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Suite 900, South Building
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January 10, 2006

ATTENTION - STATION MANAGER

Henry Florsheim
President and General Manager
KTRK ABC 13
3310 Bissonnet,
Houston TX 77005
Fax 713-663-4574

Re: Advertisement Defamatory to the Honorable Tom DeLay

Dear Mr. Florsheim:

We represent the Tom DeLay Congressional Committee, and understand that your station may be airing an advertisement sponsored by Public Campaign Action Fund and Campaign for America's Future, left-wing groups allied with the Democrat Party. The ad is reckless, malicious, and false, casting Mr. DeLay in a false light by accusing him of unsubstantiated criminal conduct. Such accusations are actionable.

Because the ad is false, we demand that you refuse or otherwise cease airing the advertisement, so as to avoid any liability. Since the ad does not constitute a "candidate use," your station is under no obligation to keep it on the air. On the contrary, as a Federal Communications Commission ("FCC") licensee, you have an obligation to the public to ensure that advertising aired by your station is accurate and does not contain false statements. In fact, to knowingly air such falsehoods not only runs counter to an FCC licensee's duty to the public, it is actionable as a matter of law, and exposes you to possible legal liability. See Felix v. Westinghouse Radio Stations, Inc., 186 F.2d 1 (3d Cir. 1950), cert. denied, 341 U.S. 909 (1951) (holding that broadcasters can be sued by a candidate for defamation over content of advertisements); Farmers Educ. & Coop. Union, North Dakota Div. v. WDAY, Inc., 360 U.S. 25 (1959) (holding that broadcasters are protected from suit in the case of a candidate use).

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Even a cursory review of the ad reveals several half-truths, distortions, and outright falsehoods. For example:

False claim #1: That Tom DeLay received \$1,000,000 from Russian tycoons to allegedly influence his vote.

This is false, and the sponsors of the ad know it is false, as the *Washington Post* article cited for support makes clear that DeLay did not receive \$1,000,000 from Russian tycoons. Instead, what the *Washington Post* reported was that a charity called the U.S. Family Network received \$1,000,000 from a now-defunct London law firm. In fact, the *Post* article makes clear that "[t]here is no evidence DeLay received a direct financial benefit . . ." But remarkably, the ad says the exact opposite of what the proffered *Post* article reported.

Inevitably, the sponsors of the ad will invoke the protections guaranteed by the First Amendment, claim that this is an issue of public importance, and trot out the usual litany of excuses that such groups offer to defend their knowing falsehoods. But such protections and arguments do not protect false speech, and do not allow these left-wing groups to simply make up the facts, and rewrite a *Washington Post* article to comport with its own political agenda.

There is a critical distinction between what the sponsors of the ad wish the *Post* said, versus what the *Post* actually reported. If the ad said that a charity run by people somehow associated with DeLay raised money, and someone said that Russians gave money to a law firm in England, and someone else told yet another person that the mystery Russians gave the money to the law firm to then in turn give the money to the charity to somehow curry favor with DeLay (all of which allegedly occurred about seven to eight years ago), that would at least arguably reflect the second and perhaps third-hand information reported by the *Post*.

But the ad does not say this, instead ignoring what was actually reported, and asserting that DeLay took \$1,000,000 from Russian tycoons. And the ad leaves no question on this point -- it begins by stating Tom DeLay's name, then listing in sequential order purported "facts" about DeLay, and then repeats the falsehoods about the Russian tycoons with emphasis, and concludes by asking what else will be "uncover(ed)" about Tom DeLay. But, as reported by the *Post*, there is "no evidence" Tom DeLay himself "received a direct financial benefit." Moreover, the *Post* also reported that the transaction was "not prohibited by law."

False claim #2: Jack Abramoff somehow provided "48 trips to golf resorts, 100 flights aboard company jets, 200 nights at world class resorts and hotels" to Tom DeLay.

Although more clever than the outright falsehood about the Russian tycoons, this

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Abramoff associates and clients, 48 trips to golf resorts, 100 flights aboard company jets, 200 nights at world class resorts and hotels.

This is false -- the cited *Associated Press* account does not report that Abramoff provided these trips and flights. On the contrary, what this article was talking about was the extent of DeLay's travel, particularly in connection for political fundraising.

Abramoff associates and clients, 48 trips to golf resorts, 100 flights aboard company jets, 200 nights at world class resorts and hotels"

This is false -- the cited *Associated Press* account does not report that Abramoff provided these trips and flights. On the contrary, what this article was talking about was the extent of DeLay's travel, particularly in connection for political fundraising. In fact, both the U.S. House of Representatives' Ethics Rules, and regulations promulgated by the Federal Election Commission explicitly recognize the legitimacy of such travel. Once again, instead of producing an ad that accurately conveys what has been reported, the sponsors of the ad have produced an ad that states what they wish the facts to be.

In fact, the *Associated Press* article does not link the referenced trips to Jack Abramoff, and in fact distinguishes between DeLay's political fundraising travel (the supposed 48 trips, 100 flights and 200 nights at resorts) and other congressional fact-finding travel.

Ultimately, the ad is intentionally false, and should not be allowed to air. In the event you elect to provide the sponsor of the ad an opportunity to provide back-up or otherwise substantiate the ad, we ask that you suspend the airing of the ad in the interim. If you have any questions, or if I can be of further assistance, I can be reached at (202) 744-3997. Thank you for your anticipated understanding and cooperation.

Sincerely,

Donald P. McGahn II