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FCC Rejects Love, Family And Tastefulness In NCE FM Underwriting Announcements

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Noncommercial licensees were recently reminded of one of the major limitations their noncommercial status imposes on them. And at the same time they were reminded of the largely undefined limits of those limitations.

We are talking about underwriting announcements and, in particular, what such announcements can say and what they can't say. Since there had been little if any regulatory activity in this area in recent years – a couple of less-than-informative consent decrees in 2007, and nothing at all in 2006 – it might have appeared that the FCC had lost interest in parsing the precise verbiage of NCE underwriting announcements. But apparently that was not the case.

As we all know, NCE stations *cannot* accept payment in return for the on-air promotion of commercial activities. But they *may* accept “underwriting” contributions and may, in turn, acknowledge the generosity of the contributing underwriter by giving an on-air shout-out mentioning the underwriter. The essential question, then, is: when does such an announcement cross the line from mere acceptable acknowledgement to punishable promotion?

Historically, the Commission has held that *verboten* “promotional” language includes comparative or qualitative descriptions, price information, calls to action, or any inducement to partake of the underwriter's goods or services. BUT it's always OK to “identify” the underwriter. Recognizing that it is “at times difficult” to distinguish between the two, the Commission accords licensees some latitude in the exercise of their good faith judgment in this area.

In a recent decision by the Enforcement Bureau, an NCE FM licensee in South Zanesville, Ohio, got the bad news that its good faith judgment fell outside the latitude the FCC was willing to accord it.

We are providing (on the last page, below) the texts of three of the announcements the FCC took a look at. Before reading on, check them out and see if you can see any problems with any of them. If you guessed that “Tasty Freeze” and “Prindle GMAC Real Estate” were trouble, but “The School House” was AOK, you’re right – but the more important question is what was it about the first two that made them bad?

Here’s what the Enforcement folks had to say about “Tasty Freeze”: “The announcement made on behalf of Tastee [sic] Freeze characterizes the underwriter’s ice cream products in prohibited qualitative terms, by noting that they are ‘tastefully decorated,’ and by attempting to induce patronage by asking listeners whether they are ‘planning a special occasion’ which might require use of the underwriter’s products.”

And as for the GMAC Real Estate announcement, the Feds said: “The Prindle GMAC Real Estate announcement also impermissibly advertises to favorable qualities possessed by the underwriter that seek to distinguish its business from similar enterprises, and thus seeks to induce patronage by stating that ‘we’re all about family,’ and that ‘we love selling real estate.’ . . . The references concerning the underwriter’s real estate agency imply that the agency possesses special business affinity or experience that attempts to favorably distinguish it from others.”

Summarizing its conclusions, the Enforcement Bureau found that these announcements used “qualitative terms” and sought to “induce business patronage.”

In view of the relatively sparse explanation offered by the Commission, it’s difficult to draw with confidence any conclusions as to the precise problems here. To describe cakes as “tastefully decorated” is apparently qualitative – but if the word “tastefully” were to be omitted, would it still be all right to describe them as “decorated by Bobby Tim”? What if it turned out that Bobby Tim were a local celebrity, so that any involvement by him might be a Big Deal – would that make the announcement “qualitative”, too, even if “tastefully” were taken out? Why did the FCC not find any problem with a specific mention, by name and manufacturer, of candles that are available at Tasty Freeze? Does that not suggest some level of inducement?

And while the Commission might think that the Prindle Real Estate claims about loving the business and being “all about family” are somehow qualitative, why are those claims more “qualitative” than the statement that one of the company’s agents “offers over 25 years of home buying and home selling experience”?

In short, this decision tends to reinforce the perception that the Commission’s policy on proper underwriting announcements is grossly subjective and dependent not on any clearly discernible and articulable standards, but rather on how any particular FCC staffer

happens to react to any particular verbiage on any particular day. Because of this, NCE licensees should continue to exercise caution and err on the side of blandness and absolute neutrality if they want to minimize their risk of forfeiture.

Oh, by the way, the folks in South Zanesville got whacked \$9,000 for these announcements (and several others that the licensee apparently chose not to dispute

Tasty Freeze

Planning a special occasion? Tasty Freeze, at the airport exit off of I-70, has ice cream cakes for that office celebration, birthdays, anniversaries, or for that special event you've planned. These cakes, tastefully decorated by Bobby Tim, are available in 8 or ten inch. Tasty Freeze, at the airport exit off of I-70, is open 7 days a week from noon until 10 p.m. Also available at Tasty Freeze: Hearth and Home Ohio Bicentennial candles by lum-lite, ice cream treats or ice cream cakes, it's Tasty Freeze, 588-9314.

Prindle GMAC Real Estate

Prindle GMAC Real Estate is proud to be an underwriter of Christian radio, located at 1805 Maple Avenue in Zanesville. Prindle GMAC Real Estate is experienced in all types of real estate sales. At Prindle GMAC Real Estate, we're all about family. Dick Pryor of Prindle GMAC Real Estate offers over 25 years of home buying and home selling experience. Dick Pryor and Prindle GMAC Real Estate, we love selling real estate. Dick Pryor, 454-9191.

The School House

Are you looking for creative learning materials? The School House, your parent-teacher supply store, has two locations, in Newark and Zanesville, to serve you. The School House has accessories for teachers, schools, home-schoolers, including Alpha-Omega home school curriculum, grandparents, youth-serving organizations, and anyone working with children. The School House, where learning and fun come together, 1218 Brandywine Boulevard in Zanesville, and 36 South Third Street in Newark. Zanesville, 455-6445; Newark, 345-7710.

