FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR 7273
COMPLAINT FILED: Sept. 1, 2017
NOTIFICATION DATE: Sept. 7, 2017
LAST RESPONSE FILED: Nov. 1, 2017
ACTIVATION DATE: Dec. 27, 2017

STATUTE OF LIMITATIONS: July 12, 2022
ELECTION CYCLE: 2018

COMPLAINANTS:
Common Cause
Paul S. Ryan

RESPONDENTS:
Robert James Ritchie a/k/a “Kid Rock”
Warner Bros Records, Inc.

RELEVANT AUTHORITY:
52 U.S.C. § 30101(2)
52 U.S.C. §§ 30102, 30103, 30104
52 U.S.C. § 30118(a)
11 C.F.R. § 110.6
11 C.F.R. § 114.2(f)
11 C.F.R. § 100.22
11 C.F.R. §§ 100.72(a), (b)
11 C.F.R. §§ 100.131(a), (b)

INTERNAL REPORTS CHECKED: None
FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Robert J. Ritchie, a recording artist known by his stage name, “Kid Rock,” issued tweets and an online public statement indicating that he was considering running for federal office, and created the website “kidrockforsenate.com” which promoted merchandise bearing the logo, “Kid Rock for US Senate,” produced and sold by his merchandising company, Warner Brothers Records, Inc. (“WBR”). Complainants allege that based on these actions, Ritchie became a federal candidate and violated the law when he failed to abide by the relevant registration and
reporting requirements, contribution limits, and source prohibitions. Complainants further allege that WBR made, facilitated, or acted as a conduit for contributions to a federal candidate. Ritchie claims that he had never decided to run for federal office, and that his activity did not result in any contributions or expenditures because it was commercial and artistic activity, not activity for the purpose of influencing a federal election.

Because Ritchie authorized the distribution of merchandise unequivocally referring to himself as a federal candidate, his activity does not fall within the exemption afforded to individuals who are only “testing the waters” of a potential candidacy. Further, by contracting with WBR to produce merchandise expressly advocating for his election to federal office, Ritchie engaged in activity that was at least nominally for the purpose of influencing a federal election, and he therefore made or authorized WBR to make expenditures, which likely exceeded the $5,000 statutory threshold for candidate status. As such, we recommend that the Commission find reason to believe that Ritchie violated 52 U.S.C. §§ 30102, 30103, and 30104, and authorize an investigation. In addition, because WBR appears to have been acting as a commercial vendor, we recommend that the Commission find no reason to believe that WBR violated the law as alleged.

II. FACTUAL BACKGROUND

According to the Complaint, in February 2017, a member of the Michigan Republican Party’s central committee suggested that “Kid Rock” a/k/a Robert J. Ritchie, a Michigan native, would generate a lot of excitement and might be a viable Republican Party candidate for the U.S. Senate in Michigan during the 2018 election. The Complaint claims that Ritchie launched the

website “kidrockforsenate.com” in early July 2017, and Ritchie acknowledges that he created and paid for the site. In a Twitter post on July 12, 2017, Ritchie wrote “I have had a ton of emails and texts asking me if this website is real... kidrockforsenate.com[.] The answer is an absolute YES.” The post was accompanied by a picture of a yard sign reading “KID ROCK FOR US SENATE” as a stylized logo. Immediately after, Ritchie tweeted “Stay tuned, I will have a major announcement in the near future – Kid Rock.” On July 17, 2017, he tweeted “kidrockforsenate.com” with an image bearing the following text in all caps: “I believe if you work your butt off and pay taxes, you should be able to easily understand and navigate the laws, tax codes, health care and anything else the government puts in place that affects us all.” The text was followed by a logo reading “KID ROCK '18 FOR US SENATE.” The next day, July 18, 2017, Ritchie tweeted “kidrockforsenate.com” along with an image bearing the text “KID ROCK FOR US SENATE” and images of a yard sign, bumper sticker, t-shirt, and cap all bearing the “Kid Rock for US Senate” logo, and the text at the bottom, “SHOP NOW.”

On July 24, 2017, Kid Rock retweeted a link to an article on “thegatewaypundit.com” with the headline “BOOM! Kid Rock LEADS in Michigan Senate Race Poll.” On July 26, 2017, Kid Rock tweeted “When my name was thrown out there for US Senate[,] I decided to

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2 Compl. at 2; Resp. of Robert J. Ritchie, Ex. 1 ¶ 6 (Nov. 3, 2017) (“Ritchie Resp.”).
3 Posts from the verified Twitter handle @KidRock are attributed to Ritchie, as are all public statements Ritchie made under his stage name, Kid Rock.
4 Compl., Ex. 1.
5 Id., Ex. 2.
6 Id., Ex. 3.
7 Id., Ex. 4.
8 Id., Ex. 5.
launch kidrockforsenate.com.... Read more: goo.gl/xXPQd5” accompanied by an image logo for
“KID ROCK ’18 FOR US SENATE.” The link in this tweet sent viewers to the webpage
“kidrock.com,” which presented a lengthy statement attributed to Ritchie; the same statement
also appeared on kidrockforsenate.com. In the statement, Ritchie acknowledged that he had
“decided to take a hard look to see if there was real support for me as a candidate and my
message” and indicated that “my first order of business is to get people engaged and registered to
vote while continuing to put out my ideas on ways to help working class people[.]” Ritchie also
claimed that “while exploring my candidacy for US Senate” he would be creating a 501(c)(4)
nonprofit organization to promote voter registration. Referring to media speculation that “this
was a ploy to sell shirts or promote something,” Ritchie responded, “I have no problem selling
Kid Rock shirts and yes, I absolutely will use this media circus to sell/promote whatever I damn
well please[.]” He also offered, however, that “either way, money raised at this time through the
sale of merchandise associated with this very possible campaign will go towards our ‘register to
vote’ efforts.” At the conclusion of the statement, Ritchie remarked “if I decide to throw my
hat in the ring for US Senate, believe me… it’s game on[.]”

