

# Initial Investigation of Brand USA and the Department of Commerce's Oversight

Documents Reveal a History of Waste, Abuse,  
Patronage, and Lax Oversight.

October 4, 2012

Senators Jim DeMint and Tom Coburn



Brand USA is a corporation created by Congress in the Travel Promotion Act of 2009 to promote the United States abroad and encourage foreign visitors to travel to the United States. Documents released in response to an investigation initiated<sup>1</sup> by Senators Jim DeMint, Rand Paul, Mike Lee, Charles Grassley, Tom Coburn and Jeff Sessions reveal a history of questionable expenditures, lavish spending, inappropriate lobbying activity and corporate cronyism at the corporation. Even though the Department of Commerce and Brand USA have provided only a small cross-section of the documents requested, those documents paint a distressing picture. The following report, the first findings in an ongoing investigation, examines the concerns raised by the limited information provided by the corporation and the Department.

## **Background**

“Brand USA was established by the Travel Promotion Act in 2010 to spearhead the nation's first global marketing effort to promote the United States as a premier travel destination and communicate U.S. entry/exit policies and procedures.”<sup>2</sup> The program is funded through a combination of private support and public support. Under the Act, a \$10 travel promotion fee is assessed on travelers visiting the United States from countries who participate in the Visa Waiver Program. Those funds are collected and deposited in a special fund in the United States Treasury.

The Corporation for Travel Promotion, now known as Brand USA, can draw from this fund if it receives matching donations from the private sector. In 2012 Brand USA receives two dollars from the Treasury for every private dollar it collects and one dollar from the Treasury for every private dollar in subsequent years. The legislation allows for only 20% of the donations received be in the form of cash - the remainder can be in in-kind donations.

Under the federal matching scheme, Brand USA Board Members spend money to make money. For every dollar a Brand USA Board Member spends and donates this year the Treasury releases two dollars.

This reports highlights serious concerns about how the corporation is spending its federal matching funds and how the corporation is abuses the matching fund process to secure unjustified federal funds.

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<sup>1</sup> [http://www.demint.senate.gov/public/index.cfm?p=JimsBlog&ContentRecord\\_id=f8535d1d-6736-4f93-a5eb-57461d73c5ee](http://www.demint.senate.gov/public/index.cfm?p=JimsBlog&ContentRecord_id=f8535d1d-6736-4f93-a5eb-57461d73c5ee)

<sup>2</sup> <http://www.thebrandusa.com/faqs/>

## Wasteful Spending In London

As part of the roll-out of “Brand USA” (formerly known as the Corporation for Travel Promotion), the corporation threw a lavish “celebratory party ... at the National Maritime Museum [in London] with 560 VIP guests.”<sup>3</sup>

Exactly how much this lavish event costs remains unclear because Brand USA has refused to respond fully to Congressional inquiries. Specifically Brand USA did not provide “[a]ll documents associated with the production of the Launch Party held at the British National Maritime Museum, including all costs associated with the event, menus, transportation, swag given to guests, invoices from contractors, and museum rental charges.”<sup>4 5</sup>

VIP Celebration of the Brand USA Launch at WTM 2011

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Documents obtained from the Department of Commerce though do start to shed some light on the costs of this event. Correspondence between Brand USA and its contractor in London indicate that Black Diamond Films, a British company, “donated” \$215,106 in services to Brand USA which was “over and above the hours allocated within the \$50,000 fee.”<sup>6</sup> This spending is all before the first petit fours were bought, any of the 38 waiters, 18 chefs, or 9 porters<sup>7</sup> were hired, a single glass of champagne was filled, and before the hall was rented. The room alone lists for £9000 + VAT or roughly \$17,000.<sup>8</sup> If Brand USA is cooperative in providing the documents requested by the Senators taxpayers may be able to get a more accurate accounting of this lavish event.

