

Questions and Answers

Pertaining to the Settlement of
the Anti-Trust Action with Respect
to A.A.A.A.



American Association of Advertising Agencies
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The A.A.A.A. Consent Decree of 1956

In 1955, the American Association of Advertising Agencies (A.A.A.A.) was one of six trade associations made defendants in a civil antitrust lawsuit brought by the U.S. Justice Department. The lawsuit alleged that the A.A.A.A. and the other associations had participated in certain collective activities in violation of the Sherman Antitrust Law, as interpreted by then-current decisions of the courts.

In 1956, the A.A.A.A. settled its portion of the lawsuit after denying the offenses charged and asserting its innocence of any violation of law. The A.A.A.A. paid no penalties or fines as part of the settlement, but it agreed to entry of a Consent Decree which permanently enjoins the A.A.A.A. from participating in certain conduct defined in the Decree.

This pamphlet attempts to explain the A.A.A.A. Consent Decree by answering the questions most often asked regarding the terms and effect of the 1956 settlement. While 1956 may seem a long time ago, the Consent Decree remains effective and continues to guide A.A.A.A. conduct and operations.

Notably, the Consent Decree does not affect the business practices that individual A.A.A.A. member agencies use to conduct their business in relation to media, their advertiser clients, or their suppliers. However, the A.A.A.A. adheres to both the letter and the spirit of the Consent Decree, and will continue to conduct its operations in a manner consistent with the Decree's provisions in serving agencies and advertising as a whole. □

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1. What was the Antitrust Action?

The Department of Justice on May 12, 1955, filed a civil antitrust suit against the American Association of Advertising Agencies and five media associations: American Newspaper Publishers Association (ANPA), Publishers Association of New York City (PANY), Associated Business Publications (ABP), Periodical Publishers Association (PPA) and Agricultural Publishers Association (APA).

It was a civil action, not a criminal one.

It was an antitrust action under the Sherman Act, which prohibits collective action in unreasonable restraint of interstate commerce.

2. How did the Antitrust Action come about?

It is the duty of the Department of Justice to question any activities which the Department deems to be in violation of the Sherman Antitrust Law as interpreted by the most recent decisions of the courts.

Over the years there are great changes in legal interpretations, even though there is no change in the basic law.

When the investigation was started, A.A.A.A. willingly and promptly opened its files to the Department. It always has been and will continue to be A.A.A.A. policy to conform to the law.

3. How was the action settled, with respect to A.A.A.A.?

The A.A.A.A.'s part of the action was settled without trial with entry of a judgment, negotiated by counsel for the Department and A.A.A.A., to which both the Department and A.A.A.A. consented.

The judgment, commonly called a "Consent Decree," was entered on February 1, 1956, in the U.S. District Court for the Southern District of New York. That Decree ended the antitrust action with respect to A.A.A.A.

4. How does the settlement affect individual advertising agencies?

The A.A.A.A. Consent Decree does not in any way relate to any individual arrangements between an agency and media or between an agency and its clients.

The Consent Decree deals entirely with acts by A.A.A.A. itself and by others acting on its behalf.

5. How does the settlement affect advertising as a whole?

The settlement has had no serious effect on the agency business or advertising as a whole, since it does not affect advertising agencies in their individual agency operations.

6. What does the Consent Decree contain, in essence?

First, it states that A.A.A.A. denies the offenses charged; that A.A.A.A. asserts its innocence of any violation of law; that no testimony has been taken; and that there has been no trial or adjudication nor any findings of fact.

Second, the Consent Decree enjoins the Association and others acting on its behalf from certain specified actions alleged in the complaint to be in violation of the Sherman Antitrust Law.

Third, there is nothing in the Consent Decree to prevent the Association from continuing to serve its members in every proper legal way.

Fourth, the Consent Decree does not apply to any member acting individually.

7. What is the A.A.A.A. enjoined from doing?

A.A.A.A. 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; (‘Commission’ is separately defined in the judgment as the ‘amount’ of commission);
- “(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, 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.”

A.A.A.A. is also enjoined 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) above.

8. What other provisions does the Consent Decree contain?

The provisos are as follows:

“Nothing contained in this Final Judgment shall be construed to prohibit members of consenting defendant from severally—‘i.e., individually’—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 writing 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 writing 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.”

There is also a proviso that A.A.A.A. may supply in writing “any statistical or other factual material or research study without comment thereon” in answer to “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 the judgment.

9. To whom does the Consent Decree apply?

It does not apply to individual A.A.A.A. members unless they are acting on behalf of the Association.

The Consent Decree spells out that it applies to the Association and its “officers, agents, servants and employees” and to any “committees or groups” when

organized and functioning as A.A.A.A. Committees or groups.

It also makes clear that nothing contained in it shall be construed to prohibit members of consenting defendant from severally—i.e., individually—“taking any action denied to consenting defendant by virtue of this Final Judgment.”

10. How has the Consent Decree affected the organization of A.A.A.A.?

The Consent Decree caused no change in our national organization, including our National Committees, Regions and Councils, and so forth.

11. Does the Consent Decree affect the amount of commission which may be allowed to an agency by an individual medium?

No. The Consent Decree does not affect payment arrangements individually made between a medium and agency.

12. Does the Consent Decree relate to contracts between an agency and media? Between an agency and its clients?

No. The Consent Decree does not relate to contracts or any other lawful individual arrangements between an agency and individual media or between an agency and its clients.

13. Does the Consent Decree mean that A.A.A.A. must admit house agencies to its membership?

No. A.A.A.A. Qualifications for Membership continue to require that A.A.A.A. members must be

bona fide independent agencies, free from control by any advertiser or any medium owner.

14. How may the Consent Decree be enforced?

The Department of Justice may, on proper request and notice, examine A.A.A.A. records and files and interview A.A.A.A. officers and employees.

If requested, A.A.A.A. must submit written reports.

Violation of the judgment would constitute contempt of court, punishable by fine or imprisonment or both. □

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Members, Non-members: no charge



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