

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMERICAN FREEDOM DEFENSE
INITIATIVE; PAMELA GELLER; and
ROBERT SPENCER,

Plaintiffs,

-v.-

MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY (“MBTA”); and BEVERLY A.
SCOTT, individually and in her official capacity as
Chief Executive Officer / General Manager of the
MBTA,

Defendants.

Case No. 1:13-cv-12803-NMG

**DECLARATION OF PAMELA
GELLER**

[28 U.S.C. § 1746]

I, Pamela Geller, make this declaration pursuant to 28 U.S.C. § 1746 and based upon my personal knowledge and upon verifiable public information and information and belief, where noted.

1. I am an adult citizen of the United States and a plaintiff in this case.
2. I, along with Robert Spencer, who is also a plaintiff in this case, co-founded the American Freedom Defense Initiative (“AFDI”). I am currently the president of AFDI, and Mr. Spencer is the vice president.
3. AFDI is a nonprofit organization that is incorporated under the laws of the State of New Hampshire. AFDI is also a plaintiff in this case.
4. Mr. Spencer and I engage in free speech activity through various projects of AFDI. One such project is the posting of advertisements on the advertising space of various government transportation agencies throughout the United States, including the Massachusetts Bay Transportation Authority (hereinafter “MBTA”), which provides public transportation throughout the Greater Boston area.

5. AFDI is a human rights organization dedicated to freedom of speech, freedom of conscience, freedom of religion, freedom from religion, and individual rights.

6. AFDI achieves its objective through a variety of lawful means, including through the exercise of its right to freedom of speech under the U.S. Constitution.

7. AFDI exercises its right to freedom of speech and promotes its objectives by, among other things, purchasing advertising space on transit authority property in major cities throughout the United States, including Boston, Massachusetts. AFDI purchases these advertisements to express its message on current events and public issues, including issues involving the Israeli / Palestinian conflict (hereinafter referred to as “AFDI’s advertising campaign”).

8. Based upon public information, the MBTA is a quasi-governmental organization which provides public transportation in the Commonwealth of Massachusetts. It operates bus routes, subway lines, a commuter rail network, and ferry service routes that provide transportation to millions of customers in the Greater Boston area. The Chief Executive Officer/General Manager of the MBTA is Beverly A. Scott.

9. The MBTA, through its advertising agent, Titan Outdoor LLC (a/k/a Titan360 and Titan) (hereinafter “Titan”), leases space on its vehicles and transportation stations for use as advertising space.

10. The MBTA accepts noncommercial and commercial advertisements for display on its advertising space.

11. The MBTA accepts noncommercial public service, public issue, and political issue advertisements, including advertisements on controversial issues, such as the Israeli / Palestinian conflict, for display on its advertising space.

12. The MBTA has leased its advertising space for political and social commentary advertisements covering a broad spectrum of political views and ideas.

13. Upon information and belief, in September 2013, the MBTA issued a statement acknowledging that some of its advertisements would be distasteful to its customers, stating, *inter alia*, “we have every confidence that our customers will understand that in our enlightened civil democracy, the answer to distasteful and uncivil speech is more, and more civilized, speech.”

14. Accordingly, the MBTA permits, as a matter of policy and practice, a wide variety of commercial, noncommercial, public-service, public-issue, and political-issue advertisements on its advertising space, including advertisements addressing the hotly debated Israeli / Palestinian conflict (hereinafter “Speech Policy”).

15. Upon public information, in October 2013, the MBTA accepted for display on its advertising space a controversial advertisement that addresses the Israeli / Palestinian conflict by conveying a message and viewpoint that criticizes Israel (hereinafter “Anti-Israel Advertisement”).

16. The Anti-Israel Advertisement, which, upon public information, appeared on approximately 80 posters throughout the transit system, depicts four maps that purport to show “the Palestinian loss of land” to Israel between 1946 and 2010. Text accompanying the maps says: “4.7 million Palestinians are Classified by the UN as Refugees.”