When the Complaint was filed, the website “kidrockforsenate.com” featured the logo
“Kid Rock ’18 for US Senate.” A link at the very top of the page “kidrockforsenate.com” read

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9 Id., Ex. 6.
10 Id. at 5.
11 Id.
12 Id. The Complaint also alleges that the Twitter account “@KidRockSenator” is “associated with”
kidrockforsenate.com and has been promoting the merchandise available on that website. Compl., Ex. 7. Twitter user @KidRockSenator tweeted on July 29, 2017, “Donate to the campaign! Get your gear! #PoliticsNation” with the accompanying image of Kid Rock for Senate merchandise. Ritchie, however, denies that @KidRockSenator is one of his Twitter handles and claims that it “is not authorized by him, Kid Rock, or his management company.” Ritchie Resp. at 10; see id., Ex. 1 ¶ 6. It is unknown who owns the Twitter handle “@KidRockSenator.”
“KID ROCK ANNOUNCEMENT ON KIDROCK.COM” and sent viewers to
“https://kidrock.com/sweetsouthernsugar” the website for Kid Rock’s album “Sweet Southern Sugar,” which was released on November 3, 2017, and its accompanying U.S. tour. The page kidrockforsenate.com also featured a “BUY NOW” button that sent viewers to a different website, “http://kidrock.warnerbrosrecords.com/senate.html.” That site, which appears to be operated by WBR, offered merchandise for sale bearing a logo reading either “Kid Rock for US Senate” or “Kid Rock ’18 for US Senate.” Under each item, the site provided a disclaimer: “All proceeds go to voter registration efforts. This is not a political contribution.”

According to WBR, its Kid Rock-branded merchandise, including the “Kid Rock for US Senate” line of items, is produced “in close collaboration with Mr. Ritchie.” WBR avers that on February 27, 2017, Ritchie requested that WBR create the “Kid Rock for Senate” merchandise, and he later approved the design. However, WBR claims that the merchandise was produced, marketed, and sold under the terms of a standard merchandising agreement between WBR and one of its artists, and at the usual and normal rates for such products. The merchandise went on sale on July 11, 2017, the day before Ritchie’s first tweet promoting kidrockforsenate.com. WBR claims that Ritchie requested that his share of the sale proceeds be designated to a 501(c)(4) organization supporting voter registration efforts, and that WBR

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13 Ritchie Resp., Ex. 6.
15 WBR Resp., Ex. A ¶ 12.
16 WBR Resp. at 2-3; id., Ex. A ¶ 14.
17 WBR Resp., Ex. A ¶¶ 13, 15.
On October 24, 2017, Ritchie announced that he would not run for the U.S. Senate. Ritchie claimed that he told people in his circle who were “in on the joke” that “we’re not doing it[,] but let’s roll with it for a while.” That same day, the statement discussing Kid Rock’s potential campaign was removed from kidrockforsenate.com. After announcing that he was not running for office, Ritchie requested that his merchandising agreement be amended so that WBR would remit his share of “Kid Rock for US Senate” merchandise sale proceeds to him.

III. FACTUAL AND LEGAL ANALYSIS

A. Ritchie Became a Federal Candidate by Directing WBR to Produce and Sell Express Advocacy Materials Supporting His Federal Candidacy

1. Ritchie’s Activity Went Beyond “Testing the Waters”

Ritchie’s activities do not fall within the Commission’s exemptions for individuals merely “testing the waters” of a potential candidacy. The Federal Election Campaign Act of 1971, as amended (the “Act”), defines a “candidate” as “an individual who seeks nomination for election, or election, to Federal office,” and an individual is deemed to seek nomination for election, or election, if he or she has received or made, or has authorized another person to receive or make, aggregate contributions or expenditures exceeding $5,000. Under the Act, a
1 contribution is “any gift, subscription, loan, advance, or deposit of money or anything of value
2 made by any person for the purpose of influencing any election for Federal office[,]” and an
3 expenditure is “any purchase, payment, distribution, loan, advance, deposit, or gift of money or
4 anything of value, made by any person for the purpose of influencing any election for Federal
5 office.” Notwithstanding these provisions, the Commission’s “testing the waters” regulations
6 provide that funds received, or payments made, “solely for the purpose of determining whether
7 an individual should become a candidate” are not contributions or expenditures, respectively.
8 The “testing the waters” regulations, however, do not apply to “activities indicating that an
9 individual has decided to become a candidate for a particular office or for activities relevant to
10 conducting a campaign[,]” such as where an “individual makes or authorizes written or oral
11 statements that refer to him or her as a candidate for a particular office.”
12 When Ritchie coordinated with WBR to sell merchandise referring to himself as a federal
13 candidate, he objectively demonstrated that he had decided to become a candidate for a particular
14 federal office and was engaging in activity relevant to conducting a campaign. While Ritchie’s
15 public statements at the time indicated that he was only considering running for office, and he
16 now claims that he never intended to become a candidate, by directing WBR to sell “Kid Rock
17 for US Senate” merchandise, Ritchie authorized written statements that referred to himself as a
18 candidate for a particular office. Moreover, Ritchie’s activity was also relevant to conducting a

25 11 C.F.R. §§ 100.72(a), 100.131(a).
26 11 C.F.R. §§ 100.72(b), 100.131(b).
27 11 C.F.R. §§ 100.72(b)(3), 100.131(b)(3).
28 11 C.F.R. §§ 100.72(b)(3), 100.131(b)(3). In MUR 6957, the Commission found that an individual became a candidate by creating a campaign website bearing the logo “Isadore Hall for Congress,” shortly after making a
campaign, even if it was not specifically intended to raise funds for the campaign. In short, Ritchie’s actions objectively evinced that he had decided to become a candidate, irrespective of his subjective intentions. As such, all of the funds spent to produce and sell “Kid Rock for US Senate” merchandise were expenditures, not “testing the waters” activity.

2. Ritchie’s Activity Was Not Bona Fide Commercial Activity Because it Was at Least Partly for the Purpose of Influencing a Federal Election

By directing WBR to produce and sell merchandise expressly advocating for his election to federal office, Ritchie went beyond the range of purely commercial activity that the Commission has determined does not constitute a contribution or expenditure under the Act because it is not “for the purpose of influencing any election for Federal office.”

Ritchie contends that he created the “Kid Rock for US Senate” merchandise, and claimed to be considering a potential candidacy, for commercial and artistic reasons; he essentially claims that he was promoting his brand and his music by tapping into an increased public interest in politics. However, even if Ritchie’s conduct was partly driven by commercial and artistic considerations, the available information demonstrates that it also served a political function, because the merchandise that Ritchie approved featured a slogan, “Kid Rock for US Senate,”

public statement expressing his intention to run for federal office. See Factual and Legal Analysis at 4-5, MUR 6957 (Isadore Hall).

29. See Advisory Op. 2015-09 at 6 (Senate Majority PAC) (“Where the circumstances demonstrate that an individual’s statement regarding candidacy reflects that individual’s decision to run for office, mere assertions that the individual’s subjective intent differs from his or her statement generally will not negate the objective indication of candidacy arising from the statement.”).


