



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 7, 2023

James R. Sutton
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150 Post Street, Suite 405
San Francisco, CA 94108

Re: Your Request for Advice
Our File No. I-23-054

Dear Mr. Sutton:

This letter responds to your request for advice regarding the advertising disclosure requirements of the Political Reform Act (the “Act”).¹ Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice. Because your inquiry is general in nature, we are treating your request as one for informal assistance.²

FACTS AS PRESENTED BY REQUESTER

Your law firm represents numerous campaign committees that plan to prepare and distribute advertisements in connection with the 2024 election cycle. You seek advice and clarification regarding the required advertising disclosures under the Act for certain types of advertisements.

QUESTIONS AND CONCLUSIONS

1. *Translating a committee’s name.* *If a committee pays for an advertisement that appears in English and Spanish but primarily in Spanish, must the committee’s name in the required disclosure appear in Spanish or English?*

Regulation 18450.6 details the disclosure requirements for an advertisement that appears primarily in a language other than English. The regulation reads in full:

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

(a) If an advertisement, as defined in Section 84501, appears primarily in a language other than English, whether written or spoken, the advertisement disclosure required by Article 5 of Chapter 4 must appear in that same language.

(b) Notwithstanding subdivision (a), a committee's name must be the same as the name used in the most recent Statement of Organization filed pursuant to Section 84101 or the name that a filer is required to use on campaign statements pursuant to subdivision (c) of Section 84211.

You state that the requirement in Regulation 18450.6(b) that a committee's name "must be the same" as the name used in its most recent statement of organization or campaign statements is unclear. Specifically, you note that, if a committee lists a name in English (e.g. "Citizens for Measure A"), on its statement of organization and/or campaign statements, but pays for an advertisement that appears primarily in Spanish, it is unclear whether the committee's name in the Spanish-language advertisement disclosure (as required by Regulation 18450.6(a)) must be a word for word Spanish translation of the committee's (English) name; or whether the committee's name in the disclosure must appear verbatim in the same language as it appears on its statement of organization or its campaign statements (in this example, "Citizens for Measure A," in English).

The text of Regulation 18450.6(b) requires the latter interpretation—the name of the committee in the example above must appear verbatim in its original form, in English. Regulation 18450.6(b) begins with the word "notwithstanding," the plain meaning of which is "despite," "nevertheless," or "however."³ Likewise, "same" is generally understood to mean "conforming in every aspect to," or "identical."⁴ Thus, Regulation 18450.6(b) must be read to provide that, despite the requirement in subdivision (a) that a required advertisement disclosure must appear in the same language as the advertisement, the committee's name in that advertisement disclosure must be identical to (and thus in the same language as) the name used on the committee's statement of organization and/or campaign statements.

As you note, this interpretation is also consistent with the Commission's stated intent to maintain the public's ability to search for a committee's information and filings in campaign filing databases, in furtherance of the purposes of the Act.⁵

2. *Advertisement formats not specifically addressed in the Act or regulations. Would the advertising disclosure requirements for "written advertisements" apply to a screen saver displaying the words "Vote for Smith," or to physical items such as balloons, potholders, dishtowels, or t-shirts emblazoned with printed campaign messages?*

³ "Notwithstanding." Merriam-Webster Online Dictionary. 2023. <https://www.merriam-webster.com/dictionary> (3 April. 2023).

⁴ "Same." Merriam-Webster Online Dictionary. 2023. <https://www.merriam-webster.com/dictionary> (3 April. 2023).

⁵ Section 81002(a) provides: "Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited."

Regulation 18450.7 specifies that a “written advertisement” displayed in a format not specifically addressed in Chapter 4, Article 5 of the Act⁶ or current Commission regulations must display the disclosures required by Sections 84502 (Committee Name), 84503 (Top Contributor Disclosure), and 84506.5 (Independent Expenditure Ads; Not Authorized by Candidate) in a size and color contrasting the background that is readily legible to an average viewer.

You are uncertain of the scope of the advertisements covered by Regulation 18450.7 and ask whether the requirements of Regulation 18450.7 apply to a screen saver displaying the words “Vote for Smith,” or to physical items such as balloons, potholders, dishtowels, or t-shirts emblazoned with printed campaign messages.

A. Screen saver.

A screen saver is generally understood to mean “a computer program that usually displays various images on the screen of a computer that is on but not in use.”⁷

The Act defines “advertisement” as “any general or public communication that is authorized and paid for by a committee for the purpose of supporting or opposing a candidate or candidates for elective office or a ballot measure or ballot measures.” (Section 84501(a)(1).) Regulation 184501 further defines advertisement to include:

An electronic media communication including a logo, icon, writing, image, recording, video, or other data posted, broadcast, or displayed electronically. This includes, but is not limited to advertisements in electronic messages, electronic message attachments, text messages, or advertisements that appear on Internet websites or webpages, social media, blogs, other generally accessible electronic communication systems.

Regulation (18450.1(a)(2).)

In this case, the screen saver would be an electronic media communication—in the form of a message or an electronic message attachment (“sent to supporters”)—containing writing (i.e., the text “Vote for Smith”) authorized and paid for by a committee for the purpose of supporting a candidate for elective office (“Smith”). Thus, the “Vote for Smith” screen saver would be an advertisement for purposes of the Act and Regulation 18450.7. Because Chapter 4, Article 5 of the Act does not specifically address screen savers, the disclosure requirements of Regulation 18450.7 would apply.

