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Is It “Fake News” To Call Media “Fake News?”

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Since the 2016 presidential election, the term “fake news” has become a ubiquitous part of our media and political vocabulary. But as we all know, the “fake news” label is often, well, “fake.” So what can media entities do when they are unfairly tagged with the “fake news” moniker? Normally not much—the First Amendment would make it rather difficult to challenge the truth of a such a hyperbolic claim (and realistically, the media has no real interest in curtailing these free speech rights). CNN, however, has found a way to fight back that is sure to stir debate in media, legal and political circles.



On May 2nd 2017, CNN [refused to air a 30-second TV spot](#) marking

President Trump’s 100th day in office. The reason? A one-second graphic showing MSNBC’s Andrea Mitchell, CNN’s Wolf Blitzer, MSNBC’s Rachel Maddow, ABC News’ George Stephanopoulos and CBS News’ Scott Pelley with “FAKE NEWS” written in red across their faces. CNN says its decision to pull the ad (which can be viewed in its entirety [here](#)) was not because CNN did not like the message. Rather, CNN says that the “fake news” claim is false and thus, the ad itself violated CNN’s false advertising policies. CNN stated: “The mainstream

media is not fake news, and therefore the ad is false. Per our policy it will be accepted only if the graphic is deleted.”

Of course, it seems unlikely that the FTC will be knocking on the White House door to pursue a truth-in-advertising claim (even if the FTC did not ultimately answer to President Trump). Although there is still a distinction between myth and fact, labeling something as “fake” seems to be increasingly open to interpretation, and a court probably would not find that labeling a news outlet as “fake news” in President Trump’s ad (or any other ad) is actionable false advertising. But CNN’s move does open a new door to challenge the “fake news” claims—albeit by curtailing speech.

Not surprisingly, President Trump’s camp sees no merit to CNN’s position. In a statement on his [Facebook page](#), President Trump doubled down on his claim, stating that “[i]t is absolutely shameful to see the media blocking the positive message that I am trying to share with the country. We will fight back - OUR message will not be silenced by FAKE and BIAS news!” As the battle between the new administration and the traditional media continues to intensify, those with an interest in media law should watch with great interest to see how First Amendment rights may be affected.

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