

BEFORE THE FEDERAL ELECTION COMMISSION

COMPLAINT

MCCLINTOCK FOR CONGRESS,)
FEC ID C00446815,)
)
COMPLAINANT)

vs.)

DOUG OSE FOR CONGRESS,)
FEC ID C00444836,)
)
RESPONDENT.)

MUR No. _____

Count 1: Improper disclaimer
11 CFR 110.11 (c)(3)(ii)

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ATTORNEY FOR COMPLAINANT
MCCLINTOCK FOR CONGRESS

I. Factual Background

Upon personal knowledge, McClintock for Congress Committee (hereafter referred to as Complainant) states and alleges as follows:

- A. “Doug Ose for Congress” (hereafter referred to as Respondent) is a designated principal campaign committee for Doug A. Ose’s candidacy for the U.S House of Representatives in the 4th Congressional District of California in the Primary Election scheduled for June 3, 2008.
- B. Respondent committee filed a duly executed Statement of Candidacy with the Federal Election Commission on or about February 5, 2008.
- C. Respondent’s campaign consists of a tightly-packed series of inflammatory television, radio and postal communications to the voters of the 4th Congressional district.
- D. On or about May 12, 2008, Respondent authorized and funded the transmittal and caused to be transmitted through television an advertising communication to the public for the purposes of electioneering, entitled “Sleep.” Therein, Respondent makes especially inflammatory and defamatory allegations against Complainant in furtherance of Respondent’s candidacy, thereby seeking support from the voters in the above-referenced Primary Election.
- E. On or about May 18, 2008, Respondent posted or caused to be posted the above-referenced communication, “Sleep,” on its website at <http://www.dougose.com>.
- F. Respondent’s communication “Sleep” is approximately thirty (30) seconds in length. During the last several seconds of communication “Sleep,” Respondent caused a typed statement to appear on the bottom of the screen, stating, “Paid for by Doug Ose for Congress.” Respondent further caused a voice-over statement purportedly of Candidate Ose’s voice to announce, “I am Doug Ose and I approve this ad.”
- G. Respondent’s communication “Sleep” contains neither a full-screen view of Candidate Doug A. Ose making the above-referenced statement nor a clearly-identifiable photographic image of Candidate Doug A. Ose. Instead, in the lower left-hand corner of the screen, “Sleep” contains a diminutive and unrecognizably small photographic image, which purports to be that of Candidate Doug A. Ose. This image comprises approximately 1/5 (20%) of the vertical screen height of “Sleep.” All of Respondent’s previous television communications contained either a full-screen video view of Candidate Ose or a clearly-identifiable photographic image thereof. Screenshot of “Sleep” is attached and incorporated hereto as “Exhibit A.”
- H. Respondent caused numerous transmissions of “Sleep” to appear throughout the 4th Congressional District since May 12, 2008. Complainant has reason to believe that transmissions will not cease until the Primary Election, scheduled to take place on June 3, 2008.

II. Legal Analysis

Given the frequency and proliferation of negative and defamatory political advertisements and the corresponding efforts of persons and entities sponsoring the same to hide their identities in order to avoid repercussions associated therewith, federal regulations, specifically 11 CFR 110.11 (c)(3)(ii) were adopted to require full and unequivocal disclosure of parties responsible for the content of political advertisements.

11 CFR 110.11 (c)(3)(ii) requires each candidate who attempts to communicate with voters via television advertisement to include a statement that identifies the candidate and states that he or she has approved the communication, in one of two methods:

1. Through an unobscured, full-screen view of himself or herself making the statement, or
2. Through a voice-over by himself or herself, accompanied by a clearly identifiable photographic or similar image of the candidate. A photographic or similar image of the candidate shall be considered clearly identified if it is at least eighty (80) percent of the vertical screen height.

Here, Respondent's communication "Sleep" contains neither a full screen view of Candidate Doug A. Ose making the required statement, nor does it contain the clearly-identifiable photographic likeness of Candidate Ose. Instead, the only photograph, which purportedly contains Candidate Ose's likeness is approximately 1/5 (20%) of the vertical height of the screen. Consequently, the photograph is inconsistent with the requirements set forth in 11 CFR 110.11 (c)(3)(ii) and is likely to be unidentifiable to those whom "Sleep" is designed to influence, and especially misleading to voters with poor eyesight and senior citizens.

III. Conclusion

Given the especially noxious and defamatory nature of "Sleep," and taking into account that each previous communication by Respondent complied with the disclosure and disclaimer requirements of 11 CFR 110.11 (c)(3)(ii), Complainant alleges and respectfully requests that the Commission find that Respondent willfully, intentionally, and knowingly violated 11 CFR 110.11 (c)(3)(ii) by not causing a full-screen view of himself or a clearly-identifiable photograph of himself to appear in the content of "Sleep," with the intent to mislead and confuse voters as to the true source of "Sleep," and disassociate the likeness of Candidate Doug A. Ose from the negative and defamatory message contained therein.

Complainant further requests that the Commission exercise its power under 26 U.S.C. §9040(c) to petition the appropriate U.S. District Court for injunctive relief to implement and enforce the provisions of 11 CFR 110.11 (c)(3)(ii) with regards to Respondent.

Respectfully Submitted,

Igor A. Birman, Esq.
McClintock for Congress