



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FIRST CLASS MAIL

DEC 20 2013

Michael E. Toner, Esq.
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006

RE: MUR 6586
Linda McMahon;
Linda McMahon for Senate 2012
and Sunghi Pak Frauen as treasurer

Dear Mr. Toner:

On June 7, 2012, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On December 17, 2013, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Linda McMahon or Linda McMahon for Senate 2012 and Sunghi Pak Frauen as treasurer violated the Act or Commission regulations with respect to the allegations in this matter. Accordingly, the Commission closed its file in this matter on December 17, 2013.

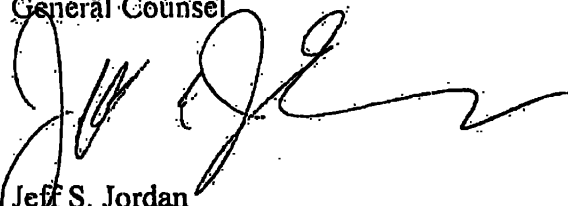
Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

14044351126

If you have any questions, please contact Donald E. Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

General Counsel

A handwritten signature in black ink, appearing to read "Jeff S. Jordan", is written over the typed name.

BY: Jeff S. Jordan
Supervisory Attorney
Complaints Examination and
Legal Administration

Enclosure:
Factual and Legal Analysis

14044351127

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Linda McMahon

MUR 6586

Linda McMahon for Senate 2012

and Sunghi Pak Frauen as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed by Elizabeth S. Ellis on June 1, 2012, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by Linda McMahon, and Linda McMahon for Senate 2012 and Sunghi Pak Frauen as treasurer. It was scored as a low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

In this matter, Complainant Elizabeth S. Ellis, as publisher of the *Journal Inquirer*, a newspaper in Manchester, Connecticut, alleges that World Wrestling Entertainment, Inc. ("WWE"), violated the Act and Commission regulations by "rendering corporation assistance" to the Senate campaign of Linda McMahon. Compl. at 1. Specifically, the Complaint alleges that the corporate assistance was in the form of a letter sent by WWE Senior Vice President Brian Flinn, dated May 24, 2012, "threatening [the *Journal Inquirer*] with a libel lawsuit for criticizing Linda McMahon in two political commentaries written by [managing editor Chris] Powell and published in the *Journal Inquirer* on January 28-29 and May 21, 2012, respectively." *Id.* Additionally, the Complaint concludes that because neither commentary mentioned WWE by name, "the only purpose of Flinn's letter is . . . to use WWE to defend the candidate and to seek

14044351128

1 to have a chilling effect on journalists in Connecticut who might otherwise criticize Linda
2 McMahon during her campaign.”¹ *Id.*

3 WWE filed a response asserting that the Complaint failed to provide a factual basis for
4 any violation of the Act and claims that “the Complaint is a plain attempt to harass WWE for
5 responding to [the *Journal Inquirer*’s] libelous statements about WWE by its editor, Mr. Chris
6 Powell.” WWE Resp. at 1. *Id.* WWE also states that it has a strong interest in “not having its
7 reputation damaged by false statements of fact about its business, regardless of the political
8 happenings in the State of Connecticut.” *Id.* at 2. On January 28, 2012, and May 21, 2012, the
9 *Journal Inquirer* published commentaries by Powell, which, according to WWE, contained
10 “false statements of fact which were damaging to WWE’s business interests and reputation.” *Id.*
11 On May 24, 2012, WWE Senior Vice President Brian Flinn wrote the *Journal Inquirer* on behalf
12 of WWE, addressing Powell’s commentaries. *Id.* According to the WWE, this letter requested a
13 retraction of the offending statements and stated that if the *Journal Inquirer* did not print a
14 retraction, the WWE would seek a legal remedy. *Id.* The WWE Response attests that Flinn’s
15 letter was not related to McMahon’s candidacy and that “WWE directed its retraction request
16 letter to the *Journal Inquirer* to protect its independent interest in its business reputation and
17 because Powell and the *Journal Inquirer* falsely implied that WWE was in the ‘business of
18 pornography.’” *Id.* at 8. The WWE Response concludes by stating that the letter to the *Journal*
19 *Inquirer* was “wholly independent of any federal candidate or campaign for public office” and
20 was made “in an effort to protect its own business interests.” *Id.* at 9-10. As such, the letter was

¹ Ellis avers that Powell wrote two political commentaries “directed to the U.S. senatorial campaign of Linda McMahon, who founded and owned with her husband World Wrestling Entertainment,” “which is owned and controlled by her husband, Vincent McMahon.” Compl. at 2. Ellis’s statement concludes: “I do not believe that the *Journal Inquirer* libeled WWE and the letter is meant to discourage our right to comment on Mrs. McMahon.” *Id.*

