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July 30, 2019

Federal Election Commission
Office of General Counsel
Office of Complaints Examination
& Legal Administration
attn: Kathryn Ross, Paralegal
1050 First Street, NE
Washington, DC 20002

Re: Response to MUR 7621

Dear Ms. Ross,

This response is submitted by the undersigned counsel on behalf of the following Respondents: (1) National Rifle Association Institute for Legislative Action, and Robert G. Owens in his capacity as Treasurer; (2) National Rifle Association of America Political Victory Fund, and Robert G. Owens in his capacity as Treasurer; and (3) National Media Research Planning and Placement, LLC.

MUR 7621 was filed by the Complainant as a supplement to MUR 7497 on or about February 8, 2019. “[D]ue to an administrative oversight” this Supplemental Complaint was not provided to the Respondents until mid-July; we obtained a complete copy on July 16, 2019.

To the extent the Supplemental Complaint repeats allegations previously made against OnMessage, Inc. and Starboard Strategic, Inc., those allegations were addressed in our Response to MUR 7497.

For the reasons set forth herein and in our Responses to MURs 7427, 7497, 7524, 7553, 7558, and 7560, this matter should be dismissed.

I. The Supplemental Complaint’s New Allegations

The Supplemental Complaint alleges violations related to the Respondents’ use of a second “common vendor,” National Media Research, Planning and Placement, LLC (“National Media”). According to the Complainant, the NRA-ILA used the services of National Media,

“under the trade name Red Eagle Media Group,” to distribute and place “pro-Rosendale communications.”¹ Meanwhile, “Matt Rosendale for Montana placed its own communications using National Media or its affiliate American Media & Advocacy Group (‘AMAG’).”² The Complainant claims that “[i]n at least one instance, the same National Media official placed advertisements on behalf of both the NRA-ILA and Matt Rosendale for Montana on the same TV station.”³

On the basis of these claims, the Complainant concludes that coordination occurred and, more specifically, asserts that “the NRA-ILA ... satisfied the conduct prong through the use of National Media (via its ‘Red Eagle’ trade name) to place the communications, while National Media was also placing Matt Rosendale for Montana’s communications (in some cases through its ‘AMAG’ affiliate.”⁴ The Complainant claims that [i]n some cases, the same National Media official placed advertisements on behalf of both the NRA-ILA and Matt Rosendale for Montana on the same stations, and the communications aired during the same program.” *Id.* at 8. (These allegations are similar to allegations included in MUR 7560. We filed a response to that complaint on March 21, 2019.)

II. Discussion

All of the Complainant’s allegations have been addressed by the Respondents in prior responses. While the specific facts may vary, there is nothing new in this Supplemental Complaint.

National Media’s records indicate that it placed NRA-ILA television advertisements in Montana that aired during the period September 6 – 19, 2018. (This is reflected on the documents included in the Supplemental Complaint at Exhibit D.) In addition, National Media placed NRA-PVF radio advertisements that aired in Montana from October 19 – November 6, 2018. (These ads are reflected on the documents included in the Supplemental Complaint at Exhibits G and H.)

National Media’s records also show that it placed television advertisements for Matt Rosendale for Montana that aired from July 31 – August 6, 2018, and from September 4 – November 6, 2018. (These ads are reflected in the documents included in the Supplemental Complaint’s remaining exhibits.)

As explained in previous responses, (1) National’s Media organizational structure reflects common business practices that have nothing to do with “evading” common vendor restrictions,

¹ Supplemental Complaint at 2.

² *Id.*

³ *Id.*

⁴ *Id.* at 7.

and are consistent with the Commission's common vendor regulations; (2) the individual who signed the documents referenced in the Supplemental Complaint is not involved in the creation, production, or distribution of any client advertising, and the referenced documents are not contractual agreements that have the effect of "placing" advertisements; and (3) National Media utilizes an appropriate firewall policy at all times.

A. National Media's Business Structure

The relationship between National Media, Red Eagle Media Group, and American Media & Advocacy Group was discussed in the Response to MUR 7524. As previously explained, "National Media, Red Eagle, and AMAG are the same company," and the Respondents do not contest that the three entities may be treated as a "common vendor" in this matter.⁵ The use of "fictitious names" by business entities is a common business practice that certainly predates the Commission's 2003 coordination rules, although those rules have prompted political vendors to adopt the practice as a means of maintaining the "separation" the Commission requires. For example, "National Media's fictitious names were initially acquired, and continue to be used, to facilitate compliance with the Commission's common vendor regulations by providing an easy mechanism by which clients can be separated."⁶

