

# Elections Vendor Demands Retractions Over 'Disinformation'

By **Nathan Hale**

Law360 (December 15, 2020, 11:06 PM EST) -- Elections technology provider Smartmatic has threatened legal action if Fox News and other conservative-leaning news outlets do not retract what it says are dozens of false and defamatory statements they have published about the company as part of a "disinformation campaign" aimed at discrediting the 2020 U.S. election.

In a statement released Monday, the company, which was founded in Boca Raton, Florida, and maintains its U.S. headquarters there, said it was issuing legal notices and retraction demand letters to Fox News, Newsmax and One America News Network. Smartmatic USA Corp. said it told the companies that it was reserving "all legal rights and remedies," including the possibility of filing claims for defamation and disparagement.

Smartmatic asserts that the media outlets could have "easily discovered" the falsity of the statements, including claims it conspired with others to defraud the American public and fix elections by changing voting results, before they disseminated them to millions of viewers and readers.

A Smartmatic spokeswoman said Tuesday that attorneys Rudy Giuliani and Sidney Powell, who have raised similar accusations against the company while representing President Donald J. Trump in his **efforts to overturn the results** of the Nov. 3 election, received similar letters.

The company said its role in the 2020 U.S. election was limited to work performed for Los Angeles County's publicly owned voting system in California, and the technology it developed for Los Angeles did not count, tabulate or store votes.

In support of its position, Smartmatic points to fact-checking reports from other publications and information made available by government agencies and officials, including statements that no evidence has been found of widespread election fraud.

"They have no evidence to support their attacks on Smartmatic because there is no evidence. This campaign was designed to defame Smartmatic and undermine legitimately conducted elections," Smartmatic CEO Antonio Mugica said in a statement. "Our efforts are more than just about Smartmatic or any other company. This campaign is an attack on election systems and election workers in an effort to depress confidence in future elections and potentially counter the will of the voters, not just here, but in democracies around the world."

In its 20-page letter to Fox News, a copy of which was provided to Law360 by Smartmatic, company litigation counsel J. Erik Connolly of the Benesch law firm in Chicago detailed numerous examples of what he says are false and misleading statements that the news outlet broadcast and published about Smartmatic.

Among the alleged falsehoods raised in the Dec. 10 letter are that Smartmatic was founded by late Venezuelan President Hugo Chavez and has a corrupt relationship with the Venezuelan government; that Smartmatic has a corporate relationship with Dominion Voting Systems, whose equipment was used in several states, including closely contested Michigan and Georgia; that Smartmatic has ties to the Democratic Party and George Soros; that Smartmatic's technology and software was used widely during the 2020 U.S. election; that its software was designed and used to fix elections; that its

software has numerous security weaknesses; and that its software has been banned from certain jurisdictions.

"Fox News used its anchors and on-air guests, including Rudy Giuliani and Sidney Powell, to spread lies about a company that had absolutely nothing to do with the voting that took place in areas at the heart of the 'conspiracies' discussed following the 2020 U.S. election," the letter said, adding, "All these statements and implications are false and defamatory. Smartmatic is a global leader in election technology and support services."

In the letter, Smartmatic demands a "full and complete retraction of all false and defamatory statements and reports published by Fox News," and says the retraction must be made with the same intensity and level of coverage as the original statements.

It said the letter serves as a notice of potential legal claims against Fox News, its reporters, anchors, producers and on-air guests and requested that Fox News preserve communications, recordings and other materials related to the reports.

Smartmatic Communications Director Samira Saba said the other letters the company sent out were similar to the one sent to Fox News.

In a separate frequently asked questions document, Smartmatic said that the alleged defamation campaign is "inflicting real damage," including financial harm, on the company and suggested damages could climb into the billions of dollars.

According to information provided by the company and posted on its website, including a "response to misinformation," Smartmatic was founded in Florida in the wake of the closely contested 2000 U.S. presidential election with the mission of developing technology to ensure the integrity of elections.

Since then, it said that it has designed and implemented secure election technologies in 25 countries and helped record over 5 billion votes without a single security breach. It added that all of those votes were "secure and fully auditable."

While its founders were born in Venezuela, the company was established in the United States, it said. It has run past election projects in Venezuela but stopped doing business there after blowing the whistle on false turnout reports from the government in 2017 and has no current operations there, it said.

Smartmatic also said that it had one brief contract to license scanning machines from Dominion for use in the Philippines, but that ended in a lawsuit and they have not worked together since and are competitors.

In a company statement, Newsmax denied Smartmatic's accusations, saying any claims about the company were made by outside sources.

"Newsmax itself has never made a claim of impropriety about Smartmatic, its ownership or software. Individuals, including plaintiff's attorneys, Congressmen and others, have appeared on Newsmax raising questions about the company and its voting software, citing legal documents or previously published reports about Smartmatic," the network said. "As any major media outlet, we provide a forum for public concerns and discussion. In the past we have welcomed Smartmatic and its representatives to counter such claims they believe to be inaccurate and will continue to do so."

Representatives for Fox News and OANN did not immediately respond to requests for comment late Tuesday. Powell and Giuliani could not immediately be reached late Tuesday.

--Editing by Bruce Goldman.

*Update: This story has been updated to include a statement from Newsmax.*