1 neither a contribution to nor expenditure for McMahon for Senate, and it also was not an
2 impermissible contribution resulting in a coordinated communication. *Id.*

3 The WWE Response also states that it has “remained silent and continues to remain silent
4 on issues related to the U.S. Senate race.” *Id.* at 2. Following the commentaries at issue,
5 however, WWE felt that Powell had made a “direct attack on WWE’s corporate reputation,” by
6 making “false statements of fact about the nature of WWE’s business which WWE considers to
7 be libelous” and that “the WWE was obligated to respond to protect its reputation.” *Id.* WWE
8 asserts that the statement in Powell’s January 28, 2012, editorial describing “the pornography
9 and mock violence of the wrestling business” was a direct attack on its corporate reputation. *Id.*²

10 Linda McMahon, Linda McMahon for Senate 2012, and Sunghi Pak Frauen in her
11 official capacity as treasurer, (collectively, “the Committee”) jointly filed a response stating that
12 the Complaint failed to allege a specific violation of the Act by the Committee and “does not
13 allege that the Respondents took any actions that would violate the Act or Commission
14 regulations.” Committee Resp. at 1-2. The Committee Response maintains that WWE, in
15 seeking a retraction from the *Journal Inquirer*, was merely defending itself against statements
16 that mischaracterized WWE’s business activities and emphasizes that WWE’s retraction letter to
17 the *Journal Inquirer* did not reference McMahon or McMahon’s candidacy for the Senate. *Id.* at
18 2. The Committee asserts that it could not have accepted a corporate contribution “when the
19 exchange between WWE and the *Journal Inquirer* had nothing to do with the Respondents.” *Id.*

² The WWE Response further states that Powell’s May 21, 2012 editorial described McMahon’s wealth, gained as CEO of WWE, as being “derived from the business of violence, pornography, and general raunch.” WWE Response at 3. Subsequently, Flinn wrote the *Journal Inquirer* on May 24, 2012, stating that if the *Journal Inquirer* did not print a retraction, the WWE would seek a legal remedy. *Id.* at 3-4. WWE’s Response also notes that the Complaint “neglects to advise the Commission that WWE’s retraction [request] letter was sent because her paper falsely implied that WWE was in ‘the business of pornography.’” *Id.* at 7.

14044351130

1 Further, "WWE's retraction letter to the *Journal Inquirer* was clearly sent for bona fide
2 corporate purposes and not for the purpose of influencing a federal election." *Id.* at 3.

3 **B. Legal Analysis**

4 The Act prohibits corporations from making contributions in connection with a federal
5 election.³ 2 U.S.C. § 441b(a). It also prohibits any candidate from knowingly accepting or
6 receiving any contribution from a corporation, or any officer or any director of a corporation
7 from consenting to any contribution by a corporation to a federal candidate. *Id.*

8 The available information does not suggest that the WWE made a corporate contribution
9 to the McMahon Committee by requesting a retraction of what the WWE ostensibly considered
10 to be libelous statements against the WWE. WWE asserts that its sole intent was to defend its
11 business reputation. Indeed, the letters submitted by the WWE did not reference Ms. McMahon,
12 let alone advocate for her election or solicit contributions to her campaign, and instead focused
13 on the *Journal Inquirer*'s description of the WWE. The Committee similarly asserts that the
14 exchange between WWE and the *Journal Inquirer* had nothing to do with McMahon's campaign
15 and, therefore, was not a corporate contribution from WWE to the Committee. The activity in
16 question does not appear to be for the purpose of influencing an election, or otherwise solicit,
17 make, or accept contributions on behalf of a federal candidate. Therefore, the Commission
18 concludes that the letters from WWE to the *Journal Inquirer* did not constitute contributions or
19 expenditures under the Act.

20 Based on the information supplied in the Complaint and Responses, it appears that the
21 letters from WWE to the *Journal Inquirer* did not constitute contributions or expenditures under

³ Contributions include any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value to any candidate or campaign committee in connection with a federal election. 2 U.S.C. § 441b(b)(2). In-kind contributions must be reported pursuant to 2 U.S.C. § 434(b). The corporate ban on contributions to federal candidates also includes in-kind contributions. 11 C.F.R. § 114.2(c).

14044351131

- 1 the Act. Accordingly, the Commission finds no reason to believe that Linda McMahon, Linda
- 2 McMahon for Senate 2012, and Sunghi Pak Frauen in her official capacity as treasurer violated
- 3 the Act or Commission regulations with respect to the allegations in this matter.

14044351132