## Plum Appointments to Major Donors

The Congressional report associated with the bill states, “No political test or qualification shall be used in personnel actions with respect to officers or employees of the Corporation.”<sup>9</sup>

<sup>3</sup> [http://www.blackdiamond.co.uk/index.php?option=com\\_content&view=article&id=5&Itemid=6](http://www.blackdiamond.co.uk/index.php?option=com_content&view=article&id=5&Itemid=6)

<sup>4</sup> [http://www.demint.senate.gov/public/index.cfm?p=JimsBlog&ContentRecord\\_id=f8535d1d-6736-4f93-a5eb-57461d73c5ee](http://www.demint.senate.gov/public/index.cfm?p=JimsBlog&ContentRecord_id=f8535d1d-6736-4f93-a5eb-57461d73c5ee)

<sup>5</sup> <https://www.facebook.com/video/video.php?v=2210089064112>

<sup>6</sup> [http://www.demint.senate.gov/public/?a=Files.Serve&File\\_id=0d41309e-baeb-4e42-8548-c2a3aa28ff64](http://www.demint.senate.gov/public/?a=Files.Serve&File_id=0d41309e-baeb-4e42-8548-c2a3aa28ff64)

<sup>7</sup> <http://www.scribd.com/doc/98899761/Brand-USA-VIP-World-Market-London-2011-Details#page=4>

<sup>8</sup> <http://www.rmg.co.uk/business-and-hire/venue-hire/corporate-evening-events/national-maritime-museum-evening-hire>

<sup>9</sup> <http://thomas.loc.gov/cgi-bin/cpquery/T?&report=sr025&dbname=111&>

Yet the *Washington Free Beacon* reported in the article “The Cronyism Board Tourism Board Stacked with Obama Cronies” that numerous members of the Board of Directors of Brand USA were heavy contributors to President Obama and Democratic campaigns.<sup>10</sup>

[Brand USA] is governed by an 11-member board. John Connor, director of the Office of White House Liaison at the United States Department of Commerce, appointed the board members. He led Obama’s LGBT outreach efforts in the northeastern U.S. during the 2008 presidential campaign.

All of the board members Connor has appointed have donated to Democrats and Democratic organizations almost exclusively, if they have donated at all.

Brand USA board chairman Stephen Cloobek is the CEO of the Las Vegas-based Diamond Resorts. Cloobek donated at least \$490,045 in political contributions since 2007, with only \$9,700 going to Republicans. In 2011, Cloobek gave \$100,000 through one of his companies to the Majority PAC, which is run by operatives tied to Senate Majority Leader Harry Reid, according to the *Las Vegas Sun*.

Documents show that many members of the Board of Directors of Brand USA are also significant cash contributors to the corporation. Of the eleven members of the board, eight have made cash contributions to the corporation.<sup>11</sup>

Stephen J. Cloobek - Chairman	Diamond Resorts International	\$250,000
Caroline Beteta - Vice Chair	Visit California	\$250,000
George Fertitta - Vice Chair	NYC & Company	\$100,000
Randy A. Garfield	Disney Destinations	\$1,000,000
Tom Klein	Sabre Holdings	\$125,000
David Lim	Amtrak	\$10,000
Roy Yamaguchi	Roy's Restaurant	\$10,000
Lynda S Zengerle	Steptoe & Johnson LLP	\$5,000

### **Expensive In-Kind Donations from Board Members**

A June 5, 2012 article in *Travel Weekly* titled, “Brand USA striving to qualify for federal matching funds” highlighted the grave fundraising situation Brand USA faces.<sup>12</sup>

As Brand USA continues its fundraising efforts, the country’s new national tourism campaign still needs to find \$20 million in in-kind investments by Sept. 30 to qualify for up to \$100 million in matching federal funding.

Charges for submitted in-kind donations range from pricey first class plane fare, bloated taxi fares, luxurious hotel rooms, compensation for articles run in newspapers (earned

<sup>10</sup> <http://freebeacon.com/the-cronyism-board/>

<sup>11</sup> [http://www.demint.senate.gov/public/?a=Files.Serve&File\\_id=fbb4ef01-f928-428d-859a-18da2dca5c50](http://www.demint.senate.gov/public/?a=Files.Serve&File_id=fbb4ef01-f928-428d-859a-18da2dca5c50)

<sup>12</sup> <http://www.travelweekly.com/Travel-News/Government/Brand-USA-striving-to-qualify-for-federal-matching-funds/>

media), and pricey private car services. Further, Brand USA is counting time spent by their volunteer board members as a donation to the Corporation at a rate of \$258 per hour.

