

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR 7930

DATE COMPLAINT FILED: Oct. 12, 2021

DATE OF NOTIFICATION: Oct. 18, 2021

LAST RESPONSE RECEIVED: Nov. 3, 2021

DATE ACTIVATED: Feb. 10, 2022

EXPIRATION OF SOL: Jan. 4, 2026-ongoing

ELECTION CYCLE: 2022

COMPLAINANT:

Jordan Moskowitz

RESPONDENTS:

Minocqua Brewing Company SuperPAC and Kirk
Bangstad in his official capacity as treasurer
Minocqua Brewing Company LLC
Sarah Yacoub
Kirk Bangstad

**RELEVANT STATUTES AND
REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30116(f)

52 U.S.C. § 30118(a)

52 U.S.C. § 30122

52 U.S.C. § 30120(a)

11 C.F.R. § 104.4

11 C.F.R. § 109.20

11 C.F.R. § 109.23

11 C.F.R. § 110.4

11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint in this matter alleges that Minocqua Brewing Company LLC (“MBC”), Minocqua Brewing Company SuperPAC and Kirk Bangstad in his official capacity as treasurer (“MBC SuperPAC”), Bangstad in his personal capacity, and Sarah Yacoub, the Executive Director of MBC SuperPAC, violated the Federal Election Campaign Act of 1971, as amended

(the “Act”) in the following ways: 1) By advertising that 5% of MBC’s profits would be donated to the MBC SuperPAC, the Respondents acted as a conduit for unreported contributions from MBC patrons to MBC SuperPAC; 2) MBC SuperPAC violated the Act’s reporting requirements; 3) MBC SuperPAC failed to include a disclaimer on an email communication and MBC SuperPAC’s website; and 4) Bangstand and MBC illegally made contributions to Joe Biden’s 2020 presidential campaign committee by hanging a large “Biden Harris” banner on MBC’s building.

The Respondents deny they violated the Act. While MBC confirms its policy of giving 5% of its profits to MBC SuperPAC, it argues that sales of MBC products cannot constitute contributions to MBC SuperPAC.¹ Moreover, Respondents deny any substantial reporting violations² and argue that MBC SuperPAC did not violate the Act’s disclaimer requirements³ nor did MBC violate the ban on corporate contributions.⁴

It does not appear that any of these allegations warrant further Commission action. Even assuming that some of MBC’s customers should have been treated as contributors to MBC SuperPAC, it is doubtful that even a few, if any, of them would have met the itemization threshold for disclosure in reports filed with the Commission. We therefore recommend that the Commission dismiss the allegation that the Respondents violated 52 U.S.C. § 30122.⁵ Similarly, we recommend that the Commission exercise its prosecutorial discretion to dismiss the allegations that MBC SuperPAC violated 52 U.S.C. § 30104(b) by incorrectly reporting

¹ Resp. at 2-3 (Nov. 3, 2021).

² *Id.* at 3-4, 6.

³ *Id.* at 4-5.

⁴ *Id.* at 5.

⁵ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

contributions and expenditures and 52 U.S.C. § 30120 and 11 C.F.R. § 110.11(a)(1) by failing to include required disclaimers because of the low amounts at issue. Finally, we recommend that the Commission find no reason to believe that MBC and Bangstad made a prohibited in-kind contribution in violation of 52 U.S.C. § 30118(a) by displaying a “Biden Harris” sign.

