



FEDERAL ELECTION COMMISSION
Washington, DC 20463

BY EMAIL ONLY

Kate Belinski
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February 23, 2022

RE: MUR 7806
PayPal Holdings, Inc.

Dear Ms. Belinski:

On October 15, 2019, the Federal Election Commission (“Commission”) notified your client, PayPal Holdings, Inc., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the “Act”). On February 15, 2022, based on the information provided in the complaint, and information provided by you, the Commission found no reason to believe your client violated 52 U.S.C. § 30118(a), a provision of the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission’s finding, is enclosed for your information.

If you have any questions, please contact Don Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark Allen

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: PayPal Holdings, Inc.

MUR: 7649

I. INTRODUCTION

The Complaint alleges that PayPal Holdings, Inc. (“PayPal”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations when it shut down the PayPal account of Augustus Invictus for President Inc. (the “Committee”), which the Committee had used as a payment processor for contributions.¹ The Complaint alleges that by terminating the Committee’s account, but not those of other presidential candidates, PayPal made prohibited in-kind corporate contributions to every other candidate for President whose PayPal account was not terminated.²

Because PayPal’s actions appear to reflect commercial considerations, rather than an effort to influence a federal election, the Commission finds no reason to believe that PayPal’s actions constituted corporate contributions.

II. FACTUAL BACKGROUND

Augustus Invictus was a 2020 candidate for President. He filed a Statement of Candidacy with the Commission on August 6, 2019.³ Augustus Invictus for President Inc., the authorized campaign committee for Invictus, filed a Statement of Organization on August 14, 2019, and a termination report on January 30, 2020.⁴

¹ Compl. at 1-4 (Oct. 10, 2019).

² *Id.*

³ *See* Augustus Invictus FEC Form 2 (Aug. 6, 2019).

⁴ *See* Augustus Invictus for President Inc. FEC Form 1 (Aug. 14, 2019). *See also* Compl. at 1-2. The Committee’s termination report, covering the period August 11, 2019, through January 30, 2020, disclosed \$4,535.71 in receipts, and \$4,535.71 in expenditures. *See* Augustus Invictus for President Inc. Termination Report (Jan. 30, 2020), available at <https://docquery.fec.gov/pdf/391/202001309182426391/202001309182426391.pdf>.

1 PayPal Holdings, Inc., is a corporation organized under the laws of Delaware.⁵ It is the
2 parent company of PayPal, Inc., the on-line payment service that is also organized under the laws
3 of Delaware, with a corporate address in San Jose, California.⁶ The PayPal User Agreement
4 requires users to comply with PayPal’s Acceptable Use Policy, and states that users must not
5 breach the User Agreement or the Acceptable Use Policy.⁷ PayPal’s Acceptable Use Policy
6 provides: “You may not use the PayPal service for activities that . . . relate to transactions
7 involving . . . the promotion of hate, violence, racial or other forms of intolerance that is
8 discriminatory or the financial exploitation of a crime.”⁸

9 The Committee filed the Complaint after PayPal terminated its account for violating its
10 User Agreement and Acceptable Use Policy.⁹ The Complaint states that PayPal “permanently
11 limited” the Committee’s account and Invictus’s law firm account due to an alleged violation of
12 PayPal’s Acceptable Use Policy, and attaches an August 16, 2019, email from PayPal to the

Excepting contributions from the candidate, all but one of the itemized individual contributions listed each contributor’s full name as “Anonymous, Anonymous.” *Id.* at 8-26. The Commission accepted the Committee’s termination report on February 3, 2020. *See* Augustus Invictus for President Inc. Termination Approval, available at <https://docquery.fec.gov/pdf/362/202002040300054362/202002040300054362.pdf>.

⁵ *See* most recent Statement of Information, California Corporate Number C3842984 <https://businesssearch.sos.ca.gov/Document/RetrievePDF?Id=03842984-27021519>; *see also* <https://investor.paypal-corp.com/node/8146/html>; <https://sec.report/CIK/0001633917>.