To the best of our knowledge, the Act has nothing to say about how individuals may or must organize their business, and neither the Act nor Commission regulations purport to govern the use of registered fictitious names or DBAs by commercial vendors. Nevertheless, the Complainant contends that National Media's use of affiliates and trade names was part of "an elaborate scheme designed to evade detection of violations of the Commission's common vendor coordination rules" and "an apparent deliberate circumvention of" those rules. Supplemental Complaint at 8, 2. As noted in our Supplemental Response of February 21, 2019, the Campaign Legal Center knows this is untrue. When asked about a Democratic media firm that used three different names several years ago, the Campaign Legal Center's former counsel Paul S. Ryan explained: "Setting up spinoffs is more about 'optics' than skirting coordination rules."⁷

The *Huffington Post* article that discussed these issues quoted an unnamed consultant that did business with the Democratic media firm at issue, who explained that "Waterfront Strategies ... exists so that GMMB has a separate corporate entity where it can employ people to handle outside expenditures. . . . The arrangement keeps the money legally separate from people who may be working more directly with Senate or House candidates. Thus campaign laws barring

⁵ See MUR 7524, Response at 4; see also MUR 7553, Response at 5-6.

⁶ MUR 7553, Response at 5 (footnote omitted).

⁷ Reity O'Brien and Andrea Fuller, *Court Opened Door To \$933 Million In New Election Spending*, The Center for Public Integrity (Jan. 16, 2013, updated May 19, 2014), <https://publicintegrity.org/federal-politics/court-opened-door-to-933-million-in-new-election-spending/>.

coordination are not violated.”⁸ The Campaign Legal Center’s then-policy director, Meredith McGehee, offered another entirely reasonable explanation: “If they had a Blue Dog [conservative Democrat], for example, they wouldn’t necessarily want it to come up that the parent company works for, say, Barbara Boxer or Obama.”⁹ Ms. McGehee concluded, “I can’t think it would be fair to say it’s the fault of the companies.”¹⁰

In short, the Campaign Legal Center knows, and always has known, that these types of business arrangements by political consultants and vendors have perfectly reasonable explanations that have absolutely nothing to do with “circumventing” coordination rules and “evading detection.” The Complainant’s claims to the contrary are untruthful and should be regarded as willful attempts to mislead the Commission.

B. Mr. Ferrell Is Not an Ad Buyer and He Does Not “Place” Advertisements

Nearly all of these allegations have been addressed in other Responses. The “same National Media official” referenced in the Supplemental Complaint is Jon Ferrell, and the Supplemental Complaint refers to his signatures on NAB Form PB-18. Mr. Ferrell’s role in these matters and NAB Form PB-18 were discussed in detail in the Responses to MURs 7560, 7553, and 7524.

Mr. Ferrell is National Media’s Chief Financial Officer.¹¹ He is not involved in the creation, production, or distribution of any advertising. He does not make decisions regarding the development of media strategy, including the selection of advertising slots. He does not select advertising audiences, develop the content of advertising, produce public communications, identify voters, or otherwise provide consulting or media advice.¹² Mr. Ferrell’s position does not involve any of the services identified at 11 C.F.R. § 109.21(d)(4)(ii)(A) – (I), and he is not involved in any of the creative or discretionary activities that implicate the Commission’s coordination regulations. Mr. Ferrell’s interaction with National Media’s media buyers generally

⁸ Michael McAuliff and Paul Blumenthal, *Political Consultants From Mysterious Firm Tread Fine Legal Line ‘Putting The Lie To Reality,’* Huffington Post (June 8, 2012), https://www.huffingtonpost.com/2012/06/08/political-consultants-2012-campaign-big-money_n_1579661.html.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Attachment A, Affidavit of Jon Ferrell at ¶ 2.

¹² *Id.* ¶ 5-7.

consists of receiving billing and invoicing instructions from those buyers,¹³ and his involvement in the purchasing of advertising is limited to this administrative function.¹⁴

The Complainant's claim that "the same National Media employee was placing ads for NRA-ILA's ads supporting Rosendale and Matt Rosendale for Montana's own ads" is entirely and completely wrong. The "agreement form" that Mr. Ferrell signed on behalf of both clients is NAB Form PB-18. As explained in past responses,¹⁵ NAB Form PB-18 is not a contract that has the effect of "buying ads." NAB-Form PB-18 is not an "order" form. NAB Form PB-18 does not authorize the airing of ads. One does not "place an advertisement," or "order" the airing of ads, by signing NAB Form PB-18. As explained previously, Mr. Ferrell often signs NAB Form PB-18 on behalf of his employer's clients *after* that form is prepared by others.¹⁶ This act is a purely administrative one.

C. National Media Maintained Appropriate Firewalls and Did Not "Coordinate" Any Ad Buys

As explained in our Response to MUR 7524, all advertising placement decisions for National Media clients were made in accordance with National Media's 2018 Firewall Policy (see MUR 7524, Response at Exhibit E.) Pursuant to that policy, Ben Angle served as the media buyer for Matt Rosendale for Montana, and Tracey Robinson served as the media buyer for NRA-ILA and NRA-PVF.¹⁷ Any decisions regarding media placement of the advertisements referenced in the Supplemental Complaint were made by these firewalled buyers. As explained above, and in several other Responses, Mr. Ferrell played no role in advertisement placement decisions.

