

EXHIBIT N

AMERICAN FREEDOM DEFENSE INITIATIVE, ET AL v.
SUBURBAN MOBILITY AUTHORITY FOR REGIONAL
TRANSPORTATION, ET AL

ANTHONY CHUBB

May 21, 2013

Prepared for you by

 **BIENENSTOCK**
NATIONWIDE COURT REPORTING & VIDEO

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ANTHONY CHUBB
 May 21, 2013

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1 Ann Arbor, Michigan
2 Tuesday, May 21, 2013
3 9:48 a.m.
4
5 ANTHONY CHUBB,
6 was thereupon called as a witness herein, and after
7 having first been duly sworn to testify to the truth,
8 the whole truth and nothing but the truth, was
9 examined and testified as follows:
10 MARKED FOR IDENTIFICATION:
11 DEPOSITION EXHIBIT 1
12 9:48 a.m.
13 EXAMINATION
14 BY MR. MUISE:
15 Q. Sir, could you please state your full name?
16 A. Anthony Chubb.
17 Q. Sir, my name is Robert Muise, and I represent the
18 plaintiffs in this case, and those plaintiffs being
19 the American Freedom Defense Initiative, Pamela
20 Geller, and Robert Spencer.
21 And present at this deposition today, to my
22 right is Daniel Piedra, who is a legal assistant at
23 the American Freedom Law Center, and to his right is
24 Mr. Avery Gordon who is representing the defendants in
25 this case, and to his right and your left is Mr.

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1 Christian Hildebrandt, who I understand is
2 representing you during the course of this deposition.
3 I want to review some ground rules,
4 hopefully to facilitate the record, making a clear
5 record during this case, because to my left and your
6 right obviously is our court reporter here who is
7 diligently trying to take down everything that you and
8 I or an attorney during this deposition says.
9 Have you ever given a deposition before?
10 A. I have not.
11 Q. Have you testified under oath before?
12 A. I have not.
13 Q. My understanding is you're actually one of the
14 attorneys of record in this case; is that right?
15 A. I am.
16 Q. So you have some familiarity with the deposition
17 process; is that fair to say?
18 A. That is true.
19 Q. Okay. And you understand that your testimony today is
20 being given under oath as if you were testifying in a
21 court of law?
22 A. I do understand.
23 Q. Okay. And as I said, our court reporter here is
24 diligently trying to take down everything that is
25 said. Consequently one of the most important rules

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1 during the course of this deposition is ensure that
2 only one of us are speaking at a time, okay?
3 A. Understood.
4 Q. And it's also going to be important that the two of us
5 speak up and speak clearly so the court reporter can
6 understand what you are saying, okay?
7 A. Understood.
8 Q. One of the tendencies in normal conversation is that a
9 person will anticipate a question being asked and then
10 want to start answering the question before the
11 question is completely asked. I would ask you to
12 resist that temptation, let me get my question out
13 completely before you start answering, okay, sir?
14 A. Understood.
15 Q. And I will likewise do the same, not to follow up with
16 any other questions until you have answered the
17 question that's on the table, okay, sir?
18 A. Understood.
19 Q. If there is a document that might assist you in your
20 testimony today, let me know. I have got quite a few
21 of them here with me, there is a good chance we might
22 have that available if that will help you give a more
23 complete and thorough answer, okay, sir?
24 A. Understood.
25 Q. If there is question that I am asking you that you

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1 don't understand, I'm from the Boston area, every now
2 and then I cut words off at the end, and I tend to
3 speak quickly, so I apologize ahead of time to our
4 court reporter. So I want to make sure you fully
5 understand my question before you answer, sir.
6 A. Understood.
7 Q. If you need a break at all this morning, let me know.
8 We will certainly do that. This is not enhanced
9 interrogation by any stretch, so if you need a break,
10 we will certainly do that. What I typically do is
11 probably after about 50 minutes I tend to take a 10
12 minute break, that's usually how it works out, but
13 again, if you need a break, let me know. The only
14 caveat being that if we are in the middle of a
15 question and answer, I would ask that you finish your
16 answer to the question before we take a break, okay?
17 A. Understood.
18 Q. Now, is there any reason as you are sitting here today
19 why it would be difficult for you to fully understand
20 and answer my questions, meaning are you under any
21 doctor's care, do you have any personal issues, and I
22 don't need to know the details, I just want to know if
23 there is anything that might effect your ability to
24 fully understand and answer my questions this morning.
25 A. No.

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1 Q. In preparation for this deposition, did you review any
2 documents that might help you to recall facts related
3 to the issues in this case?
4 A. Yes.
5 Q. Do you recall what those documents were that you
6 reviewed?
7 A. I reviewed the document production that SMART has
8 given to the plaintiffs.
9 MR. HILDEBRANDT: Including the CBS stuff
10 that we gave to you yesterday that came up in his
11 review.
12 A. And various other internal memorandums and documents
13 related to the case.
14 BY MR. MUISE:
15 Q. Do you recall any specifics of what these internal
16 memoranda and documents related to the case were?
17 A. I really -- no, I couldn't say.
18 Q. Were they e-mails amongst individuals that work for
19 SMART?
20 A. Not beyond those which were produced in the discovery.
21 Q. Was there a document that was created regarding the
22 application of the SMART policy to the advertisement
23 that's at issue in this case?
24 A. Any such document would be privileged if there was a
25 review of it.

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1 Q. But does such a document exist?
2 A. I don't believe so. Actually, no.
3 Q. Anything you can recall about any other documents you
4 may have reviewed that are separate or distinct from
5 the documents that were provided in the production,
6 including the document that was produced yesterday?
7 A. I don't believe so.
8 Q. Did you discuss your deposition this morning with
9 anyone other than counsel?
10 A. No.
11 Q. I'm handing you what has been marked as Deposition
12 Exhibit Number 1. Have you seen this document prior
13 to today?
14 A. Yes, I have.
15 Q. And do you understand that this document is the
16 deposition notice directed to defendant SMART, which
17 is Suburban Mobility Authority For Regional
18 Transportation, pursuant to rule 30 (b)(6) of the
19 Federal Rules of Civil Procedure?
20 A. Yes, I do.
21 Q. And pursuant to this deposition notice, you have been
22 identified by -- and let me just back up.
23 Is it okay with you, I will be using the
24 acronym SMART, S-M-A-R-T, to refer to defendants
25 Suburban Mobility Authority for Regional

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1 Transportation, is that okay with you?
2 A. Understood.
3 Q. And I'm sure our court reporter will appreciate that
4 as well.
5 So pursuant to this notice you have been
6 designated as the witness to testify on behalf of
7 defendant SMART; is that your understanding?
8 A. Yes.
9 Q. And if you look at page 2 and 3, there are subject
10 matter that have been identified in this deposition
11 notice, again the numbers are 1 through 6 paragraphs,
12 do you see those, sir?
13 A. Yes.
14 Q. And are you prepared to testify on behalf of those
15 matters on behalf of SMART this morning?
16 A. Yes.
17 Q. And so I just want to be clear, so for purposes of
18 your answers in this deposition, those answers are the
19 answers of SMART, do you understand that?
20 MR. HILDEBRANDT: I'm going to object to
21 the question. It assumes that all of your questions
22 are going to be properly asked and properly
23 configured. To the extent that you ask him about his
24 personal opinions, you may receive personal opinions.
25 To the extent that your questions are directed to

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1 questions against SMART, you will receive answers that
2 are on behalf of SMART.
3 BY MR. MUISE:
4 Q. Do you understand my question, sir, that I am going to
5 be asking you questions regarding and expecting
6 answers on behalf of SMART, do you understand that?
7 A. Understood.
8 Q. And I just want to be clear that if I use the pronoun
9 you during the course of this deposition, the you is
10 referring to SMART, do you understand that?
11 A. Understood.
12 Q. Unless I preface a question specifically asking for a
13 personal opinion of Anthony Chubb, every one of my
14 questions during the course of this deposition will be
15 directed towards you as the witness for SMART, do you
16 understand that?
17 A. Understood.
18 Q. Now, at issue in this case is an advertisement that my
19 clients submitted to SMART for them to display on
20 their buses, do you understand that?
21 A. Yes.
22 Q. And I'm handing you what has been previously marked as
23 Deposition Exhibit Number SS from the Geller
24 deposition. Do you see that, sir?
25 A. Yes.

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1 Q. Is it your understanding that that, the advertisement
2 that's depicted in Exhibit Number SS, is in fact the
3 advertisement at issue in this case?
4 A. Yes.
5 MR. HILDEBRANDT: When you use the pronoun
6 your, you mean SMART as well, right?
7 MR. MUISE: Absolutely, I do. I want to
8 make sure that we are crystal clear on the record that
9 this is SMART's deposition testimony. I'm not looking
10 for the personal opinions of Mr. Chubb during the
11 course of this.
12 MR. HILDEBRANDT: Well, to be fair, your
13 question asked him whether it was his understanding
14 that that's the ad at issue, and I'm assuming you
15 meant was it SMART's understanding that that's the ad
16 at issue, and I'm certain that that's how he answered
17 that, based upon your admonition.
18 BY MR. MUISE:
19 Q. And I don't want you to have any assumptions
20 whatsoever. All my questions directed to you, whether
21 I use the pronoun him, his, you, your, any other
22 reference that's directed to the person sitting in the
23 chair across from me is a question directed to SMART
24 and I expect an answer from SMART. Do you understand
25 that?

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1 A. Understood.
2 MR. MUISE: Okay. Mark this Exhibit Number
3 2.
4 MARKED FOR IDENTIFICATION:
5 DEPOSITION EXHIBIT 2
6 9:58 p.m.
7 BY MR. MUISE:
8 Q. Sir, I'm handing you what's been previously marked as
9 Exhibit Number 2, which I can represent to you these
10 were documents that were produced pursuant to the
11 document production. The front appears to be an
12 e-mail from, the top it says Beth Gibbons, but an
13 e-mail from Robert Hawkins to Ms. Beth Gibbons dated
14 May 13, 2010. It has as a subject line forward:
15 Leaving Islam, and then it has attachment of a jpeg,
16 leaving Islam.
17 If you look at the second page of that,
18 again, is this advertisement that's listed on the
19 second page the advertisement at issue that my clients
20 submitted to SMART for display on the buses?
21 A. Yes.
22 Q. Do you know who Beth Gibbons is?
23 A. Yes.
24 Q. And who is Beth Gibbons?
25 A. Beth Gibbons is the manager of marketing and external

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1 affairs for SMART.
2 Q. Does Beth Gibbons have any role at SMART with regard
3 to the application of any policies that would apply as
4 to whether or not an advertisement will be accepted or
5 rejected by SMART?
6 A. Yes.
7 MR. HILDEBRANDT: Objection, vague.
8 BY MR. MUISE:
9 Q. And what is her role?
10 A. Beth Gibbons is the contact person with CBS Outdoors,
11 which is our current, SMART's current advertising
12 vendor, and so pursuant to the contract, if they
13 question whether there is a violation of the policy
14 and the advertising restriction content, then they
15 contact Beth, and she makes determinations or looks
16 for internal advice regarding violations of the
17 contract.
18 Q. Does she have authority to make determinations on her
19 own?
20 A. Yes.
21 Q. And sometimes she might seek other advice to assist in
22 making the determination; is that correct?
23 A. Yes.
24 Q. And would that be in the application of the policy
25 that was applied to reject my client's advertisement?

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1 A. Yes, I believe she has authority to make that
2 determination in certain circumstances.
3 Q. I understand. You mentioned Robert -- well, let me
4 back up.
5 You mentioned CBS Outdoor, but I want to
6 ask you, Robert Hawkins, do you know who Mr. Hawkins
7 is?
8 A. He was, at the time of this e-mail, he was their sales
9 representative for the Detroit area.
10 Q. Okay. And you say their. You are referring to the
11 CBS Outdoor?
12 A. Correct, yes.
13 Q. And what is the relationship of CBS Outdoor to SMART
14 with regard to these advertisements?
15 A. CBS Outdoor is our agent and contractor for the sale
16 and placement of advertising on the buses, the sale
17 production and placement, sorry.
18 Q. I'm sorry. Does CBS Outdoor have any role whatsoever
19 in making determinations as to whether an
20 advertisement would be accepted or rejected?
21 A. Generally, no. The way that the contract is set up,
22 if they feel that there is any potential violation of
23 the advertising content policy, they go directly to
24 SMART for a determination to be made.
25 Q. Do you know if CBS Outdoor had any role whatsoever in

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1 the decision to reject the placement of my client's ad
2 on SMART buses?
3 MR. HILDEBRANDT: Objection, vague.
4 A. They may have -- yes.
5 BY MR. MUISE:
6 Q. And what would have been their role?
7 A. They may have communicated the rejection to your
8 client.
9 Q. In terms of the actual the decision to reject the
10 advertisement, do you know if CBS Outdoor or any of
11 its officers played any role in making that decision?
12 A. I do. They did not.
13 Q. Okay. Thank you.
14 Now, my client's advertisement, the one I
15 have been referring to in Exhibit SS in Deposition
16 Exhibit Number 2, was rejected by SMART based on its
17 content; is that correct?
18 A. That's correct.
19 Q. And it was rejected based on its content based on
20 SMART's content policy; is that right?
21 A. That's correct.
22 Q. Do you have a name for that policy? I refer to it as
23 content policy. Is there an official name for the
24 policy that was used to reject the advertisement?
25 A. Could I have a copy of that? It's section 5.07 of the

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1 contract between CBS and SMART.
2 Q. Certainly. That actually was going to be the next
3 exhibit, so why don't we just move to that.
4 You refer to it as the contract between?
5 A. Between CBS and SMART.
6 MR. MUISE: Let's mark this as number 3.
7 MARKED FOR IDENTIFICATION:
8 DEPOSITION EXHIBIT 3
9 10:03 a.m.
10 BY MR. MUISE:
11 Q. Sir, I'm handing you what's been marked for this
12 deposition as Exhibit Number 3, and I will represent
13 to you that this was Exhibit A that was submitted by
14 SMART as document number 12-2 in this case, and it was
15 my understanding based on responses to the document
16 production as well as representations made in court
17 that Exhibit A depicts in fact the policy for
18 accepting or rejecting advertisements with SMART; is
19 that correct, sir?
20 MR. HILDEBRANDT: We will stipulate to
21 that.
22 A. Correct.
23 BY MR. MUISE:
24 Q. Okay. And I believe I had a question, I asked you a
25 question was there a particular, what you call this

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1 particular policy, does it have a particular title?
2 A. It's the advertising guidelines.
3 Q. And the advertising guidelines I believe you are
4 referring to I believe is listed on this Exhibit
5 Number 3 as 5.07 advertising guidelines; is that
6 correct?
7 A. That's correct.
8 Q. And it appears on page 40, the page number at the
9 bottom of this document, but this document doesn't
10 have 40 pages, correct?
11 A. That's correct. It's page 40 of the contract. This
12 is a portion of that contract.
13 Q. Now, with regard to determinations that are made on
14 the content of the advertisement, whether to restrict
15 it or to permit it, is the entire guidelines listed
16 under section 5.07 as indicated in this Exhibit Number
17 3?
18 A. No.
19 Q. What other guidelines are applied?
20 A. There are other guidelines with regard to the size of
21 the advertising that are listed elsewhere in the
22 contract, but they aren't regarding the content of the
23 advertising.
24 Q. And I appreciate your response to clarify. It helps
25 me to clarify my follow-up question now.

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1 So with regard to advertising guidelines
2 related to content, whether to accept or reject an
3 advertisement, is the entirety of those guidelines
4 listed in section 5.07 in Exhibit 3?
5 A. Yes.
6 Q. Are there any sections that would provide any
7 definitions for any of those -- let me back up.
8 Is there a definitional section that is
9 related to section 5.07 of Exhibit 3?
10 A. No.
11 Q. Are there any other guidelines, manuals or criteria
12 that relate to the application of section 5.07 of
13 Exhibit 3?
14 MR. HILDEBRANDT: I'm going to object to
15 the question. It's compound. Guidelines are
16 different than criteria.
17 BY MR. MUISE:
18 Q. Let me ask it -- are there any other -- I will break
19 it down.
20 Section 5.07, the advertising guidelines
21 here on Exhibit 3, are the guidelines that SMART uses
22 to either accept or reject an advertisement based on
23 content, correct?
24 A. Correct.
25 Q. Are there any other guidelines that address the

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1 application of section 5.07?
2 MR. HILDEBRANDT: Objection, vague.
3 A. No.
4 BY MR. MUISE:
5 Q. Do you understand the question?
6 A. I believe so. Within the contract there are no other
7 guidelines that speak to the application of 5.07.
8 Q. Is there -- are there any other guidelines outside
9 this contract that speak to the application section,
10 5.07?
11 MR. HILDEBRANDT: Objection, vague.
12 A. No.
13 BY MR. MUISE:
14 Q. Are there any other instructions outside of this
15 contract that speak to section, the application of
16 section 5.07?
17 A. No.
18 Q. So if an official at SMART was going to make a
19 determination of whether content was acceptable or
20 impermissible for display on its buses, the entirety
21 of the guidance that that official would be operating
22 under is contained in section 5.07 of these
23 advertising guidelines?
24 MR. HILDEBRANDT: Objection, vague.
25 A. Correct.

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1 BY MR. MUISE:
2 Q. Now, these advertising guidelines, 5.07, the content
3 restrictions, they apply to bus advertisements,
4 correct --
5 A. Correct.
6 Q. -- in SMART?
7 Are there other fora for advertising that
8 SMART, that SMART permits? I believe I have seen ads
9 for like bus shelters, for example?
10 A. Yes.
11 Q. So you have buses, you have bus shelters. Are there
12 other locations where people can advertise that SMART
13 controls?
14 A. No.
15 Q. So bus shelters and buses is the extent of it?
16 A. That's correct.
17 Q. And with regard to buses, I have seen advertisements
18 that appear to be inside the buses; is that right?
19 A. Correct.
20 Q. Is there a particular name for those advertisements?
21 A. Just interior bus advertisements.
22 Q. So you have exterior bus advertisements and interior
23 bus advertisements?
24 A. Correct.
25 Q. And on the exterior I have seen that some have been

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1 posted on the long edge of the buses; is that right?
2 A. Correct.
3 Q. And on the back side of the buses as well?
4 A. Correct.
5 Q. And these advertising guidelines regarding contents,
6 section 5.07 in Exhibit 3, does it apply to all those
7 advertising spaces that we have just described?
8 A. Yes.
9 Q. Now, I would like for you to explain to me the process
10 that SMART uses for when an advertisement is presented
11 for determination of whether it will run or not run on
12 the SMART buses. Are you familiar with that process?
13 A. Yes.
14 Q. Okay. Would it begin with, as we had in Exhibit 2,
15 for example, you had Robert Hawkins who would then
16 present an advertisement to SMART or how does the
17 process go? My client wants to put this advertisement
18 listed on Exhibit 2 and Exhibit SS on a SMART bus ad.
19 What were the steps that the person would have to take
20 for that to happen?
21 A. Generally an advertiser will speak first to CBS
22 Outdoor as our agent, as SMART's agent. They will --
23 they will explain the pricing and everything regarding
24 the actual placement, timing, the available space, and
25 then the ad copy is submitted to CBS from the

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1 advertiser. CBS then will, if it believes that there
2 is a potential violation of section 5.07, it will give
3 a copy of the advertising to Beth Gibbons or the
4 person in that role obviously, and Beth then will seek
5 advice internally as necessary to make any final
6 determination as to violations of section 5.07.
7 Q. Okay. If there is a determination that it violates
8 section 5.07, is there a process or procedure that
9 SMART employs to notify the advertiser?
10 A. Generally, although there could be exceptions, Beth
11 Gibbons will then go back to CBS to tell them to
12 notify the advertiser that their advertisement has
13 been rejected.
14 Q. Is it the policy or practice of SMART to give a reason
15 as to why the advertisement was rejected?
16 A. Yes.
17 Q. Would they specifically cite to section 5.07 if it was
18 a content based issue?
19 A. They would -- no, not necessarily. They would say --
20 I mean in a vague sense, yes. They wouldn't
21 necessarily say section 5.07, but they would say it's
22 against SMART's content policy.
23 Q. Is it the practice to explain what part of the content
24 policy the particular advertisement violated?
25 A. No.

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1 Q. And I believe you testified previously that in the
2 sequence that you have described, Beth Gibbons, if she
3 based on her determination concluded that it violated
4 the content restriction, she could then tell Mr.
5 Hawkins that the advertisement has been rejected
6 without any further, seeking any further advice; is
7 that right?
8 A. That's correct.
9 Q. And in some cases she may seek further advice; is that
10 right?
11 A. Correct.
12 Q. Who are the other officers or persons to whom she
13 would seek advice?
14 A. Generally the office of the general counsel, the
15 general manager, and other individuals within
16 administration potentially if the ad is of a certain
17 nature that it would impact -- that they would have
18 some technical expertise in it.
19 Q. For example, what would be an example of that?
20 A. It would be hard to come up with one. I was thinking
21 SMART has a drug and alcohol compliance person that
22 may have specialized knowledge in that area if it was
23 something related to drugs or alcohol potentially, or
24 our deputy general manager of administration has also
25 been sought generally if more opinions are needed.

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1 Q. Is the procedure for reviewing beyond Beth Gibbons'
2 determination, is there -- is it set forth in any
3 rules, guidelines or regulations as to what the
4 procedure will be employed if Beth Gibbons has to go
5 beyond her own determination?
6 A. No. It's fairly consistent, though.
7 Q. So you have the office of the general counsel, the
8 general manager and perhaps other individuals?
9 A. Well, first the marketing department or the external
10 affairs and communications department, which is Beth
11 Gibbons, the office of the general counsel, and the
12 general manager is the standard process.
13 Q. So marketing department, and who is it after that?
14 A. The office of the general counsel, and the general
15 manager's office.
16 Q. Does it have to go to all of those or can at any point
17 somebody make a determination that it's either good or
18 it fails?
19 A. At any point someone could make a determination if
20 they thought that it was clear-cut and didn't need to
21 be escalated further, they could make a determination
22 and the decision would be made.
23 Q. And that's a decision whether to run it or to reject
24 it?
25 A. Correct.