The October 1, 2012 deadline (when “donations” to Brand USA lose half their value) has created an urgency at Brand USA that has led to numerous questionable donations and called into question whether Brand USA can meet the requirements of The Travel Promotion Act to “justif[y] for its use within the context of the Corporation’s mission”<sup>13</sup> all in-kind contributions.

### *Amtrak Takes the Board Out to the Ballgame*

After donating \$10,000 in cash to Brand USA, Amtrak followed up with train tickets, corporate information technology support, and luxury baseball seats. Amtrak is quick to note that its contributions come from the non-federal sources (tickets and other revenue) but money is fungible (it’s hard to divorce ticket revenue on Amtrak trains from federal funded capital outlays for Amtrak trains) and the federal taxpayer provides \$1.5 billion annually to the corporation. Through its contributions to Brand USA Amtrak is essentially providing more federal money to Brand USA.

The most troubling contribution that Amtrak has made to Brand USA is the \$6,180.98 they donated for 22 tickets to the Washington Nationals baseball game in August of 2011.<sup>14</sup> These tickets were for seats in the “Lincoln Suite.” According to Forbes.com, “[t]he Lincoln Suites, starting at \$300,000 per year, include access to the private Stars and Stripes membership club, a private entrance off the main concourse, and inside the suite, marble countertops with an induction heating range to keep catered food warm.”<sup>15</sup>



Brand USA does not explain how a night at the National Baseball game furthers Brand USA’s mission to, “to encourage increased international visitation to the United States and to grow America’s share of the global travel market.”<sup>16</sup> They only state that the box was

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<sup>13</sup> Section (c)(3)(C) PL 111-145 <http://www.gpo.gov/fdsys/pkg/PLAW-111publ145/pdf/PLAW-111publ145.pdf>

<sup>14</sup> [http://www.demint.senate.gov/public/?a=Files.Serve&File\\_id=b935c4b6-c0f1-4a92-ba8d-bd9b5b2cea96](http://www.demint.senate.gov/public/?a=Files.Serve&File_id=b935c4b6-c0f1-4a92-ba8d-bd9b5b2cea96)

<sup>15</sup> [http://www.forbes.com/2008/03/24/suites-sport-luxury-forbeslife-cx\\_ls\\_0325sports.html](http://www.forbes.com/2008/03/24/suites-sport-luxury-forbeslife-cx_ls_0325sports.html)

<sup>16</sup> <http://www.thebrandusa.com/our-mission/>

“donated for client engagement and partnership/industry outreach.”<sup>17</sup> The Department of Commerce does not explain why it approved the donation of baseball tickets as an acceptable in-kind donation to unlock federal matching funds.

### *Earned Media*

One of the most outrageous examples of an attempt to collect matching funds was Brand USA’s effort to collect millions of dollars in federal funds for the value of newspaper articles and television interviews, claiming that the “earned media” was a donation to the corporation and should be counted as having value for the purpose of matching funds.



In November of 2011 Brand USA requested matching funds for various newspaper articles and online news stories with what they said was a donated value of \$429,421.<sup>18</sup> In what looks like double dipping, Chair of the Brand USA Board also “donated” his time speaking to the reporters who wrote those stories for five hours totaling \$1290 in additional donations to the Corporation.

