

# Campaigns & Elections

## **Super PACs Lying About Your Candidate? Here's How to Get Their Ads Booted from the Airwaves**

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Super PACs aren't going away anytime soon, and neither are the sizable advertising budgets many of them wield. But if you're under attack, there's good news: You can mess with them.

When it comes to Super PAC advertising, there's one important thing to remember: Independent expenditure ads are governed by a different set of rules than candidate campaign ads. Candidate campaigns can just about say anything they want about their opponent, provided the candidate's image—and in federal races, the candidate's voice—appear in the spot. Super PACs, however, must be able to prove, or at least substantiate, the claims they make in their ads.

If an independent expenditure ad doesn't meet that requirement (among others), you can get it pulled from the airwaves. It's something our firm has done successfully at least twice this past campaign cycle. Getting an opposing committee's independent expenditure ad pulled off the airwaves requires a thorough understanding of the rules, a good deal of persistence, solid persuasion skills, and quickness on the part of your media and consulting team. You'll also need a good expert lawyer.

But when you successfully pull an opponent's ad off the air, it's more than worth it. For one, it delays a negative message and gives your team more time to prepare a response or counter. It also wreaks havoc on an opposing

committee. It will cost the opposition valuable time and money to revise their spots, and then deliver the new ad to television stations. And best of all, it will drive your opponents crazy, throwing them off-message and off-balance.

The first step in this process is to make sure you have an instantaneous way to capture an opponent's ad. That allows you to analyze the technical aspects of the spot, as well as its content. On the technical specs, there are ironclad rules governing the size of the letters in the disclaimer, the wording, and the duration it appears on screen. It's always a little surprising to us how often the agencies or consultants working for independent expenditure committees either don't know these basic rules, or simply choose to ignore them. Often, they figure they'll just get away with it. You shouldn't let them.

A proper ad by a candidate campaign committee, in which the candidate appears and which follows the disclosure rules, can't technically be censored or pulled off the air. But if an independent expenditure or Super PAC ad slips up, you should be ready for it. Independent expenditure ads cannot make statements that one can demonstrate are false.

Here's the process that we've honed over the years: First, have an attorney draft a formal complaint. Second, have your media buyer talk with station reps informally. Third, make sure your opposition research team works closely with your legal team when drafting the complaint so as to provide ironclad citations. And make sure your media buyer has already established a personal relationship with the local station reps early in the campaign before any advertising is placed. (This is something they should be doing anyway.)

From our experience, a challenge is most effective if it's launched within the first four hours after the Super PAC ad airs. This is why you need to act quickly and decisively to get all the pieces in place. Even though it's important to move fast, never trade speed for accuracy. Your challenge must be put together quickly, but it's still more important to get it done right in eight hours, than it is to have it done sloppily in two.

Below are three best avenues for getting an opposing Super PAC ad, independent expenditure spot, and in some cases, a candidate ad, pulled off the air.

### **1. Disclaimer Violations**

Disclaimer violations are the easiest way by far to get any political ad (Super PAC or candidate ad) yanked off the air. The disclaimer rules can differ across states for non-federal or local races, so make sure you brush up on the rules

in your locale. Federal campaigns have their own set of rules, and those supersede any state laws. There have been instances where consultants or ad agencies get them confused.

For example, most states recognize the federal requirement that political TV advertising must have a visual disclaimer with letters that constitute at least 4 percent of the vertical picture height. Typically, that visual disclaimer must air for at least four seconds, not counting any fade up or fade off.

So how does this help you? If an ad from your opponent or from an opposing Super PAC doesn't meet these basic technical disclaimer requirements, you can immediately get their spot kicked off the air and force them to spend precious time and money on a revision.

In a mayoral race this year, we got an opposition Super PAC ad kicked off the air three times for disclaimer violations—from the same ad. We purposely timed each of our objections to force the opponents to revise their ad over and over again. First, we objected to the fact that the Super PAC's disclaimer was too small and didn't meet the vertical height requirement. The ad was booted, and the Super PAC put a revised version back on the air. Then we challenged the revised spot because they had neglected to include "not authorized by any candidate" in the disclaimer. Again, the spot was booted. Finally, after the Super PAC had spent a huge amount of time and money to revise the ad a second time, we got it kicked off the air yet again, because it didn't obey a separate local disclaimer rule.

We knew all of those violations existed the first time the ad aired, but we rolled out each objection separately, knowing it would drive the Super PAC crazy with frustration, and that it would undermine the committee's faith in their consultant. After the final version of the ad appeared, the media consultant for the Super PAC actually included an unnecessary verbal disclaimer, wasting a full four seconds of precious ad time. The great irony is that the ad we kicked off the air was an ad attacking our candidate for not following the rules.

If you do decide to go after an opposing ad for disclaimer violations, understand there is much variation in the requirements, so be sure to check with an elections lawyer and with the secretary of state's office in your particular state to make sure you know the disclaimer rules for your campaign. And don't forget that federal campaigns have their own rules, which are immune to state law.

## **2. Provable, Clear Cut Errors**

Most local TV stations will give the benefit of the doubt to the advertiser; they *do* want to keep their money, after all. Still, the second easiest claim to make against an opposing ad is that it contains a piece of information that can be proven false beyond a doubt.

In 2012, we were able to kick an opponent's ad off the air because it listed an incorrect place of birth of our candidate in an ad attacking his residency. It was a simple fact that was disputable with hard evidence. Their ad broadcast false information. We provided a copy of the candidate's passport, which clearly stated his place of birth. That was enough to get the ad pulled.

Strategically, kicking this ad off the air bought us some time. The attack against us wasn't on the air, our opponents were forced to spend money revising the ad, and it allowed us to say the opposition was running false ads that had been pulled from TV stations as a result.

## **3. Outright Lies**

As we noted earlier, Super PACs and candidate committees are not held to the same standard when it comes to telling the truth. Working with attorney Jim Lamb, of Sandler, Reiff, Young & Lamb, and VJ Bustos of Gragert-Jones Research, we were able to successfully get a Super PAC ad pulled from the air this past cycle based on falsehoods. Just as we did in this case, it's always a good idea to have your opposition researcher work with your attorney when it comes to this. Your researcher more than likely has all the facts needed to prove your case.

The letter we provided to TV stations, written by Lamb with Bustos's research assistance, took each claim made against our candidate and broke it down line by line with a news-sourced rebuttal. The letter also contained this key statement: "Your station should protect the public from this Super PAC's false, misleading, and deceptive advertising by taking the ad off the air immediately." We won that battle.

The Super PAC's next ad made it to one local TV station with an email from an unhappy media consultant that described us in a way that would make Samuel L. Jackson (circa "Snakes On A Plane") very proud. "Here is the proof and the script should motherfuckers start crying foul," the email read.

We took it as a compliment.

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