II. FACTUAL BACKGROUND

MBC is a limited liability company registered in Wisconsin⁶ and Kirk Bangstad is its sole shareholder.⁷ Although official records are unclear, Bangstad appears to have publicly declared that MBC is a corporation.⁸ MBC SuperPAC is an independent expenditure-only political committee that registered with the Commission on January 3, 2021, and Bangstad is its treasurer.⁹ Sarah Yacoub is the Executive Director of MBC SuperPAC.¹⁰

The Complaint attaches a January 4, 2021 mass email from Bangstad explaining his rationale for founding MBC SuperPAC. In it, Bangstad says he created MBC SuperPAC in the wake of “the historically awful Supreme Court decision ‘Citizen’s United’” to use “dark money meant for good” to oppose Republican candidates at the state and federal level.¹¹ Specifically, this email criticizes the policy positions of U.S. Senator Ron Johnson and Congressman Tom Tiffany, as well as two Wisconsin state officeholders, and says that MBC SuperPAC will work

⁶ *Corporate Records*, WIS. DEP’T OF FIN. INSTS., <https://www.wdfr.org/apps/corpsearch/search.aspx> (last visited May 15, 2022) (search for “Minocqua Brewing Company”).

⁷ *See Resp.* at 1.

⁸ *See Compl.*, Attach. C (Oct. 12, 2021) (attaching email from Bangstad stating “[s]ince the Minocqua Brewing Company is a corporation . . .”).

⁹ Minocqua Brewing Company SuperPAC, Statement of Organization (Jan. 3, 2021); Minocqua Brewing Company SuperPAC, Amended Statement of Organization (Jan. 8, 2021).

¹⁰ *See Resp.* at 1.

¹¹ *Compl.*, Attach C.

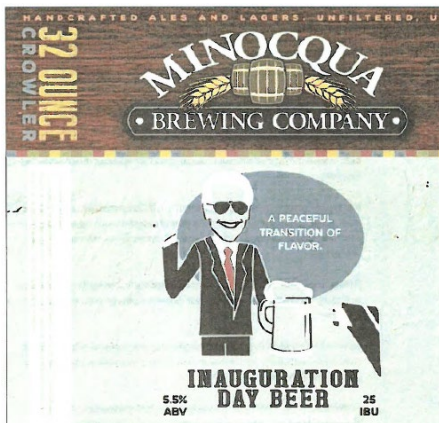
MUR 7930 (Minocqua Brewing Company SuperPAC, *et al.*)

First General Counsel's Report

Page 4 of 19

to oppose their reelection.¹² Bangstad further declares his commitment to donate 5% of MBC's profits to MBC SuperPAC.¹³ Bangstad ends the email by expressing his hope that other small business owners will publicly support Democratic candidates and providing a link to donate to MBC SuperPAC, accompanied by the statement, "[i]f you agree with me, please donate to Minocqua Brewing Company SuperPAC."¹⁴

In addition, the email embedded two images apparently showing MBC's support for 2020 Presidential candidate Joe Biden, including a cartoon of Biden drinking beer as well as a "Biden Harris" banner that appears to be on the side of MBC's building:¹⁵



The Complaint also attaches a Facebook post from MBC SuperPAC's account announcing Yacoub's appointment as Executive Director¹⁶ and what appears to be a donation

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* In an interview, Bangstad said he put up the sign with the help of a graphic designer. See Kathy Flanagan, *Giant Biden Campaign Sign Ignites Controversy for Minocqua Brewing Company Owner*, MILKWAUKEE J. SENTINEL (Oct. 7, 2020), <https://www.jsonline.com/story/entertainment/beer/2020/10/07/minocqua-brewing-co-owner-vows-keep-giant-joe-biden-sign-up/3637173001/>.

¹⁶ Compl., Attach. A.

- 1 page for MBC SuperPAC on MBC's website, which also has a picture of a billboard apparently
 2 paid for by MBC SuperPAC.¹⁷



- 3
 4 As of the date of this Report, MBC's website has a page labeled "Super PAC," which displays a
 5 similar graphic:¹⁸



It's time for small businesses to take a stand and stick their necks out. If you agree with me, please join us. With your help, we will make politics in the Northwoods look a little bit more like our lakes—clean and healthy.

**SUPPORT THE MINOCQUA BREWING COMPANY SUPERPAC BY
 CLICKING HERE**

¹⁷ Compl., Attach. B.

¹⁸ *Super PAC*, MINOCQUA BREWING CO., <https://minocquabrewingcompany.com/pages/super-pac> (last visited May 16, 2022).

