



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**ADVISORY OPINION 2010-19
(Google, Inc.)**

**CONCURRING STATEMENT OF
VICE CHAIR CYNTHIA L. BAUERLY,
COMMISSIONER STEVEN T. WALTHER and
COMMISSIONER ELLEN L. WEINTRAUB**

Google, Inc. ("Google") submitted an advisory opinion request asking whether disclaimers are required on text ads generated when Internet users use Google's search engine to perform searches under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations. Specifically, Google asks two questions:

(1) Do text ads on behalf of candidates and political committees generated through Google's AdWords program qualify for the "small items" exception at 11 CFR § 110.11(f)(1)(i)?

(2) If text ads on behalf of candidates and political committees generated through Google's AdWords program require a disclaimer, is the requirement satisfied under Google's model, where the text ad displays the Uniform Resource Locator ("URL") of the ad sponsor's website in the text ad and the landing page contains a disclaimer in full compliance with 11 CFR § 110.11?

A majority of Commissioners agreed that under the circumstances described in the request, Google's conduct did not violate the Act or Commission regulations.¹ We write separately to explain our analysis.

Advisory opinions provide a mechanism for a requester to obtain the Commission's guidance concerning the application of the Act or Commission regulations "with respect to a specific transaction or activity by the [requesting] person." 2 U.S.C. 437f(a)(1). An advisory opinion may be relied upon by "any person involved in the specific transaction or activity" that is the subject of the request and "any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity" described in the request. 2 U.S.C. 437f(c)(1). With respect to the specific activity described in Google's request, the disclaimer requirements of the Act are satisfied because Google's proposal provides

¹ Chairman Petersen, Vice Chair Bauerly, and Commissioners Walther and Weintraub voted affirmatively for a motion so stating. Commissioners Hunter and McGahn dissented.

substantial information through a text ad that displays the URL of the committee sponsor's website and a landing page that contains a full disclaimer meeting the requirements of 11 CFR § 110.11. Since we find that the requester is satisfying the requirements of the Act, we do not reach the question of whether an exemption might apply.

Background

Google is a corporation that creates programs and applications that allow persons to search for and collect information on the Internet. Google's AdWords program generates text ads in conjunction with keywords chosen by the advertiser. Text ads have a headline which can consist of up to 25 characters, and two lines of text and a display URL which can consist of up to 70 characters. This format applies to all advertisers, regardless of whether they are political committees. When a user enters search terms in Google's search engine or views content relevant to the selected keywords, AdWords generates text ads that appear alongside the search results or content. Google has also partnered with other websites to participate in Google's AdWords program. Using the chosen keywords, Google can match an advertiser's ads to websites in Google's partner network that are most relevant to the advertiser's message.

The primary purpose of a text ad is to attract customers to an advertiser's web page or "landing page" so that customers may learn more about what the advertiser has to offer. Accordingly, advertisers pay Google for a text ad based upon the number of times a user clicks on the ad and is taken to the advertiser's website. Advertisers do not pay Google based on the number of times a text ad appears on a search page. Google wishes to sell text ads to candidates, their authorized committees, and other political committees under the AdWords program. These text ads would not display a full disclaimer indicating who authorized or paid for the ad; rather, a full disclaimer would appear on the landing page that appears when a user "clicks through" a text ad.

Legal Analysis and Conclusion

In circumstances where the delivery of a required disclaimer would be unwieldy or unfeasible, the Commission historically has allowed the disclaimer to be delivered in an alternate fashion, rather than eliminating the disclaimer requirement altogether. *See* Advisory Opinion 2004-01 (Bush/Kerr) (required disclaimer for advertisement authorized by two candidates could be delivered by one candidate on behalf of both of them); Advisory Opinion 2004-37 (Waters) (disclaimer did not have to separately list each and every Federal candidate in brochure featuring numerous Federal candidates as long as there was an alternative way to identify them). Similarly, in Advisory Opinion 2004-10 (Metro Networks), the Commission allowed modification of the disclaimer requirements for live broadcasted reports, featuring traffic, news and other content, sponsored by candidates. Given the live nature of the reports and technological limits, the requester stated that it would be "physically impossible" for it to include the "stand by your ad" statement spoken by the candidate as set forth in 11 CFR § 110.11(c)(3). While the Commission agreed that the nature of the ad rendered the candidate's speaking of the disclaimer impossible, the Commission did not find that the physical and technological limitations prevented the provision of the disclaimer. Instead, the Commission concluded that a

disclaimer was required but permitted the disclaimer to be spoken by the individual providing the report.

Text ads generated through Google's AdWords program are limited to 95 characters, including the headline. Taking, for example, a disclaimer for a communication not authorized by a candidate, the disclaimer must clearly state, among other requirements, that the communication "is not authorized by any candidate or candidate's committee." 2 U.S.C. 441d(a); 11 CFR § 110.11(b)(3). The phrase "Not authorized by any candidate or candidate's committee" is 57 characters long. Including the full name of the political committee could require more characters for the disclaimer than are allowed for the text ad itself.

Google proposes an alternative manner that satisfies the disclaimer requirements, that is, the text ad displays the URL of the political committee's website and the landing page includes a full disclaimer. The Commission has recognized that URLs of political committees provide important identifying information. First, the URL typically contains some form of the candidate or political committee's name.² Second, by providing its World Wide Web address, a committee is able to meet in part its disclaimer obligations under the Act and Commission regulations. See 2 U.S.C. 441d(a)(3) and 11 C.F.R. 110.11(b)(3). In addition, users who "click through" a text ad will be taken to the political committee's website that will contain a disclaimer displayed in a clear and conspicuous manner on the landing page.

Accordingly, under the circumstances described in the request, the disclaimer requirement is satisfied because the text ad displays the URL of the political committee's website and the landing page contains a full disclaimer as required by 11 CFR 110.11. This conclusion conforms to the Commission's practice of "interpret[ing] the Act and its regulations in a manner consistent with contemporary technological innovations . . . where the use of the technology would not compromise the intent of the Act or regulations." Advisory Opinion 1999-09 (Bradley for President) (approving Federal matching funds for contributions received over the Internet through the use of a credit card).³ This conclusion is also consistent with Commission regulations, which exempt much activity over the Internet but require disclaimers on political committee websites and Internet "communications placed for a fee on another person's website." 11 CFR 110.11(a)(1), 100.26. Moreover, as noted by the Supreme Court, the transparency

² Our conclusion might be different if we were presented with evidence that a committee was using the URL to mislead readers with respect to the source of a particular AdWords text ad.

³ Indeed, the Act and Commission regulations need not be barriers to technological innovation; rather, technological innovation may promote compliance with campaign finance laws. The California Fair Practices Commission ("CFFPC") recently amended its regulations regarding paid campaign advertisements and addressed the issue of disclaimers in electronic media advertisements. See Cal. Code Regs. tit. 2, § 18450.4 (effective December 2010). CFFPC's regulation provides, for example, that small advertisements may use technological features such as rollover displays, links to a webpage, or "other technological means" to meet disclosure requirements. See *id.* § 18450.4(b)(3)(G)(i). Unnecessary exemptions would discourage the development of such innovative uses of technology to provide the most effective disclosure.


provided by disclosure and disclaimer requirements “enables the electorate to make informed decisions and give proper weight to different speakers and messages.” *Citizens United v. FEC*, 130 S. Ct. 876, 916 (2010). This conclusion honors and advances these ideals.



Cynthia L. Bauerly
Vice Chair

12/16/10


Date



Steven T. Walther
Commissioner

12/16/10

Date



Ellen L. Weintraub
Commissioner

12/16/10

Date