31. See Ritchie Resp., Ex. 1 ¶ 2 (“I have never seen the country as politically agitated as it is today. I wanted to reach that audience.”); id., ¶ 8 (“The shirts and signs are just one way to draw attention to me, help advertise my concerts, and frankly to give my fans a new way to have a little fun.”).
expressly advocating for Ritchie’s election to federal office. Ritchie then issued tweets, as well as a longer-form statement featured on the websites kidrock.com and kidrockforsenate.com, to generate interest in his potential candidacy and the “Kid Rock for US Senate” merchandise. Although Ritchie now claims that he never seriously intended to run for office and was merely promoting his artistic persona and generating interest in his upcoming album, in July 2017, he was by his own words seriously exploring a potential candidacy. By selling shirts, caps, and yard signs that explicitly referred to him as a candidate, Ritchie’s conduct appears to have been at least partly for the purpose of influencing a federal election.

Ritchie’s conduct thus fails to satisfy the Commission’s four-factor test for bona fide commercial activity, because when he, as the named candidate, distributed merchandise expressly advocating for his candidacy, that conduct was inconsistent with activity engaged in “for genuinely commercial purposes.” The Commission has cautioned that the commercial activity exemption may not apply where a candidate is involved in the commercial enterprise. Advisory Opinion 1994-30 (Conservative Concepts) concerned a company selling merchandise that contained express advocacy for profit. Because no candidate was involved in the venture and none of the sale proceeds went to any political committee, the Commission determined that the company was engaged in genuinely commercial activity, and that its conduct therefore did

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32 See 11 C.F.R. § 100.22 (defining express advocacy). Ritchie argues that “Kid Rock” is a fictional character and the slogan “Kid Rock for US Senate” therefore “fails to identify any actual person or individual who can run for office.” Ritchie Resp. at 8. However, “Kid Rock” is Ritchie’s stage name and the statement “Kid Rock for US Senate” expressly advocates for the election of the person publicly identifiable as Kid Rock, Robert Ritchie.

33 Advisory Op. 1994-30 at 4 (Conservative Concepts). The four factors used to evaluate when activity that might otherwise constitute a contribution or expenditure would be exempted as bona fide commercial activity are (1) whether the sales involve fundraising activity or solicitations for political contributions; (2) whether the activity is engaged in for genuinely commercial purposes; (3) whether the items are sold at the usual and normal charge; and (4) whether the purchases are made by individuals for their personal use in political expression. Id.
1 not result in contributions or expenditures to any candidate or committee.\textsuperscript{34} Crucially, however,
2 the Commission noted that the same activity might not be considered commercial, and could
3 result in the company making contributions or expenditures to a candidate, if it was coordinated
4 with that candidate.\textsuperscript{35}
5
6 When Ritchie directed WBR to produce “Kid Rock for US Senate” merchandise and
7 personally approved the designs for the items, he coordinated with WBR to sell merchandise
8 containing express advocacy messages supporting his candidacy. The available information
9 therefore indicates that all payments to produce and market the merchandise were at least partly
10 for the purpose of influencing a federal election and not for purely commercial purposes. As
11 such, those payments were expenditures under the Act, and Ritchie was required to register as a
12 candidate and report them once they exceeded the $5,000 statutory threshold.

3. Ritchie Made or Authorized Expenditures Most Likely in Excess of
   the Statutory Threshold for Federal Candidacy

Because the funds used to produce and sell “Kid Rock for US Senate” merchandise were
expenditures, and those expenditures most likely exceeded $5,000 in the aggregate, the available
facts support a reasonable inference that Ritchie crossed the statutory threshold for candidate
status and was therefore required to register and report as a candidate. While the available
record does not indicate how much WBR spent to produce and market the merchandise expressly
advocating for Ritchie’s election to federal office, the merchandise was offered for sale on or

\textsuperscript{34} Advisory Op. 1994-30 at 5-7.

\textsuperscript{35} \textit{Id.} at 8 (“[T]he Commission expressly notes that this conclusion is predicated on the representations that
you have made that your activities are for purely commercial purpose and are \textit{not} coordinated with any candidate.”) (emphasis added); see First Gen. Counsel’s Report at 15, MURs 5474 and 5539 (Dog Eat Dog) (“There is also no
information that the production or release of the film was coordinated with any candidate or political committee[.]”); see also Advisory Op. 1976-50 (Friends of Dick Lugar).
about July 11, 2017, was still being sold when Ritchie announced that he would not run for
office on October 24, 2017, and continues to be offered on WBR’s website. As such, there is
sufficient circumstantial evidence at this stage to infer that the amount spent to produce “Kid
Rock for US Senate” merchandise was in excess of the $5,000 statutory threshold.

Because Ritchie made or authorized sufficient expenditures to become a candidate, it is
immaterial that he directed his share of the proceeds from “Kid Rock for US Senate”
merchandise sales to a 501(c)(4) nonprofit organization. Ritchie requested that his share of the
sale proceeds be donated to support voter registration efforts, posted a statement to that effect on
his website, kidrockforsenate.com, and asked WBR to post a disclaimer to that effect on its
website where the items were sold. As such, potential purchasers were reasonably on notice
that sale proceeds would be used to support a social welfare cause and would not be used to
support Ritchie’s potential campaign for federal office. Because purchasers’ funds were
therefore not available for the purpose of influencing a federal election, they were not
“contributions” to Ritchie under the Act.

See Ritchie Resp., Ex. 8 (WBR Merchandising Agreement) (“At your and Kid Rock’s hereby irrevocably
issued direction and authorization, [WBR] hereby agrees to issue to the order of/pay directly to the 501(c)(4)
organization CRNC Action (“CRNC Action”), instead of to you or Kid Rock, all Merchandise Net Profits and any
other moneys due to you or Kid Rock . . . that are derived from sales of Kid Rock for Senate Merchandise under the
Merchandising Agreement occurring during the period July 1, 2017 through October 31, 2017.”). After declaring
that he would not run for the U.S. Senate, Ritchie asked that the merchandising agreement be amended so that future
proceeds from the sale of “Kid Rock for US Senate” merchandise be remitted to him personally. WBR Resp. at 4.

