

EXHIBIT V
Section II, Question 5

LITIGATION

The only reportable adverse findings or adverse final actions that may be reportable with respect to The Walt Disney Company, Disney Enterprises, Inc., ABC, Inc, any of its broadcast subsidiaries, or any of their respective officers or directors are as follows:

1. Steve Davis v. KGO-TV and Capital Cities/ABC, Inc. (Superior Court of California, County of San Francisco, Case No. 946879). On October 27, 1992, Steve Davis, a former KGO-TV news reporter, filed a complaint for age discrimination against KGO-TV and its parent company, Capital Cities/ABC, Inc., in the Superior Court of California, County of San Francisco. The Complaint alleged that the defendants terminated Davis from their employ because of his age. Defendants denied the allegations and maintained that Davis' employment was terminated due to inadequate job performance. In its September 16, 1994, verdict, the jury awarded damages in the amount of \$224, 419.00 against KGO-TV, while finding the parent company, Capital Cities/ABC, Inc., not liable for age discrimination. On March 27, 1995, the court awarded Davis attorneys' fees in the amount of \$290, 030.00 and expenses in the amount of \$49,691.38. Both parties appealed. In a decision filed on July 29, 1996 as supplemented on rehearing by a decision filed on

October 31, 1996, the Court of Appeal of the State of California, First Appellate District, Division One, affirmed the judgment of the trial court in all respects except that the court reversed the award of costs for the fees of expert witnesses. Davis appealed to the California Supreme Court on the expert witness fee issue, and on February 5, 1998, the Court found in KGO-TV's favor when it decided that "fees of an expert not ordered by the court are not recoverable costs." On February 20, 1998, Davis petitioned the Court for rehearing on this issue and on March 25, 1998, the Court denied Davis' petition for rehearing. A subsequent motion by Davis for an order on attorneys' fees and costs was settled out of court.

EXHIBIT V
Section II, Question 5
(Continuation)

LITIGATION

2. Children’s Broadcasting Corp. v. The Walt Disney Company and ABC Radio Networks (Civil Action No. 96-CV-907 DDA1, FLN, D. Minn.) on an appeal by the Children’s Broadcasting Corporation (“CBC”). The appeals court affirmed an order of the District Court for the District of Minnesota granting summary judgment to The Walt Disney Company and ABC Radio Networks on most of plaintiffs’ claims, including claims of fraud, breach of fiduciary duty and negligent misrepresentation, but reversed a post-trial order setting aside a jury verdict in CBC’s favor on the remaining claims. The appeals court concluded that there was sufficient evidence for the jury to find causation and damages on breach of contract claims and on a claim for misappropriation of trade secrets, viz., plaintiff’s list of advertisers sold and proposed in 1995 and 1996, and ordered a new trial on damages on those claims only. The court was careful to point out that its decision “should not be read to imply that the conduct caused any particular type of damage to [CBC]”
- The Court’s decision does not, in our view, constitute an “adverse finding” in a proceeding “brought under the provisions of any law relating to 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 Court of Appeals decision 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.” It is clear that the Court of Appeals decision does not constitute an adverse finding within the meaning of the Commission’s disclosure requirement. In relevant part, the proceeding in which

that decision was rendered was brought, not under the Minnesota Antitrust Law of 1971, Minn. Stat. §325D, 49-66, or any other law dealing with “antitrust or anticompetitive activity,” but under the Minnesota Uniform Trade Secrets Act, Minn. Stat. §325C, 01-07. Therefore, the Court of Appeals decision does not reflect adversely on the character of The Walt Disney Company or ABC.

There has been no material change in status with respect to any previously disclosed matter which is reportable pursuant to the Commission’s modified requirements regarding the reporting of non-FCC misconduct. (Policy regarding Character Qualifications in Broadcast Licensing, FCC 92-448 (released Oct. 9, 1992).)