17. The Anti-Israel Advertisement appears as follows:



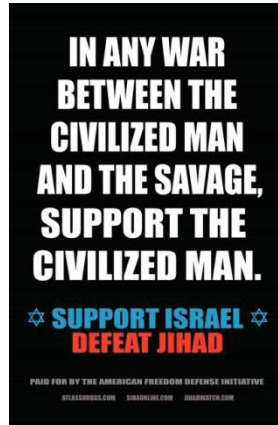
18. A true and accurate copy of the Anti-Israel Advertisement is attached to this declaration as Exhibit A and incorporated herein by reference.

19. Upon public information, after receiving a rash of complaints, on or about October 31, 2013, the MBTA, through its advertising agent, removed all of the Anti-Israel Advertisements from the MBTA's advertising space.

20. However, based upon public information, on or about November 1, 2013, the MBTA decided, without much of a public explanation, except to claim that it was a "miscommunication" between the MBTA and its advertising agent, to repost the Anti-Israel Advertisement on the MBTA's advertising space.

21. Pursuant to the MBTA's Speech Policy and in direct response to the original posting of the Anti-Israel Advertisement, on or about October 26, 2013, I submitted to Titan for display on MBTA's advertising space an advertisement that supported Israel in the debate over the Israeli / Palestinian conflict. More specifically, I contacted via email Scott Goldsmith, the executive vice president and chief commercial officer of Titan, and requested to run AFDI's "pro-Israel ads in 10 of the Boston T stations where the anti-Israel campaign is running." A true and correct copy of my email to Mr. Goldsmith is attached to this declaration as Exhibit B and incorporated herein by reference.

22. AFDI's pro-Israel advertisement ("AFDI Advertisement") states, in relevant part, "In any war between the civilized man and the savage, support the civilized man. Support Israel. Defeat jihad." AFDI's Advertisement appears as follows:



23. A true and correct copy of the AFDI Advertisement is attached to this declaration as Exhibit C and incorporated herein by reference.

24. The AFDI Advertisement discusses the same subject matter as the Anti-Israel Advertisement, except it does so from a viewpoint that favors Israel.

25. The quote, "In any war between the civilized man and the savage, support the civilized man," is adapted from a quote by the famous Russian-born, American author of *Atlas Shrugged*, Ayn Rand.

26. The message of the AFDI Advertisement is very timely in light of the fact that the Anti-Israel Advertisement is now running (or will be running shortly) on the MBTA's advertising space.

27. Acceptance of political- and public-issue advertisements, specifically including the MBTA's acceptance of the Anti-Israel Advertisement, demonstrates that the forum is suitable for the AFDI Advertisement.

28. On November 4, 2013, the MBTA made a formal determination and officially rejected the AFDI Advertisement. In an email from Scott E. Goldsmith, MBTA's advertising

agent, to me, Mr. Goldsmith states, “Pamela: The MBTA has rejected your ad because it falls within the category (b)(i) ‘Demeaning or disparaging’. I have attached the ad policy for your review. Thank you. Scott.” A true and correct copy of this email containing the MBTA’s formal determination and rejection of the AFDI Advertisement is attached to this declaration as Exhibit D and incorporated herein by reference.

29. Attached to the MBTA’s rejection email was a copy of the Guidelines Regulating MBTA Advertising (hereinafter “Advertising Guidelines”). A true and correct copy of this email attachment is attached to this declaration as Exhibit E and incorporated herein by reference.

30. This email represents the formal determination and final decision by the MBTA to reject the AFDI Advertisement and thereby restrict AFDI’s, Mr. Spencer’s, and my speech. (“Speech Restriction”).

31. The MBTA’s rejection of the AFDI Advertisement has caused and will continue to cause irreparable harm to AFDI, Mr. Spencer, and me because the MBTA’s rejection is depriving us of the right to freedom of speech guaranteed by the First Amendment.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 8th day of November, 2013.

