

October 27, 2022

Re: False Identification of Sponsor of Get Michigan Working Again Ads

MARK BREWER
RONITA BAHRI
MICHELLE T. AARON
AMANDA B. WARNER
J. SCOTT FANZINI
NICOLE M. McCARTHY

Dear Station Manager,

We are legal counsel to Progress Michigan. We write on its behalf concerning the false sponsor identification (“Paid for by...”) on advertisements by Get Michigan Working Again (“GMWA”) running on your station.

*ALSO ADMITTED IN DC
**ALSO ADMITTED IN FL
***ALSO ADMITTED IN NY

WWW.GOODMANACKER.COM

The GMWA ads contain a false identification of their sponsor. The Michigan Campaign Finance Act (“MCFA”) requires that all ads identify who paid for them. *See* MCL 169.47. The FCC requires that the true sponsor of an ad be identified. *See* 47 CFR § 73.1212(e). However, as detailed below, GMWA is falsely stating that it paid for these ads when the Republican Governors Association (“RGA”) actually made the expenditures and is the true sponsor of the ads. If your station continues to air them, then your station bears responsibility for their false identification. Based on FCC requirements and the public interest, we request that your station immediately cease and desist airing these ads which fail to disclose who actually paid for them.

LEGAL STANDARDS

First, this GMWA ad is not a “candidate use.” Under *Columbia Broadcasting System, Inc v. Democratic Nat’l Committee*, 412 U.S. 94 (1973), *Nat’l Conservation Political Action Committee*, 89 F.C.C. 2d 626 (1982), and *You Can’t Afford Dodd Committee*, 81 F.C.C. 2d 579 (1980), your station is not obligated to air any advertisements from third parties, such as GMWA, because third parties have no right to air advertisements on your station. Therefore, your station is not protected from legal liability for airing this false sponsorship. *See Felix v. Westinghouse Radio Stations, Inc.*, 186 F.2d 1 (3d Cir.), *cert. denied*, 314 U.S. 909 (1950).

Second, even if your station opts to run the GMWA ad, the FCC strictly requires that the true sponsor of the ad be identified. *See* 47 CFR § 73.1212(e). The FCC has indicated that a station has a duty to investigate the true sponsor if there is reason to believe that the named sponsor is not the true sponsor. *See id.* Stations have been fined for failure to comply with this sponsorship identification requirement.

Third, your station has a longstanding affirmative duty “to protect the public from false, misleading or deceptive advertising.” *Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising*, 74 F.C.C. 2d 523 (1961). Your station must take “reasonable steps” to satisfy itself “as to the reliability and reputation of every prospective advertiser,” *In re Complaint by Consumers Association of District of Columbia*, 32 F.C.C. 2d

SOUTHFIELD • MAIN OFFICE

17000 WEST TEN MILE ROAD, SECOND FLOOR • SOUTHFIELD, MICHIGAN 48075 • PHONE 248.483.5000 • FAX 248.483.3131

GRAND RAPIDS

1500 E BELTLINE AVE SE, SUITE 235 • GRAND RAPIDS, MICHIGAN 49506 • PHONE 616.582.7225

400, 405 (1971), and failure to prevent the airing of “false and misleading advertising” may be “probative of an underlying abdication of licensee responsibility.” *Cosmopolitan Broadcasting Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir., 1978).

FALSE IDENTIFICATION OF SPONSOR

As detailed in the attached complaint pending before the Michigan Bureau of Elections, while GMWA claims to have paid for the ads it’s running, the RGA has reported to the IRS that it—the RGA—is actually paying for those ads and is the true sponsor of those ads. Thus, the sponsorship of GMWA claimed in the ads is false because it does not identify the true sponsor, the RGA.

The GMWA ads clearly violate 47 CFR § 73.1212(e) by failing to identify their true sponsor, the RGA. Those ads with a false sponsorship identification cannot continue to air. Allowing them to air not only violates federal and state law but is deceiving the public in violating your station’s duty to protect the public from false, misleading, and/or deceptive advertising.

CONCLUSION

Michigan residents deserve to know the truth about who is funding political advertisements. We urge you to recognize GMWA and RGA’s blatant disregard for the truth and we respectfully demand that your station refuse to air these ads containing false sponsorship identification.

Thank you in advance for your prompt attention to this matter. If you have questions, please call me at 248-483-5000 or email me at mbrewer@goodmanacker.com.

Very truly yours,

GOODMAN ACKER, P.C.

Mark Brewer

Mark Brewer