

VIA ELECTRONIC MAIL

June 29, 2020

Jennifer Newstead, Esq.
General Counsel
Facebook, Inc.
1601 Willow Road
Menlo Park, California 94025

Re: Deceptive, False and Defamatory “Health Alert” Advertisement by 314 Action

Dear Ms. Newstead:

This Firm represents the Nancy Mace for Congress Campaign as well as Nancy Mace individually and write concerning an advertisement currently being run on Facebook by 314 Action that falsely and deceptively characterizes itself as a “Health Alert” purportedly to warn people regarding COVID-19 exposure and urging them to contact their “local health authority immediately.” Given the serious nature of the health concerns surrounding COVID-19, it is shocking that an organization would seek to utilize the very real public health concerns arising from this unprecedented global pandemic for brazen political purposes. It is more troubling that this organization tries to deceive the public by styling its political advertisement as a “Health Alert” involving local health authorities and is using Nancy Mace’s personal health information for political gain. This advertising violates Facebook’s Terms of Service, Community Standards and Advertising Policies.

According to Facebook’s Advertising Policies, ads must not infringe on the privacy rights of any third party, nor may they make assertions about, *inter alia*, an individual’s physical health. In addition, an ad must not contain sensational content, misinformation, or be deceitful. 314 Action’s advertisement is deceitful misinformation designed in a sensational way to scare the public and violates Facebook’s Community Standards as its deceptive content misrepresents that it is a “Health Alert” rather than a political advertisement intended to scare the public for political gain.

Further, Facebook has a responsibility to the public not to air false “Health Alerts” designed to scare the people during the worst global public health crisis in over a century. Allowing this advertisement to run on your platform undermines public health and safety. Additionally, by broadcasting Nancy Mace’s personal health information, you may be equally liable for the improper disclosure and improper use of her private health information.

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We write to put you on notice that the advertisement by 314 Action is false and deceptive in all respects and in and of itself constitutes a danger to the health and safety of South Carolinians.

First, the advertisement is deceptively styled to appear as though it is some sort of official governmental warning and is designed to scare South Carolina voters. It is a crime in South Carolina for an individual or group to falsely assert authority of law. *See* SC Code § 16-17-735. This advertisement is crafted to appear to do just that—be a public warning regarding health and safety related to COVID-19.

Second, in addition to being deceptive as a “Health Alert” the advertisement is false in all respects with regard to Nancy Mace’s activities on June 23, 2020 and a violation of Facebook’s Advertising Policy because it discusses her personal health information

Third, in addition to impermissibly discussing Nancy Mace’s personal health information, the advertisement is factually wrong and defamatory.

According to the advertisement, Nancy Mace visited her polling place on Tuesday, June 23rd, without a mask, and shook hands with South Carolina voters after knowing she had diagnosed with COVID-19. This statement is demonstrably false.

Contrary to what the advertisement says, Nancy Mace wore a mask when she visited her polling place on June 23rd and she did not shake hands with any voters. In fact, when she arrived at the polling place to vote at 7:15 a.m. that day, she was the only voter there. At her car, just before she left at 7:17 a.m., she removed her mask to take a ‘selfie’ to encourage South Carolinians to vote in the House District 99 runoff which she shared via Twitter. In addition to not having shaken hands with any voters at the polling place, at no time did she interact with anyone without a mask. This false allegation is intended to convey a threat to the public health that did not and does not exist.

Furthermore, the advertisement falsely claims that Nancy Mace went to the polling place on June 23rd after knowing that she had tested positive for COVID-19. This is false. She did not know that she had been exposed to COVID-19 prior to voting. The advertisement falsely states that Nancy Mace knowingly placed voters in danger. This too is demonstrably false.

A false message that Nancy Mace poses a danger to the public is *per se* defamatory under South Carolina law and she is entitled to damages for the harm to her reputation resulting from 314 Action’s false and deceptive advertisement. *Kennedy v. Richland Cty. Sch. Dist. Two*, 428 S.C. 98, 833 S.E.2d 414, 423 (Ct. App. 2019) (The “tort of defamation allows a plaintiff to recover when a defendant communicates a false message about the plaintiff to others that injures the plaintiff’s reputation.”); *McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010) (A “statement is classified as defamatory *per se* when the meaning or message is obvious on its face.”). It is clear that 314 Action has acted with either the “knowledge that the statement was false or with reckless disregard of its falsity” which satisfies the constitutional

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malice standard required in defamation actions involving public officials. *New York Times v. Sullivan*, 376 U.S. 254, 279–80 (1964). Facebook’s policies prohibit advertisements on its platform that blatantly defame third parties.

Now that you are on notice regarding the falsity of the advertisement, and how it violates Facebook’s policies regarding advertisements, Facebook has an obligation to pull 314 Action’s advertisement from its platform and we encourage Facebook to take any and all other action to prevent 314 Action from further scaring and deceiving the public and defaming Nancy Mace.

Given the foregoing, on behalf of the Nancy Mace for Congress Campaign and Nancy Mace individually, we insist that you immediately cease and desist from running 314 Action’s deceptive “Health Alert” on the Facebook platform. Nothing contained in this letter, nor any act or omission to act by the Campaign or Ms. Mace should be construed as a waiver of the rights or remedies available to them under applicable law, and all such rights and remedies are hereby reserved.

Sincerely,



David A. Warrington
Counsel for Nancy Mace
and
Nancy Mace for Congress