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1 Q. Is this the general direction it goes, marketing
2 department, office of general counsel, and then
3 general manager's office?
4 A. Yes.
5 Q. And using a, I guess a trite phrase, the buck could
6 stop at one of those departments; is that right?
7 A. That's correct.
8 Q. You know what I mean by that --
9 A. Yes.
10 Q. -- a final decision could be made in any one of those
11 departments?
12 A. Yes.
13 Q. Are there any guidelines that, for example, Beth
14 Gibbons in the marketing department would review to
15 make a determination whether it then needed to be
16 bumped up to the office of general counsel?
17 MR. HILDEBRANDT: Objection, vague. You
18 mean in addition to 5.07?
19 MR. MUISE: Exactly.
20 A. Common sense.
21 BY MR. MUISE:
22 Q. Anything other than common sense?
23 A. No.
24 Q. Do you know if there was anyone other than Beth
25 Gibbons who in the marketing department reviewed my

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1 client's advertisement at issue in this case?
2 MR. HILDEBRANDT: Objection, vague. What
3 do you mean by reviewed?
4 BY MR. MUISE:
5 Q. Do you understand what I mean by reviewed?
6 A. Yes, I believe so. I believe that at the time we had
7 a direct -- there was a SMART director of marketing
8 and external affairs, Beth Dryden, and I believe she
9 has reviewed the advertisement.
10 Q. Okay. Other than Beth Gibbons and Beth Dryden,
11 anybody else in the marketing department that you are
12 aware of that reviewed my client's advertisement to
13 determine whether it satisfied the content based
14 requirements?
15 A. No.
16 Q. Do you know if the decision to reject my client's
17 advertisement was made by the marketing department?
18 A. It was not.
19 Q. So there was something about my client's advertisement
20 that then caused either Ms. Gibbons or Ms. Dryden to
21 push the decision up to the office of the general
22 counsel; is that correct?
23 A. Presumably, yes.
24 Q. Well, do you know?
25 A. I can't speculate as to their -- what they were

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1 thinking, but they did push it beyond the marketing
2 department, and so based on our policy, yes, there was
3 something that caused them uncertainty and they needed
4 further review.
5 Q. Okay. So they didn't -- even though she had the
6 authority to either approve or reject the
7 advertisement, it's your understanding that Beth
8 Gibbons or Beth -- was it Beth Dryden too?
9 A. Correct.
10 Q. So two Beths, I'm sorry. So Beth Gibbons and Beth
11 Dryden in the marketing department did not make a
12 decision one way or the other and they pushed it up to
13 the office of general counsel, correct?
14 A. Correct.
15 Q. Do you know if the decision to reject my client's ad
16 was made from the office of the general counsel?
17 A. Can you restate that question?
18 Q. Sure. Do you know if the decision then to reject my
19 client's ad was made at the office of the general
20 counsel?
21 A. It was not.
22 Q. So then the office of the general counsel decided it
23 needed to be pushed up to the general manager's
24 office?
25 A. That's correct.

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1 Q. And was the decision to deny, reject my client's
2 advertisement was made then by the general manager's
3 office; is that right?
4 A. In consultation with the other departments, yes.
5 Q. So the final decision then went through all three of
6 those levels up to the general manager's office?
7 A. That's correct.
8 Q. Who was the general manager at the time?
9 A. John Hertel.
10 Q. Did the marketing department make a recommendation to
11 the office of general counsel as to whether my
12 client's ad should be accepted or rejected?
13 MR. HILDEBRANDT: I'm going to object.
14 That's privileged information. The advice that they
15 sought from the attorney from SMART is privileged.
16 MR. MUISE: I'm not asking for the
17 advice --
18 BY MR. MUISE:
19 Q. Is Beth Gibbons an attorney?
20 A. She is not.
21 Q. Is Beth Dryden an attorney?
22 A. She is not.
23 Q. Do either of them hold a role as an attorney?
24 A. Not that I'm aware of, no.
25 Q. So they are not engaging in the lawful practice of law

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1 at SMART; is that fair to say?
2 A. Correct.
3 Q. Do you know what recommendations either Beth Dryden or
4 Beth Gibbons made as to whether this advisement should
5 be accepted or rejected?
6 MR. HILDEBRANDT: I'm objecting, that's
7 attorney client privileged.
8 MR. MUISE: Are you directing the witness
9 not to answer the question?
10 MR. HILDEBRANDT: I am directing the
11 witness not to answer the question because the fact
12 that she sought legal counsel and the discussions that
13 she had with legal counsel are absolutely privileged.
14 MR. MUISE: Are you instructing the client
15 not to answer the question?
16 BY MR. MUISE:
17 Q. Are you going to answer the question?
18 A. Are you directing me?
19 MR. GORDON: Can I hear the question again,
20 please?
21 (The following record was read by the
22 reporter at 10:21 a.m.
23 "QUESTION: Do you know what
24 recommendations either Beth Dryden or Beth
25 Gibbons made as to whether this advisement

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1 should be accepted or rejected?")
2 A. Could you clarify as to -- do you mean prior to the ad
3 being reviewed by the office of the general counsel?
4 BY MR. MUISE:
5 Q. Right. I'm trying to understand the process in which
6 SMART uses to apply generally the content based
7 restrictions and how it was applied in my client's
8 case, and my question is based on your testimony the
9 decision to accept or reject the advertisement was not
10 made at the marketing department level, although it
11 could have been made under this policy, correct?
12 A. Correct.
13 Q. And so the -- that decision was pushed up to the next
14 level, and the next level is the office of general
15 counsel, and you testified that that decision could
16 have been made to accept or reject at that point, but
17 it wasn't. In the case of my client's ad, it was
18 pushed up again to the third level, which was the
19 general manager's office, and it was at the general
20 manager's office that the final decision was made to
21 reject the advertisement. Is that a correct summary?
22 A. That is all correct, but it isn't strictly appellate
23 review; it's more of a consensus review, and if there
24 isn't absolute consensus, then another and more input
25 is sought, but yes.

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1 Q. I understand.
2 A. The advertisement did go through people in that order.
3 Q. And so my question was did the marketing department
4 make a recommendation as to whether it believed that
5 the advertisement should have been accepted or
6 rejected when it was pursuing further information from
7 or further determination from the office of general
8 counsel?
9 MR. HILDEBRANDT: Objection, that seeks
10 attorney client privileged information. Whether the
11 client seeks legal advice from their legal department
12 is privileged, whether or what or whatever
13 conversations they have are absolutely privileged.
14 And so to the extent that Beth Gibbons came to the
15 legal department and said I want to talk about this,
16 what she says after that or even before that with the
17 legal department is absolutely privileged. So any
18 recommendation made to the legal department, which is
19 the basis of your question, is privileged.
20 MR. MUISE: You are instructing the witness
21 not to answer the question?
22 MR. GORDON: Yes, of course.
23 MR. HILDEBRANDT: Yes.
24 MR. MUISE: Okay. I just want to make sure
25 we are perfectly clear on the record of that.

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1 MR. HILDEBRANDT: Perfectly.
2 BY MR. MUISE:
3 Q. I want to ask you in terms of the application of the
4 content based restrictions generally and then focus in
5 on how it was applied in my client's case.
6 If a determination cannot be made at the
7 marketing department level, is it typical that the
8 marketing department will then make a recommendation
9 to the next level in the sequence that we described in
10 terms of the application of the policy?
11 MR. HILDEBRANDT: You are again getting
12 into what is the conversation between the marketing
13 department and their attorneys, the general counsel.
14 You don't get that. It's privileged.
15 MR. MUISE: There is nothing specific about
16 it. The fact that --
17 MR. HILDEBRANDT: It doesn't matter if it's
18 specific.
19 MR. MUISE: The fact that -- the fact of
20 making a recommendation is not a privileged
21 communication.
22 MR. HILDEBRANDT: Yes, it is.
23 MR. MUISE: Are you going to instruct him
24 not to answer the question?
25 MR. HILDEBRANDT: The fact that they picked

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1 up the phone to call legal is a privileged issue.
2 What they seek legal advice about is privileged, how
3 they seek legal advice is privileged. The legal
4 advice is privileged.
5 If you want to ask what the review was at
6 the general counsel level, that's fine. If you want
7 to ask what the review was at the marketing level,
8 that was fine, but if you ask her what she asked her
9 attorney about or what she normally asks her attorney
10 about, that is privileged information and he is not
11 going to be answering. SMART asserts that privilege.
12 BY MR. MUISE:
13 Q. So you're not going to answer the question; is that
14 correct?
15 A. As directed by my counsel.
16 Q. Okay. That's a yes?
17 MR. HILDEBRANDT: SMART's counsel.
18 A. SMART's counsel, yes.
19 MR. MUISE: The my pronoun fits SMART as
20 well in the course of this deposition.
21 MR. HILDEBRANDT: Fair enough.
22 BY MR. MUISE:
23 Q. So in light of the objection and what I believe was
24 clarification of Mr. Hildebrandt was offering, did the
25 marketing department make a determination based on its

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1 review of whether this ad should be accepted or
2 rejected?
3 A. It did not.
4 Q. Did the office of general counsel -- well, let me back
5 up. I believe you already answered that question.
6 So the decision to deny the advertisement
7 was ultimately made at the general manager's office as
8 you testified, correct?
9 A. That's correct, and the advice, the contents of which
10 is privileged, from the office of the general counsel.
11 Q. And what was the basis for rejecting my client's
12 advertisement, the one depicted in Exhibit 2 and
13 Exhibit SS?
14 A. Right. It was rejected based upon 5.07 B 2 and 5.07 B
15 4 of the contract.
16 MR. HILDEBRANDT: 1 and 4.
17 A. My apologies, yeah. 5.07 B 1 which is political or
18 political campaign advertising and 5.07 B 4 which is
19 advertising that is clearly defamatory or likely to
20 hold up to scorn or ridicule to any person or group of
21 persons.
22 BY MR. MUISE:
23 Q. Looking at these advertising guidelines, is there any
24 articulated definitive standard to determine what is
25 considered political in violation of this advertising

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1 guideline?
2 A. Within the advertising guideline itself?
3 Q. Yes.
4 A. This states political or political campaign
5 advertising.
6 Q. Is there any articulated definitive standard to
7 determine whether something is political or not in
8 violation of these advertising guidelines?
9 MR. HILDEBRANDT: Objection, that assumes
10 that the guideline itself is not an articulated
11 standard.
12 A. I'm not clear as to whether you are asking me the
13 contents of 5.07 or beyond that.
14 BY MR. MUISE:
15 Q. Is there anything beyond section -- well, let me ask
16 this, within 5.07 is there anything in your view that
17 is an articulated definitive standard of what
18 qualifies as political under this restriction?
19 A. I think political is articulated, but beyond that
20 within 5.07 nothing further explains political.
21 Q. Okay. And then with regard to, same question, are
22 there any articulated definitive standards to
23 determine whether something in advertising is likely
24 to hold up to scorn or ridicule any person or group?
25 MR. HILDEBRANDT: Same objection, it

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1 assumes that the guidelines themselves are
2 insufficient to be articulated standards.
3 A. I would answer that the advertisement -- or the
4 guideline as written is articulated, but something
5 beyond that is not contained within 5.07 to explain
6 what that means.
7 BY MR. MUISE:
8 Q. Okay. And so then going beyond 5.07, are there any
9 guidelines, manuals, guidance or any written criteria
10 that would provide a definitive, articulated --
11 articulation of the -- let me back up.
12 Are there any guidelines, manuals, or
13 instructions beyond 5.07 that would provide an
14 articulated definition or definitive standard of what
15 political means for purposes of application of these
16 guidelines?
17 MR. HILDEBRANDT: I'm going to object to
18 the question as compound. Guidelines, manuals and
19 instructions are completely different things. You can
20 ask each separately, you will get better answers.
21 Guidelines could include published case law.
22 A. Would you like -- should I answer?
23 BY MR. MUISE:
24 Q. Go ahead.
25 MR. HILDEBRANDT: If you can.

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1 A. There are no -- if you are asking about internal
2 documents, internal posted documents, for example,
3 SMART authored documents, there are none beyond those
4 that are clearly articulated within the policy itself.
5 BY MR. MUISE:
6 Q. Okay. And same question with regard to restriction
7 5.07 B 4, are there any other guidelines, manuals or
8 instructions that would provide an articulated,
9 definitive standard to determine what is likely to
10 hold up to scorn or ridicule of any person, what
11 advertisement would fit that criteria?
12 MR. HILDEBRANDT: Same objection, the
13 question is vague and compound.
14 A. Again, there is nothing beyond -- I mean SMART doesn't
15 author common sense, but there is nothing that SMART
16 authored to further define these guidelines.
17 BY MR. MUISE:
18 Q. And how then does an individual who has the authority,
19 for example, Beth Gibbons, somebody in the marketing
20 department who has the authority to make a
21 determination as to whether something is accepted or
22 rejected, what is the definition of political that
23 that individual would employ?
24 MR. HILDEBRANDT: Objection, it assumes
25 that Beth Gibbons would make a decision on the

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1 question of political.
2 A. I'm not -- could you do the question again? I'm
3 sorry.
4 BY MR. MUISE:
5 Q. Sure. What is the standard or definition that SMART
6 employs to determine whether an advertisement is
7 political under its advertising guidelines?
8 MR. HILDEBRANDT: Asked and answered.
9 A. I would just -- political is any -- is any -- I mean
10 in the context of the advertising policy, is any
11 advocacy of a position of any politicized issue.
12 BY MR. MUISE:
13 Q. How do you determine whether an issue has been
14 politicized?
15 A. I would say -- I would say if -- within society if an
16 issue -- if there are -- if society is fractured on an
17 issue and factions of society have taken up positions
18 on it that are not in agreement, it's politicized.
19 Q. Does political for purposes of the advertising
20 guidelines we are discussing, would this definition
21 hold of or relating to government, a government or the
22 conduct of government?
23 A. That is -- if you are not -- I mean if you are
24 literally looking at the word political, yes, that's
25 the definition of political.

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1 Q. Is that the definition that SMART employs to reject
2 advertisements that it deems to be political?
3 MR. HILDEBRANDT: Asked and answered.
4 A. That -- that's a consideration, but that's the -- I
5 believe that's the Black's Law definition of
6 political.
7 BY MR. MUISE:
8 Q. But that's not the definition -- back up.
9 SMART doesn't limit its view of what is
10 political to that definition; isn't that correct?
11 A. In the determination of political advertising, I think
12 you would have to say that is correct, based on my
13 prior explanation of what is political.
14 Q. And so the definition that SMART employs to determine
15 what is political is broader than the definition that
16 I just explained to you; is that right?
17 A. Than the -- could you read the definition again, I
18 guess?
19 Q. Sure. Of or relating to government, a government, or
20 the conduct of government.
21 A. I guess -- sorry, repeat the question then. My
22 apologies.
23 Q. No problem. SMART's definition of political for
24 purposes of its content based guidelines is broader
25 than that definition; is that correct?

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1 A. If you find my previous definition inconsistent with
2 that definition, then yes.
3 Q. So it doesn't -- you don't just reject advertisements
4 that relate to government, a government, or the
5 conduct of government; is that right?
6 A. I think that is correct.
7 Q. In terms of the political component of it?
8 A. Yes.
9 Q. Would it be fair to say that when you use the term
10 politicized, that's referring to public issues that
11 have become controversial?
12 A. I have already given a definition for politicized in
13 your questioning. I don't think controversial is -- I
14 don't think your definition is consistent with my
15 definition that I previously gave.
16 Q. Well, I'm not clear on what you said, matters that
17 have become politicized, and I believe you indicated
18 that its people have taken different sides on a public
19 issue and that makes it politicized?
20 A. In so many --
21 MR. HILDEBRANDT: I object that it
22 misconstrues the previous testimony.
23 A. Insofar as that's consistent with my previous
24 statement, yes.
25 BY MR. MUISE:

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1 Q. I want to be clear. How is it that SMART determines
2 whether an advertisement is political or not political
3 advertising?
4 A. I would have to refer to what I have already said to
5 ensure that I'm consistent. I have already answered
6 that question.
7 Q. How is it -- how do you determine whether an
8 advertisement is political or not political? You
9 didn't answer that. You said if an issue has been
10 politicized.
11 A. I said if it's an advocacy of a topic that has been
12 politicized, and then you asked me what politicized
13 meant, and I answered that.
14 Q. And what does politicized mean?
15 MR. HILDEBRANDT: Asked and answered.
16 A. You would have to ask her to review the transcript. I
17 want to make sure I'm consistent.
18 BY MR. MUISE:
19 Q. You don't know how SMART defines politicized?
20 MR. HILDEBRANDT: Now, wait a second.
21 A. I have already said it.
22 MR. HILDEBRANDT: You are using you and
23 SMART in the same question now. Are you asking if
24 SMART knows how SMART does it --
25 MR. MUISE: Exactly.

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1 MR. HILDEBRANDT: -- or are you asking him
2 if he knows how SMART does it?
3 MR. MUISE: My questions are all directed
4 at SMART.
5 MR. HILDEBRANDT: He has already answered
6 the question about what political means for the
7 purposes of this contract. You can go back and review
8 the transcript, you can ask the court reporter to read
9 it back, which is what he has indicated you should do
10 if you want to continue asking the same question.
11 Asked and answered.
12 MR. MUISE: That's fine. I want to get to
13 the point of --
14 BY MR. MUISE:
15 Q. Let me ask this, is there anywhere in this advertising
16 guideline where the term politicized is used?
17 A. No.
18 Q. Is there any guideline that you are aware of that
19 defines politicized for the purposes of the officials
20 at SMART that have to apply these guidelines?
21 MR. HILDEBRANDT: Objection, vague as to
22 the word guidelines and what it includes and what can
23 be reviewed by the legal counsel's office to do that.
24 A. In a loose sense of the word, of course we use case
25 law, and I think that the sixth circuit in this case

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1 referred to politicized, and but we don't have any
2 internal guideline on these issues beyond the
3 advertising guideline itself.
4 BY MR. MUISE:
5 Q. If you look at my client's advertisement, you can look
6 at Exhibit Number 2, if you like, is there anything in
7 this advertisement that relates to government, a
8 government or the conduct of government?
9 A. Are you speaking of the American government or --
10 could you clarify the question? I'm sorry.
11 Q. Well, government in general, is there anything in this
12 advertisement that refers to government?
13 A. No.
14 Q. What was it about this advertisement that SMART
15 concluded was political?
16 A. This advertisement refers to a fatwa, which is an
17 edict issued by a Muslim cleric, it's part of sharia
18 law. That's clearly political.
19 Q. You say it's clearly political. What makes it
20 political?
21 A. It's referencing sharia law.
22 Q. And what is political about sharia law?
23 A. It is a system of law, and it's referencing its
24 application, you know, and -- it's referencing its
25 application.

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1 Q. So any advertisement that references the application
2 of sharia law is rejected as political by SMART?
3 MR. HILDEBRANDT: Object to the
4 hypothetical. Do you have examples as to whether
5 things were rejected or not other than this particular
6 ad?
7 BY MR. MUISE:
8 Q. Do you understand my question?
9 A. Could you restate the question? I'm sorry.
10 (The following record was read by the
11 reporter at 10:40 a.m.
12 "QUESTION: So any advertisement that
13 references the application of sharia law is
14 rejected as political by SMART?")
15 A. I would have to -- I can't speculate on anything
16 beyond this. I would have to see it.
17 BY MR. MUISE:
18 Q. So is it SMART's position that a fatwa is a political
19 edict?
20 A. Well, within the context of this advertisement it is.
21 I can't speculate as to whether in a different context
22 it wouldn't be.
23 Q. And what makes it political in the context of this
24 advertisement?
25 A. Well, the review -- the review of this advertisement

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1 involved the review of the website as well, because it
2 is clearly in this advertisement, and in this
3 situation this is -- the website is clearly
4 anti-Islam, and therefore its reference to the sharia
5 law is taking a position on Islam generally.
6 Q. And I believe in your prior definition of
7 politicalization -- is that the term you used, or
8 politicized?
9 A. Politicized, yeah.
10 Q. Politicized was if people are taking a position on a
11 particular issue that have competing positions, that
12 makes the issue politicized?
13 MR. HILDEBRANDT: Object to the
14 mischaracterization of the prior testimony. I think
15 he said advocating.
16 A. Sorry, could you repeat the question?
17 BY MR. MUISE:
18 Q. Your last reference was that when you went to the
19 website you saw that it was taking a position on
20 Islam, correct?
21 A. Correct.
22 Q. And by taking a position on Islam, does that make the
23 advertisement politicized?
24 MR. HILDEBRANDT: The position taken itself
25 or the fact that positions are taken on the issue?

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1 What is your question?
2 BY MR. MUISE:
3 Q. I'm trying to figure out this politicized adjective
4 that you are using and how it applies.
5 MR. HILDEBRANDT: And I'm trying to figure
6 out what the question is so that I know whether to
7 object or not.
8 MR. MUISE: I understand.
9 MR. HILDEBRANDT: The question to me is
10 unintelligible.
11 BY MR. MUISE:
12 Q. You're saying an issue has become politicized if there
13 are advocates on both sides of the issue; is that
14 right?
15 MR. HILDEBRANDT: I'm going to object to
16 the oversimplification of the prior testimony.
17 A. That's consistent with my explanation, yes.
18 MR. MUISE: Let's take a break, because I
19 want to go pull that transcript, we are going to go
20 back and look at the transcript so we are talking on
21 the same page here. Why don't we take a 10 minute
22 break right now. It's 10:45.
23 MR. HILDEBRANDT: All right.
24 (Recess taken at 10:43 a.m.)
25 (Back on the record at 11:03 a.m.)

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1 BY MR. MUISE:
2 Q. Sir, I went back and reviewed the transcript, and here
3 is how you had explained the definition of political:
4 Political is any advocacy of a position of any
5 politicized issue. Does it sound familiar?
6 A. Yes.
7 Q. Okay. And then the following question asked about
8 politicized, and here how it was described: If
9 society is fractured on an issue and factions of
10 society have taken up positions on it that are not in
11 agreement, it's politicized. Sound correct?
12 A. Correct.
13 Q. So with regard to determining -- how is it that SMART
14 determines that an issue is politicized?
15 A. I'm not sure how to answer that beyond what I have
16 already explained politicized to mean.
17 Q. So if there is any issue that's addressed by an ad in
18 which society has taken up positions on it that are
19 not in agreement, it's prohibited content?
20 MR. HILDEBRANDT: Object to
21 mischaracterization. Fractured, fractured society was
22 an important part of that.
23 A. Well, then it's determined to be politicized, and you
24 have to look at if it's an advocacy of one of those
25 viewpoints on the issue.

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1 BY MR. MUISE:
2 Q. Does it have to -- is there a scale of how politicized
3 an issue must be in terms of how, you know, how
4 controversial it is at the moment or how do you
5 determine whether something is sufficiently
6 politicized?
7 MR. HILDEBRANDT: Object to vague. Nobody
8 used the word controversial.
9 A. I would have to have an example. We don't -- I -- we
10 have never had an issue where this wasn't clear by
11 common sense or logic.
12 BY MR. MUISE:
13 Q. Okay. Well, let's look at the advertisement that you
14 rejected from my client. I will refer you to Exhibit
15 2. Is there anything on the face of this
16 advertisement that addresses a politicized issue?
17 A. I think you have already asked that question, and yes,
18 fatwas and the application of sharia law is a
19 politicized issue.
20 Q. Okay. Is sharia law mentioned anywhere on this
21 advertisement?
22 A. Fatwa, a fatwa is an edict issued under sharia law.
23 Q. And how do you know that?
24 A. It was reviewed by SMART representatives.
25 Q. And SMART determined that a fatwa was something that

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1 was issued under Islamic law?
2 MR. HILDEBRANDT: Is that something that is
3 being contested in this case, Mr. Muise?
4 MR. MUISE: I want to get to the bottom of
5 how they determined that this is politicized
6 advertisement.
7 A. A fatwa is an edict issued by a Muslim cleric that was
8 determined -- or yes.
9 BY MR. MUISE:
10 Q. I believe you testified previously you understood it
11 to be a religious edict; is that right?
12 A. Yes, under -- pursuant to sharia law, yes.
13 Q. And was it because it's pursuant to sharia law that
14 the issue has become politicized?
15 A. Yes. There is a lot more -- this is very complex and
16 that's a very finite question. That was a
17 consideration in making the determination, yes.
18 Q. That sharia law has become politicized?
19 A. The application of sharia law on people of the Islamic
20 faith, yes.
21 Q. And is that because factions of society have taken up
22 positions on it that are not in agreement?
23 A. Yes.
24 Q. And not in agreement in what respect, whether it
25 should be applied or shouldn't be applied, what is the

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1 lack of agreement with regard to sharia law that made
2 it a politicized issue?
3 A. Certainly we have in many states, I think we have
4 bills pending, and I believe we did at the time, that
5 this is just the most acute example I can think of
6 that banned the placement of sharia law within our
7 system of government or the application of sharia law
8 within our borders. Certainly factions -- that
9 certainly seems to be a faction and an issue of great
10 debate.
11 Q. Now, you said it was an issue of great debate. If it
12 had been an issue of little debate, does that make it
13 a politicized issue?
14 MR. HILDEBRANDT: I'm going to object to
15 the hypothetical. I don't think that he can make a
16 determination as to what would have happened under
17 different circumstances without having an ad presented
18 to him that would be on an issue of little debate.
19 A. I need a further example. It doesn't require great
20 debate, although that's not a finite term, I guess.
21 BY MR. MUISE:
22 Q. Okay. And let's cut to the chase here. How does a --
23 how does an objective government official look at an
24 advertisement, determine whether something is
25 sufficiently politicized to either accept or reject

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1 under SMART's advertising guidelines?
2 A. This policy for the 7 years that I have been at SMART
3 has been implemented without issue, and so obviously
4 it's -- based on just the face of the advertising
5 policy, that isn't an issue.
6 Q. Well, there has to be some judgement made by the
7 officials who are making determinations on behalf of
8 SMART whether something is sufficiently politicized to
9 be rejected; isn't that true?
10 A. Yes.
11 Q. And what are they base that judgement upon?
12 A. Everything that we have just gone over, all of the
13 explanations that I have just given you. You look at
14 the advertisement, you make the determination, and
15 it's just -- it's just like determining if something
16 promotes the sale of alcohol or tobacco, and we have
17 successfully done it for the 10 years that I know of
18 the policy and until your client filed suit.
19 Q. Now, I want to back up to your -- the SMART's
20 advertising guidelines. My understanding is SMART
21 permits commercial advertisement, correct?
22 A. If it's within the restriction -- if it's acceptable
23 under 5.07, yes.
24 Q. So a commercial advertisement could be rejected
25 because it represents a politicized issue as well?

