

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : S4 02 Cr. 649 (TPG)
v. : Filed: 4/14/03
JOHN GHIANNI, : Violations: 15 U.S.C. § 1
 : 26 U.S.C. § 7206(1)
Defendant. :

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SUPERSEDING INFORMATION

COUNT ONE -- SHERMAN ACT CONSPIRACY
(15 U.S.C. § 1)

The United States of America, acting through its attorneys, charges:

1. John Ghianni (“Ghianni”) is hereby made a defendant on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Ghianni resided in Fort Lee, New Jersey. Ghianni was an independent salesperson representing Quality House of Graphics, Inc. (“Quality”), a graphic services company, and was responsible for servicing one of its clients, Grey Global Group, Inc. or its predecessors or affiliates, including Grey Advertising, Inc. (collectively “Grey”).

3. Quality, located in Queens, New York, was a supplier of graphic services, including retouching and separation services, to Grey.

4. Grey provided advertising, marketing, public relations, and media services. Grey, headquartered in Manhattan, New York, was one of the largest advertising agencies in the world, with as many as 12,000 employees and offices in 90 countries. Grey, which had approximately \$8.3 billion in billings in 2000, had a client roster that included major consumer brand

companies such as Brown & Williamson Tobacco Corp., The Procter & Gamble Co., GlaxoSmithKline p.l.c., Mars Inc., Hasbro, Inc., Eli Lilly & Co., 3M Co., and Joseph E. Seagram & Sons, Inc.

5. Brown & Williamson Tobacco Corp. (hereinafter “B&W”) marketed tobacco products. B&W, the third largest cigarette manufacturer and marketer in the United States, was headquartered in Louisville, Kentucky. B&W was a subsidiary of British American Tobacco p.l.c. It had approximately 5,000 employees. B&W’s principal brands were Kool, Lucky Strike, Carlton, Kent, Capri, and Pall Mall.

6. The Color Wheel, Inc., a company located in Manhattan, New York, was a supplier of graphic services, including retouching and separation services, to Grey. The Color Wheel, Inc. was wholly owned by Haluk K. Ergulec. In 1999, The Color Wheel, Inc. merged with two other companies also wholly owned by Haluk K. Ergulec, Manhattan Color Graphics, Inc., and A2, Inc., with The Color Wheel, Inc. being the surviving corporate entity. Manhattan Color Graphics, Inc., A2, Inc., and the pre- and post-merger The Color Wheel, Inc. are hereinafter collectively referred to as “Color Wheel.”

7. Whenever in this Count reference is made to any act, deed, or transaction of any corporation, such allegation shall be deemed to mean that the corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

8. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in

furtherance thereof. They included Grey executive vice president and director of graphic services Mitchell E. Mosallem; Grey vice president John F. Steinmetz; a Grey production employee; Color Wheel; Color Wheel salesperson Gabriel Casas; Lori Montgomery, a co-owner of Quality; James Rattoballi, a co-owner of a graphic services company and a salesperson representing two other graphic services companies; and salespeople representing certain other graphics services companies.

II. DEFINITIONS

9. “Retouching” is the process of editing or otherwise manipulating a photograph or digital image to achieve an aesthetically desired result. The process employs a range of image processing tools which can be used to compose, change, and improve any type of image.

10. “Separation” is the act of decomposing an image or photograph into single-color layers, so that it may be printed with a printing press.

III. BACKGROUND

11. On approximately July 1, 1994, B&W retained Grey as its agent to provide advertising and marketing services on behalf of its various brands. The agreement between B&W and Grey and all succeeding agreements (hereinafter collectively “the agreement”) stated that Grey owed the highest fiduciary duties to B&W, and obliged Grey to exert its best efforts and apply its highest professional skill on B&W’s behalf.

12. As part of the agreement, Grey, acting on B&W’s behalf, procured various goods and services from third parties. These goods and services included retouching and separation services from graphics supply companies. To ensure that B&W received the best value on purchases made on its behalf by Grey, the agreement between B&W and Grey required that Grey

obtain at least three competitive bids before entering into any single contract for goods or services in excess of \$25,000, and at least once a year to obtain competitive bids for any other goods or services purchased on B&W's behalf.

