



RE: AOR 2013-18--Revolution Messaging, LLC

Joseph E. Sandler

to:

AO@fec.gov, tlutz@fec.gov

02/03/2014 05:17 PM

Cc:

"ANoti@fec.gov", "rknop@fec.gov", "NStipanovic@fec.gov", Dara Lindenbaum, "Neil P. Reiff"

Hide Details

From: "Joseph E. Sandler" <sandler@sandlerreiff.com> Sort List...

To: "AO@fec.gov" <AO@fec.gov>, "tlutz@fec.gov" <tlutz@fec.gov>,

Cc: "ANoti@fec.gov" <ANoti@fec.gov>, "rknop@fec.gov" <rknop@fec.gov>,

"NStipanovic@fec.gov" <NStipanovic@fec.gov>, Dara Lindenbaum

<lindenbaum@sandlerreiff.com>, "Neil P. Reiff" <reiff@sandlerreiff.com>

1 Attachment



Supplement to AOR 2013-18

AOR 2013-18 Follow Up Clarification of Request by Revolution Messaging 2-3-2014.pdf

To the Office of General Counsel:

Please find attached a clarification of the above-referenced request, on behalf of our client, the requestor, Revolution Messaging LLC.

Thanks very much for your time and attention to this matter.

Sincerely,

Joe Sandler

From: Joseph E. Sandler

Sent: Monday, January 27, 2014 3:48 PM

To: AO@fec.gov; tlutz@fec.gov

Cc: 'ANoti@fec.gov'; 'rknop@fec.gov'; 'NStipanovic@fec.gov'; Dara Lindenbaum (lindenbaum@sandlerreiff.com); Neil P. Reiff (reiff@sandlerreiff.com)

Subject: AOR 2013-18--Revolution Messaging, LLC

To the Office of General Counsel:

Per our discussion with Mr. Lutz, this will confirm that our client, Revolution Messaging LLC, consents to extend the time for the Commission to issue an advisory opinion in response to the above-referenced request, through and including February 28, 2014.

Thanks you for your time and attention to this matter.

Sincerely,

Joe Sandler

Joseph E. Sandler

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SANDLER, REIFF, YOUNG & LAMB, P.C.

February 3, 2014

2014 FEB -3 PM 5:33

OFFICE OF GENERAL
COUNSEL

By E-Mail and Facsimile

Lisa Stevenson, Esq.
Deputy General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Advisory Opinion Request 2013-18 (Revolution Messaging, LLC)

Dear Ms. Stevenson:

We are writing on behalf of our client, Revolution Messaging, LLC, the requestor of the above-referenced AOR ("Revolution Messaging"), to follow up on the discussion at the Commission's open meeting of January 16, 2014 by providing additional detail concerning and clarification of the content of the advertisements that are the subject of the AOR.

As explained in the comments filed on January 15, 2014 by Revolution Messaging and in the answers to questions posed by Commissioners at the open meeting on January 16, the specific proposed advertisements that are the subject of the AOR include smart phone static banner advertisements, for which the maximum size is 320 x 50 pixels, as indicated by the Interactive Advertising Bureau's Mobile Phone Creative Guidelines.

In addition, the Commission should be made aware that, in accordance with the advertising guidelines of many mobile advertising applications, and generally accepted best practices in the industry, Revolution Messaging would ensure that the advertisements that are the subject of the AOR will always include a clear identification of the name of the advertiser.

While there is no law or regulation currently requiring such identification on mobile advertising (leaving aside the application of the FECA and FEC regulations), the advertising guidelines of many leading mobile advertising applications require such identification. For example, the Facebook Advertising Guidelines, section III(A), provide that, "Ads must clearly represent the company, product, service or brand that is being advertised."

https://www.facebook.com/ad_guidelines.php

Similarly, Yahoo's Advertising's General Guidelines provide that some kind of identification of the sponsor must appear in the advertisement or on a landing page; and in any event, that "Ad branding must accurately reflect the party ultimately offering the specific product or service."
<http://advertising.yahoo.com/ad-policies/ad-policies-general-guidelines/index.htm>

RM intends to identify the advertiser in all smart phone static banner advertisements, including all of those that would be potentially subject to the Commission's disclaimer regulations, 11 C.F.R. §110.11. Specifically:

- (1) In the case where the advertiser (Revolution Messaging's client) is an authorized committee of a candidate for federal office, either there would be a link to the committee's website OR some clear identification of that committee would be included in the advertisement. For example, if the authorized committee of John Smith for US Senate sponsored a mobile static banner ad, that for whatever reason did NOT contain a link to the committee's website, the advertisement itself would contain the words "Smith for Senate" somewhere in the advertisement; or make clear that the committee is the sponsor within the ad language; or include a logo for the committee. For example, normally we would just say "Vote John Smith Tomorrow," but to make sure it is clear who is paying for the ad, we would include the committee name: "Vote Smith for Senate Tomorrow." An actual size mockup of such an advertisement appears below:



- (2) Where the advertiser is a federal political committee other than an authorized committee of a candidate, either there would be a link to the committee's website OR some clear identification of that committee would be included in the advertisement—the name or a recognizable abbreviation of the name of the PAC. For example, if the advertiser was the United Brotherhood of Widget Workers Federal Political Action Committee, the advertisement would contain the words: "From UBWW PAC", or it would make it clear that this was from the UBWW PAC by including their logo as part of the advertisement. An actual size mockup of such an advertisement appears below and an individual clicking on this ad would be connected with their legislator on their phone after clicking the advertisement.



- (3) Where the advertiser is not a federal political committee, but the advertisement constitutes an independent expenditure or electioneering communication, Revolution Messaging would again either include a link to the organization's website or some clear identification of the advertiser that would appear with the words "paid by". The example below would be linked to a hypothetical article appearing on Politifact.com around the accuracy of candidate Bob Jones' recent statements; the sponsor of the ad is a nonprofit organization called "Americans for Freedom," and makes use of more

Lisa Stevenson, Esq.
February 3, 2014
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eye-catching language that also states who is responsible for the independent expenditure without requiring an impossible-to-fit disclaimer.



Revolution Messaging respectfully suggests that the approach above, which is consistent with the requirements of many mobile applications and best industry practices, would also address the concerns expressed by some Commissioners at the January 16 open meeting that granting the opinion requested in this AOR would open the door to mobile political advertising with no indication of who is paying for the advertisement, thus frustrating the policy behind the disclaimer requirement in the Act and the Commission regulations. At the same time, this approach would recognize the practical impossibility of including the full prescribed disclaimer in smartphone static banner advertisements due to their small size, thereby serving the policy interest reflected in section 110.11(f)(1)(i) of the Commission's regulations. *See, e.g.,* Advisory Opinion 2004-37 (allowing "flexibility in listing candidate names in a disclaimer notice" where it was impractical to include full authorized committee names).

We respectfully request that the additional information set forth above be brought to the Commission's attention and considered to be part of the request. Please let us know if you have any questions or need additional information on the above. Thank you for your time and attention to this matter.

Sincerely yours,

Joseph E. Sandler
Neil P. Reiff
Dara S. Lindenbaum

Counsel for Revolution Messaging LLC