

## MEMORANDUM

CLIENT-MATTER NUMBER  
999100-0130

**TO:** Station Manager

**FROM:** Cleta Mitchell, Esq., Counsel  
Pat McCrory / McCrory for Governor

**DATE:** May 21, 2012

**RE:** Renewed Demand to Cease Airing False Advertisement

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On Friday, May 18, 2012, you received a Memorandum from this Firm, notifying you that an ad currently being aired on your station personally and falsely attacking my client, Pat McCrory, is a) defamatory and b) does not disclose the true identity of its sponsor as required by federal law.

This is to advise you as follows:

1. The false ad is defamatory and you should be aware that, pursuant to North Carolina law (N.C. Gen. St. §99.1), the notice provided to your station on May 18, 2012 triggered the statutory notice of five (5) days prior to commencement of legal proceedings for your continued dissemination of the defamatory advertisement.
2. You were furnished ample documentation of the Ad's false and defamatory statements in my May 18, 2012 Memorandum. Accordingly, your station is negligent in continuing to air the ad. (*See* N.C. Gen. St. §99.5)
3. The Ad falsely claims to be sponsored by an entity called "North Carolina Citizens for Progress" when, in fact, the true sponsor is the Democratic Governors Association. Your failure to announce the true identity of the sponsor of the ad is a violation of federal law and we have filed today a complaint against your station with the Federal Communications Commission ("FCC") on the grounds that you have failed to announce to the public the true identity of the sponsor of the ad. *See* 47 U.S.C. §317(c).

There is ample case authority in North Carolina – and elsewhere – that even a candidate for office can recover damages for defamation by a political opponent sponsoring false advertising during a political campaign. *See Boyce & Isley, PLLC v. Cooper*, 153 N.C. App. 25, 568 S.E.2d 893 (2002) (“Boyce I”) and *Boyce & Isley, PLLC v. Cooper*, 169 N.C. App. 572, 611 S.E.2d 175 (2005) (“Boyce II”). *Boyce & Isley, PLLC v. Cooper*, Case No. COA 10-243 (NC Ct. App., May. 3, 2011) (“Boyce III”).

As the Court of Appeals noted in Boyce III, “In Boyce I, reviewing a motion for judgment on the pleadings, our Court determined that assuming that the statements in the advertisement were false, *they were defamatory as a matter of law.*” (emphasis added)

The statements in the Ad are false and have been made with reckless disregard of the truth. We documented to you last Friday that the statements in the ad are false, to-wit:

- Pat McCrory has *never* had a hint of an ethical misdeed associated with his public service as Mayor of Charlotte.
- Pat McCrory’s efforts to keep two companies located in Charlotte from relocating to South Carolina in 2006 were a) important duties of his office and b) were not ‘lobbying’ as that term is defined in N.C. law.
- Pat McCrory received not one dime of compensation from Tree.com (or the other employer) as a result of his efforts to keep 3500 jobs from leaving North Carolina.
- Pat McCrory was not a member of the Tree.com board until well after the filing of the lawsuits referenced in the Ad
- The job of Mayor of Charlotte is a part-time, citizen position, anticipating and expecting that the mayor will earn his/her livelihood elsewhere. Pat McCrory had no conflict of interest nor are there *any* ethical issues associated with his duties as Mayor of Charlotte and his service on the Board of Directors of Tree.com during the final months of his tenure as mayor.

We reiterate that the ad is false and defamatory. It is so blatantly false that the Democratic Governors Association, who admits publicly that it paid for the ad, is not even willing to put its name on the ad.

Please be advised, again, that we will pursue all legal remedies related to this false and defamatory ad unless your station immediately takes the ad off the air.

Please contact me if you have any questions. Thank you.