In a submission in February of 2012, Brand USA attempted to submit a two and one half minute interview with Travel Channel International as having an in-kind donation value of \$4.9 million and an interview with Eurosport as having a value of \$272,172. Brand USA was using these submissions to request over \$10 million in federal funds.<sup>19</sup>

The Department of Commerce approved the November matching funds request, but then subsequently rejected the February request. Brand USA then refunded the funding from the November request when they realized that items like a short blurb on *Fox News* or a mention in the *Las Vegas Sun* was not a donation to the corporation and was therefore ineligible for matching funds.<sup>20</sup>

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<sup>17</sup> <http://www.thebrandusa.com/files/pdf/2011AnnualReport.pdf>

<sup>18</sup> [http://www.demint.senate.gov/public/?a=Files.Serve&File\\_id=07111e54-143a-4b3f-9a09-11b1a3eab466](http://www.demint.senate.gov/public/?a=Files.Serve&File_id=07111e54-143a-4b3f-9a09-11b1a3eab466)

<sup>19</sup> [http://www.demint.senate.gov/public/?a=Files.Serve&File\\_id=09947272-3a72-430c-9f84-625f2f691628](http://www.demint.senate.gov/public/?a=Files.Serve&File_id=09947272-3a72-430c-9f84-625f2f691628)

<sup>20</sup> [http://www.demint.senate.gov/public/?a=Files.Serve&File\\_id=dc0c42a8-f4bb-491a-90e2-5de6747f12a3](http://www.demint.senate.gov/public/?a=Files.Serve&File_id=dc0c42a8-f4bb-491a-90e2-5de6747f12a3)

### *Board Members Counting Luxury Expenses As In-Kind Donations*

Brand USA has submitted first class air travel and luxury hotel accommodations for its Board Members as in-kind donations for the purpose of federal matching funds.<sup>21</sup> It seems no expense was too small or too large to donate to Brand USA. Again, no explanation is provided why the federal government should treat these extravagant expenses as an appropriate expense for a public-private partnership.

#### Randy Garfield – Disney Destinations

November 5, 2011	British Airways Flight Orlando to London	\$6799.30
November 6, 2011	Bellman Gratiuity – Park Plaza Westminster Bridge	\$3.20
November 6, 2011	Doorman Gratiuity – Park Plaza Westminster Bridge	\$1.60
November 9, 2011	Virgin Airways Flight London to Orlando	\$3238.30
November 8 – 11, 2011	4 Nights at the Park Plaza Westminster @ 412.41 per night	\$649.64
November 9, 2011	A snack	\$14

The total cost of round trip airfare from Orlando to London was \$10,037.60 even though the current roundtrip direct flight on British Airways from Orlando to London lists at \$1951.92.

#### Tom Klein – Sabre Holdings

October 4, 2011	Dinner Room Service	\$70.30
October 5, 2011	Hire car, 3 hour 45 min as transfer from hotel to meeting locations and return	\$379.14
November 5, 2011	Hotel Lobby Charge – Bottled Water	\$4.77
November 10, 2011	Taxi Fare from Union Station to Capitol Hilton	\$94.87
November 11, 2011	Taxi Fare from CTP to DCA	\$94.87
November 11, 2011	Hotel Room at Capitol Hilton	\$365.26

The distance from Union Station to the Capitol Hilton is 2.1 miles, and the fare is \$13 with a 15% gratuity.<sup>22</sup> The distance from the Corporation for Travel Promotion to Reagan National Airport is 5.5 miles, and taxi fare is \$24 with a 15% gratuity.<sup>23</sup> The General

<sup>21</sup> [http://www.demint.senate.gov/public/?a=Files.Serve&File\\_id=f567572d-f942-4f12-8fbe-cd9ce939af28](http://www.demint.senate.gov/public/?a=Files.Serve&File_id=f567572d-f942-4f12-8fbe-cd9ce939af28)

<sup>22</sup> <http://www.taxifarefinder.com/main.php?city=Washington-DC&from=Union+Station+Metro+Station%2C+Washington%2C+DC&to=1001+16th+Street+Northwest%2C+Washington+D.C.%2C+DC+20005>

<sup>23</sup> <http://www.taxifarefinder.com/main.php?city=Washington-DC&from=1330+Connecticut+Avenue+Northwest%2C+Washington%2C+DC&to=DCA%2C+Arlington%2C+VA>

Services Administration permits a maximum *per diem* for lodging in Washington D.C. of \$183.00.<sup>24</sup>

