



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 3, 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2011-24

James A. Kahl, Esquire
Womble Carlyle Sandridge & Rice
1200 Nineteenth Street, N.W., Suite 500
Washington, DC 20036

Dear Mr. Kahl:

We are responding to your advisory opinion request on behalf of Louder Solutions, LLC, d/b/a StandLouder.com (“StandLouder.com”), concerning the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to StandLouder.com’s projected business model. StandLouder.com asks (1) whether it is a political committee; (2) whether StandLouder.com, together with persons who use StandLouder.com to create, post, and fund advertisements, are a political committee or a series of political committees; (3) what disclosure and disclaimer obligations apply to these advertisements; and (4) if, as an alternative, StandLouder.com may create an independent expenditure-only committee.

The Commission concludes that StandLouder.com may create an independent expenditure-only committee. The Commission could not approve a response to the remaining questions by the required four affirmative votes. 2 U.S.C. 437c(c); 11 CFR 112.4(a).

Background

The facts presented in this advisory opinion are based on your letter received on November 22, 2011, your comment filed on January 11, 2012 and StandLouder.com’s representations at the Commission’s Open Meeting on January 12, 2012.

StandLouder.com is a for-profit limited liability company (“LLC”) established under the laws of North Carolina. StandLouder.com has a single natural person member and has not elected to be treated as a corporation by the Internal Revenue Service.

StandLouder.com represents that it will be operated exclusively for commercial purposes; that it is not nor will be directly or indirectly established, financed, maintained, or controlled by any candidate or party committee; and that it will not conduct the activities described below in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or political party.

StandLouder.com plans to provide services through its website that will enable users to: 1) submit proposed advertisements for posting on the website (“content creators”); and 2) to help finance the airing of those advertisements (“funders”) on television, radio, or other media.¹ StandLouder.com states that it will offer these services on a non-partisan basis without regard to party affiliation.

An advertisement submitted to StandLouder.com for posting on its website may concern any topic. StandLouder.com anticipates that advertisements will relate not only to political and social issues and candidates for public office, but also to other topics, such as charitable causes, civic groups, or products and services.

StandLouder.com will impose certain conditions and restrictions on advertisements posted on its website. Advertisements may not solicit contributions to any political committee, nor may advertisements republish, in whole or in part, any broadcast, written, graphic or other material prepared by a candidate or candidate’s authorized committee, or their agents, unless those materials come from a public source and are used in an advertisement that advocates the election or defeat of the candidate or political party that created the materials. Content creators of advertisements that may qualify as independent expenditures or electioneering communications must represent that they are not Federal contractors, foreign national individuals, foreign corporations or other foreign entities, Federally-chartered organizations, candidates, or party committees. As discussed below, content creators also must grant StandLouder.com rights to use, modify, or distribute their advertisements. Any content creator that is not a nonconnected committee or a separate segregated fund (“SSF”) may choose to have its name displayed on StandLouder.com alongside its advertisement, but StandLouder.com will not otherwise identify the content creators.² StandLouder.com represents that it will, however, require content creators to identify themselves to StandLouder.com, and also provide information regarding the production costs of each advertisement, which will be included by StandLouder.com in reports required by the Act and Commission regulations.

StandLouder.com will review advertisements only to screen for legal compliance issues, such as defamation, intellectual property infringement, pornography, privacy, and fraud. StandLouder.com will reserve the right to refuse to post an advertisement only if

¹ The term “users” refers collectively to funders and content creators.

² StandLouder.com represents that it will not allow nonconnected committees and SSFs to provide any identifying information in their advertisements or on the StandLouder.com website.

there is such an issue or if the advertisement is “otherwise offensive or would harm the reputation” of StandLouder.com.

Each advertisement posted on StandLouder.com will have a corresponding message forum that is intended to facilitate discussions regarding the advertisement by website users. Messages containing offensive content or that otherwise do not comply with the terms of service will be removed. The message forums will be monitored to ensure that rules are observed.

