

OFFICE OF
GENERAL COUNSEL

2022 OCT -5 AM 10:17

BEFORE THE FEDERAL ELECTION COMMISSION

Smiley for Washington, Inc.
228 S. Washington St.
Ste. 115
Alexandria, VA 22314

v.

MUR No. **8075**

The Seattle Times
P.O. Box 70
Seattle, WA 98111

COMPLAINT

For over 115 years, corporations have been prohibited from making contributions to federal candidates.¹ Throughout history, corporations and candidates alike have violated this longstanding law,² which led to the passing of the Federal Election Campaign Act (“FECA”) and the establishment of the Federal Election Commission (“FEC” or “the Commission”) to ensure that corporations could not make contributions to federal candidates. News media outlets, throughout the years, have been guilty of bias against conservative voices, and *The Seattle Times* (“the Respondent”) is yet another media entity targeting conservative candidates. While unfair and bias reporting and commentary is likely protected by the First Amendment – as codified in the media exemption found in FECA – that speech protection does not apply to providing corporate resources to a campaign. What is illegal is for Respondent to provide its resources to Patty Murray, and her campaign committee, People for Patty Murray, while at the same time denying such resources to her opponent Tiffany Smiley and Smiley for Washington, Inc. (“the Campaign”). That is what happened when Respondent intentionally and discriminatorily enforced its copyright and trademark rights for the Smiley for Washington’s fair and legitimate use of the Respondent’s Logo (“the Logo”) in its campaign advertisement, “Cup of Coffee” (“the Campaign Ad”).

In its desperate attempt to minimize the views it does not like by suppressing the Campaign advertisement, *The Seattle Times* has run afoul of FECA. This complaint is filed pursuant to 52 U.S.C. §§ 30118(a) and 30109(a)(1) and is based on information providing reason to believe that the Respondent has violated and is engaging in the continuing violation of the corporate contribution and/or expenditure prohibitions established by FECA, 52 U.S.C. § 30101, *et. seq.* and Commission regulations. Specifically, by allowing certain candidates to use its trademark and/or copyright and banning others, the Respondent is providing something of value to Smiley’s political opponent, Patty Murray, for the purpose of influencing Washington’s Senate race.

The standard for an FEC investigation is, “[i]f the Commission, upon receiving a complaint... has reason to believe that a person has committed, or is about to commit, a violation of [FECA]... [t]he Commission shall make an investigation of such alleged violation...” 52 U.S.C. § 30109(a)(2); see also 11 C.F.R. § 111.4(a). That standard is easily met in this matter and the Commission should take proper action.

FACTS

The Seattle Times is a news media outlet that claims to “enlighten[], inform[] and engage[] with storytelling that is as dynamic and vibrant as our region.”³ The Respondent provides news media coverage that, in their own words, “directly impacts our local community and has changed public policy.”⁴ Tiffany

¹ The Tillman Act of 1907.

² Ciara Torres-Spelliscy, *The Supreme Court Nixes Corporate Contributions for the 2020 Campaign*, THE BRENNAN CENTER (June 5, 2019)

³ The Seattle Times, Who We Are, <https://company.seattletimes.com/who-we-are/> (last accessed Sept. 23, 2022).

⁴ *Id.*

Smiley is the Republican nominee for United States Senate for the State of Washington. Smiley for Washington, Inc. is her official campaign committee.⁵

On September 21, the Campaign received an email from the Respondent, demanding that the Campaign immediately remove their logo from the Campaign ad.⁶ The Respondent also asked the Campaign to remove the advertisement from an *NBC News* article that was covering the Senate race. Notably, in conducting our due diligence, it became clear that *The Seattle Times* has allowed its endorsed candidates,⁷ such as Patty Murray, to use its corporate Logo without license to do so.⁸ This, along with the Respondent's concerns, was addressed with *The Seattle Times* in a response to their email, which was submitted on September 26, 2022.⁹

