

Before the
Federal Communications Commission
Washington, D.C. 20554

October 29, 1996

Trumper Communications of Portland, Ltd.
Licensee of KKCW-FM
888 S.W. 5th Avenue, Suite 790
Portland, OR 97204

KEZI, Inc.
Licensee of KEZI-TV
Box 7009, 2225 Coburg Road
Eugene, OR 97401

Hill Radio, Inc.
Licensee of KRWQ-FM
86 4th Street, Box 388
Gold Hill, OR 97525

California Oregon Broadcasting, Inc.
Licensee of KOBI-TV
Box 5M
Medford, OR 97501

DRG Oregon License, Inc.
Licensee of KUGN-AM/FM
4222 Commerce Street
Eugene, OR 97402

Fisher Broadcasting, Inc.
Licensee of KATU-TV
2153 N.E. Sandy Boulevard
Portland, OR 97232

Alexander Broadcasting, Inc.
Licensee of KXL-AM
Box 14959, 1415 S.E.
Portland, OR 97214

KOIN TV, Inc.
Licensee of KOIN-TV
222 S.W. Columbia Street
Portland, OR 97201

Citicasters Company
Licensee of KEX-AM
4949 S.W. Macadam Avenue
Portland, OR 97201

King Broadcasting Company
Licensee of KGW-TV
1501 S.W. Jefferson Street
Portland, OR 97201

Dear Licensees:

The Bureau has before it a complaint filed by Media Access Project (MAP) on behalf of the Committee to Support the Oregon Health Plan (CSOHP) against the above-captioned radio and television broadcast stations. According to MAP, each of these stations is airing advertisements opposing an Oregon ballot proposition which would impose, if passed, increased taxes on cigarettes and other tobacco products. The advertisements identify "Fairness Matters to Oregonians Committee" (FMOC) as the sponsor. MAP contends the proper sponsorship identification should name "The Tobacco Institute" as the true sponsor.

In support of its argument, MAP cites the following factors: (1) a filing with the Oregon Secretary of State's office shows that all but \$20.00 of the \$2,664,600 raised by the named

sponsor FMOC was donated by the Tobacco Institute¹; (2) the two directors and sole members of FMOC are registered with the State of Oregon as lobbyists for R.J. Reynolds, a company with substantial interests in tobacco products; (3) a filing with the Internal Revenue Service shows that R.J. Reynolds is the largest single contributor to the Tobacco Institute; and (4) the address and phone numbers listed with the state for FMOC are the same as for the FMOC directors' lobbying firm.

In order to facilitate an expedited determination before the November 5, 1996, election, the Bureau contacted each station by telephone on October 23, 1996, and asked for a response to the complaint by the close of business October 24, 1996. The stations generally assert in their respective responses that the present identification of FMOC as the sponsor complies with both the statute and the Commission's rules, emphasizing that FMOC is a bona fide political committee as evidenced by its registration with the State of Oregon. There is also a consensus among the stations that the case law in this area indicates that a broadcaster is not required to go beyond the reasonable assurances of those persons with whom it deals directly that they are the true sponsors. One station, KUGN-TV, responded that it conducted an investigation to ascertain whether FMOC was an appropriate identification and became convinced that it sufficed after receiving a letter from counsel for FMOC that stated the Tobacco Institute exercised no editorial control over the campaign and that such control rested with Mark Nelson, one of the two directors of FMOC. No evidence to support the assertions is furnished.

Generally, when a broadcast station is paid to broadcast any material except for product advertising, Section 317 of the Communications Act requires the station to announce that the broadcast is paid for, and who paid for it.² The announcement must be made at the time the program is broadcast. The law applies to paid political broadcasts as well as to other sponsored programs and spots. The sponsorship identification rules, which implement Section 317, are set out in Section 73.1212 of the Commission's rules. 47 C.F.R Section 73.1212. The purpose of the identification requirement is to inform the public of the identity of the persons or entities attempting to persuade them.

