

Simply Naming a Sponsor Not Enough for Broadcasters to Comply with Sponsorship Identification Rules

February 2012

A recent Notice of Apparent Liability against a Chicago radio station reinforces the care that broadcasters must take to identify sponsored material that does not promote a commercial product or service.

On February 3, 2012, the Federal Communications Commission (FCC or Commission) proposed a fine of \$44,000 against WLS(AM) for violating the Commission's sponsorship identification rules. The station, which broadcasts a news/talk format, aired a series of paid programs from an organization called Workers Independent News. The advertiser purchased two two-hour programs, a one-hour program, 45 90-second spots, and 27 15-second spots. While the majority of the spots clearly indicated that they contained sponsored or promotional content, 11 of the 90-second spots did not. Instead, these spots opened with "Workers Independent News, I'm Doug Cunningham" and closed with "Doug Cunningham, Workers Independent News." In between, the spots contained what might have sounded like a news story about the Chicago economy, including sound bites from a state representative and a state official.

Under Section 317(a)(1) of the Communications Act, 47 U.S.C. § 317 (a)(1), stations broadcasting any matter in exchange for direct or indirect consideration must, "at the time the same is so broadcast," announce that the material is "paid for or furnished, as the case may be, by such person." Similarly, Section 73.1212(a) of the FCC's rules, 47 C.F.R. § 73.1212(a), requires that a broadcast station, when transmitting matter in exchange for direct or indirect consideration, announce: (1) that the matter is "sponsored, paid for or furnished" and (2) by whom the consideration was supplied.

Authors

Kathleen A. Kirby
Partner
202.719.3360
kkirby@wiley.law

Ari Meltzer
Partner
202.719.7467
ameltzer@wiley.law

The Commission held that identifying the sponsor of the announcements by name was not sufficient. Although the FCC's rules accept "an announcement stating the sponsor's corporate image or trade name" as sufficient identification for matters involving commercial products or services, the Commission found that the Workers Independent News announcements did not involve commercial products or services. Thus, the exception did not apply.

Further, the Commission refused to accept the broadcaster's argument that because the spots were included with other commercial matter, rather than as part of the station's news or talk programming, there was no basis for listener confusion. Instead, the Commission determined that the subject matter of the announcements and the confusing name of the sponsor—"Workers Independent News"—could have confused listeners.

All stations, but especially those that broadcast news or talk programming, should remember that when broadcasting sponsored content, they must clearly identify both that the content is paid for and who paid for the content. Leaving out even one of these elements could subject a station to an FCC enforcement action, including the possibility of fines.