

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	S2 02 Cr. 649 (TPG)
v.	:	Filed: 11/26/02
HALUK K. ERGULEC and	:	Violations: 15 U.S.C. § 1
THE COLOR WHEEL, INC.,	:	18 U.S.C. § 371
	:	
Defendants.	:	

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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. The Color Wheel, Inc. is hereby made a defendant on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. The Color Wheel, Inc., a company located in Manhattan, New York, was a supplier of graphic services, including retouching and separation services. The Color Wheel, Inc. was wholly owned by Haluk K. Ergulec. In 1999 The Color Wheel, Inc. merged with two other companies 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."

3. Grey Global Group, Inc. or its predecessors or affiliates, including Grey Advertising, Inc. (hereinafter collectively "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.

4. 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.

5. 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.

6. 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; a Grey vice president; a Grey production employee; Color Wheel salesperson Gabriel Casas; John Ghianni, a salesperson representing a graphic services company; Lori Montgomery, a co-owner of a graphic services company; 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

7. “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.

8. “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

9. 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.

10. 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

11. 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.

12. 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.

13. 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

14. From approximately late 1994 until approximately 2001, the exact dates being unknown to the Grand Jury, 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).

15. 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.

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

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

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

(c) Certain co-conspirators submitted, or caused to be submitted, intentionally high, noncompetitive bids on contracts to supply retouching and separation services on behalf of B&W brands, with the understanding that they would be allowed to submit bids for, and under certain circumstances allocated contracts to supply, various services on behalf of 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

17. 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 -- CONSPIRACY
(18 U.S.C. § 371)

The United States of America further charges:

18. Haluk K. Ergulec is hereby made a defendant on the charge stated below.

19. The Color Wheel, Inc. is hereby made a defendant on the charge stated below.

20. Paragraphs 2, 3, 5, 7, and 8 of Count One of this Superseding Information are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

VII. THE RELEVANT PARTIES AND ENTITIES

21. Defendant Haluk K. Ergulec (hereinafter “Ergulec”) was a resident of Manhattan. Ergulec was the owner of Color Wheel.

22. 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 (“Mosallem”); Grey vice president and manager of graphic services Joseph Panaccione (“Panaccione”); and Color Wheel salespeople Birj Deckmejian (“Deckmejian”) and Gabriel Casas (“Casas”).

VIII. DEFINITIONS

23. “Prepress services” are the services and materials necessary to provide magazines and other print media with the images that they manufacture and publish. These services include

retouching and separation services.

24. “Printing” is the use of a commercial printing press to produce multiple, printed copies of images inserted in print media or otherwise distributed to potential consumers.

25. “Graphic services” encompasses both prepress services and printing.

IX. DESCRIPTION OF THE OFFENSE

26. From approximately 1991 until approximately July 2000, the exact dates being unknown to the United States of America, in the Southern District of New York and elsewhere, defendants Ergulec and Color Wheel and co-conspirators unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States of America, to wit, to violate Title 18, United States Code, Section 1341, in violation of Title 18, United States Code, Section 371.

27. It was a part and an object of the conspiracy that defendants Ergulec and Color Wheel, and others known and unknown, having devised and intending to devise a scheme and artifice to defraud clients of Grey, and for obtaining money and property from Grey clients by means of false and fraudulent pretenses, representations, and promises, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice, would and did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, in violation of Title 18, United

States Code, Section 1341.

X. BACKGROUND

28. Grey developed advertising and marketing campaigns on behalf of its clients. Some of the advertising that Grey developed appeared in printed form, such as advertisements consisting of pictures and words in magazines. On behalf of its clients, through its graphics services department, Grey contracted with third parties that were suppliers of graphics services (“graphics suppliers”) to provide services and materials related to advertising that appeared in print, including prepress services and printing. Mosallem was responsible for establishing procedures for the selection and supervision of graphics suppliers, including the initial review and authorization of their bills for payment.

29. Pursuant to agreements with certain of its clients, Grey was paid a fee for its creative work on behalf of the client, and for its supervision of the production of various components of a campaign, including supervision of prepress services and printing. In addition, pursuant to express written agreements with certain of its clients, Grey paid third parties, and was reimbursed by its clients, for “out-of-pocket” costs, including the actual costs of prepress services and printing provided by graphics suppliers. Grey received no markup or other profit on these “out-of-pocket” costs. Grey’s clients relied on Grey’s representations regarding the accuracy of the bills it presented for reimbursement or the amounts for which it sought reimbursement.