MBC's business model appears to highlight its political affiliations, promoting itself with the hashtag #ProgressiveBeer. According to MBC's official website, Bangstad purchased MBC in 2016 but began to focus on politics shortly before MBC SuperPAC was created:

After the coronavirus shut down all restaurants in March, 2020, and the Trump administration failed to have a national plan to slow down [the] contagion and the restaurant industry suffered unnecessarily by having to limit[] capacity longer than necessary, Bangstad aired his frustrations by hanging a huge "Joe Biden for President" sign on his wall after having to lay off his entire restaurant staff. That stance alienated many conservatives in his area but endeared him to progressives around the country, leading him to decide to sell #ProgressiveBeer.¹⁹

MBC's website features beer named after politicians and political issues:²⁰

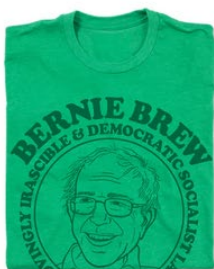


In addition, MBC appears to sell merchandise featuring both prominent politicians as well as issues.²¹

¹⁹ *About Us*, MINOCQUA BREWING CO., <https://minocquabrewingcompany.com/pages/about-us> (last visited May 16, 2022).

²⁰ MINOCQUA BREWING CO., <https://minocquabrewingcompany.com/> (last visited May 16, 2022).

²¹ *Get Merch*, MINOCQUA BREWING CO., <https://minocquabrewingcompany.shop/> (last visited May 16, 2022).



Bernie Brew T-Shirt
\$29.00



Love Is Love T-Shirt
\$29.00



Kamala T-Shirt
\$29.00



Coasters (Set of 4)
\$6.00

III. LEGAL ANALYSIS

A. The Commission Should Dismiss the Allegation that MBC Illegally Facilitated Conduit Contributions

A “[c]ontribution” is defined to include any gift of money or “anything of value” for the purpose of influencing a federal election.²² The Act prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.²³ The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or
- (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.²⁴

²² 52 U.S.C. § 30101(8)(A); 11 C.F.R. §§ 100.52(a), 100.111(a). “Expenditure” is likewise defined to include “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9).

²³ 52 U.S.C. § 30122.

²⁴ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

Both the Act and the Commission's implementing regulations provide that a person who furnishes another with funds for the purpose of contributing to a candidate or committee "makes" the resulting contribution.²⁵ Because the concern of the law is the true source from which a contribution to a candidate or committee originates, the Commission looks to the structure of the transaction itself and the arrangement between the parties to determine who in fact "made" a given contribution.

According to its website, MBC predates the MBC SuperPAC by several years, and it appears to operate as a legitimate commercial brewery.²⁶ MBC's corporate policy of donating 5% of its "profits" to support the MBC SuperPAC²⁷ appears to be legal because a corporation is permitted to use its treasury funds to make contributions to an independent expenditure-only political committee.²⁸ Thus, a customer's purchase of MBC's products alone, absent an indication that the customer sought to influence a federal election through the purchase, would not appear to result in a contribution by the customer as defined by the Act.²⁹

However, based on the Complaint's allegation that MBC SuperPAC failed to report its "digital expenditures" as independent expenditures,³⁰ we reviewed the Respondents' paid

²⁵ See *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011) (holding that to determine who made a contribution "we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee." (emphasis added)); *United States v. O'Donnell*, 608 F.3d 546, 550 (9th Cir. 2010) ("To identify the individual who has made the contribution, we must look past the intermediary's essentially ministerial role to the substance of the transaction."); *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) ("The Act prohibits the use of 'conduits' to circumvent . . . [the Act's reporting] restrictions." (quoting then-Section 441f)).

²⁶ See *supra* note 19 and accompanying text.

²⁷ Resp. at 2.

