



VIA FED EX DELIVERY

January 22, 2018

David J. Apol
Acting Director
Office of Government Ethics
Suite 500
1201 New York Avenue, N.W.
Washington, D.C. 20005

Re: Ivanka Trump's Use of Public Office for Private Gain in Violation of 5 C.F.R. § 2635.702

Dear Mr. Apol:

Ivanka Trump appears to be using her public role as a White House Advisor to promote the merchandise sold by her private business, the namesake fashion company from which she has refused to divest and continues to profit: IT Collection LLC ("IT Collection").¹ For the reasons set forth below, Democracy Forward Foundation requests that the Office of Government Ethics ("OGE") take action to stop the ongoing use of public office to accrue private profit to Ms. Trump's company and to Ms. Trump. These efforts should begin with an investigation into whether Ms. Trump has violated federal ethics rules prohibiting federal employees from using their public office for private gain, including whether Ms. Trump is coordinating directly with IT Collection or third party celebrity style publications that serve to connect consumers with featured products.

Factual Allegations

Concurrently with her public position, Ms. Trump maintains a personal lifestyle brand with an active social media presence. She currently has 6.3 million Facebook followers, 5.2 million Twitter followers, and 4.2 million Instagram followers. Ms. Trump promotes her official duties on these platforms. She describes herself on these accounts as an "advisor to POTUS,"

¹ See Jean Eaglesham and Lisa Schwartz, *How Ivanka Trump Is a Walking Billboard for Her Namesake Fashion Business*, Wall St. J. (Dec. 27, 2017), <https://www.wsj.com/articles/how-ivanka-trump-is-a-walking-billboard-for-her-namesake-fashion-business-1514389465>; Hilary Weaver, *Is Ivanka Trump a "Walking Billboard" for Her Own Clothing Brand?*, Vanity Fair, (Dec. 28, 2017), <https://www.vanityfair.com/style/2017/12/is-ivanka-trump-walking-billboard-for-own-clothing-brand>; Greg Price, *Ivanka Trump Wears Her Company's Clothes in Social Media Posts, Raising Further Conflict of Interest Questions*, Newsweek (Dec. 27, 2017), <http://www.newsweek.com/ivanaka-clothes-company-conflicts-interests-760744>.

also regularly posts pictures and statements regarding her official duties on her various social media pages.

Ms. Trump also frequently features her name-branded apparel on these social media accounts, and does so in a way that cannot be separated from the performance of her official duties. Specifically, Ms. Trump posts pictures of herself wearing clothing and accessories from her own brand while doing work or making public appearances on behalf of the United States. Indeed, a recent analysis by the Wall Street Journal found that in Ms. Trump's social media posts in which she features her work as a government employee, she is wearing her own clothing or accessories *more than two-thirds of the time*.³ Moreover, these photos are then frequently used by style publications that link consumers with retailers of Ms. Trump's merchandise.

For example, on December 11, 2017, Ms. Trump wore an IT Collection dress at a White House event commemorating NASA and posted pictures of herself from the event on her various social media feeds.⁴ The celebrity style website Star Style immediately identified the outfit and posted a link to purchase it.⁵ Shortly thereafter, the dress had sold out from Macy's department store online sales.⁶ Also in December 2017, Ms. Trump wore an IT Collection dress to a visit with Norwalk Early College Academy in her official government capacity, and posted pictures of the same on her various social media accounts.⁷ Star Style thereafter posted the picture of Ms. Trump and a link to purchase the dress. The month before, Ms. Trump wore a distinctive pair of IT Collection boots while appearing at a tax reform forum with Senator Susan Collins. Ms. Trump posted these pictures on social media,⁸ and Star Style again featured an identification of the outfit as an IT Collection product, with links to purchase the boots.⁹ These examples are typical of Ms. Trump's tenure as an official government employee.¹⁰

³ See Eaglesham and Schwartz, *supra* note 1.