⁶ *See* PayPal Holdings, Inc. Form 10-K 2019 Annual Report at 1 (“in January 2015, eBay incorporated PayPal Holdings, Inc., which ultimately became the parent of PayPal, Inc. and holds directly or indirectly all of the assets and liabilities associated with PayPal, Inc.”), available at <https://sec.report/Document/0001633917-20-000028/>. *See* Amended Registration Statement by Foreign Corporation, California Corporate Number C2172783 <https://businesssearch.sos.ca.gov/Document/RetrievePDF?Id=02171783-6228539> and most recent Statement of Information <https://businesssearch.sos.ca.gov/Document/RetrievePDF?Id=02171783-26314451>.

⁷ *See* PayPal User Agreement, available at https://www.paypal.com/us/webapps/mpp/ua/useragreement-full?locale.x=en_US. *See also* Resp. at 1-4 (Dec. 2, 2019).

⁸ *See* PayPal Acceptable Use Policy, available at <https://www.paypal.com/us/webapps/mpp/ua/acceptableuse-full>.

⁹ Compl. at 1-2.

1 Committee.¹⁰ The Complaint notes that PayPal had previously shut down Invictus’s personal
2 account and his law firm’s account in late 2017, claiming that PayPal had done so “in retaliation
3 for having organized the Unite the Right rally in Charlottesville, Virginia in August 2017.”¹¹
4 The Complaint alleges that by terminating the Committee’s account in August 2019, but not
5 those of other presidential candidates, PayPal made prohibited in-kind corporate contributions to
6 every other candidate for President whose PayPal account was not terminated.¹² The Complaint
7 states that the Committee raised \$1,000 in the five days that its PayPal account was active, and
8 concludes that if the Committee had been able to continue using PayPal as its payment processor
9 for contributions, the Committee would have continued to raise money at the same rate, and
10 therefore would have raised \$73,000 “by the time of the presidential primary in August 2020,”
11 apparently a reference to the Republican National Convention scheduled to be held August 24–
12 27, 2020.¹³ The Complaint concludes that by permanently limiting the Committee’s use of

¹⁰ *Id.*, Attach. 1.

¹¹ *Id.* at 3. The Complaint did not provide documentation supporting this claim, although contemporaneous news reports indicate that PayPal made a statement regarding the application of its Acceptable Use Policy against hate speech following the Unite the Right rally, and that Invictus was a featured speaker at the rally. *See* Franz Paasche, *PayPal’s AUP - Remaining Vigilant on Hate, Violence & Intolerance*, PAYPAL STORIES (Aug. 15, 2017), <https://www.paypal.com/stories/us/paypals-aup-remaining-vigilant-on-hate-violence-intolerance>; Levi Sumagaysay, *PayPal, Crowdfunding Sites Cut Off White Supremacists, Hate Groups*, SILICONBEAT, THE TECH BLOG OF THE MERCURY NEWS (Aug. 16, 2017), <http://www.siliconbeat.com/2017/08/16/paypal-crowdfunding-sites-cut-off-white-supremacists-hate-groups/>, also available at TECHNEWSLOG (Aug. 16, 2017), <http://technewslog.com/paypal-crowdfunding-sites-cut-off-white-supremacists-hate-groups/>. (“Blocked accounts on PayPal include . . . the Revolutionary Conservative, whose publisher and founder is Augustus Invictus . . . one of the listed headliners at the Unite the Right rally in Charlottesville”); *see also* Kaya Yurieff, *PayPal is Quietly Cracking Down on White-Supremacist Accounts*, CNN BUSINESS (Aug. 16, 2017), <https://money.cnn.com/2017/08/16/technology/paypal-alt-right-accounts/index.html>.

¹² Compl. at 3-4. When PayPal processes contributions to political committees as a service to the committees, it is compensated by charging fees for those services. *See* <https://www.paypal.com/us/webapps/mpp/political-contributions-donations>.