²⁸ See Advisory Opinion 2010-11 (Commonsense Ten) (analyzing federal court decisions on independent expenditures and concluding that corporations "may make unlimited contributions to organizations . . . that make only independent expenditures") (citing *Citizens United*, 130 S. Ct. at 913; *SpeechNow.org v. FEC*, 599 F.3d 686, 692-96 (D.C. Cir. 2010) (*en banc*)).

²⁹ 52 U.S.C. § 30101(8)(A).

³⁰ See Compl. ¶ 20.

political advertisements on the Facebook Ad Library³¹ and discovered that Bangstad solicited viewers to support the MBC SuperPAC by purchasing MBC's products. For example, in a number of advertisements, Bangstad appears to have solicited contributions to the MBC SuperPAC by providing links to purchase MBC beer and merchandise as reflected below:

How do you donate? The easiest way is to simply buy our beer or merchandise. 5% of the profits of everything you buy goes towards our Super PAC, including this effort.
<https://minocquabrewingcompany.com/pages/locations>
<https://minocquabrewingcompany.com/collections/all>³²

Consequently, MBC may have accepted contributions from customers through these solicitations.

Nevertheless, it is not a prudent use of Commission resources to pursue this allegation because MBC pledged only that 5% of its *profits* — and presumably something less than 5% of its gross revenue — would eventually be donated to MBC SuperPAC. Customers would have to spend thousands of dollars on MBC products just to exceed the \$200 itemization threshold for MBC SuperPAC.³³ In fact, in its Year-End Report for 2021, MBC SuperPAC reported a contribution of \$2,486.20 from MBC with a memo entry “proceeds from sales,” which appears to be MBC's pledged contribution.³⁴ Thus, to meet the itemization threshold, a potential contributor would have had to account for over 8% of MBC's entire business for the year.³⁵ We therefore recommend that the Commission exercise its prosecutorial discretion to dismiss the

³¹ FACEBOOK AD LIBRARY, <https://www.facebook.com/ads/library/> (last visited May 16, 2022).

³² See, e.g., Facebook Advertisement ID 857716591536218, Minocqua Brewing Company (active July 19, 2021-July 23, 2021); Facebook Advertisement ID 733267274738922, Minocqua Brewing Company (active Aug. 5, 2021-Aug. 10, 2021).

³³ See 52 U.S.C. § 30104(b)(3)(A) (stating that political committees are required to provide certain identifying information about persons whose contributions have an aggregate value in excess of \$200 within the calendar year).

³⁴ See Minocqua Brewing Company SuperPAC, Amended 2021 Year-End Report at 360 (April 15, 2022).

³⁵ \$200 represents 8.04% of \$2,486.20.

allegation that Respondents violated 52 U.S.C. § 30122 by effecting a contribution in the name of another.³⁶

B. The Commission Should Dismiss the Allegation that MBC SuperPAC Violated the Act's Reporting Requirements

1. Contributions from MBC

Political committees must file reports disclosing receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104(b). The Complaint alleges that, except for an upfront contribution of \$1,000, “MBC SuperPAC failed to disclose any transfer of 5% of profits” from MBC.³⁷ In its Response, MBC SuperPAC argues that it did not disclose any such profits because MBC intends to make them “at the end of fiscal year 2021, and the contributions will be reported in the appropriate 2022 report.”³⁸ There is nothing in the record to cast doubt on the explanation that MBC had not made significant contributions to MBC SuperPAC prior to its year-end contribution.

The Complaint also alleges that MBC SuperPAC failed to report an in-kind contribution from MBC for the use of its corporate resources in creating and disseminating the January 4, 2021 email, as well as developing MBC SuperPAC's website and “other expenditures.” The Response concedes that it should have reported an in-kind contribution related to using MBC's email list and reported the list as a \$3,000 in-kind contribution in its Amended 2021 Mid-Year Report.³⁹ With regard to the other allegations about MBC SuperPAC's website and possible

³⁶ See *Heckler*, 470 U.S. 821.

³⁷ Compl. at 1.

³⁸ Resp. at 3. As referenced above, MBC SuperPAC has since reported a contribution of \$2,486.20 from MBC dated December 16, 2021 — two months after the Complaint in this matter was filed.