Section 317(c) of the Act requires broadcasters to "exercise reasonable diligence" to obtain from

¹ A total of \$8,500 of "in kind" contributions, of which R.J. Reynolds contributed \$3500, is also listed.

² Section 317(a)(1) states in pertinent part:

All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person

47 U.S.C. Section 317(a)(1).

"persons with whom it deals directly" the requisite information to assure that a proper identification is made.³ Section 73.1212(e) obligates a licensee to "fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or entity by whom or on whose behalf such payment is made."⁴ The Commission and the courts have not interpreted these provisions as obligating broadcasters to act as private investigators to ascertain whether the persons with whom they deal are the true sponsors. Rather, unless furnished with credible, unrefuted evidence that a sponsor is acting at the direction of a third party, the broadcaster may rely on the plausible assurances of the person(s) paying for the time that they are the true sponsor.⁵ In this context, the Commission and the court agreed in Loveday that the source of funding together with control of editorial content is the kind of evidence broadcasters should consider. While emphasizing that, under normal circumstances, broadcasters cannot be expected to investigate whether the persons with whom they deal directly are themselves the true sponsors, the Loveday court stated:

There may be cases where a challenger makes so strong a circumstantial case that someone other than the named sponsor is the real sponsor that licensees, in the exercise of reasonable diligence, would have to inform the named sponsor that they could not broadcast the message without naming another party.

707 F.2d at 1459. We believe that the evidence provided by MAP presents a compelling

³ Section 317 (a)(2)(c) states:

The licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.

⁴ Section 73.1212(e) further states:

Where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in [47 U.S.C Section (a)(c)(2)], could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent.

⁵ In re Request for Declaratory Ruling of Paul Loveday and Californians for Smoking and No Smoking Sections, 87 FCC 2d 393 (1981); review denied, 87 FCC 2d 492 (1981); aff. sub nom. Loveday v. FCC, 707 F.2d 1443 (D.C. Cir. 1983). See also, Letter to Paul Loveday, 55 RR 2d 1086 (MMB 1984), aff'd, FCC 85-184, released April 19, 1985.

circumstantial case that the Tobacco Institute is the true sponsor of the ads. Specifically, not only is essentially all of the FMOC's funding provided by the Tobacco Institute, but editorial control of the FMOC's campaign rests exclusively with lobbyists for R.J. Reynolds, the single largest contributor to the Tobacco Institute. In these circumstances, we are not persuaded that any of the information furnished by the stations thus far is sufficient to overcome the very strong presumption that the true sponsor of the subject advertising is the Tobacco Institute. Absent additional probative facts, it is simply not credible that the advertisements in question reflect independent judgments of the R.J. Reynolds lobbyists, who, we note, conduct all of the FMOC's activities from their lobbying firm. For example, unlike the facts presented in Loveday, there is no evidence that entities who are not employed by tobacco interests have any role in FMOC's activities; nor have affidavits been furnished by FMOC's directors, attesting to their editorial independence or describing how their editorial decisions are made.

We emphasize, however, that our determination herein is on the specific facts as outlined in today's ruling. Our ruling should not be taken to require a sponsorship identification of funding entities when there is credible evidence that such entities do not have editorial control of the ads. Furthermore, we do not believe it is appropriate in this case to issue any sanctions against the stations. Much of the evidence before the Bureau was apparently brought to each station's attention less than two weeks ago. Moreover, we recognize that the stations may have been uncertain how to proceed in the absence of definitive guidance from the Commission. Therefore, today's action is intended to be advisory in nature and to clarify that, in these specific circumstances, identification of the Tobacco Institute as the true sponsor is required by the statute and our rules. Thus, we conclude, based on the record before us, that the broadcast of FMOC's material without the identification of the Tobacco Institute as the sponsor would be inconsistent with Section 317 of the Act and Section 73.1212(e) of our rules. In the future, broadcasters should not air the FMOC advertisement without disclosing that the Tobacco Institute is the sponsor.

Staff action is taken under delegated authority.

Sincerely,

Roy J. Stewart
Chief, Mass Media Bureau