The Department of Commerce thought providing reimbursement for first class tickets was unacceptable and “adjusted travel allowable claims to a business and coach class cost posted on the web a (\$10,725.78) difference. They approved the remainder of the requests.”<sup>25</sup>

### *Questionable Donations of Board Members Time to the Corporation*

While the Brand USA Board was envisioned as a board of individuals volunteering their time, members of the Board were also quick to submit the time they spend working on Brand USA issues to the Department of Commerce to unlock matching funds. Brand USA has submitted and the Department of Commerce has approved \$208,456 (billed at a rate of \$258/hour) in Board member time spent on Brand USA activities.<sup>26</sup>

The donations of the Chairman of the Board of Brand USA raise concerns.<sup>27</sup>

Stephen Cloobek

June 9, 2011	Meeting with Senator Klobuchar	\$258
June 9, 2011	Meeting with Senator Reid to Introduce Jim Evans	\$258
May 1 - 4, 2011	Milken Global Conference	\$4128

While at the Milken conference Mr. Cloobek served on a panel entitled, “Dear Washington, Please Make Government Work Again. Sincerely, America.” He made some interesting observations.

“I’m worried about the bureaucrats. I’m worried about the people who go politician to politician who are there for their life. And you can’t fire ‘em. You can dock ‘em in pay, but you can’t fire ‘em. What is wrong with our government? Get rid of half the bureaucrats. Get rid of the folks who can’t say “yes,” because if they do they may get fired. ... These folks are full of \*\*\*\*. They don’t understand how to run a business.”<sup>28</sup>

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Cloobek: “Anthony, I know you went to school with him, the President. But it’s really simple, who’s more likeable - Romney or the President.”

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<sup>24</sup> <http://www.gsa.gov/portal/category/100120>

<sup>25</sup> [http://www.demint.senate.gov/public/?a=Files.Serve&File\\_id=4106cb5f-cc88-4b6a-89f9-1da16f6beca9](http://www.demint.senate.gov/public/?a=Files.Serve&File_id=4106cb5f-cc88-4b6a-89f9-1da16f6beca9)

<sup>26</sup> [http://www.demint.senate.gov/public/?a=Files.Serve&File\\_id=64a6e3be-ccbb-4be8-8791-f420575c262a](http://www.demint.senate.gov/public/?a=Files.Serve&File_id=64a6e3be-ccbb-4be8-8791-f420575c262a)

<sup>27</sup> [http://www.demint.senate.gov/public/?a=Files.Serve&File\\_id=3101f670-ba66-4c1a-b4b6-eb83e7991a34](http://www.demint.senate.gov/public/?a=Files.Serve&File_id=3101f670-ba66-4c1a-b4b6-eb83e7991a34)

<sup>28</sup> <http://youtu.be/V28RtPsvqA?t=7m42s>

Panel member: “The President.”

Cloobek: “That’s ok. He’s the next President.”

Panel Member, “I think there’s more to it than that.”

Cloobek: “I really don’t. I don’t think today people make decisions that are so cerebral when they go to that box.”<sup>29</sup>

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“And you’re telling me people aren’t just – what I said – likeability. The voters are idiots.”<sup>30</sup>

Mr. Cloobek’s comments on this panel do not further Brand USA’s mission “to encourage increased international visitation to the United States and to grow America's share of the global travel market.”

### **Coordinating Lobbying Activities Despite Clear Language From Congress Opposing Lobbying at Brand USA**

The Travel Promotion Act states, “It is the sense of Congress that the Corporation should not engage in lobbying activities.”<sup>31</sup> Acting CEO Caroline Beteta in her response to the Senators request for documents stated, “We strive in all instances to ensure prudent and optimal use of federal and partner funds and to **abide by the letter and the spirit** of the Travel Promotion Act.”<sup>32</sup> [emphasis added] Unfortunately according to documents obtained from the Department of Commerce, Brand USA worked closely with a registered lobbyist, Dan Addison,<sup>33</sup> at Patton Boggs to discuss lobbying.