The Complaint alleges that the full purchase price of all “Kid Rock for US Senate” merchandise is a
contribution, relying on 11 C.F.R. § 100.53, see Compl. at 15, but that rule is inapposite here. The rule indicates
that “the entire amount paid as the purchase price for a fundraising item sold by a political committee is a
contribution.” The items at issue in this matter clearly were not “sold by a political committee,” and we can find no
prior instance where this rule has been applied to items not sold by a political committee. In addition, the website
where the items were offered specifically alerted potential purchasers that “all [sale] proceeds [will] go to voter
registration efforts,” Ritchie Resp. at 4, indicating that the items were not being sold to raise funds for any political
committee or candidate, or as “an inducement” to make a political contribution. See Advisory Op. 1975-15 at 1
(Wallace) (“[W]hen the Campaign sells the described items, it is engaging in an activity to raise funds and to build
support for the candidate. As a general matter, a person who transmits money to a political committee or candidate
Nevertheless, as discussed above, the funds that Ritchie spent or authorized to produce and sell materials containing express advocacy were sufficient to require him to register and report as a federal candidate. Ritchie did not do so, and we therefore recommend that the Commission find reason to believe that Ritchie violated 52 U.S.C. §§ 30102, 30103, 30104.

B. WBR Acted as a Commercial Vendor and Therefore Did Not Make, Facilitate, or Serve as a Conduit For Any Contribution to Ritchie

The available information supports the inference that WBR was acting as a commercial vendor when it produced and sold “Kid Rock for US Senate” merchandise, and WBR therefore did not make, facilitate, or act as a conduit for contributions to Ritchie. Under the Act, a contribution includes “anything of value,” which in turn includes all in-kind contributions, such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” By implication, goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act. Commission regulations also provide that a corporation does not facilitate a contribution by providing goods or services to a candidate or political committee in the ordinary course of its business as a commercial vendor. In addition, corporations cannot make contributions to candidates or serve...
as conduits for earmarked contributions, which are contributions directed to a clearly identified federal candidate through an intermediary. 42

Ritchie and WBR have a long-standing merchandising relationship, and Ritchie directed WBR to produce and sell "Kid Rock for US Senate" merchandise, which WBR claims it did under the terms of a standard merchandising agreement with one of its artists, at the usual and normal rate for such services. Nothing in the available record suggests that WBR provided any special discounts or terms for the "Kid Rock for US Senate" merchandise, and WBR specifically denies that it provided any. As explained above, moreover, purchases of "Kid Rock for US Senate" merchandise did not qualify as "contributions" under the Act. 43 The available information also provides no support for the allegation that WBR received or transmitted any contributions earmarked for Ritchie. As such, there is insufficient factual support for the allegation that WBR made, facilitated, or served as a conduit for any contributions to Ritchie. We therefore recommend that the Commission find no reason to believe WBR violated 52 U.S.C. § 30118(a) and 11 C.F.R. §§ 110.6, 114.2(f).

IV. PROPOSED INVESTIGATION

Our proposed investigation would seek information regarding how much Ritchie or WBR spent to produce and sell the "Kid Rock for US Senate" merchandise at issue in this matter, as well as any information regarding contributions received or expenditures made by Ritchie. This information would substantiate Ritchie's alleged violation of the Act's registration and reporting requirements, and would clarify whether Ritchie failed to report any other financial activity.

42 11 C.F.R. § 110.6(a), (b); see 52 U.S.C. § 30118(a).
43 See supra note 38 and related text.
related to his candidacy. We would attempt to obtain this information voluntarily, but we recommend that the Commission approve the use of compulsory process.

V. RECOMMENDATIONS

1. Find reason to believe that Robert James Ritchie a/k/a “Kid Rock” violated 52 U.S.C. §§ 30102, 30103, 30104;

2. Find no reason to believe that Warner Brothers Records, Inc. violated 52 U.S.C. § 30118(a) and 11 C.F.R. §§ 110.6, 114.2(f);

3. Approve the attached Factual and Legal Analyses;

4. Close the file as to Warner Brothers Records, Inc.;

5. Authorize the use of compulsory process; and

6. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

July 9, 2018

Kathleen M. Guith
Associate General Counsel for Enforcement

Mark Shonkwiler
Assistant General Counsel

Saurav Ghosh
Attorney

Attachments:
Factual and Legal Analysis – Robert James Ritchie a/k/a “Kid Rock”
Factual and Legal Analysis – Warner Brothers Records, Inc.
FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Robert J. Ritchie a/k/a "Kid Rock" MUR 7273

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by Common Cause and Paul S. Ryan. See 52 U.S.C. § 30109(a)(1). Robert J. Ritchie, a recording artist known by his stage name, "Kid Rock," issued tweets and an online public statement indicating that he was considering running for federal office, and created the website "kidrockforsenate.com" which promoted merchandise bearing the logo, "Kid Rock for US Senate," produced and sold by his merchandising company, Warner Brothers Records, Inc. ("WBR"). Complainants allege that based on these actions, Ritchie became a federal candidate and violated the law when he failed to abide by the relevant registration and reporting requirements, contribution limits, and source prohibitions. Ritchie claims that he had never decided to run for federal office, and that his activity did not result in any contributions or expenditures because it was commercial and artistic activity, not activity for the purpose of influencing a federal election.

Because Ritchie authorized the distribution of merchandise unequivocally referring to himself as a federal candidate, his activity does not fall within the exemption afforded to individuals who are only "testing the waters" of a potential candidacy. Further, by contracting with WBR to produce merchandise expressly advocating for his election to federal office, Ritchie engaged in activity that was at least nominally for the purpose of influencing a federal election, and he therefore made or authorized WBR to make expenditures, which likely exceeded...
the $5,000 statutory threshold for candidate status. As such, the Commission finds reason to believe that Ritchie violated 52 U.S.C. §§ 30102, 30103, and 30104.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

According to the Complaint, in February 2017, a member of the Michigan Republican Party’s central committee suggested that “Kid Rock” a/k/a Robert J. Ritchie, a Michigan native, would generate a lot of excitement and might be a viable Republican Party candidate for the U.S. Senate in Michigan during the 2018 election. The Complaint claims that Ritchie launched the website “kidrockforsenate.com” in early July 2017, and Ritchie acknowledges that he created and paid for the site. In a Twitter post on July 12, 2017, Ritchie wrote “I have had a ton of emails and texts asking me if this website is real... kidrockforsenate.com[.] The answer is an absolute YES.” The post was accompanied by a picture of a yard sign reading “KID ROCK FOR US SENATE” as a stylized logo. Immediately after, Ritchie tweeted “Stay tuned, I will have a major announcement in the near future – Kid Rock.” On July 17, 2017, he tweeted “kidrockforsenate.com” with an image bearing the following text in all caps: “I believe if you work your butt off and pay taxes, you should be able to easily understand and navigate the laws, tax codes, health care and anything else the government puts in place that affects us all.”

