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An Ananalysis and Description of Advertising Agencies in North Dakota

John N. Hein

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AN ANALYSIS AND DESCRIPTION OF ADVERTISING
AGENCIES IN NORTH DAKOTA

by

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B.A. in Economics, University of Minnesota, Duluth 1964

A Thesis

Submitted to the Faculty

of the

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in partial fulfillment of the requirements

for the Degree of

Master of Arts

Grand Forks, North Dakota

June
1967

This thesis submitted by John N. Hein in partial fulfillment of the requirements for the Degree of Master of Arts in the University of North Dakota is hereby approved by the Committee under whom the work has been done.

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ABSTRACT

This thesis describes and analyzes the advertising practices of selected North Dakota advertising agencies. Much of the data was obtained from personal interviews with executives of five North Dakota advertising agencies. Such agency topics as clients, services, media used, billings, and false and misleading advertising laws adhered to by North Dakota agencies were described.

A total of 65 advertisers were represented by North Dakota advertising agencies in 1966. The large national and regional advertisers were most profitable in terms of billings to agencies. Knowledge and familiarity of markets and media of North Dakota and the surrounding area were probably the primary reasons why these relatively large advertisers purchased the services of North Dakota agencies. The small size of North Dakota agencies caused a heavy workload to be placed on all agency personnel in the performance of agency services. All services of agencies were dependent upon the amount of funds obtained from advertising accounts and the limited amount of time available to service these accounts by agency personnel.

Newspapers were the most popular commissionable medium used by North Dakota agencies. The large agencies required a minimum amount of billings in commissionable

media, per year, of \$5,000 and the small agencies \$1,000 respectively for a client to be profitable. The mean billings per North Dakota agency in 1966 were \$443,000.

This abstract of a thesis submitted by John N. Hein in partial fulfillment of the requirements for the Degree of Master of Arts in the University of North Dakota is hereby approved by the Committee under whom the work has been done.

D. I. Anderson
Chairman

Paul M. Eger

Courtney F. Schley

Dean of the Graduate School

CHAPTER I

INTRODUCTION

Objectives

The primary objective of this study was to describe and analyze the advertising practices of North Dakota advertising agencies. Topics which have been discussed in the study are the organization, billings, clients, media used, services, and false and misleading advertising laws adhered to by North Dakota advertising agencies. In so doing, attention has been focused on the objectives of comparing North Dakota advertising agencies in a non-industrialized area to those in an industrialized area, as well as local agencies to national agencies.

The American Association of Advertising Agencies defines an advertising agency as: "(1) an independent business organization, (2) composed of creative and business people, (3) who develop, prepare, and place advertising in advertising media, (4) for sellers seeking to find customers for their goods and services."¹

¹Gamble, Fredric R. What Advertising Agencies Are--What They Do and How They Do It. 5th ed. (New York: American Association of Advertising Agencies, Inc., January 1966), p. 4.

Methodology

The research design consisted of four steps: (1) review of related literature; (2) personal interviews with executives of four of the advertising agencies in North Dakota which were listed in the Standard Directory of Advertising Agencies² during the months of July through November, 1966; (3) evaluation of the data; (4) formulation of findings and conclusions.

The principal approach used in this study was the case method. By this method individual advertising agencies were analyzed in depth. All but one of the North Dakota agencies listed in the Standard Directory of Advertising Agencies were included in the study. In addition, one agency not listed in the directory was interviewed.

Limitations

All free-lance, outdoor, and direct mail agencies were excluded from consideration. These agencies either were not listed by the directory or did not place advertising in advertising media.

Organization

The report is organized into chapters and topics as follows:

Chapter II is concerned with the history of advertising agencies in the United States and North Dakota.

²Standard Directory of Advertising Agencies.
No. 148. (Skokie: National Register Publishing Co.,
June 1966), p. 804.

The organization of advertising agencies in North Dakota is also discussed, and a comparison is made to national agencies.

Chapter III describes the advertiser-agency contracts and the clients of advertising agencies in North Dakota. It presents the services of agencies in North Dakota and relates them to national agencies.

Chapter IV explains the advertising agency media used, billings, and commissions of agencies in North Dakota.

