

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER

Released: February 3, 1992

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Edward G. Atsinger III, President 8310-SP
Salem Media Corporation C5-163
Radio Station WMCA(AM)
2310 Ponderosa Drive, Suite 29
Camarillo, CA 93010

Dear Mr. Atsinger:

This letter constitutes a Notice of Apparent Liability for a Forfeiture in the amount of twelve thousand five hundred dollars (\$12,500) against Salem Media Corporation (Salem), licensee of Station WMCA(AM) in New York, New York. Pursuant to Section 503(b) of the Communications Act of 1934, as amended, you are hereby advised of the following:

The Commission received a letter of complaint dated July 11, 1990, from Ms. Miriam Miller alleging that the weekly program, "Healthline," hosted by Dr. Stuart Berger, was a paid-for program but was not identified as such. On the basis of that correspondence, the Commission sent you a letter of inquiry on April 1, 1991. Salem responded to that letter of inquiry on May 6, 1991, enclosing cassette tapes of portions of ten "Healthline" programs.

Salem states that WMCA(AM) broadcast "Healthline," a two-hour program hosted by Dr. Stuart Berger, every Saturday from 12:00 to 2:00 p.m. since it acquired the station in September 1989, with the exception of preemptions due to football games. It acknowledges that the Commission's sponsorship identification rule (Section 73.1212) was not "strictly" complied with during this program until after May 1, 1991, following receipt of our letter of inquiry. Salem admits that WMCA broadcast no sponsorship identification announcement for the program. The response explains that Dr. Berger purchases the entire block of time from the station for the broadcast of "Healthline," uses it to discuss health issues and promote his medical practice, and also sell time to several other sponsors promoting products. After reviewing the audio tapes of this program, we have determined that sponsorship identification was omitted, and the content of the program alone does not make it clear that "Healthline" is paid for by Dr. Berger. (See Section 73.1212(f) of the Commission's Rules.)¹

Section 317 of the Communications Act of 1934, as amended, states in pertinent part:

(a)(1) All matter broadcast by any radio station for which money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station broadcasting,

from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person

Additionally, Section 73.1212 of the Commission's Rules states in pertinent part:

When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce: (1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and (2) by whom or on whose behalf such consideration was supplied. . . .

In the instant case, WMCA(AM), over an extended period of time, broadcast programs for which the licensee received valuable consideration. It appears, however, that the broadcasts of the programs were not accompanied by the required sponsor identification announcements and it was not clear from the mention of Dr. Berger's name that "Healthline" was sponsored by him. This violation is not diminished by Salem's representations that WMCA(AM) has since taken steps to assure that appropriate sponsorship identification announcements are and will be broadcast on "Healthline." It is well established that a licensee will not be excused from past violations because of subsequent remedial measures. *Cate Communications Corp.*, 60 R.R. 2d 1386, (1986).

The forfeiture amount was reached after careful consideration of the factors set forth in Section 503(b)(2) of the Communications Act. We have also considered the guidelines detailed in our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *recon. pending*. Under these guidelines the base amount for a sponsorship identification violation is \$6,250.00. In this case the violation was repeated over an extended period of time; therefore, the forfeiture amount was increased to \$12,500.00. No other adjustments appear appropriate. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, Salem Media Corporation, licensee of Station WMCA(AM), New York, NY, is hereby advised of its APPARENT LIABILITY for a FORFEITURE in the amount of \$12,500.00 for its apparent willful and repeated violation of Sections 317 of the Communications Act of 1934, as amended, and 73.1212 of the Commission's Rules from September 1989 through May 1991, (with the exception of programs preempted by football game broadcasts).

In regard to this forfeiture proceeding, you may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this letter.

This letter was adopted by the Commission on January 17, 1992.

BY DIRECTION OF THE COMMISSION

Donna R. Searcy
Secretary

FOOTNOTE

¹ Advertisements for various products, such as Regina's Royal Jelly Bee Pollen, were aired during the program. The naming of the products in these instances clearly was a sponsorship identification for these products. *See* Section 73.1212(f). They did not, however, in any way make clear the paid-for nature of the surrounding "Healthline" program.