³⁹ *Id.* at 5; Minocqua Brewing Company SuperPAC, Amended 2021 Mid-Year Report at 172 (April 15, 2022).

other expenditures, there is not enough information in the record to conclude that any unreported corporate resources MBC may have expended on behalf of the SuperPAC were significant. Although MBC promotes MBC SuperPAC on its website, MBC SuperPAC reported a \$1,000 contribution from MBC shortly after its founding,⁴⁰ which could encompass that expense. Even if it did not, however, it appears that MBC SuperPAC occupies only a single page on MBC's website and the content of that website focuses primarily on MBC beer and merchandise. As such, the proportion of MBC's website spending that could reasonably be considered a contribution to MBC SuperPAC would be low. Given both the uncertainty and the relatively low amount in violation, it does not appear that this allegation merits the expenditure of further Commission resources. Accordingly, we recommend that the Commission exercise its prosecutorial discretion to dismiss the allegation that MBC SuperPAC failed to report contributions from MBC.⁴¹

2. Independent Expenditures

The Act requires a political committee to report its independent expenditures ("IEs").⁴² An IE is an expenditure "for a communication expressly advocating the election or defeat of a clearly identified candidate" that is not coordinated with the candidate or the candidate's committee.⁴³ Under Commission regulations at 11 C.F.R. § 100.22, the term "expressly advocating" means any communication that: (1) uses phrases or words such as "vote for,"

⁴⁰ Minocqua Brewing Company SuperPAC, Amended 2021 Mid-Year Report at 172 (April 15, 2022).

⁴¹ *See Heckler*, 470 U.S. 821.

⁴² 52 U.S.C. § 30104(b)(4)(H)(iii) (regarding regularly scheduled reports); *id.* § 30104(g)(2) (regarding reporting within 48 hours of making \$10,000 worth of IEs, referred to as "48-Hour Reports"); 11 C.F.R. §§ 104.3(b)(1)(vii), 104.4(b)(2).

⁴³ 11 C.F.R. § 100.16(a) (providing definition of independent expenditure); *see also* 52 U.S.C. § 30101(17) (same).

“elect,” “defeat,” etc., “which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s);” or (2) “[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s).”⁴⁴

The Complaint alleges that MBC SuperPAC failed to properly report Bangstad’s January 4, 2021 email as an independent expenditure and that it failed to report its disbursements for digital advertising, billboards, media production, and other forms of advertising as IEs or direct contributions to candidates.⁴⁵ Respondents contend that none of the challenged communications contained express advocacy.⁴⁶ As discussed below, although some of the communications in question do appear to expressly advocate the election or defeat of a federal candidate, we do not believe that the dollar value of such communications warrant Commission action.

In the January 4, 2021 email, Bangstad is critical of two clearly identified federal candidates, Ron Johnson and Tom Tiffany; states MBC SuperPAC’s intent to “defeat these people in 2022”; describes a plan to “target” Republicans “up for election,” specifically at the “federal level”;⁴⁷ and requests contributions to the SuperPAC to help defeat those candidates.⁴⁸ Considering the email’s expressed desire to defeat two clearly identified federal candidates and

⁴⁴ 11 C.F.R. § 100.22(a)-(b).

⁴⁵ Compl. at 2.

⁴⁶ Resp. at 3-4.

⁴⁷ Compl., Attach C. (“Since the Minocqua Brewing Company is a corporation, and since I think my Republican representation in the Northwoods is poisonous for the people that live here, I’m creating a SuperPAC to help defeat these people in 2022. The Republicans up for election at the state and federal level that we will target with our ‘dark money meant for good’ is Ron Johnson, Tom Tiffany, and Rob Swearingen. Mary Felzkowski is not up for reelection in 2022.”).