Chapter V relates to the North Dakota laws in the area of false and misleading advertising and attempts to regulate abuses in advertising by the Federal Trade Commission and other various organizations and commissions.

Chapter VI contains a summary and conclusions of the study.

CHAPTER II

AGENCY HISTORY AND ORGANIZATION

Historical Background

General History, 1841-1900

Initially, advertising agencies were agents of advertising media. They represented newspapers and magazines in the sale of space to advertisers. Today, they would be called publisher's representatives.

The first advertising agency in the United States was founded by Volney B. Palmer in Philadelphia in 1841.¹ He collected a twenty-five percent commission from newspapers on printed media.

Other agents and their contributions to the development of the modern advertising agency were:

(1) S. M. Pettingill, who worked for Palmer and then established his own agency. He was the first agent who prepared copy for his advertisers.

(2) George P. Rowell, who bought advertising space at wholesale rates and then sold it to advertisers in small lots at retail price. In 1869 he published the first list of all newspapers and their circulation in the United States.

¹"The World of Advertising," Advertising Age. January 15, 1963, p. 38.

This list was called the American Newspaper Directory and was copied after Mitchell's Directory of the Newspapers of Great Britain. N. W. Ayer and Son's Directory of Newspapers and Periodicals supercedes it today and is a standard reference for advertising agencies. In 1888, Rowell also founded Printer's Ink Magazine which became an outstanding advertising trade magazine.²

The early agencies were of three types:

(1) "Space brokers"--who bought space from newspapers or magazines at wholesale prices and resold it to advertisers at retail price.

(2) "Advertising concessionaires"--who took over the advertising space for some publication for a lump sum of money and then sold it to advertisers.

(3) "Space jobbers"--who first sold space to advertisers and then filled the orders with newspapers and magazines.³

These agencies served two institutions--the advertiser and the media. In effect, they were selling space for publishers and trying to instruct and counsel their clients--a difficult task because of a division of loyalty.

Among these pioneer agencies were the J. Walter Thompson Advertising Agency which was founded in 1864,

²Wood, James Playsted. The Story of Advertising. (New York: Ronald Press Co., 1958), p. 139.

³"The World of Advertising," loc. cit.

N. W. Ayer Advertising Agency which was established in 1869, and Lord and Thomas Advertising Agency which began operations in 1873. These agencies purchased all media advertising space in certain types of publications. Ayer bought all advertising space in agricultural papers. Lord and Thomas obtained all the advertising space in religious papers. J. Walter Thompson purchased all advertising space in women's magazines.⁴

These early agencies served as a liaison between advertisers and media. Their most lucrative advertiser accounts were the patent medicine manufacturers. The agency business was characterized at this time as "the principle of getting from the advertiser all that he could be induced to pay and offering the publisher as little as he would consent to accept."⁵

The N. W. Ayer advertising agency established the "open contract plus commission" plan. Under this plan, Ayer obtained the lowest medium rate possible for the advertiser and then added a commission for its services.⁶ The commissions initially ranged from eight to fifteen percent. The fifteen percent commission was formalized in 1893 when the American Newspaper Publishers Association,

⁴"How Advertising and Advertising Agencies Started and Grew in the U.S.: A Brief History," Advertising Age, December 7, 1964, p. 4.

⁵"The World of Advertising," loc. cit.

⁶Ibid.

which represented the newspaper industry, established this commission as payment to recognized independent agencies.

Ayer's plan finally established the agency as a servant of the advertiser. Before the plan, agencies argued rates and placed orders for their clients. Now, the agencies developed services and became specialists in advertising preparation.

1900 to Present

After the turn of the century, agencies commenced to offer specialized services in copywriting, creating layouts, and planning advertising programs to advertisers. Marketing and advertising copy shifted from emphasis on mechanical superiority of a product to the pleasure an owner would experience from the product. Specialized personnel in such as economics, psychology, mathematics, and marketing entered the advertising agency. The role of the agency changed to increasing the effectiveness of a client's advertising by making the advertising pay the advertiser in terms of profits, share of the market, and product recognition.