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1 A. Or any of the other rejections -- or any of the other
2 restrictions on content, yes.
3 Q. But commercial advertisement in general, if it doesn't
4 violate one of your content restrictions, leaving
5 aside the, you know, the size restrictions and that
6 sort of thing, but with regard to the content
7 restrictions, commercial advertising is permitted,
8 correct?
9 MR. HILDEBRANDT: Are we assuming that your
10 client's advertisement is noncommercial?
11 MR. MUISE: I am not asking that. That's
12 not even an assumption built into the question. It's
13 a pretty straightforward question.
14 BY MR. MUISE:
15 Q. Commercial advertising is accepted by SMART in
16 general, correct?
17 A. Pursuant to the advertising guidelines, yes.
18 Q. Okay. And same with noncommercial advertising?
19 A. Correct.
20 Q. And my understanding based on representations that
21 have been made in this case so far, religion is not a
22 subject matter that is per se excluded from the
23 advertising guidelines?
24 A. That is correct.
25 Q. And public service messages are accepted by SMART; is

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1 that correct?
2 A. Pursuant to the advertising guidelines, yes.
3 Q. And in terms of specific categories that are excluded
4 by these guidelines, campaign advertising is a
5 category that's excluded, correct?
6 A. Correct.
7 Q. And you indicated alcohol or tobacco sales are
8 excluded, correct?
9 A. Advertising promoting the sale are alcohol or tobacco,
10 correct.
11 Q. Did SMART determine, referring back to my client's
12 advertisement, did SMART determine that this
13 advertisement was not a religious advertisement?
14 A. An advisement that has religion -- that involves
15 religion still has to be reviewed against the content
16 policy. This speaks directly to Islam. Obviously it
17 has religious content.
18 Q. Okay. And it was politicized because it refers to
19 fatwa which is a reference to sharia, and sharia has
20 been a politicized issue?
21 A. If that's consistent with my testimony, correct.
22 Q. And the reference to sharia as plain from this
23 advertisement, it doesn't show on its face it refers
24 to sharia, you said you went to the website; is that
25 correct?

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1 A. To RefugeFromIslam.com?
2 Q. Yes.
3 A. Correct.
4 Q. Is it from RefugeFromIslam.com that you determined
5 that this advertisement was about sharia?
6 A. Well, the fatwa, as I have already explained, a fatwa
7 is an edict made under sharia law by a Muslim cleric,
8 and sharia law governs Muslim or people of the Islamic
9 faith.
10 Q. And it was decided that sharia law is politicized that
11 made this advertisement politicized?
12 A. Yes, in concert with that which was found on the
13 website. Again, it's not any one piece of this, this
14 is looking at everything together to make these
15 determinations.
16 Q. And what was it from the website that SMART reviewed
17 to make the determination that this was a politicized
18 issue?
19 MR. HILDEBRANDT: Do you need to see the
20 website for that?
21 A. Yeah, if I could see the website from that day. I
22 could try to recall from three years ago, but if I
23 could see the website I could give you more detail.
24 BY MR. MUISE:
25 Q. So as you sit here today, you don't have any specific

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1 recollection of what from the website that --
2 A. It --
3 Q. Let me finish the question. So as you sit here today,
4 you don't have any specific recollection of what it
5 was on the website that led you to conclude that this
6 was a politicized advertisement?
7 MR. HILDEBRANDT: Is that question asking
8 him to recite word for word what he referred to --
9 MR. MUISE: No.
10 MR. HILDEBRANDT: -- or just the ideas that
11 he referred to, which he has already testified to?
12 MR. MUISE: I'm asking --
13 MR. HILDEBRANDT: The question is vague.
14 MR. MUISE: I'm asking him if he has any
15 specific recollection of anything.
16 BY MR. MUISE:
17 Q. And you being SMART, the corporate knowledge of SMART,
18 have any specific recollection of anything that was
19 reviewed on the website RefugeFromIslam.com that led
20 to the conclusion that this is a politicized
21 advertisement?
22 A. A large portion of the website was really just links
23 or advertisements to stop Islamization of America and
24 the American Freedom Defense Initiative, they weren't
25 actually anything related to RefugeFromIslam.com, it

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1 was advertisements to other sites.
2 Q. Was there, other than advertisements to other sites,
3 was there any content that you can recall as you sit
4 here today from the RefugeFromIslam.com website that
5 led to the conclusion that this was a politicized ad?
6 MR. HILDEBRANDT: You know, this is going
7 beyond the topics set forth in the deposition notice,
8 and so to the extent that he can answer this, the
9 answer is not binding on SMART because we were not
10 given prior notice of questions concerning the content
11 of your client's blog website, so to the extent that
12 he can answer at all, I don't consider that binding on
13 SMART because it's beyond the topics that the
14 deposition notice identified.
15 MR. MUISE: I understand the objection,
16 it's noted. It's incorrect. The notice is pretty
17 specific dealing with the application of your policy
18 to my client's advertisement.
19 MR. HILDEBRANDT: Well, show me in your
20 deposition notice then where it indicates that he is
21 to identify information on the website that was
22 reviewed or what part that that would fall under.
23 MR. MUISE: You are saying that he's not
24 testifying here as to how SMART applied its policy to
25 reject my client's advertisement?

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1 MR. HILDEBRANDT: He has already testified
2 as to how it is applied.
3 MR. MUISE: No.
4 MR. HILDEBRANDT: Now you are asking him to
5 identify what was on your client's website.
6 MR. MUISE: I am asking him how they
7 applied --
8 MR. HILDEBRANDT: That's a little
9 different.
10 MR. MUISE: He said they looked at the
11 website to apply this policy.
12 MR. HILDEBRANDT: He said they looked at
13 the website in conjunction with the ad because it was
14 referred to in the ad, and that --
15 MR. MUISE: I understand.
16 MR. HILDEBRANDT: -- the aggregate of all
17 of this was identified as both a political and a
18 politicized issue, that's what he has testified to.
19 However, there is nothing here that indicates that he
20 is to identify what is in your client's website today
21 on behalf of SMART.
22 MR. MUISE: Your objection is noted. It's
23 incorrect.
24 BY MR. MUISE:
25 Q. Do you recall when you were applying your SMART

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1 policies what was determined from the RufugeFromIslam.
2 com website that led SMART to conclude that this was a
3 politicized ad?
4 MR. HILDEBRANDT: Same objection.
5 A. Beyond what I already said, I believe that the website
6 stated that those leaving Islam were in danger because
7 sharia law dictated that -- let me make sure I explain
8 this right. Because under Islam, those leaving the
9 faith are governed by sharia law, and sharia law
10 dictates that people leaving the faith be put to death
11 or -- and that's why you would be in danger leaving
12 the faith, and it's my recollection it said you needed
13 to call the police.
14 BY MR. MUISE:
15 Q. So that is information that's SMART would use to
16 conclude that this advertisement is politicized?
17 A. Correct.
18 Q. And what is politicized about what you just described?
19 MR. HILDEBRANDT: Objection, asked and
20 answered.
21 A. I'm not sure how far back within my testimony --
22 BY MR. MUISE:
23 Q. That last answer --
24 A. -- but the application of sharia law and stating that
25 the laws governing people of the Islamic faith require

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1 that they die if they attempt to leave the faith
2 clearly shows the application of this law governing
3 them, and that's a politicized issue.
4 Q. Politicized because factions of society have taken up
5 positions that are in disagreement as to how sharia
6 applies?
7 A. As to whether it should apply.
8 Q. How is your definition of politicized different from
9 controversy?
10 MR. HILDEBRANDT: Are you asking for his
11 personal opinion?
12 MR. MUISE: Never, not in this deposition
13 at all.
14 A. So you're asking for --
15 MR. HILDEBRANDT: So you're asking him --
16 A. -- SMART's definition?
17 BY MR. MUISE:
18 Q. Definition of politicized --
19 (Speaking simultaneously).
20 A. We already agreed we wouldn't do that. My apologizes.
21 MR. HILDEBRANDT: And I guess the question
22 really becomes are you asking him to act as a -- to
23 give you a definition of controversy today on behalf
24 of SMART?
25 MR. MUISE: That's not my question.

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1 MR. HILDEBRANDT: Well, then you have to
2 repeat your question.
3 BY MR. MUISE:
4 Q. How is SMART's definition of politicized in their
5 application of the policy different from the
6 definition of controversy?
7 MR. HILDEBRANDT: This is beyond the
8 deposition notice. These are not topics upon which we
9 were asked to prepare a witness, that is to provide
10 definitions on behalf of SMART, and so I don't
11 consider any answer that he may or may not be able to
12 give to be binding on SMART as a result.
13 A. I'm not -- I don't know how to answer your question.
14 They aren't consistent, but I'm not sure what -- how
15 you would like me to answer or what you are asking.
16 BY MR. MUISE:
17 Q. Well, politicized based on your definition on behalf
18 of SMART, is you have opposing views on a particular
19 issue; isn't that correct?
20 A. I said -- well, we can have her pull that back up if
21 you would like, but I believe I said it's a topic of
22 debate within society and that there are factions of
23 society that differ on the issue.
24 Q. How is it any different than having opposing views on
25 a particular issue?

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1 A. It's in a bigger scheme, I guess. I mean I'm sure you
2 and I disagree on things, but I wouldn't say it really
3 politicizes it because you and I independently as two
4 individuals disagree.
5 Q. So how large of factions do these need to be for the
6 opposing views or the disagreements to be politicized?
7 MR. GORDON: Do you know the answer to this
8 question?
9 A. I'm not sure how to answer your question.
10 BY MR. MUISE:
11 Q. I'm trying to get an understanding of how SMART
12 applies this concept of politicized to accept or
13 reject advertisements, that's what I am trying to
14 discern based on the description that you gave.
15 MR. HILDEBRANDT: To be fair, he has
16 actually already told you that, you just simply didn't
17 like the answer and you have asked him several more
18 times.
19 MR. MUISE: That's not fair.
20 BY MR. MUISE:
21 Q. You say factions of society have taken up positions on
22 the issue that are not in agreement, correct?
23 MR. GORDON: Are you intentionally leaving
24 out the part of the advocacy or are you just wanting
25 to focus on that particular element, which you are

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1 certainly entitled to, I'm just asking for some
2 clarification.
3 MR. MUISE: Well, in his definition of
4 politicized, he didn't say advocacy.
5 A. I said advocate -- in political, I said advocacy of a
6 politicized issue. Is the record clear on that?
7 MR. HILDEBRANDT: The record is clear on
8 that.
9 BY MR. MUISE:
10 Q. Here is how I wrote it down from the court reporter's
11 transcript: If society is fractured on an issue and
12 factions of society have taken up positions of it that
13 are not in agreement, it's politicized.
14 A. Correct.
15 MR. HILDEBRANDT: What more do you need?
16 A. I said a political advertisement was advocating for a
17 position on a politicized issue. We don't --
18 politicized is nowhere in this advertising guideline,
19 and it alone will have no bearing, it alone will have
20 no bearing on the placement of an ad. The 5.07
21 advertising guidelines are what have bearing on the
22 placement of an ad and whether it's political
23 advertising.
24 Q. And whether something is political advertising,
25 according to your testimony, is any advocacy of a

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1 position of any politicized issue?
2 A. I don't know if that's what I said, but I will trust
3 your restatement to me.
4 Q. And so --
5 A. And I have already said it.
6 Q. And then the question is what is a politicized issue,
7 and we went through how you described a politicized
8 issue, and I'm trying to understand what you mean by
9 factions of society have taken up positions on it.
10 You used an example of we may have opposing
11 views, but we are not factions of society, and how do
12 you determine how large or how small a faction of
13 society has to take up a side before the issue is
14 politicized?
15 MR. HILDEBRANDT: And he has already
16 indicated he can't answer that question.
17 A. I can't -- this is a case by case issue. I can't tell
18 you with specificity down to the exact number of the
19 people of society it required to make a critical mass
20 that would satisfy the definition.
21 BY MR. MUISE:
22 Q. Is there then sort of a spectrum of whether something
23 is sufficiently politicized as to not politicized to
24 be accepted or rejected by SMART?
25 A. I would have to look at a specific example. We have

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1 talked about a situation where two people disagreeing
2 does not make something politicized. We have talked
3 about a situation where a critical mass of people
4 disagreeing and forming these factions on these
5 issues, as is already in the record, does. So if you
6 call that a spectrum, yes, that's a spectrum.
7 Q. There was an example that your counsel presented to
8 the sixth circuit in the reply brief dealing with the
9 BP Oil Company, if it sought advertisement on the
10 SMART buses. And I want to ask you, since you're
11 SMART testifying whether this is a proper
12 understanding or application of SMART's content based
13 guidelines on advertising.
14 MR. HILDEBRANDT: So you are using an
15 example of counsel in argument to determine what
16 SMART's position is on an ad that has never been
17 submitted; is that correct?
18 MR. MUISE: No.
19 MR. HILDEBRANDT: Well, a BP ad has never
20 been submitted --
21 MR. MUISE: I understand.
22 MR. HILDEBRANDT: Okay.
23 MR. MUISE: And I'm trying to gather the
24 understanding of how this policy is applied.
25 MR. HILDEBRANDT: Which you have gotten

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1 much testimony on, but if you are going to be talking
2 about the BP example that I used in my brief to the
3 sixth circuit, you are going well beyond the
4 deposition notice, and any answer he gives is going to
5 be not binding on SMART.
6 MR. MUISE: Well, that's your objection.
7 We will let the court decide.
8 MR. HILDEBRANDT: Unless, unless you can
9 tell me how that example fits into categories 1
10 through 6 of your deposition notice as we sit here
11 today, then this answer is not going -- he's not been
12 prepared on this issue.
13 MR. MUISE: That's fine. It's the
14 application of the policy.
15 MR. HILDEBRANDT: Well, he has not been
16 asked to apply the policy to a hypothetical BP ad
17 based upon the argument of counsel, and he wasn't
18 asked to, and also we have already identified or
19 already objected in this deposition that ads need to
20 be submitted to be determined under the policy, and
21 hypothetical ads cannot be determined without the
22 actual information, and by the way, that example in my
23 brief is not as to a particular ad, but speaks to
24 whether an issue has become politicized, not whether
25 there was an ad submitted or an ad proposed.

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1 MR. MUISE: That's fine. We will use it
2 for that, to determine whether or not an issue has
3 been politicized in terms of what SMART's
4 understanding of politicized means in terms of its
5 application of its advertising guidelines as you have
6 testified to already here today.
7 BY MR. MUISE:
8 Q. So let me just read you this example. Suppose for
9 instance that BP Oil Company sought to place
10 advertisements on the side of SMART coaches that
11 encouraged deep well offshore drilling for oil in the
12 Gulf of Mexico. Nothing within the four corners of
13 such an advertisement would be per se political in
14 nature, and five years ago SMART more than likely
15 would have allowed the posting of such an
16 advertisement on the sides of its coaches. Would you
17 agree with that assertion?
18 A. Could you please repeat it? My apologies.
19 Q. Suppose for instance that BP Oil Company sought to
20 place advertisements on the side of SMART coaches that
21 encouraged deep well offshore drilling for oil in the
22 Gulf of Mexico. Nothing within the four corners of
23 such an advertisement would be per se political in
24 nature, and five years ago SMART more than likely
25 would have allowed the posting of such an

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1 advertisement on the sides of its coaches.
2 MR. HILDEBRANDT: Again I'm going to object
3 that it calls for this witness on behalf of SMART to
4 identify whether a hypothetical ad would be acceptable
5 under the policy or not.
6 A. I would agree that -- with the statement that more
7 than likely it would be accepted in that time frame.
8 BY MR. MUISE:
9 Q. And then on April 20, 2010 an explosion occurred on
10 the deep water horizon, a BP owned oil well in the
11 Gulf of Mexico. That explosion resulted in the deaths
12 of 11 men working on the platform and injured 17
13 others. In addition the explosion resulted in a leak
14 that cannot be capped until July 15, 2010, after
15 having released 4.9 million barrels of crude oil into
16 the gulf. After that incident, deep well offshore
17 drilling became a hot political issue, and the same ad
18 that may have been approved five years before would
19 now have to be rejected by SMART as political
20 advertising. Would you agree with that statement?
21 A. Insofar as it advocated for offshore drilling after
22 the incident in the Gulf, I agree with that statement,
23 yes.
24 Q. Going back to my client's advertisement, is there
25 anything on the four corners of this advertisement

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1 that SMART used to determine that it was political --
2 a politicized issue?
3 MR. HILDEBRANDT: Object to form of the
4 question and the definition of four corners.
5 BY MR. MUISE:
6 Q. Do understand what I mean by four corners?
7 A. Yes. I have already answered that the reference to
8 fatwa as well as the website, which is intrinsic to
9 the four corners of the document, were used in that
10 determination.
11 Q. Do you know if in the determination of to reject my
12 client's ad was the face of the ad sufficient for
13 SMART to reject it based on political advertising or
14 was it required to go look further at the website to
15 make the final determination?
16 MR. HILDEBRANDT: I'm going to object to
17 the form of the question. He has already identified
18 what was intrinsic to the ad, and I also want to know
19 if your question is limited to the political review or
20 to the review of whether it's scorn and ridicule on a
21 group of persons or person.
22 MR. MUISE: My question, I thought was
23 clear, was related to the politicized political
24 advertising aspect.
25 MR. HILDEBRANDT: Well, I think that the

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1 question then is unfair because it was rejected on two
2 bases and not just a single basis.
3 A. It would be very difficult to ask me -- you are asking
4 if the advertise -- or if the reference to the website
5 was gone and the advertising guidelines were
6 different, if it went through the process of an
7 exception -- of submission of an advertisement, if
8 under the theoretical policy and the theoretical
9 advertisement whether it would be posted or rejected
10 as a political advertisement?
11 Q. No, that was not my question.
12 A. Can you repeat it?
13 Q. Sure. Let's make it clear, because -- and let's -- I
14 want to be clear then from your counsel's objections.
15 There were two distinct reasons why SMART rejected
16 this advertisement; is that correct?
17 A. Correct.
18 Q. And one, because it was considered political
19 advertising, correct?
20 A. Correct.
21 Q. And the other because it was considered advertising
22 that is clearly defamatory or likely to hold up to
23 scorn or ridicule any person or group of persons,
24 correct?
25 A. Correct.

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1 Q. And each of those were made independently; isn't that
2 correct?
3 A. Each of those determinations?
4 Q. Yes.
5 A. That's correct.
6 Q. Okay. So looking at just the determination that where
7 SMART concluded that this was political advertising
8 and the issue should be rejected on that ground, did
9 SMART have to go beyond the four corners of this
10 advertisement to make that determination?
11 A. No. As I have already told you, fatwa on your head
12 and the analysis that I had previously given that we
13 can get from the transcript is enough to reject this
14 as a political advertisement.
15 Q. Okay. So on its face, the fatwa on your head was
16 sufficient in SMART's view to reject this as political
17 advertising?
18 MR. HILDEBRANDT: Object to the
19 mischaracterization of the testimony. He indicated
20 the website was also intrinsic to their review.
21 A. In combination with the remainder of the ad, yes. I
22 mean --
23 BY MR. MUISE:
24 Q. Well, you just changed your answer then. So did you
25 reject it on its face or did SMART have to go to the

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1 other -- the other contents to make the determination?
2 MR. HILDEBRANDT: I'm going to object to
3 the form of the question, because it assumes that
4 there was some requirement --
5 MR. MUISE: You are going way far in to
6 talking objections.
7 MR. HILDEBRANDT: No.
8 MR. MUISE: Listen, you know this is a
9 speaking objection. I have let you get on with this
10 for a long time now, but if you want to state your --
11 if you want to state your objection, state your
12 objection, don't give it a speaking objection which is
13 clearly intended to signal to the witness how he
14 should answer a particular question.
15 MR. HILDEBRANDT: The problem --
16 MR. MUISE: If you want to object it's
17 vague or if you want to object that it's asked and
18 answered, fine, make your objection. If you want to
19 instruct the witness not to answer the question based
20 on some privilege or some reason, fine, do that.
21 MR. HILDEBRANDT: I want to object --
22 MR. MUISE: Stop the speaking objections.
23 MR. HILDEBRANDT: I want to object to the
24 unfair nature of the question and I want to set forth
25 why it's unfair, and I think I have a right to do that

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1 when I say that your question is just -- I mean it's
2 similar to have you stopped beating your wife as a
3 question. I mean it's a ridiculous question.
4 What you are asking him is as he sits here
5 today, did SMART have to go to the website or was
6 this, this document in front of him enough when he has
7 already told you that SMART did go to the website. It
8 would be impossible for him to determine whether it
9 had to be done when all of this was reviewed as a
10 group of information. It's an unfair question.
11 MR. MUISE: I'm asking about the
12 application of his policy.
13 MR. HILDEBRANDT: The policy was applied,
14 the ad was rejected. He has already said that.
15 MR. MUISE: Okay. I understand that.
16 MR. HILDEBRANDT: Now you are asking him --
17 MR. MUISE: I want the determinations of
18 how it was determined to be a political advertisement.
19 MR. HILDEBRANDT: He has already indicated
20 it was determined based upon the language of this and
21 the language of the website together. Now you are
22 saying is one enough, is the other enough? How can he
23 answer that when that determination has already been
24 made.
25 MR. MUISE: Well, then we will see if they

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1 apply the same even handed approach to all these
2 advertisements. I don't want to get into argument,
3 let's keep moving on here. And I am going to instruct
4 you about making speaking objections that you are
5 plainly giving this witness, indicating to this
6 witness how to answer. It's totally improper and you
7 know it is.
8 MR. HILDEBRANDT: Consider me instructed.
9 MR. MUISE: See if you can learn.
10 A. Am I waiting for a question, Robert?
11 BY MR. MUISE:
12 Q. Yes. No question, we are good. The time shows up the
13 same on the transcript.
14 Let me just recap. So in light of what
15 your client's objections were and what your answer
16 was, you rejected this advertisement as political
17 advertising looking both on its face and at the
18 website, correct?
19 A. Correct.
20 Q. And whether one or the other of those approaches was
21 the determinate factor is not known?
22 A. Are you asking me to speculate as to whether one or
23 the other would be -- would have been enough?
24 Q. I'm not asking you to speculate. My understanding
25 from counsel's objection is that it was, you know, a

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1 combination of the two that resulted in the rejection
2 of the political advertisement.
3 A. Right. We looked at the whole advertisement to make
4 the determination.
5 Q. And you are saying the whole advertisement, you also
6 mean going to the actual website that is cited,
7 correct?
8 A. Right, the website is obviously intrinsic to the
9 document, and I have explained the components that
10 made it, and it independently made this political.
11 Q. Now, the second component or independent bases for
12 rejecting the advertisement is that it was prohibited
13 under 5.07 B 4, and that restriction prohibits
14 advertising that is clearly defamatory or likely to
15 hold up to scorn or ridicule any person or group of
16 persons, correct?
17 A. That's correct.
18 Q. Was there anything about this advertisement that was
19 defamatory?
20 A. I guess -- yes, insofar as the advertisement, when you
21 review it on its four corners, it's asking someone of
22 the Islamic faith whether they are leaving their
23 religion, and it's saying is your family or community
24 threatening you as a result of leaving that religion.
25 That's defamatory to the family and community that

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1 this advertisement clearly says is threatening someone
2 for wanting to leave the religion.
3 Q. Is defamatory as used in this advertising guideline
4 the legal term defamatory?
5 A. I would need a definition, I suppose, or the
6 alternative.
7 Q. Well, is it referring to defamation as a matter of
8 law?
9 A. No.
10 Q. Because in the other part it says or likely to hold up
11 to scorn or ridicule any person or group of persons,
12 do you see that?
13 A. Yes.
14 Q. And how SMART defines defamatory, how is that
15 different if at all from likely to hold up to scorn or
16 ridicule any person?
17 A. I think they are all within the same vein. It's all
18 reaching at the same idea, that this ad very clearly
19 violates.
20 Q. And what is the same idea that this ad is clearly
21 violating?
22 A. It is defamatory and is likely to hold people of the
23 Islamic faith up to scorn and ridicule when you review
24 this ad, and again, it's asking someone if they are
25 leaving Islam, and it says as a result of that to have

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1 an edict under sharia law that is a fatwa on your
2 head, is your family or community threatening you,
3 because this intimates that if you are leaving Islam,
4 your family will threaten you and your community will
5 threaten you, and then it further says to seek help,
6 RefugeFromIslam.com is the website that you should go
7 to, intimating that you must seek refuge from your
8 religious community if you intend to leave them
9 because they will issue an edict on your head and
10 threaten you.
11 Q. And so that is holding Islam up to scorn or ridicule?
12 A. Any person from outside the faith, for example, but I
13 wouldn't limit it to this, is going to look at it, and
14 me independently Anthony Chubb as an Episcopalian
15 person --
16 MR. HILDEBRANDT: And not as a witness for
17 SMART.
18 A. Correct, is going to look at this and clearly think
19 that people of the Islamic faith, I would certainly
20 think this is defamatory to them because it gives me
21 certain beliefs about someone of the Islamic faith and
22 what they do when someone threatens to leave their
23 family or community -- or I'm sorry, or threatens to
24 leave their faith if they are part of their family or
25 community.