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sale of merchandise associated with this very possible campaign will go towards our ‘register to vote’ efforts.” At the conclusion of the statement, Ritchie remarked “if I decide to throw my hat in the ring for US Senate, believe me... it’s game on[.]”

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According to WBR, its Kid Rock-branded merchandise, including the “Kid Rock for US Senate” line of items, is produced “in close collaboration with Mr. Ritchie.” WBR avers that on February 27, 2017, Ritchie requested that WBR create the “Kid Rock for Senate” line of merchandise.

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11 Id.

12 Id. The Complaint also alleges that the Twitter account “@KidRockSenator” is “associated with” kidrockforsenate.com and has been promoting the merchandise available on that website. Compl., Ex. 7. Twitter user @KidRockSenator tweeted on July 29, 2017, “Donate to the campaign! Get your gear! #PoliticsNation” with the accompanying image of Kid Rock for Senate merchandise. Ritchie, however, denies that @KidRockSenator is one of his Twitter handles and claims that it “is not authorized by him, Kid Rock, or his management company.” Ritchie Resp. at 10; see id., Ex. 1 ¶ 6. It is unknown who owns the Twitter handle “@KidRockSenator.”

13 Ritchie Resp., Ex. 6.

merchandise, and he later approved the design. However, WBR claims that the merchandise was produced, marketed, and sold under the terms of a standard merchandising agreement between WBR and one of its artists, and at the usual and normal rates for such products. The merchandise went on sale on July 11, 2017, the day before Ritchie’s first tweet promoting kidrockforsenate.com. WBR claims that Ritchie requested that his share of the sale proceeds be designated to a 501(c)(4) organization supporting voter registration efforts, and that WBR “has not remitted and does not intend to remit any payments from the sale of Kid Rock for Senate merchandise to any political candidate or committee.”

On October 24, 2017, Ritchie announced that he would not run for the U.S. Senate. Ritchie claimed that he told people in his circle who were “in on the joke” that “we’re not doing it[,] but let’s roll with it for a while.” That same day, the statement discussing Kid Rock’s potential campaign was removed from kidrockforsenate.com. After announcing that he was not running for office, Ritchie requested that his merchandising agreement be amended so that WBR would remit his share of “Kid Rock for US Senate” merchandise sale proceeds to him.

15 WBR Resp., Ex. A ¶ 12.
16 WBR Resp. at 2-3; id., Ex. A ¶ 14.
17 WBR Resp., Ex. A ¶¶ 13, 15.
19 Ritchie Resp. at 5; id., Ex. 1 ¶ 12.
22 Id., Ex. A ¶ 21.
B. Ritchie Became a Federal Candidate by Directing WBR to Produce and Sell Express Advocacy Materials Supporting His Federal Candidacy

1. Ritchie's Activity Went Beyond "Testing the Waters"

Ritchie's activities do not fall within the Commission's exemptions for individuals merely "testing the waters" of a potential candidacy. The Federal Election Campaign Act of 1971, as amended (the "Act"), defines a "candidate" as "an individual who seeks nomination for election, or election, to Federal office," and an individual is deemed to seek nomination for election, or election, if he or she has received or made, or has authorized another person to receive or make, aggregate contributions or expenditures exceeding $5,000.\(^{23}\) Under the Act, a contribution is "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office[;]" and an expenditure is "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office."\(^{24}\) Notwithstanding these provisions, the Commission's "testing the waters" regulations provide that funds received, or payments made, "solely for the purpose of determining whether an individual should become a candidate" are not contributions or expenditures, respectively.\(^{25}\) The "testing the waters" regulations, however, do not apply to "activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to

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25 11 C.F.R. §§ 100.72(a), 100.131(a).
conducting a campaign[,] such as where an “individual makes or authorizes written or oral
statements that refer to him or her as a candidate for a particular office.”

When Ritchie coordinated with WBR to sell merchandise referring to himself as a federal
candidate, he objectively demonstrated that he had decided to become a candidate for a particular
federal office and was engaging in activity relevant to conducting a campaign. While Ritchie’s
public statements at the time indicated that he was only considering running for office, and he
now claims that he never intended to become a candidate, by directing WBR to sell “Kid Rock
for US Senate” merchandise, Ritchie authorized written statements that referred to himself as a
candidate for a particular office. Moreover, Ritchie’s activity was also relevant to conducting a
campaign, even if it was not specifically intended to raise funds for the campaign. In short,
Ritchie’s actions objectively evinced that he had decided to become a candidate, irrespective of
his subjective intentions. As such, all of the funds spent to produce and sell “Kid Rock for US
Senate” merchandise were expenditures, not “testing the waters” activity.

2. Ritchie’s Activity Was Not Bona Fide Commercial Activity Because it
Was at Least Partly for the Purpose of Influencing a Federal Election

By directing WBR to produce and sell merchandise expressly advocating for his election
to federal office, Ritchie went beyond the range of purely commercial activity that the

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26 11 C.F.R. §§ 100.72(b), 100.131(b).
27 11 C.F.R. §§ 100.72(b)(3), 100.131(b)(3).
28 11 C.F.R. §§ 100.72(b)(3), 100.131(b)(3). In MUR 6957, the Commission found that an individual became
a candidate by creating a campaign website bearing the logo “Isadore Hall for Congress,” shortly after making a
public statement expressing his intention to run for federal office. See Factual and Legal Analysis at 4-5, MUR
6957 (Isadore Hall).
29 See Advisory Op. 2015-09 at 6 (Senate Majority PAC) (“Where the circumstances demonstrate that an
individual’s statement regarding candidacy reflects that individual’s decision to run for office, mere assertions that
the individual’s subjective intent differs from his or her statement generally will not negate the objective indication
of candidacy arising from the statement.”).
Commission has determined does not constitute a contribution or expenditure under the Act because it is not “for the purpose of influencing any election for Federal office.”

