



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

May 24, 2022

**Via E-mail**

Brian Spahn  
Godfrey & Kahn, S.C.  
833 East Michigan St., Suite 1800  
Milwaukee, WI 53202-5615  
[REDACTED]

Re: Obligation of Birdsall Voss & Associates to Register under the Foreign Agents Registration Act

Dear Mr. Spahn:

Based upon information reviewed by this office, we have determined that Birdsall Voss & Associates, Inc., dba BVK (“BVK”) is obligated to register under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). BVK’s obligation arises from its engaging in political activities and acting as a public relations counsel, publicity agent, and information-service employee within the United States for the Dominican Republic’s Ministry of Tourism (“DRMT”) a foreign principal under the Act.

**I. Background**

On April 13, 2022, the FARA Unit sent a letter to BVK seeking information and documents to assist it in determining whether BVK had an obligation to register under FARA for activity undertaken on behalf of DRMT. BVK responded to our inquiry, first with a telephone call on April 27, 2022, and later, on May 5, 2022, with a production of information, received by the FARA Unit on May 12, 2022, that included contracts between BVK and DRMT (“May 5 Letter”).<sup>1</sup>

According to the May 5 Letter, BVK initially entered into a three-year Advertising & Marketing Services Contract with DRMT on March 2, 2005, to provide “strategic planning services, advertising, branding, and marketing efforts aimed at promoting tourism to the Dominican Republic.”<sup>2</sup> That contract was renewed annually until August 2020, when BVK was informed that DRMT did not intend to renew the contract. Following negotiations, BVK and DRMT entered into a wind-down contract in which the services that BVK was providing would

<sup>1</sup> Letter from Brian Spahn, Godfrey & Kahn, S.C., to [REDACTED] (May 5, 2022). Copies of contracts and agreements with DRMT and its predecessor agency, the State Secretary of Tourism, were provided to the FARA Unit in hard copy bearing Bates numbers BVK000001– 000108.

<sup>2</sup> *Id.*, BVK000022-000030.

be transitioned back to DRMT at the March 31, 2021, conclusion of the contract.<sup>3</sup> BVK is no longer engaged with DRMT.

During the period of time during which BVK was under contract to provide services to DRMT, the services provided by BVK included creation of advertising ideas and formulation of plans, strategies, advertising campaigns; writing advertising material and text for music; design, illustration, and artistic preparation of advertising; executing the advertising in finished form and hiring corresponding local and international media for its placement; advising on preparation of presentations; and providing media, creative, and public relations service generally.<sup>4</sup>

## **II. Foreign Agents Registration Act**

FARA requires agents of foreign principals engaged in specified activities to register with the Department of Justice and to provide certain disclosures. *See* 22 U.S.C. §§ 611(c) and 612. The purpose of FARA is to inform the American public of the activities of agents working for foreign principals to influence U.S. Government officials or the American public about the domestic or foreign policies of the United States, or about the political or public interests, policies, or relations of a foreign country or a foreign political party.

The term “foreign principal” includes a “government of a foreign country,” “a foreign political party,” and “a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.” 22 U.S.C. § 611(b).

The specified activities of a foreign agent that require registration and disclosure are defined by statute and regulation. As relevant here, an “agent of a foreign principal” is defined as “any person who acts as an agent . . . or . . . in any other capacity at the order, request, or under the direction or control” of a “foreign principal” and “who directly or through any other person engages within the United States in political activities for or in the interests of such foreign principal” or who “acts within the United States as a . . . public relations counsel, publicity agent, [or] information-service employee . . . for or in the interests of such foreign principal.” 22 U.S.C. § 611(c)(1)(i), (ii).

The terms “political activities,” “public relations counsel,” “publicity agent,” and “information-service employee,” are further defined by statute. First, FARA defines “political activities” as:

any activity that the person engaging in believes will or *that the person intends to in any way influence* any agency or official of the Government of the United States or *any section of the public within the United States* with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies of a

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<sup>3</sup> BVK000015-00021.

<sup>4</sup> *See e.g., id.*, BVK000097-105 (contract for calendar year 2018).

government of a foreign country or a foreign political party.

