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**BEFORE THE FEDERAL ELECTION COMMISSION**

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**IN THE MATTER OF MINOCQUA BREWING COMPANY SUPERPAC,  
MINOCQUA BREWING COMPANY, KIRK BANGSTAD,  
And SARAH YACOB  
Respondents,**

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**MUR 7930**

On behalf of Respondents MINOCQUA BREWING COMPANY SUPERPAC, Minocqua Brewing Company LLC, Kirk Bangstad, and Sarah Yacoub (hereinafter "Respondents"), the undersigned counsel hereby responds to the Complaint filed with the Federal Election Commission (hereinafter "FEC") by Jordan Moskowitz.

Respondents respectfully request, for the reasons outlined below, that the FEC find no reason to believe that Respondents have violated or are likely to violate the Federal Election Campaign Act, as amended (hereinafter "the Act"), and that the FEC take no action on the basis of the Complaint. Absent the existence of a violation of the Act, or facts indicating that a violation of the Act is likely to occur, the FEC should find no reason to believe that further proceedings are warranted in this matter.

**BACKGROUND OF THE RESPONDENTS**

The MINOCQUA BREWING COMPANY SUPERPAC was registered with the FEC as an independent expenditure committee on January 3<sup>rd</sup>, 2021. The SuperPAC is currently run by Sarah Yacoub as Executive Director, with Kirk Bangstad as treasurer. Over the course of the past 11 months, the MINOCQUA BREWING COMPANY SUPERPAC has been relatively active and has been appropriately a mid-year and amended mid-year report with the FEC.

Kirk Bangstad is also the sole shareholder of Minocqua Brewing Company LLC, which has a corporate policy of donating 5% of its profits to the MINOCQUA BREWING COMPANY SUPERPAC. The contributions will be made in the ordinary course of business for the Minocqua Brewing Company LLC, likely at the end of every fiscal year. As of the date of this response, the Minocqua Brewing Company LLC has donated \$1000 dollars to the MINOCQUA BREWING COMPANY SUPERPAC. The \$1000 dollars was donated on January 8, 2021, and was recorded in the 2021 midyear report.

**THE COMPLAINT**

The Complaint currently before the FEC makes several allegations of misconduct that respondents will address in the order they appear on the complaint.

Paragraphs 8 and 9 read as follows;

8. Minocqua Brewing Company is acting as a conduit by soliciting contributions to the MBC SuperPAC through the sale of its products, but has failed to disclose the names of these donors whose funds it purports to have transferred to the MBC SuperPAC.
9. By advertising a promise to donate 5% of profits to the MBC SuperPAC, MR. Bangstad is using the existence of the committee to personally profit through an attempt to increase sales of beer and company merchandise. Apart from an initial \$1000 contribution made to fund the committee on January 8, 2021, however, the MBC SuperPac failed to disclose any transfer of 5% of profits from the Minocqua Brewing Company on its regularly scheduled 2021 Mid-Year Report filed on July 30, 2020. It follows that either the Respondents misappropriated intended donor contributions for private benefit, or the MBC SuperPAC filed a false report which failed to report receipt of these funds

The Minocqua Brewing Company LLC is not a conduit for the MINOCQUA BREWING COMPANY SUPERPAC, and its sales do not constitute contributions to the MINOCQUA BREWING COMPANY SUPERPAC. While it is true that the Minocqua Brewing Company LLC has a corporate policy of donating 5% of its profits to the MINOCQUA BREWING COMPANY SUPERPAC, this does not make the Minocqua Brewing Company a conduit for the MINOCQUA BREWING COMPANY SUPERPAC as the Minocqua Brewing Company is making sales, not accepting contributions. The FEC defines a contribution as “A gift, subscription, loan, advance or deposit of money or anything of value given to influence a federal election; or the payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee for any purpose”. 11 CFR 100.52(a) and 100.54. The Minocqua Brewing Company’s customers are buying beer and merchandise, they are not making contributions to the MINOCQUA BREWING COMPANY SUPERPAC, and as such their purchases do not need to be recorded as political contributions.

