

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Andrew N. Ferguson, Chairman
Melissa Holyoak
Mark R. Meador

_____)	
)	
In the Matter of)	
)	
Omnicom Group Inc.,)	
a corporation,)	
)	
and)	DECISION AND ORDER
)	DOCKET NO.
The Interpublic Group of)	
Companies, Inc.,)	
a corporation.)	
)	
)	

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition by Omnicom Group Inc. (“Omnicom”) of The Interpublic Group of Companies, Inc. (“IPG”, and collectively “Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents a draft of the Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45 (collectively “Acts”).

Respondents and the Bureau of Competition executed an Agreement Containing Consent Order (“Consent Agreement”) containing (1) an admission by Respondents of all of the jurisdictional facts set forth in the Complaint, (2) a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Complaint, or that the facts as alleged in the Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Act, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure

described in Rule 2.34, the Commission makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Omnicom Group Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal executive offices located at 280 Park Avenue, New York, New York 10017.
2. Respondent The Interpublic Group of Companies, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal executive offices located at 909 Third Avenue, New York, New York 10022.
3. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Omnicom” means Omnicom Group Inc. its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Omnicom Group Inc., including Omnicom Media Group, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Effective Date Omnicom will include IPG.
- B. “IPG” means The Interpublic Group of Companies, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by The Interpublic Group of Companies, Inc., including Mediabrands, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Advertiser” means any customer or potential customer of Media Buying Services from Omnicom or IPG.
- D. “Effective Date” means the date on which the acquisition of IPG by Omnicom is consummated, and the date on which the obligations described in Sections II, III, IV, and V will enter into force.
- E. “Mediabrand” means the network within IPG responsible for Media Buying Services.
- F. “Media Buying Services” means purchases of advertising inventory across any type of media and types of purchases on behalf of, or for later resale to, Advertisers, but does not include other media services sold or billed separately, such as media planning or campaign management.

- G. “Media Publisher” means any United States-based seller of advertising inventory, including a website, application, broadcaster, or publisher to Omnicom or IPG.
- H. “Omnicom Media Group” means the network within Omnicom responsible for Media Buying Services.
- I. “Relevant Area” means the United States.

II. Prohibited Conduct

IT IS FURTHER ORDERED that, after the Effective Date:

- A. Respondent Omnicom, in connection with its activities in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, shall cease and desist from, directly or indirectly, continuing, entering or attempting to enter into, maintaining or attempting to maintain, enforcing or attempting to enforce, or threatening to enforce any agreement, understanding, rule or practice, with any third party with respect to Media Buying Services in the Relevant Area that:
 - 1. Directs Advertisers’ advertising spend based on the Media Publisher’s political or ideological viewpoints, or the political or ideological viewpoints expressed in content that the Media Publisher sells advertising to run alongside of (other than as required by applicable laws);
 - 2. Refuses Advertisers’ requests to direct advertising spend to a Media Publisher based on political or ideological viewpoints or political content (other than as required by applicable laws); or
 - 3. Declines to deal with Advertisers based on political or ideological viewpoints of that Advertiser (other than as required by applicable laws);

PROVIDED, HOWEVER, that this Paragraph II.A shall not apply to any agreement or discussion between Omnicom and an Advertiser (or vendors, subcontractors, or similar service providers on behalf of the Advertiser) relating to how to direct that Advertiser’s advertising spend.

- B. Respondent Omnicom shall cause Omnicom Media Group, the entities that operate as part of Omnicom Media Group, Mediabrands, and the entities that operate as part of Mediabrands, not to rely on “exclusion lists” or other means of differentiating between Media Publishers in the Relevant Area on the basis of political or ideological viewpoints to determine or direct Advertisers’ advertising placements. Omnicom shall not knowingly encourage or solicit third parties to create such means of differentiation on Omnicom’s behalf that it itself would be prohibited from creating under this order.

