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**FEDERAL ELECTION COMMISSION**  
999 E Street, NW  
Washington, D.C. 20463

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**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

MUR: 5479

DATE COMPLAINT FILED: July 9, 2004

DATE OF NOTIFICATION: August 9, 2004

DATE ACTIVATED: December 8, 2004

EXPIRATION OF STATUTE OF LIMITATIONS:  
April 27, 2009

COMPLAINANT: Todd W. Singer

RESPONDENTS: Friends of Wortman for Congress and Hedin E.  
Daubenspeck, in his official capacity as treasurer  
Wortman Central Air Conditioning Company

RELEVANT STATUTES  
AND REGULATIONS:

2 U.S.C. § 434(b)  
2 U.S.C. § 441b(a)  
2 U.S.C. § 441d(a)(1)  
11 C.F.R. § 100.52(d)(1)  
11 C.F.R. § 110.10(a)  
11 C.F.R. § 110.11(a)  
11 C.F.R. § 114.9(d)

INTERNAL REPORTS CHECKED: Federal Disclosure Reports

FEDERAL AGENCIES CHECKED: None

**I. INTRODUCTION**

The issues presented in this matter are whether the Wortman Central Air Conditioning Company (the "Company") made prohibited corporate contributions to Friends of Wortman for Congress and Hedin E. Daubenspeck, in his official capacity as treasurer (the "Committee"), and the Committee knowingly accepted them, and whether the Committee's website included the requisite disclaimers. As discussed in more detail below, this Office recommends that the Commission take

no action with respect to alleged violations of 2 U.S.C. § 441b(a) by the Committee and the Company. This Office also recommends that the Commission find reason to believe that the Committee violated both 2 U.S.C. § 434(b) by failing accurately to report an in-kind contribution from candidate William Wortman, and 2 U.S.C. § 441d(a)(1) by failing to include the required disclaimer on its website. Finally, this Office recommends that the Commission admonish the Committee, take no further action, and close the file as to all of the respondents.

## **II. FACTUAL AND LEGAL ANALYSIS**

The complaint alleges that the Committee illegally used the corporate assets of the Company to benefit the campaign.<sup>1</sup> Specifically, the complaint first alleges that the Committee committed a knowing and willful violation of the Act by using the Company's corporate building as its campaign headquarters, and displaying and distributing its campaign materials at that location. The response, submitted by the candidate and the Committee's treasurer, does not deny the campaign and the Company used the same building, but asserts that Mr. Wortman personally owns the land and building at 1612 E [sic] 6<sup>th</sup> Street, Tulsa, Oklahoma, in which both the Company and the campaign office were located. The response further maintains that the campaign used 100 square feet of space in the Company's building, that Mr. Wortman discounted the rent for this space to \$500 and that the Committee amended its disclosure reports to reflect this arrangement.

County property records corroborate the response's assertion that Mr. Wortman personally owns the Company's building. Therefore, the Committee did not accept a corporate contribution when it used the space. Furthermore, the candidate, who is legally permitted to make unlimited expenditures from his personal funds, *see* 11 C.F.R. § 110.10(a), could make an in-kind

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<sup>1</sup> The complaint notes that 2 U.S.C. § 441b(a) prohibits corporate contributions, but also relies on 2 U.S.C. § 441i(e), the "soft money" provision of the Federal Election Act of 1971, as amended ("the Act"), as additionally prohibiting corporate contributions. Since the latter provision is not applicable to the circumstances alleged, we do not address it further in this Report.

1 contribution of discounted rent to his campaign. *See* Advisory Opinion 1995-8 (candidate may  
2 make in-kind contribution to his campaign consisting of rental of building owned by him at below  
3 the usual and normal rental charge).

4 It appears, however, that the Committee's reporting of its rental payment is incorrect. On its  
5 amended 12-Day Pre-Primary report, the Committee reported a \$500 disbursement, which it mis-  
6 reported as "in-kind," to the candidate on July 7, 2004, but failed to report as an in-kind  
7 contribution from the candidate "the difference between the usual and normal charge for the goods  
8 or services [including "facilities"] at the time of the contribution and the amount charged the  
9 political committee," 11 C.F.R. § 100.52(d)(1), or the non-discounted portion of the rent.  
10 Therefore, this Office recommends that the Commission find reason to believe that Friends of  
11 Wortman for Congress and Hedin E. Daubenspeck, in his official capacity as treasurer, violated  
12 2 U.S.C. § 434(b). Given the Commission's limited resources and the likely *de minimis* amount of  
13 the reporting violation, however, this Office recommends taking no further action with respect to  
14 this apparent violation other than sending the Committee an admonishment letter.

15 The complaint further alleges that the Committee illegally used the Company logo as its  
16 campaign logo. The response disputes this, noting that the logo used by the Committee was  
17 redesigned. The common element between the two logos is the name "Wortman." *See* Attachment  
18 1. This is not surprising since Mr. Wortman is the owner of the Company in the one instance and  
19 the candidate in the other. The corporate logo has no distinctive symbol. With respect to the  
20 appearance of the name "Wortman," in both logos, it appears in light print against a dark  
21 background. As compared to the Company logo, the letters in the campaign logo appear larger,  
22 slightly less slanted and closer together, and the "W" appears to be larger in contrast to the rest of  
23 the letters. There has been no allegation that the Company's logo or the name "Wortman"

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1 have been trademarked, and there appears to have been some attempt by the campaign to  
2 differentiate the common item in both logos. Under these circumstances, it does not appear that  
3 further pursuit of this issue is warranted. *Compare* MUR 4340 (TWEEZERMAN) (Commission  
4 found reason to believe that candidate's company made corporate contributions to his campaign  
5 committee where "TWEEZERMAN," the candidate's nickname and the name of his corporation,  
6 was a registered trademark and the campaign, *inter alia*, ran advertisements such as  
7 "TWEEZERMAN for Congress").