CAUSE OF ACTION

COUNT 1

Prohibited Contributions by Corporations

Under FECA, a contribution is defined as 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.”¹⁰ The phrase “anything of value” includes all in-kind contributions.¹¹ The term “person” includes corporations.¹² Federal law prohibits corporations, such as *The Seattle Times*, from making contributions to Federal candidates.¹³ If a corporation makes its resources available to one candidate for free, it must do so for all candidates.¹⁴

By allowing Ms. Smiley's campaign opponent, Patty Murray, to use its Logo, but not Smiley, the Respondent is giving something of value to Smiley's opponent while at the same time denying Smiley's political campaign something of significant value. While it is difficult to ascertain an exact numerical value of the use of *The Seattle Times*' logo in campaign advertising, we can ascertain the cost associated with removing and replacing the advertisement with an updated version. Based on communications with the Campaign's vendor, it is estimated to cost \$5,000 to remove and update an advertisement, costs that Patty Murray does not have to accrue. That does not even consider the crucial amount of time lost to communicate with voters about important issues impacting voters across the State of Washington. Certainly, the Respondents believe that its logo holds intrinsic value, as they wrote a cease and desist to protect it.

The Respondents also chose to target the Campaign for no reason other than to influence the outcome of the election. Given the Respondents' arbitrary enforcement of its own copyright and/or trademark, the Respondents preferential treatment towards its ideal candidates must be to influence the outcome of the election, or at minimum ensure that Ms. Smiley does not get to discuss Patty Murray's failures with the Washington electorate. As FEC regulations make clear, if a corporation makes its resources available for free, it must do so for *all* candidates, even candidates it may not like.¹⁵

⁵ FEC Form 1, Smiley for Washington, Inc., <https://docquery.fec.gov/pdf/191/202204149496257191/202204149496257191.pdf> (Apr. 14, 2022).

⁶ See Exhibit A.

⁷ The Seattle Times Editorial Board, *The Times Recommends: Patty Murray for U.S. Senate*, THE SEATTLE TIMES (July 21, 2022).

⁸ Carrie Chapman Catt Center for Women in Politics, *Patty Murray- Senator Patty Murray Gets Things Done*, YOUTUBE (Oct. 10, 2016) (use of the Logo at the 19 second mark); Carrie Chapman Catt Center for Women in Politics, *Patty Murray- First 2016 Ad*, YOUTUBE (Aug. 3, 2016) (use of the Logo at the 22 second mark).

⁹ Exhibit B.

¹⁰ 52 U.S.C. § 30101(8); 11 C.F.R. § 100.52.

¹¹ *Id.* at § 100.52(d)(1).

¹² 52 U.S.C. § 30101(11).

¹³ 52 U.S.C. § 30118(a).

¹⁴ 11 C.F.R. § 114.13.

¹⁵ 11 C.F.R. § 114.13.

While we recognize that media entities often rely on a "legitimate business purpose" to avoid being held accountable to the FEC on the corporate contribution ban, there is no legitimate business purpose associated with the Respondents preferential treatment. Use of any copyrighted image falls squarely within the Copyright Act's fair use doctrine, and any likelihood of confusion is laughable, given The Seattle Times' clear loyalty to Patty Murray. We certainly trust that an average viewer watching the Campaign ad would understand that the use of *The Seattle Times*' headline, "Starbucks To Close 5 Seattle Stores Over Safety Concerns," was not intended to imply an endorsement by *The Seattle Times*, but rather to provide commentary regarding Patty Murray's reckless policies.

Sadly, *The Seattle Times* is yet against attempting to "influence public policy," and its attack on Ms. Smiley shows clear intent to influence voters against Tiffany Smiley. However, in doing so, the Respondents provided a prohibited corporate in-kind contribution to Luna's political opponents, violating 52 U.S.C. § 30118(a).