⁴ Ivanka Trump (@IvankaTrump), Twitter, <https://twitter.com/IvankaTrump/status/940338724507930624> (Dec. 11, 2017); Ivanka Trump, Facebook, <https://www.facebook.com/IvankaTrump/photos/a.408144492681.184065.120745732681/10156081391912682/?type=3&theater> (Dec. 11, 2017); Ivanka Trump (ivankatrump), Instagram, <https://www.instagram.com/p/Bck-rcYFmiT/?hl=en&taken-by=ivankatrump> (Dec. 11, 2017).

⁵ Apparel identifications by celebrity fashion website Star Style. *Ivanka Trump White House December 11, 2017*, Star Style, (Dec. 11, 2017), <http://www.starstyle.com/ivanka-trump-white-house-sp316986/>.

⁶ See Hannah Golden, *Ivanka Trump's Fashion Choices Are Much More Significant Than You Might Think*, Elite Daily, (Dec. 2017), <https://www.elitedaily.com/p/ivanka-trumps-fashion-choices-are-much-more-significant-than-you-might-think-7747268>.

⁷ *Ivanka Trump Norwalk Connecticut December 18, 2017*, Star Style, (Dec. 18, 2017), <http://www.starstyle.com/ivanka-trump-norwalk-connecticut-sp317664/>; Ivanka Trump (@IvankaTrump), Twitter, <https://twitter.com/IvankaTrump/status/942839203565592577> (Dec. 18, 2017); Ivanka Trump (ivankatrump), Instagram, <https://www.instagram.com/p/Bc2u5pvlxuN/?hl=en&taken-by=ivankatrump> (Dec. 18, 2017); Ivanka Trump, Facebook, <https://www.facebook.com/IvankaTrump/photos/a.408144492681.184065.120745732681/1015610180507682/?type=3&theater> (Dec. 18, 2017).

⁸ Ivanka Trump (@IvankaTrump), Twitter, <https://twitter.com/IvankaTrump> (Nov. 10, 2017); Ivanka Trump (ivankatrump), Instagram, <https://www.instagram.com/p/BbU5-8Klm8-/?hl=en&taken-by=ivankatrump> (Nov. 10, 2017); Ivanka Trump, Facebook, <https://www.facebook.com/IvankaTrump/photos/a.408144492681.184065.120745732681/10155991583902682/?type=3&theater> (Nov. 10, 2017).

⁹ Karla, *Ivanka Trump Washington D.C. November 10, 2018*, Star Style, (Nov. 10, 2017), <http://www.starstyle.com/ivanka-trump-washington-d-c-sp313095/>.

¹⁰ A survey of Ms. Trump's social media posts from March 29, 2017 through October 2017 revealed that Ms. Trump featured IT Collection products in her posts about official appearances 68% of the time. Eaglesham and

Legal Violations

The bedrock principle of government ethics is that public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.¹¹ As an executive branch employee, Ms. Trump is prohibited from using her public position for her own enrichment or to endorse any product or company. Specifically, OGE regulations state:

An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of . . . persons with whom the employee is affiliated in a nongovernmental capacity, including . . . persons with whom the employee has or seeks . . . business relations.¹²

Although Ms. Trump has reportedly placed IT Collection into a trust run by close family members, she has not divested from it. She and her family still reap the profits from her brand's association with an influential presidential advisor. The details regarding this trust are not publicly available,¹³ but it is clear that Ms. Trump continues to receive substantial payments from IT Collection, including a payment of an amount between \$1 - 5 million for a period of approximately three months in the Spring of 2017.¹⁴

Ms. Trump's conduct, at the very least, appears to violate federal ethics regulations in that Ms. Trump has created the appearance of a government endorsement of her own brand, which, in turn, benefits the brand and further enriches Ms. Trump.

While this endorsement is subtler than endorsements of IT Collection merchandise previously made by members of the Administration and the Trump presidential campaign, it is no less effective.¹⁵ Fashion brands operate in a well-established ecosystem in which public

Schwartz, *supra* note 1. March 29, 2017 was the date that the White House announced that Ms. Trump would become an official government employee, serving as an unpaid advisor to her father, President Donald J. Trump. See Maggie Haberman and Rachel Abrams, *Ivanka Trump, Shifting Plans, Will Become a Federal Employee*, N.Y. Times (Mar. 29, 2017), <https://www.nytimes.com/2017/03/29/us/politics/ivanka-trump-federal-employee-white-house.html>.