StandLouder.com will establish a two-stage process for collecting funds from users of its website who wish to finance an advertisement. When StandLouder.com first posts an advertisement on its website, a user may pledge any amount to help finance its distribution, but StandLouder.com will initially charge only \$1 of that pledge to the funder’s credit card. StandLouder.com will ascertain the level of support for each advertisement based on the volume of the pledges that it receives. When StandLouder.com receives enough pledges to indicate that, in its judgment, the advertisement will be successfully funded, StandLouder.com will “open [the advertisement] for sponsorship.”³ At this second stage, funders who have already pledged funds will receive an email from StandLouder.com and will have to take affirmative steps online to pay the balance due on the pledge. Other users will also be able to provide funds, which will immediately be charged to their accounts. All funds received for advertisements will be kept in StandLouder.com’s corporate account, and the amounts received for each advertisement will be accounted for separately.

StandLouder.com will allow individuals, partnerships, corporations, nonconnected committees, and SSFs to help finance an advertisement. Persons wishing to finance advertisements that qualify as independent expenditures or that would qualify as electioneering communications if distributed in the applicable time periods must represent that they are not Federal contractors, foreign national individuals, foreign corporations and other foreign entities, or Federally-chartered organizations. Additionally, all users must represent that they are not candidates or employees or agents of candidates or party committees, and that their activities on StandLouder.com are not undertaken in cooperation, consultation or concert with, or at the request or suggestion of any candidate, authorized committee, or political party, or their agents.

Once StandLouder.com determines that sufficient funds have been collected for a given advertisement, it will purchase air time for, or otherwise distribute, the advertisement. StandLouder.com will employ political media buyers and advertising consultants to select the most appropriate market, medium, place, and time to air or distribute the advertisement. Once it has determined a particular media strategy for an advertisement, StandLouder.com will inform its users of that strategy. StandLouder.com represents that its users will not be able to alter the media strategy. StandLouder.com will air or distribute advertisements that support competing candidates and take opposing

³ If StandLouder.com receives insufficient pledges to support an advertisement, pledgers will be notified that their unused \$1 pledges may be redirected to another advertisement. Any funds not redirected after twelve months will be given to charities listed on the website.

positions on issues in equivalent times and markets. StandLouder.com represents that it will modify advertisements to add required disclaimers or make other technical changes, but StandLouder.com will not materially alter an advertisement's content.

StandLouder.com states that its activities "are strictly profit-oriented and undertaken at normal and usual rates." It generally will charge content creators a fee of \$25 or less to post their advertisements on the website. In addition, StandLouder.com plans to charge its users a transaction fee for each online donation.

StandLouder.com will periodically engage in promotional activities to encourage greater use of its services. For example, StandLouder.com may occasionally waive the \$25 content fee. StandLouder.com also intends to provide limited supplemental funding for advertisements during promotional periods, because "it is in the Company's business interests to maximize the number of [advertisements] that are aired or otherwise publicly distributed." StandLouder.com will develop financial qualification thresholds and all advertisements that meet or exceed the thresholds will be entitled to the same amount of funding. StandLouder.com will not be able to exercise any discretion to offer or deny funding to any advertisement that meets or exceeds a threshold. Further, as a means of encouraging submissions, StandLouder.com will award cash prizes or make small payments to content creators whose advertisements are broadcast. These prizes and payments would also be offered on a non-partisan basis. Finally, StandLouder.com proposes to contract with vendors to manufacture products, such as t-shirts, hats, and mugs, that contain popular messages from advertisements posted on its website. These products will be sold online at StandLouder.com.

StandLouder.com represents that it is committed to "full and timely" disclosure. StandLouder.com will file the reports required by Commission regulations at 11 CFR 104.5, 104.20, and 109.10 for any advertisements that constitute independent expenditures or electioneering communications. The reports will include the total amount provided to support the advertisement, including the funds used to compensate media buyers and other third parties involved in the broadcast or distribution of the advertisement. The reports will identify each funder who provided funding in excess of \$200 for the purpose of furthering an independent expenditure or in excess of \$1,000 for the purpose of furthering an electioneering communication, as well as StandLouder.com's own funding or waiver of fees, if applicable. If required, StandLouder.com also will report the identity of the content creator and the cost to create and post the advertisement, as those costs are reported to StandLouder.com by the content creator. StandLouder.com will not report the \$25 placement fee paid by a content creator or any transaction fees that it receives from website users.