Documents obtained by the Senators detail numerous occasions when in violation of the clear language of the act creating the corporation, Brand USA and its attorneys spent time and money formulating a strategy on how to lobby Congress. The documents disclosed by the Department of Commerce, detail at least \$8348.75 in legal fees paid by Brand USA for formulating a lobbying strategy.<sup>34</sup> That amount does not include the salaries of Brand USA’s legal staff who were discussing the proposed strategy.

Compounding the problem, these documents were included in an application for federal matching funds submitted to the Department of Commerce. In spite of the clear direction for Congress against lobbying the Department approved Patton Boggs donation of work on lobbying. Additionally there is no indication that the Department undertook any effort to

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<sup>29</sup> <http://youtu.be/V28RtPsvqA?t=28m30s>

<sup>30</sup> <http://youtu.be/V28RtPsvqA?t=34m20s>

<sup>31</sup> <http://www.gpo.gov/fdsys/pkg/PLAW-111publ145/pdf/PLAW-111publ145.pdf>

<sup>32</sup> <http://www.scribd.com/doc/98899963/Brand-USA-reponse-to-request-for-information-from-Senator-Jim-DeMint>

<sup>33</sup> <http://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=0cb43783-49fb-413e-b44c-7a66f3eab9ca>

<sup>34</sup> [http://www.demint.senate.gov/public/?a=Files.Serve&File\\_id=57024db1-7759-4160-ad13-4a146ca8926b](http://www.demint.senate.gov/public/?a=Files.Serve&File_id=57024db1-7759-4160-ad13-4a146ca8926b)

address this clear violation of the intent of the legislation or question Brand USA on why they were discussing lobbying.

Brand USA paid Patton Boggs \$84,865.75 for their legal work and received an in kind donation of \$28,282.62 from the firm.

### **Using Chair Stephen Cloobek's Merger and Acquisition Firm to Do Brand USA Legal Work.**

According to records submitted to the Department of Commerce and obtained as part of the investigation, the Brand USA has spent \$292,318.54 on three different legal projects at Katten, Munchin, Rosenman, LLP. Depending on who is working on the project Brand USA is paying anywhere from \$190 an hour for paralegal work to \$800 an hour for attorney work.

Katten was not a complete unknown to Brand USA leadership before they started handling legal work for the corporation. Stephen Cloobek, the Chairman of the Board of Brand USA and President of Diamond Resorts, has been using Katten for merger and acquisition work at his company for years.<sup>35 36</sup> The attorney, Mr. Howard Lanznar, who is handling Diamond Resorts attempt to acquire another resort company, was cc'd on the letters providing Brand USA with over \$30,000 in pro bono work. Mr. Lanznar works out of the Chicago office of Katten while Mr. Schnitzer, who was the lead attorney on the Brand USA work, works out of the firm's Washington office.<sup>37</sup>

### **Conclusion**

The limited documents already obtained from the Department of Commerce and Brand USA paint a picture of mismanagement, waste, and cronyism. In order to ensure that federal funds are spent appropriately, the Senate will continue its investigation and looks forward to the full cooperation of the Department of Commerce and Brand USA.

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<sup>35</sup> [http://www.kattenlaw.com/files/Publication/514aa953-d1cb-47c4-940b-1c67b435c624/Presentation/PublicationAttachment/50ec0582-9820-40f3-92ba-ca41dbf75739/MAJ\\_v806\\_A%20Conversation%20with%20Katten\\_Emmerman\\_Lanznar.pdf](http://www.kattenlaw.com/files/Publication/514aa953-d1cb-47c4-940b-1c67b435c624/Presentation/PublicationAttachment/50ec0582-9820-40f3-92ba-ca41dbf75739/MAJ_v806_A%20Conversation%20with%20Katten_Emmerman_Lanznar.pdf)

<sup>36</sup> <http://www.sec.gov/Archives/edgar/data/1514601/000095012311060294/filename1.htm>

<sup>37</sup> [http://www.demint.senate.gov/public/?a=Files.Serve&File\\_id=04f05d0b-2e3a-4023-be47-16b024366bfd](http://www.demint.senate.gov/public/?a=Files.Serve&File_id=04f05d0b-2e3a-4023-be47-16b024366bfd)