⁴⁸ *Id.* (“If you agree with me, please donate to the Minocqua Brewing Company SuperPAC. With your help, we will make politics in the Northwoods look a little bit more like our lakes — clean and healthy.”).

request for monetary support to further that goal, the email contains express advocacy under at least section 100.22(b) because reasonable minds could not differ as to whether the email “encourages actions to elect or defeat one or more clearly identified candidate(s).”⁴⁹ Moreover, the email uses words such as “defeat,” “target,” and “up for election,” that in context have no other reasonable meaning than to urge the election or defeat of the specified candidates under 100.22(a). Nonetheless, the cost to send the email was likely low,⁵⁰ other than the value of the corporate mailing list, which has been reported as an in-kind contribution.⁵¹ We therefore do not believe that additional action would be an efficient use of Commission resources.

In addition, MBC SuperPAC paid to erect the following billboard advertisement:



This advertisement also contains pictures of two federal candidates, Senator Johnson and Congressman Tiffany, as well as a flag from what appears to be Donald Trump’s 2020

⁴⁹ 11 C.F.R. § 100.22(b)(2); *see* Factual & Legal Analysis (“F&LA”) at 6-9,

see also F&LA at 14, MUR 5752 (Environment2004, Inc.) (finding that solicitations contained express advocacy under section 100.22(a) because they urged support a candidate’s election through “through voting, campaigning, or contributing.”).

⁵⁰ *See* Internet Communications, 71 Fed. Reg. 18,589, 18,594-95 (Apr. 12, 2006) (recognizing that “there is virtually no cost associated with sending e-mail communications, even thousands of e-mails to thousands of recipients”).

⁵¹ *See supra* note 39 and accompanying text.

1 presidential campaign. Although the advertisement, including the tagline “NO UNITY UNTIL
 2 THESE GUYS STOP LYING,” does not exhort the reader to vote for or against either of the
 3 pictured candidates, it appears to criticize the character of Johnson and Tiffany, *i.e.* implying that
 4 they have a propensity to lie, and the Commission has stated that communications that comment
 5 on a candidate’s character, qualifications, or accomplishments are express advocacy under
 6 section 100.22(b) “if, in context, they have no other reasonable meaning than to encourage
 7 actions to elect or defeat the candidate in question.” However, Johnson and Tiffany were also
 8 federal officeholders at the time this advertisement was placed, and the advertisement makes no
 9 mention of their status as candidates. Thus, it is unclear as to whether the advertisement is
 10 campaign-related or is seeking legislative action from these elected officials on a particular issue.
 11 Therefore, this advertisement does not contain express advocacy under section 100.22 and is not
 12 an IE.

13 The Facebook Ad Library shows that MBC’s account spent \$37,454 on digital
 14 advertisements about “social issues, elections, or politics,”⁵² which include numerous updates on
 15 and solicitations for MBC SuperPAC. Most of the ads do not contain express advocacy.⁵³ But
 16 we identified 23 ads that contain references to clearly identified candidates, and we identified a
 17 number of advertisements that could be interpreted to expressly advocate the defeat of Senator
 18 Johnson and Congressman Tiffany.⁵⁴ However, each of these advertisements cost less than \$599

⁵² FACEBOOK AD LIBRARY, <https://www.facebook.com/ads/library> (last visited May 16, 2022) (search “Minocqua Brewing Company”).

⁵³ Several ads appear to endorse non-federal candidates, while many others focus exclusively on issues such as environmental conservation and the covid-19 pandemic.

⁵⁴ *See, e.g.*, Facebook Advertisement ID 153513240229370, Minocqua Brewing Company (active Aug. 4, 2021-Aug. 8, 2021) (“I’m going to re-dedicate the Minocqua Brewing Company to make traitors Ron Johnson and Tom Tiffany pay dearly at the ballot box in 2022”); Facebook Advertisement ID 870616863865490, Minocqua Brewing Company (active June 20, 2021-June 23, 2021) (“We will continue to think big and believe that we can

1 to run and the total spent on all ads with any reference to a federal candidate is somewhere
 2 between \$7,800 and \$10,077. Thus, it does not appear to be a prudent use of the Commission's
 3 limited resources to analyze whether each of the 23 advertisements were IEs.

