

July 17, 2020

Hon. Emory A. Rounds
Director
U.S. Office of Government Ethics
1201 New York Ave., NW, Suite 500
Washington, DC 20005

Re: Ivanka Trump Misuse of Official Position

Dear Director Rounds:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Government Ethics (“OGE”) review Assistant to the President Ivanka Trump’s use of her social media accounts to promote a private company, Goya Foods, and its products in apparent violation of the Standards of Ethical Conduct for Employees of the Executive Branch (“Standards of Conduct”). Consistent with its past handling of a similar allegation involving a White House official’s misconduct,¹ OGE should invoke the corrective action procedure at 5 C.F.R. pt. 2638, subpt. E, beginning with a request that the White House Counsel investigate the matter and consider appropriate disciplinary action against Ms. Trump for improperly using her government position, title, and authority to endorse a commercial enterprise.

Factual Background

Ms. Trump was appointed to serve as Assistant to the President in March 2017.² In response to ethical questions raised about her appointment, Ms. Trump issued a statement, saying: “I have heard the concerns some have with my advising the president in my personal capacity while voluntarily complying with all ethics rules, and I will instead serve as an unpaid employee in the White House Office, subject to all of the same rules as other federal employees.”³

Ms. Trump’s Social Media Accounts

Since March 2017, Ms. Trump has used her @IvankaTrump Twitter account for official government purposes.⁴ The account profile states that Ms. Trump is an “Advisor to POTUS on job creation + economic empowerment, workforce development & entrepreneurship.”⁵ In furtherance of her role in the White House, Ms. Trump has primarily used the account to post about official Trump Administration activities and priorities. For example, Ms. Trump often

¹ Letter from OGE Director Walter Shaub to White House Deputy Counsel Stefan C. Passantino, Feb. 13, 2017, <https://bit.ly/2WICEcf>.

² Maggie Haberman and Rachel Abrams, *Ivanka Trump, Shifting Plans, Will Become a Federal Employee*, *New York Times*, Mar. 29, 2017, <https://nyti.ms/2XuvJ2l>.

³ *Id.*

⁴ Ivanka Trump (@IvankaTrump), Twitter, <https://twitter.com/IvankaTrump>.

⁵ *Id.*

links to the official website of the White House from her @IvankaTrump account.⁶ The official Twitter account of the White House, @WhiteHouse, also has referenced Ms. Trump's work on behalf of the Trump Administration, linking to her @IvankaTrump account.⁷ Although Ms. Trump's account profile states it is a "Personal Pg. Views are my own," Ms. Trump primarily uses her Twitter account to promote her work in the government and President Trump's agenda and is not known to use any other separate Twitter account for official purposes.⁸

Ms. Trump similarly uses her @ivankatrump Instagram account for official government purposes.⁹ Like her Twitter account, Ms. Trump includes her White House position in her Instagram profile as "Advisor to POTUS on job creation + economic empowerment, workforce development & entrepreneurship."¹⁰ Ms. Trump primarily uses her Instagram account to post photographs and videos of herself carrying out official duties in the White House and on foreign and domestic trips.¹¹

Ms. Trump's Goya Foods Postings

On July 14, 2020, using her @IvankaTrump Twitter account, Ms. Trump tweeted a photograph of herself holding a can of Goya black beans with the company name prominently featured on the food product in the photograph.¹² She added the company's trademarked slogan and a Spanish translation of the slogan in text above the photograph: "If it's Goya, it has to be good. Si es Goya, tiene que ser bueno."¹³ She posted the same photograph and slogan on her @ivankatrump Instagram account.¹⁴

A few days earlier, President Trump had posted an image promoting Goya Foods on his Instagram account.¹⁵ He did so again the morning after Ms. Trump posted her social media messages about Goya Foods.¹⁶ That morning he posted a similar endorsement on his Twitter

⁶ See, e.g., Ivanka Trump (@IvankaTrump), Twitter (July 8, 2020, 12:41 PM), <https://bit.ly/2B6q09s>; Ivanka Trump (@IvankaTrump), Twitter (June 11, 2020, 1:11 PM), <https://bit.ly/32u1rhV>.

⁷ See, e.g., Exhibit 3 (The White House (@WhiteHouse), Twitter (retweeting Ivanka Trump (@IvankaTrump), Twitter, July 14, 2020)).

⁸ Ivanka Trump (@IvankaTrump), Twitter, <https://twitter.com/IvankaTrump>.

⁹ Ivanka Trump (@IvankaTrump), Instagram, at <https://www.instagram.com/ivankatrump/?hl=en..>

¹⁰ *Id.*

¹¹ See e.g., Ivanka Trump (@IvankaTrump), Instagram (July 14, 2020), <https://bit.ly/2OwtepV>; Ivanka Trump (@IvankaTrump), Instagram (June 28, 2020), <https://bit.ly/30fWMNX>; Ivanka Trump (@IvankaTrump), Instagram (May 27, 2020), <https://bit.ly/397bHOK>;

¹² Exhibit 1 (Ivanka Trump (@IvankaTrump), Twitter (July 14, 2020, 10:05 PM)) and <https://bit.ly/32kt8Ke>.