PRAYER FOR RELIEF

1. Wherefore, the Commission should find expedited reason to believe that Respondent *The Seattle Times* is engaging in an ongoing knowing and willful violation of 52 U.S.C. § 301011, *et. seq.*, and move expeditiously to force *The Seattle Times* to comply with the law.
2. Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin respondent(s) from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

Dated: September 29, 2022

Respectfully submitted,



Charlie Spies
Katie Reynolds
Counsel to Smiley for Washington, Inc.
Dickinson Wright PLLC
1825 I. Street NW
Suite 900
Washington, D.C. 20006

Subscribed and sworn before me on this 29th day of September, 2022



District of Columbia
Signed and sworn to (or affirmed) before me on
9/29 2022 by Charles Spies
Date Name(s) of Individual(s) making statement
Jessica Franzosi Bymers
Signature of Notarial Officer
Jessica Bymers Notary Public
Title of Office
My commission expires: 8/14/2027

JESSICA FRANZOSI BYMERS
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires August 14, 2027

EXHIBIT A

To: Cale Ottens | cale@smileyforwashington.com the Jane Smiley Campaign Smiley for Washington, Inc. 228 S. Washington St., Ste. 115, Alexandria, VA 22314

Dear Mr. Ottens,

Unauthorized use of The Seattle Times logo and two headlines (“Content”) has been discovered in at least two instances being used by a Tiffany Smiley campaign advertisement video (“Video”) here:

YouTube: <https://www.youtube.com/watch?v=B6kGg6py6xc>

and

NBC Meet the Press blog: <https://www.nbcnews.com/meet-the-press/meetthepressblog/tiffany-smiley-launches-new-crime-ad-wash-senate-race-rcna48460>

(See screen captures below.)

The Content of The Seattle Times is protected by copyright and trademark and is the exclusive property of The Seattle Times.

Use of material from The Seattle Times requires The Seattle Times’ consent. Under no circumstances, unless expressly licensed by The Seattle Times, may the Content be reproduced or imitated including in advertising material.

If the Content was licensed under an alternate company name (dba) or in the name of a third party, please reply to this email with information on the sales order, invoice or other pertinent licensing information.

However, if a valid license for the use of the Content does not exist, the Tiffany Smiley campaign is liable for the unauthorized use in the absence of a valid license, including cases in which a website designer, employee, volunteer or intern is responsible for the inclusion of the Content.

If your use of the Content without a license was unintentional, for example if the Content was found on the Internet and believed to be available for free use, it is still in violation of copyright law and ceasing use of the Content now will not release you or your organization from liability in this regard.

Please immediately remove all Seattle Times Content from your Video, and from all platforms where the Content appears including from NBC News Blog and YouTube.

Contact The Seattle Times Resale and Permissions Department regarding this matter, using the email resale@seattletimes.com.

Alternatively, provide the contact information for the appropriate person to whom we should address this matter if someone other than you.

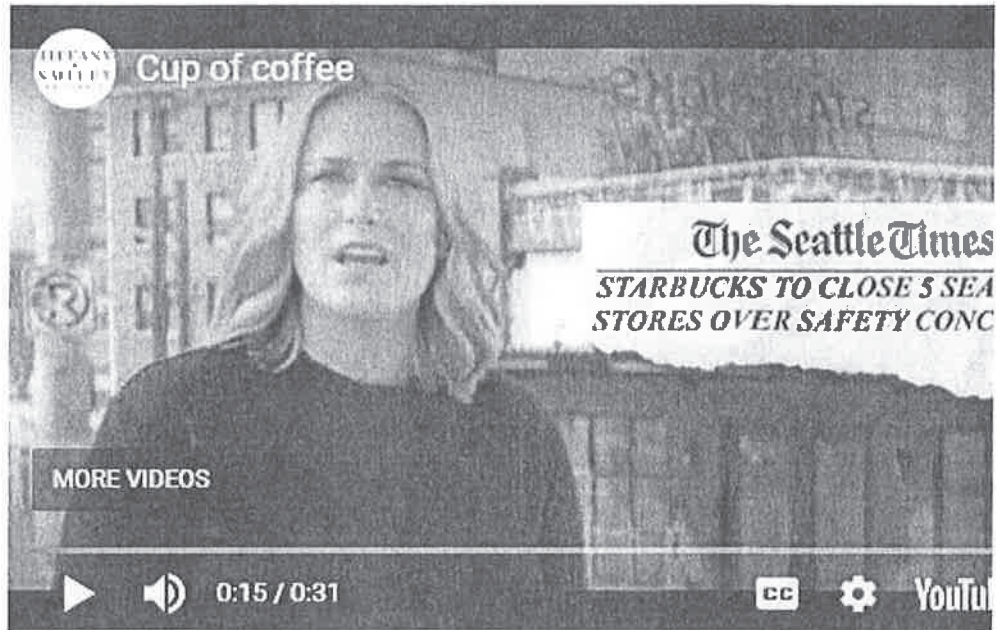
COPYRIGHTED CONTENT LOGO AND TWO HEADLINES USED

