

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
TRI-STATE INSPIRATIONAL) EB-01-IH-0332-KMS
BROADCASTING CORPORATION) Facility #67799
)
Licensee of Noncommercial Educational Station)
WFIX(FM), Florence, Alabama)

MEMORANDUM OPINION AND ORDER

Adopted: September 17, 2001

Released: September 18, 2001

By the Chief, Enforcement Bureau:

I. Introduction

1. In this Order, we admonish Tri-State Inspirational Broadcasting Corporation ("Tri-State"), licensee of noncommercial educational station WFIX(FM), Florence, Alabama, for broadcasting advertisements in violation of Section 399B of the Communications Act of 1934, as amended ("the Act"), 47 U.S.C. §399b, and Section 73.503 of the Commission's rules, 47 C.F.R. §73.503. Tri-State responded to our May 16, 2001, and June 13, 2001, inquiries by submission dated June 25, 2001. We have carefully reviewed the record, including Tri-State's response, and conclude that the licensee has violated the pertinent statutory and Commission underwriting rule provisions. While we believe that no monetary sanction is warranted at this time, we find that an admonishment is necessary to redress the statutory and rule violations. Moreover, we believe that it is appropriate to specifically advise Tri-State of our concerns so that rule compliance may be fully achieved.

II. Background

2. Advertisements are defined by the Act as program material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities. 47 U.S.C. §399b(a). As noted above, noncommercial educational stations may not broadcast advertisements. Although contributors of funds to noncommercial stations may receive on-air acknowledgements, the Commission has held that such acknowledgements may be made for identification purposes only, and should not promote the contributors' products, services, or business.

3. The Commission noted that it may be difficult at times for licensees to distinguish between language that promotes versus that which merely identifies the underwriter, but expects that licensees exercise "reasonable, good faith judgment" in this area. See Xavier University, 5 FCC Rcd 4920 (1990); Public Notice, "In the Matter of the Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations," (April 11, 1986), republished, 7 FCC Rcd 827 (1992). As the Commission made clear in Xavier, it will not deem announcements impermissible where the "language at issue . . . is not clearly promotional as opposed to identifying and . . . the licensee exercised reasonable, good-faith judgment regarding the language. . . ."

III. Discussion

4. The key facts in this case are not in dispute. Tri-State does not deny that the station broadcast the sponsored announcements described in our letter of inquiry and set forth in the attached transcript. Tri-State argues, however, that the announcements comply with Section 399B of the Act, and the pertinent Commission policies and rules, noting that “at the time [of their broadcast] we felt we were well within our bounds, and that our announcements were fully permissible.” Tri-State admits, however, that its management is relatively inexperienced in noncommercial broadcast and that it has found interpreting the Commission’s underwriting announcement policy to be difficult, often requiring it to consult with other more seasoned noncommercial broadcasters. Since taking control of the licensee’s board in September 2000, Tri-State’s management contends that it has developed “newly revised” control procedures aimed at ensuring Commission underwriting rule compliance.

5. We find that the subject underwriting announcements exceed the bounds of what is permissible under Section 399B of the Act, and the Commission’s pertinent rules and policies, in light of the “good-faith” discretion afforded licensees under *Xavier, supra*. Notwithstanding this finding, we believe that a monetary sanction is not necessary to redress the statutory and rule violations at issue. This disposition is based to a significant degree upon the fact that Tri-State’s board is new and has taken steps to ensure compliance with our underwriting rules. However, certain aspects of Tri-State’s response warrant further examination.