¹³ Guillermo A. Baralt, *If It's Goya... It Has to Be Good, 75 Years of History*, <https://amzn.to/3j9FdHY>; U.S. Patent & Trademark Office, Serial No. 86772756, available via search at <https://bit.ly/2WsCbov>.

¹⁴ Exhibit 2 (Ivanka Trump (@IvankaTrump), Instagram (July 14, 2020)) and <https://bit.ly/2Zz3Fuy>.

¹⁵ Donald Trump (@realdonaldtrump), Instagram (July 10, 2020), <https://bit.ly/32nHR71>. President Trump is not covered by the standards of conduct, but both OGE and the Justice Department have advised presidents to act as though the rules applied. 5 C.F.R. § 2635.102(k); Office of Gov't Ethics, *Letter to a Deputy DAEO*, OGE 83 x 6, (1983), <https://bit.ly/3jhDNeT>; Memorandum to Howard Lazarus, Associate Counsel to the President, from Antonin Scalia, Assistant Attorney General, Dec. 19, 1974, <https://bit.ly/2OxORpW>.

¹⁶ Donald Trump (@realdonaldtrump), Instagram (July 15, 2020), <https://bit.ly/2CLgXLx>.

account: “@GoyaFoods is doing GREAT. The Radical Left smear machine backfired, people are buying like crazy!”¹⁷

Goya Foods Controversy

Ms. Trump’s social media posts promoting Goya Foods and its product appears to be in response to a controversy involving the company CEO’s appearance at a White House event a few days earlier. On July 10, 2020, Goya Foods president and CEO, Bob Unanue, appeared at the White House to promote President Trump’s Hispanic Prosperity Initiative.¹⁸ In remarks made in the Rose Garden, Mr. Unanue stated that “We’re all truly blessed . . . to have a leader like President Trump, who is a builder.”¹⁹

Mr. Unanue’s statement in praise of President Trump prompted a boycott of Goya Foods, using Twitter hashtags “#Goyaway” and “#BoycottGoya,” by people who were reportedly upset that Mr. Unanue would “openly support a president who has vilified immigrants, especially those from Latin America, and whose harsh polices have targeted them.”²⁰ A counter protest then ensued on Twitter “among conservatives and Trump supporters” using the hashtag “#BuyGoya.”²¹

Potential Violations

White House employees are barred by the Standards of Conduct from using or permitting the use of their government positions or titles or any authority associated with their public offices to endorse any product, service or enterprise.²² The Standards of Conduct also require that employees avoid using their titles or positions in any manner that would create an appearance that the government sanctions or endorses their activities or those of another.²³

In evaluating whether a reference to an employee’s official title or position on social media would violate ethics regulations, OGE states that ethics officials “must consider the totality of the circumstances to determine whether a reasonable person with knowledge of the relevant facts would conclude that the government sanctions or endorses the communication.”²⁴ OGE lists several relevant factors for agency ethics officials to consider in making the determination, including:

- Whether the employee states that he or she is acting on behalf of the government;

¹⁷ Donald Trump (@realDonaldTrump), Twitter (July 15, 2020, 7:57 AM), <https://bit.ly/3jcn1gP>.

¹⁸ Derrick Bryson Taylor, Goya Foods Boycott Takes Off After Its President Praises Trump, *New York Times*, July 10, 2020, <https://nyti.ms/2Oypap4>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² 5 C.F.R. § 100.1; 5 C.F.R. § 2635.702(c).

²³ 5 C.F.R. § 2635.702.

²⁴ Office of Gov’t Ethics, *The Standards of Conduct as Applied to Personal Social Media Use*, LA-15-03 (Apr. 9, 2015), <https://bit.ly/3h5yL2V>.

- Whether the employee refers to his or her connection to the government as support for the employee's statements;
- Whether the employee prominently features his or her agency's name, seal, uniform or similar items on the employee's social media account or in connection with specific social media activities;
- Whether the employee refers to his or her government employment, title, or position in areas other than those designated for biographical information;
- Whether the employee holds a highly visible position in the Government, such as a senior or political position, or is authorized to speak for the Government as part of the employee's official duties;
- Whether other circumstances would lead a reasonable person to conclude that the government sanctions or endorses the employees' social media activities; or
- Whether other circumstances would lead a reasonable person to conclude that the government does not sanction or endorse the employees' social media activities.²⁵

Ms. Trump's use of her social media accounts satisfies many of these criteria. She holds one of the most highly visible positions in the government and, as both a top presidential advisor and the President's daughter, she is recognized as a member of President Trump's innermost circle. As one of the President's most senior advisors, Ms. Trump is authorized to speak for the administration as part of her official duties. She not only refers to her senior White House position in both her Twitter profile and her Instagram profile but frequently posts messages and images of her official work and the administration's activities on these accounts. She often links to the official website of the White House from her Twitter account, and the official Twitter accounts of the White House and the President of the United States likewise reference her official activities and link to her @IvankaTrump account.