22 U.S.C. § 611(o) (emphasis added). Second, FARA defines “public relations counsel” to include “any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal.” 22 U.S.C. § 611(g). Third, FARA defines a “publicity agent” to include “any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of . . . broadcasts, motion pictures, or otherwise.” 22 U.S.C. § 611(h). And, fourth, an “information-service employee” is defined to include any person “who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions or any country other than the United States or of any government of a foreign country or of a foreign political party . . . .” 22 U.S.C. § 611(i).

### **III. Basis for BVK to Register Under FARA**

Determining whether a party is an “agent of a foreign principal” required to register under FARA is a two-part inquiry that considers both the *relationship* between the agent and the foreign principal and the *activities* the agent performs in the principal’s interests. 22 U.S.C. § 611(c).

#### *A. DRMT Is a Foreign Principal Under FARA*

DRMT (formerly the Secretary of State for Tourism) is an institution of the Government of the Dominican Republic. Thus, it falls within the definition of a foreign principal under FARA which defines “foreign principal” to include “a government of a foreign country.” 22 U.S.C. § 611(b)(2).

#### *B. BVK is an Agent of DRMT*

Agency under the FARA occurs when a person acts, *inter alia*, “at the order, request, or under the direction or control of a foreign principal.” 22 U.S.C. § 611(c)(1). FARA’s implementing regulations further define “control” to include “the possession or exercise of the power, directly or indirectly, to determine the policies or the activities of a person, whether through the ownership of voting rights, by *contract*, or otherwise.” 28 C.F.R. § 5.100(b) (emphasis added.). The information presented in your submission indicates that BVK entered into a series of contracts with DRMT to perform covered activities on behalf of DRMT.

Although you have stated in your submission that BVK’s work for DRMT did not promote the political interests of the Dominican Republic or any other government and that BVK’s activities were completely non-political, we must disagree with your assertions and inform you that BVK must register under FARA.

*C. BVK Engages in Political Activities and Acts as Public Relations Counsel, Publicity Agent, and Information-Service Employees for DRMT*

As noted above, FARA requires registration of parties whose activities are “for or in the interests of” foreign principals with whom there is an agency relationship and whose activities are “political or border on the political.”<sup>5</sup> The Act sets out categories of activities that if occurring in the United States and are engaged in “for or in the interests of a foreign principal,” trigger an obligation to register. 22 U.S.C. § 611(c)(1)(i-iv). To that end, the activities undertaken by BVK on behalf of and for the benefit of DRMT, a foreign principal, as noted above, constitute “political activities,” and “acting as a public relations counsel, publicity agent [and] information service employee.” *Id.* at § 611(c)(1)(i-ii). BVK, therefore, is an “agent of a foreign principal” who must register under FARA as set out below.

1. Political Activities

Agents, such as BVK, who engage in activities in support of foreign government tourism ministries are engaged in political activities in that the activities advance the public interests of a foreign government through attempts to influence members of the U.S. public to spend their tourism dollars in the foreign country.<sup>6</sup> The FARA Unit has been consistent in requiring registration of entities engaged in tourism promotion for foreign government travel entities.<sup>7</sup> BVK’s activities in support of various foreign government tourism bureaus are specifically designed to “influence . . . [the] public within the United States . . . with reference to the . . . public interest of a foreign country.” 22 U.S.C. § 611(o).

2. Public Relations Counsel

BVK’s activities within the United States clearly establish that it is acting as public relations counsel on behalf of DRMT. FARA defines “public relations counsel” to include

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<sup>5</sup> As noted in the legislative history of the 1966 amendment to the Act, the intent of FARA (and the 1966 amendments) is “to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political.” S. Rep. No. 89-143 at 1 (1965); H.R. Rep. No. 89-1470 at 2 (1966).