SEATTLE TIMES ORIGINAL CONTENT <https://www.seattletimes.com/business/starbucks/starbucks-to-close-5-seattle-stores-due-to-safety-concerns/> (headline: *Starbucks to close 5 Seattle stores over safety concerns*, July 11, 2022)

SMILEY INFRINGEMENT ON NBC NEWS BLOG



Tiffany Smiley launches new crime ad in Wash. Senate race



“For decades Patty Murray has spearheaded reckless policie lead to shortages, inflation, and so much crime that you can get a cup of coffee from the hometown shop on Capitol Hill, you could still afford it,” Smiley adds.

“Thirty years in the Senate and this is what she has to show i she won’t do the job, I will,” Smiley says at the end of the ad.



FIG. 1

SMILEY INFRINGEMENT ON YOUTUBE



Cup of coffee



Smiley for Washington
562 subscribers

Subscribe

31

1,000 views Sep 19, 2022...more

Comments
Click here to read

FIG. 2

SEATTLE TIMES ORIGINAL CONTENT <https://www.seattletimes.com/seattle-news/seattles-awful-august-shows-the-city-continues-to-backslide-on-crime/> (headline: *Seattle's awful August shows the city continues to backslide on crime, Aug. 31, 2022*)

SMILEY INFRINGEMENT ON NBC NEWS BLOG

← → ↻ 🔒 nbcnews.com/meet-the-press/meetthepressblog/tiffany-smiley-launches-new-crime-ad-wash



Tiffany Smiley launches new crime ad in Wash. Senate race



“For decades Patty Murray has spearheaded reckless policie lead to shortages, inflation, and so much crime that you can get a cup of coffee from the hometown shop on Capitol Hill, you could still afford it,” Smiley adds.

“Thirty years in the Senate and this is what she has to show! she won’t do the job, I will,” Smiley says at the end of the ad.

FIG. 3

SMILEY INFRINGEMENT ON YOUTUBE

youtube.com/watch?v=B6kGg6py6xc

YouTube

Search



Cup of coffee



Smiley for Washington

562 subscribers

Subscribe

31



1,000 views Sep 19, 2022...more

Comments

Click here to read

FIG. 4

Marie Koltchak, Seattle Times Resale and Permissions

resale@seattletimes.com

The Seattle Times

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

--
Cale Ottens



EXHIBIT B



INTERNATIONAL SQUARE
1825 EYE STREET, NW, SUITE 900
WASHINGTON, DC 20006
TELEPHONE: 202-457-0160
FACSIMILE: 844-670-6009
<http://www.dickinsonwright.com>

CHARLIE SPIES
CSpies@dickinsonwright.com
202.466.5964

September 27, 2022

The Seattle Times
Attn: Marie Koltchak
P.O. Box 70
Seattle, WA 98111

SENT VIA EMAIL: resale@seattletimes.com

Re: Response from Smiley for Washington, Inc. on Use of The Seattle Times Logo

Ms. Koltchak,

We represent Smiley for Washington, Inc. (“the Campaign”) and are in receipt of a cease and desist email sent by you on behalf of *The Seattle Times* regarding the Campaign’s use of *The Seattle Times* logo (“the Logo”) as sourcing for a quotation in a campaign advertisement, “Cup of Coffee” (“the Campaign Ad”).¹ Upon review of your claims, we have no reason, nor any intention, to remove the Logo (nor the factual statement it supports) from the Campaign Ad.