Ritchie contends that he created the “Kid Rock for US Senate” merchandise, and claimed to be considering a potential candidacy, for commercial and artistic reasons; he essentially claims that he was promoting his brand and his music by tapping into an increased public interest in politics. However, even if Ritchie’s conduct was partly driven by commercial and artistic considerations, the available information demonstrates that it also served a political function, because the merchandise that Ritchie approved featured a slogan, “Kid Rock for US Senate,” expressly advocating for Ritchie’s election to federal office. Ritchie then issued tweets, as well as a longer-form statement featured on the websites kidrock.com and kidrockforsenate.com, to generate interest in his potential candidacy and the “Kid Rock for US Senate” merchandise. Although Ritchie now claims that he never seriously intended to run for office and was merely promoting his artistic persona and generating interest in his upcoming album, in July 2017, he was by his own words seriously exploring a potential candidacy. By selling shirts, caps, and yard signs that explicitly referred to him as a candidate, Ritchie’s conduct appears to have been at least partly for the purpose of influencing a federal election.

Ritchie’s conduct thus fails to satisfy the Commission’s four-factor test for bona fide commercial activity, because when he, as the named candidate, distributed merchandise

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31 See Ritchie Resp., Ex. 1 ¶ 2 (“I have never seen the country as politically agitated as it is today. I wanted to reach that audience[,]”); id., ¶ 8 (“The shirts and signs are just one way to draw attention to me, help advertise my concerts, and frankly to give my fans a new way to have a little fun.”).

32 See 11 C.F.R. § 100.22 (defining express advocacy). Ritchie argues that “Kid Rock” is a fictional character and the slogan “Kid Rock for US Senate” therefore “fails to identify any actual person or individual who can run for office.” Ritchie Resp. at 8. However, “Kid Rock” is Ritchie’s stage name and the statement “Kid Rock for US Senate” expressly advocates for the election of the person publicly identifiable as Kid Rock, Robert Ritchie.
expressly advocating for his candidacy, that conduct was inconsistent with activity engaged in “for genuinely commercial purposes.” The Commission has cautioned that the commercial activity exemption may not apply where a candidate is involved in the commercial enterprise. Advisory Opinion 1994-30 (Conservative Concepts) concerned a company selling merchandise that contained express advocacy for profit. Because no candidate was involved in the venture and none of the sale proceeds went to any political committee, the Commission determined that the company was engaged in genuinely commercial activity, and that its conduct therefore did not result in contributions or expenditures to any candidate or committee. Crucially, however, the Commission noted that the same activity might not be considered commercial, and could result in the company making contributions or expenditures to a candidate, if it was coordinated with that candidate.

When Ritchie directed WBR to produce “Kid Rock for US Senate” merchandise and personally approved the designs for the items, he coordinated with WBR to sell merchandise containing express advocacy messages supporting his candidacy. The available information therefore indicates that all payments to produce and market the merchandise were at least partly for the purpose of influencing a federal election and not for purely commercial purposes. As

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33 Advisory Op. 1994-30 at 4 (Conservative Concepts). The four factors used to evaluate when activity that might otherwise constitute a contribution or expenditure would be exempted as bona fide commercial activity are (1) whether the sales involve fundraising activity or solicitations for political contributions; (2) whether the activity is engaged in for genuinely commercial purposes; (3) whether the items are sold at the usual and normal charge; and (4) whether the purchases are made by individuals for their personal use in political expression. Id.


35 Id. at 8 ("[T]he Commission expressly notes that this conclusion is predicated on the representations that you have made that your activities are for purely commercial purpose and are not coordinated with any candidate.") (emphasis added); see First Gen. Counsel's Report at 15, MURs 5474 and 5539 (Dog Eat Dog) ("There is also no information that the production or release of the film was coordinated with any candidate or political committee."); see also Advisory Op. 1976-50 (Friends of Dick Lugar).
such, those payments were expenditures under the Act, and Ritchie was required to register as a
candidate and report them once they exceeded the $5,000 statutory threshold.

3. Ritchie Made or Authorized Expenditures Most Likely in Excess of
the Statutory Threshold for Federal Candidacy

Because the funds used to produce and sell “Kid Rock for US Senate” merchandise were
expenditures, and those expenditures most likely exceeded $5,000 in the aggregate, the available
facts support a reasonable inference that Ritchie crossed the statutory threshold for candidate
status and was therefore required to register and report as a candidate. While the available
record does not indicate how much WBR spent to produce and market the merchandise expressly
advocating for Ritchie’s election to federal office, the merchandise was offered for sale on or
about July 11, 2017, was still being sold when Ritchie announced that he would not run for
office on October 24, 2017, and continues to be offered on WBR’s website. As such, there is
sufficient circumstantial evidence at this stage to infer that the amount spent to produce “Kid
Rock for US Senate” merchandise was in excess of the $5,000 statutory threshold.

Because Ritchie made or authorized sufficient expenditures to become a candidate, it is
immaterial that he directed his share of the proceeds from “Kid Rock for US Senate”
merchandise sales to a 501(c)(4) nonprofit organization.\(^{36}\) Ritchie requested that his share of the
sale proceeds be donated to support voter registration efforts, posted a statement to that effect on
his website, kidrockforsenate.com, and asked WBR to post a disclaimer to that effect on its

\(^{36}\) See Ritchie Resp., Ex. 8 (WBR Merchandising Agreement) (“At your and Kid Rock’s hereby irrevocably
issued direction and authorization, [WBR] hereby agrees to issue to the order of/pay directly to the 501(c)(4)
organization CRNC Action (“CRNC Action”), instead of to you or Kid Rock, all Merchandise Net Profits and any
other moneys due to you or Kid Rock . . . that are derived from sales of Kid Rock for Senate Merchandise under the
Merchandising Agreement occurring during the period July 1, 2017 through October 31, 2017.”). After declaring
that he would not run for the U.S. Senate, Ritchie asked that the merchandising agreement be amended so that future
proceeds from the sale of “Kid Rock for US Senate” merchandise be remitted to him personally. WBR Resp. at 4.
website where the items were sold. As such, potential purchasers were reasonably on notice
that sale proceeds would be used to support a social welfare cause and would not be used to
support Ritchie's potential campaign for federal office. Because purchasers' funds were
therefore not available for the purpose of influencing a federal election, they were not
"contributions" to Ritchie under the Act.

Nevertheless, as discussed above, the funds that Ritchie spent or authorized to produce
and sell materials containing express advocacy were sufficient to require him to register and
report as a federal candidate. Because Ritchie did not do so, the Commission finds reason to
believe that Ritchie violated 52 U.S.C. §§ 30102, 30103, 30104.