Paragraphs 8 and 9 also seem to suggest that if a customer knows that a corporation contributes to a SuperPAC then a corporation's contributions are no longer coming from themselves but are instead coming from their customers. This is a ridiculous notion that if true, would virtually shut down corporate speech thereby violating the First Amendment to the Constitution of the United States, as it would require any corporation that makes contributions or engages in independent expenditures to poll every one of their customers to determine whether or not they were aware of their corporate policies on political, speech, contributions and/or independent expenditures and then file reports for every purchase made by any customer the customers that was.

The Supreme Court briefly addressed this exact issue in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010) where they instructed the FEC that. “It is irrelevant for First

Amendment purposes that corporate funds may “have little or no correlation to the public's support for the corporation's political ideas.” *Austin, supra*, at 660, [110 S.Ct. 1391](#). All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech, and the First Amendment protects the resulting speech.” If it is true that the First Amendment protects corporate speech when a corporation’s customers don’t agree with the customer, then the corollary must also be true, and the First Amendment protects corporate speech when a corporations customers agree with the speech. Corporations have customers, not contributors regardless of whether or not the customer supports the political speech of the corporation, and as such, the FEC rules on recording contributions do not apply to a corporation’s sales.

Similarly, it is also true that the Minocqua Brewing Company has only donated \$1000 dollars to the MINOCQUA BREWING COMPANY SUPERPAC, but it plans to make future contributions in line with its corporate policy of donating 5% of its profits to the MINOCQUA BREWING COMPANY SUPERPAC. This will likely occur at the end of fiscal year 2021, and the contributions will be reported in the appropriate 2022 report.

Paragraphs 10, 11, 12, and 13 read as follow.

10. On January 4, 2021, one day following the registration of the MBC SuperPAC, Kirk Bangstad disseminated a mass email mailing which originates from his Minoqua Brewing Company corporate email address ("January 4th Email"). See Attachment C.
11. The January 4th Email is a communication that expressly advocates for the defeat of clearly identified candidates. The email states, in part, "I'm creating a SuperPAC to help defeat these people in 2022 ... Ron Johnson, Tom Tiffany ... " which meets the definition of an independent expenditure under 11 CFR 100.16.
12. The MBC SuperPAC failed to file a 48 Hour Report to disclose this communication as an independent expenditure.
13. The MBC SuperPAC failed to report the independent expenditure on Schedule E of its regularly scheduled 2021 Mid-Year Report.

The January 4, 2021, email was not an independent expenditure. An independent expenditure occurs when an organization makes a communication “Unambiguously advocating the election or defeat of a clearly identified federal candidate. There are two ways that a communication can be defined as express advocacy (candidate advocacy): by use of certain “explicit words of advocacy of election or defeat” and by the “only reasonable interpretation” test. 11 CFR 100.22. If one looks to the January email it is quite clear that the email was not advocating anything, but instead it was merely announcing the formation of the MINOCQUA BREWING COMPANY

SUPERPAC. As the email was not an independent expenditure and the MINOCQUA BREWING COMPANY SUPERPAC was not required to report it as such on either the mid-year report or in a 48 hour report.

Paragraph 14 reads as follows;

14. The MBC SuperPAC failed to report an in-kind contribution from the Minocqua Brewing Company for use of its resources in creating and disseminating the January 4th Email, development of the committee website, and other expenditures.

The allegations in paragraph 14 were in fact correct. The MINOCQUA BREWING COMPANY SUPERPAC did inadvertently forget to report the email list as an in-kind contribution in its initial 2021 mid-year report, but it was included in the 2021 amended mid-year report.

Paragraph 15 and 16 read as follows;

15. The January 4th Email did not bear the federal disclaimers required by 11 CFR 109.11 and 110.11.
16. Both the January 4th Email and the Minocqua Brewing Company websites solicit contributions for the SuperPAC but do not bear the required federal disclaimer notices for solicitations.

Neither the January 4, 2021, email nor the Minocqua Brewing Company LLC website require a federal disclaimer under either 11 CFR 109.11 or 11 CFR 110.11, as neither are an independent expenditure or a public communication.

