



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

November 21, 2023

**Via E-mail**

[Requestor]

[Address]

Re: Request for an Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [Requestor]:

This letter is in response to your e-mail and its supporting attachments, which we received on October 24, 2023, (“October 24 E-mail”), requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding [Company A]’s possible obligation to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), for media and public relations activities it expects to perform and has performed for the foreign business entities [Company B], [Company C], [Company D], [Company E], [Company F], and [Company G]. Based on our review of your request, we have determined that [Company A] would not be obligated to register under FARA for its ongoing and prospective activities, which are on behalf of [Company B], [Company C], and [Company D].

In the October 24 E-mail, to which was attached [Company A]’s contracts with these foreign business entities, you informed us that [Company A] is a public relations and digital marketing agency in [U.S. State], that has provided public relations and social media marketing services to several foreign clients. You identified these foreign business clients as: (1) [Company E], headquartered in [foreign country E]; (2) [Company F], headquartered in [foreign country F]; (3) [Company G], headquartered in [foreign country G]; (4) [Company B], headquartered in [foreign country B]; (5) [Company C], headquartered in [foreign country C]; and (6) [Company D], headquartered in [foreign country D]. [Company A] inquired whether its activities for these foreign business entities would require it to register under FARA.

However, your request indicated that [Company A]’s contractual arrangements with [Company E], [Company F], and [Company G] have concluded. FARA’s implementing regulations governing our provision of advisory opinions prevent us from opining on purely historical conduct. *See* 28 C.F.R. § 5.2(b). Therefore, this advisory opinion will address only [Company A]’s ongoing and prospective activities for [Company B], [Company C], and [Company D].

Generally speaking, save certain exemptions, a party is an “agent of a foreign principal” required to register under FARA if it acts “in any . . . capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly

supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal and who directly or through any other person,” and within the United States:

- (i) Engages in political activities for or in the interests of such foreign principal;
- (ii) acts as public relations counsel, publicity agent, information-service employee, or political consultant for or in the interests of such foreign principal;
- (iii) solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or
- (iv) represents the interests of such foreign principal before any agency or official of the Government of the United States.

*See* 22 U.S.C. § 611(c)(1).

[Company A] has contractual agreements with [Company B], [Company C], and [Company D], each of which constitutes a “foreign principal” as defined by the Act because each is a corporation or organization organized under the laws of a foreign country and having its principal place of business in a foreign country.<sup>1</sup> Should [Company A] perform the above-described public relations and social media marketing activities for these three entities pursuant to its contracts, it would be acting “at the order, request, or under the direction or control, of a foreign principal.”<sup>2</sup>

FARA defines a “public relations counsel” as “any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal.”<sup>3</sup> FARA defines a “publicity agent” as “any person who engages directly or indirectly in the publication and dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising.”<sup>4</sup> And FARA defines an “information-service employee,” in relevant part, to include:

any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, . . . or other benefits, advantages, facts, or conditions of a partnership,

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<sup>1</sup> *See* 22 U.S.C. § 611(b)(3).

<sup>2</sup> 22 U.S.C. § 611(c)(1). *See* 28.C.F.R. § 5.100(b) (“As used in the Act, the term ‘control’ or any of its variants shall be deemed to include the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person, whether through the ownership of voting rights, by contract, or otherwise.”).

<sup>3</sup> 22 U.S.C. § 611(g).

<sup>4</sup> 22 U.S.C. § 611(h).

association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in a foreign country.<sup>5</sup>

You have informed us that [Company A] is engaged in public relations and social media marketing activities for its foreign principals pursuant to its contracts with them. For instance, in its contract with [Company D], [Company A] has agreed to “manage [Company D]’s public relations program with an initial goal of increasing product awareness as well as brand awareness among key vertical markets, with a large focus on elevating the brand’s messaging and positioning . . .” In engaging in this activity, [Company A] would be acting as a “public relations counsel” because it would be “informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal.”<sup>6</sup>

Likewise, [Company A]’s contract with [Company B] requires it to “draft and place polished, industry-leading thought leadership pieces tailored to specific publications and audiences.” The contract states that “[t]hese efforts will work in tandem with pitching initiatives, ensuring that content creation efforts further reinforce the expertise of spokespeople and the brand.” [Company A] thus would be acting as a “publicity agent” because its activities on behalf of each of its foreign clients would include the “publication and dissemination of oral, visual, graphic, written, or pictorial information[.]”<sup>7</sup>

Finally, in its contract with [Company C], [Company A] has agreed to “manage [Company C]’s public relations program with the goal of increasing product awareness as well as brand awareness among key vertical markets.” The contract requires [Company A] to “help facilitate new audience introduction opportunities via untapped media vertical markets, with the aim of establishing [Company C] as a category leader.” Because these activities would include providing accounts, descriptions, information, or data concerning the industrial, economic, or other benefits and advantages of [Company C], [Company A] would qualify as an information-service employee. Thus, in light of its activities on behalf of these three foreign principals, each a foreign corporation, [Company A] would be required to register under FARA unless an exemption applies.

We consider whether [Company A] qualifies for the exemption available under Section 613(d) of the Act. Section 613(d)(1) exempts an agent of a foreign principal from FARA’s registration requirements if the agent engages “*only* . . . in private and nonpolitical activities in furtherance of the bona fide trade or commerce<sup>8</sup> of the foreign principal.”<sup>9</sup> Importantly, to qualify for this

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<sup>5</sup> 22 U.S.C. § 611(i).

<sup>6</sup> 22 U.S.C. § 611(g).

<sup>7</sup> 22 U.S.C. § 611(h).

<sup>8</sup> As used in FARA, the term “trade or commerce” “shall include the exchange, transfer, purchase, or sale of commodities, services, or property of any kind.” 28 C.F.R. § 5.304(a).

<sup>9</sup> 22 U.S.C. § 613(d)(1) (emphasis added).

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[Company A]  
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exemption, [Company A]’s activities on behalf of the foreign business entities must be both private and nonpolitical.<sup>10</sup>

Based on the information provided, [Company A]’s activities on behalf of its foreign principals appear to meet these criteria. The proposed activities—public relations and digital marketing services—appear to be private and nonpolitical in that they are intended solely to advance the foreign businesses’ commercial interests.<sup>11</sup> Moreover, as delineated in [Company A]’s contracts with its foreign principals, [Company A]’s activities appear to be “in furtherance of the bona fide trade or commerce” of these foreign business entities.<sup>12</sup> Accordingly, we conclude that the exemption under Section 613(d)(1) applies and the proposed activities for [Company B], [Company C], and [Company D] therefore would not require registration under the Act.

If there are any future developments that affect the above analysis, such as a change in the scope of [Company A]’s anticipated duties on behalf of these foreign business entities, please reach out to the FARA Unit for further discussion.

If you have any questions regarding this matter, please contact the FARA Unit by e-mail at [FARA.Public@usdoj.gov](mailto:FARA.Public@usdoj.gov) or by telephone at (202) 233-0776.

Sincerely,

*/s/ Evan N. Turgeon*

Evan N. Turgeon  
Chief, FARA Unit

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<sup>10</sup> FARA defines “political activities” as “any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States . . . with reference to the political or public interests, policies, or relations of a government of a foreign country or of a foreign political party.” 22 U.S.C. § 611(o).

<sup>11</sup> See 22 U.S.C. § 613(d)(1).

<sup>12</sup> See *id.*