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Honorable Donald R.
Zuidmulder
Branch 1



Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

June 14, 2024

**Re: False and Misleading Advertising
Sponsored by “WinSenate”**

Dear Station Manager:

It has come to our attention that an organization named “WinSenate” has purchased airtime on your network to run a negative advertisement targeting Eric Hovde and his United States Senate campaign. This advertisement contains demonstrably false and intentionally misleading assertions about Mr. Hovde and is intended to deceive your viewers. You must immediately remove this false advertisement from your network in accordance with your obligations and duties as an FCC licensee.

The advertisement opens with the false claim that Mr. Hovde is a “California banker.” This is not true. *First*, Mr. Hovde is not, and never has been, a resident of California. He was born and raised in Wisconsin where he is still a resident today. To describe him as a “California” banker is plainly misleading. *Second*, Sunwest Bank is headquartered and domiciled in Utah.¹ Although, like many financial institutions, it has locations in California, it is not a California bank.²

The next inaccurate claim made in the advertisement—that Mr. Hovde “*now* is sheltering his wealth in shady tax havens around the world”—is both false and defamatory in that it accuses Mr. Hovde of tax evasion with no evidence to support the allegations made. The advertiser’s primary source for this outlandish accusation is that many of Mr. Hovde’s companies are incorporated in Delaware or Nevada. To describe either of these states, where more than 1,000,000 U.S. businesses are incorporated (and more than 66% of Fortune 500 companies), as “shady tax havens” is absurd on its face and patently misleading.³ Taking this claim at face value, you may also be accused of sheltering your wealth in a tax haven since you manage a station owned by a company that is also incorporated in Delaware.⁴

The only other sources cited in support of this misleading claim reference investments Mr. Hovde and his company were involved in more than 12 years ago in the Cayman Islands and Bermuda. *First*, it should be noted that these sources all reference transactions that occurred over a decade ago. To cite to them in support of a claim regarding activity Mr. Hovde is engaged in

¹ See Utah Business Search, Sunwest Bank, Entity Number 10313739-0142 (accessed June 14, 2024), <https://secure.utah.gov/bes/displayDetails.html>.

² Sunwest Bank, Locations (accessed June 14, 2024), <https://www.sunwestbank.com/locations>.

³ *About the Division of Corporations*, Delaware Division of Corporations (accessed June 14, 2024), <https://corp.delaware.gov/aboutagency>.

⁴ Delaware Entity Search, Paramount Global, File No 2106821 (accessed June 14, 2024), <https://icis.corp.delaware.gov/ecorp/entitysearch/namesearch.aspx>; Delaware Entity Search, American Broadcasting Companies, Inc., File No 2077158 (accessed June 14, 2024); Delaware Entity Search, NBCUniversal Media, LLC, File No 2090232 (accessed June 14, 2024).

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“now” is obviously false and misleading. *Second*, none of these transactions can be described as “sheltering his wealth” in a “tax haven.” Neither Mr. Hovde nor his company made any investments in the Cayman Islands. Rather, foreign investors (and not Mr. Hovde) invested their own money in companies based in the Cayman Islands, which in turn invested in funds managed by Mr. Hovde. Additionally, no money was ever “sheltered” by Mr. Hovde or his companies in Bermuda. Any investment in a company based in Bermuda is simply an investment in a company located in Bermuda. Any money that Mr. Hovde himself or his businesses received was still subject to U.S. tax.⁵ It is simply not true that any “wealth” was ever “sheltered” in tax havens. And, to imply otherwise, or to suggest that Mr. Hovde engaged in the crime of tax evasion, is false and defamatory.