¹¹ See 5 C.F.R. § 2635.101.

¹² 5 C.F.R. § 2635.702; see also 5 C.F.R. § 2635.702(c); see also 5 C.F.R. § 2635.102(k) (defining "person" to include corporations and "any officer, employee, or agent" thereof).

¹³ See Rachel Abrams, *Despite a Trust, Ivanka Trump Still Wields Power Over Her Brand*, N.Y. Times (Mar. 20, 2017), <https://www.nytimes.com/2017/03/20/business/despite-trust-ivanka-trump-still-wields-power-over-her-brand.html>.

¹⁴ See Eaglesham and Schwartz, *supra* note 1.

¹⁵ The Administration and campaign endorsements to date include the following: In February 2017, Kellyanne Conway, a senior White House advisor, told Fox News Channel viewers to "go buy Ivanka's stuff." See Drew Harwell, et al., *White House Says Conway Has Been 'Counseled' After Touting Ivanka Trump's Products*, Wash. Post (Feb. 9, 2017), https://www.washingtonpost.com/politics/conway-may-have-broken-key-ethics-rule-by-touting-ivanka-trumps-products-experts-say/2017/02/09/fd1cc64a-eeda-11e6-b4ff-ac2cf509efe5_story.html?utm_term=.cfbc3c95e755; President Trump tweeted that "My daughter Ivanka has been treated so unfairly by @Nordstrom" after the department store dropped the IT Collection. Donald Trump (@realDonaldTrump), Twitter, https://twitter.com/realDonaldTrump/status/829356871848951809?ref_src=twsrc%5Etfw&ref_url=https%3A%2F%2Fwww.nytimes.com/2017/03/29/us/politics/ivanka-trump-federal-employee-white-house.html

figures showcase a brand's products on social media and in public appearances. Celebrity style publications then identify the merchandise and direct customers to where it can be purchased. This process, which is widely understood and predictable, increases the value of the lifestyle brand and the associated products. Here, it translates directly into increased exposure and sales for Ms. Trump's brand.

As an experienced business executive in the world of lifestyle branding and marketing, Ms. Trump is almost certainly aware of the myriad ways in which her conduct feeds this ecosystem, and the ways in which she profits from it. By incorporating her official duties into her social media pages and personal self-promotion, Ms. Trump increases her public exposure. As such, Ms. Trump's actions violate the letter and spirit of this prohibition by frequently featuring her name-branded company's products in her social media posts showcasing her official duties.

More troubling still, the pattern of facts surrounding Ms. Trump's conduct gives rise to a concern that she is violating federal ethics regulations by coordinating directly with IT Collection or third party celebrity style publications that serve to connect consumers with featured products.

Ms. Trump's experience in the fashion industry suggests she is almost certainly aware of the way in which her conduct benefits IT Collection financially. However, the pattern of activity discussed above -- whereby Ms. Trump wears IT Collection products while performing official duties, posts pictures of those products on official government channels, and then third party publications use those images to connect consumers with featured products -- raises the prospect that Ms. Trump, or agents acting on her behalf, is actively coordinating with IT Collection or third party celebrity style publications to market and sell her products.

Such a finding, while not necessary to show Ms. Trump is in violation of federal ethics laws, would amount to a particularly extreme and blatant violation of those laws.

Request for Relief and Further Investigation

Given Ms. Trump's ongoing failure to ensure her duties as a federal employee are carried out in the interest of public service, and not in the interest of her private profits, we respectfully request that you: (i) recommend that Ms. Trump complete a full divestment from her company; and (ii) investigate any potential coordination between Ms. Trump, or her agents, and her company and/or celebrity style publications to coordinate the use of images she posts in her official government capacity to sell IT Collection products.