Aside from attempting to mislead the Commission about the nature and significance of NAB Form PB-18, the Complainants present no evidence that any nonpublic, material campaign information was shared through National Media, Red Eagle, and AMAG personnel, or otherwise improperly used by the foregoing. The Complainants simply declare that the use of a "common

¹³ *Id.* ¶ 3.

¹⁴ Final Rule on Coordinated Communications, 71 Fed. Reg. 33,190, 33,207 (June 8, 2006) ("The Commission notes that *common leadership or overlapping administrative personnel* does not defeat the use of a firewall.") (emphasis added).

¹⁵ See MUR 7560, Response at 5; MUR 7553, Response at 11-14; MUR 7524, Response at 5-8.

¹⁶ Attachment A, Affidavit of Jon Ferrell at ¶ 4.

¹⁷ The Supplemental Complaint also notes that Michael Eyerman is listed on a "traffic instructions" document submitted in connection with a Rosendale campaign advertisement. See Supplemental Complaint at 4. Mr. Eyerman is a media assistant who performed administrative duties. He had no role in making decisions regarding advertisement placement and did not provide strategic advice to clients. His role was similar to that of Caroline Kowalski (discussed in the Response to MUR 7553 at pages 14-17).

vendor” provides reason to believe coordination occurred, and that the use of “trade names” evidences “an elaborate scheme designed to evade detection of violations.” The Complainant’s “common vendor” theory was addressed at length in our Response to MUR 7427. In short, the Commission’s common vendor regulation “does not presume coordination from the mere presence of a common vendor.”¹⁸ Evidence of actual sharing of information through a common vendor must be shown before a reason to believe finding may be made.¹⁹ And for the reasons previously discussed, the presence of Mr. Ferrell’s signature on various NAB Form PB-18 documents does not evidence any sharing of information between clients or any other form of coordination.²⁰ National Media employees were properly firewalled, and there is no evidence of any qualifying conduct, only speculation and, mostly, an intentional effort to mislead.

III. Conclusion

This Supplemental Complaint should be dismissed, along with the other related complaints filed by the Complainants. There is no credible evidence in support of the Complainant’s allegations that the Respondents engaged in any form of coordination under the Act or the Commission’s regulations.

Sincerely,



Jason Torchinsky
Michael Bayes
Jessica Furst Johnson

Attachment

¹⁸ Final Rule on Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 436 (Jan. 3, 2003).

¹⁹ See MUR 7427, Response at 11-14.

²⁰ See MUR 7524, Response at 4-8; MUR 7553, Response at 10-14.

ATTACHMENT A
Affidavit of Jon Ferrell

AFFIDAVIT OF JON FERRELL

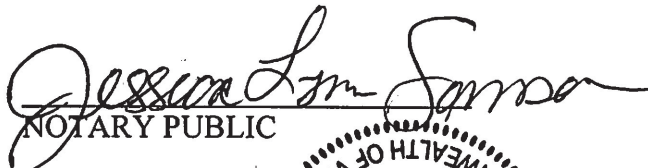
PERSONALLY came and appeared before me, the undersigned Notary, the within named JON FERRELL, and makes this his Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am Jon Ferrell. I am a resident of the State of Maryland.
2. I am the Chief Financial Officer of National Media Research Planning and Placement LLC ("National Media"). I have served in this capacity since 1998.
3. I am a Certified Public Accountant. I manage accounting and financial matters for National Media, including client invoicing and paying broadcast stations for clients' advertising buys. I receive and effectuate billing and invoicing instructions from National Media's advertisement buyers in connection with clients' advertisement buys.
4. I often sign NAB Form PB-18 on behalf of National Media clients after this form is completed by others, including National Media's advertisement buyers and assistants.
5. I do not "place advertisements" or "authorize ad buys" for National Media clients as those terms are commonly understood and used in the Complaint (FEC MUR 7621). Specifically, I am not involved in any decisions pertaining to the selection of advertising time slots, nor am I involved in decisions related to the creation, production, or distribution of any advertising.
6. I am not involved in the development of media strategy, the selection of audiences for client's advertisements, the development of advertising content, the production of public communications, or the identification of voters on behalf of National Media and its clients.
7. I do not provide political strategy consulting or media strategy advice to National Media clients.

DATED this the 29th day of July, 2019


Signature of Affiant, Jon Ferrell

SWORN to subscribed before me, this 29 day of July, 2019


NOTARY PUBLIC

My Commission Expires:

9/30/2021

