

Ads are Too Political

By Reg P. Wydeven
October 14, 2006

Two years ago I received one of the most exciting phone calls of my life, which then turned out to be one of the most disappointing. I remember it was a cold, rainy October night and my wife and I were trying to herd the kids into the kitchen for dinner. Amidst the chaos, the phone rang and when I picked it up, the voice on the other end said in a thick Austrian accent, "Hi, this is Arnold Schwarzenegger."

With all the confusion, it took me a moment to realize it was a recording. For a split second, I thought the Terminator was calling to tell me he was going to use the list of one-liners I sent him in his next action flick.

I angrily hung up the phone, fuming that Arnold was just bombarding me with yet another political ad. Last week I wrote about the rules governing prescription drug ads. In much the same way, political ads are also regulated.

The Federal Election Commission has strict rules for all political "public communications," which include TV and radio ads, newspaper, magazine or outdoor advertising, and mass mailings or telephone calls to the general public - like Arnold's.

Just like the Christmas displays at department stores, political commercials seem to be showing up earlier and earlier in election years. Unlike political commercials of the past, however, ads these days include required information in addition to the mudslinging.

Basically, any public communication must contain a disclaimer that states whether the candidate supports the communication and also who funded it. Regardless of the medium, the disclaimer must be clear and conspicuous, meaning it must not be difficult to read or hear or be placed where it can be easily overlooked.

In television commercials that are authorized and paid for by a candidate or her campaign committee, the candidate must identify herself in an oral disclaimer and state that she has approved the commercial. For example, most ads use something like, "Hi, I'm Mr. T and I support this message." The disclaimer can either be a full-screen view of the candidate making the statement or a clearly identifiable photograph of the candidate that appears during the candidate's voice-over statement.

The commercial must also include a clearly readable written statement that appears at the end of the ad for at least four seconds with a "reasonable degree of color contrast" between the background and the disclaimer statement.

If the TV spot is authorized by a candidate or her campaign committee but is paid for by someone else, the disclaimer must identify who paid for the commercial and indicate that the candidate authorized the message. The disclaimer must be conveyed by a full-screen view of or voice-over by the person or organization's representative making the statement. The ad must also have the written disclaimer.

If a TV commercial is not authorized by a candidate or her campaign committee, the disclaimer must identify who paid for the message, their address, phone number or web address, and finally state that it was not authorized by any candidate or candidate's committee. A typical example would be, "This message was paid for by the I Pity The Fool Committee (www.ipitythefool.org) and is not authorized by any candidate or candidate's committee."

While I look forward to voting, I can't wait for political commercials to be off the air!

This article originally appeared in the Appleton Post-Crescent newspaper and is reprinted with the permission of Gannett Co., Inc. © 2006 McCarty Law LLP. All rights reserved.