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Washington, DC 20463

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For meeting of June 18, 2020
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June 12, 2020

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS*
Acting General Counsel

Neven F. Stipanovic *NFS*
Associate General Counsel

Esther Gyory *EDG*
Acting Assistant General Counsel

Joanna S. Waldstreicher *JSW*
Attorney

Subject: Draft AO 2019-18 (IDF International Technologies) - Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on June 17, 2020.

Members of the public may view the virtual Commission meeting at which the draft will be considered. The advisory opinion requestor may appear remotely via telephone before the Commission at this virtual meeting to answer questions.

For more information about how to submit comments or attend the virtual Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2019-18

2

3 Konstantin Goudkov
4 IDF International Technologies, Inc.
5 382 NE 191st St., Ste #74906
6 Miami, FL 33179

DRAFT A

7
8 Dear Mr. Goudkov:

9 We are responding to your advisory opinion request on behalf of IDF
10 International Technologies, Inc. (“IDF”), regarding the application of the Federal
11 Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations
12 to IDF’s activities operating and advertising for an online political discussion forum. The
13 Commission concludes that IDF’s activities are not expenditures, contributions, or
14 electioneering communications under the Act and Commission regulations, and do not
15 require IDF to submit any reports to the Commission or to include disclaimers in its
16 advertising.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter received on
19 November 25 and your email received on December 9, 2019.

20 IDF is a for-profit Florida corporation that runs online discussion forums on
21 various topics. Advisory Opinion Request at AOR001. One of these forums,
22 www.OnePoliticalPlaza.com, is a political discussion forum. *Id.*¹ IDF does not take a
23 public position on any political party, candidate, or issue, and all content on the forum is
24 posted by users. *Id.* IDF is not affiliated with any political party, candidate, or political
25 committee, *id.*, and does not have any communication or interaction with candidates or

¹ Other forums operated by IDF cover fishing, photography, and other hobbies. AOR004.

1 political committees. AOR004. IDF's business model is to buy advertising for a forum,
2 provide the forum as a communications platform for users, and then sell advertising on
3 the forum to generate revenue for IDF. AOR001. IDF's only source of revenue is the
4 sale of ad space on its forum websites, through Google and other distributors of online
5 advertising. *Id.* IDF does not control the content of any ads displayed on its forums. *Id.*
6 IDF neither solicits nor makes contributions to candidates, political parties, or other
7 political committees.² AOR005. IDF spends money only on operating expenses like
8 webhosting and server space, and on buying ads to attract new users.

9 In the ordinary course of its business, IDF buys online advertising for its forums
10 from companies such as Google, in the form of banner ads, pay-per-click ads, and display
11 ads. AOR001. IDF conducts all advertising for its forums online. *Id.* IDF's advertising
12 purchases are solely for the purpose of attracting users to its forum, and not for the
13 purpose of influencing any election. AOR002. IDF's advertising strategy is for its ads to
14 act as the voice of a hypothetical existing user of the forum who is reaching out to
15 potential new users with similar interests or views, to engage them in conversation. *Id.*
16 Because OnePoliticalPlaza focuses on politics and current events, IDF's ads for
17 OnePoliticalPlaza typically follow the format of these examples:

18 "Do You Hate Trump? Read it before it's taken down. This is what they aren't
19 telling you."

20 "Do You Hate Biden? Read it before it's taken down. This is what they aren't
21 telling you.

² It is possible that ads purchased by third parties to be displayed on OnePoliticalPlaza could solicit contributions, but IDF does not control the content of the third party ads displayed on OnePoliticalPlaza.

1 “Do You Love Trump? Did you know this? Unbelievable. Nobody is reporting
2 this yet.”

3 “Do You Love Biden? Did you know this? Unbelievable. Nobody is reporting
4 this yet.”