30. The advertising Grey developed and produced for each client often consisted of many separate jobs, with separate, corresponding contracts between Grey and various third party graphics suppliers. In many cases, Grey provided the initiative and exercised its discretion in

selecting a graphics supplier and awarding a contract for a particular job or a related group of jobs (a “campaign”) after seeking what purported to be competitive bids from multiple graphics suppliers. Usually, by the time a contract was awarded, Grey and its client had established a budget for the job, in part by referring to the prices quoted by the competing graphics suppliers. Employees of Grey’s graphics services department were responsible for monitoring jobs to determine whether they would be completed within the established budgets and, if not, for seeking the client’s approval to increase the budgets. The actual value of work done in connection with each job ultimately could be lower than, equal to, or higher than the established budget.

31. The third party graphics suppliers issued invoices to Grey, corresponding to the contracts they had been awarded, when those contracts were completed. Employees of Grey’s graphics services department were responsible for reviewing the invoices for accuracy and authorizing them for payment. In situations where the graphics supplier’s price for the work exceeded the budget for a particular job, the graphics supplier often knew, at the time it was prepared to seek payment, that it would not be paid in full for the work it had done.

XI. THE MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

32. Beginning in approximately 1991, defendants Ergulec and Color Wheel agreed with Mosallem, Deckmejian, and other co-conspirators to defraud certain Grey clients by causing defendant Color Wheel to issue false and fraudulent invoices relating to its contracts to produce advertising services and materials. Typically, the invoices were false and fraudulent in

that the quantities -- and thus the prices -- of certain line items listed in the invoices were inflated to allow defendant Color Wheel to recoup three specific types of expenses:

(a) Certain invoices were inflated to allow defendant Color Wheel or Deckmejian to recoup the cost of tickets to theater, sporting, and cultural events it or Deckmejian had provided for the personal benefit of Mosallem, Panaccione, other senior employees and executives of Grey, and members of their families;

(b) Certain invoices were inflated to allow defendant Color Wheel to recoup the cost of goods and services it had provided for the personal benefit of Mosallem, Panaccione, other senior employees and executives of Grey, and members of their families. These goods and services included the printing of graphics items such as wedding invitations, holiday cards, brochures, and family and other personal photographs; and

(c) Certain invoices were inflated to allow defendant Color Wheel to recoup charges for work it had performed on earlier jobs, frequently for different Grey clients, for which it had not been fully paid. In these instances, defendant Color Wheel had not received full compensation for the earlier work performed because those jobs had run overbudget, or because the client which had commissioned the advertising was unwilling or unable to pay its bills.

33. Defendant Ergulec instructed Casas, and Mosallem instructed Panaccione, to track the expenses defendant Color Wheel was to recoup, and to identify jobs to which those amounts could be added by fraudulently increasing the quantities and prices of certain line items in those jobs.

34. Between approximately 1991 and July 2000, Casas created and maintained lists of expenses and showed them to Panaccione, who then identified to which jobs those monies

should be added and, in many cases, exactly where and how on the false and fraudulent invoices those charges should appear. On many occasions, Panaccione consulted with other employees in Grey's graphics services department in order to identify the jobs to which monies could be added, normally in situations where the job was expected to run under budget or where the job had not yet been budgeted but defendant Color Wheel could be given an opportunity to increase its bid or price quotation. Casas periodically showed the lists to defendant Ergulec, Mosallem, and Deckmejian, and updated them on the status of the scheme.

35. Between approximately 1991 and July 2000, defendant Ergulec, Mosallem, Deckmejian, and other co-conspirators caused defendant Color Wheel to issue to Grey numerous false and fraudulent invoices.

36. Mosallem and other co-conspirators further caused Grey to pay the false and fraudulent invoices and then to seek reimbursement from its clients.

37. Certain of the checks issued by Grey to defendant Color Wheel in payment of the false and fraudulent invoices were sent via the United States mail.

38. Certain of Grey's invoices to its clients, and corresponding checks issued by Grey clients in payment of the fraudulently inflated charges, were sent via the United States mail or by private or commercial interstate carrier.

39. Certain negatives, press proofs, and other portions of finished advertisements, which were produced by defendant Color Wheel and the prices of which were fraudulently inflated pursuant to the charged conspiracy, were sent by Grey to magazines located throughout the United States by private or commercial interstate carrier.