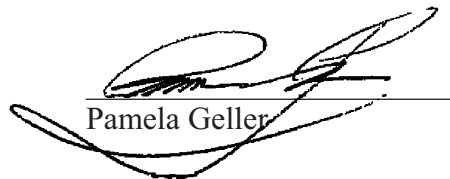

Pamela Geller

EXHIBIT A



EXHIBIT B

----- Forwarded message -----

From: **Pamela Geller** <pamelageller@gmail.com>

Date: Sat, Oct 26, 2013 at 4:23 PM

Subject: Boston ad buy: Pro-Israel ad campaign

To: Scott Goldsmith <Scott.Goldsmith@titan360.com>, Greg Wolinsky <Greg.Wolinsky@titan360.com>

Scott,

We wish to run our pro-Israel ads in 10 of the Boston T stations where the anti-Israel campaign is running. We want 10 of the busiest transit hubs (http://www.bostonglobe.com/metro/2013/10/25/mbta-restores-ads-critical-israel/61EuEtlckODpYHKd08JEqM/story.html?s_campaign=email_BG_TodaysHeadline)

You know the ad. You've run it before. **We wish to begin ASAP** - same ad placement as the anti-Israel ads in the Globe article.

Please send specs.

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Yours in liberty,
Pamela Geller
Editor, Publisher Atlas Shrugs
President, AFDI, SIOA and SION

[Pamela Geller](#) on Facebook
[@AtlasShrugs](#) in Twitter
[@PamelaGeller](#) on Twitter

Author: Freedom or Submission: On the Dangers of Islamic Extremism & American Complacency
Author The Post-American Presidency: The Obama Administration's War on America
Author: Stop the Islamization of America: A Practical Guide for the Resistance

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Yours in liberty,
Pamela Geller

EXHIBIT C

**IN ANY WAR
BETWEEN THE
CIVILIZED MAN
AND THE SAVAGE,
SUPPORT THE
CIVILIZED MAN.**

 **SUPPORT ISRAEL** 
DEFEAT JIHAD

PAID FOR BY THE AMERICAN FREEDOM DEFENSE INITIATIVE

ATLASSHROGS.COM

SPOA.US

JIHADWATCH.COM

EXHIBIT D

From: Scott Goldsmith <Scott.Goldsmith@titan360.com>
Sent: Monday, November 04, 2013 4:38 PM
To: Pamela Geller
Cc: david.yerushalmi@verizon.net; <rmuise@aflc.us>; spencercg1@yahoo.com
Subject: Proposed Ad - MBTA
Attachments: MBTA - Ad guidelines .pdf

Pamela: The MBTA has rejected your ad because it falls within the category (b)(i) "Demeaning or disparaging". I have attached the ad policy for your review. Thank you. Scott.

Scott E. Goldsmith, Esq.
EVP & Chief Commercial Officer
100 Park Avenue
New York, NY 10017

T (212) 891-5688
F (212) 418-1082
scott.goldsmith@titan360.com

TITAN
titan360.com

From: Pamela Geller <pamelageller@gmail.com>
Date: Friday, November 1, 2013 4:02 PM
To: Scott Goldsmith <Scott.Goldsmith@titan360.com>
Cc: "david.yerushalmi@verizon.net" <david.yerushalmi@verizon.net>, "<rmuise@aflc.us>" <rmuise@aflc.us>, "spencercg1@yahoo.com" <spencercg1@yahoo.com>
Subject: Re:

Scott, What's the hold-up? These delays hurt my message. I want to counter the blood libel currently running. I need a a yes or no answer ASAP.

On Mon, Oct 28, 2013 at 10:39 AM, Pamela Geller <pamelageller@gmail.com> wrote:
10
We need specs

Yours in liberty,
Pamela Geller

Sent from my iPhone

On Oct 28, 2013, at 9:39 AM, Scott Goldsmith <Scott.Goldsmith@titan360.com> wrote:

Pamela: We will submit. How many posters do you want to do? Thanks. Scott

Scott E. Goldsmith, Esq.
EVP & Chief Commercial Officer
100 Park Avenue
New York, NY 10017

T (212) 891-5688
F (212) 418-1082
scott.goldsmith@titan360.com

TITAN
titan360.com

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Yours in liberty,
Pamela Geller
Editor, Publisher Atlas Shrugs
President, AFDI, SIOA and SION

[Pamela Geller](#) on Facebook
[@AtlasShrugs](#) in Twitter
[@PamelaGeller](#) on Twitter

Author: Freedom or Submission: On the Dangers of Islamic Extremism & American Complacency
Author The Post-American Presidency: The Obama Administration's War on America
Author: Stop the Islamization of America: A Practical Guide for the Resistance

