



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

July 30, 2020

VIA EMAIL

[addressee deleted]

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

Dear [name deleted]:

This is in reference to your letter of July 13, 2020 (“the July 13 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, with respect to the obligation of your client, the [corporation], to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or “the Act”). Specifically, your letter requests a determination that the [corporation] qualifies for an exemption from registration pursuant to § 613(d)(2). Based upon the representations in your letter, we do not oppose your assertion that the [corporation] is exempt from the obligation to register under FARA at this time.

In the July 13 Letter, you state that the [corporation] is a global public relations and communications company with offices in over 40 countries, including the United States and [a foreign country]. You further state that [Company A] is a private biotechnology company in [a foreign country] and a subsidiary of the [Company A’s parent], a [foreign country] company self-described as “one of the world’s leading life science and genomics organizations.”¹ According to your letter, on or about June 12, 2020, [corporation] entered into an agreement with [Company A] to provide public relations services in the United States concerning an upcoming article in the [newspaper] about [Company A].² Pursuant to the agreement, the [corporation] responded to questions posed by reporters working on the article. Specifically, the [corporation] provided information concerning [Company A’s] origins, operations, and financial status, as well as information to rebut claims that [Company A] is charging below-market prices in the United States for its [diagnostic] tests, due to alleged [government of foreign country]³, and that [Company A] has access to patient data from [diagnostic] tests conducted in the United States utilizing [Company A] test kits.⁴

¹ You represent that the “[government of a foreign country] has no ownership interest in either [Company A] or [Parent of Company A].” July 13 Letter, at 3.

² The article has been published on the [newspaper’s] website. [Redacted]

³ You assert that [Company a] informed the [corporation] that it receives no [government of foreign country] subsidies related to the costs of producing [diagnostic] tests. *See* July 13 Letter, at 2 n.2.

⁴ You assert that [Company A] informed the [corporation], and has stated publicly, that it has no access to patient data resulting from [diagnostic] testing, as it does not operate the laboratories in which such testing occurs, nor does it come into contact with patient samples. *See* July 13 Letter, at 2 n.3.

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Generally speaking, a party is an “agent of a foreign principal” that, absent an exemption, must 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, in pertinent part: “acts as a public relations counsel [or] publicity agent . . . for or in the interests of such foreign principal[.]” 22 U.S.C. § 611(c)(1)(ii).

Based on the facts provided, the [corporation] is acting as an agent of a foreign principal within the meaning of FARA, and would be required to register absent an exemption. [Company A] is a “foreign principal” within the meaning of 22 U.S.C. § 611(b)(2). The [corporation] is acting as an agent of [Company A], a “foreign principal,” because it is acting under [Company A’s] “direction or control” pursuant to the agreement described in your letter. *See* 22 U.S.C. § 611(c)(1). Further, the [corporation] is engaging in activities within the United States on behalf of [Company A] that require registration under FARA such as acting as a public relations counsel or publicity agent. *See* 22 U.S.C. § 611(c)(1)(ii); *see also* 22 U.S.C. §§ 611(g), (h).

We next consider your assertion that [corporation’s] work on behalf of [Company A] qualifies [the corporation] for the exemption from registration set forth in 22 U.S.C. § 613(d)(2) because the [corporation] has engaged “only . . . in other activities not serving predominantly a foreign interest[.]” *See* 22 U.S.C. § 613(d)(2). In support of this assertion, you state that the [corporation’s] public relations activities on behalf of [Company A]: (i) “are directly in furtherance of the bona fide commercial, industrial, or financial operations of [a] foreign corporation;” (ii) “are not directed by a foreign government or foreign political party;” and (iii) “do not directly promote the public or political interests of a foreign government or foreign political party.” *See* July 13 Letter, at 2–3; 28 C.F.R. § 5.304(c). You further assert that [Company A]: (i) is not supervised by a foreign government or foreign political party; (ii) is not owned by a foreign government or foreign political party; (iii) is not directed by a foreign government or foreign political party; (iv) is not controlled by a foreign government or foreign political party; (v) is not financed by a foreign government or foreign political party; and (vi) is not subsidized by a foreign government or foreign political party. *See* July 13 Letter, at 3.

Based upon the foregoing representations in your letter, we do not contest your assertion that the [corporation] qualifies for the Section 613(d)(2) exemption from registration because the [corporation’s] activities appear to be singularly focused on protecting and promoting the commercial interests of [Company A].⁵

We remind you, however, that our determination is limited to the particular facts in the July 13 Letter. If any of those facts change, please notify this office, as those changes may affect the [corporation’s] registration status.

⁵ Separately, you have informed us that in addition to the above-described activities, the [corporation] has proposed engaging in lobbying activities before Congress and the Executive Branch on behalf of [Company A]. You opine that such activities would qualify for the exemption contained in 22 U.S.C. § 613(h) for those who properly register pursuant to the Lobbying Disclosure Act of 1995 (“LDA”), 2 U.S.C. § 1601, *et seq.* This opinion does not address your assertion because the Department of Justice cannot provide advisory opinions concerning hypothetical transactions. *See* 28 C.F.R. § 5.2(b).

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We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact [name redacted] at (202) 233-0776, if you have any questions.

Sincerely,

/s/ Brandon L. Van Grack

Brandon L. Van Grack
Chief, FARA Unit