8 Finally, the complaint alleges that the Committee benefited from illegal corporate  
9 contributions by using the Company's telephone and facsimile numbers. The response maintains  
10 that the Committee issued a disbursement on July 8, 2004 for \$300 to reimburse the Company for  
11 the use of its telephone and facsimile machine, and that the Committee's October Quarterly Report  
12 would be amended to reflect the reimbursement. A \$300 disbursement to the Company for "rent,"  
13 presumably indicating that the Committee rented the telephone and facsimile machine from the  
14 Company, is listed on the Committee's amended October Quarterly Report, filed October 12, 2004.

15 Pursuant to 11 C.F.R. § 114.9(d), non-corporate employees may use corporate facilities such  
16 as telephones, typewriters, or office furniture in connection with a federal election, assuming that  
17 the corporation is reimbursed the normal and usual rental charge in a commercially reasonable  
18 period of time. *See* Advisory Opinion 1984-24 ("... section 114.9... applies [] to the use of  
19 corporate facilities by... candidates and their committees for activity in connection with a Federal  
20 election"). We do not know whether the Committee reimbursed the Company in a "commercially  
21 reasonable time" or whether the reimbursement was "in the amount of the normal and usual rental  
22 charge," as required by 11 C.F.R. § 114.9(d). If these conditions were not met, the Company may  
23 have made an impermissible corporate in-kind contribution that was accepted by the Committee.

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1 However, given the likely low amount of money in possible violation, and the absence of a specific  
2 allegation concerning these issues, it would not be a worthwhile use of the Commission's limited  
3 resources to investigate them. Accordingly, this Office recommends that the Commission take no  
4 action with respect to allegations that Friends of Wortman for Congress and Hedin E.  
5 Daubenspeck, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a), or that the Wortman  
6 Central Air Conditioning Company violated 2 U.S.C. § 441b(a).

7 In addition to the illegal corporate contribution allegations, the complaint alleges that the  
8 Committee's website did not contain the required "Paid for" disclaimer. An Internet website that is  
9 paid for by a candidate's authorized committee and that expressly advocates the candidate's  
10 election or solicits donations must include a disclaimer stating that the committee paid for the  
11 website. 2 U.S.C. § 441d(a)(1); 11 C.F.R. § 110.11(a). The complaint attached a copy of the  
12 Committee's website, which contains express advocacy, but did not include a disclaimer. This  
13 document was also provided to the respondents, but the response did not address the missing  
14 disclaimer issue. Therefore, this Office recommends that the Commission find reason to believe  
15 that Friends of Wortman for Congress and Hedin E. Daubenspeck, in his official capacity as  
16 treasurer, violated 2 U.S.C. § 441d(a). However, given that the allegation appears to be limited to  
17 the Committee's website—other Committee materials provided by complainant contained the  
18 requisite disclaimer—and to conserve Commission resources, this Office recommends that the  
19 Commission admonish Friends of Wortman for Congress and Hedin E. Daubenspeck, in his  
20 official capacity as treasurer, but take no further action.<sup>2</sup> Compare MUR 5158 (Brady) (where,  
21 among several other violations, respondents sponsored two websites containing incomplete

<sup>2</sup> The complaint also cited the alleged absence in a solicitation by the Wortman campaign of disclaimers stating that it would use its "best efforts" to obtain contributors' names, addresses, names of employers, and the like, and that contributions are not tax deductible for federal income tax purposes. Section 441d, however, does not require that disclaimers contain such information.

disclaimers, a website containing no disclaimer, and a television commercial containing no disclaimer.

**III. RECOMMENDATIONS**

1. Take no action with respect to allegations that Wortman for Congress and Hedin E. Daubenspeck, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a).
2. Take no action with respect to allegations that the Wortman Central Air Conditioning Company violated 2 U.S.C. § 441b(a).
3. Find reason to believe Wortman for Congress and Hedin E. Daubenspeck, in his official capacity as treasurer, violated 2 U.S.C. § 434(b), take no further action and send an admonishment letter.
4. Find reason to believe Wortman for Congress and Hedin E. Daubenspeck, in his official capacity as treasurer, violated 2 U.S.C. § 441d(a)(1), take no further action and send an admonishment letter.
5. Close the file.
6. Approve the appropriate letters.

Lawrence H. Norton  
General Counsel

Rhonda J. Vosdigh  
Associate General Counsel  
for Enforcement

3/4/05

Date

BY:

Susan L. Lebeaux  
Susan L. Lebeaux  
Assistant General Counsel

Ruth Heilizer  
Ruth Heilizer  
Attorney

Attachment 1: Logos of Wortman Company and Wortman campaign

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“ENGINEERING MAKES THE DIFFERENCE”

918-584-4721  
FAX 918-584-4723

**Wortman**

**CENTRAL AIR CONDITIONING CO.**

1612 EAST 6th STREET • TULSA, OKLAHOMA 74120-4098

RESIDENTIAL AND SMALL COMMERCIAL INSTALLATION • CITY WIDE SERVICE



**Wortman**  
CONGRESS

Republican For Congress