

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	Criminal No. 02 CR 1326
v.	:	Filed: 10/1/02
JOSEPH PANACCIONE,	:	Violations: 18 U.S.C. § 371
AKA JOE PAYNE	:	
Defendant.	:	

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INFORMATION

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

1. Joseph Panaccione, aka Joe Payne ("Panaccione"), is hereby made a defendant on the charges stated below.

COUNT ONE -- CONSPIRACY TO COMMIT MAIL FRAUD
(18 U.S.C. § 371)

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Panaccione, a resident of Bayonne, New Jersey, was an employee of Grey Global Group, Inc., or its predecessors or affiliates, including Grey Advertising, Inc. (collectively "Grey"). While employed by Grey, Panaccione held several positions; most recently, he was employed as a vice president and a manager of graphic services at Grey.

3. Grey, headquartered in Manhattan, New York, provided advertising, marketing, public relations, and media services. Grey 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. 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."

5. John Chessa ("Chessa") was a co-conspirator who sold printing to Grey through a printing company ("CC-1") located in Manhattan, New York of which Chessa was a part owner.

6. James Rattoballi ("Rattoballi") was a co-conspirator who sold printing to Grey through a printing company located in Manhattan, New York of which Rattoballi was a part owner. Rattoballi also worked as a salesperson representing two Manhattan companies that provided prepress services. The printing company and two prepress service companies are hereinafter collectively referred to as "CC-2."

7. "CC-3" was a co-conspirator that was a corporation located in Clifton, New Jersey. CC-3 supplied printing to Grey.

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. In addition to the persons and firms identified in Paragraphs 5 through 7, these included Haluk K. Ergulec ("Ergulec"), the owner of Color Wheel; Birj Deckmejian ("Deckmejian"), a

salesperson representing Color Wheel; Gabriel Casas (“Casas”), another salesperson representing Color Wheel; Mitchell Mosallem (“Mosallem”), an executive vice president and director of graphic services at Grey; Grey employees whose primary responsibility was overseeing prepress services and printing; and other individuals representing certain 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.

11. “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.

12. “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.

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

III. BACKGROUND

14. 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. Panaccione worked under the direction of Mosallem.

15. 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. Typically, 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.

16. 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 and printing 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 and printing 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.

17. The 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 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.

IV. DESCRIPTION OF THE OFFENSE

18. From approximately 1991 until approximately mid-2000, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, the defendant 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.

19. It was a part and an object of the conspiracy that the defendant 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.

V. 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:

20. Beginning in approximately 1991, Panaccione agreed with certain co-conspirators to defraud certain Grey clients by causing Color Wheel to issue false and fraudulent invoices relating to its contracts to produce graphic services and materials for advertising. 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 Color Wheel to recoup three specific types of expenses:

(a) Certain invoices were inflated to allow Color Wheel and 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 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 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, Color Wheel had not received full compensation for the earlier work performed because those jobs had run overbudget, or because the client that had commissioned the advertising was unwilling or unable to pay its bills.

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

22. Between approximately 1991 and mid-2000, Panaccione reviewed lists of monies owed that were created and maintained by Casas. Panaccione then identified to which jobs those monies should be added and, in many cases, exactly where and how on the false and fraudulent invoices the inflated 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 Color Wheel could be given an opportunity to increase its bid or price quotation.

23. Beginning in approximately 1991, Panaccione agreed with certain co-conspirators to defraud certain Grey clients by causing CC-1 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 CC-1 to recoup three specific types of expenses:

(a) Certain invoices were inflated to allow CC-1 to recoup the cost of goods and services it had provided for the personal benefit of 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

(b) Certain invoices were inflated to allow CC-1 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, CC-1 had not received full compensation for the earlier work performed because those jobs had run overbudget, or because the client that had commissioned the advertising was unable to pay its bills because it was bankrupt.

24. A Grey executive instructed Panaccione to identify jobs to which those amounts could be added by fraudulently increasing the quantities and prices of certain line items in those jobs.

25. Between approximately 1991 and mid-2000, Panaccione discussed lists of monies owed that were created and maintained by Chessa. Panaccione then identified to which jobs those monies should be added and, in many cases, exactly where and how on the false and fraudulent invoices the inflated 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 CC-1 could be given an opportunity to increase its bid or price quotation.

26. Beginning in approximately the early 1990s, Panaccione agreed with certain co-conspirators to defraud certain Grey clients by causing CC-2 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 CC-2 to recoup the cost of goods and services it had provided for the personal benefit of 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.

27. A Grey executive instructed Panaccione to identify jobs to which those amounts could be added by fraudulently increasing the quantities and prices of certain line items in those jobs. Panaccione discussed the amounts of expenses incurred by CC-2 and 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 occasion, 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 CC-2 could be given an opportunity to increase its bid or price quotation.