- C. Notwithstanding the foregoing, exclusion lists or other means of differentiating between Media Publishers developed at the express direction of a particular client are, however, expressly permitted; provided, however, that Omnicom will not offer any client's exclusion list to another client or third party, nor will it knowingly encourage or solicit third parties to do so.
- D. To the extent such prohibited practices currently exist upon the Effective Date, Omnicom must promptly abolish them.

Nothing in this Order shall prohibit or prevent Omnicom or IPG from making day-to-day unilateral business decisions in the ordinary course, consistent with past practice, including but not limited to decisions on whether to pursue particular client business, so long as Omnicom and IPG do not violate the provisions of this Order.

III. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondent Omnicom shall notify Commission staff via email at bccompliance@ftc.gov of the Effective Date no later than 5 days after its occurrence; and
- B. Respondent Omnicom shall file verified written reports (“Compliance Reports”) in accordance with the following:
 - 1. Respondent Omnicom shall submit:
 - a. an annual Compliance Report one year after the date this Order is issued, and annually for the next 4 years on the anniversary of that date;
 - b. additional Compliance Reports as the Commission or its staff may request.
 - 2. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent Omnicom is in compliance with this Order. Conclusory statements that Respondent Omnicom has complied with its obligations under this Order are insufficient. Respondent Omnicom shall include in its Compliance Reports, among other information or documentation that may be necessary to demonstrate compliance a full description of the measures Respondent Omnicom has implemented or plans to implement to ensure that it has complied or will comply with each Section of this Order, including a list setting forth the number of times a publisher appears on “exclusion lists” developed or applied by Omnicom Media Group at the express direction of a particular client based on political ideology (as permitted by Section II of this Order).
 - a. For a period of 5 years after filing a Compliance Report, Respondent Omnicom shall retain all final versions of material written communications with each party identified in each Compliance Report

and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent Omnicom's obligations under this Order during the period covered by such Compliance Report. Respondent Omnicom shall provide copies of these documents to Commission staff upon request.

- b. Respondent Omnicom shall verify each Compliance Report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondent Omnicom shall file its Compliance Reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondent Omnicom shall provide a copy of each Compliance Report to the Monitor if the Commission has appointed one in this matter.

IV. Change in Respondent

IT IS FURTHER ORDERED that Omnicom shall notify the Commission at least 30 days prior to:

- A. The proposed dissolution of Omnicom Group Inc.;
- B. The proposed acquisition, merger, or consolidation of Omnicom Group Inc.; or
- C. Any other organizational change in Omnicom, including the transfer, sale, or dissolution of subsidiaries, if such change may materially affect compliance obligations arising out of this Order.

V. Access

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon 5 days' notice to Respondent Omnicom, Respondent Omnicom shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Omnicom and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession, or under the control, of Omnicom related to compliance with this Order, which copying services shall be provided by Omnicom at its expense; and
- B. To interview officers, directors, or employees of Omnicom, who may have counsel present, regarding matters related to compliance with this Order.

VI. Cooperation Agreement

IT IS FURTHER ORDERED that Omnicom agrees to cooperate with the Commission in any investigation into (a) Omnicom's compliance with the Order and (b) any investigation or litigation relating to Media Buying Services, advertising, or similar matters, including by making employees available for interviews or testimony, facilitating interviews with former employees, accepting service of any compulsory process, not unreasonably objecting to or seeking to quash any such compulsory process, and voluntarily providing and authenticating documents and data reasonably sought by the Commission.

VII. Purpose of Order

IT IS FURTHER ORDERED that the purpose of this Order is, among other things, to address the theories of harm to competition alleged by the Commission in its Complaint including that the acquisition of IPG by Omnicom increased the likelihood of coordination among competitors in the Media Buying Services industry relating to the placement of advertisements based on political or ideological viewpoints.

VIII. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission, Commissioner Meador recused.

SEAL
ISSUED:

April J. Tabor
Secretary