As you should be aware, the Copyright Act allows for the unlicensed use of copyright-protected works in certain circumstances, such as providing commentary, under the “fair use” doctrine.² Upon review of the Campaign Ad, it is clear that the Campaign’s use of the Logo constitutes fair use. Weighting the factors that constitute fair use,³ the Campaign’s extremely limited use of the Logo, coupled with the Logo clearly being used for political commentary, there is no doubt that a judge would view the Campaign’s use of the logo as fair use. Fair use is intended to protect and promote freedom of expression, which *The Seattle Times* should understand and appreciate, as freedom of expression allows *The Seattle Times* to publish extreme leftist commentary and pretend that it is news.

¹ While we understand your disappointment that not every news media outlet has joined you as a full-fledged member of the Patty Murray apologist club, we bear no responsibility for what *NBC News* chooses to publish regarding Patty Murray and her reckless policies. If you have concern with the use of the Campaign Ad in their news story, we recommend you contact *NBC News* and/or the author of the story to resolve your concerns.

² Copyright Act § 107 (“Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phone records or by any other means specified by that section, for purposes such as *criticism, comment, news reporting, teaching* (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.”)

³ *Id.* The four factors that are reviewed include (1) purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes; (2) nature of the copyrighted work; (3) amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) effect of the use upon the potential market for or value of the copyrighted work.

Interestingly, in conducting our own due diligence, it became clear that *The Seattle Times* has previously allowed its endorsed candidates,⁴ such as Senator Patty Murray, to use the Logo without license to do so.⁵ Given *The Seattle Times*' clear support of Patty Murray and her radical agenda over Tiffany Smiley for Washington's Senate seat,⁶ it does not surprise us that when (likely despite your best efforts) your reporting paints Murray in a bad light, you prefer that nobody – including the Campaign – use such reporting (including the Logo) to educate the public about Murray's failures. That said, should you pursue legal action, *The Seattle Times*' preferential treatment in enforcing its copyright and trademark rights undercuts any claim of enforceability.

With regards to your trademark infringement concerns, we have no reason to believe that there is any likelihood of confusion regarding where *The Seattle Times*' loyalties lie, given its slanted reporting and commentary, published endorsement of Patty Murray, and now your attempt here to protect Murray from criticism by sending her opponent a cease and desist letter. Furthermore, we trust that an average viewer watching the Campaign ad would understand that the use of *The Seattle Times*' headline, "Starbucks To Close 5 Seattle Stores Over Safety Concerns," was not intended to imply an endorsement by *The Seattle Times*, but rather to accurately provide commentary regarding Patty Murray's reckless policies. Not to shine light on the obvious, but even trademark infringement claims do not trump First Amendment protections.⁷

Given your clear lack of understanding regarding copyright and trademark laws, you may also be unaware that that the Federal Election Campaign Act ("FECA") prohibits corporate entities, such as *The Seattle Times*, from making corporate contributions to federal candidates. If you are correct that there is value attached to the use of your corporate logo, then selectively providing use of such logo to your favored political candidate is not legally permissible. Perhaps the attached complaint, filed today, will help you understand *The Seattle Times*' legal obligations under federal election laws.

Should you have any questions regarding this correspondence, please contact me at cspies@dickinson-wright.com.

Sincerely,



Charlie Spies
Katie Reynolds
Counsel to Smiley for Washington, Inc.

⁴ The Seattle Times Editorial Board, *The Times Recommends: Patty Murray for U.S. Senate*, THE SEATTLE TIMES (July 21, 2022).

⁵ Carrie Chapman Catt Center for Women in Politics, *Patty Murray- Senator Patty Murray Gets Things Done*, YOUTUBE (Oct. 10, 2016) (use of the Logo at the 19 second mark); Carrie Chapman Catt Center for Women in Politics, *Patty Murray- First 2016 Ad*, YOUTUBE (Aug. 3, 2016) (use of the Logo at the 22 second mark).

⁶ The Seattle Times Editorial Board, *supra* Note 5.

⁷ See, e.g., *AM General LLC v. Activision Blizzard, Inc.* (S.D.N.Y. March 31, 2020); *Pellegrino v. Epic Games, Inc.*, No. 19-1806 (E.D. Pa. Mar. 31, 2020); *VIP Products v. Jack Daniel's Properties* (9th Cir. Mar. 31, 2020).