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December 18, 2009

Thomasenia P. Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

AOR 2009-32

Dear Ms. Duncan:

I am writing to your offices in request of an Advisory Opinion. Allow me to outline my proposal.

Proposal:

I conduct a web-based business selling various products. I operate my business as a sole proprietor. At some time in the future, some consideration has been given to forming an LLC.

Products that I offer for sale include a print of an artist's pencil sketch of President Obama. I also have marketing rights to another print by the same artist. That print depicts President Obama and Secretary of State Hillary Clinton superimposed on the Declaration of Independence. I would like to offer my services to campaign committees or general party committees (for example, to Members of Congress or The Democratic National Committee...DNC) whereby these products are shown to recipients in the email database that is property of that particular committee. Essentially, I write the email copy that, for all practical purposes, is written in a manner that looks like it is being sent by the committee and that email is forwarded to the email database the candidate has on file. This contemporary business model is oftentimes referred to as an "affiliate email marketing program". As sales of the product are made, the committee makes a profit based on sales minus expenses.

Outline of mechanics of an "affiliate email marketing program":

I propose to offer my products and services to a committee for their fundraising. The contemporary affiliate email marketing approach is the core of my business model.

The following summary outlines the steps taken for this business model.

1. The products listed for sale are detailed on my web site. It is understood that anyone can go to the web site and purchase these items. My web site can be viewed at: www.mydestinies.com.
2. To promote traffic to my web site and increase the potential for sales, organizations with large email databases are contacted directly.
3. I first contact a committee and outline my proposal to that committee.
4. I propose to that committee that I will write an email that promotes the products mentioned above for soliciting funds for their treasury and/or campaigns. The email copy is written as if it comes directly from the committee and not from an outside source. This reduces the possibility of rejection of the email by JUNK MAIL or SPAM filters.
5. A fee for service will be charged to each committee for writing their email copy.
6. The email can be worded whatever way the committee prefers. The committee has final say on the context. The objective is to make the recipient want to look at the body of the email because it comes from a sender they are familiar with and/or have supported in the past.
7. The committee simply forwards this email to the recipients listed in their database.
8. Within the body of the email is the committee's plea to the recipient that they purchase the product offered for fundraising for that committee.
9. The email will have images of the products for sale inserted in the copy. Each image will have an active link associated with it that directs the recipient to the specific page on my web site that allows one to order the product.
10. It is important to note here that the link to that product page will have a "unique ID tag" as part of that active link. No other committee will have that same tag. The ID tag consists of a random set of letters generated by the YaHoo Stores checkout service associated with my web site.
11. The ID tag allows for data collection for all activity associated with the email recipients from the specific committee. The data collected and available to the committee includes:
 - a. Number of hits by their recipients
 - b. Sales (dollars generated)
 - c. Analysis of sales success rates for multiple products offered
 - d. Name of donor
 - e. Address of donor
12. When a sale is generated, the donor (customer) is directed to the checkout page (market basket) for the store at the web site. This store (mentioned above) is part of the YaHoo Small Business Services that my web site utilizes. It is a certified store and is secure by all standards of today's electronic business world.
13. The customer makes payment via Pay Pal Pro, the payment processor utilized by my web site. Pay Pal and Pay Pal Pro are recognized as secure sites and are gold standards for the industry.
14. All orders are checked by me both for accuracy and to guard against fraudulent use. Pay Pal Pro first validates credit cards.
15. The committee will receive data on the donor (name and address). Donors with orders in excess of the \$200 limit will be asked to provide information about their occupation and place of employment.
16. The committee has real time access to the data (listed in #11 above). They are provided a "tracking link" that contains their unique ID tag that points them to their data page. The ID tag in the tracking link is the same random set of letters generated by YaHoo. Committees will have access to their data only and will not be able to access data for any other committee.

17. A separate bank account for each committee that participates will be utilized. Money collected from sales for a particular committee will be drafted from Pay Pal Pro to that account and all funds will reconcile with the data shown at the YaHoo Store for that committee.
18. Payments will be made from that account to cover the following expenses:
 - a. Cost of goods sold from the artist's inventory
 - b. Cost of shipping and handling
 - c. My commission
 - d. Costs associated with fee per transaction imposed by Pay Pal Pro
19. The committee will retain the balance as their profit.
20. It should be noted that the committee does not have a requirement to inventory products. The artist maintains an inventory of products for other outlets as well and ships the product to the donor as sales are made.
21. It is agreed between the committee and me that the email campaign be conducted at least two times during a 30-day period. Repeat emails have a higher sales success rate.

Description of merchandise offered:

I currently offer two products to political committees for customers to choose from. They are high quality prints of an artist's original artwork. Steps are currently in place to produce paintings (and thus prints that follow) of other distinguished political figures from another major political party and allow participation by more committees.

The first print depicts President Obama looking to the 2008 election. This beautiful print of President Barack Obama has quite a résumé already. The original was composed in May of 2008. A month later, on the day following his historic nomination, the then Senator Barack Obama signed the original painting. Shortly thereafter, on June 25, 2008 the painting was shown at the G.R.N'Namdi and Rush Art Galleries in New York City. At that art opening, the artist was offered \$50,000 for the original. It was not for sale. The print of the President does not bear the President's signature.

The second print depicts President Barack Obama standing with Secretary of State Hillary Clinton. They are superimposed over The Declaration of Independence.

The actual prints you see below measure 12 inches by 24 inches. They come shipped in a sturdy mailing tube. Both prints are made on acid free paper and are ideal for framing. The price for either print is \$49.95 (plus \$5 S&H).

The prints are:



Payment Processor (Pay Pal Pro):

The payment processor for all orders is through Pay Pal Pro. This service collects payment via either regular Pay Pal or through a customer's credit card of choice. A certain percentage of the sale is automatically deducted from the amount collected to cover the Pay Pal fee for service. The amount that Pay Pal charges is based on sales volume.

How Funds are Handled:

The funds collected by this Pay Pal service are always available. The exact amounts due each affiliate (committee) are outlined in the detailed report that the YaHoo Store provides based on the unique affiliate ID Tag assigned to every committee.

Funds are delivered to a separate account for each committee. Unless otherwise directed, funds will be moved from the Pay Pal Pro payment processor to the committee account every two weeks. All reports and funds will be sent to the committee in time for the filing schedule(s) required by law.

Distribution of Expenses and Fulfillment of all Transactions:

Expenses for the artist's inventory, costs for Shipping and Handling and the fees for my services will be made from that account and forwarded to the proper parties. The committee will retain the balance. As funds are delivered to the committee's general account of record, a full disclosure of all contributors with respect to name and address will be given to that committee treasurer. YaHoo Stores provides an Excel Spreadsheet for the export of data to the affiliate (committee).

In the event that a customer's order reaches the \$200 aggregate level, no sale will be complete without the collection of the customer's data pertaining to their occupation and place of employment.

All requirements for State and Federal Tax Laws will be strictly adhered to. This includes timely filings and submission of forms as required by law.

I ask again that you consider this proposal for an Advisory Opinion.

Thank you again for your assistance. I await your decision and/or reply.

Sincerely,

R. L. Jorgensen, DDS

Richard L. Jorgensen, DDS