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1 BY MR. MUISE:
2 Q. Is there anything about this advertisement, again I
3 don't want to know Anthony Chubb, SMART, is there
4 anything about this advertisement and what you just
5 described in fatwa that SMART believes is not true?
6 A. Please repeat the question because this is a little --
7 this can be very detailed and I just want to make sure
8 I understand exactly what you are asking.
9 Q. Okay. As I understand, you said this holds up to
10 scorn because somebody in the Islamic community who
11 might want to leave could be threatened as a result of
12 having a fatwa on their head and they may need to seek
13 refuge?
14 MR. HILDEBRANDT: That's what the ad
15 implies, you mean?
16 BY MR. MUISE:
17 Q. Is that what your understanding of what the ad --
18 A. What the ad implies?
19 Q. Implies, suggests --
20 A. Yes.
21 Q. -- states. Yes?
22 A. Yes.
23 Q. And so that holds people up, people of the Islamic
24 faith up to ridicule or scorn because why?
25 A. Because it intimates --

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1 MR. HILDEBRANDT: Asked and answered.
2 A. Because it -- it intimates that people of the faith
3 will resort to these tactics if someone wants to leave
4 the faith, and that's likely to hold someone up to
5 ridicule or scorn.
6 BY MR. MUISE:
7 Q. And do you know if it's not true that if you have a
8 fatwa on your head for leaving Islam that you could be
9 subject to threats of violence?
10 MR. HILDEBRANDT: Objection, I don't think
11 truth is a defense to scorn or ridicule.
12 A. I don't know.
13 BY MR. MUISE:
14 Q. I'm sure we will be moving back to this a little
15 later, but I want to hand you -- let's mark this as
16 another exhibit.
17 MARKED FOR IDENTIFICATION:
18 DEPOSITION EXHIBIT 4
19 11:46 a.m.
20 BY MR. MUISE:
21 Q. I will hand you what has been marked as Exhibit Number
22 4, and I will represent to you this was submitted as
23 Exhibit G to the Geller declaration document number
24 80 -- excuse me, document number 8-9 in this case. Do
25 you recognize the advertisement depicted on the second

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1 page of Deposition Exhibit 4?
2 A. Yes, I do.
3 Q. And what is this?
4 MR. HILDEBRANDT: Do you have a copy of
5 this that is not an example of a defaced version for
6 use in this deposition?
7 MR. MUISE: We may later. The deposition
8 notice specifically references Exhibit G, so that's
9 why I'm using this one for now.
10 A. I do recognize this.
11 BY MR. MUISE:
12 Q. And what is this advertisement?
13 A. This is an advertisement that was submitted by the
14 Detroit Coalition of Reason that was placed on SMART
15 coaches.
16 Q. And this was an advertisement that SMART accepted?
17 A. That's correct.
18 Q. And SMART did not determine that this advertisement
19 contained any advocacy of a position of any
20 politicized issue; is that correct?
21 A. SMART reviewed the advertisement against the --
22 against the content policies set forth in 5.07, and it
23 did make a determination it did not violate the
24 content policy.
25 Q. And one of those content policies, the one that you

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1 applied to my client's ad in part was the prohibition
2 of political advertising, correct?
3 A. Correct.
4 Q. And so then based on your definition of political
5 advertising, this advertisement then did not advocate
6 a position of any politicized issue; is that right?
7 A. That is correct.
8 Q. So whether one believes in God or doesn't believe in
9 God is not a politicized issue according to SMART?
10 MR. HILDEBRANDT: Whether one believes in
11 God or does not believe in God is not a politicized
12 issue according to SMART? Okay. I'm sorry.
13 A. I don't believe that -- well --
14 MR. HILDEBRANDT: What is SMART's position,
15 remember, not what you believe.
16 A. The determination was made that it wasn't -- it's not
17 broken down like that, so if it's determined to be a
18 politicized issue regardless, it's -- it's still
19 reviewed as whether it's an advocacy of such a
20 position, but just to be clear about the process, but
21 this is -- whether one -- sorry, could you repeat your
22 question? I just want to make sure I'm answering or
23 I'm answering exactly what you said. Whether one --
24 sorry. I will rely on you.
25 (The following record was read by the

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1 reporter at 11:49 a.m.
2 "QUESTION: So whether one believes in God
3 or doesn't believe in God is not a
4 politicized issue according to SMART?")
5 A. I think that's correct.
6 BY MR. MUISE:
7 Q. The DetroitCoalition.org, that's a website that is
8 cited on this advertisement, correct?
9 A. DetroitCoR.com. Or I'm sorry, DetroitCoR.org. It's
10 the Detroit Coalition of Reason.
11 Q. Did you go to the Detroit, and I'm referring to SMART,
12 did SMART go to the Detroit Coalition of Reason
13 website listed here on this advertisement to make a
14 determination of whether or not this ad was
15 permissible or impermissible under the content
16 guidelines?
17 A. Yes. The website is intrinsic to the advertisement,
18 and prior to approval of the ad the website was
19 reviewed.
20 Q. Is the question of civil rights a politicized issue
21 according to SMART?
22 MR. HILDEBRANDT: Objection, vague.
23 A. The question of civil rights?
24 MR. HILDEBRANDT: And overly broad.
25 A. Generally speaking -- I'm not sure exactly what you

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1 mean. There are civil rights in their legal context
2 and those which you are allowed by law, certainly
3 seems politicized topic.
4 BY MR. MUISE:
5 Q. What about the separation of church and state, is that
6 a politicized issue?
7 A. It is certainly a politicized issue.
8 Q. Now, my understanding from representations that have
9 been made previously in this case, and I want to
10 confirm with you since you are testifying now on
11 behalf of SMART, that this -- the content of this
12 advertisement was permissible because it was
13 considered to be purely religious; is that correct?
14 A. It was considered not to be political. It was -- I
15 don't know if -- in the context of whether something
16 was political or religious, yes, it was considered to
17 be purely religious, but I can't say that every word
18 on this and the art involved are purely religious.
19 Q. Was it fair to say that the message was a purely
20 religious message and none of its content violated any
21 of the content restrictions?
22 MR. HILDEBRANDT: Objection, compound,
23 that's two questions.
24 BY MR. MUISE:
25 Q. Is that correct?

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1 MR. HILDEBRANDT: One that was just asked
2 and answered.
3 A. I'm sorry, could you repeat the questions?
4 (The following record was read by the
5 reporter at 11:53 a.m.
6 "QUESTION: Was it fair to say that the
7 message was a purely religious message and
8 none of its content violated any of the
9 content restrictions?")
10 A. As just said, in speaking political versus religious,
11 it was determined that it did not have any political
12 content, and it did not violate the advertising
13 guidelines.
14 BY MR. MUISE:
15 Q. And the fact that it conveyed a religious message did
16 not exclude it from being displayed on SMART buses; is
17 that correct?
18 A. Religious language is not prohibited under the SMART
19 advertising guidelines.
20 Q. Or even arguably anti-religious --
21 MR. HILDEBRANDT: Object to the mis --
22 BY MR. MUISE:
23 Q. -- messages?
24 MR. HILDEBRANDT: Objection to the
25 mischaracterization of the ad, objection to it asked

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1 and answered.
2 A. Anti-religious message theoretically could be, I
3 suppose. I would have to have more information.
4 BY MR. MUISE:
5 Q. Well, what do you know about the Detroit Coalition of
6 Reason as an organization?
7 A. From the review of the website it is a support site
8 for those that don't believe in God.
9 Q. And that alone wasn't sufficient for SMART to
10 determine that this was a political advertisement?
11 A. It provided -- can I just say a support site -- I mean
12 it provides -- it's a resource site or a resource
13 tool. It provided locations or contact information
14 perhaps of those that don't believe in God. And now I
15 have lost your question, my apologies.
16 (The following record was read by the
17 reporter at 11:55 a.m.
18 "QUESTION: And that alone wasn't
19 sufficient for SMART to determine that this
20 was a political advertisement?")
21 MR. MUISE: You probably have to go to his
22 answer.
23 (The following record was read by the
24 reporter at 11:54 a.m.
25 "QUESTION: Well, what do you know about

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1 the Detroit Coalition of Reason as an
2 organization?
3 ANSWER: From the review of the website it
4 is a support site for those that don't
5 believe in God.
6 QUESTION: And that alone wasn't
7 sufficient for SMART to determine that this
8 was a political advertisement.")
9 A. That's correct.
10 BY MR. MUISE:
11 Q. And as counsel noted in this Exhibit 4, it appears
12 that there was some vandalism that was done to these
13 advertisements while they were posted on SMART buses;
14 is that correct?
15 A. That's correct.
16 Q. Do you know how many of the advertisements were in
17 fact vandalized?
18 A. It's my recollection that two were vandalized, but --
19 MR. HILDEBRANDT: That's all, that's the
20 question.
21 A. Yeah.
22 BY MR. MUISE:
23 Q. You believe two of them were vandalized?
24 A. That's correct.
25 Q. And the one depicted here in Exhibit 4, was this one

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1 of the buses that was vandalized?
2 A. Correct.
3 Q. And it appears that somebody was attempting to scratch
4 out the don't, is that a fair characterization?
5 A. It's difficult to tell. Some of believe is missing as
6 well, but don't is scratched out or portions of it.
7 Q. And I believe from one of the e-mails that there is --
8 there was an indication that one of the buses might
9 have been vandalized by a worker while the bus was
10 kept on the docks or wherever they are kept?
11 MR. HILDEBRANDT: Objection,
12 mischaracterization.
13 A. That's a mischaracterization of that e-mail. There
14 was a question as to whether it had occurred, if you
15 are referring to the e-mail that I wrote to Keith
16 Taylor.
17 BY MR. MUISE:
18 Q. Do you have any information about who actually did the
19 vandalizing of these vehicles?
20 A. No SMART employees were determined to have done it or
21 to have played a role in it.
22 Q. And it's my understanding, and correct me if I'm
23 wrong, that even after the vandal -- after some of the
24 advertisements were vandalized, the ad campaign was
25 allowed to continue to run?

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1 A. That is correct.
2 Q. And I believe it was allowed to run beyond its
3 contract end date to make up for time that some of the
4 ads were taken down because of the vandalism; is that
5 correct?
6 A. Generally under the contract, if an ad doesn't show
7 for any reason because the vehicle is broken, the
8 advertisement is ripped off, then as part of the
9 advertising contract we will -- we will run the ad for
10 any lost show time, if that doesn't need further
11 explanation.
12 Q. Right. But that in fact then happened with this
13 advertisement?
14 A. That would be consistent with our policy.
15 Q. And as I understand from the e-mails, that CBS Outdoor
16 actually paid for the replacement advertisements; is
17 that correct?
18 A. And again, pursuant to the contract, SMART -- or CBS
19 will repair ads however they are damaged, if it's an
20 accident, a wash rag, you know, when they are cleaning
21 the buses if it's damaged or if it's vandalized, I
22 guess we will say this is. And again, no one was ever
23 charged in this, what is believed to be vandalism or
24 was alleged to be vandalism.
25 I have several advertisements that are

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1 damaged by the wash rags in operation on these
2 vehicles. They run tens of thousands of miles a year,
3 and things happen.
4 MR. HILDEBRANDT: Can we take the next
5 logical break, Mr. Muise?
6 MR. MUISE: Absolutely. Do you want to
7 take a 30 minute lunch break or something?
8 MR. HILDEBRANDT: I just need a short
9 break.
10 MR. MUISE: Let's go off the record.
11 (Off the record at 11:59 a.m.)
12 (Back on the record at 1:08 p.m.)
13 MR. MUISE: During the break, the parties
14 discussed a stipulation that will apply through the
15 course of this litigation, and that being that the
16 documents that were produced pursuant to the discovery
17 request, the parties will stipulate to the
18 authenticity of those documents, meaning that they
19 will authenticate by the stipulation that the
20 documents are what they purport to be. For example,
21 an e-mail from Elizabeth Dryden to Anthony Chubb is in
22 fact an e-mail as such, and that no further
23 authentication of the documents are required. Is that
24 a fair statement?
25 MR. HILDEBRANDT: That is a fair statement.

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1 If for some reason in the future Beth Dryden comes
2 forward and says that ain't my e-mail, though, I don't
3 know what we will do with it by then, but for purposes
4 as far as I'm concerned, they are all authentic. I
5 think they are authentic, yes, I stipulate.
6 MR. MUISE: So stipulated. Thank you.
7 BY MR. MUISE:
8 Q. Sir, I want to pick up where we were. I was asking
9 you some questions about the advertisement listed in
10 Exhibit G which is Exhibit Number 4 to this
11 deposition.
12 Do you know at what level was it that this
13 advertisement was determined to be acceptable to run?
14 And I'm referring to you testified previously that
15 there were three potential levels of review, the
16 marketing department, the office of general counsel,
17 and the general manager's office.
18 A. I believe all, all parties mentioned were aware of the
19 decision when it was made, all were consulted.
20 Q. Was the general manager then the one that would have
21 made the final decision for it to run?
22 A. I think I previously testified it's not a -- it's not
23 a strict appellate review with each level that it
24 goes; it's more of a consensus. He does have the
25 ultimate determination as the CEO of the company, but

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1 in his determination he was in support of the
2 determination to post the ad.
3 Q. So just to follow up there then, as the general
4 manager, could he veto any decision to run an
5 advertisement as the general manager?
6 A. As the CEO.
7 MR. HILDEBRANDT: Object to the form of the
8 question.
9 A. As the CEO.
10 BY MR. MUISE:
11 Q. Okay. Now, was it determined by SMART that this
12 advertisement that we are referring to, the Don't
13 Believe in God, that it contained no political
14 component whatsoever?
15 A. As set forth in the advertising guidelines, correct.
16 Q. Is there ever a case where an advertisement might be
17 partially political and partially not political that
18 it would be acceptable?
19 A. If an advertisement contains political contents, it's
20 not allowed pursuant to the advertising guidelines in
21 5.07 of the contract.
22 Q. If any component of it whatsoever is determined to be
23 political, is that correct?
24 MR. HILDEBRANDT: Asked and answered.
25 A. Consistent with the application of political that we

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1 have previously talked about, yes.
2 BY MR. MUISE:
3 Q. Now, the -- and I just want to make sure we are clear
4 on this. We were referring to the advertising
5 guidelines that were previously provided to as Exhibit
6 Number 3, correct?
7 A. Section 5.07 of the contract, yes.
8 Q. And those were enacted in 2008; is that correct?
9 A. Yes, this is a 2008 contract, yes.
10 Q. Okay. Have those advertising guidelines changed
11 between 2008 till today?
12 A. They have not.
13 Q. And this advertising that we have been referring to,
14 the Don't Believe in God advertisement in Exhibit 4
15 was accepted pursuant to the same guidelines by which
16 my client's advertisement was rejected; is that
17 correct?
18 A. That is correct.
19 Q. And so nothing has changed from these policing
20 guidelines content restrictions since 2008 to the
21 present; is that correct?
22 A. That's correct.
23 Q. And would this Don't believe in God advertisement
24 still run today under your current guidelines?
25 A. Yes, I have answered yes, the policy has not changed.

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1 Q. Under the contents based guidelines 5.07 that we have
2 been referring to, is Islam as a subject matter
3 prohibited by those restrictions?
4 A. That calls for some speculation. I would have to see
5 the ad. We review the ad in its entirety, but Islam
6 as a subject matter, I would presume an ad that
7 involved Islam is not necessarily violative of 5.07,
8 no.
9 Q. What about with regard to sharia in light of the
10 determination that my client's advertisement was
11 considered political, is sharia not permitted as a
12 subject matter pursuant to the content based
13 guidelines of SMART?
14 A. It seems like that would be speculative on my part,
15 but I would have to see the ad to make that
16 determination.
17 Q. Okay. As you sit here today it wouldn't necessarily
18 be prohibited under these restriction contents, an
19 advertisement that had sharia as a subject?
20 A. Sharia MULAN governs people of the Islamic faith. It
21 seems to me that therefore it would be political, but
22 I would have to see the advertisement to make such a
23 determination because theoretically it could -- I
24 can't come up with such example, but if --
25 MR. HILDEBRANDT: When you say it seems to

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1 me, do you mean you or SMART?
2 BY MR. MUISE:
3 Q. And I don't want an answer from you. I want an answer
4 from SMART, so I want to -- if we have to reemphasize
5 that point since the break, let's do that.
6 I'm just asking, because as I look at this
7 content restriction, plainly any advertisement for the
8 sale of alcohol or tobacco is per se prohibited under
9 this policy; is that correct?
10 A. Correct.
11 Q. So is any advertisement that mentions sharia per se
12 prohibited by this content restriction?
13 A. It would have to be --
14 MR. HILDEBRANDT: Calls for speculation.
15 A. It would have to be reviewed under the policy, but as
16 I have explained, sharia is a politicized issue. If
17 it spoke in support or if it -- you know, now we have
18 had lunch and I can't remember exactly how I have
19 testified, so maybe we should go back, but if it
20 advocated for it or against it or in some position
21 regarding it, it would certainly be in violation of
22 this contract, of this -- and therefore in violation
23 of the policy and therefore not permissible.
24 Q. Right. And just -- and simply if it's -- if it's not
25 advocating one way or another but it mentions sharia,

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1 is the sharia itself a forbidden content under the
2 content based restrictions?
3 MR. HILDEBRANDT: Calls for speculation.
4 A. Literally -- I can't answer that question without
5 seeing the advertisement. Generally I --
6 MR. HILDEBRANDT: You have answered.
7 BY MR. MUISE:
8 Q. You have answered the question about Islam, so Islam
9 is different than sharia in terms of your application
10 of this policy?
11 A. There is no difference in application of this policy.
12 Q. Well, God itself is not a subject matter that's
13 prohibited under the content based restrictions; isn't
14 that correct?
15 A. That is correct.
16 Q. And the subject of atheism, that's not prohibited
17 under this -- your content based restriction; is that
18 right?
19 A. That's correct, pursuant to vetting it through, the
20 proposed ad through the advertising guidelines, et
21 cetera.
22 Q. Right. And I'm just saying the subject matter itself,
23 regardless if it advocates one way or another, just
24 the subject matter itself is not prohibited by these
25 restrictions; that's correct, is it not?