6. Specifically, we caution Tri-State that references that distinguish the underwriter from its competitors are prohibited. *See Public Notice, supra*. Thus, the mention of a sponsoring retail jeweler’s getting its gemstones directly from the diamond cutter distinguishes the jeweler from those who do not. Such references are thus promotional and should be avoided.¹ Similarly, the station’s characterization of an underwriter’s inventory as “name-brand” seeks to cast its products in a favorable light and is not value-neutral.² *Id.* Also, underwriting announcements may not make descriptive, qualitative references that intend to induce patronage of their underwriters’ businesses. *Id.*; *see also In re WJTA(FM)*, 5 FCC Rcd 7106 (MMB 1990). Thus, Tri-State’s explanation that several of the station’s announcements attempt to “conjure up feelings that we could all identify with” essentially reveals that their intent is to distinguish and promote their respective underwriters’ products or services in the minds of listeners.³ Moreover, even where statements made about an underwriter are factually true, they are not permissible if they are also promotional. *See Letter from the Chief, Investigations and Hearings Division, Enforcement Bureau, to Station KOUZ(FM)*, (July 12, 2000) (use of the phrase “ICAR gold-class certification” to describe underwriter’s service qualifications was found impermissible). Thus, the station’s references to an underwriter’s having “kept up with [changing] technology” or a “new Sentricon Baiting System” are prohibited.⁴ Additionally, the station’s description of an underwriter’s service as being “convenient” is qualitative and prohibited.⁵ *See Letter from the Chief, Investigations and Hearings Division, Enforcement Bureau, to Station WLRY(FM)*, (April

¹ See attached announcements for Osborne’s Jewelers.

² See attached announcement for The Sound Shoppe.

³ See attached announcements for Osborne’s Jewelers, Gilbert Furniture, Cedar Gables, and Chic-Fil-A.

⁴ See attached announcements for Heil Heating and Cooling and Southern Services Pest Control.

⁵ See attached announcement for Williams Cleaners.

5, 2000) (where description of underwriting pharmacy as “provid[ing] the same service as the major chains without the long wait” was found impermissible).

7. Finally, we note that several of the announcements in question were over 30 seconds in length. While the Commission has not adopted quantitative limitations on announcements, it has noted that the longer they take to identify their underwriters, the more likely they are to be found promotional. *See In re WNYE-TV*, 7 FCC Rcd 6864, 6865 (MMB 1992). In the instant case, it appears that the excessive length of several of the announcements contribute to their overall promotional nature.

IV. Ordering Clauses

8. In view of the foregoing, we conclude that a sanction is appropriate. Accordingly, IT IS ORDERED that Tri-State Inspirational Broadcasting Corporation, licensee of noncommercial educational station WFIX(FM), Florence, Alabama, IS ADMONISHED for broadcasting advertisements in violation of Section 399B of the Act, 47 U.S.C. §399B, and Section 73.503 of the Commission's rules, 47 C.F.R. §73.503.

9. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order shall be sent, by Certified Mail -- Return Receipt Requested, to Tri-State Inspirational Broadcasting Corporation, 113 N. Seminary Road, Florence, Alabama, 35630.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

Attachment

ATTACHMENT

The following text was transcribed from audiotape recordings of underwriting announcements broadcast on WFIX(FM), Florence, AL, during the period October 2000 through March 2001:

1. Osborne's Jewelers (30 seconds).

The Antwerp diamond dealers usually deal only with America's largest importers. At Osborne Jewelers, as a member of the IJO, they acquire diamonds directly from the diamond cutter in Antwerp, eliminating the importer and distributor. Antwerp means a diamond directly from the diamond's source. Osborne Jewelers of Florence and Athens, with diamonds directly from Antwerp. Osborne Jewelers, on Jefferson Street in Athens, and Cox Creek Parkway in Florence.

2. The Sound Shoppe (30 seconds).

The Sound Shoppe in the Shoals-area has name-brand musical instruments and sound equipment. Brand-name guitars like Gibson, Takoma, and a brand-new truckload of Epiphones. Drums from Sonar and digital pianos, amps, accessories and much, much more! Lessons available, too. Darrell Trippet and the staff at the Sound Shop proudly service anything they sell. The Sound Shoppe, Parkway Shopping Center, in Florence.

3. Osborne's Jewelers (45 seconds).

Our jewelers can tell that there's a problem before she ever says a word. They see it all over her face. They instinctively know what the problem is. A nice lady comes in, and has just had her once-in-a-lifetime experience of being proposed to. She's very happy about that although she's not thrilled by her engagement ring. The ring she's going to wear for the rest of her life. Osborne's pleas with all the guys out there -- please don't let this be you! Osborne Jewelers has diamond engagement rings that words cannot describe. Osborne Jewelers on Jefferson Street in Athens, and now on Cox Creek Parkway.

4. Gilbert Furniture (30 seconds).

Don't you love meeting new, friendly faces in warm, friendly places? Gilbert Furniture. Don't you love furnishing your home nice and cozy for the holiday season? Gilbert Furniture. Don't you love solid-wood bedroom suites by Orleans? And Chippendale dining-room suites? Everyone loves Queen Anne living-room suites with matching lamps, curios, and end tables. Gilbert Furniture. Gilbert Furniture has all of this, plus leather, three-piece sets, five-piece small dinettes and much more! Gilbert Furniture, next to Southern BBQ on Wilson Dam Road.

5. Cedar Gables (30 seconds).

Do you like Waterford Crystal, Linden Clocks, Fitz & Floyd, Arthur Court, Seraphim Classics, Austin, and many others? Cedar Gables. Do you like surprises? Like being able to buy a gift or decorative piece for your home that you never dreamed would fit into your budget? Cedar Gables. On the hill just outside of Killen off Highway 72. Where there are many collectibles, gifts, and most importantly, pleasant surprises.

6. Osborne's Jewelers (45 seconds).

Because the first snow of the holiday season makes her pulse quicken and her cheeks flush. Because she doesn't feel it's Christmas without a mile of colored lights or the scent of pine mixing with gingerbread. Diamonds for Christmas. Because she doesn't have the heart to tell a little boy that Santa's helpers aren't truly elves, or a little girl that it forgot to snow. Soon it will be Christmas morning, and all she's expecting is trinkets under the tree. Diamonds: just because you love her. Osborne Jewelers on Cox Creek Parkway in Florence, and in Athens on Jefferson Street.

7. Chic-Fil-A (55 seconds).

Male Voice: "Hey honey, what are you doing?"

Female Voice: "I'm making a guest list for our party."

Male Voice: "Oh. Who's invited?"

Female Voice: "Well, I thought we'd ask the Johnsons."

Male Voice: "Arrrgh. The Johnsons!"

Female Voice: "The Burkes."

Male Voice: "Not the Burkes!"

Female Voice: "And the Smiths."

Male Voice: "Oh, great!"

Female Voice: "The Fitz-Hughs."

Male Voice: "What is this, a wake?"

Female Voice: "The Everetts."

Male Voice: "Hide the jewelry!"

Female Voice: "The Bakers."

Male Voice: "Make it stop!"

Female Voice: "And the Bovines."

Male Voice: "Really? *The Bovines?*"

Female Voice: "The Bovines."

Male Voice: "As in - 'he smells like a barn and she chews with her mouth wide open?' Those Bovines?"

Female Voice: "They're the ones."

Male Voice: "Are they bringing those Chic-Fil-A Party Platters with them?"

Female Voice: "Yes, they are: chicken nuggets, chicken strips and even chicken salad finger sandwiches."

Male Voice: "I got no beef with them."

Later at the Party:

Host's Voice: "Great party, huh?"

Guest's Voice: "M--OOO!"

Narrator: "Party Trays from Chic-Fil-A. We didn't invent the chicken, just the chicken sandwich."

8. Heil Heating and Cooling (30 seconds).

Offering heating and cooling products for over 100 years. Technology changes rapidly and Heil Heating and Cooling has kept up with technology! Their units, offering up to 13 CR means comfort and energy efficiency for your home or office. The Heil Dealer nearest you is listed in the Yellow Pages. Heil Heating and Cooling, supporters of the New FIX 91.3.

9. Southern Services Pest Control (30 seconds).

So that nothing can cause damage to your valuable home or property, Southern Services Pest Control offers service for all types of homes, businesses, restaurants, hotels, churches, anywhere pests are a problem. Southern Services Pest Control . . . features the new Sentricon Baiting System that eliminates termite colonies. Call Southern Services Pest Control to find out how they can help you with a free quote. Southern Services Pest Control, at 764-3121

10. Williams Cleaners (30 seconds).

There's a new name in the dry-cleaning industry in the Shoals – Williams Cleaners. Mike Williams and his staff at Williams Cleaners offers same-day service! With a convenient drive-through window. On Avalon Avenue in Muscle Shoals, you don't even have to leave your car. Williams Cleaners does laundry service, alterations, leather cleaning. And don't forget: same-day service! When you need it fast, let Williams Cleaners help you! Williams Cleaners, with two locations