IV. TRADE AND COMMERCE

13. From approximately late 1994 until approximately 2001, pursuant to contracts that are the subject of this Count, B&W, through its agency Grey, purchased substantial quantities of retouching and separation services from members of the conspiracy. Materials and equipment were transported across state lines for use in performing some of the aforementioned retouching and separation services.

14. The activities of the defendant and co-conspirators with respect to the sale of retouching and separation services to B&W, purchased through its agency Grey, including the sale of retouching and separation services pursuant to contracts that are the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

15. During the period covered by this Count, the defendant and co-conspirators performed retouching or separation services on advertisements, including advertisements completed pursuant to contracts that are the subject of this Count, which were thereafter shipped across state lines in a continuous and uninterrupted flow of interstate commerce for inclusion in magazines and other media manufactured and produced outside the State of New York. These magazines and other media were also shipped across state lines in a continuous and uninterrupted flow of interstate commerce from their places of manufacture to customers located throughout the United States.

V. DESCRIPTION OF THE OFFENSE

16. From approximately late 1994 until approximately 2001, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

17. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of retouching and separation services to B&W, contracted through its agency Grey.

18. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and conspired to do, including, among other things:

(a) Co-conspirators designated in advance that Color Wheel would be the low bidder, among the co-conspirators, on contracts to supply retouching services, and that another graphic services company would be the low bidder on contracts to supply separation services on behalf of B&W brands;

(b) Co-conspirators discussed and agreed on the prices that would be bid on contracts to supply retouching and on contracts to supply separation services on behalf of B&W brands; and

(c) Defendant and co-conspirators submitted, or caused to be submitted, intentionally high, noncompetitive bids (i.e., “cover” bids) on contracts to supply retouching and

separation services on behalf of B&W brands, with the understanding that certain of these graphics supply companies would be allowed to submit bids for, and under certain circumstances allocated contracts to supply, various graphic services in connection with advertising for other Grey clients. The intentionally high bids relating to work Grey procured for B&W were submitted in order to make it appear to B&W that there had been competition for its contracts when, in fact, there had not.

VI. JURISDICTION AND VENUE

19. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Superseding Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1

COUNT TWO -- FRAUD AND FALSE STATEMENTS

(26 U.S.C. § 7206(1))

The United States of America further charges:

20. John Ghianni is hereby made a defendant on the charge stated below.

21. Paragraph 2 of Count One of this Superseding Information is repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

22. As a sales representative of Quality, Ghianni earned commissions, calculated as a percentage of sales to each customer. The percentages ranged from 7.5% to 25%, depending on the customer. The commissions were paid to J. Ghianni Graphics, Inc. ("JGG, Inc."), a business owned by Ghianni.

23. On or about March 4, 1997, February 17, 1998, March 15, 1999, February 23, 2000, March 9, 2001, and February 27, 2002, in the Southern District of New York and

elsewhere, Ghianni, unlawfully, knowingly and willfully, did make and subscribe U.S. Income Tax Returns for an S Corporation, Forms 1120S, for JGG, Inc. for the tax years 1996 through 2001, which contained and were verified by Ghianni's written declaration that the returns were made under penalties of perjury, and which were filed with the Internal Revenue Service, and which income tax returns he did not believe to be true and correct as to every material matter, in that each income tax return deducted as "production costs" sums that, as Ghianni then and there well knew and believed, he had in fact paid as cash kickbacks to purchasing officials at advertising agencies that were Ghianni's customers, in exchange for those officials' steering contracts to Quality. From 1996 through 2001, the kickback payments, which usually occurred in Manhattan, totaled approximately \$950,000. The payments to the purchasing official at each customer equaled approximately one-half of the commission that Ghianni earned in connection with the sales to that customer.

IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTION 7206(1)

Dated: 4/14/03

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Acting Assistant Attorney General

/s/ _____
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Chief, New York Office

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