5 *Id.*

6 IDF’s ads may reference various candidates and officeholders of different parties,
7 the Democratic, Republican, and other political parties, current events, and political
8 issues. *Id.* The ads do not mention elections, voting, or the dates of elections, and do not
9 include calls to action involving voting or elections. *Id.*, AOR005. IDF determines
10 which candidates’ and parties’ names to use in its ads by means of tracking click-through
11 rates, and those names that generate the most traffic to OnePoliticalPlaza are used in the
12 ads; IDF does not use any other process to choose which candidates’ or parties’ names to
13 use in its ads. AOR005.

14 ***Questions Presented***³

- 15 1. *Are the ads described in the request expenditures or contributions?*
- 16 2. *Is IDF required to register with the Commission?*
- 17 3. *Are the ads described in the request electioneering communications, and*
18 *is there any time period preceding elections when IDF may not run the ads?*
- 19 4. *Is IDF required to file reports of its spending on advertising with the*
20 *Commission?*
- 21 5. *Is IDF required to include disclaimers in its ads?*

³ The questions are set forth here in a different order from the order they were asked in the advisory opinion request, for ease of analysis.

1 6. *Does IDF qualify for the media exemption from the disclosure, disclaimer,*
2 *and reporting requirements of the Act and Commission regulations?*

3 ***Legal Analysis and Conclusion***

4 1. *Are the ads described in the request expenditures or contributions?*

5 No, payments for the ads described by IDF do not constitute expenditures or
6 contributions under the Act and Commission regulations.

7 The Act and Commission regulations define the term “contribution” and
8 “expenditure” to include any gift, loan, or payment of money or anything of value for the
9 purpose of influencing a federal election. 52 U.S.C. §§ 30101(8)(A)(i), 30101(9)(A)(i);
10 11 C.F.R. §§ 100.52(a), 100.111(a).

11 IDF states that it advertises OnePoliticalPlaza solely for the purpose of attracting
12 new users, and not for the purpose of influencing any election. AOR001-002. This is
13 supported by the fact that IDF’s ads do not espouse any public positions on any candidate
14 or political party or contain express advocacy. AOR001. Nor does IDF have any
15 interaction with any candidate or political party, or make any contributions to any
16 political committee. AOR004. Accordingly, its payments do not constitute contributions
17 to any political committee or expenditures.

18 2. *Is IDF required to register with the Commission?*

19 No, IDF is not required to register with the Commission, because IDF is not a
20 political committee under the Act and Commission regulations.

21 The Act and Commission regulations require all political committees to register
22 with the Commission by filing a statement of organization. 52 U.S.C. § 30103(a); 11
23 C.F.R. § 102.1. A “political committee” is defined as “any committee, club, association

1 or other group of persons which receives contributions aggregating in excess of \$1,000
2 during a calendar year or which makes expenditures aggregating in excess of \$1,000
3 during a calendar year.” 52 U.S.C. § 30101(4); 11 C.F.R. § 100.5(a). The Supreme
4 Court has further construed “political committee” to “only encompass organizations that
5 are under the control of a candidate or the major purpose of which is the nomination or
6 election of a candidate.” *Buckley v. Valeo*, 424 U.S. 1, 79 (1976).

7 As discussed above, IDF does not make any expenditures. Neither does it receive
8 any contributions; its only source of revenue is the sale of ad space on its discussion
9 forums, which it does for commercial purposes as a for-profit corporation. AOR001,
10 AOR004. Therefore, IDF is not a political committee and need not register with the
11 Commission.

12 3. *Are the ads described in the request electioneering communications, and*
13 *is there any time period preceding elections when IDF may not run the ads?*

14 No, the ads described by IDF do not constitute electioneering communications,
15 and therefore IDF may run them without regard for timing in relation to any election.

16 The Act defines “electioneering communication” as “any broadcast, cable, or
17 satellite communication which . . . refers to a clearly identified candidate for [f]ederal
18 office” that is made within 30 days before a primary election or 60 days before a general
19 election, and in a geographically targeted area. 52 U.S.C. § 30104(f)(3)(A); *see also* 11
20 C.F.R. § 100.29(a). Because IDF’s advertising is conducted exclusively on the internet,
21 and does not include any “broadcast, cable, or satellite communications,” the ads do not

1 constitute electioneering communications, regardless of when they run in relation to any
2 election.⁴

3 4. *Is IDF required to file reports of its spending on advertising with the*
4 *Commission?*

5 No, IDF is not required to file any reports of its spending with the Commission, as
6 it is not a political committee and its advertising does not constitute electioneering
7 communications or independent expenditures.