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1 A. Which subject matter, sir?
2 Q. Well, I think the last one we were on was atheism.
3 A. Correct.
4 Q. Okay. And but is sharia different than the subject
5 matter of Islam and God?
6 A. It would be reviewed -- sharia would be reviewed the
7 same as Islam, God, atheism, and therefore I guess
8 there is not a blanket -- it's, you know, it isn't
9 absolutely a violation because it is being mentioned
10 necessarily, but it has to be reviewed by the policy.
11 Q. Do you know if the -- and I have been referring to it
12 as the atheist ad. Is that okay if I refer to it as
13 the atheist ad, Exhibit Number 4, do you have a
14 preference?
15 A. That will be understood.
16 Q. Exhibit 4, the atheist ad, do you know if when they
17 made the request for this to be displayed whether or
18 not SMART required the Detroit Coalition of Reason to
19 make any modifications to what was proposed?
20 A. No modifications were required.
21 Q. And so the advertisement that's listed on Exhibit 4
22 was the one that they proposed, there wasn't a
23 different variation that SMART said we need to modify
24 at all?
25 A. This was the one that was proposed for the sides of

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1 our buses and was accepted.
2 Q. And that's Exhibit 4?
3 A. Correct.
4 Q. Upon reviewing this advertisement, SMART did not
5 determine that this advertisement conveyed a
6 defamatory or likely to hold up to scorn or ridicule
7 message against individuals who do believe in God?
8 A. That is correct.
9 Q. Is it not a fair view of this advertisement as
10 conveying the message that if you do believe in God
11 you lack of reason?
12 MR. HILDEBRANDT: SMART's position on that.
13 A. I disagree with you if that's your opinion. SMART
14 disagrees with you if that's your opinion.
15 BY MR. MUISE:
16 Q. And do you think it's unreasonable for a person to
17 look at this advertisement and conclude that it holds
18 up to scorn or ridicule people who believe in God?
19 MR. HILDEBRANDT: Give SMART's position
20 now.
21 A. That's not reasonable. I don't -- from reviewing this
22 advertisement, that's not a reasonable conclusion.
23 BY MR. MUISE:
24 Q. And despite the fact that you have had vandalism where
25 somebody actually went out of their way to scratch on

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1 the Don't aspect of this, your position is you don't
2 believe it's reasonable for somebody to look at this
3 and conclude that it conveys a scornful or a message
4 of scorn or ridicule towards people who believe in
5 God?
6 MR. HILDEBRANDT: Does your question assume
7 that vandalism is reasonable?
8 MR. MUISE: That's not what my question
9 was.
10 MR. HILDEBRANDT: I think it was.
11 A. Could you restate the question? I'm sorry.
12 MR. GORDON: He didn't say repeat. He said
13 restate. I think there is a -- he was not confused
14 about what he heard.
15 MR. MUISE: Well, let's see.
16 (The following record was read by the
17 reporter at 1:20 p.m.
18 "QUESTION: And despite the fact that you
19 have had vandalism where somebody actually
20 went out of their way to scratch on the
21 don't aspect of this, your position is you
22 don't believe it's reasonable for somebody
23 to look at this and conclude that it
24 conveys a scornful or a message of scorn or
25 ridicule towards people who believe in

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1 God?")
2 A. I don't believe it's reasonable, I have already said
3 that.
4 MARKED FOR IDENTIFICATION:
5 DEPOSITION EXHIBIT 5
6 1:21 p.m.
7 BY MR. MUISE:
8 Q. I'm handing you what has been marked as Exhibit Number
9 5. Do you recognize what this document is? And I
10 will represent to you it is a document that we took
11 off of the SMART website. Can you confirm that?
12 MR. HILDEBRANDT: Is the date on this, June
13 14, 2010, was that when this was actually printed?
14 MR. MUISE: The way the system works, yes,
15 that would have been printed off on June 14, 2010.
16 A. Sorry, I have to read through this.
17 BY MR. MUISE:
18 Q. And just so you know, while you are reading it, all
19 I'm going to ask you is whether or not the section,
20 the first paragraph that is highlighted, if that is an
21 accurate statement.
22 A. Okay.
23 Q. Is that a correct statement?
24 A. I'm sorry, you would have to repeat the question.
25 Q. On Exhibit 5 there is a paragraph, the very first

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1 paragraph which is highlighted, do you see that, sir?
2 A. Yes.
3 Q. Is that a correct statement of fact?
4 A. Governed could be taken many ways. It is overseen by
5 all of those entities and is subject to some of their
6 regulations and rules, but governed, if you are trying
7 to take a highly technical definition of it, you could
8 read it in an accurate way -- in an inaccurate way.
9 Generally speaking this is correct if you see -- if
10 you understand governed to mean overseen.
11 Q. And SMART is a governmental agency, correct?
12 A. It is an authority created pursuant to Public Act 204
13 of 1967.
14 Q. Does that make it a government agency?
15 A. It is a government agency.
16 Q. And I have seen in some of the e-mails, is there a
17 distinction between SMART and -- the acronym is DDOT,
18 I assume is the Detroit Department of Transportation,
19 is there a distinction between SMART and the Detroit
20 Department of Transportation?
21 A. They are entirely unrelated.
22 Q. Okay. What is the Detroit Department of
23 Transportation?
24 A. The Detroit Department of Transportation is a
25 subsection of the City of Detroit, it is not a state

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1 authority. It shares no employees, no assets other
2 than by mutual agreement. It's entirely different.
3 There is no -- and we both run buses, but beyond
4 that --
5 Q. And so does -- do you know if CBS Outdoor is the
6 advertising agency for DDOT, and the only reason why
7 I'm asking is because some of the e-mails there seems
8 to be some overlap from DDOT employees as well as
9 SMART employees on some of these advertising
10 campaigns?
11 A. CBS, it's my understanding, although again we have no
12 formal -- or we don't have any shared -- we don't have
13 any shared management, but it is my understanding that
14 CBS does run or does contract for advertising with the
15 City of Detroit.
16 Q. Do you know like, for example, if somebody says I want
17 to run an advertisement in the Detroit area, they
18 submit it to CBS Outdoor, CBS Outdoor might send it to
19 DDOT as well as to SMART and determine whether one or
20 both will run the advertisement, do you happen to
21 know?
22 A. I couldn't speculate.
23 Q. I have seen e-mails that have DDOT with the SMART, and
24 it's just not clear to me what the relationship is if
25 any between the two, but they are two distinct,

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1 separate entities, correct?
2 A. Absolutely.
3 Q. And I understand -- your understanding is you're not
4 sure what CBS Outdoor's relationship is with DDOT, but
5 they might have some relationship with them?
6 A. That's correct. It's my understanding they do place
7 advertisement on their buses.
8 Q. Do you ever coordinate with DDOT in terms of various
9 advertisements that might be proposed through CBS
10 Outdoor?
11 A. No, not directly with DDOT, whether CBS does such a
12 coordination for the purpose of contracts, I couldn't
13 speculate, but SMART does not.
14 Q. Do you know if my client's advertisement was rejected
15 by DDOT and then brought to your attention?
16 A. I don't know.
17 MARKED FOR IDENTIFICATION:
18 DEPOSITION EXHIBIT 6
19 1:27 p.m.
20 BY MR. MUISE:
21 Q. Let me hand you what has been marked as Exhibit 6.
22 Mr. Hertel is, John Hertel, H-E-R-T-E-L, he's the
23 general manager of SMART; is that right?
24 A. That is correct.
25 Q. And I think you referred to him as CEO as well. Is

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1 that sort of a dual hat?
2 A. His title is general manager. I use CEO only in a
3 loose sense. He is the chief executive officer of the
4 company, but his title is general manager.
5 Q. Thank you. If you look at what I have handed you as
6 Exhibit Number 6, if you would take a minute and look
7 at that, I want to ask you if you have seen this
8 portion of the SMART website prior to today.
9 A. Okay.
10 Q. If you look under the section, the first paragraph
11 under the advertising guidelines section, it says as a
12 governmental agency that receives state and federal
13 funds, SMART is mandated to comply with federal and
14 state laws, do you agree with that statement?
15 A. SMART is a governmental agency and it is required to
16 comply with federal and state laws.
17 Q. So that's a correct statement?
18 A. That is a correct statement.
19 Q. And then the statement after that, First Amendment
20 free speech rights require that SMART not censor free
21 speech and because of that, SMART is required to
22 provide equal access to advertising on our vehicles.
23 Do you see that, sir?
24 A. I see that.
25 Q. Is that a correct statement?

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1 A. Again in a legal sense, the area that we are talking
2 about is a nonpublic forum, and so free speech rights
3 that are present in a nonpublic forum I would agree
4 with that statement.
5 Q. Do you know if that statement was added to this
6 website after -- let me back up.
7 When SMART accepted the atheist
8 advertisement that we have been discussing to be
9 displayed on its vehicles, did that create a public
10 controversy as far as you know?
11 A. I don't necessarily -- could you define public
12 controversy? I'm sorry, I don't mean --
13 Q. I would define it as you just defined politicized.
14 MR. HILDEBRANDT: Objection to the form of
15 the question.
16 BY MR. MUISE:
17 Q. Let me ask you --
18 A. There were --
19 Q. Go ahead.
20 A. There were news stories written about the
21 advertisement after it was placed. I don't
22 necessarily know that that politicized it, but there
23 were news stories written about it.
24 Q. Did SMART receive complaints about it?
25 A. I don't -- I don't recall. I can get that answer. I

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1 don't know in a 30(b)(6) situation what I am supposed
2 to do if I don't recall.
3 Q. You answer truthfully you don't recall. There is not
4 much we can do about that.
5 A. I don't recall.
6 Q. Do you know if --
7 MR. HILDEBRANDT: We can break and find out
8 the answer to that question if you would like.
9 MR. MUISE: Well, let's -- let me just
10 proceed here for a moment, and then maybe we can get
11 back to that.
12 BY MR. MUISE:
13 Q. In a previous affidavit submitted in this case by Beth
14 Gibbons, she said in paragraph 6, and this is document
15 12-9, after advertisements regarding an atheist
16 organization were posted by SMART, I prepared a notice
17 for posting on the SMART website stating that SMART
18 must comply with applicable laws in policy in the
19 posting of advertisements. Do you know if that
20 statement is correct?
21 A. I believe that to be correct, and if that is in the
22 exhibit, I'm certain that it is, if that's my exhibit.
23 MR. HILDEBRANDT: That is an exhibit of an
24 affidavit of Beth Gibbons.
25 A. All right.

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1 MR. MUISE: It's document 12-9. I don't
2 need to mark it.
3 MR. HILDEBRANDT: No, you do not.
4 MR. MUISE: It's Paragraph number 6.
5 A. Okay.
6 BY MR. MUISE:
7 Q. Do you know if the posting on the website that Ms.
8 Gibbons is referring to is that paragraph that we just
9 reviewed on Exhibit 6?
10 MR. HILDEBRANDT: That first paragraph
11 under advertising guidelines is what you are referring
12 to?
13 MR. MUISE: It is what I am referring to.
14 A. I believe that everything under advertising
15 guidelines, including the second paragraph which
16 refers to the advertising guidelines was all posted --
17 it is the posting that is referenced in paragraph 6 of
18 the document we just reviewed.
19 BY MR. MUISE:
20 Q. Okay. So did it also include that, what appears to be
21 a disclaimer at the bottom, do you know if that was
22 posted pursuant to this reference in Ms. Gibbons --
23 A. I believe that it was, yes.
24 Q. We cut each other off. I want to make sure I'm clear.
25 A. I'm sorry, yes, all three paragraphs or the two

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1 paragraphs in the disclaimer were the result -- or are
2 what is referenced in paragraph 6 of the document we
3 just reviewed.
4 Q. Okay. If you look at the last bolded sentence, it
5 says advertising posted on SMART property does not
6 always reflect the views or opinions of SMART, its
7 employees or riders?
8 A. Yes.
9 Q. Do you know who drafted the language for that, what
10 appears to be a disclaimer?
11 A. The marketing department did, I will say generally. I
12 don't know the specific person, but I can find that
13 out if you need me to.
14 Q. Do you know, is that a correct statement?
15 MR. HILDEBRANDT: Is the disclaimer a
16 correct statement or is the fact that the marketing
17 department did it a correct statement?
18 BY MR. MUISE:
19 Q. The disclaimer, is that a correct statement?
20 A. It's a very generalized marketing statement, but I
21 believe that it's true.
22 Q. Now, based on my view of the documents that have been
23 produced, there were, I believe, three, possibly four
24 advertisements that SMART has rejected under those
25 2008 advertising guidelines.

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1 A. I would have to look at the documents, but roughly.
2 Q. And let me just say, and I do have these and we are
3 going to go through them, but one was a, I have
4 described it as a Redemption video game advertisement?
5 MR. HILDEBRANDT: Red Dead Redemption.
6 BY MR. MUISE:
7 Q. Red Dead Redemption, and I will get you a copy, that
8 was one that was originally rejected, but modified and
9 then accepted; is that your understanding?
10 A. I believe that's correct.
11 Q. The original one had a gun in the advertisement, they
12 modified it to remove the gun, and that was
13 subsequently accepted, correct?
14 A. Correct.
15 Q. There was a Pinckney pro-life advertisement that
16 advertised, it mentioned abortion and advertised for
17 Rachel's Vineyard, that one was rejected?
18 A. Correct.
19 Q. A third one that was rejected is my client's
20 advertisement that we have been discussing today, the
21 Leaving Islam, correct?
22 A. Correct.
23 Q. And then recently there was a fourth advertisement
24 proposed by my client that had a website address on it
25 and it was rejected, however if the website was

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1 removed my understanding was SMART was going to accept
2 it. Does that comport with your general
3 recollection --
4 A. Correct.
5 Q. -- or we can get into the details?
6 Any other advertisements that you recall
7 that have been rejected under these content guidelines
8 that we have been discussing?
9 A. Under the 2008 content guidelines, I think that's
10 correct.
11 MR. MUISE: Let's mark this as the next
12 exhibit, which is 7.
13 MARKED FOR IDENTIFICATION:
14 DEPOSITION EXHIBIT 7
15 1:37 p.m.
16 BY MR. MUISE:
17 Q. Sir, I'm handing you what's been marked as Exhibit
18 Number 7. Do you recognize what is depicted in that
19 exhibit?
20 A. Yes.
21 Q. And what is that?
22 A. This is an advertisement that was proposed to SMART
23 that was rejected as -- that was rejected as
24 political.
25 Q. And when you say this advertisement, it was submitted

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1 on behalf of Pinckney Pro-Life, is that your
2 understanding?
3 A. That's my recollection.
4 Q. And what was it about this advertisement that violated
5 your restrictions on prohibition of political
6 advertisement?
7 A. This advertisement, the topic is abortion which is a
8 politicized topic, and the website is very --
9 Rachel's -- the ProjectLIFEBOARD and Rachel's Vineyard
10 are both websites that are put on the -- that are on
11 the graphic, and the websites contained much pro-life
12 information, and so they were clearly advocating for a
13 pro -- for an anti-abortion stance on a politicized
14 issue.
15 Q. Is abortion itself a subject matter that is prohibited
16 under the political -- the prohibition on political
17 advertising?
18 A. Again there are situations where abortion -- it would
19 have to be reviewed against the advertising content
20 policy, but there are situations where abortion could
21 be permissible, so as a blanket rejection or a blanket
22 prohibition, it is not, no.
23 Q. Do you know what Rachel's Vineyard actually is?
24 A. I do not.
25 Q. Do you know at what level of the review, and again we

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1 talked about the marketing department, general
2 counsel, and general manager, do you know where the
3 decision, the final decision was made to reject this
4 advertisement?
5 A. I believe this was with the general manager, in
6 consultation with everyone else that you previously
7 mentioned.
8 MR. MUISE: Can you mark this?
9 MR. HILDEBRANDT: Is this from our records?
10 MR. MUISE: No.
11 MR. HILDEBRANDT: What is it, please?
12 MARKED FOR IDENTIFICATION:
13 DEPOSITION EXHIBIT 8
14 1:41 p.m.
15 BY MR. MUISE:
16 Q. I'm handing you what has been marked as Exhibit 8, and
17 I will represent to you it's taken off the home page
18 of RachelsVineyard.org, the website that's referenced
19 in the Pinckney advertisement number 7. Do you know
20 who viewed the website of RachelsVineyard.org upon
21 making the determination to reject the Pinckney
22 Pro-Life advertisement in Exhibit 7?
23 A. Again there are two websites listed with on the
24 advertisement, and they were both viewed by the office
25 of the general counsel. I can't be certain that

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1 that's an exhaustive list, though. I can get that
2 information if you need it.
3 Q. Do you know if SMART had any understanding that
4 Rachel's Vineyard was an organization that assisted
5 post-abortive women with medical, social and other
6 needs?
7 A. I'm not certain of your question. I'm sorry, could
8 you repeat your question?
9 Q. Sure. And let me -- I guess I will come at it this
10 way. What was SMART's understanding of what Rachel's
11 Vineyard actually was?
12 MR. HILDEBRANDT: Object to relevance.
13 A. Such a determination as part of the review of the
14 content policy does not need to be made. If a
15 determination is made that there is political content
16 within the advertisement or that which it directs the
17 reader to, then the advertisement is rejected. A
18 determination of their scope, their goal, their
19 product is not necessary if it's determined
20 independently that a portion of the advertisement is
21 political.
22 BY MR. MUISE:
23 Q. And if I understand your answer then, so going to
24 RachelsVineyard.org was not necessary to determine
25 that this advertisement was political?

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1 MR. HILDEBRANDT: Object to the
2 mischaracterization of the testimony.
3 A. I did not say that. I did not say that.
4 BY MR. MUISE:
5 Q. And so what -- was this rejected on its four corners,
6 on its face in terms of the message that's conveyed by
7 the Exhibit 7 as being political?
8 MR. HILDEBRANDT: Including its intrinsic
9 website? I mean we have defined face, on its face as
10 what, just what --
11 MR. MUISE: Just what you are reading here.
12 MR. HILDEBRANDT: Without going anywhere
13 else?
14 MR. MUISE: Exactly.
15 A. A determination was not made based solely -- I mean at
16 this time we went to the websites, the
17 projectLIFEBOARD website, as well as it's my
18 recollection the Rachel's Vineyard website contained
19 political information -- political content. Certainly
20 the projectLIFEBOARD did, website did, so the
21 determination was made that it was political. It was
22 never therefore necessary to make a determination as
23 to absent these websites whether it would be deemed
24 political, but I could speculate to that if you would
25 like me to.

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1 MR. HILDEBRANDT: No, you can't.
2 BY MR. MUISE:
3 Q. I don't need to.
4 Handing you what has been previously marked
5 as Geller deposition Exhibit TT, tango, tango.
6 A. Is this our exhibit?
7 MR. HILDEBRANDT: Yes.
8 BY MR. MUISE:
9 Q. Do you recognize --
10 MR. HILDEBRANDT: It's not part of our
11 production, but it was marked in the previous
12 deposition of Pam Geller. It was provided to us by
13 their counsel. That is what was submitted.
14 A. I do recognize this.
15 BY MR. MUISE:
16 Q. And you recognize that as an advertisement that my
17 client submitted to SMART to be run on the SMART
18 buses?
19 A. That's correct.
20 Q. And that advertisement as depicted there in Exhibit TT
21 was rejected, correct?
22 A. That's correct.
23 Q. Do you know on what bases that advertisement was
24 rejected?
25 A. It was determined to be political, and I don't know if

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1 further determinations were made for bases of
2 rejection, but I can get that if you need that.
3 Q. What was it about this advertisement that made it
4 political?
5 A. The referenced website referred back to the Freedom
6 Defense Initiative's website or the Stop the
7 Islamization of America website. I am not recalling
8 right now as to which one it referred back to, or
9 perhaps it referred back to both, but therefore it
10 incorporated their content, which was clearly
11 political.
12 Q. Are you sure it referenced those two websites?
13 A. I would have to go back to the information that we
14 have, and I don't know if we have produced that, but
15 additionally within the website itself, it's my
16 recollection that it referred to Muhammad as the
17 pedophile prophet almost at the top of the website,
18 and the remainder of the contents were consistent with
19 that.
20 Q. And my understanding is an offer or suggestion was
21 made to run this advertisement without the website
22 listed on there, is that your recollection?
23 A. Yes.
24 Q. And without that website listed SMART indicated they
25 would run this advertisement?

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1 A. That is correct.
2 MR. HILDEBRANDT: Do you have a copy of the
3 graphic without the website?
4 MR. MUISE: I don't. I don't know if there
5 ever was one, to be honest with you.
6 MR. HILDEBRANDT: Fair enough.
7 BY MR. MUISE:
8 Q. And so it's the content of the TruthAboutMuhammad.com
9 that made this advertisement political; is that
10 correct?
11 A. Correct.
12 Q. Do you know at what level of review it was determined
13 that this advertisement, the one before you, tango
14 tango with the website address would be rejected?
15 A. It was viewed by all of the groups that we previously
16 mentioned, marketing, the office of the general
17 counsel, and the general manager.
18 Q. And how about the decision to allow it to run without
19 the website?
20 A. All groups would have made that determination as well.
21 Q. Is it SMART's understanding that the reference to
22 Muhammad in this website is to the Prophet Muhammad
23 from Islam?
24 A. That's the presumption, yes, because this is a parity
25 of the previous ad.

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1 Q. And you say previous ad referring to the atheist ad?
2 A. Correct. The artwork is similar is what I mean by
3 that.
4 MARKED FOR IDENTIFICATION:
5 DEPOSITION EXHIBIT 9
6 1:50 p.m.
7 BY MR. MUISE:
8 Q. Sir, I'm going to hand you what has been marked as
9 Exhibit Number 9. Do you recognize what is depicted
10 in that exhibit?
11 A. Yes.
12 Q. And what is that?
13 A. This is an advertisement that was proposed to be
14 advertised on SMART vehicles for a product, a game Red
15 Dead Redemption.
16 Q. And was that advertisement accepted by SMART?
17 A. It was not.
18 Q. And why?
19 A. It was determined to be, if I can refer to --
20 Q. Absolutely.
21 A. -- section 5.07 of the contract, which is the
22 advertising guidelines, in violation of 5.07 B 5, in
23 that it was in advocacy of imminent lawlessness or
24 unlawful violent action.
25 MR. MUISE: Can you mark this?

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1 MARKED FOR IDENTIFICATION:
2 DEPOSITION EXHIBIT 10
3 1:53 p.m.
4 BY MR. MUISE:
5 Q. I'm handing you what has been marked as Exhibit Number
6 10. And the top document appears to be an e-mail from
7 Anthony Chubb to Beth Gibbons, and in this e-mail
8 Anthony Chubb indicates that they amended it and we
9 approved it without the gun, referring to the Red Dead
10 Redemption advertisement; is that accurate?
11 A. That is the statement in the e-mail. This e-mail was
12 looking for clarification from Beth Gibbons, because
13 when I sent it it was three years later, and so I was
14 asking for her to confirm that my recollection -- that
15 Anthony Chubb's recollection was correct.
16 Q. And if you look at the document on the second page, do
17 you know if that is the advertisement that was
18 approved by SMART?
19 MR. HILDEBRANDT: Whether that's the actual
20 one?
21 MR. MUISE: Yes.
22 A. I -- based upon these e-mails, it does look like that
23 is correct, that this was the ad without the --
24 without the gun that was approved.
25 BY MR. MUISE:

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1 Q. Just so we are -- there is clarity here, why don't we
2 just mark this, because hopefully this will help out,
3 number 11.
4 MARKED FOR IDENTIFICATION:
5 DEPOSITION EXHIBIT 11
6 1:54 p.m.
7 BY MR. MUISE:
8 Q. Sir, I'm handing you what has been marked as Exhibit
9 Number 11, and I realize Exhibit Number 10 the e-mail
10 was in 2013. Exhibit 11 there is an e-mail from Beth
11 Gibbons -- excuse me, from Robert Hawkins to Beth
12 Gibbons in 2010 with an image. It says here is the
13 image without the gun. Do you recognize if that image
14 which is on the second page was the same as the one in
15 Exhibit Number 10 and in fact was the one that ran on
16 SMART buses?
17 A. I believe that that's correct, I think it just
18 reproduced in an incomplete way on Exhibit 10.
19 Q. Now, in Exhibit, the second page of Exhibit Number 11,
20 on this advertisement it still says outlaws to the
21 end, do you see that?
22 A. Yes.
23 Q. That statement isn't advocating imminent lawlessness
24 or unlawful violent action?
25 A. On its face, no, and this is -- on its face, no.

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1 Q. Do you know if anyone from SMART actually watched the
2 game that's referenced here to see whether or not it
3 contained any content that is prohibited by your
4 content based restrictions?
5 A. It's my recollection that this was leading up to the
6 release of the game, so this was prior to its
7 availability, but in this situation -- so in this
8 situation I guess it was not available, so I would
9 presume no.
10 Q. Is it the policy or practice of SMART that if an
11 advertisement references a movie or a video that SMART
12 will actually review that movie or video to determine
13 whether any content in that movie or video might
14 contain content that is restricted under the
15 advertising guidelines?
16 A. For a product such as a movie or video, it's not a
17 general policy to review every single one of them,
18 that's correct.
19 Q. Is it the general policy, though, to review every
20 single website that might be referenced on an
21 advertisement that is submitted by SMART?
22 A. Yes.
23 Q. What is the difference between the content of a
24 website compared to the content of the actual product
25 that's being promoted by the advertisement?