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Similarly, neither the email, nor the website is a public communication. A public communication is a communication "by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or

any other form of general public political advertising. The term general public political advertising does not include communications made over the internet, except for communications placed for a fee on another person's website." 11 CFR 100.26, 100.27 This definition does not include mass emails, and the MINOCQUA BREWING COMPANY SUPERPAC did not pay the Minocqua Brewing Company LLC for the use of their website. As such a disclaimer statement was not required for either the email or the website.

Paragraph 17 reads as follows;

17. Upon information and belief, the January 4th Email was sent, in part, to lists owned by other political committees for which no purchase or rental is reported on MBC SuperPAC's 2021 Mid-Year Report.

The January 4, 2021, email was sent to an email list owned by the Minocqua Brewing Company LLC. This donation was recorded as an in-kind donation in the 2021 amended mid-year report.

Paragraph 18 reads as follows;

18. The January 4th Email displays a photograph of the Minocqua Brewing Company using its business as a billboard in support of Joe Biden's presidential campaign committee, one early example of the company's impermissible use of corporate funds to provide direct support to federal candidates.

Paragraph 18 does not describe any illegal activity. Placing a political sign is not a contribution, a contribution is a "gift, subscription, loan, advance or deposit of money or anything of value given to influence a federal election; or the payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee for any purpose. 11 CFR 100.52(a) and 100.54. As such, when the Minocqua Brewing Company LLC placed the yard signs, they were not making a direct contribution to any candidate. Similarly, Corporations are clearly allowed to engage in political speech under *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 313 (2010), and therefore the Minocqua Brewing Company LLC was clearly allowed to post campaign signs.

Paragraph 19 reads as follows;

19. Minocqua Brewing Company is acting as a conduit by soliciting and earmarking contributions to the Minocqua Brewing Company SuperPAC through the sale of its products, but has failed to disclose the names of these donors whose funds it purports to have transferred to the MBC SuperPAC.

The Minocqua Brewing Company is not a conduit for the MINOCQUA BREWING COMPANY SUPERPAC, and its sales do not constitute contributions to the MINOCQUA BREWING COMPANY SUPERPAC. While it is true that the Minocqua Brewing Company has a corporate policy of donating 5% of its profits to the Minocqua Brewing Company SuperPAC, this does not make the Minocqua Brewing Company a conduit for the Minocqua Brewing Company SuperPAC as the Minocqua Brewing Company is making sales, not accepting contributions. The FEC defines a contribution as “A gift, subscription, loan, advance or deposit of money or anything of value given to influence a federal election; or the payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee for any purpose”. 11 CFR 100.52(a) and 100.54. The Minocqua Brewing Company’s customers are buying beer and merchandise, they are not making contributions to the Minocqua Brewing Company SuperPAC, and as such their purchases do not need to be recorded as political contributions.

Paragraph 20 reads as follows;

20. On its regularly scheduled 2021 Mid-Year Report, the MBC SuperPAC reports a number of expenditures for Digital Advertising, Billboard Signs, Radio Advertising, Advertising, Media Production and Canvassing Services for which no independent expenditure or direct contribution is disclosed.

The MINOCQUA BREWING COMPANY SUPERPAC did not report any independent expenditures in the 2021 Mid-Year report because it did not make any independent expenditures.

Paragraph 21 reads as follows

21. Mr. Bangstad, in his capacity as Treasurer for the MBC SuperPAC, failed to use best efforts to maintain and report accurate records of vendor address and donor employer and occupation information. Most notably, Mr. Bangstad and the MBC SuperPAC failed to report the address for its own Executive Director, Sarah Yacoub on the 2021 Mid-Year Report.

Unfortunately, Sarah Yacoub’s address did not make it on to the 2021 mid-year report, but it does appear on the 2021 amended mid-year report. The suggestion that Mr. Bangstad in his capacity as treasurer has failed to use his best efforts to maintain and report accurate records is patently false however, in fact, he has hired an experienced FEC compliance organization, the CFO Consulting Group, to handle all FEC reporting matters for the MINOCQUA BREWING COMPANY SUPERPAC.

### Conclusion

As the Complainant only outlines only two minor violations of the Act, which have already been remedied, Respondents respectfully request that the FEC take no action on the basis of the Complaint.

*Frederick Melms*

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