XII. OVERT ACTS

40. In furtherance of the conspiracy and to effect the illegal objects thereof, defendants Ergulec and Color Wheel, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) On approximately September 30, 1999, defendant Color Wheel issued a false and fraudulent invoice to Grey in connection with a Cover Girl smudgeproof mascara magazine advertisement featuring Brandy Norwood, in which invoice the line item for retouching was fraudulently inflated by \$5,000;

(b) On approximately March 30, 1999, defendant Color Wheel issued a false and fraudulent invoice to Grey in connection with a Cover Girl Crackle Lacquer nail polish magazine advertisement, in which invoice the line items for various retouching services were fraudulently inflated by a total of \$2,000;

(c) On approximately September 30, 1999, defendant Color Wheel issued a false and fraudulent invoice to Grey in connection with a Cover Girl Smoothers magazine advertisement featuring Brandy Norwood, Niki Taylor, Yamila Diaz, Lonneke Engel, and Faith Hill, in which invoice the line items for various retouching services were fraudulently inflated by a total of \$5,000;

(d) On approximately January 12, 1999, defendant Color Wheel issued a false and fraudulent invoice to Grey in connection with Pantene bus shelter outdoor advertisements, in which the line item for retouching services was fraudulently inflated by a total of \$2,025;

(e) On approximately April 12, 2000, Deckmejian paid \$500 for tickets to the Big East basketball tournament;

(f) On approximately May 3, 1999, Gotham Sales, Inc. (hereinafter "Gotham

Sales”), a ticket brokerage company located in Stamford, Connecticut, issued an invoice to Deckmejian that included a charge of \$1,350 for tickets to the Lion King; and

(g) On approximately January 4, 1999, Gotham Sales issued an invoice to Deckmejian that included a charge of \$600 for tickets to the Metropolitan Opera.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371

COUNT THREE -- CONSPIRACY
(18 U.S.C. § 371)

The United States of America further charges:

41. Haluk K. Ergulec is hereby made a defendant on the charge stated below.
42. The Color Wheel, Inc. is hereby made a defendant on the charge stated below.
43. Paragraphs 2, 3, 5, 7, and 8 of Count One and Paragraphs 21, 23, 24, 25, 28, 29, 30, and 31 of Count Two of this Superseding Information are repeated, realleged, and incorporated in Count Three as if fully set forth in this Count.
44. 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 Gabriel Casas (hereinafter “Casas”) and certain Color Wheel executives, employees, and salespeople.

XIII. DESCRIPTION OF THE OFFENSE

45. From approximately 1991 until approximately 1999, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, defendants Ergulec and Color Wheel and co-conspirators unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States of America, to wit, to violate Title 18, United States Code, Section 1341, in

violation of Title 18, United States Code, Section 371.

46. It was a part and an object of the conspiracy that the defendants and others known and unknown, having devised and intending to devise a scheme and artifice to defraud clients of Grey, and for obtaining money and property from Grey clients by means of false and fraudulent pretenses, representations, and promises, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice, would and did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, in violation of Title 18, United States Code, Section 1341.

XIV. THE MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

47. Beginning in approximately 1991, defendant Ergulec agreed with Casas and other co-conspirators, who were employees of defendant Color Wheel, to defraud certain Grey clients by causing defendant Color Wheel to issue false and fraudulent invoices relating to its contracts to produce graphic services and materials for advertising. Typically, pursuant to this scheme (hereinafter "monies added scheme"), the invoices were false and fraudulent in that the quantities -- and thus the prices -- of certain line items listed in the invoices were inflated. Unlike the scheme alleged in Count Two of this Superseding Information, where Grey employees and executives and others were aware of and participated in the agreement to allow defendant Color Wheel to recoup certain expenses, the monies added scheme was carried out by

defendant Ergulec, Casas, and other co-conspirators who were employees of defendant Color Wheel, without the knowledge or assistance of Grey employees or executives.

48. Between approximately 1991 and 1999, Casas created and maintained lists of the monies added to Grey jobs and periodically showed them to defendant Ergulec or reported to defendant Ergulec about the progress of the monies added scheme.

49. Between approximately 1991 and 1999, pursuant to the monies added scheme, defendant Ergulec, Casas, and other co-conspirators caused defendant Color Wheel to issue to Grey numerous false and fraudulent invoices.