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1 MR. HILDEBRANDT: Are you asking for a
2 definitive answer or for SMART's answer on that?
3 MR. MUISE: His -- SMART's answer.
4 A. The relationship is far more tangential for -- this is
5 selling the product that people would have to go by as
6 opposed to a website which is incorporated wholly
7 within the document or within the advertisement.
8 Q. How about with a television program that somebody
9 would turn on their TV, any different than looking at
10 a website, do you watch every television show that is
11 advertised on SMART vehicles to determine whether any
12 of its content might be restricted under the
13 advertising guidelines?
14 A. No. Again the relationship is much more tangential.
15 A website that is on -- that is explicitly set forth
16 in the advertisement itself is a smartphone away from
17 being reviewed, whereas there is a lot of -- it's not
18 that easy to go watch a movie or a show that's on once
19 a week or go to the theater to watch a movie or to go
20 buy a game, so that isn't the policy to review them
21 all.
22 Q. Can you not go on your same smartphone and pull up
23 videos on YouTube of television shows, movies, other
24 things that might be advertised on the SMART vehicles?
25 MR. HILDEBRANDT: Are you saying at the

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1 time of this ad?
2 MR. MUISE: At any time. These are the
3 advertisement guidelines that apply as of today.
4 MR. HILDEBRANDT: He has indicated this ad
5 was anticipatory to the release.
6 MR. MUISE: I'm not asking about the
7 specific ad, I'm asking about what SMART's policy is
8 on reviewing the content of the advertisement to make
9 its determination as to whether it's prohibited.
10 A. We reviewed -- and I have told you, we review the
11 content of the advertisement. A television show that
12 is advertised is tangential, it's not -- and therefore
13 it's not a policy of SMART to review the entire
14 contents of the movie or the television show.
15 BY MR. MUISE:
16 Q. Any other advertisement that you are aware of since
17 2008 that SMART has rejected because it contained
18 political content other than the three advertisements
19 that we discussed? For political content that would
20 have been my client's advertisement, the one that is
21 at issue here, Leaving Islam, the Pinckney Pro-Life
22 advertisement, and then my client's subsequent
23 advertisement that had the Truth About Muhammad
24 website.
25 A. I do not recall any others that were rejected due to

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1 being political.
2 Q. And then the one other advertisement that was rejected
3 by SMART under its content based guidelines is the one
4 referred to in Exhibit Number 11, and that was because
5 it advocated imminent lawlessness or unlawful violent
6 action. And let me back up, Exhibit 11 was modified
7 to remove the gun to accept it, but the advertisement
8 with the gun was rejected under that provision?
9 A. Correct.
10 Q. Any other advertisements since 2008 that you are aware
11 of that SMART rejected under its advertising
12 guidelines that we have been discussing today?
13 MR. HILDEBRANDT: I'm going to object just
14 to the vagueness of the question, and I would like you
15 to kind of clarify that a little bit, because there
16 are ads that are submitted that are rejected out of
17 hand if they are for Winston's or they are for whiskey
18 or something like that, but they are not sent on to
19 SMART for review at all because they are clearly
20 violative of the second paragraph. Do you mean those
21 as well or just the ones that were reviewed by SMART
22 and rejected?
23 MR. MUISE: My question is advertisements
24 that were rejected by SMART pursuant to its
25 advertising guidelines.

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1 A. Section -- the ones that were reviewed by SMART
2 personnel that were rejected pursuant to section 5.07
3 B of the contract are the four that we have spoken
4 about. I'm not aware of any others that were reviewed
5 directly by SMART.
6 Q. Do you know how many advertisements, even if you know
7 generally, SMART has accepted since 2008?
8 A. I can get that information. There are --
9 MR. HILDEBRANDT: We have produced copies
10 of all of them, but I will be honest with you, neither
11 of us have counted them.
12 A. There are hundreds since 2008.
13 MR. MUISE: Mark this as the next, which is
14 what number?
15 MR. HILDEBRANDT: 12.
16 MR. MUISE: 12.
17 MARKED FOR IDENTIFICATION:
18 DEPOSITION EXHIBIT 12
19 2:03 p.m.
20 MR. HILDEBRANDT: Mr. Muise, do you know if
21 this is the version that was in effect on the day of
22 the presentation of that ad?
23 MR. MUISE: That's what I am going to ask
24 the witness if he knows.
25 MR. HILDEBRANDT: Where did you get this,

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1 did we produce this?
2 MR. MUISE: No. It was downloaded from the
3 TruthAboutMuhammad.com website.
4 BY MR. MUISE:
5 Q. I'm handing you what has been marked as Exhibit Number
6 12, and you may or may not have knowledge of this.
7 You had mentioned in rejecting my client's
8 advertisement marked as Geller deposition Exhibit TT
9 that it was the content of the TruthAboutMuhammad.com
10 website that was the basis for the rejection. I have
11 handed you Exhibit 12 which is entitled a document
12 that is 14 pages long entitled the Truth about
13 Muhammad. Do you recall seeing any of that content
14 prior to today?
15 MR. HILDEBRANDT: What is the foundation
16 for this document? Where does it come to you from?
17 MR. MUISE: Well, I mean I can establish
18 the foundation independently. He may not have any
19 recollection of reading this or seeing this or seeing
20 the content. My question to him in terms of what his
21 personal knowledge is as SMART --
22 MR. HILDEBRANDT: It's not being presented
23 in the manner of a website. As a matter of fact, it's
24 actually a Word document that is still in the editing
25 phases according to this track changes notation on the

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1 ad. I have no idea where this came from, and you
2 know, for him to be asked whether this is the same
3 content that was on the website that was reviewed is
4 kind of unfair unless you are going to give him the 14
5 pages of the website to compare one word to each.
6 MR. MUISE: Either he knows --
7 MR. HILDEBRANDT: I mean this was similar
8 certainly to what was on the website, I can say that.
9 A. The only independent recollection that I have of this
10 is it did say the Truth about Muhammad at the top, is
11 my recollection, and pedophile prophet as I previously
12 stated, I do recall that. I don't recall the contents
13 of every other -- of everything else in this document.
14 Q. Do you recall going to the website and there was
15 actually a document posted on the website to download?
16 MR. HILDEBRANDT: A document posted to
17 download? Was there a web page at that address, is
18 that what your question is?
19 MR. MUISE: No, I'm -- what his
20 recollection was about the website
21 TruthAboutMuhammad.com.
22 A. SMART went to TruthAboutMuhammad.com and reviewed the
23 contents on the website.
24 BY MR. MUISE:
25 Q. Right.

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1 A. It is not my recollection that there was a document to
2 download, but there was information that you could
3 review directly on the website.
4 Q. And your recollection is, I don't want to put words in
5 your mouth, but your recollection is some of the
6 information at least that was contained in Exhibit 12
7 is similar to the information that you recall seeing
8 at the website?
9 A. The language the Truth about Muhammad and pedophile
10 prophet is language that I recall seeing when we
11 reviewing the website.
12 Q. Do you recall when you reviewed the website whether
13 there were references cited to any of the information
14 contained on the TruthAboutMuhammad.com website?
15 A. I don't have a recollection of that.
16 Q. Okay.
17 MR. MUISE: Why don't we take a break until
18 2:15 right now.
19 (Off the record at 2:07 p.m.)
20 (Back on the record at 2:20 p.m.)
21 BY MR. MUISE:
22 Q. Before we broke, I was asking you some questions about
23 whether or not SMART would review the content of a
24 television program or a video game or a movie prior to
25 making a determination under its content based

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1 restrictions whether to accept or reject the ad. Do
2 you remember those questions, sir?
3 A. Yes.
4 Q. And my understanding is that SMART would not review
5 any of those three categories of items advertised on
6 an advertisement; is that correct?
7 A. In the past we have not, that's correct.
8 Q. And what about if they are advertising a book, would
9 it be the same thing, would anyone from SMART read the
10 content of the book to determine whether or not there
11 was any political content or other prohibited content
12 in that book before allowing an advertisement for
13 that?
14 MR. HILDEBRANDT: I'm going to object that
15 it calls for a review of a nonspecific hypothetical
16 ad, and I'm not sure this witness can speak on behalf
17 of SMART relative to that. As he said, anything would
18 have to be done under the policy.
19 A. Generally speaking we would not.
20 BY MR. MUISE:
21 Q. Do you know if -- has SMART ever considered when they
22 are reviewing advertisements for television programs
23 or movies or video games whether the actual title of
24 the video game, movie or television show, whether that
25 might present content that's prohibited under the

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1 content based restriction?
2 MR. HILDEBRANDT: Object, calls for
3 speculation and based upon a hypothetical.
4 A. Presumably it could, yes, if the title of the movie,
5 whatever, was in violation, its plain language was in
6 violation of language section 5.07 B, it would be
7 rejected pursuant to 5.07 B.
8 BY MR. MUISE:
9 Q. Are you aware of any instances in which a television
10 program, a video game or a movie advertisement was
11 rejected because of its title?
12 A. No.
13 MR. MUISE: Can you mark this as the next
14 exhibit?
15 MARKED FOR IDENTIFICATION:
16 DEPOSITION EXHIBIT 13
17 2:23 p.m.
18 BY MR. MUISE:
19 Q. Sir, I'm handing you what has been marked as Exhibit
20 Number 13. That first page is an advertiser agreement
21 and the second page appears to be a posted
22 advertisement. Do you know if this was an
23 advertisement that SMART accepted?
24 A. I'm just trying to review the pictures to see if I
25 recognize this particular bus stop as a SMART bus

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1 stop, but it is my -- SMART has approved -- that will
2 do it, yeah. I don't recognize this specific bus
3 stop, but it does look like it has SMART information.
4 SMART has approved these advertisements, yes.
5 Q. And these advertisements reference a website
6 statussexy.com, do you see that?
7 A. Yes.
8 Q. And pursuant to your policies, SMART reviewed that
9 website and found that there was nothing, no component
10 of that website was political; is that correct?
11 A. According to our policy it would be reviewed, yes.
12 MR. MUISE: Mark that as the next exhibit,
13 14.
14 MARKED FOR IDENTIFICATION:
15 DEPOSITION EXHIBIT 14
16 2:25 p.m.
17 BY MR. MUISE:
18 Q. Handing you what has been marked as Exhibit Number 14,
19 do you recognize that, sir?
20 A. I understand it to be a couple of SMART bus stops,
21 yes.
22 Q. And we just saw in the previous Exhibit, Exhibit
23 Number 13 the sexy -- the statussexy.com advertisement
24 at a bus stop. Do you know if this is the same bus
25 shelter, SMART bus shelter but from a broader view?

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1 A. I don't know. I presume it to be.
2 Q. Do you recognize that the bus shelter in Exhibit
3 Number 14 is a SMART bus shelter?
4 A. In Exhibit 14 I know that to be a SMART bus shelter,
5 yes.
6 MARKED FOR IDENTIFICATION:
7 DEPOSITION EXHIBIT 15
8 2:27 p.m.
9 BY MR. MUISE:
10 Q. Handing you what's been marked as Exhibit Number 15.
11 Do you recognize this as an advertisement that was
12 accepted by SMART?
13 A. I couldn't be certain. If this is the same
14 advertisement that we have just looked at --
15 Q. And I can represent to you that was a document that
16 was produced in the document production by SMART.
17 A. Okay. Okay.
18 Q. And so there is nothing about the advertisement
19 depicted in Exhibit Number 15 that violated any of
20 SMART's content restrictions?
21 A. That's correct.
22 Q. Nothing about this advertisement or statussexy.com,
23 any component of it was political pursuant to SMART's
24 content guidelines?
25 A. That's correct.

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1 Q. If you look at Exhibit Number 13, it appears that this
2 advertisement at least was submitted sometime in 2012;
3 is that right?
4 A. It appears that's correct. I couldn't tell you when
5 it was posted on SMART property, but it does appear it
6 was -- the agreement was entered into between CBS and
7 its partnership with Michigan in March 2012.
8 Q. There is some handwriting, it says 3/13 and there is
9 some like handwritten names, Tom, Bob, Karen, Nancy,
10 Alisha, Robert, do you see that?
11 A. Yes.
12 Q. Do you know what that is referencing?
13 A. I would speculate it's internal --
14 MR. HILDEBRANDT: Don't speculate.
15 BY MR. MUISE:
16 Q. I don't need you to speculate, but is this something
17 that SMART put on there?
18 A. No, these are not SMART employees.
19 Q. Do you recognize these names as people who are
20 employed by CBS Outdoor?
21 A. Robert is Robert Hawkins, and Tom is Tom Carroll.
22 Q. Who is Tom Carroll?
23 A. Another CBS employee.
24 Q. Do you know what his role is at CBS?
25 A. I believe he oversees the region, but I couldn't be

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1 certain as to his title.
2 MR. MUISE: Can you mark that as the next
3 one?
4 MARKED FOR IDENTIFICATION:
5 DEPOSITION EXHIBIT 16
6 2:30 p.m.
7 BY MR. MUISE:
8 Q. I'm handing you what has been marked as Exhibit Number
9 16. Do you recognize what is depicted in Exhibit
10 Number 16?
11 A. Yes.
12 Q. And what is that?
13 A. This is another advertisement that was proposed for
14 advertisement on SMART property.
15 Q. Do you know if this advertisement was accepted?
16 A. I believe it was accepted.
17 MR. MUISE: Let's go to the next one.
18 MARKED FOR IDENTIFICATION:
19 DEPOSITION EXHIBIT 17
20 2:31 p.m.
21 BY MR. MUISE:
22 Q. I'm handing you what has been marked as Exhibit Number
23 17.
24 A. Just one second. I'm getting a little mixed up here.
25 Q. Do you recognize this advertisement, sir?

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1 A. Yes, I do.
2 Q. And is this an advertisement that SMART accepted for
3 posting on its vehicles?
4 A. Yes.
5 Q. So that at the time didn't violate any of the content
6 based restrictions?
7 A. That's correct.
8 MR. MUISE: Next one.
9 MARKED FOR IDENTIFICATION:
10 DEPOSITION EXHIBIT 18
11 2:32 p.m.
12 BY MR. MUISE:
13 Q. I'm showing you what has been marked as Exhibit Number
14 18. Do you recognize this, sir?
15 A. Yes.
16 Q. And what is it?
17 A. I think it's the same advertisement as Exhibit 17.
18 Q. And again I will represent to you this was a document
19 produced by SMART in their document production. Is
20 this an advertising space that's on the inside of the
21 buses?
22 A. This looks like a picture taken on the inside of a
23 SMART coach.
24 MARKED FOR IDENTIFICATION:
25 DEPOSITION EXHIBIT 19

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1 2:33 p.m.
2 BY MR. MUISE:
3 Q. This is what has been marked as Exhibit Number 19.
4 And I will represent to you this was pulled up from
5 the website that is cited on the advisements we just
6 reviewed, statussexy.com?
7 A. Okay.
8 Q. Is AIDS a politicized issue from SMART's perspective?
9 MR. HILDEBRANDT: Are you equating HIV with
10 AIDS for the purpose of that question?
11 MR. MUISE: Well, it says fighting HIV
12 slash AIDS on the website.
13 MR. HILDEBRANDT: Okay.
14 MR. GORDON: Not on this website it
15 doesn't.
16 A. In the body here.
17 MR. HILDEBRANDT: Yeah, it does.
18 MR. MUISE: It does.
19 MR. GORDON: I apologize, it does. There
20 is that one spot.
21 A. Sorry, could you repeat the question?
22 MR. GORDON: But I take exception to your
23 characterization of it being equated as the same.
24 (The following record was read by the
25 reporter at 2:34 p.m.)

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1 "QUESTION: Is AIDS a politicized issue
2 from SMART's perspective?")
3 A. As we have spoken about, and perhaps we should get my
4 previous testimony to be sure I'm consistent, but I
5 was saying that it is an issue of public debate and
6 one that finds factions on both sides. I don't
7 necessarily know that there is a faction in support of
8 AIDS if that's your question.
9 BY MR. MUISE:
10 Q. That's not my question. My question is from SMART's
11 perspective is AIDS an issue or topic that has been
12 politicized as you understand that term to be?
13 MR. HILDEBRANDT: Give him the one word
14 answer.
15 A. No.
16 MARKED FOR IDENTIFICATION:
17 DEPOSITION EXHIBIT 20
18 2:36 p.m.
19 BY MR. MUISE:
20 Q. Sir, I'm handing you what has been marked as Exhibit
21 20, and I will represent to you if you look at Exhibit
22 Number 19, there is a link on the statussexy.com
23 website where it says there is a great story about us
24 on thebody.com, check it out, and when you click on
25 the link, number 19 --

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1 A. Okay, sorry.
2 Q. -- what is going on, the second paragraph, there is
3 great story about us on thebody.com, check it out.
4 A. Got you.
5 Q. And you click on the link, and this story from 2012
6 pops up, and that's Exhibit Number 20. Do you see
7 that, sir?
8 A. I see that this is Exhibit Number 20. Now, I make no
9 statement regarding whether this link there is a great
10 story about us on thebody.com check it out was present
11 when SMART reviewed this website, just the
12 statussexy.com website, just to be clear.
13 Q. Okay. So as you are looking at the statussexy.com
14 website in Exhibit Number 19 --
15 MR. HILDEBRANDT: Which was printed
16 yesterday, right?
17 BY MR. MUISE:
18 Q. -- does that make the advertisements that SMART
19 selected to be now political and prohibited by the
20 content based restrictions?
21 A. This does not change the answer.
22 Q. Okay. Look at the article that is linked there. The
23 very first sentence of this article says, quote, "the
24 in quotes, status sexy" end quote campaign uses images
25 of attractive shirtless men to convey its message

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1 encouraging men who have sex with men to be tested for
2 HIV," end quote, do you see that?
3 A. Yes.
4 Q. Is that a political statement as SMART understands
5 political to be for the purposes of its content based
6 restrictions?
7 A. In determining whether it is a political statement
8 under the guidelines that I have previously testified,
9 we make a determination as to whether something is
10 political?
11 Q. Yes.
12 A. It's not, no, but SMART has never reviewed the body in
13 the web's content policy.
14 MR. HILDEBRANDT: The website, the body,
15 you mean, right? You certainly review the body of the
16 ad.
17 A. Yes.
18 MR. HILDEBRANDT: Just not the website the
19 body?
20 A. Exhibit 20.
21 BY MR. MUISE:
22 Q. But if it's linked to Exhibit 19, the website cited on
23 the advertisement, pursuant to your policy you would
24 review all of the ad; is that correct?
25 A. That's correct.

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1 MR. HILDEBRANDT: Are you indicating that
2 he said the policy was to follow every link within the
3 web page and every link within those links and every
4 link within those links?
5 BY MR. MUISE:
6 Q. Well, you tell me --
7 MR. HILDEBRANDT: Is that what you
8 understood him to say?
9 BY MR. MUISE:
10 Q. You tell me what the policy is. At what point do you
11 decide which link you are going to follow and which
12 one you're not going to follow?
13 A. We take every reasonable measure to follow what the
14 reader is directed to within the ad.
15 Q. Okay. You have one website, and one click away you
16 have Exhibit Number 20, correct?
17 A. That's correct.
18 Q. And --
19 A. Now of course again, we haven't said as to whether
20 this link was present on this website at the time --
21 on the statussexy website that's in Exhibit Number 19,
22 nobody in this room seems -- knows whether that was
23 there, the link to the website in Exhibit 20 was on
24 the website in Exhibit 19 at the time it was reviewed
25 by SMART.

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1 Q. And based on your understanding of the policy looking
2 at Exhibit 19 and Exhibit 20, neither of those would
3 cause the advertisement to be prohibited under SMART's
4 content restriction; is that correct?
5 A. I will have to review Exhibit 20 if you want to --
6 Q. Yes.
7 A. -- have me speculate as to what the answer would be if
8 it was reviewed under the content policy.
9 MR. HILDEBRANDT: And again this is going
10 beyond the topics that were identified as topics of
11 conversation for this 30(b)(6) witness, and so any
12 answer that he gives is beyond the scope of the notice
13 and not binding on SMART.
14 MR. MUISE: Well, certainly I thoroughly
15 disagree since this advertisement was the
16 advertisement provided by SMART.
17 MR. HILDEBRANDT: You are entitled to
18 disagree.
19 MR. MUISE: Of course, and you are entitled
20 to object.
21 A. I don't believe that this -- that the body story
22 referenced in Exhibit 20, if it were reviewed by
23 SMART, would be determined to be in violation of the
24 content restriction policy --
25 Q. And just to be clear --

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1 A. -- of the political content restriction policy.
2 Q. With regard to the advertisement that that website is
3 cited to?
4 A. With regard to Exhibit 19?
5 Q. And let's just back up, just with regard to either the
6 ads, any of the ads accepted as Exhibit 16, 17 -- or
7 15, 16, or 17?
8 A. Those were all accepted under the content policy.
9 Q. Right. And the fact that that article, Exhibit 20
10 would be referenced in the advertisement cited in
11 statussexy.com itself would not prohibit these
12 advertisements from being displayed?
13 A. Once again, there is no determination here that this
14 was -- that Exhibit 20 was referenced by statussexy,
15 which is Exhibit 19 which is referenced in Exhibits
16 15, 16, 17, and 18, but if it were -- you are asking
17 if it were, would it be a violation of the content
18 policy. I don't believe so.
19 Q. I will hand you what has been --
20 MR. MUISE: I will mark this as the next
21 exhibit.
22 MARKED FOR IDENTIFICATION:
23 DEPOSITION EXHIBIT 21
24 2:44 p.m.
25 BY MR. MUISE:

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1 Q. Do you know who at SMART or at what level at SMART the
2 statussexy.com advertisements were approved?
3 A. I could confer and find that out. I don't know.
4 Q. Do you know if it was reviewed at least at the legal
5 counsel level?
6 A. It was.
7 Q. Hand you what has been marked as Exhibit Number 21.
8 And this too is a document that was linked to Exhibit
9 Number 19. If you hit the top link where it says
10 testing together is a new way to go status sexy with
11 your boo, exclamation point.
12 A. Yes.
13 Q. Take a minute -- let me back up. Do you recall ever
14 seeing this document depicted in Exhibit 21 prior to
15 today?
16 A. No. This document is a press release that has an
17 immediate release of 10-1-2012. The contract that you
18 put in as Exhibit 13 is dated 3-12-2012, so it
19 predates it by seven months. It's likely it wasn't
20 there, but we can go further with that understanding.
21 MR. HILDEBRANDT: And by the way, Exhibit
22 20 is also dated two-and-a-half months after the
23 contract that was referred to in Exhibit 13.
24 BY MR. MUISE:
25 Q. Do you know how long the advertisements ran at the

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1 statussexy.com?
2 MR. HILDEBRANDT: According to the
3 contract?
4 A. It was, according to the contract it's from the -- it
5 looks like it's from the period of 4-2-12 to 4-29-12,
6 so that's a one month period -- it's a four week
7 period, a 28 day period.
8 BY MR. MUISE:
9 Q. Okay. Looking at Exhibit Number 21.
10 MR. HILDEBRANDT: Object to relevance.
11 BY MR. MUISE:
12 Q. Have you had a chance to read it yet?
13 A. No.
14 Q. Please do.
15 (Off the record at 2:46 p.m.)
16 (Back on the record at 2:49 p.m.)
17 BY MR. MUISE:
18 Q. Okay. After reviewing Exhibit Number 21 is there
19 anything in that content that would then make the
20 statussexy.com advertisements prohibited under any of
21 these SMART content based restrictions?
22 A. Once again, the date on this press release is far past
23 the date that this advertisement ran, and therefore it
24 was almost certainly -- it seems impossible that it
25 could be linked at the time that it was reviewed or

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1 that the ad ran.
2 Q. Okay. My question --
3 A. But Exhibit 21 is an explanation of a testing, HIV
4 testing program that they are running. I don't see
5 that as being political. It's a medical testing
6 program.
7 MARKED FOR IDENTIFICATION:
8 DEPOSITION EXHIBIT 22
9 2:51 p.m.
10 BY MR. MUISE:
11 Q. Handing you what has been marked as Exhibit Number 22.
12 Do you recognize what this is, sir?
13 A. Yes.
14 Q. And is this an advertisement that was run by SMART?
15 A. Yes.
16 Q. And so there was nothing about this advertisement or
17 any website that it's cited to that violated any of
18 the content based restrictions by SMART?
19 A. This -- just one moment. I don't believe that
20 SMART -- I think that CBS reviewed this
21 advertisement. I don't believe that SMART officials
22 did. I can confirm that, though, if you would like me
23 to do so.
24 Q. Well, this advertisement actually ran on the SMART
25 vehicles, did it not?