In her social media posts, Ms. Trump endorsed Goya Foods products. The photograph showed Ms. Trump invitingly holding a can of the company's black beans, and she included Goya Foods' trademarked slogan in the posts. Further, since Ms. Trump's tweet was released just a few days after the company's president was featured in the Rose Garden, the circumstances would lead any reasonable person to conclude her Goya Foods posts represented an official government endorsement intended to counteract the negative effect of any boycott. In particular, when viewed in the context of President Trump's own contemporaneous social media messages about the company, any argument to the contrary would be disingenuous. As a result, Ms. Trump appears to have clearly violated the Standards of Conduct barring her from using her government position, title or any authority associated with her public office to endorse any product, service, or enterprise.²⁶

²⁵ *Id.*

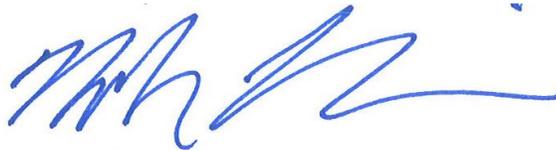
²⁶ Although OGE asserts that a clear and conspicuous disclaimer would usually be sufficient to dispel any confusion that arises, the totality of the circumstances in the present case and the ensuing publicity that resulted from her promotion of the company and its products override any intended effect to the contrary. *See* OGE Legal Advisory, LA-15-03, Apr. 9, 2015. The generalized statement in the biographical section regarding the nature of Ms. Trump's account ("Personal Pg. Views are my own") is entirely inadequate to dispel the appearance that she is speaking on behalf of the administration with respect to this particular tweet – particularly given that the content of her account, which focuses largely on her official duties and the administration's activities. Adopting a blanket rule that merely

Conclusion

Ms. Trump has been the subject of prior ethics complaints, including a criminal complaint to the Department of Justice for an apparent violation of the conflict of interest statute arising from her participation in the Trump administration's implementation of the Opportunity Zones program while her husband held a financial interest imputed to her in an entity benefiting from that program, Cadre.²⁷ Ms. Trump also has been the subject of a Hatch Act complaint for using her @IvankaTrump account to post political messages including President Trump's campaign slogan "Make America Great Again."²⁸

As a public servant, Ms. Trump is expected to adhere to the highest standards of ethical conduct. As a top member of the administration who wields considerable influence, she should not be held to a lower standard than other government officials. Yet, by using social media accounts to promote Goya Foods and its products, she appears to have violated ethics regulations barring her from misusing her official government position, title, and authority to endorse a private enterprise and its products. Like all government officials, Ms. Trump must be held accountable for her apparent violations of the Standards of Conduct.

Sincerely,



Noah Bookbinder
Executive Director



Virginia Canter
Chief Ethics Counsel

cc: Chairwoman Carolyn B. Maloney
House Committee on Oversight and Reform

stating that a social media page is "personal" is a "get out of jail free" card for any misuse of position would betray the language and spirit of the misuse of position regulation.

²⁷ Letter to Deputy Attorney General Rod J. Rosenstein from Noah Bookbinder, Executive Director, Citizens for Responsibility and Ethics in Washington, Jan. 4, 2019, <https://bit.ly/30hZBhF>.

²⁸ Letter to Special Counsel Henry Kerner from Noah Bookbinder, Executive Director, Citizens for Responsibility and Ethics in Washington, June 20, 2019, <https://bit.ly/2CA4tGG>.

Exhibit 1

← Tweet



Ivanka Trump 
@IvankaTrump



If it's Goya, it has to be good.
Si es Goya, tiene que ser bueno.



10:05 PM · Jul 14, 2020 · [Twitter for iPhone](#)

60K Retweets and comments 123.3K Likes

Exhibit 2



ivankatrump • Follow



ivankatrump If it's Goya, it has to be good.
Si es Goya, tiene que ser bueno.

1d



mbschott This is encouraging!
Girlfriend knows she will need a new job soon because her BS White House gig is just about over 🙌

6m Reply



emilykatherine__

5m Reply



401,044 likes

1 DAY AGO

Log in to like or comment.

Exhibit 3

The White House Retweeted



Ivanka Trump ✓
@IvankaTrump

Today in partnership w the @AdCouncil, @Apple, @IBM & private sector leaders our #PledgetoAmericasWorkers launched a robust ad campaign+website to connect all Americans to NEW pathways & jobs!

Never been a more critical time to explore new opportunities ↘

[FindSomethingNew.org](https://www.findsomethingnew.org)



4:36 PM · Jul 14, 2020 · [Twitter for iPhone](#)

3.4K Retweets and comments **12.2K** Likes