EXHIBIT E

Guidelines Regulating MBTA Advertising
Adopted July 1, 2012

Purpose

Through these Guidelines the MBTA intends to establish uniform, viewpoint-neutral standards for the display of advertising. In setting its advertising standards, the MBTA seeks to fulfill the following goals and objectives:

- (a) maximization of revenue generated by advertising;
- (b) maximization of revenue generated by attracting, maintaining, and increasing ridership;
- (c) maintaining the safe and orderly operation of the MBTA;
- (d) maintaining a safe and welcoming environment for all MBTA passengers, including minors who travel on or come in contact with the MBTA system; and
- (e) avoiding the identification of the MBTA or the Commonwealth of Massachusetts with advertisements or the viewpoints of the advertisers.

The MBTA reserves the right, from time to time, to suspend, modify or revoke the application of any or all of these Guidelines as it deems necessary to comply with legal mandates, to accommodate its primary transportation function and to fulfill the goals and objectives referred to herein. All the provisions of these Guidelines shall be deemed severable.

Advertising Program and Administration

- (a) These guidelines shall apply to advertising on or in all MBTA equipment and facilities (including but not limited to land, terminals, stations, garages, yards, shops, structures, rolling stock, vehicles, fences, equipment, electronic and hard copy media, websites and other personal property) unless otherwise expressly provided by contract regarding a premise covered by an alcoholic beverages license.
- (b) The MBTA shall, from time to time, select an “Advertising Contractor” who shall be responsible for the daily administration of the MBTA’s advertising program in a manner consistent with these Guidelines and the terms of its agreement with the MBTA. The advertising program shall include, but not be limited to, promotion, solicitation, sales, accounting, billing, collections and posting of advertising displays on or in all MBTA equipment and facilities.
- (c) The Advertising Contractor shall provide, or shall subcontract for, all employees and equipment necessary to perform the work and provide the services required by the MBTA.
- (d) The MBTA shall designate an employee (typically, the Director of Marketing Communications) as its “Contract Administrator” to be the primary contact for the Advertising Contractor. Questions regarding the terms, provisions and requirements of these Guidelines shall be addressed initially to the Contract Administrator.

MBTA Operations and Promotions

The MBTA has the unqualified right to display, on or in its equipment and facilities, advertisements and notices that pertain to MBTA operations and promotions, consistent with the provisions of its agreement with the Advertising Contractor.

Disclaimer

The MBTA reserves the right, in all circumstances, to require that an advertisement on or in its equipment and facilities include a disclaimer indicating that it is not sponsored by, and does not necessarily reflect the views of, the MBTA.

Advertising Standards

- (a) The MBTA intends that its equipment and facilities constitute nonpublic forums that are subject to the viewpoint-neutral restrictions set forth below. Certain forms of paid and unpaid advertising will not be permitted for placement or display on or in MBTA equipment and facilities.
- (b) The MBTA shall not display or maintain any advertisement that falls within one or more of the following categories:
 - (i) Demeaning or disparaging. The advertisement contains material that demeans or disparages an individual or group of individuals. For purposes of determining whether an advertisement contains such material, the MBTA will determine whether a reasonably prudent person, knowledgeable of the MBTA's ridership and using prevailing community standards, would believe that the advertisement contains material that ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of, an individual or group of individuals.
 - (ii) Tobacco. The advertisement promotes the sale or use of tobacco or tobacco-related products, including but not limited to depicting such products.
 - (iii) Alcohol. The advertisement advertises an alcohol product or a brand of alcohol products.
 - (iv) Profanity. The advertisement contains profane language.
 - (v) Firearms. The advertisement either (a) advertises a firearm or a brand of firearms, (b) contains an image of a firearm in the foreground of the

main visual or (c) contains image(s) of firearm(s) that occupy 15% or more of the overall advertisement.