<sup>6</sup> This principle has been consistently applied by the FARA Unit in its advisory opinions. *See* Adv. Op., Jan. 20, 1984 (“Tourism on behalf of [foreign government] . . . cannot be construed as private and nonpolitical activities. On the contrary, tourism creates an influx of capital and a host of jobs for the indigenous population, both of which are obviously in the political and public interests of [foreign country].”), *available at*, <https://www.justice.gov/nsd-fara/page/file/1046156/download>. *See also*, Adv. Op., July 19, 1988, (“promoting economic investments in the [foreign local jurisdiction] is considered ‘political activity’ as that term is defined in Section 1(o) of the Act.”), *available at* <https://www.justice.gov/nsd-fara/page/file/1046161/download>; Adv. Op., Oct. 27, 2021 (“[the registrants activities] . . . promote the advantages of tourism to [redacted] and . . . attempt to influence American tourists to travel to the region.” *Available at* <https://www.justice.gov/nsd-fara/page/file/1469971/download>).

<sup>7</sup> *See e.g.*, MMGY Global, LLC, Reg. No. 6492 (7 foreign principals); Myriad International Marketing, LLC, Reg. No. 6549 (18 foreign principals). One current registrant, Switzerland Tourism, Reg. No. 55, has been continuously registered since March 1, 1942. [https://efile.fara.gov/ords/fara/f?p=1381:200:13649208383959:::RP,200:P200\\_REG\\_NUMBER:55](https://efile.fara.gov/ords/fara/f?p=1381:200:13649208383959:::RP,200:P200_REG_NUMBER:55).

“any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter *pertaining to the political or public interests, policies, or relations* of such principal.” 22 U.S.C. § 611(g) (emphasis added). As described above, BVK has entered into contracts with DRMT to provide public relations services promoting tourism to the Dominican Republic. As noted above, such public relations services promoting tourism are also considered political activities under the Act, requiring registration.<sup>8</sup>

### 3. Publicity Agent

BVK also acts within the United States as a “publicity agent” for DRMT. A “publicity agent,” under FARA, includes “any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information of any kind, including publication by means of . . . broadcasts, motion pictures or otherwise.” 22 U.S.C. § 611(h). As described in the materials provided with your correspondence, BVK directly and indirectly participates in the publication and/or dissemination of advertising in the form of music, designed illustrations, and multimedia products in the United States on for and on behalf of DRMT, and by engaging with media and social media outlets to disseminate promotional materials in support of tourism to the Dominican Republic.

### 4. Information-Service Employee

Similarly, BVK’s activities within the United States establish that it is also operating as an information-service employee on behalf of DRMT. FARA defines “information-service employee” to include “any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts or conditions of any country other than the United States or of any government of a foreign country.” 22 U.S.C. § 611(i). As detailed in BVK’s contracts with DRMT, BVK has agreed to provide services disseminating advertising, developing, and pitching promotional campaigns, disseminating advertising to U.S. media and online platforms, and creating and obtaining social media exposure within the United States. All of this outreach promotes the purported benefits of travel to the Dominican Republic. As such, acting as an information-service employee in the context of promoting tourism on behalf of DRMT would also be considered political activity under the Act, requiring registration.<sup>9</sup>

## IV. Conclusion

For the reasons stated above, Birdsall Voss & Associates, Inc. is obligated to register under FARA as an agent of the Dominican Republic’s Ministry of Tourism as discussed in this letter, having engaged in the specified activities under the statute described above.

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<sup>8</sup> See *supra*, n.6 and accompanying text.

<sup>9</sup> *Id.*

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Registration would not require BVK to alter the activities in which it currently engages. Indeed, if registered as required, BVK would be free to continue to provide advertising and related services to any entity, including foreign principals, if it so chooses, unless otherwise prohibited by law. Registration would simply allow the public to be fully informed regarding any foreign beneficiary behind BVK's activities.<sup>10</sup>

Please effect BVK's registration within thirty (30) days of the date of this letter. Useful information and forms needed for registration may be found on our website at <https://www.justice.gov/nsd-fara>. If you have any questions regarding registration, or have additional information to provide, please contact this office at (202) 233-0776, or send an e-mail to [FARA.Public@usdoj.gov](mailto:FARA.Public@usdoj.gov).

Sincerely,

*Jennifer K. Gellie*

Jennifer Kennedy Gellie  
Chief, FARA Unit

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<sup>10</sup> It should be noted that if BVK, in the future, provides services similar to those discussed in this letter for or in the interest of a foreign government principal, it could be obligated to register under FARA. 22 U.S.C. §§ 611(c) and 612.