However, the Act creates exceptions to the definition of “advertisement” for communications from an organization, other than a political party, to its members, and for

⁶ Article 5 of Chapter 4 of the Act sets forth advertising disclosure requirements for: radio and telephone ads; video and television ads; print ads; electronic media ads; text messages; online platform disclosed ads; radio, television, and social media ads paid for by a political party or candidate; and independent expenditure and ballot measure ads, including those featuring a paid spokesperson and/or paid for by a political party or candidate.

⁷ “Screen saver.” Merriam-Webster Online Dictionary. 2023. <https://www.merriam-webster.com/dictionary> (3 April. 2023).

electronic media communications (such as emails and text messages) from an organization to people who have “opted in” or asked to receive messages from that organization. (Section 84501(a)(2)(A-B). Thus, to the extent that a committee sends a “Vote for Smith” screen saver to a recipient covered under one of these exceptions, no advertisement disclosure would be required.

B. Physical items such as balloons, potholders, dishtowels, or t-shirts emblazoned with printed campaign messages.

Under Section 84501(a)(2) of the Act, certain items are exempt from the definition of “advertisement” and therefore do not require advertisement disclosures, even if they have written campaign messages on them:

- “Wearing apparel” (i.e. clothing)
- Campaign buttons smaller than 10 inches in diameter
- Bumper stickers smaller than 60 square inches
- Small tangible promotional items, such as pens, pins, or key chains, upon which the disclosure required cannot be conveniently printed or displayed

Section 84501(a)(2)(D-E).

We have also previously advised that these exceptions apply to other similar physical items upon which the disclosure required cannot be conveniently printed or displayed, such as magnets, pencils, rulers, mugs, potholders, and golf balls.⁸

You ask whether the advertising disclosure requirements for written advertisements apply to balloons, potholders, dishtowels, or t-shirts emblazoned with printed campaign messages. T-shirts are a form of clothing and thus are exempt from the definition of advertisement under Section 84501(a)(2)(E). Likewise, potholders are among the items that we have previously advised fall within the exception to the definition of “advertisement.” The Act does not directly address balloons or dishtowels emblazoned with printed campaign messages. However, to the extent that it would be inconvenient to print or display the required disclosure on a small promotional balloon or dishtowel, it would be consistent with our past advice that such an item need not include a disclosure under Section 84501(a)(2)(D).

3. *Disclosure for advertisements on listening applications that are both audio and visual. Is a video posted on YouTube or a text advertisement on a social media platform that also includes an audio message when clicked on considered to be on a “listening application,” as used in Regulation 18450.8?*

While the Act only addresses the required advertisement disclosures for advertisements that appear in audio or video format, respectively, Regulation 18450.8 addresses the required disclosure

⁸ Please see page 2 of the Commission’s fact sheet, “Political Advertisement Disclosures,” available at: <https://www.fppc.ca.gov/content/dam/fppc/NSDocuments/TAD/Campaign%20Documents/CampaignAdvertisementDisclosure/Political%20Advertisement%20Disclaimers%20Final.pdf>.

for an electronic media advertisement that is on a listening application that uses both audio and visual formats simultaneously.

You note that while the July 2021 staff memorandum concerning the adoption of Regulation 18450.8 “refers to ads which appear on Pandora (the music app) the language of the regulation does not seem to be limited to these music apps and [you] are not aware of a definition of [“listening application”] in the law.” You therefore ask whether Regulation 18450.8 applies to videos posted on the online video sharing platform YouTube or to “printed ads posted on a social media platform which include an audio message if clicked on.” Presumably, by “printed,” you mean “text.”

In the July 2, 2021 staff memorandum you cite, staff described what was at the time proposed new Regulation 18450.8 as clarifying the required “disclosures for electronic campaign advertisements that are both visual and audio that typically appear on mobile phone listening applications similar to that of Spotify or Pandora Radio.”⁹ Thus, both the text of Regulation 18450.8 and the staff memorandum indicate that the regulation is limited to “listening applications.” While not defined, a “listening application” in this context can reasonably be understood to include, but not be limited to, audio streaming applications such as: Spotify, Pandora Radio, Apple Podcasts, Audible, Google Podcasts, and Stitcher.

By contrast, other rules may apply to video advertisements such as those you are asking about, that appear on an online video sharing platform like YouTube. These rules are generally found in Sections 84504.1 and 84504.5, which contain disclosure requirements for video advertisements. Meanwhile, for your example of text that qualifies as an advertisement posted on a social media platform that, when clicked on, includes an audio message, Section 84504.3(b) or (g), which address electronic media advertisements, may be applicable to the written text portion depending on whether or not it is in the form of a post, comment, or similar communication. For the audio portion, Section 84504.3(e) would be applicable.

Alternatively, if an advertisement meets the criteria of an “online platform disclosed advertisement,”¹⁰ it must contain the advertisement disclosure required under Section 84504.6.

⁹The referenced July 2, 2021 staff memorandum is available at:
<https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/General%20Items/2021/july/7.0-disclose-act-regs.pdf>.

¹⁰ “Online platform disclosed advertisements” are either (1) electronic media advertisements made via an online platform (such as Facebook) that allows users to engage in discourse and post content, or any other type of social media, for which the committee pays the online platform, unless all advertisements on the platform are video advertisements that can comply with Section 84504.1; or (2) electronic media advertisements for which the committee pays the online platform and that are in the form of a graphic, image, animated graphic, or animated image that an online platform hosting the advertisement does not allow to hyperlink to an internet website containing required disclosures under Section 84504.3 and is not a video, audio or email. (84504.6.)

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in black ink, appearing to read 'T. Lewis', with a stylized flourish at the end.

By: Toren Lewis
Counsel, Legal Division

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