The advertisement compounds its false and misleading claims by implying that Mr. Hovde’s financial success as a “California banker” is because his “family rigged the system to rake in thirty million in government subsidies and loans.” This claim is also demonstrably false and deceptive. First, Sunwest Bank never received any subsidies from the federal government. Second, the “subsidies and loans” referenced in the materials cited to support this advertisement have nothing to do with Sunwest Bank. Rather, they largely refer to tax incremental financing (“TIF”) received by Mr. Hovde’s development company, Hovde Properties, from local Wisconsin municipalities. Contrary to the advertisement’s misleading implication that this financing personally enriched Mr. Hovde, it was in fact used by his development company (not the bank) to improve blighted or polluted property in Wisconsin cities and bring about positive development through new housing developments, property tax base increases, and other economic development that, by TIF law, otherwise would not have occurred but for the TIF. Far from being a “rigged system,” the TIF projects are negotiated and approved by elected council members and the mayors of those municipalities under Wisconsin’s Open Meetings Law and TIF law in a very transparent, public process. In short, there is no way to “rig the system.”

As outline herein, the claims made in the “WinSenate” advertisement are clearly false and intentionally misleading. Your station is under no obligation to air advertisements sponsored by non-candidate organizations (such as “WinSenate”), and you should reject such advertising on the basis of its false, misleading, and deceptive content.⁶ In fact, your station is legally responsible for the content of non-candidate advertising. Your station has an obligation both to its viewers and, under the law, “to protect the public from false, misleading or deceptive advertising.”⁷ This duty

⁵ The primary source cited for these claims falsely asserts that “According to a Politico newsletter, Wisconsin Republican Senate candidate Eric Hovde avoided paying corporate taxes by investing tens of millions of dollars in insurance companies based in Bermuda.” See Richard Eberwein, *Report: Wisconsin GOP Senate Candidate Eric Hovde Used Bermuda to Evade Federal Taxes*, Heartland Signal (Mar. 18, 2024), <https://heartlandsignal.com/2024/03/18/report-wisconsin-gop-senate-candidate-eric-hovde-used-bermuda-to-evade-federal-taxes>. In fact, the referenced Politico newsletter clearly states that Mr. Hovde “invested” in companies that “were based in Bermuda,” and those Bermuda companies “benefited from not having to pay U.S. corporate taxes.” Daniel Lippman, *Politico Influence* (Mar. 13, 2024), <https://www.politico.com/newsletters/politico-influence/2024/03/13/signal-group-buys-out-wiley-00146851>.

⁶ *Columbia Broadcasting System v. Democratic National Committee*, 412 U.S. 94 (1973); *You Can Afford Dodd Committee*, 81 F.C.C. 2d 579 (1980); *National Conservative Political Action Committee*, 89 FCC2d 626 (1982).

⁷ *Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising*, 74 F.C.C.2d 623 (1961).

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necessitates “the additional obligation to take reasonable steps” to affirmatively determine the veracity of the statements contained in advertisements and the authenticity of the sources cited.⁸ You must be able to satisfy yourself “as to the reliability and reputation of every prospective advertiser.”⁹ Failing to take these steps, and allowing false and misleading advertising to air, may be “probative of an underlying abdication of licensee responsibility.”¹⁰

Now that your station has been apprised of the relevant facts, you are on notice that the “WinSenate” advertisement you are currently airing is false and misleading. Accordingly, we request that you comply with the requirements imposed on your station under the law and decline to further air the “WinSenate” advertisement on the grounds that it contains false and misleading claims. Any future airings would be done so with reckless disregard of the advertisement’s falsity. We trust that your station understands its responsibilities as a licensee and has no interest in facing liability for knowingly broadcasting false, misleading, and deceptive claims. Mr. Hovde is prepared to take any necessary action to protect his rights and seek legal relief for any violation of law that may result should these false charges continue to air.

Thank you for your prompt attention to this matter. We respectfully request a response no later than 5:00 p.m. CDT June 17, 2024. If you require further information, you may contact me by phone at 202-737-8808 or by email at tkronquist@holtzmanvogel.com. We look forward to your response.

Regards,



Timothy E. Kronquist
Andrew D. Watkins
Counsel to Eric Hovde and Hovde for Senate

⁸ *In re Complaint by Consumers Association of District of Columbia*, 32 F.C.C.2d 400, 405 (1971).

⁹ *Id.*

¹⁰ *Cosmopolitan Broadcasting Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1971).