8 The Act and Commission regulations require certain persons to file reports with
9 the Commission. For example, a “treasurer of a political committee shall file reports of
10 receipts and disbursements.” *See* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1. In
11 addition, persons who spend above threshold amounts on independent expenditures or
12 electioneering communications must file reports with the Commission. *See* 52 U.S.C.
13 § 30104(c), (f); 11 C.F.R. §§ 104.20, 109.10.

14 As discussed above, IDF is not a political committee and thus it will not be
15 subject to the reporting requirements for political committees, and IDF’s advertising will
16 not constitute electioneering communications and thus it will not subject IDF to the
17 reporting requirements for electioneering communications.

18 The Act and Commission regulations define an “independent expenditure” as “an
19 expenditure by a person for a communication expressly advocating the election or defeat
20 of a clearly identified candidate that is not made in cooperation, consultation, or concert
21 with, or at the request or suggestion of, a candidate, a candidate's authorized committee,

⁴ The Commission notes that even if IDF’s ads did constitute electioneering communications, IDF would not be restricted from running the ads; it would merely be subject to reporting and disclaimer requirements for electioneering communications.

1 or their agents, or a political party committee or its agents.” 11 C.F.R. § 110.16(a); *see*
2 *also* 52 U.S.C. § 30101(17). As discussed above, IDF’s ads do not expressly advocate
3 the election or defeat of any candidate. As such, they are not independent expenditures,
4 and therefore do not subject IDF to the reporting requirements for persons making
5 independent expenditures.

6 5. *Is IDF required to include disclaimers in its ads?*

7 No, IDF is not required to include disclaimers in its ads, as IDF is not a political
8 committee, and the ads are not electioneering communications and do not solicit
9 contributions or expressly advocate the election or defeat of any candidate.

10 The Act and Commission regulations require certain communications to contain
11 disclaimers stating who paid for them and whether they were authorized by any
12 candidate. Disclaimers are required for (a) all public communications and mass emails
13 by a political committee, and all political committee websites; (b) all public
14 communications that expressly advocate the election or defeat of a clearly identified
15 candidate; (c) all public communications that solicit contributions; and (d) all
16 electioneering communications. 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a).

17 IDF’s ads do not meet any of the criteria that would require disclaimers. As
18 discussed above, IDF is not a political committee, and its ads are not electioneering
19 communications. Further, IDF’s ads, as described in the advisory opinion request, do not
20 expressly advocate the election or defeat of any candidate, nor do they solicit
21 contributions to any candidate. Accordingly, IDF is not required to include disclaimers
22 in its ads.

1 6. *Does IDF qualify for the media exemption from the disclosure, disclaimer,*
2 *and reporting requirements of the Act and Commission regulations?*

3 This question is moot, as the Commission has concluded above that none of the
4 disclosure, disclaimer, or reporting requirements of the Act and Commission regulations
5 are applicable to IDF.

6 This response constitutes an advisory opinion concerning the application of the
7 Act and Commission regulations to the specific transaction or activity set forth in your
8 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change
9 in any of the facts or assumptions presented, and such facts or assumptions are material to
10 a conclusion presented in this advisory opinion, then the requestor may not rely on that
11 conclusion as support for its proposed activity. Any person involved in any specific
12 transaction or activity which is indistinguishable in all its material aspects from the
13 transaction or activity with respect to which this advisory opinion is rendered may rely on
14 this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or
15 conclusions in this advisory opinion may be affected by subsequent developments in the
16 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
17 Any advisory opinions cited herein are available on the Commission's website.

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On behalf of the Commission,

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21

Caroline C. Hunter

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Chair