

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
World Class Gun Shows, Inc. and) MUR 5595
Clear Channel Communications, Inc./)
WFBQ Radio)

STATEMENT OF REASONS

This matter involves a radio advertisement aired on WFBQ Radio, a Clear Channel Communications, Inc. station, one week prior to the 2004 Presidential election. The advertisement was for the upcoming Indy 1500 Gun & Knife Show, sponsored by World Class Gun Shows, Inc. The advertisement presents a speaker who is hunting with his friend, Harv. Harv leaves and returns distressed because a “slick-talkin’ guy wearing flip flops” took away his guns. The narrator responds that Harv “got the new carry/Kerry permit.” The complainant alleged that the advertisement referred to a clearly identified Federal candidate by referencing a “Kerry permit” and did not contain the requisite disclaimer as required under the Federal Election Campaign Act of 1971, as amended (“the Act”). Respondent World Class Gun Shows, Inc. contended that the reference was to a “carry permit,” which is the common name for a license to carry a handgun.

The Office of General Counsel recommended that the Commission find reason to believe that World Class Gun Shows, Inc. violated 2 U.S.C. § 441b(a) by making an electioneering communication as defined in 2 U.S.C. § 434(f)(3)(A)(i), and also violated 2.U.S.C. § 441d(a)(3) by failing to include the appropriate disclaimer. The General Counsel recommended that the Commission authorize an investigation, including the use of compulsory process, to discover the cost of the radio advertisement. The General Counsel also recommended that the Commission find no reason to believe that Clear Channel Communication/WFBQ Radio violated the Act or the Commission’s regulations, and to close the file as to this Respondent because it represented to the Commission that it had charged the “usual and customary rate for the advertising,” and the General Counsel had no contrary information. *See* Advisory Opinion 2005-18 (Reyes).

We rejected the Office of General Counsel’s recommendations as to World Class Gun Shows, Inc. Under the circumstances, even if a technical violation of 2 U.S.C. 434(f), 441b or 441d could be proven, the matter does not represent a sufficiently serious matter to devote the resources to pursue. The primary purpose and effect of the advertisement was to encourage attendance at an upcoming gun show in Indianapolis. To achieve that end, the promoters of the

event paid for an advertisement that included a humorous reference to Senator Kerry, who was then a candidate for President. The record indicates the ad was targeted to individuals who were most likely to attend the gun show, as evidenced by the fact that it was broadcast to listeners in a limited area near the location of the gun show. The commercial purpose of the ad is further reflected by the fact that, at the time of the broadcast, Senator Kerry and President Bush were not seriously competing for votes in Indiana. Furthermore, the ad was broadcast over the radio, a low-cost medium, reflecting that the sums at stake in the case are unlikely to be large. Under these circumstances, we determined, as a matter of prosecutorial discretion, in the proper ordering of our priorities and resources, to dismiss the complaint and close the file in MUR 5595. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

April 7, 2006

Michael E. Toner
Chairman

Robert D. Lenhard
Vice Chairman

David M. Mason
Commissioner

Hans A. von Spakovsky
Commissioner

Steven T. Walther
Commissioner

Ellen L. Weintraub
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