- (vi) Violence. The advertisement contains an image or description of graphic violence, including but not limited to (1) the depiction of human or animal bodies, body parts or fetuses, in states of mutilation, dismemberment, decomposition or disfigurement, and (2) the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal.
- (vii) Unlawful goods or services. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, the use or possession of unlawful or illegal goods or services.
- (viii) Unlawful conduct. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities.
- (ix) Obscenity or nudity. The advertisement contains obscene material or images of nudity. For purposes of these Guidelines, the terms “obscene” and “nudity” shall have the meanings contained in Massachusetts General Laws ch. 272, §31.¹
- (x) Prurient sexual suggestiveness. The advertisement contains material that describes, depicts or represents sexual activities or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults in sex. For purposes of these Guidelines, the term “minor” shall have the meaning contained in Massachusetts General Laws ch. 272, §31.²
- (xi) Political campaign speech. The advertisement contains political campaign speech. For purposes of these Guidelines, the term “political campaign speech” is speech that (1) refers to a specific ballot question, initiative petition, or referendum, (2) promotes or opposes a political party for local, state, or federal election, or (3) promotes or opposes a candidate or group of candidates. For purposes of these Guidelines, the term “candidate” shall include any person actively campaigning for office, any person who has filed their candidacy or declared their intent to run for office, or any person who has been reported in the mainstream media as likely to run for a particular public office.

- (xii) Endorsement. The advertisement, or any material contained in it, implies or declares an endorsement by the MBTA or the Commonwealth of any service, product or point of view, without prior written authorization of the MBTA (through its General Manager) or the Commonwealth (through the Secretary of the Executive Office of Transportation and Construction).
- (xiii) False, misleading, or deceptive commercial speech. The advertisement proposes a commercial transaction, and the advertisement, or any material contained in it, is false, misleading or deceptive.

¹ Mass. Gen. Laws ch. 272, §31, defines “obscene” as follows: “matter is obscene if taken as a whole it (1) appeals to the prurient interest of the average person applying the contemporary standards of the county where the offense was committed; (2) depicts or describes sexual conduct in a patently offensive way; and (3) lacks serious literary, artistic, political, or scientific value” Mass. Gen. Laws. ch. 272, §31, defines “nudity” as follows: “uncovered or less than opaquely covered human genitals, pubic areas, the human female breast below a point immediately above the top of the areola, or the covered male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple or areola only are covered.”³

² Mass. Gen. Laws ch. 272, §3 I, defines “minor” as “a person under eighteen years of age.

- (xiv) Libelous speech, copyright infringement, etc. The advertisement, or any material contained in it, is libelous or an infringement of copyright, or is otherwise unlawful or illegal or likely to subject the MBTA to litigation.
 - (xv) “Adult”-oriented goods or services. The advertisement promotes or encourages, or appears to promote or encourage, a transaction related to, or uses brand names, trademarks, slogans or other materials which are identifiable with, films rated "X" or “NC-17,” **video games rated M or AO**, adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments, adult telephone services, adult Internet sites and escort services.
- (c) Review of advertisements. The Advertising Contractor shall review each advertisement submitted for display on or in MBTA equipment and facilities to determine whether the advertisement falls within, or may fall within, one or more of the categories set forth in (b) above. If the Advertising Contractor determines that an advertisement falls within, or may fall within, one or more of the categories set forth in (b) above, then:
- (i) Referral to Contract Administrator. The Advertising Contractor shall promptly send the advertisement - along with the name of the advertiser, the size and number of the advertisements and the dates and locations of display - to the Contract Administrator for review of the advertisement by the MBTA.
 - (ii) Initial Review by MBTA. Upon the Contractor Administrator’s receipt of the advertisement and supporting information, the Contract Administrator shall review the advertisement and supporting information to determine whether the advertisement falls within one or more of the categories set forth in (b) above. In reaching this determination, the Contract Administrator may consider any materials submitted by the advertiser and may consult with the Advertising Contractor. In the event that the Contract Administrator determines that the advertisement does not fall within any of the categories set forth in (b) above, the Contract Administrator shall advise the Advertising Contractor that the advertisement is in conformity with the MBTA’s Advertising Guidelines.
 - (iii) Subsequent Review by MBTA. In the event that the Contract Administrator determines that the advertisement falls within, or may fall within, one or more of the categories set forth in (b) above, then the Contract Administrator shall, in writing, specify which of the categories the advertisement falls within, or may fall within, and shall refer the advertisement and supporting information to the General Counsel. Likewise, the General Counsel shall review the advertisement and supporting information to determine whether the advertisement falls within one or more of the categories set forth in (b) above. In reaching this determination, the General Counsel may consider any materials submitted by the advertiser and may consult with the Contract Administrator. In the event that the General Counsel determines that the advertisement does not fall within any of the categories set forth in (b) above, the Contract Administrator shall advise the Advertising Contractor that the advertisement is in conformity with

the MBTA's Advertising Guidelines.