2Fwww.nytimes.com%2F2017%2F02%2F08%2Fbusiness%2Fivanka-trump-nordstrom-tj-maxx.html (Feb. 8, 2017); In November 2016, after President Trump's election, Ivanka Trump Fine Jewelry sent an email to journalists promoting a bracelet that Ms. Trump wore in a 60 Minutes interview the day before. See Richard Perez-Pena and Rachel Abrams, *Kellyanne Conway Promotes Ivanka Trump Brand, Raising Ethics Concerns*, N.Y. Times (Feb. 9, 2017), <http://www.nytimes.com/2017/02/09/us/politics/kellyanne-conway-ivanka-trump-ethics.html>; Although the occurrence preceded her federal employment, following her appearance at the Republican National Convention, Ms. Trump herself tweeted, "Shop Ivanka's look from her #RNC speech" and included a link to purchase the dress she wore at the Convention. Ivanka Trump (@IvankaTrump), Twitter, <https://twitter.com/ivankatrump/status/756492146484580352?lang=en> (July 22, 2016).

i. Recommendation that Ms. Trump Fully Divest from Her Company

As the director of OGE, you have authority to review potential ethical violations and notify the employee's agency, which in this case is the White House. As has been true in the past for this Administration's endorsement of Ms. Trump's company's products,¹⁶ there is a challenge in that the President, who is the disciplinary authority for White House employees, has an inherent conflict of interest since the apparent violations benefit his daughter and her private business activities, and, potentially, his business interests, as well.

For this reason, we request that you use the authority Congress granted to you under the Ethics in Government Act of 1978, as amended, to "recommend to the head of the officer's or employee's agency appropriate disciplinary action (such as reprimand, suspension, demotion, or dismissal) be brought against the officer or employee."¹⁷

As your predecessor noted with regard to this issue, "[Ms. Trump is] one of the rare government appointees in the White House who has not divested her financial interests and that puts a higher burden on her to be conscious of what she's doing at all times."¹⁸ Ms. Trump has not met that burden, and therefore, we request that, as the director of OGE, you recommend Ms. Trump be ordered to fully divest herself from this corporate interest.

If Ms. Trump's position is that full divestment is not possible, it may be that Ms. Trump, while a federal employee subject to 5 C.F.R. § 2635.702, cannot allow her namesake company to operate at all, and must insist on its dormancy for the duration of her public service tenure.¹⁹

ii. Request For Investigation Into Marketing Coordination Between Ms. Trump and IT Collection and/or Celebrity Style Publications

As noted above, a finding that Ms. Trump is coordinating--either with IT Collection or with a third party style publication for the purpose of connecting consumers with her merchandise--is not necessary to conclude that Ms. Trump is in violation of federal ethics laws. Such coordination would, however, amount to a particularly egregious violation of federal ethics laws, and an inquiry into Ms. Trump's conduct is therefore necessary to ensure that Ms. Trump's public service in advising the President is done in service of the public interest, and not private profits.

¹⁶ See Letter from H. Comm. on Oversight and Gov't Reform to Walter M. Shaub, Dir., U.S. Office on Gov't Ethics (Feb. 9, 2017), <https://oversight.house.gov/wp-content/uploads/2017/02/Letter-to-OGE-re-Conway-Endorsement-FINAL.pdf>.

¹⁷ 5 U.S.C.A. App. 4 § 402(f)(2)(A).

¹⁸ Eliza Relman, *Ivanka Trump is Promoting Her Own Brand by Wearing Its Products, Pushing the Limits of Ethics Laws*, Bus. Insider (Jan. 6, 2018), <http://www.businessinsider.com/ivanka-trump-is-promoting-her-own-brand-by-wearing-its-products-2018-1>.

¹⁹ Happily, such an outcome would have very little negative impact on opportunities for American workers. See Matea Gold, et al., *Ivanka Inc.*, Wash. Post (July 14, 2017), https://www.washingtonpost.com/graphics/2017/politics/ivanka-trump-overseas/?utm_term=.f2b486c1f35c (noting that "Ivanka Trump's company relies exclusively on foreign factories in countries such as Bangladesh, Indonesia and China, where low-wage laborers have limited ability to advocate for themselves").

We look forward to learning more about the outcome of your inquiry. Should you have any questions, or wish to discuss this matter further, please do not hesitate to contact Robin Thurston at rthurston@democracyforward.org (202) 701-1775.

Sincerely,

/s/ Anne Harkavy

Anne Harkavy
Executive Director

Robin Thurston
Senior Counsel

Democracy Forward Foundation