StandLouder.com states that it will include any necessary disclaimers required by 11 CFR 110.11 in advertisements that constitute independent expenditures or electioneering communications. Radio and television advertisements placed by StandLouder.com will contain the following disclaimer with voiceover:

StandLouder.com is responsible for the content of this advertising. Paid for by StandLouder.com. Not authorized by any candidate or candidate's committee. (www.StandLouder.com)

Apart from the first sentence, print advertisements placed by StandLouder.com will contain the same disclaimer.

Questions Presented

1. *Is StandLouder.com a "political committee"?*
2. *Will StandLouder.com, the content creators, and the users who donate funds collectively become a political committee or a series of political committees?*
3. *What disclosure and disclaimer obligations apply to StandLouder.com's advertisements?*
4. *As an alternative, can StandLouder.com form an independent expenditure-only committee for the purpose of accepting advertisement content, receiving contributions, and funding independent expenditures or electioneering communications?*

Legal Analysis and Conclusions

1. *Is StandLouder.com a "political committee"?*

The Commission could not approve a response to Question 1 by the required four affirmative votes. 2 U.S.C. 437c(c); 11 CFR 112.4(a).

2. *Will StandLouder.com, the content creators, and the users who donate funds collectively become a political committee or a series of political committees?*

The Commission could not approve a response to Question 2 by the required four affirmative votes. 2 U.S.C. 437c(c); 11 CFR 112.4(a).

3. *What disclosure and disclaimer obligations apply to StandLouder.com's advertisements?*

The Commission could not approve a response to Question 3 by the required four affirmative votes. 2 U.S.C. 437c(c); 11 CFR 112.4(a).

4. *As an alternative, can StandLouder.com form an independent expenditure-only committee for the purpose of accepting advertisement content, receiving contributions, and funding independent expenditures or electioneering communications?*

Yes, StandLouder.com may form an independent expenditure-only committee for the purpose of accepting advertisement content, receiving contributions, and funding independent expenditures.⁴

Nonconnected committees that make only independent expenditures may solicit and accept unlimited contributions from individuals, corporations, labor organizations, and other political committees, but not from foreign nationals, Federal contractors, national banks, or corporations organized by any law of Congress. *See, e.g.,* Advisory Opinion 2011-11 (Colbert); *see also Citizens United v. FEC*, 130 S. Ct. 876 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*); *EMILY's List v. FEC*, 581 F.3d 1, 12 (D.C. Cir. 2009). These political committees must register with the Commission and comply with all applicable reporting rules. *See SpeechNow*, 599 F.3d at 698.

In prior advisory opinions, the Commission has concluded that nonconnected committees that do not make contributions could solicit and receive unlimited contributions from individuals, political committees, corporations, and labor organizations. *See* Advisory Opinions 2011-11 (Colbert) and 2010-11 (Commonsense Ten). Like the political committees in those advisory opinions, StandLouder.com asserts that its independent expenditure-only committee would register as a nonconnected committee, would not make contributions or coordinated communications, and would comply with all applicable disclaimer and reporting requirements of the Act and Commission regulations.

Accordingly, the Commission concludes that StandLouder.com may establish and operate an independent expenditure-only committee. The committee must comply with all applicable reporting and disclaimer requirements. *See generally* 2 U.S.C. 432, 433, 434, 441d.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the

⁴ While StandLouder.com also asks whether it may create an independent expenditure-only committee to fund electioneering communications, political committees, “by operation of the expenditure and independent expenditure exemption from the definition of ‘electioneering communications,’ . . . do not make disbursements for electioneering communications.” *See Final Rules on Bipartisan Campaign Reform Act of 2002 Reporting: Coordinated and Independent Expenditures*, 68 FR 404, 412 (Jan. 3, 2003). Instead, political committees must report their disbursements for communications as independent expenditures or expenditures under 11 CFR 104.3 and 104.4. 11 CFR 104.20(b).

transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law, including, but not limited to, statutes, regulations, advisory opinions, and case law. The cited advisory opinions are available on the Commission's website, www.fec.gov, or directly from the Commission's Advisory Opinion searchable database at <http://www.fec.gov/searchao>.

On behalf of the Commission,

(signed)
Caroline C. Hunter
Chair