Note: The Complaint alleges that the full purchase price of all "Kid Rock for US Senate" merchandise is a
contribution, relying on 11 C.F.R. § 100.53, see Compl. at 15, but that rule is inapposite here. The rule indicates
that "the entire amount paid as the purchase price for a fundraising item sold by a political committee is a
contribution." The items at issue in this matter clearly were not "sold by a political committee," and we can find no
prior instance where this rule has been applied to items not sold by a political committee. In addition, the website
where the items were offered specifically alerted potential purchasers that "all [sale] proceeds [will] go to voter
registration efforts," Ritchie Resp. at 4, indicating that the items were not being sold to raise funds for any political
committee or candidate, or as "an inducement" to make a political contribution. See Advisory Op. 1975-15 at 1
(Wallace) ("[W]hen the Campaign sells the described items, it is engaging in an activity to raise funds and to build
support for the candidate. As a general matter, a person who transmits money to a political committee or candidate
— any portion of which is available to be spent for the purpose of influencing a Federal election — has made a
contribution in the full amount of the funds so transmitted. . . . The fact that the contributor obtains an item of
intrinsic value does not remove the transaction from this definition of contribution. The items offered by the
Campaigns are an inducement to the contributor to give money the same as a dinner or other social event held for
the purpose of fundraising.").
I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by Common Cause and Paul S. Ryan. See 52 U.S.C. § 30109(a)(1). Robert J. Ritchie, a recording artist known by his stage name, "Kid Rock," issued tweets and an online public statement indicating that he was considering running for federal office, and created the website "kidrockforsenate.com" which promoted merchandise bearing the logo, "Kid Rock for US Senate," produced and sold by his merchandising company, Warner Brothers Records, Inc. ("WBR"). Complainants allege that based on these actions, Ritchie became a federal candidate and violated the law when he failed to abide by the relevant registration and reporting requirements, contribution limits, and source prohibitions. Complainants further allege that WBR made, facilitated, or acted as a conduit for contributions to Ritchie. WBR denies these allegations. Because WBR appears to have been acting as a commercial vendor for Ritchie, the Commission finds no reason to believe that WBR violated the law as alleged.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

According to the Complaint, in February 2017, a member of the Michigan Republican Party's central committee suggested that "Kid Rock" a/k/a Robert J. Ritchie, a Michigan native, would generate a lot of excitement and might be a viable Republican Party candidate for the U.S.
Senate in Michigan during the 2018 election. The Complaint claims that Ritchie launched the website “kidrockforsenate.com" in early July 2017, and Ritchie acknowledges that he created and paid for the site. In a Twitter post on July 12, 2017, Ritchie wrote “I have had a ton of emails and texts asking me if this website is real . . . kidrockforsenate.com[.] The answer is an absolute YES." The post was accompanied by a picture of a yard sign reading “KID ROCK FOR US SENATE" as a stylized logo. Immediately after, Ritchie tweeted “Stay tuned, I will have a major announcement in the near future – Kid Rock." On July 17, 2017, he tweeted “kidrockforsenate.com" with an image bearing the following text in all caps: “I believe if you work your butt off and pay taxes, you should be able to easily understand and navigate the laws, tax codes, health care and anything else the government puts in place that affects us all.” The text was followed by a logo reading “KID ROCK ’18 FOR US SENATE." The next day, July 18, 2017, Ritchie tweeted “kidrockforsenate.com” along with an image bearing the text “KID ROCK FOR US SENATE” and images of a yard sign, bumper sticker, t-shirt, and cap all bearing the “Kid Rock for US Senate” logo, and the text at the bottom, “SHOP NOW.”

2 Compl. at 2; Resp. of Robert J. Ritchie, Ex. 1 ¶ 6 (Nov. 3, 2017) ("Ritchie Resp.").
3 Posts from the verified Twitter handle @KidRock are attributed to Ritchie, as are all public statements Ritchie made under his stage name, Kid Rock.
4 Compl., Ex. 1.
5 Id., Ex. 2.
6 Id., Ex. 3.
7 Id., Ex. 4.
On July 24, 2017, Kid Rock retweeted a link to an article on “thegatewaypundit.com” with the headline “BOOM! Kid Rock LEADS in Michigan Senate Race Poll.” On July 26, 2017, Kid Rock tweeted “When my name was thrown out there for US Senate[,] I decided to launch kidrockforsenate.com.... Read more: goo.gl/xXPQd5” accompanied by an image logo for “KID ROCK '18 FOR US SENATE.” The link in this tweet sent viewers to the webpage “kidrock.com,” which presented a lengthy statement attributed to Ritchie; the same statement also appeared on kidrockforsenate.com. In the statement, Ritchie acknowledged that he had “decided to take a hard look to see if there was real support for me as a candidate and my message” and indicated that “my first order of business is to get people engaged and registered to vote while continuing to put out my ideas on ways to help working class people[.]” Ritchie also claimed that “while exploring my candidacy for US Senate” he would be creating a 501(c)(4) nonprofit organization to promote voter registration. Referring to media speculation that “this was a ploy to sell shirts or promote something,” Ritchie responded, “I have no problem selling Kid Rock shirts and yes, I absolutely will use this media circus to sell/promote whatever I damn well please[.]” He also offered, however, that “either way, money raised at this time through the sale of merchandise associated with this very possible campaign will go towards our ‘register to
vote' efforts." At the conclusion of the statement, Ritchie remarked "if I decide to throw my hat in the ring for US Senate, believe me... it's game on[]."

When the Complaint was filed, the website "kidrockforsenate.com" featured the logo "Kid Rock '18 for US Senate." A link at the very top of the page "kidrockforsenate.com" read "KID ROCK ANNOUNCEMENT ON KIDROCK.COM" and sent viewers to "https://kidrock.com/sweetsouthern sugar": the website for Kid Rock’s album "Sweet Southern Sugar," which was released on November 3, 2017, and its accompanying U.S. tour. The page kidrockforsenate.com also featured a “BUY NOW” button that sent viewers to a different website, “http://kidrock.wamerbrosrecords.com/senate.html.” That site, which appears to be operated by WBR, offered merchandise for sale bearing a logo reading either "Kid Rock for US Senate" or "Kid Rock '18 for US Senate." Under each item, the site provided a disclaimer: "All proceeds go to voter registration efforts. This is not a political contribution."