50. Certain of the checks issued by Grey to defendant Color Wheel in payment of the false and fraudulent invoices issued pursuant to the monies added scheme were sent via the United States mail.

51. Certain of Grey's invoices to its clients requesting reimbursement for Grey's payment of fraudulently inflated invoices issued by defendant Color Wheel pursuant to the monies added scheme and corresponding checks issued by Grey's clients in payment of the Grey invoices, were sent via the United States mail or by private or commercial interstate carrier.

XV. OVERT ACTS

52. In furtherance of the conspiracy and to effect the illegal objects thereof, the defendants, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) On numerous occasions between 1991 and 1999, defendant Ergulec and other co-conspirators caused defendant Color Wheel to issue fraudulently inflated invoices to Grey pursuant to the monies added scheme, and Grey to issue checks in payment of those invoices to

defendant Color Wheel. Some of those invoices and checks were sent through the United States mails; and

(b) On numerous occasions between 1991 and 1999, Grey issued invoices to its clients requesting reimbursement for those fraudulently inflated invoices received from defendant Color Wheel and, in turn, Grey's clients sent checks in payment of those invoices to Grey. Some of those invoices and checks were sent through the United States mails.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371

COUNT FOUR -- CONSPIRACY
(18 U.S.C. § 371)

The United States of America further charges:

53. Haluk K. Ergulec is hereby made a defendant on the charge stated below.

54. The Color Wheel, Inc. is hereby made a defendant on the charge stated below.

XVI. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

55. Paragraphs 2, 3, and 5 of Count One and Paragraph 21 of Count Two of this Superseding Information are repeated, realleged, and incorporated in Count Four as if fully set forth in this Count.

56. "CC-1" was a co-conspirator who was a senior executive at Grey with responsibility for selecting graphics suppliers.

57. Ivan Glick (hereinafter "Glick") was co-conspirator who was a sales agent representing Color Wheel in the business of selling commercial printing and graphic services. Glick, who maintained an office on the premises of Color Wheel, received commissions based on the value of the contracts that he obtained for Color Wheel.

58. “CC-2” was a co-conspirator who was a purchasing agent at Impact Communication, Inc. (hereinafter “Impact”), an advertising agency located in Manhattan that specialized in servicing customers in the pharmaceutical industry.

59. Lawrence Scaglione (hereinafter “Scaglione”) was a co-conspirator who was a purchasing agent for Brouillard Communications (hereinafter “Brouillard”), an advertising agency located in Manhattan. Brouillard was at various times a division of J. Walter Thompson, Inc. and at other times separately incorporated. Scaglione was responsible, along with others, for determining which suppliers of graphics services would be awarded contracts by Brouillard.

60. “CC-3” was a co-conspirator who was a purchasing agent for TDI Winston Network, a media agency located in Manhattan that contracted with its customers to sell media space. TDI Winston Network was acquired by Viacom Outdoor, Inc., a subsidiary of Viacom, Inc. (hereinafter collectively “Viacom”).

61. Various other persons, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. They included other executives, employees, and salespeople of defendant Color Wheel.

XVII. DESCRIPTION OF THE OFFENSE

62. From approximately 1990 until approximately 2001, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, defendants Ergulec and Color Wheel and co-conspirators unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States of America, to wit, to violate Title 18, United States Code, Sections 1341 and

1346, all in violation of Title 18, United States Code, Section 371.

63. It was a part and an object of the conspiracy that defendants Ergulec and Color Wheel, and others known and unknown, having devised and intending to devise a scheme and artifice to defraud certain of defendant Color Wheel's customers, including Grey, Impact, Brouillard, and Viacom (hereinafter collectively the "defrauded customers"), and for obtaining money and property from the defrauded customers by means of false and fraudulent pretenses, representations, and promises, and to deprive the defrauded customers of their intangible right to the honest services of certain of their employees, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice, would and did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, in violation of Title 18, United States Code, Section 1341 and 1346.

XVIII. THE MANNER AND MEANS BY WHICH THE
CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

64. During all or some of the period from approximately 1990 until approximately 2001, defendants Ergulec and Color Wheel, and co-conspirators who were executives, employees, and salespeople of defendant Color Wheel, paid kickbacks in the form of cash,

checks, goods, and services to executives and employees with purchasing responsibility (hereinafter collectively the “corrupt purchasing agents”) at the defrauded customers. The corrupt purchasing agents included CC-1, CC-2, Scaglione, and CC-3.

