

## **ADVERSE FINDINGS**

The only adverse finding or adverse final action that may be reportable with respect to The Walt Disney Company, Disney Enterprises, Inc., ABC, Inc, any of its broadcast subsidiaries (one of which is the subject of this application), or any of their respective officers or directors is as follows: Children's Broadcasting Corp. v. The Walt Disney Company and ABC Radio Networks (Civil Action No. 96-CV-907 DDA1, FLN, D. Minn.). On May 10, 2002, a Minneapolis jury returned a verdict on the only claims remaining in the lawsuit: (1) breach of contract (failure to use reasonable efforts to sell advertising), and (2) breach of contract (confidentiality)/misuse of a list of potential advertisers. Plaintiff Children's Broadcasting Companies' ("CBC") fraud, breach of fiduciary duty and negligent misrepresentation claims were previously dismissed. In August 2002, the trial judge entered judgment on the jury verdict and denied the parties' post-trial motions. The Walt Disney Company and ABC Radio Networks filed an appeal, and CBC has filed a cross-appeal. On January 24, 2004, the Eighth Circuit Court of Appeals issued a decision that affirmed the district court decision and rejected the parties' grounds for appeal. Defendants have paid the judgment.

The verdict does not, in our view, constitute an "adverse finding" in a proceeding "brought under the provisions of any law relating to any of the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination." However, the phrase "unfair competition," which is sometimes used to denote the type of anticompetitive conduct at which antitrust laws are aimed, is also sometimes used more broadly to refer to a wide variety of business torts (including the misappropriation of trade secrets) that protect very different kinds of

interests. While we think it clear that the Commission did not use the phrase “unfair competition” in this second, broader sense, we are reporting the jury verdict in what may be an excess of caution.

The list of categories specified in the application form stems from the FCC’s Character Policy, 102 F.C.C.2d 1179, on recon., 1 FCC Rcd 421 (1986), as modified, 5 FCC Rcd 3252 (1990), on recon., 6 FCC Rcd 3448 (1991), further recon., 7 FCC Rcd 6564 (1992). Since its 1986 order, the Commission has limited its inquiries into litigation for purposes of character evaluation, disclaiming a general interest in whether an applicant or licensee has violated any law whatever governing business conduct. On the other hand, “antitrust and anticompetitive activity in broadcasting have occupied a unique position in the Commission’s regulatory scheme,” and hence violations of “anticompetitive or antitrust laws” have “a potential bearing on an applicant’s proclivity to comply with the Commission’s rules and policies.” 102 F.C.C.2d at 1201-02. It is clear therefore that the references to “unfair competition” in the Commission’s application forms are intended to be limited to laws specifically designed to prohibit anticompetitive conduct of the kind encompassed by antitrust laws. Preventing the misappropriation of trade secrets has never occupied a “unique position in the Commission’s regulatory scheme.” The jury verdict does not constitute an adverse finding within the meaning of the Commission’s disclosure requirement. The verdict does not reflect adversely on the character of The Walt Disney Company or ABC.