

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Civil Action
	:	No. 100-309
v.	:	
	:	Filed: February 1, 1956
AMERICAN ASSOCIATION OF ADVERTISING	:	
AGENCIES, INC.; THE AMERICAN NEWSPAPER	:	
PUBLISHERS ASSOCIATION, INCORPORATED;	:	
PUBLISHERS ASSOCIATION OF NEW YORK CITY;	:	
ASSOCIATED BUSINESS PUBLICATIONS, INC.;	:	
PERIODICAL PUBLISHERS ASSOCIATION OF	:	
AMERICA; and AGRICULTURAL PUBLISHERS	:	
ASSOCIATION,	:	
	:	
Defendants.	:	
	:	
- - - - -	:	-X

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on May 12, 1955; defendant, American Association of Advertising Agencies, Inc. (hereinafter referred to as consenting defendant), having appeared herein and having filed its answer in which it denies the offenses charged in such complaint and having asserted the truth of its answer and its innocence of any violation of law; and no testimony having been taken and the plaintiff and said defendant by their respective attorneys having consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without any findings of fact, and the Court having considered the matter and being duly advised.

NOW, THEREFORE, upon the consent as aforesaid of the parties hereto,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of the plaintiff and consenting defendant. The complaint states a claim against said defendant under Section 1 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopoly," as amended, commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Advertising agency" shall mean any person, firm or corporation engaged in the business of developing, servicing and placing national advertising.

(B) "National advertising" shall mean the advertising of products or services through media on a national or broad sectional basis.

(C) "Media" shall mean the several instrumentalities used in publishing national advertising including but not restricted to newspapers, magazines, radio and television.

(D) "Agency commission" shall mean the amount allowed by media to advertising agencies when placing national advertising for advertisers in media.

### III

The provisions of this Final Judgment shall apply to consenting defendant and its subsidiaries, successors and assigns, to each of its officers, agents, servants and employees, to any committees or groups of consenting defendant's membership when organized and functioning as committees or groups of consenting defendant and to all other persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise.

### IV

(A) Consenting defendant is enjoined and restrained from entering into, adhering to, promoting or following any course of conduct, practice or policy, or any agreement or understanding:

(1) Fixing, establishing or stabilizing agency commissions, or attempting so to do;

(2) Requiring, urging or advising any advertising agency to refrain from rebating or splitting agency commissions;

(3) Designed, in whole or part, to deny or limit credit or agency commission due or available to any advertising agency;

(4) Establishing or formulating, or attempting to establish or formulate, any standards of conduct or other qualifications to be used by any media or any association of media to determine whether media should or should not do business with, recognize or approve any advertising agency;

(5) Designed to cause any media not to do business with, not to recognize or not to approve any advertising agency;

(6) Fixing, establishing or determining advertising rates to be charged advertisers not employing an advertising agency, or attempting so to do;

(7) Designed to have media adhere to published advertising rates or rate cards;

(8) Requiring, urging or advising any advertising agency to refrain from submitting advertising copy, art work, illustrations, detailed plans, market surveys or similar material to any national advertiser in the solicitation of a new account.

(B) Consenting defendant is enjoined and restrained from requiring, urging or advising any of its members to engage in, or assisting any of its members to engage in, any activities covered by Paragraphs (1) through (8) of subsection (A) of this Section IV; provided that nothing in this subsection (B) shall be construed to prevent consenting defendant on the written request of any of its members, not solicited by consenting defendant and not on its face showing an intent for use contrary to any paragraph of subsection (A) hereof, from supplying in writing any statistical or other factual material or research study without comment thereon.

(C) Nothing contained in this Final Judgment shall be construed to prohibit members of consenting defendant from severally taking any action denied to consenting defendant by virtue of this Final Judgment; nor shall this Final Judgment be construed to prohibit consenting defendant from:

(1) Circulating among advertising agencies or media information and views relating to their obligations to fulfill all lawful contractual commitments by means of writings or by means of speeches reduced to writing after delivery thereof;

(2) Truthfully and fairly acquainting the public, advertisers, advertising agencies or media by means of writings or

speeches designed and available for general consumption in the trade, with the nature, background, services and functions of members of consenting defendant and with the advantages of their employment;

(3) Where necessary or appropriate in proceedings conducted by Federal, State or local Governments, participating in such proceedings and responding in any manner to inquiries upon any subject, including specifically, inquiries concerning ethics and commercial practices among members of consenting defendant.

#### V

Consenting defendant is ordered and directed to:

(1) Within sixty days of the entry of this Final Judgment take such action as may be necessary to make its charter, by-laws, rules, regulations, forms, policies and practices conform to the terms of this Final Judgment;

(2) Within sixty days after the entry of this Final Judgment mail to each of its members a copy thereof and copies of such other documents of consenting defendant which have been modified in compliance with the provisions thereof;

(3) Supply a copy of this Final Judgment to each new member of consenting defendant at the time he becomes a member.

#### VI

For the purpose of securing compliance with this Final Judgment duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the

Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the consenting defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of the consenting defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the consenting defendant relating to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of the consenting defendant and without restraint or interference from the consenting defendant, to interview officers or employees of the consenting defendant, who may have counsel present, regarding any such matters.

Upon written request the consenting defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

## VII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as

may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

The Court hereby expressly finds and determines that there is no just reason for delay in the entry of judgment and directs the entry of this Final Judgment herein.

Dated: February 1, 1956.

/s/ John M. Cashin  
United States District Judge

We hereby consent to the making and entry of the foregoing Final Judgment:

For the Plaintiff:

/s/ Stanley N. Barnes

/s/ Henry M. Stuckey

/s/ W. D. Kilgore, Jr.

/s/ Vincent A. Gorman

/s/ Victor H. Kramer

For the Defendant:

AMERICAN ASSOCIATION OF ADVERTISING  
AGENCIES, INC.

/s/ Carl E. Newton  
Carl E. Newton

/s/ Ralstone R. Irvine  
Ralstone R. Irvine

/s/ James R. Withrow, Jr.  
James R. Withrow, Jr.

/s/ Breck P. McAllister  
Breck P. McAllister

Of Counsel:

Donovan Leisure Newton & Irvine

/s/ George Link, Jr.  
George Link, Jr.

/s/ Mahlon F. Perkins, Jr.  
Mahlon F. Perkins, Jr.