- (iv) Final Review by MBTA. In the event that the General Counsel determines that the advertisement falls within, or may fall within, one or more of the categories set forth in (b) above, then the General Counsel shall, in writing, specify which of the categories the advertisement falls within, or may fall within, and shall refer the advertisement and supporting information to the General Manager. Likewise, the General Manager shall review the advertisement and supporting information to determine whether the advertisement falls within one or more of the categories set forth in (b) above. In reaching this determination, the General Manager may consider any materials submitted by the advertiser and may consult with the Contract Administrator and the General Counsel. In the event that the General Manager determines that the advertisement does not fall within any of the categories set forth in (b) above, the Contract Administrator shall advise the Advertising Contractor that the advertisement is in conformity with the MBTA's Advertising Guidelines. In the event that the General Manager determines that the advertisement falls within one or more of the categories set forth in (b) above, then the General Manager shall, in writing, specify which of the categories the advertisement falls within and the Contract Administrator shall advise the Advertising Contractor that the MBTA has determined that the advertisement is not in conformity with its Advertising Guidelines.
- (v) Opportunity for Revision by Advertiser. In the event that the MBTA determines that the advertisement falls within one or more of the categories set forth in (b) above, the Advertising Contractor may, in consultation with the Contract Administrator, discuss with the advertiser one or more revisions to the advertisement, which, if undertaken, would bring the advertisement into conformity with the MBTA's Advertising Guidelines. The advertiser shall then have the option of submitting a revised advertisement for review by the MBTA.
- (vi) Formal Determination by MBTA. In the event that the MBTA and the advertiser do not reach agreement with regard to a revision of the advertisement, the advertiser may request that the MBTA memorialize its formal determination in the form of a final written notice of its decision, which shall then be relayed to the advertiser. The MBTA's formal determination shall be final.
- (vii) Removal of Non-Complying Advertisements. Notwithstanding the foregoing, if the Contract Administrator, the General Counsel, and the General Manager determine at any time that an advertisement already accepted for display by the Advertising Contractor falls within one or more of the categories set forth in (b) above, they shall (1) in writing, specify which of the categories the advertisement falls within, (2) notify the advertiser that the MBTA has determined that the advertisement is not in conformity with its Advertising Guidelines and that the advertisement shall be promptly removed and (3) instruct the Advertising Contractor to remove the advertisement. Upon such

instruction, the Advertising Contractor shall promptly remove the advertisement, shall provide the advertiser with a copy of these Guidelines, and may, with the Contract Administrator, discuss with the advertiser one or more revisions to the advertisement, which, if undertaken, would bring the advertisement into conformity with the MBTA's Advertising Guidelines. The advertiser shall then have the option of submitting a revised advertisement for review by the MBTA. In the event that the MBTA and the advertiser do not reach agreement with regard to a revision of the advertisement, the advertiser may request that the MBTA memorialize its formal determination in the form of a final written notice of its decision, which shall then be relayed to the advertiser. The MBTA's formal determination shall be final.

Public Service Announcements

The MBTA will, from time to time, make unsold advertising space available for public service announcements proposed by non-profit corporations that are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or by federal, state or local government agencies or subdivisions thereof. Each such non-profit corporation shall provide the Advertising Contractor or the MBTA with documentation demonstrating that it currently qualifies under the above-referenced provision of the Internal Revenue Code. A public service announcement cannot contain a message that is retail or commercial in nature and shall comply with the Advertising Standards set forth in these Guidelines. A public service announcement may be required to bear the following legend if the sponsor is not readily or easily identifiable from the content or copy of the proposed advertisement: "This message is sponsored by _____".