¹³ *See* <https://www.2020gopconvention.com/>. Invictus’s Statement of Candidacy filed with the Commission identified his party affiliation as Republican.

1 PayPal as its payment processor, PayPal made prohibited excessive in-kind contributions to
2 every other candidate for President in the amount of \$73,000.¹⁴

3 PayPal responds that it was operating within the bounds of its reasonable commercial
4 prerogative and contractual rights when it closed the Invictus accounts under the terms of its
5 User Agreement and Acceptable Use Policy, and that doing so does not constitute a contribution
6 under the Act.¹⁵ PayPal further states that it monitors customers' compliance with the
7 Agreement and Policy.¹⁶ If PayPal believes that a customer has violated applicable terms, per
8 the User Agreement, it may take actions at any time in PayPal's sole discretion that include, but
9 are not limited to: (1) terminating the User Agreement, limiting the customer's PayPal account,
10 and/or closing or suspending their PayPal account immediately and without penalty to PayPal;
11 (2) refusing to provide PayPal services to the customer in the future; or (3) limiting the
12 customer's access to the Respondent's websites, software, systems, the customer's PayPal
13 account, or any of the PayPal services.¹⁷

14 The Response notes the Committee acknowledges that PayPal had previously shut down
15 Invictus's personal and business accounts for violating its User Agreement and Acceptable Use
16 Policy, and that the User Agreement provides that customers that violate it with respect to one

¹⁴ Compl. at 3-4.

¹⁵ Resp. at 1-4. *See also* PayPal User Agreement, available at https://www.paypal.com/us/webapps/mpp/ua/useragreement-full?locale.x=en_US.

¹⁶ Resp. at 2. Respondents state that political committees that wish to open an account with PayPal for the purpose of receiving political contributions do so on the same terms, and are subject to the same "usual and normal" fees, as any other customer. *Id.*

¹⁷ *Id.* *See also* PayPal User Agreement, available at https://www.paypal.com/us/webapps/mpp/ua/useragreement-full?locale.x=en_US.

1 account are prohibited from opening other accounts that they control.¹⁸ PayPal explains that
2 when its Compliance Team discovered the newly opened accounts of “Augustus Invictus for
3 President, Inc.” and “The Law Office of Augustus Invictus, P.A.” — which on their face were
4 clearly tied to Invictus — the Compliance Team closed the accounts and provided notice of the
5 action and the reason for the action, as expressly permitted by the User Agreement.¹⁹ The
6 Response also states that political committees are subject to the same “usual and normal” fees as
7 any other PayPal customer.²⁰ Finally, PayPal asserts that its actions were consistent with the
8 Commission’s determination that service providers have broad latitude in determining which
9 committees they provide services to, so long as the determination is commercially reasonable and
10 at the usual and normal charge, and it concludes that nothing in the Act or the Commission’s
11 regulations requires commercial entities to offer their services to all committees without regard to
12 commercial considerations.²¹

13 **III. LEGAL ANALYSIS**

14 The Act and Commission regulations prohibit any corporation from making contributions
15 to a candidate’s principal campaign committee.²² “Contribution” is defined to include any gift of

¹⁸ Resp. at 3. Neither the Complaint nor the Response state the precise provision in PayPal’s User Agreement and Acceptable Use Policy that was initially violated in 2017. *See supra* n. 11.

¹⁹ Resp. at 3. Respondents also assert that the closing of the accounts in August 2019 was not motivated by partisan political interests.

²⁰ *Id.* at 2; *see also Political Campaign Contributions Made Secure and Easy*, PAYPAL <https://www.paypal.com/us/webapps/mpp/political-contributions-donations>; and *PayPal for Political Fundraising*, PAYPAL <https://assets.ctfassets.net/7rifqg28wcbd/3QRjO6ZbnOC5PFhBP7Qw4X/beac34a0438cf19fb5c3dfea263c00fc/paypal-political-fundraising.pdf>.

