

M e m o r a n d u m**140.0003**

To: Inglewood – Auditing (RLI)

Date: August 22, 1978

From: Headquarters – Legal (JM)

Subject: Merchandise Given Away on T.V. Shows

We have received the agreements between television networks and [X] Corporation submitted for our evaluation.

With respect to the agreement of August 30, 1977 involving the [X] program, it is our opinion that a sale has occurred by virtue of the exchange of the merchandise provided by [X] for advertising (air time) provided by [Y] in connection with its program, and that the “sales price” of the merchandise is “Dealer’s Cost” which we interpret to be the wholesale price, i.e., the price [X] charges its dealers for such merchandise.

The agreement provides at Article III 3, that “the merchandise will be supplied as a prize in exchange for an identification.”

If [Y] omits a broadcast (and corresponding identification) of a previously taped program where a prize has been given to a contestant, [Y] agrees that in lieu of a broadcast (and identification), payment for the merchandise will be made at “dealer’s cost” to [X] or its agent. (Agreement Article IV and paragraph 1 of Standard Terms and Conditions, on back of agreement.)

We believe the prices stated for the described items at the beginning of this agreement relate only to the suggested retail price or the average prevailing retail price in the [city] area for purposes of the contest wherein the contestant attempts to guess the value of the merchandise and does not relate to the sales price of the merchandise to [Y] under the exchange provisions of the agreement.

The letter agreement dated November 9, 1977, concerning [Y]’s program, presents a more difficult problem since its form is less revealing of the intent of the parties. However, in substance it appears to be another kind of an exchange agreement. [X] is to supply property as prizes for the program in consideration of the television promotion of its products.

Under the provisions of the agreement the “prize” is to receive approximately 10 seconds of visual identification simultaneously with 15 - 20 words of audio copy for each exposure.

The value of the prize merchandise furnished constitutes the entire consideration for the T.V. promotion of the products. The only values indicated in the agreement are the suggested retail prices.

[X] agrees not to represent in any way that it is the sponsor of the program; accordingly, we do not believe that Annotation 280.0840 is applicable.

Absent any express provision as to the value of the air time or an agreed upon price to be paid by [X] in lieu of [Y] providing air time (as is provided in the Program - dealer's cost), it is our opinion that the stated retail prices constitute the exchange price.

JM:rt