May 10, 2022

Re: Cease and Desist Airing Neighbors for a Safer and Cleaner LA Opposing Karen Bass for Mayor False Advertisement

Dear [Name]

We are writing on behalf of Congresswoman Karen Bass and Karen Bass for Mayor 2022 to demand that your station immediately cease and desist from airing a political advertisement produced by Neighbors for a Safer and Cleaner LA Opposing Karen Bass for Mayor 2022, sponsored by Los Angeles Police Protective League ("Committee"), an independent expenditure committee opposing Karen Bass’s candidacy for Mayor of Los Angeles. The ad, which we understand has been submitted for airing on your station, contains false, misleading, and defamatory statements about Congresswoman Bass. Your failure to comply with this demand will result in us pursuing all available legal remedies against your station and others responsible for airing this intentionally false and deceptive advertisement.

The ad in question, available at https://m.youtube.com/watch?v=EwaZolaMOSA, falsely alleges that Karen Bass accepted a scholarship from USC’s School of Social Work “then, repeatedly voted to give USC millions in taxpayer funds.” In addition to the audio voiceover, the following statement is displayed on screen:

KAREN BASS REPEATEDLY VOTED TO GIVE USC MILLIONS IN TAXPAYER FUNDS.

As support, the ad cites seven congressional bills: HR 3547 (2013-14); HJR 124 (2014-15); HR 4412 (2014); HR 6395 (2020); HR 7617 (2020); HR 2225 (2021); and HR 5771 (2014).

The assertion in the voiceover that Karen Bass “then, repeatedly voted to give USC millions in taxpayer funds” and on screen that “Karen Bass repeatedly voted to give USC millions in taxpayer funds” is demonstrably false. Karen Bass never voted to appropriate taxpayer funds to USC, and none of the bills cited in the ad refer to USC or the University of Southern California.

Six of the congressional bills cited by the Committee either authorized or appropriated money for federal government agencies, including the Department of Commerce, Health and Human Services, Defense, Transportation, Housing and others. The seventh piece of legislation, H.R.
5771, The Tax Increase Prevention Act of 2014, did not even appropriate or authorize any money whatsoever—it merely extended several tax credits and deductions for individuals and businesses that were due to expire.

In short, the bills cited in the ad had nothing to do with USC. Thus, by any objective standard, the Committee’s ad contains false, misleading, and defamatory statements that should not be aired.

Unlike candidates for office, independent political organizations like the Committee do not have a “right to command the use of broadcast facilities.” (See CBS v. DNC, 412 U.S. 94, 113 (1973).) And, since you need not air this advertisement, your station bears responsibility for its content when you do grant access. (See Felix v. Westinghouse Radio Stations, 186 F.2d 1, 6 (3rd Cir.), cert. denied, 314 U.S. 909 (1950).) In fact, you have a duty “to protect the public from false, misleading or deceptive advertising.” (Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising, 74 F.C.C.2d 623 (1961).) And, failure to prevent the airing of “false and misleading advertising” may be “probative of an underlying abdication of licensee responsibility” that can be cause for the loss of a station’s license. (Cosmopolitan Broad. Corp. v. FCC, 581 F.2d 917, 927 (D.C. Cir. 1978).)

Finally, since your station is not shielded from liability from publication of defamatory content by the FCC’s “no censorship” rule for a candidate ad, you may be held accountable on that basis as well. As you know, the First Amendment provides certain protections for political speech, but it does not protect defamatory speech. (See New York Times Co. v. Sullivan, 376 U.S. 254 (1964).) The United States Supreme Court has conclusively and unequivocally stated, “[i]f a false and defamatory statement is published with knowledge of falsity or a reckless disregard for the truth, the public figure may prevail.” (See Harte-Hanks Communications v. Connaughton, 491 U.S. 657, 688 (1989).) Since you are now on notice of the advertisement’s blatant untruthfulness, any subsequent publication of the ad will be done with the knowledge of the falsity of the statement contained in the ad. Finally, “an action for...placing the plaintiff in a false light in the public eye is in substance equivalent to a libel claim.” (Flowers v. Carville, 310 F.3d 1118, 1133 (9th Cir. 2002) citing Selleck v. Globe Int'l, Inc., 166 Cal. App. 3d 1123, 1133 (1985).)

Our client respects the First Amendment and the rights of citizens to engage in spirited debate and criticism, but we cannot allow Congresswoman Bass’s character and reputation to be assailed by the repeated broadcast of the false, misleading, and defamatory claims in the Committee’s ad. We request that you act immediately to cease airing the ad.
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Please contact me at the address listed on this letterhead or by email at [email] to confirm that your station has ceased from running the Committee's advertisement in its current form.

Thank you for your immediate attention to this matter.

Sincerely,

Stephen J. Kaufman

cc: