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From "Ask the Expert" columnist John Bagwell

This article is intended only as a general discussion of the issues and should not be regarded as legal advice.

For additional details or advice about a specific situation, please consult legal counsel directly.

It is well known that while noncommercial stations may make underwriting announcements identifying station supporters, they may not broadcast advertisements. Such prohibited advertisements include material aired in exchange for any remuneration and that are intended to promote any service, facility or product of a for-profit entity.

Last week the FCC affirmed a \$9,000 forfeiture against a non-commercial educational FM station in Ohio for two announcements it had aired, one on behalf of an ice cream shop and another for a real estate company. The FCC found that the announcement for the ice cream shop described the store's products using prohibited qualitative terms, stating that they were "tastefully decorated," and sought to induce patronage by asking listeners to consider the store when "planning a special occasion." As well, the FCC found that the announcement for the realty company impermissibly sought to distinguish itself from similar companies, thus seeking to induce patronage, by stating that, "We're all about family," and that, "We love selling real estate."

The Commission has frequently noted that it can be difficult to distinguish between language that improperly promotes an underwriter from language that simply identifies the underwriter. Thus the Commission expects broadcasters to use reasonable, good-faith judgment in making these determinations. In the above instances, the Commission found that such judgment had not been properly used and that the language used was inconsistent with the identification-only purpose of underwriting announcements. The FCC's forfeiture should serve as a reminder that underwriting announcements may not discuss the quality of a for-profit underwriter's products or services, seek to differentiate for-profit underwriters from their competitors, or encourage audience members to purchase products or services sold by for-profit underwriters.

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Ask the Expert

"Ask the Expert" is featured monthly in *BottomLine*. The current experts are attorneys John Bagwell and Katrina Gleber. Mr. Bagwell counsels broadcasters on a variety of regulatory, operational, and transactional issues. Katrina Gleber focuses her practice on communications law, counsels clients on FCC regulatory matters, and provides assistance to broadcast clients on digital media technology transactions. Both are associates at Leventhal Senter & Lerman, PLLC, in Washington, DC.

Want to "Ask the Expert?" Send your query to lisa@pbma.org and look for the expert response in a future *BottomLine* issue.