark] did not help create this ad personally, he has conveyed material 'plans, projects, activities, or needs' of Tarkanian to the Montandon campaign." Complaint, p. 4-5.

Tarkanian for Senate and Chrissie Hastie, in her official capacity as Treasurer, argue that the complaint provides no supporting documentation to demonstrate that: (1) the ad at issue is what it purports to be, or that it was in fact published and paid for by Montandon for Governor; (2) the ad was publicly distributed or disseminated in the clearly identified jurisdiction within 90 days of an election; (3) the ad was produced by Steve Wark, the alleged common vendor, or his agents, or with Wark's knowledge, advice, input or consent; (4) or that any information obtained from Tarkanian and used by the vendor in creating the advertisement was "material to the creation, production, or distribution" of the ad at issue, and was not obtained from a publicly available source.

In his response, Mike Montandon states that he ran an advertisement that indicated that Rory Reid, one of his opponents in the race for governor of Nevada, was part of a "dynasty," in that he is related to his political father, incumbent Senate Majority Leader Harry Reid. The reference to a "dynasty," he says, was obviously a reference to a son of Harry Reid. He states that his new media advisors, Harris and Associates, created the advertisement and did not coordinate the ad with anyone other than himself and his campaign manager. Montandon further states that Steve Wark knew nothing of the ad and was not employed by his campaign after November 2009.

In his response, Steve Wark states that he ceased working for the Montandon campaign in November of 2009, and that the advertisement at issue was apparently created, paid for, and

placed at least 120 days after he ceased working for the campaign. He further states that he had no prior knowledge of the content, or the placement, of the advertisement, and that he has never seen the advertisement in any form or medium, with the exception of the copy attached to the complaint. In addition, he asserts that he never shared any of the plans, projects, activities, or needs of Tarkanian for Senate with the Montandon campaign.

B. Analysis

Under the Act, an expenditure made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of" a candidate constitutes an in-kind contribution. *See* 2 U.S.C. § 441a(a)(7)(B)(i); *see also* 11 C.F.R. § 109.20(a). Commission regulations set forth a three-prong test to define when a communication is coordinated with a candidate. A communication is coordinated with a candidate or candidate committee when: (1) the communication is paid for by a person other than that candidate, authorized committee or agent thereof; (2) the communication satisfies at least one of the four "content" standards described in 11 C.F.R. § 109.21(c);¹ and (3) the communication satisfies at least one of the six "conduct"

¹ The "content" standard includes: (1) an "electioneering communication" defined at 11 C.F.R. § 100.29(a) as a broadcast, cable, or satellite communication that refers to a clearly identified federal candidate, is publicly distributed within a specific time frame, and is targeted to the relevant electorate; (2) a "public communication" that disseminates campaign materials prepared by a candidate; (3) a communication that "expressly advocates" the election or defeat of a clearly identified federal candidate; and (4) a "public communication" that refers to a clearly identified candidate, is distributed 120 days or fewer before an election and is directed to a targeted audience. 11 C.F.R. § 109.21(c).

standards described in 11 C.F.R. § 109.21(d). 11 C.F.R. § 109.21(a).²

Here, the complaint alleges that the conduct prong for coordination is satisfied based on a common vendor theory. The Commission's regulations provide that the conduct prong may be satisfied if the parties contracted with or employed a common vendor that used or conveyed material information about the campaign's plans, projects or activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication. 11 C.F.R. § 109.21(d)(4). The complaint, however, provides no specific information indicating that conduct showing coordination based on a common vendor theory occurred, and only speculates that the common vendor, Steve Wark, "very likely" used or conveyed to the payor information about the Tarkanian campaign's plans, projects, activities, or needs. *See* Complaint, p. 4-5. In contrast, available information unequivocally refutes the complaint's unsupported allegations. In particular, Wark states that he left the campaign in November 2009, more than 120 days before the advertisement appeared, and had no prior knowledge of the content, or the placement, of the ad, had never seen the advertisement in any form or medium with the exception of the copy attached to the complaint, and never shared any of the plans, projects, activities, or needs of Tarkanian for Senate with the Montandon campaign. Similarly, Montandon for Governor states that Steve Wark knew nothing of the ad and was not employed by his campaign after November 2009. Thus, there appears to be no basis for

² The conduct prong is satisfied where any of the following types of conduct occurs: (1) the communication was created, produced or distributed at the request or suggestion of a candidate or his campaign; (2) the candidate or his campaign was materially involved in decisions regarding the communication; (3) the communication was created, produced, or distributed after substantial discussions with the campaign or its agents; (4) the parties contracted with or employed a common vendor that used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; (5) the person paying for the communication employed a former employee or independent contractor of the candidate who used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; or (6) the person paying for the communication republished campaign material. *See* 11 C.F.R. § 109.21(d).

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concluding that Mike Montandon for Governor coordinated the Internet advertisement with Tarkanian for Senate through a common vendor, or otherwise.³ Because the conduct prong has not been met, the Commission has determined to find no reason to believe Tarkanian for Senate and Chrissie Hastie, in her official capacity as Treasurer, or Danny Tarkanian violated 2 U.S.C. §§ 441a or 441b by receiving an in-kind contribution that may have been paid for with funds that did not comply with the limitations and prohibitions of the Act.

³ Mike Montandon states that media advisors Harris and Associates created the advertisement and communicated only with Montandon and his campaign manager.