

FEC Matter Cautions Against Use of Corporate Employees, Facilities, and Logos

November 2019

In late August, just before it lost a quorum of Commissioners, the Federal Election Commission (FEC) voted 4-0 to dismiss a complaint filed against Whirlpool Corporation and U.S. Senator Sherrod Brown's campaign committee, Friends of Sherrod Brown. The complaint alleged that Whirlpool Corporation made – and the Brown campaign received – a prohibited corporate contribution when the campaign employed the Whirlpool logo and corporate facilities and employees in a campaign advertisement.

The advertisement at the center of the complaint was a YouTube video ad paid for and released by the Brown campaign. The ad featured Whirlpool corporate employees sporting Whirlpool-branded clothing and stating their support for Senator Brown. (Press coverage of Senator Brown sometimes labels his appearance as “rumped,” and the Whirlpool employees had a rebuttal: “We make washing machines, and Sherrod Brown looks great to us!”) The employees and Senator Brown both delivered lines while standing in front of a large Whirlpool sign, and the ad also featured b-roll footage from inside a Whirlpool factory.

While the ad's repeated allusions to Whirlpool were unmistakable, the FEC nonetheless found that there was no corporate contribution by Whirlpool. This conclusion hinged on several important findings, namely: (1) that all Whirlpool employees who appeared in the advertisement did so in their individual capacities and on their own time; (2) that Whirlpool did not authorize the Brown campaign to use its name or logo; (3) that the ad was filmed on public property; and (4) that the Whirlpool factory footage was obtained from publicly available sources, not from Whirlpool. Moreover, the FEC observed that Whirlpool had specifically refused to allow the Brown campaign

Authors

Carol A. Laham
Partner
202.719.7301
claham@wiley.law

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to film on corporate property, and after the ad was released the company had immediately requested that the Brown campaign add a disclaimer stating that the ad “d[id] not constitute an endorsement of Whirlpool Corporation.” Given the factual circumstances and Whirlpool’s actions to alleviate any perception of corporate endorsement, the FEC concluded that it had not contributed any corporate resources to the Brown campaign.

Though this case was resolved in Whirlpool’s favor, the FEC could easily have reached the opposite conclusion had any of the factual circumstances been different – if, for example, the company had allowed the Brown campaign to capture factory footage inside the corporate facilities. The case thus serves as a cautionary reminder that a corporation’s resources – including its employees, its facilities, and its trademarks or logos – may not be used for campaign purposes.