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1 A. That's correct.
2 Q. Is there anything about this advertisement that
3 violated any of the content based restrictions that
4 SMART imposes for advertising content?
5 MR. HILDEBRANDT: Would you like to see the
6 website?
7 A. What's that?
8 MR. HILDEBRANDT: Do you want to see the
9 website?
10 A. I mean that would be necessary to make the
11 determination. It's fairly detailed to do that, and I
12 need the content restriction policy as well.
13 MR. HILDEBRANDT: Exhibit 3?
14 A. And this ad ran in 2009, so I can't -- what's on the
15 website now I don't necessarily know would be of
16 assistance.
17 MR. HILDEBRANDT: All right. Looking on my
18 phone today, the website seems to route to the
19 Michigan Department of Community Health.
20 MR. MUISE: He's not testifying, so I will
21 have that struck from the record.
22 A. Well, a determination on this would revolve around
23 whether it was political advertising, and so I
24 previously had spoken about how a determination of
25 political advertising is made, and it's whether it

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1 advocates on an issue that has been politicized.
2 Looking at this advertisement, generally speaking
3 health services are not what I would -- what we would
4 consider a politicized issue, and SMART advertises
5 many health services.
6 BY MR. MUISE:
7 Q. Is it SMART's position that even after Obamacare being
8 signed into law in March of 2010 that health care is
9 not a politicized issue?
10 MR. HILDEBRANDT: I'm going to object to
11 the nature of the question because that is several
12 months, if not years, after this ad ran. It has no --
13 it has no connection to this ad whatsoever.
14 MR. MUISE: Well, he gave a general
15 statement, and my question is following up on his
16 general statement, and I will get to the specifics of
17 his detail.
18 MR. HILDEBRANDT: That generally health
19 care issues are not a politicized issue is what he
20 said.
21 A. This advertisement refers to a specific provider of
22 health care. Whether payment is made by insurers is
23 not even --
24 BY MR. MUISE:
25 Q. Okay, well, we will get to the health insurance thing

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1 separate. Looking at this is there anything about
2 this advertisement as you are looking at it that is
3 political advertising prohibited by SMART's content
4 restrictions?
5 MR. HILDEBRANDT: Actually, wait. Before
6 he answers that, are you asking for his legal opinion
7 and determination on this, because SMART he has said
8 did not review this ad.
9 MR. MUISE: This thing is posted on SMART's
10 advertising.
11 MR. HILDEBRANDT: I get that, but it was
12 not reviewed by SMART as he said.
13 MR. MUISE: He said --
14 MR. HILDEBRANDT: So now you are asking
15 him --
16 MR. MUISE: No.
17 MR. HILDEBRANDT: -- to review it and
18 determine whether it's violative.
19 MR. MUISE: This is plainly within his 30
20 (b)(6) realm since this was an advertisement that was
21 permitted by SMART to be run on its buses.
22 MR. HILDEBRANDT: I understand that it's
23 plainly within your 30(b)(6) notice, but it could also
24 be privileged depending on where you are going,
25 because if you are asking for the mental impressions

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1 of an attorney for SMART, then that could be work
2 product and/or attorney client product privilege.
3 MR. MUISE: Of course that is not the
4 question.
5 BY MR. MUISE:
6 Q. Answer the question.
7 MR. HILDEBRANDT: So you're not asking for
8 his mental impressions?
9 MR. MUISE: I am asking him to apply
10 SMART's policy as we have been doing here for the last
11 several hours in this deposition.
12 MR. HILDEBRANDT: Hypothetical?
13 MR. MUISE: It's not hypothetical. This
14 ran on your buses.
15 BY MR. MUISE:
16 Q. Is there anything about this advertisement that
17 violates SMART's content based restrictions?
18 A. No.
19 Q. Let me ask you, there is quite a few advertisements
20 that we have been provided that have advertising for
21 health services or health care in general. Are you
22 aware that SMART has accepted advertisements that
23 cover health care and health services?
24 A. Yes.
25 Q. And they have been some accepted post March of 2010;

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1 is that correct?
2 A. I would presume that's likely, yes.
3 Q. Do you know if health care is considered by SMART to
4 be a politicized issue such that advertisements
5 addressing that content are prohibited?
6 A. I would have to see the advertisement in particular,
7 but an advertisement for the provision of health care
8 would not be, and again given the explanation of
9 political that I have given you now hundreds of times,
10 unless it referred to support of nationalized health
11 care, for example, or Obamacare is what you are
12 clearly getting at, which is the Affordable Care Act.
13 MR. MUISE: Can you mark that?
14 A. If there are any that directly reference that, they
15 may deserve review, but if it's a provider, it's -- it
16 would be any relation to the issue of nationalized
17 health care or the Health Care Affordability Act are
18 too attenuated.
19 BY MR. MUISE:
20 Q. Are you done?
21 A. Yes.
22 MARKED FOR IDENTIFICATION:
23 DEPOSITION EXHIBIT 23
24 3:00 p.m.
25 BY MR. MUISE:

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1 Q. Handing you what has been marked as Exhibit Number 23.
2 A. Okay.
3 Q. Do you recognize what this depicts?
4 A. Yes.
5 Q. Were these advertisements that were accepted by SMART?
6 A. I do not believe SMART approved these ads, but I can
7 confer and confirm that if you would like.
8 Q. Do you recognize whether these advertisements were
9 posted on SMART buses or SMART shelter?
10 A. You didn't ask that, you asked if SMART approved them.
11 These pictures clearly depict them on a SMART shelter
12 as well as on a SMART vehicle, but I don't believe
13 these advertisements were forwarded from CBS to SMART
14 for approval.
15 Q. Well, you know, I understood from your earlier
16 testimony that CBS Outdoor didn't have authority to
17 make approval or denial decisions for posting of
18 advertisements on SMART's vehicles. Is that not true
19 now?
20 A. You will have to go back to the testimony. I didn't
21 say that.
22 Q. So CBS Outdoor has independent authority to approve
23 ads that can or cannot run on SMART's vehicles?
24 A. I previously told you Exhibit 3 is the contract
25 between CBS and SMART. In 5.07 C the contract says

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1 before displaying any advertising exhibit material or
2 announcement which contractor, which in this case is
3 CBS, believes may be in violation of section 5.07 B,
4 restriction on content, contractor shall first submit
5 the material to SMART for review. SMART shall make
6 the final determination as to all violations of
7 section 5.07 B.
8 Q. So this policy, the first part of this policy is
9 somebody from CBS Outdoor making a determination of
10 whether or not they think it should be brought to your
11 attention before it's run on the SMART buses?
12 A. They make a determination as to whether there is any
13 potential violation of 5.07, and if they believe that
14 there is, they review -- they send it to SMART for a
15 final determination under the content guidelines.
16 Q. Okay. And so Exhibit Number 23, are you saying you
17 don't have any recollection as to whether or not this
18 was an advertisement that SMART -- that SMART approved
19 that was posted on its bus shelter and bus?
20 MR. HILDEBRANDT: In actuality he said he
21 did have a recollection and it was not posted. A
22 misrepresentation of the testimony.
23 MR. MUISE: Well, it looks like it was
24 posted. Are you telling me it was not posted?
25 MR. HILDEBRANDT: It was in the approved by

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1 SMART is what he said.
2 MR. MUISE: Okay. So you misstated?
3 MR. HILDEBRANDT: I did, you are right. My
4 apologies.
5 A. My apologies, could you please restate the question?
6 BY MR. MUISE:
7 Q. Sure, and I will just ask it this way, does this
8 advertisement, which appears one was posted on a SMART
9 bus shelter, one was posted on a SMART bus, do either
10 of these advertisements violate any of the content
11 based restrictions under SMART's policy?
12 A. No.
13 MARKED FOR IDENTIFICATION:
14 DEPOSITION EXHIBIT 24
15 3:05 p.m.
16 BY MR. MUISE:
17 Q. I'm handing you what has been marked as Exhibit Number
18 24. Do you recognize this advertisement?
19 A. Yes.
20 Q. Is this an advertisement that was run on SMART buses?
21 A. It is.
22 Q. Is it an advertisement that was approved by SMART?
23 A. I don't have any independent recollection. I would
24 have to -- what are the dates?
25 MR. HILDEBRANDT: November, December of

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1 2011.
2 A. I don't remember if this was -- if this was reviewed
3 by SMART, but it was run on SMART buses.
4 BY MR. MUISE:
5 Q. Looking at this advertisement, is there anything about
6 this advertisement that would violate the content
7 restrictions, SMART's content restrictions?
8 A. No.
9 Q. Does it make a difference if Sheriff Wickersham and
10 Prosecutor Smith were elected officials?
11 A. They -- this doesn't reference that in any way, so the
12 answer is no.
13 MARKED FOR IDENTIFICATION:
14 DEPOSITION EXHIBIT 25
15 3:08 p.m.
16 BY MR. MUISE:
17 Q. I'm handing you what has been marked as Exhibit Number
18 25. It appears to be a advertisement from the Kaiser
19 Family Foundation regarding AIDS, according to the
20 contract at the top, and the advertisement appears to
21 be posted on a bus shelter on the second page. Do you
22 recognize that advertisement?
23 A. I don't recognize this as a SMART property, and I
24 don't recall this advertisement being posted on SMART
25 property or being approved by SMART or running on

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1 SMART property.
2 Q. I can tell you this was from documents that were
3 produced pursuant to the document production request.
4 A. We produced this?
5 MR. HILDEBRANDT: It may have been produced
6 to us by CBS at our request and produced by us to
7 them, I agree, but you are the SMART witness. If you
8 don't think it's yours, then it's not yours.
9 A. I just don't recognize the names on the contract
10 itself, but if we have produced that and it was on
11 SMART property, it wasn't approved by SMART directly,
12 it was approved by CBS as our contractor, it's not
13 violating section 5.07 B.
14 BY MR. MUISE:
15 Q. Is there anything about this advertisement that would
16 violate it from SMART's perspective your content based
17 revisions?
18 A. No.
19 Q. You said there is names that you don't recognize on
20 the contract, what are you referring to? Because it
21 appears the handwritten names appear to be the similar
22 ones from CBS out at least.
23 A. Perhaps I just haven't -- Sara Levine, I just done
24 recognize the name. I presume one of these is a SMART
25 signature, and I just don't -- I can't pick them out,

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1 and this -- why I'm looking closely is this
2 advertising campaign was run on D dot coaches. I
3 don't recall it being run --
4 Q. And when you say D dot, you are referring to the
5 Detroit --
6 A. The City of Detroit, correct.
7 Q. Detroit Department of Transportation?
8 A. Sorry.
9 MARKED FOR IDENTIFICATION:
10 DEPOSITION EXHIBIT 26
11 3:13 p.m.
12 BY MR. MUISE:
13 Q. I'm handing you what has been marked as Exhibit Number
14 26. It appears to be an advertisement that ran
15 sometime in June of 2012 on SMART buses; is that
16 correct?
17 A. Yes.
18 Q. Do you recall seeing this advertisement prior to
19 today?
20 A. Yes.
21 Q. Was this an advertisement that SMART approved?
22 A. Yes.
23 Q. Was there anything about this advertisement that
24 violated any of the content restrictions of SMART?
25 A. No.

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1 Q. So this doesn't convey a political message at all from
2 SMART's perspective?
3 A. Correct.
4 MARKED FOR IDENTIFICATION:
5 DEPOSITION EXHIBIT 27
6 3:16 p.m.
7 BY MR. MUISE:
8 Q. Do you recognize the advertisement depicted in this
9 Exhibit Number 27?
10 A. Yes.
11 Q. And it appears from the contract this is from the
12 Kaiser Family Foundation slash AIDS, correct?
13 A. Yes.
14 Q. Similar to the one that we looked at previously where
15 you weren't certain if it was run on SMART buses; is
16 that right?
17 A. That's correct.
18 Q. Does this appear to be a SMART bus shelter?
19 A. Yes, it is.
20 Q. So based on Exhibit 27 is it -- are you fairly certain
21 that the Kaiser Family Foundation AIDS advertisements
22 ran on SMART property?
23 A. Yes, I can't speculate as to whether they ran on D dot
24 property, and that's what Exhibit 26 might be, but
25 Exhibit 27 is funded by the same foundation, it's a

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1 different advertisement, and it's on SMART property.
2 Q. Do you recall seeing this advertisement before today?
3 A. I do not.
4 Q. Do you know if this advertisement was approved by
5 SMART?
6 A. I can get the --
7 MR. HILDEBRANDT: Object to the form of the
8 question.
9 A. I can get that information, but I do not recall.
10 BY MR. MUISE:
11 Q. Do you know if there is anything about this
12 advertisement that would violate any of SMART's
13 content based restrictions?
14 A. I can't -- I cannot read the writing on the
15 advertisement, but from what I can read, it's
16 advocating for or it's a public safety message to get
17 tested for HIV. That would not violate the content
18 restriction policy.
19 MARKED FOR IDENTIFICATION:
20 DEPOSITION EXHIBIT 28
21 3:19 p.m.
22 BY MR. MUISE:
23 Q. This is what has been marked as Exhibit Number 28. It
24 appears to be an advertisement that was submitted by a
25 community food bank. I can't tell if that's Gleaners

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1 or Gleaners.
2 A. Gleaners.
3 MR. HILDEBRANDT: Gleaners.
4 A. With a G.
5 BY MR. MUISE:
6 Q. Do you know what Gleaners Community Food Bank is?
7 A. A community food bank.
8 Q. Is it a -- it's a nonprofit, do you know?
9 A. I couldn't be certain.
10 Q. Was this an advertisement that was accepted to be run
11 on SMART buses?
12 A. Yes.
13 Q. Do you have recollection of reviewing this
14 advertisement?
15 A. I would have to ask if it has been reviewed by SMART.
16 Anthony Chubb was on medical leave during this point.
17 MR. HILDEBRANDT: All of the ads that SMART
18 is aware of having reviewed have been provided to you
19 under those circumstances. This one was not reviewed.
20 BY MR. MUISE:
21 Q. Is there anything about this advertisement that
22 violates any of SMART's content based restrictions?
23 A. No.
24 Q. There is nothing about this advertisement that
25 addresses a politicized issue?

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1 A. There is nothing about this that violates section 5.07
2 B of the advertising -- or of the section 5.07 of the
3 content -- of the contract.
4 MARKED FOR IDENTIFICATION:
5 DEPOSITION EXHIBIT 29
6 3:21 p.m.
7 BY MR. MUISE:
8 Q. This has been marked as Exhibit Number 29. Do you
9 recognize this advertisement?
10 A. I do not recognize this.
11 Q. Is this an advertisement that actually ran on SMART
12 buses?
13 A. It appears that the picture attached is page 2 of
14 Exhibit 29 is a -- is the referenced advertisement on
15 a SMART bus.
16 MR. HILDEBRANDT: Yes, it ran on a SMART
17 bus.
18 A. Yes.
19 MR. HILDEBRANDT: Okay.
20 BY MR. MUISE:
21 Q. Is there anything about this advertisement that
22 violates any of the content based restrictions that
23 SMART applies?
24 A. From what I can see in the attached picture, no.
25 Q. Do you know what the film Chain Letter is about?

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1 A. I do not.
2 Q. Let me ask, of all the advertisements that were
3 produced by SMART in the document production, have you
4 had a chance to review those prior to today?
5 A. I have had a chance to review.
6 Q. We went through just a few, because we could speed
7 this up obviously quite a bit or we could go in more
8 detail. We reviewed the, I believe it was four of the
9 advertisements that were produced that were rejected
10 under the content based guidelines at issue here, and
11 those being the game, the Redemption, was it Red --
12 MR. HILDEBRANDT: Red Dead Redemption.
13 BY MR. MUISE:
14 Q. -- Red Dead Redemption, my client's Leaving Islam ad,
15 my client's Don't Believe in Muhammad ad with the
16 website --
17 MR. HILDEBRANDT: And Pinckney Pro-Life.
18 BY MR. MUISE:
19 Q. -- and Pinckney Pro-Life. In terms of any of the
20 other advertisements that were produced, are there any
21 of those that you are aware of that violated any of
22 those content based restrictions that SMART applied to
23 my client's ad in this case?
24 MR. HILDEBRANDT: Other than the ones you
25 have talked about in a stack between 29, any others

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1 other than the ones we have discussed that you are
2 aware of have violated the 5.07 B content
3 restrictions, is that your question?
4 MR. MUISE: Right.
5 MR. HILDEBRANDT: Okay.
6 MR. MUISE: Of the advertisements that you
7 have produced to us.
8 MR. HILDEBRANDT: Fair enough.
9 MR. MUISE: Because it is my understanding
10 there were none, other than those four, there were
11 none of those advertisements that were rejected for
12 any reason.
13 A. Can we discuss that -- can I speak with my attorney
14 briefly before answering that?
15 MR. MUISE: Do you want to take a break?
16 MR. HILDEBRANDT: Sure.
17 MR. MUISE: Okay. Let's do that.
18 (Recess taken at 3:25 p.m.)
19 (Back on the record at 3:37 p.m.)
20 BY MR. MUISE:
21 Q. To speed things along here, there were numerous
22 advertisements that were produced by SMART in the
23 document production. We have gone through quite a few
24 already today, and we have identified the four that
25 violated the content based restrictions that applied

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1 to deny my client's advertisement, and my question is
2 are any of the other advertisements that SMART
3 produced, did any of those or do any of those violate
4 any of the content based restrictions at issue in this
5 case?
6 A. For all the ads that were produced that were run on
7 vehicles, none are in violation of the content policy
8 that we have spoken about.
9 Q. Okay. That's going to leave open just a couple of
10 quick questions about a couple of ads, because I'm not
11 sure if they actually ran on vehicles or not, and I
12 want you to refer to.
13 MR. MUISE: If you could mark this.
14 MARKED FOR IDENTIFICATION:
15 DEPOSITION EXHIBIT 30
16 3:39 p.m.
17 BY MR. MUISE:
18 Q. I'm handing you what has been marked as Exhibit Number
19 30. Do you recognize this advertisement, sir?
20 A. Yes.
21 Q. Do you know if this -- I did not see one in the
22 production as far as I'm aware of this advertisement
23 actually appearing on SMART property, but do you know
24 if this advertisement was run on any SMART property?
25 A. I would need to confer to make a determination. I do

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1 not believe that it was.
2 Q. Do you know if it was rejected because it violated any
3 content based restrictions?
4 A. It was not rejected, it was approved.
5 Q. It was approved, it just never ran?
6 A. Correct.
7 MARKED FOR IDENTIFICATION:
8 DEPOSITION EXHIBIT 31
9 3:40 p.m.
10 BY MR. MUISE:
11 Q. I'm handing you, sir, what has been marred as Exhibit
12 Number 31. It appears to be a similar ad to Exhibit
13 Number 30. Do you know if -- and I didn't see in any
14 of the document production that this ad appeared on
15 any SMART property. Do you know if this ad was
16 submitted for approval to SMART?
17 A. It was submitted for approval to SMART, yes.
18 Q. And was it approved?
19 A. It was approved.
20 Q. But it was never run on the buses; is that correct?
21 A. I believe so, that's correct.
22 Q. Do you know why or why Exhibits Number 30 and 31 never
23 actually appeared on SMART property?
24 A. A lot of times -- with specificity to these, no.
25 MARKED FOR IDENTIFICATION:

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1 DEPOSITION EXHIBIT 32
2 3:41 p.m.
3 BY MR. MUISE:
4 Q. Handing you what has been marked as Exhibit Number 32,
5 and this was a document that came in the document
6 production. I do note the date is March 15, 2007,
7 that's referring to an advertisement from an upscale
8 gentleman's club in Inkster. Do you see that, sir?
9 A. Yes.
10 Q. Do you recall if there was an advertisement that SMART
11 ran from the gentleman's club in Inkster?
12 A. Yes.
13 Q. And the name of the club, I guess, is Flight Club?
14 A. That's my recollection, yes.
15 Q. And was this advertisement run under prior content
16 restrictions?
17 A. That's correct.
18 Q. Do you recall what that advertisement was?
19 A. What the -- what the advertisement depicted?
20 Q. Yes.
21 A. It was woman holding -- it was a waitress holding a
22 tray with drinks on it.
23 Q. Is there anything about that advertisement that would
24 violate the 2008 restrictions?
25 A. No.

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1 MR. MUISE: 33.
2 MARKED FOR IDENTIFICATION:
3 DEPOSITION EXHIBIT 33
4 3:43 p.m.
5 BY MR. MUISE:
6 Q. This is what was marked as Exhibit 33. Again this was
7 a document that was produced, and it appears to be
8 from Anthony Chubb to Beth Gibbons?
9 A. Correct, yes.
10 Q. And given the date of this, this appears to be an
11 e-mail regarding the modifications, the 2008
12 modifications to the advertising contract; is that
13 accurate?
14 A. That's correct. This was the -- this was in the
15 process of drafting the 2008 contract, yes.
16 Q. And it would appear that number 6 on, that's depicted
17 here in this e-mail as Exhibit Number 33, never made
18 its way into the advertising guidelines?
19 A. That's correct.
20 Q. Do you know why it never made it into the advertising
21 guidelines?
22 MR. HILDEBRANDT: Without infringing on
23 privilege.
24 A. That's privileged.
25 BY MR. MUISE:

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1 Q. Well, I think the question of whether you know is
2 separate and distinct from what the information might
3 be. Do you know why that was -- why it was removed
4 from the guidelines?
5 MR. HILDEBRANDT: Yes or no.
6 A. Yes.
7 BY MR. MUISE:
8 Q. And my understanding is that you are not going to
9 answer that, the question as to why it was removed
10 based on attorney client privilege; is that correct?
11 MR. HILDEBRANDT: I'm instructing him not
12 to answer as to why it was removed based upon attorney
13 client privilege.
14 BY MR. MUISE:
15 Q. Was paragraph number 6 included in pre 2008
16 advertising guidelines?
17 A. Some of the language was. It was organized
18 differently.
19 MARKED FOR IDENTIFICATION:
20 DEPOSITION EXHIBIT 34
21 3:45 p.m.
22 BY MR. MUISE:
23 Q. This is what has been marked as Exhibit Number 34, and
24 this was a document that was produced by SMART in
25 their document production. It appears that this three

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1 page e-mail is referring to my client's ad at issue in
2 this case, the Leaving Islam ad; is that correct?
3 A. Just one moment. Okay.
4 Q. Is it accurate to say that this three page e-mail is
5 referencing my client's advertisement that was
6 rejected by SMART, that being the Leaving Islam
7 advertisement?
8 A. Correct, yes.
9 Q. If you look at the e-mail in the bottom of the first
10 page, it appears it's from Elizabeth Dryden to Avery
11 Gordon and others. It begins with Avery, do you see
12 that, sir?
13 A. Yes.
14 Q. On the third line down it says while we don't believe
15 we need to do that, let's meet to discuss slash meet
16 with ACCESS about this, something to think about. Do
17 you see that?
18 A. Yes.
19 Q. Do you know who ACCESS is, A-C-C-E-S-S?
20 A. I do not. I can find that out if you would like me
21 to.
22 Q. Do you know if it's the Arab Community Center For
23 Economic and Social Services?
24 A. I can find that out.
25 Q. Is ACCESS an entity that's part of SMART?