65. The kickbacks were paid in several different ways. For example, defendant Ergulec himself paid the kickbacks to CC-1, typically in cash on a monthly basis, in many months in amounts exceeding \$10,000. In the case of CC-3, defendant Ergulec caused defendant Color Wheel to issue checks directly to CC-3 in an amount equal to a percentage of defendant Color Wheel’s sales to Viacom. In other instances, such as those of CC-2 and Scaglione, salespeople of defendant Color Wheel actually paid the kickbacks, using money that defendant Color Wheel had paid them -- in many cases separate from their normal sales commissions.

66. The kickbacks were unknown to the supervisors of the corrupt purchasing agents and the owners of the defrauded customers. In exchange for the kickbacks, the corrupt purchasing agents ensured that defendant Color Wheel was an approved vendor, and that defendant Color Wheel would receive a portion of the total value of contracts awarded by the defrauded customers. By paying the kickbacks, defendant Color Wheel was able to maintain its prices at noncompetitive levels because it did not have to set prices in response to open and honest competition from other vendors. As a result, the defrauded customers and their clients paid higher prices than they would have if the corrupt purchasing agents had aggressively and honestly solicited competitive prices from other vendors.

67. Between approximately 1990 and 2001, defendants Ergulec and Color Wheel and co-conspirators caused Color Wheel to issue numerous invoices to the defrauded customers.

68. Some of the checks issued by the defrauded customers to defendant Color Wheel

in payment of the invoices were sent via the United States mail.

69. Some printed materials, negatives, press proofs, and other portions of finished advertisements, which were produced by defendant Color Wheel, were sent to magazines located throughout the United States by private or commercial interstate carrier.

XIX. OVERT ACTS

70. In furtherance of the conspiracy and to effect the illegal objects thereof, defendants Ergulec and Color Wheel and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) On numerous occasions defendant Color Wheel sent invoices to the defrauded customers through the mails; and

(b) On numerous occasions the defrauded customers paid invoices issued by defendant Color Wheel by checks sent through the mails.

COUNT FIVE -- CONSPIRACY (18 U.S.C. § 371)

The United States of America further charges:

71. Haluk K. Ergulec is hereby made a defendant on the charge stated below.

72. Paragraphs 2 and 3 of Count One, Paragraph 21 of Count Two, and Paragraph 56 of Count Four of this Superseding Information are repeated, realleged, and incorporated in Count Five as if fully set forth in this Count.

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

XX. DESCRIPTION OF THE OFFENSE

74. From approximately 1990 until approximately 2001, the exact dates being

unknown to the United States, in the Southern District of New York and elsewhere, defendant Ergulec and co-conspirators unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to defraud the United States of America and an agency thereof, to wit, the Internal Revenue Service (hereinafter "IRS") of the United States Department of the Treasury, in violation of Title 18, United States Code, Section 371.

75. It was a part and object of the conspiracy that defendant Ergulec and co-conspirators would and did defraud the United States of America and the IRS by impeding, impairing, obstructing, and defeating the lawful government functions of the IRS in the ascertainment, computation, assessment, and collection of income taxes due and owing from certain co-conspirators.

XXI. THE MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

76. During all or some of the period from approximately 1990 until approximately 2001, defendant Ergulec paid kickbacks in the form of cash and goods and services to CC-1. The kickbacks were typically paid in cash on a monthly basis and in many months exceeded \$10,000. To raise the cash he gave to CC-1, Ergulec cashed multiple checks he made out to himself from his personal account. CC-1 failed to account for the value of these kickbacks on the income tax returns he filed.

XXII. OVERT ACTS

77. In furtherance of the conspiracy and to effect the illegal objects thereof, defendant Ergulec and others known and unknown, committed the following overt acts, among others, in

the Southern District of New York and elsewhere:

(a) On numerous occasions defendant Ergulec gave substantial amounts of cash to CC-1 at various locations in Manhattan.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371

Dated: 11/26/02

/s/_____
CHARLES A. JAMES
Assistant Attorney General

/s/_____
RALPH T. GIORDANO
Chief, New York Office

/s/_____
JAMES M. GRIFFIN
Deputy Assistant Attorney General

/s/_____
REBECCA MEIKLEJOHN

/s/_____
SCOTT D. HAMMOND
Director of Criminal Enforcement

/s/_____
DOUGLAS M. TWEEN

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U.S. Department of Justice

/s/_____
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/s/_____
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