

August 17, 2021

Re: False Advertisement: “Kimberly” Sponsored by Empower Wisconsin

Dear Station Manager:

We write on behalf of Tony for Wisconsin regarding an advertisement sponsored by Empower Wisconsin that is currently running on your station.¹ This advertisement contains an incendiary and blatant falsehood aimed at deceiving Wisconsin voters. **It must be pulled from the air now.**

Referring to Governor Evers’ response to the rioting that took place after a Kenosha police officer shot Jacob Blake last summer, the narrator blatantly lies to your viewers, saying “*it took the loss of lives before help finally came.*” Empower Wisconsin provides absolutely no support for this claim -- the screen is blank other than the narrator’s face.

That is because the timeline of events and news sources confirm Governor Evers dispatched the National Guard and help did arrive *prior to any loss of life*:

- Jacob Blake was shot by a Kenosha police officer **on Sunday, August 23, 2020.**²
- **At around 2:00pm On Monday, August 24, 2020,** Governor Evers “authorized the Wisconsin National Guard to support local law enforcement in Kenosha County.”³ News sources confirm the Guard was “focus[ed] on protecting critical infrastructure and maintaining public safety during the protests.”⁴
- **At 11:45pm on Tuesday, August 25, 2020, more than 24 hours after Governor Evers dispatched the Guard,** two individuals were shot and killed in connection with the Kenosha protests according to Kenosha police.⁵ Those are the only two individuals who

¹ The ad is available here: <https://youtu.be/MqOJynwxbLw>.

² Adam Rogan, *How Evers Responded to Kenosha Riots in 2020 appears to be a GOP Talking Point for 2022*, Madison.com (Jun. 27, 2021), https://madison.com/news/local/govt-and-politics/gov-tony-evers-response-to-kenosha-riots-in-2020-appears-to-be-gop-talking-point/article_8386d346-05ff-5899-b7df-5e4af456aaf4.html; Maddie Burakoff, *Timeline: Scaled-up Law Enforcement Presence in Kenosha*, Spectrum News (Aug. 27, 2020), <https://spectrumnews1.com/wi/milwaukee/news/2020/08/27/timeline--scaled-up-law-enforcement-presence-in-kenosha>.

³ Press Release, Office of the Gov., *Wisconsin National Guard to Support Local Law Enforcement in Kenosha*, <https://content.govdelivery.com/accounts/WIGOV/bulletins/29b954d> (Aug. 24, 2020).

⁴ Burakoff, *supra* note 2.

⁵ Kenosha Police Dept. (@KenoshaPolice), Twitter (5:29 AM Aug. 26, 2020), <https://twitter.com/KenoshaPolice/status/1298553070729789440?s=20>.

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died in connection with the Kenosha protests -- a fact even the Empower Wisconsin advertisement acknowledges.

As you can see, a simple outline of events confirms that no lives were lost prior to the dispatch or arrival of National Guard in Kenosha County. Any claim otherwise is a blatant lie aimed at misleading and terrifying your viewers. The voters of Wisconsin deserve better and you have an obligation to protect them from deceptive ads like this one.

Unlike candidates, independent political organizations like Empower Wisconsin do not have a "right to command the use of broadcast facilities."⁶ Because you need not air this advertisement, your station bears responsibility for its content when you do grant access.⁷ Moreover, you have a duty "to protect the public from false, misleading or deceptive advertising."⁸ Failure to prevent the airing of "false and misleading advertising" may be "probative of an underlying abdication of licensee responsibility" that can be cause for the loss of a station's license.⁹

This advertisement is false and should be removed immediately. Thank you for your attention to this matter, and please contact us immediately at 202-654-1730 to confirm that this ad is no longer appearing on your station.

Sincerely,



Courtney T. Weisman
Jonathan S. Berkon
Counsel to Tony for Wisconsin

⁶ See *CBS v. DNC*, 412 U.S. 94, 113 (1973).

⁷ See *Felix v. Westinghouse Radio Stations*, 186 F.2d 1, 6 (3rd Cir.), cert. denied, 314 U.S. 909 (1950).

⁸ Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising, 74 F.C.C.2d 623 (1961).

⁹ *Cosmopolitan Broad. Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978).