

FEC Warns Business About Use of Company Logo in Campaign Ad

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The Federal Election Commission (FEC) recently sent a caution letter to a North Dakota business that allowed its company logo to be used in an advertisement for a U.S. Senate candidate. While the Commission ultimately dismissed the underlying enforcement matter as an exercise of prosecutorial discretion, the FEC's decision is an important reminder to corporations and other businesses that allowing campaigns to use their intellectual property can be problematic.

In late 2017, the American Legal Democracy Fund filed a complaint against North Dakota congressional candidate Tom Campbell's campaign, alleging that Mr. Campbell used equipment from his potato-growing business, Campbell Farms, in his campaign advertising. In particular, the complaint explained that, in one of his campaign commercials, Mr. Campbell stood in front of a Campbell Farms truck with the business logo featured prominently behind him.

This eight seconds of Campbell Farms imagery was enough to get the FEC's attention. The Commission-approved legal analysis cited prior precedent to conclude that allowing a campaign committee to use corporate logos and other intellectual property "in a manner suggesting the corporation's support or endorsement may constitute an in-kind contribution." The Commission referenced, for example, an earlier matter involving campaign advertisements that included the name and logo of the candidate's plumbing company, as well as images of the company's storefront. In that matter, the Commission dismissed the case as likely involving a *de minimis* use of corporate resources. Nevertheless, as here, the Commission cautioned the candidate's business to take steps to properly adhere to the law.

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In reciting this past history, the Commission also referred back to other, past dismissals that involved the use of corporate logos on mailers and fundraising invitations. The Commission did not dismiss these matters outright, but rather declined to pursue these claims based on the agency's prosecutorial discretion.

Though the Commission will not punish every use of corporate intellectual property in a federal campaign, there appears to be bipartisan consensus that the use of corporate imagery will at least result in careful review by the FEC. To avoid potential problems, businesses should not let a candidate use any corporate intellectual property in campaign materials.