²¹ Resp. at 3.

²² 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

1 money or “anything of value” for the purpose of influencing a federal election.²³ “Anything of
2 value” includes in-kind contributions, such as the provision of goods or services without charge
3 or at a charge that is less than the usual and normal charge.²⁴ “Usual and normal charge” is
4 defined as the price of goods in the market from which they ordinarily would have been
5 purchased at the time of the contribution, or the commercially reasonable rate prevailing at the
6 time the services were rendered.²⁵

7 The Commission has determined in advisory opinions that the provision of contribution-
8 processing services to a political committee by a commercial vendor, when done so in the
9 ordinary course of business and at the usual and normal charge, does not constitute a contribution
10 to the political committee.²⁶ A commercial vendor providing services to political committees
11 will not make a contribution when its business activity “reflects commercial considerations and
12 does not reflect considerations outside of a business relationship.”²⁷

13 Additionally, a commercial vendor need not make its services available to committees
14 representing all political ideologies, but rather may establish objective business criteria to protect
15 commercial viability of its business without making contributions to the committees that meet
16 those criteria.²⁸ The Commission has concluded that vendors are permitted to target customers

²³ 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 100.52(a).

²⁴ 11 C.F.R. § 100.52(d)(1).

²⁵ 11 C.F.R. § 100.52(d)(2).

²⁶ Advisory Op. 2018-05 (CaringCent) at 4-5; *see also* Advisory Op. 2016-08 (eBundler.com) at 6-7; Advisory Op. 2012-09 (Points for Politics) at 5-6; Advisory Op. 2007-04 (Atlatl) at 3-4. In these advisory opinions, the Commission determined that a commercial vendor must meet certain criteria, including the requirement that it render services in the ordinary course of business and at the usual and normal charge. *See, e.g.*, AO 2018-05 at 4-5; AO 2016-08 at 6-7; AO 2012-09 at 5-6; AO 2007-04 at 3-4.

²⁷ Advisory Op. 2012-31 (AT&T) at 4.

²⁸ Advisory Op. 2017-06 (Stein and Gottlieb) at 6; *see also* Advisory Op. 2012-35 (Global Transaction Services Group, Inc.) at 2 (mobile payment provider may develop eligibility criteria based upon commercial

1 and limit the range of services provided without making any contributions themselves, and, when
2 such vendor uses commercially reasonable criteria, limiting the possible candidates to whom
3 users can contribute through its services will not cause the services provided to constitute a
4 contribution to recipient committees.²⁹

5 PayPal asserts that it shut down Invictus's accounts for commercial reasons and did not
6 contribute to any other candidates by doing so, and there is no available information to the
7 contrary. PayPal's actions appear to reflect commercial considerations under its User Agreement
8 and Acceptable Use Policy, rather than an effort to influence a federal election.³⁰ Neither the
9 Complaint nor other available information indicates otherwise.

10 Accordingly, when PayPal suspended Invictus's accounts, but not the accounts of other
11 candidates, it did not provide something of value to other candidates that would constitute
12 contributions. In light of PayPal's commercial, rather than electoral, purpose for terminating the
13 Committee's account, the Commission finds no reason to believe that PayPal made corporate
14 contributions here.

considerations and therefore may decide to accept only proposals from some political committees and not others); Advisory Op. 2012-28 (CTIA — The Wireless Association) at 3, 8-9 (no contribution to committee where “wireless service providers may decide, due to commercial considerations, to accept proposals from some political committees and not others”); Advisory Op. 2012-26 (Cooper for Congress, *et al.*) at 10 (no contribution to committee where its participation was subject to “objective and . . . commercially reasonable” criteria). *See also* Factual and Legal Analysis at 8, MURs 7309, 7399 (Crowdpac, Inc.).

²⁹ AO 2017-06 at 6.

³⁰ *See Resp.* at 2-3.