



March 11, 2020

Taina Bien-Aimé  
Executive Director  
Coalition Against Trafficking in Women

Dear Ms. Bien-Aime:

I am responding to your email of March 2, 2020 to Mark Heavey of the MTA, which attaches a letter to Outfront Media regarding “Sex Workers’ Pop-Up” advertisements promoting “an exhibition of art and performances dedicated to the global sex worker movement” – ads paid for by Open Society Foundations. Thank you for bringing your concerns to our attention.

As a state public authority, the MTA is governed by the First Amendment and takes its constitutional obligations seriously. As you are aware, to meet those obligations, the MTA has adopted an Advertising Policy with standards for what ads are permissible and impermissible on MTA property, and a detailed process for reviewing proposed ads. That Advertising Policy complies with the First Amendment, and the MTA must apply it in an even-handed manner. In doing so, the MTA cannot distinguish between ads based on their viewpoint. These principles forbid us from removing an advertisement that otherwise complies with the MTA Advertising Policy, such as the “Sex Workers’ Pop-Up” advertisements, because of opposition to its point of view.

Let me also clarify a few important facts. First, the MTA controls advertising in the subway and bus system, but has no involvement with advertising on bus shelters. The City, not the MTA, has jurisdiction over bus shelters, and the MTA Advertising Policy does not apply to them. In short, we have no involvement with some of the ads included in your letter.

Second, the MTA has approved only the advertisements attached hereto as Exhibit A. The MTA, through its independent contractor, Outfront, declined to approve a proposed advertisement with the quotation “sex work is work,” on the ground that it constituted prohibited political advertising under the MTA Advertising Policy.

The advertisements in Exhibits A, however, are plainly permitted by the MTA Advertising Policy. The sole textual copy on these advertisements provides a brief description of the subject matter of the pop-up exhibit and basic logistical information, including its location, date, and entrance fee (free). The ads therefore constitute “Permitted Advertising” under the MTA Advertising Policy, which permits nonprofit corporations exempt from taxation under Section 501(c)(3) – such as Open Society Foundations – to run public service advertisements relating to “art or culture” (Section IV.A.3).

Contrary to your suggestion, the advertisements in Exhibit A are not “Prohibited Advertising” under any of the cited sections of the MTA Advertising Policy. We do not consider advertisements that merely identify the topic or title and logistical details regarding exhibits, museums, and media products (such as books and movies) to be prohibited political ads under Section IV.B.2 of the MTA



Advertising Policy, which prohibits ads that “prominently or predominately” advocate a political message. Thus, for example, the MTA has approved ads for many books, movies and art exhibits with a political theme where the advertising copy provides only this basic type of information and does not prominently or predominantly advocate a political message. Exhibits—like books, movies, and art—may, of course, advocate a political message in part, but the relevant question for purposes of the MTA’s policy is whether the *advertisement* “prominently or predominately” advocates such a political message, and the advertisement at issue here does not.

Likewise, the advertisements in Exhibit A do not promote unlawful or illegal goods, services, or activities, or involve other unlawful conduct. It is not unlawful to promote an exhibition of art and performances, nor is it illegal to host such an exhibition on this topic. In short, this is an exhibit sponsored by a nonprofit organization on a topic as to which the MTA can take no position.

For similar reasons, the advertisements in Exhibit A do not promote an escort service or sexually oriented business under the MTA Advertising Policy. Sexually oriented businesses include, for example, sex toy manufacturers and strip clubs. The ads at issue here, however, promote an exhibit that is not a sexually oriented business. This decision was consistent with the MTA’s decisions in the past to permit ads for exhibits in the Museum of Sex, because the museum itself is not a sexually oriented business.

Finally, the MTA’s role in assessing whether an ad is “false misleading or deceptive” is limited to the content of the ad itself. You have provided us with no factual basis to conclude that any of the limited text in the advertisements in Exhibit A, providing only the topic and location/date/entrance fee of the exhibit, are false, misleading or deceptive.

In sum, the MTA is constitutionally bound to follow its Advertising Policy and has done so in connection with the two attached advertisements. It is not our role to judge what is the right public policy in this area. The MTA cannot assess advertisements on such viewpoint-based political grounds.

Sincerely,

A handwritten signature in black ink, appearing to read "Janno Lieber".

Janno Lieber  
President, MTA Construction & Development