4 In sum, because of the relatively low dollar value of the communications in question, we
 5 recommend that the Commission exercise its prosecutorial discretion and dismiss the allegation
 6 that MBC SuperPAC violated 52 U.S.C. § 30104(b)(4)(H)(iii) or (g)(2) by failing to report IEs.⁵⁵

7 3. Accuracy of Filings

8 Finally, the Complaint alleges generally that as treasurer, Bangstad "failed to use best
 9 efforts to maintain and report accurate records."⁵⁶ It appears that MBC SuperPAC failed to add
 10 sufficiently specific purpose descriptions for some of its expenditures,⁵⁷ and the Commission's
 11 Reports Analysis Division ("RAD") therefore issued a Request for Further Information to MBC
 12 SuperPAC.⁵⁸ MBC SuperPAC responded with an amended report addressing those issues within
 13 a few weeks,⁵⁹

14 The Complaint does not specifically allege any other

make politics in Northern Wisconsin less corrupt by ridding ourselves of the small and cynical Tom Tiffany and Ron Johnson . . .").

⁵⁵ See *Heckler*, 470 U.S. 821.

⁵⁶ Compl. at 3. The term "best efforts" is used in Commission regulations as a defense to incomplete filings. See 11 C.F.R. § 104.7. Because it does not appear that MBC SuperPAC's filings contained any material omissions or errors, it is not necessary to determine whether Bangstad used "best efforts."

⁵⁷ See 52 U.S.C. § 30104(b)(5)(A); 11 C.F.R. § 104.3(b)(3)(i) (explaining that purpose means "a brief statement or description of why the disbursement was made" and giving examples of adequate and inadequate purpose statements).

⁵⁸ Minocqua Brewing Company SuperPAC, RFAI: 2021 Year-End Report (Mar. 29, 2022).

⁵⁹ Minocqua Brewing Company SuperPAC, Amended 2021 Year-End Report (Apr. 15, 2022).

1 substantial reporting violations, and we did not find any that would warrant the use of further
 2 Commission resources. As such, we recommend that the Commission dismiss the allegation that
 3 MBC SuperPAC failed to accurately report its disbursements in violation of 52 U.S.C.
 4 § 30104(b)(5).⁶¹

5 **C. The Commission Should Dismiss the Allegation that MBC SuperPAC Failed**
 6 **to Include Required Disclaimers**

7 The Act and Commission regulations provide that political committees must identify
 8 themselves through disclaimers on all of their political advertising, on their websites, and in
 9 emails of more than 500 substantially similar communications.⁶² The Complaint alleges that
 10 MBC SuperPAC violated this requirement by failing to include disclaimers on Bangstad's
 11 January 4, 2021 email and the donation portal on MBC's website.⁶³ The Response argues that
 12 no disclaimer was required because the email was not a public communication and MBC
 13 SuperPAC did not pay MBC for use of its website.⁶⁴

14 It appears, however, that MBC SuperPAC may have failed to include required
 15 disclaimers in both the email and on the website. While the Response argues that neither
 16 constitute "public communications" as defined by Commission regulations, there is a separate
 17 requirement for political committees like MBC SuperPAC to include disclaimers on mass emails
 18 and official websites.⁶⁵ Nonetheless, it does not appear that this allegation warrants further
 19 Commission action. Both the email and the website refer to MBC SuperPAC in numerous

⁶¹ See *Heckler*, 470 U.S. 821; *see, e.g.*, F&LA, MUR 7293 (Zinke for Congress, *et al.*) (dismissing reporting allegations with low amount in violation that were corrected by the committee).

⁶² See 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(1).

⁶³ Compl. ¶¶ 15, 16.

⁶⁴ Resp. at 4-5.

