



FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Investigations and Hearings Division
445 12th Street, S.W., Suite 4-C330
Washington, D.C. 20554

September 23, 2009

Ms. Carolyn Ballou
94 46th Street
Sacramento, California 95819

Re: Station KCRA-TV,
Sacramento, California
File No. EB-07-IH-9412

Dear Ms. Ballou:

This letter responds to your complaint¹ alleging that Hearst-Argyle Stations, Inc. (the "Licensee"), licensee of Station KCRA-TV, Sacramento, California conducted a promotion during April and May 2007 that may have violated Section 73.1216 of the Commission's rules, which is applicable to licensee-conducted contests. Your complaint concerns an advertising and promotional package for Western Contract Furnishers Home Design Studio ("Western Contract"), which featured a Mother's Day essay contest awarding a family room makeover to the entrant whose essay received the greatest number of votes from members of the public. You also state that you were the Sales Marketing Director for the station at the time of the promotion but that after the start date of the promotion, you took a scheduled month-long medical leave.

We issued a letter of inquiry to the Licensee based upon your allegations.² The Licensee filed its response to our LOI on March 5, 2008.³ You were provided an opportunity to submit a reply to the Licensee's Response, and did so on April 1, 2008.⁴ For the reasons set forth below, we deny your complaint.

¹ See Letter from Carolyn Ballou to Robert Ratcliffe, Enforcement Bureau, Federal Communications Commission, dated November 4, 2007 (the "complaint").

² See Letter from Benigno E. Bartolome, Acting Chief, Investigations and Hearings Division, Enforcement Bureau to Hearst-Argyle Stations, Inc., dated January 16, 2008 ("LOI").

³ See Letter from Mark J. Prak, Esquire and Stephen Hartzell, Esquire, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., counsel to Hearst-Argyle Stations, Inc., dated March 5, 2008 ("Response").

⁴ See Rebuttal to Licensee's Responses to Commission Inquiries filed by Carolyn Ballou on April 1, 2008 (undated) ("Reply"). The Licensee filed a Request for Leave to File and Motion to Strike the Reply, alleging that it inappropriately relies on hearsay statements and makes new allegations that were not part of the original complaint. See Letter from Stephen Hartzell, Esquire, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., counsel to Hearst-Argyle Stations, Inc., dated April 16, 2008. In light of our decision herein, we find it unnecessary to address this pleading.

Section 73.1216 defines the term "contest" as a scheme in which a prize is offered or awarded, based upon chance, diligence, knowledge or skill, to members of the public.⁵ The rule also requires that a licensee that broadcasts or advertises information about a contest that it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised.⁶

In this case, it appears that the provisions of Section 73.1216 do not govern the Western Contract promotion because the selection of the recipient of the family room makeover was based upon the subjective judgment of members of the public who reviewed selected essays and voted for a winner, and not on chance, diligence, knowledge or skill.⁷ Accordingly, further Commission action concerning the promotion appears unwarranted.

You further allege in your Reply that the Licensee's Response contains misrepresentations concerning the Western Contract promotion, including the station management's involvement in the promotion, the scope of your job duties, your role in and responsibilities associated with the Western Contract promotion, and whether employees received training on Section 73.1216 and the station's procedures and practices with respect to licensee-conducted contests. You also allege that the Licensee made misrepresentations to another station employee concerning the Commission's investigation of your complaint. You additionally allege that the Licensee maintained recordings of all of the commercial spots for the Western Contract promotion, but failed to produce them all in response to our LOI and that its statement that it does not routinely retain records of broadcasts related to contests and promotions is a misrepresentation.

Misrepresentation is a false statement of fact made to the Commission with the intent to deceive the Commission.⁸ In addition, the misrepresentation must concern matters that are material to the Commission's regulatory jurisdiction or are of decisional significance.⁹ Your allegation concerning the Licensee's retention and submission of recordings of the advertising spot for the Western Contract promotion is unsupported.¹⁰ Furthermore, your Reply also suggests that there was only one version of the spot produced, and the Licensee submitted a recording of the spot. The Licensee's alleged misrepresentations concerning our investigation were made to a station employee and not to the Commission. Furthermore, you acknowledge the accuracy of the declaration

⁵ See 47 C.F.R. § 73.1216, Note 1(a).

⁶ See 47 C.F.R. § 73.1216.

⁷ See, e.g., Letter from Rebecca A. Hirselj, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau to Complainant, File No. EB-08-IH-5314, dated July 23, 2009; Letter from Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau to Complainant, File No. EB-07-IH-0213, dated September 19, 2007.

⁸ See, e.g., *Swan Creek Communications v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994); *LUJ, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 16980, 16982 (2002); *Fox River Broadcasting, Inc.*, Order, 93 FCC 2d 127, 129 (1983).

⁹ See *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8452, 8478 (1995).

¹⁰ Your allegation is based on statements of unnamed station personnel and not your personal knowledge concerning the Licensee's retention of the recordings for the Western Contract promotion. See Reply at 7-8.

signed by this employee, and submitted by the Licensee with its Response.¹¹ Under these circumstances, further consideration of these matters is not warranted.

Your other allegations concerning Licensee misrepresentations are not material to a determination of whether this promotion was a licensee-conducted contest within the meaning of Section 73.1216, and if so, whether the Licensee violated the rule. Thus, there also is no basis for further consideration of your allegations concerning the Licensee's representations concerning its managers' involvement in the Western Contract promotion, employee training, your job responsibilities or the scope of your employment and your familiarity with the requirements of this rule. Even if Section 73.1216 were applicable to the Western Contract promotion, a licensee is responsible for the acts or omissions of its employees and for ensuring that a licensee-conducted contest complies with the requirements of the rule.¹² In addition, Section 73.1216 does not include provisions related to employee training.

For the foregoing reasons, we find that your complaint does not provide the Commission with any basis for enforcement action and, therefore, your complaint is denied.

Sincerely,



Benigno E. Bartolome
Deputy Chief
Investigations and Hearings Division
Enforcement Bureau

cc: Mark J. Prak, Esquire and Stephen Hartzell, Esquire, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., Counsel for Hearst-Argyle Stations, Inc.

¹¹ See Reply at 40.

¹² A licensee cannot avoid a finding that it violated the licensee-conducted contest rule by asserting that its staff failed to adhere to the rule's requirements. See, e.g., *Service Broadcasting Group, LLC (Station KKDA-FM)*, Notice of Apparent Liability for Forfeiture, 2009 WL 1834098 (Investigations and Hearings Div., Enf. Bur. 2009) (forfeiture paid).