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1 A. No.

2 MR. HILDEBRANDT: Arab Community Center,

3 what?

4 MR. MUISE: Economic and Social Services.

5 BY MR. MUISE:

6 Q. Is it the policy or practice of SMART to discuss

7 contents of advertisement with organizations that

8 aren't part of SMART to make determinations as to

9 whether they should be accepted or approved?

10 MR. HILDEBRANDT: You mean outside of

11 perhaps CBS?

12 BY MR. MUISE:

13 Q. Well, I would leave aside CBS since they are a natural

14 agent of SMART.

15 A. No.

16 Q. Outside of CBS.

17 And Elizabeth Dryden, what is her position?

18 A. She's the director of marketing.

19 Q. She --

20 A. She was at the time. She is not currently with SMART.

21 Q. Was she Beth Gibbons' boss for lack of a better

22 description?

23 A. That's correct.

24 Q. So she was actually the head of the marketing

25 department?

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1 A. Correct.

2 Q. And would she be somebody that, based on your prior

3 testimony, somebody that would be applying the SMART's

4 content based policy to advertisements; is that

5 correct?

6 A. Generally she does, I'm not saying that is what she is

7 doing in this e-mail. She was a marketing person.

8 Q. She is, though, one of the people that does review

9 pursuant to the content based policy; is that right?

10 A. That is correct.

11 Q. Do you know if a meeting was ever held with ACCESS to

12 discuss my client's advertisement?

13 A. One was not. May I restate that?

14 MR. HILDEBRANDT: Sure.

15 BY MR. MUISE:

16 Q. Sure.

17 A. If ACCESS is an acronym for --

18 MR. HILDEBRANDT: Arab Community Center for

19 Economic and Social Services.

20 A. -- Arab Community Center for Economic and Social

21 Services, a meeting was never held.

22 BY MR. MUISE:

23 Q. Do you know of any other organization that's, I would

24 assume it's an acronym since it's in all caps, ACCESS,

25 do you know of any --

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1 A. No, none.

2 MR. HILDEBRANDT: To be fair, he didn't

3 know of that one, though, either.

4 MR. MUISE: I understand. I didn't know if

5 there was another organization out there that he might

6 think it was referring to.

7 A. No.

8 BY MR. MUISE:

9 Q. I have got a question on how payment is made for these

10 advertisements. When an individual such as my client

11 enters into a contract with CBS Outdoor to run an

12 advertisement, the Leaving Islam advertisement, how

13 does the payment process work?

14 A. The payment is made to CBS as SMART's agent for sales

15 of advertising, and under CBS's contract with SMART,

16 at the end of any given month, within several weeks

17 thereafter or a couple weeks thereafter, the numbers

18 are audited for that given month and a determination

19 is made as to how much CBS owes SMART for advertising

20 sold the previous month.

21 Q. And how would it work, for example, a client -- so the

22 first payment for Leaving Islam, for example, would go

23 to CBS Outdoor; is that correct?

24 A. Correct.

25 Q. And then CBS Outdoor would hold that payment until

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1 such time as there is an audit done and the money is

2 transferred or is the money transferred at some point

3 and then an audit is done to double-check the

4 transfer? I'm not sure if I understand completely.

5 A. SMART produced additional documents regarding CBS and

6 the payment. If I could review those, I think I could

7 give you a very detailed explanation, because it's

8 quite complicated. I have a copy of them.

9 Q. Well, let me mark it for the record so we are not --

10 there is no confusion over this.

11 A. Okay.

12 MARKED FOR IDENTIFICATION:

13 DEPOSITION EXHIBIT 35

14 3:53 p.m.

15 BY MR. MUISE:

16 Q. What number is that?

17 A. This is 35.

18 Q. Okay. You commented about wanting a copy of the

19 document that was previously provided regarding

20 accounting and billing from CBS Outdoors. Do you have

21 that document in front of you?

22 A. Yes.

23 Q. And will this help you to respond more accurately to

24 the question?

25 A. Yes. It's a somewhat complicated scheme, so I'm going

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1 to need to explain it in some level of detail to
2 explain how the audits are done at the end of the
3 month.
4 Under the contract CBS is allowed to charge
5 vendors separate fees for production and advertising.
6 They retain all of the production cost, and SMART
7 never sees those.
8 The advertising costs are split 50 percent,
9 50 percent SMART and CBS. In addition to that split,
10 SMART is guaranteed a minimum amount under -- of
11 commercial -- of advertising revenue of 500,000 a
12 year, so regardless of whether the 50/50 split ads up
13 to 41,666.67 a month, SMART is entitled to that
14 minimum guarantee, and so at the end of the month the
15 billings for advertising are reviewed, they are
16 divided in half because SMART is entitled to half, and
17 then compared against the guarantee, and it's at that
18 point that it's determined if additional payment
19 beyond the \$41,666.67 needs to be made as a match up
20 for the previous month.
21 Q. And so the audit is done monthly as opposed to yearly;
22 is that correct?
23 A. It's done at the end of every month, and I believe
24 it's pursuant to contract that it's done within the
25 first couple of weeks of the following month.

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1 Q. So looking at this first page of Exhibit 35 -- and it
2 looks like the billing period went from March of 2009
3 to February of 2010; is that correct?
4 A. That's correct.
5 Q. And so that would be a whole year's worth of
6 advertising?
7 A. Correct. This was the first year of revenue recording
8 of the contract. I'm sorry, this is the second year.
9 It started in 2008.
10 Q. And so looking at this, the actual revenue under the
11 contract, aside from making up the deficit, was
12 \$226,340.39 of actual revenue, the 50 percent split
13 that came in; is that correct?
14 A. Well, so for this year, which I'm going to need to
15 correct myself again, the contract is a 2008 contract,
16 but the first month of it must have been in February
17 2009, so that March 2009 is the first month referenced
18 on this sheet, is the first month of the contract,
19 which is why they have zero dollars in revenue for
20 that period.
21 If you look at it for this year, they
22 billed -- CBS billed \$452,680.77 in advertising fees.
23 That entitled SMART to \$226,340.39 based upon the
24 50/50 split, however, the contract also has a minimum
25 guarantee of 500,000 per year, and therefore SMART was

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1 given 500,000.
2 MR. HILDEBRANDT: And 4 cents.
3 A. And 4 cents.
4 BY MR. MUISE:
5 Q. And so then CBS Outdoor would have to cut in to
6 whatever revenues or profits they have generated of
7 \$273,659.66 to make up the minimum guarantee of
8 500,000?
9 A. That's correct.
10 Q. Do you know how much of the total budget for SMART the
11 revenue generated through advertising is part of?
12 MR. HILDEBRANDT: How much does that half a
13 million dollars constitute as a portion of SMART's
14 budget?
15 MR. MUISE: Yes.
16 A. I would have to look over the fiscal year 2010 numbers
17 to give you an accurate number, but our budget is
18 approximately -- if you want an approximation, our
19 budget is approximately 130 million dollars a year.
20 MR. MUISE: You know, it's 4:00 o'clock.
21 Let's take a ten minute break because I need to clean
22 up here, take a look and see what other wrap-ups I
23 have got.
24 MR. HILDEBRANDT: All right.
25 MR. MUISE: Actually let's make it 15

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1 minutes, because the time I spend here figuring out
2 further will be well spent, so let's come back in 15
3 minutes.
4 (Recess taken at 3:59 p.m.)
5 (Back on the record at 4:19 p.m.)
6 MARKED FOR IDENTIFICATION:
7 DEPOSITION EXHIBIT 36
8 4:19 p.m.
9 BY MR. MUISE:
10 Q. Here is what has been marked as Exhibit Number 36,
11 which is a document produced by SMART in the document
12 production. If you take a minute and look at this,
13 I'm assuming you have seen this e-mail before?
14 A. Yes.
15 Q. In the first sentence it says typically get out the
16 vote drives are not political, do you see that?
17 A. Yes.
18 Q. Is that in reference to the content restrictions that
19 we have been referring to?
20 A. That's correct.
21 Q. And would SMART agree with that statement?
22 A. Yes, with the understanding that by get out the vote
23 drives, I mean drives that encourage participation in
24 the voting process only.
25 Q. I understand. Was there an actual advertisement that

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1 was associated with this e-mail where a decision had
2 to be made whether it was accepted or rejected?
3 A. I don't believe there was any ad copy of attached to
4 this, it was a general question.
5 Q. And in reference to your prior response, it says here
6 targeted get out the vote drives paid for by
7 politicians could very well cross the line. Is that a
8 statement that SMART would agree with?
9 A. Again, just because I'm kind of using shorthand, but
10 consistent with what I previously said, if get out the
11 vote that encourages political participation goes to
12 support a candidate would cross the line as with
13 regard to section 5.07 of the contract, yes.
14 Q. What if it was just endorsed by a political party
15 encouraging people to go out and vote, would that
16 cross the line?
17 MR. HILDEBRANDT: Endorsed in what way?
18 MR. MUISE: Get out the vote, paid for by
19 the Democrat party.
20 A. I would really have to review the document. If it's
21 generally solely the source of funding it would not
22 impact the review of the four corners of the document,
23 of the advertising copy.
24 BY MR. MUISE:
25 Q. So whoever the actual either company, organization or

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1 individual who is the speaker of the message wouldn't
2 be a basis for restricting the -- making a restriction
3 under the content based regulations; is that correct?
4 A. That's correct.
5 Q. And you're referring to here about crossing the line,
6 so at some point looking at the content you would have
7 to determine whether, for example, in the context of
8 the get out the vote drive, whether it's a get out the
9 vote drive that's not a political statement to a point
10 where it crosses the line into becoming a political
11 statement in contravention of the content based
12 regulations?
13 A. Correct.
14 MR. HILDEBRANDT: Or political campaign?
15 BY MR. MUISE:
16 Q. Or political campaign?
17 A. Correct. I was saying generally crosses the line and
18 violates section 5.07 here where it was talking about
19 the political or political campaign subsection of the
20 content restriction policy.
21 MARKED FOR IDENTIFICATION:
22 DEPOSITION EXHIBIT 37
23 4:23 p.m.
24 BY MR. MUISE:
25 Q. Handing you what has been marked as Exhibit Number 37.

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1 And on top this appears to be an e-mail from Anthony
2 Chubb to Beth Gibbons, cc's Elizabeth Dryden and Avery
3 Gordon dated January 13, 2010, and I will represent to
4 you this was a document that was produced by SMART in
5 their production. I'm assuming you have seen this
6 e-mail prior to today?
7 A. Yes.
8 Q. And this is in reference to the atheist advertisement
9 that we have been discussing earlier in the
10 deposition; is that correct?
11 A. That's correct.
12 Q. And in this e-mail again the similar phrase is used
13 about crossing the line and making political
14 statements, do you see that?
15 A. Yes.
16 Q. So at some point there is some line between an
17 advertisement, in this case atheist advertisement,
18 where it may cross the line into political, but in
19 this case it was on the accepted side of the line; is
20 that correct?
21 A. This is shorthand, and I note that I'm referencing a
22 conversation that we had, but --
23 Q. And in that case I, you are referring to Anthony
24 Chubb? We have been very careful at SMART --
25 A. Yes, it was a conversation that Beth Gibbons, Anthony

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1 Chubb and Avery Gordon had, and this was referring to
2 and confirming it, confirming that conversation, and
3 so I do state we do have to continue being very
4 careful on this issue and in making the determination
5 of whether proposed advertisements are simple
6 information items or cross the line and make political
7 statements.
8 Q. Is that a statement that SMART would agree with?
9 A. This is again shorthand for a much longer
10 conversation. We in the conversation --
11 MR. HILDEBRANDT: Be careful not to violate
12 privilege.
13 A. -- which is privileged, it's confirming that
14 conversation.
15 BY MR. MUISE:
16 Q. I understand, but I'm just asking this statement here,
17 would this be a statement that SMART would agree with?
18 A. Simple information items is too vague. Everything has
19 to be reviewed against section 5.07. If the simple
20 information items that I reference don't violate
21 section 5.07 in any other way, yes, they do post.
22 MARKED FOR IDENTIFICATION:
23 DEPOSITION EXHIBIT 38
24 4:26 p.m.
25 BY MR. MUISE:

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1 Q. Handing you what is marked Exhibit Number 38. Again
2 this is a document that was produced pursuant to the
3 document production, and do you recognize this e-mail,
4 sir?
5 A. I do recognize the e-mail.
6 Q. Do you know what the -- well, if you look at the top
7 e-mail, it says this decision turns on whether the
8 proposed advertisement is "obscene" in quotes per
9 section 5.07. Do you know what specific advertisement
10 this is referring to?
11 A. I don't have an independent recollection of what the
12 ad copy looked like.
13 Q. Do you know if it's referring to the television show
14 My Generation?
15 A. Based upon the e-mail, it does appear that that's
16 correct, but this had an image attached which, I
17 presume based on my e-mail, which I don't recall.
18 Q. Do you know or do you have any recollection of whether
19 or not an advertisement by My Generation was run on
20 SMART buses?
21 A. I don't believe that one was.
22 Q. Do you know if one was rejected or just not proposed?
23 A. I don't believe that one was rejected.
24 MARKED FOR IDENTIFICATION:
25 DEPOSITION EXHIBIT 39

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1 4:28 p.m.
2 BY MR. MUISE:
3 Q. Handing you what has been marked as Exhibit Number 39.
4 And again this is a document that was produced by
5 SMART and it appears to be referring to lung, the lung
6 cancer advertisements; is that a fair assessment?
7 A. If you just give me one moment.
8 Q. Absolutely. Do you know if the e-mail is referring to
9 the lung cancer advertisements that we have seen
10 previously?
11 A. I believe that it is, yes.
12 Q. And those were Exhibits 30 and 31?
13 A. I believe that that's correct.
14 Q. And I believe you testified that those weren't
15 rejected, they just might not have run on the SMART ad
16 space, right?
17 A. Correct.
18 Q. So they didn't themselves, did not violate the content
19 restrictions?
20 A. That's correct.
21 MARKED FOR IDENTIFICATION:
22 DEPOSITION EXHIBIT 40
23 4:30 p.m.
24 BY MR. MUISE:
25 Q. Here is what has been marked as Exhibit Number 40.

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1 And Exhibit 40 was a document produced by SMART as
2 part of their document production?
3 A. Okay.
4 Q. Do you recognize this e-mail string, in particular the
5 very first e-mail?
6 A. Yes.
7 Q. Do you know if there is anything in that e-mail, the
8 top e-mail that SMART disagrees with?
9 MR. HILDEBRANDT: Doesn't the e-mail just
10 simply say there are outstanding issues?
11 A. I don't think SMART would agree with the analysis set
12 forth under the number 1.
13 BY MR. MUISE:
14 Q. All of it or part of it or --
15 A. This is referencing a different post than we
16 previously spoke about for Red Dead Redemption, first
17 of all, but I don't believe that SMART would agree
18 with generally any of it, although it's a different
19 post which I don't have in front of me to review.
20 Q. Would SMART disagree with this last sentence, further
21 once we open the door to this type of content it's
22 permanently opened under this contract?
23 A. I think that's privileged.
24 Q. Okay. Let me ask you this, at the end of number 3, it
25 it has Marijuana University. Do you know did SMART

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1 accept any advertisements from Marijuana University?
2 A. It did not.
3 Q. Did SMART reject any advertisements from Marijuana
4 University?
5 A. It's my recollection that SMART did.
6 Q. Do you know on what basis those advertisements were
7 rejected?
8 A. I would have to go back and confer with other people
9 related to that determination because as I think about
10 it further, I don't believe we formally rejected that
11 advertisement for whatever reason by the time -- for
12 whatever reason a rejection wasn't necessary. They
13 weren't interested in posting.
14 MR. MUISE: And counsel can perhaps correct
15 me. I don't recall seeing any advertisements for
16 Marijuana University in any of the productions; is
17 that right?
18 MR. HILDEBRANDT: My understanding is that
19 no graphic was conveyed, that this was based upon a
20 conversation from Hawkins to Beth about the potential
21 for such advertisements but then nothing was submitted
22 to SMART for formal review.
23 BY MR. MUISE:
24 Q. Is that SMART's recollection?
25 A. Yes, going through this, that's consistent with it,

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1 the medical marijuana issue, they approached CBS, but
2 it didn't go any further than that, so no ad copy was
3 ever submitted for approval.
4 Q. Has SMART taken any position on whether it would
5 accept or not accept ad copy from Marijuana
6 University?
7 MR. HILDEBRANDT: Formally?
8 A. I would have to review the advertisement itself. If
9 it met with section 5.07 content restrictions, it
10 would be approved.
11 BY MR. MUISE:
12 Q. Okay. So there hasn't been -- there hasn't been a
13 determination one way or another because nothing --
14 A. Nothing has been submitted for review.
15 Q. Okay. But it's not like SMART would automatically
16 reject an advertisement from Marijuana University, you
17 still have to review the individual advertisement?
18 A. Correct.
19 MARKED FOR IDENTIFICATION:
20 DEPOSITION NUMBER 41
21 4:37 p.m.
22 BY MR. MUISE:
23 Q. This is Exhibit Number 41. This is a document that
24 was produced by SMART pursuant to its document
25 production. And I understand this was a March 13,

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1 2007 e-mail, at least according to the date on this
2 e-mail. I want to direct your attention to the second
3 line of this e-mail, and it says quote, "to reject
4 it," referring to an advertisement, "based solely upon
5 the company that is making the proposal would
6 certainly be questionable constitutionally speaking,"
7 end quotes, do you see that?
8 A. Yes.
9 Q. Does SMART agree with that statement?
10 A. Insofar as that is outside of the advertising
11 guidelines, yes.
12 Q. What do you mean it's outside of the advertising
13 guidelines?
14 A. If this was based solely upon the company making the
15 proposal and not based upon the guidelines in section
16 5.07 of the contract, which was not in effect at the
17 time this e-mail was written, it would be
18 inappropriate.
19 Q. And would it be inappropriate as well today after the
20 2008 guidelines?
21 A. Yes.
22 MR. HILDEBRANDT: He was applying the 2008
23 guidelines.
24 MR. MUISE: I thought he was referring to
25 in -- this was before 2008. I just want to make sure

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1 that we are clear on this.
2 BY MR. MUISE:
3 Q. So the statement in 2007 would hold true today after
4 the 2008 guidelines that we are referring to here in
5 Exhibit 41, correct?
6 A. Yes.
7 Q. I'm going to ask you a question that was posed by
8 counsel to my client in reference to your policy, in
9 particular Exhibit -- excuse me, section number 4 of
10 the advertising guidelines which prohibits clearly
11 defamatory or likely to hold up to scorn or ridicule
12 any person or group of persons, and you are familiar
13 with that section, correct, sir?
14 A. Correct.
15 Q. So an advertisement that said Hindus are Heretics,
16 would that be prohibited under that provision of the
17 advertising guidelines?
18 A. I would think that would be speculative, but I would
19 have to review the entire ad to be able to make such a
20 determination.
21 Q. So that content alone wouldn't -- that message alone
22 wouldn't violate the advertising guidelines 5.07 B 4?
23 MR. HILDEBRANDT: I'm going to object to
24 the form of the question. He didn't say that at all.
25 MR. MUISE: Well, I'm asking him.

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1 BY MR. MUISE:
2 Q. That message standing alone, you can't make a
3 determination whether that message violates the
4 content restriction 5.07 B 4 on your guidelines?
5 A. I would have to have a definition of heretics.
6 Q. Okay. How about Islam is a religion of violence,
7 would that be a prohibited content under the 5.07
8 advertising -- 5.07 B 4?
9 A. Yes, it would be impermissible under section 5.07 B 4.
10 Q. And if the advertisement said Islam is a religion of
11 peace, would that be prohibited under the content
12 based restrictions?
13 MR. HILDEBRANDT: Any of the content based
14 restrictions or just number 4?
15 MR. MUISE: Any of them.
16 A. That seems quite speculative, but insofar as it was
17 taking a political or making a political statement
18 with regard to Islam, it would be a violation of 5.07.
19 BY MR. MUISE:
20 Q. What about with regard to the section 4, would it
21 violate section 4?
22 A. It doesn't appear on its face that saying Islam is a
23 religion of peace, is that the proper --
24 Q. Yes.
25 A. -- and would be clearly defamatory or likely to hold

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1 up to scorn or ridicule any person or group of
 2 persons, but you have to understand you are doing this
 3 lightning round style, and I have explained a process
 4 that all of these advertisements go through that have
 5 a multitude of people intake, sometimes several days,
 6 and certainly several hours, so you are asking for a
 7 quick response, rapid fire style, and you are not
 8 going to -- its virtually impossible to recreate an
 9 answer that would have come out of the process that I
 10 have explained in detail during this deposition.
 11 Q. All I'm asking for is sworn testimony from SMART on
 12 its application of its policy, and you are the person
 13 who has been designated, sir.
 14 MR. HILDEBRANDT: And he has just told you
 15 he can't do it.
 16 MR. MUISE: Well, I believe he answered the
 17 questions.
 18 I think that's a wrap. I have no further
 19 questions.
 20 MR. HILDEBRANDT: I have no questions. We
 21 are going to read and sign.
 22 MR. MUISE: All right.
 23 (Deposition concluded at 4:42 p.m.)
 24 Signature of the witness was requested.
 25

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1 AMERICAN FREEDOM DEFENSE
 2 INITIATIVE; et al,
 3 Plaintiffs,
 4 vs. Case No. 2:10-cv-12134-DPH-MJH
 5 SMART,
 6 Defendants.
 7
 8
 9 VERIFICATION OF DEPONENT
 10
 11 I, having read the foregoing deposition
 12 consisting of my testimony at the aforementioned time
 13 and place, do hereby attest to the correctness and
 14 truthfulness of the transcript.
 15
 16
 17 _____
 18 ANTHONY CHUBB
 19 Dated:
 20
 21
 22
 23
 24
 25

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1 ERRATA SHEET
 2 PAGE LINE READS PAGE LINE SHOULD READ
 3
 4
 5
 6
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 11
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 16
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 22
 23
 24 Anthony Chubb
 25 Dated:

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1 CERTIFICATE OF NOTARY
 2 STATE OF MICHIGAN)
 3) SS
 4 COUNTY OF OAKLAND)
 5
 6 I, Sharon Campbell, a Notary Public in and
 7 for the above county and state, do hereby certify that
 8 the above deposition was taken before me at the time
 9 and place hereinbefore set forth; that the witness was
 10 by me first duly sworn to testify to the truth, and
 11 nothing but the truth; that the foregoing questions
 12 asked and answers made by the witness were duly
 13 recorded by me stenographically and reduced to
 14 computer transcription; that this is a true, full and
 15 correct transcript of my stenographic notes so taken;
 16 and that I am not related to, nor of counsel to either
 17 party nor interested in the event of this cause.
 18
 19
 20
 21
 22 Sharon Campbell, CSR-3006
 23 Notary Public,
 24 Oakland County, Michigan
 25 My Commission expires: June 9, 2019

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