28. Beginning in approximately 1998, Panaccione agreed with another Grey executive, individuals representing CC-3, and certain co-conspirators to defraud certain Grey clients by causing CC-3 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 CC-3 to recoup expenses for work it had performed on earlier jobs, frequently for different Grey clients or Grey itself, for which it had not been fully paid. In these instances, CC-3 had not

received full compensation for the earlier work performed because those jobs had run overbudget.

29. A Grey executive instructed Panaccione to identify jobs to which those amounts could be added by fraudulently increasing the quantities and prices of certain line items in those jobs.

30. Between approximately 1999 and mid-2000, Panaccione discussed the monies owed with individuals representing CC-3 and 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. The monies were added in situations where the job was either expected to run under budget or where the job had not yet been budgeted but CC-3 could be given an opportunity to increase its bid or price quotation.

31. Between approximately 1991 and mid-2000, Panaccione and co-conspirators caused Color Wheel, CC-1, CC-2, and CC-3 to issue to Grey numerous false and fraudulent invoices.

32. Co-conspirators further caused Grey to pay the false and fraudulent invoices and then to seek reimbursement from its clients.

33. Certain of the checks issued by Grey to Color Wheel, CC-1, CC-2, and CC-3 in payment of the false and fraudulent invoices were sent via the United States mail.

34. Certain of Grey's invoices issued to its clients requested reimbursement for Grey's payment of fraudulently inflated invoices issued by Color Wheel, CC-1, CC-2, and CC-3, 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.

VI. OVERT ACTS

35. In furtherance of the conspiracy and to effect the illegal objects thereof, the defendant, 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 mid-2000, pursuant to the charged conspiracy, co-conspirators caused Color Wheel, CC-1, CC-2, and CC-3 to issue fraudulently inflated invoices to Grey, and Grey to issue checks in payment of those invoices to Color Wheel, CC-1, CC-2, and CC-3. Some of those invoices and checks were sent through the United States mails; and

(b) In addition, Panaccione and his co-conspirators caused Grey to issue invoices to its clients requesting reimbursement for fraudulently inflated invoices received from Color Wheel, CC-1, CC-2, and CC-3 and, in turn, Grey's clients sent checks in payment of those invoices to Grey. Some of these invoices and checks were sent through the United States mails.

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

COUNT TWO -- CONSPIRACY TO COMMIT MAIL FRAUD (18 U.S.C. § 371)

The United States of America further charges:

36. Paragraph 1 and Paragraphs 2, 3, 5 and 9 through 17 of Count One of this Information are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

VII. THE RELEVANT PARTIES AND ENTITIES

37. Various co-conspirators, not made defendants herein, participated in the offense charged herein and performed acts and made statements in furtherance thereof. These included

John Chessa, a part owner of CC-1, and CC-1.

VIII. DESCRIPTION OF THE OFFENSE

38. From approximately November 1999 and until approximately December 2000, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, the defendant 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, in violation of Title 18, United States Code, Section 371.

39. It was a part and an object of the conspiracy that the defendant and others known and unknown, having devised and intending to devise a scheme and artifice to defraud Grey and Grey's clients, and for obtaining money and property from Grey and Grey's clients by means of false and fraudulent pretenses, representations, and promises, and to deprive Grey and Grey's clients of their intangible right of honest services of certain of Grey's 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, Sections 1341 and 1346.

IX. 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:

40. During all or some of the period from approximately 1999 until approximately December 2000, John Chessa paid Panaccione kickbacks in cash and checks totaling approximately \$46,675. The kickbacks were unknown to Grey and Grey's clients, who expected that Grey's employees would act in accordance with Grey's fiduciary obligation when awarding contracts to vendors. Chessa paid these kickbacks roughly calculated according to a percentage, usually 2% or 3%, of the total value of CC-1's invoices paid by Grey. Chessa paid these kickbacks to ensure that CC-1 would remain on Grey's list of approved vendors and that Grey would not seek an alternative supplier, and so that Panaccione would allocate to CC-1 a portion of Grey's total purchases of printing. As a result, other legitimate printing suppliers were foreclosed from selling to Grey and CC-1's prices were not set in response to open and honest competition from other vendors.

X. OVERT ACTS

41. In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts were committed in the Southern District of New York, and elsewhere:

(a) On numerous occasions between 1999 and December 2000, Panaccione and his co-conspirators caused Grey to issue purchase orders, and caused CC-1 to issue invoices relating to the sale of printing to Grey. Some of those invoices and purchase orders were sent through the United States mails; and

(b) On one occasion in late 1999, Panaccione received approximately \$10,000 in cash from Chessa in Manhattan.

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

Dated:

/s/ _____
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Assistant Attorney General

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

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

/s/ _____
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/s/ _____
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