⁶⁵ 11 C.F.R. § 110.11(a)(1). MBC SuperPAC does not have its own website and instead occupies a page on MBC's website.

places, and the likelihood of public confusion is small.⁶⁶ Accordingly, we recommend that the Commission dismiss this allegation.⁶⁷

D. The Commission Should Find No Reason to Believe that MBC and Bangstad Made Prohibited Corporate Contributions

The Act and Commission regulations prohibit any corporation from making contributions to a candidate's principal campaign committee.⁶⁸ A "[c]ontribution" is defined to include any gift of money or "anything of value" for the purpose of influencing a federal election.⁶⁹ Under Commission regulations, expenditures that are coordinated with a candidate, but are neither a coordinated communication nor a party coordinated communication, are in-kind contributions to that candidate.⁷⁰ Coordinated means "means made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee."⁷¹

The Complaint alleges that MBC and Bangstad violated the Act's prohibition on corporate contributions by hanging what appears to be an official "Biden Harris" sign on the side of MBC's building, likening it to a "billboard."⁷² There is, however, no indication that this

⁶⁶ See, e.g., F&LA at 5-6, MUR 7039 (Sanders 2016, *et al.*) (dismissing alleged disclaimer violation where there was information sufficient to demonstrate that Sanders's committee had authorized the ad). Our review of the Facebook Ad Library suggests that MBC SuperPAC may have failed to include disclaimers on these ads as well. Like the website and email, however, the ads refer to MBC and MBC SuperPAC in multiple places and the risk of public confusion was very small. Accordingly, we do not believe further action would be a prudent use of Commission resources.

⁶⁷ See *Heckler*, 470 U.S. 821.

⁶⁸ 52 U.S.C. § 30118(a).

⁶⁹ *Id.* § 30101(8)(A); 11 C.F.R. §§ 100.52(a), 100.111(a). "Expenditure" is likewise defined to include "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(9).

⁷⁰ 11 C.F.R. § 109.20(b).

⁷¹ *Id.* § 109.20(a).

⁷² Compl. at 2.

1 action was coordinated with any candidate or that MBC typically used its building as advertising
2 space. For these reasons, we recommend that the Commission find no reason to believe that
3 MBC or Bangstad violated 52 U.S.C. § 30118(a) by making prohibited in-kind contributions.

4 **IV. RECOMMENDATIONS**

- 5 1. Dismiss the allegation that Minocqua Brewing Company SuperPAC and Kirk
6 Bangstad in his official capacity as treasurer, Minocqua Brewing Company LLC,
7 Sarah Yacoub, or Kirk Bangstad violated 52 U.S.C. § 30122 by effecting a
8 contribution in the name of another;
- 9 2. Dismiss the allegation that Minocqua Brewing Company SuperPAC and Kirk
10 Bangstad in his official capacity as treasurer violated 52 U.S.C. § 30104(b) by
11 failing to accurately report contributions and expenditures;
- 12 3. Dismiss the allegation that Minocqua Brewing Company SuperPAC and Kirk
13 Bangstad in his official capacity as treasurer violated 52 U.S.C.
14 § 30104(b)(6)(B)(iii), (g) by failing to report independent expenditures;
- 15 4. Dismiss the allegation that Minocqua Brewing Company SuperPAC and Kirk
16 Bangstad in his official capacity as treasurer violated 52 U.S.C. § 30120 and
17 11 C.F.R. § 110.11 by failing to include required disclaimers;
- 18 5. Find no reason to believe that Minocqua Brewing Company LLC and Kirk
19 Bangstad violated 52 U.S.C. § 30118(a) by making prohibited in-kind
20 contributions;
- 21 6. Approve the attached Factual and Legal Analysis;
- 22 7. Approve the appropriate letters; and
- 23 8. Close the file.

24
25 Lisa J. Stevenson
26 Acting General Counsel
27

28
29 Charles Kitcher
30 Associate General Counsel
31 for Enforcement

May 17, 2022

Date

Jin Lee

Jin Lee

Deputy Associate General Counsel

Peter J. Blumberg

Peter Blumberg

Assistant General Counsel

Amanda Andrade

Amanda Andrade

Attorney