




FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission
Staff Director
General Counsel
Press Office
Public Disclosure

FROM: Commission Secretary 

DATE: May 24, 2012

SUBJECT: Comments on Draft AO 2012-17
(Red Blue T LLC, Armour Media, Inc.,
and m-Qube, Inc.)

Transmitted herewith is a timely submitted comment from David M. Mason on behalf of Aristotle International.

Draft Advisory Opinion 2012-17 is on the May 24, 2012 open meeting agenda.

Attachment

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May 24, 2012

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Caroline C. Hunter
Chair
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: Comment on AOR 2012-17 (Red Blue T, Armour Media, and m-Qubc) Drafts
By fax: (202) 208-3333, (202) 219-3923

Dear Madam Chair:

This comment is submitted on behalf of Aristotle International, in support of Draft B of Advisory Opinion 2012-17.

Aristotle is a leading provider of fundraising technologies to campaigns, parties, and PACs, and plans to offer text message contribution capability to its clients, consistent with FECA requirements. Aristotle does not believe that every proffered feature of this request (such as the mandatory factoring or certain contributor certifications) is required under the FECA, but the request clearly meets, and in some cases exceeds, FECA requirements.

While drafts A and B differ in many particulars, the fundamental difference in approach is plain. Draft B accepts the propriety of anonymous contributions within limits established by Congress. Draft A, in contrast, without statutory warrant would impose affirmative duties on political committees and vendors to seek information about permissible anonymous contributions and contributors.

While the anti-circumvention concerns underlying Draft A are understandable, Congress has already clearly and explicitly established anti-circumvention procedures and thresholds applicable to this type of contribution. Draft A is inconsistent and in conflict with those statutory provisions. The FECA requires no reporting of individual contributions of up to \$200. 2 USC 434(b)(3). To prevent circumvention of the Act's reporting requirements, FECA requires Treasurers, and persons transmitting contributions, to record or transmit the names and addresses of persons contributing more than \$50. Contributions of \$50 or less may be transmitted without identifying information. 2 USC 432(b) and (c).

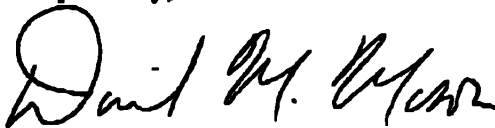
Thus, properly understood, FECA allows anonymous contributions of up to \$200. FECA then imposes anti-circumvention procedures on individual contributions in excess of \$50 to prevent contributors from making unreported aggregate contributions in excess of \$200. Where Congress has explicitly addressed potential circumvention with an elaborate recordkeeping and reporting scheme, the Commission lacks authority to impose additional and different requirements to address imagined evils. See, e.g. Van Hollen v. FEC, DDC Civil Action 11-0766, Memorandum Opinion "[where] the language of the statutory provision in question is not ambiguous, the FEC's attempt to tailor it to new circumstances cannot stand, even if its approach may have been reasonable. When the agency determine[s] ... that the statute should be revised in light of legal developments, it [undertakes] a legislative, policymaking function that [is] beyond the scope of its authority."

Nothing about text message technology or the volume of financial activity potentially enabled by this and other communications technologies changes this limit on the Commission's authority. If the Commission believes this or other technologies enable inappropriate activity that escapes the anti-circumvention provisions enacted by Congress, the Commission's remedy is to recommend appropriate changes to Congress.

The segregation requirements proposed by Draft A also exceed statutory requirements. The statutory prohibition on comingling requires segregation of political committee funds from "the personal funds of any individual." 2 USC 432(c), 11 CFR 102.15. The use of a common account by a vendor for processing contributions does not constitute comingling with personal funds. Nor does commercially routine use of a single account with proper accounting controls constitute a prohibited contribution by a corporation. Any special restrictions imposed on Separate Segregated Funds, 11 CFR 115.5, have no application to vendor relationships.

In sum, Draft A would impose unnecessary, extra-statutory requirements on text message contributions. The Commission should adopt Draft B consistent with the FECA and its longstanding policy of interpreting the Act to accommodate new technologies.

Respectfully,



David M. Mason
Senior Vice President, Compliance Services
Aristotle International, Inc.