According to WBR, its Kid Rock-branded merchandise, including the "Kid Rock for US Senate" line of items, is produced “in close collaboration with Mr. Ritchie." WBR avers that on February 27, 2017, Ritchie requested that WBR create the "Kid Rock for Senate" merchandise, and he later approved the design. However, WBR claims that the merchandise

11 Id.

12 Id. The Complaint also alleges that the Twitter account "@KidRockSenator" is "associated with" kidrockforsenate.com and has been promoting the merchandise available on that website. Compl., Ex. 7. Twitter user @KidRockSenator tweeted on July 29, 2017, "Donate to the campaign! Get your gear! #PoliticsNation" with the accompanying image of Kid Rock for Senate merchandise. Ritchie, however, denies that @KidRockSenator is one of his Twitter handles and claims that it "is not authorized by him, Kid Rock, or his management company." Ritchie Resp. at 10; see id., Ex. 1 ¶ 6. It is unknown who owns the Twitter handle "@KidRockSenator.”

13 Ritchie Resp., Ex. 6.

14 Resp. of WBR at 2 (Oct. 30, 2017) ("WBR Resp.").

15 WBR Resp., Ex. A ¶ 12.
was produced, marketed, and sold under the terms of a standard merchandising agreement between WBR and one of its artists, and at the usual and normal rates for such products.16 The merchandise went on sale on July 11, 2017, the day before Ritchie’s first tweet promoting kidrockforsenate.com.17 WBR claims that Ritchie requested that his share of the sale proceeds be designated to a 501(c)(4) organization supporting voter registration efforts, and that WBR “has not remitted and does not intend to remit any payments from the sale of Kid Rock for Senate merchandise to any political candidate or committee.”18

On October 24, 2017, Ritchie announced that he would not run for the U.S. Senate.19 Ritchie claimed that he told people in his circle who were “in on the joke” that “we’re not doing it[,] but let’s roll with it for a while.”20 That same day, the statement discussing Kid Rock’s potential campaign was removed from kidrockforsenate.com.21 After announcing that he was not running for office, Ritchie requested that his merchandising agreement be amended so that WBR would remit his share of “Kid Rock for US Senate” merchandise sale proceeds to him.22

B. WBR Acted as a Commercial Vendor and Therefore Did Not Make, Facilitate, or Serve as a Conduit For Any Contribution to Ritchie

The available information supports the inference that WBR was acting as a commercial vendor when it produced and sold “Kid Rock for US Senate” merchandise, and WBR therefore

16 WBR Resp. at 2-3; id., Ex. A ¶ 14.
17 WBR Resp., Ex. A ¶¶ 13, 15.
19 Ritchie Resp. at 5; id., Ex. 1 ¶ 12.
22 Id., Ex. A ¶ 21.
did not make, facilitate, or act as a conduit for contributions to Ritchie. Under the Act, a
collection includes "anything of value," which in turn includes all in-kind contributions, such
as "the provision of any goods or services without charge or at a charge that is less than the usual
and normal charge for such goods or services." By implication, goods or services provided at
the usual and normal charge do not constitute "anything of value" under the Act. Commission
regulations also provide that a corporation does not facilitate a contribution by providing goods
or services to a candidate or political committee in the ordinary course of its business as a
commercial vendor. In addition, corporations cannot make contributions to candidates or serve
as conduits for earmarked contributions, which are contributions directed to a clearly identified
federal candidate through an intermediary.

Ritchie and WBR have a long-standing merchandising relationship, and Ritchie directed
WBR to produce and sell "Kid Rock for US Senate" merchandise, which WBR claims it did
under the terms of a standard merchandising agreement with one of its artists, at the usual and
normal rate for such services. Nothing in the available record suggests that WBR provided any
special discounts or terms for the "Kid Rock for US Senate" merchandise, and WBR specifically
denies that it provided any. In addition, because Ritchie requested that his share of the sale
proceeds be donated to support voter registration efforts, posted a statement to that effect on his

23 11 C.F.R. § 100.52(d)(1); see 52 U.S.C. § 30101(8).
24 See 11 C.F.R. § 100.52(d)(2) (defining "usual and normal charge" for goods as "the price of those goods in
the market from which they ordinarily would have been purchased at the time of the contribution [and, for services,]
the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services
were rendered.").
25 11 C.F.R. § 114.2(f)(1); see 11 C.F.R. § 116.1(c) (defining "commercial vendor" as "any persons 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 or services); see also Advisory Op. 2007-04 at 3 (Atral, Inc.).
26 11 C.F.R. § 110.6(a), (b); see 52 U.S.C. § 30118(a).
website, kidrockforsenate.com, and asked WBR to post a disclaimer to that effect on its website
where the items were sold, potential purchasers were reasonably on notice that sale proceeds
would be used to support a social welfare cause and would not be used to support Ritchie’s
potential campaign for federal office. Because purchasers’ funds were therefore not being given
for the purpose of influencing a federal election, they were not “contributions” to Ritchie under
the Act, and WBR therefore could not have facilitated contributions to Ritchie by offering the
merchandise for sale.\(^\text{28}\)

The available information also provides no support for the allegation that WBR received
or transmitted any contributions earmarked for Ritchie. As such, there is insufficient factual
support for the allegation that WBR made, facilitated, or served as a conduit for any
contributions to Ritchie. The Commission therefore finds no reason to believe WBR violated
52 U.S.C. § 30118(a) and 11 C.F.R. §§ 110.6, 114.2(f).

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\(^{27}\) Ritchie Resp. at 3–4; id., Ex. 5; WBR Resp., Ex. A ¶ 19.

\(^{28}\) The Complaint alleges that the full purchase price of all “Kid Rock for US Senate” merchandise is a
contribution, relying on 11 C.F.R. § 100.53, see Compl. at 15, but that rule is inapposite here. The rule indicates
that “the entire amount paid as the purchase price for a fundraising item sold by a political committee is a
contribution.” The items at issue in this matter clearly were not “sold by a political committee,” and in no prior
instance has this rule been applied to items not sold by a political committee. In addition, the website where the
items were offered specifically alerted potential purchasers that “all [sale] proceeds [will] go to voter registration
efforts,” Ritchie Resp. at 4, indicating that the items were not being sold to raise funds for any political committee or
candidate, or as an inducement to make a political contribution. See Advisory Op. 1975-15 at 1 (Wallace)
(“[W]hen the Campaign sells the described items, it is engaging in an activity to raise funds and to build support for
the candidate. As a general matter, a person who transmits money to a political committee or candidate — any
portion of which is available to be spent for the purpose of influencing a Federal election — has made a contribution
in the full amount of the funds so transmitted . . . . The fact that the contributor obtains an item of intrinsic value does
not remove the transaction from this definition of contribution. The items offered by the Campaigns are an
inducement to the contributor to give money the same as a dinner or other social event held for the purpose of
fundraising.”).