In 1963, there were 4,820 advertising agencies with reported payrolls in the United States.⁷ Approximately 1,400 of these agencies were small agencies in

⁷U.S. Bureau of Census, Census of Business: 1963, Selected Services, United States, (Washington: U.S. Government Printing Office, 1965), pp. 1-7.

that they had annual billings of less than \$100,000 and an average of two employees.⁸ Another 1,900 agencies had an annual volume of billings between \$100,000 and \$500,000, with an average of five employees.⁹ The remaining 1,500 agencies had annual billings of over \$500,000 and averaged more than five employees per agency. In 1963, advertising agencies with payroll, employed 65,555 people in the United States and did a total volume of business amounting to \$5,786,830,000.¹⁰

History of North Dakota Agencies

It is not known when the first advertising agency appeared in North Dakota. An agency in Fargo, North Dakota, is the oldest agency in the state that is still functioning. It refused to cooperate by supplying information for this study. The oldest agency, under present management and included in this study, was founded in Grand Forks, North Dakota, in 1947. In 1954, another agency was established in Grand Forks. An agency in Fargo, North Dakota, was started in 1946 but came under present management in 1953. Fargo acquired another agency in 1959. An agency was established in Bismarck, North Dakota, in 1964, as a consequence of absorbing another agency.

⁸Gamble, Fredric R. What Advertising Agencies Are--What They Do and How They Do It. 5th ed. (New York: American Association of Advertising Agencies, Inc., January 1966), p. 28.

⁹Ibid.

¹⁰Census of Business: 1963, Selected Services, United States, loc. cit.

The founders of North Dakota advertising agencies entered the advertising agency business in North Dakota for a variety of reasons. One agency executive started an agency in a particular town because he was born there. Another executive was employed in retail advertising and decided to establish his own agency. A third agent moved to North Dakota for reasons of health and set up an agency. A fourth agency owner joined an advertising agency in North Dakota upon an invitation of a friend who was employed at the agency, and together they purchased the existing agency from its founders. The fifth proprietor bought out an existing agency after advertising experience obtained from a local radio station led to his being employed by the agency.

All of the executives of North Dakota advertising agencies have had some previous advertising or sales experience. Two executives were employed by newspapers prior to their agency experience. One executive was a pharmaceutical salesman. One executive was employed in retail advertising, and this experience led to his establishing an agency.

Executives of North Dakota advertising agencies either had sales, creative, or management abilities, which enabled them to establish their advertising agencies.

Agency Organization

Types of Agency Internal Organization

An advertising agency can be internally organized in three ways: (1) as a group agency, (2) as a departmentalized or concentric agency, or (3) as a combination of the two preceding organizations.¹¹

In the group agency plan, a group of agency personnel handles the contact, planning, and creative work for one or more clients, or products of clients. The group consists of a team of specialists in marketing, media, economics, psychology, or other phases of specialization within the agency. The group's work is subject to approval by the agency's planning board or its chief officers. Each individual group makes use of the centralized research, media, print production, and other such departments within the agency.

The departmentalized or concentric agency is divided into departments based on functions performed such as copywriting, layouts and illustrations, print production, media selection, television and radio production, and other departments. The account executive, who contacts the client, explains the agency operations and benefits to the client, and is responsible for the execution of the client's advertising. He coordinates

¹¹Crichton, John. The Advertising Agency Business--1966. Talk by the President of the American Association of Advertising Agencies, p. 18.

work completed by each individual department in the planning of his client's advertising. Departments thus serve all account executives and their clients.

A description of the duties and responsibilities of the departmentalized agency are as follows:¹²

(1) Account supervisors and account executives--they maintain contact with the clients. In large agencies an account group headed by an account supervisor directs the work of one or more account executives. Their job is to act as a liaison between the client and the rest of the agency. They are also responsible for the execution of the client's advertising.

(2) Copy writers--writers who develop, write, and plan layouts of advertisements. There is usually a departmental division between print writers and broadcast writers. Production of television commercials is normally a joint effort of writer, art directors, and broadcaster producers.

(3) Art directors and artists--their responsibility is the visual framework for commercials, and creating, or supervising the creation of, finished art and photography. Agency artists work on illustrations, labels, design booklets, and other printed material. Often, a large portion of finished art is purchased from specialists outside the agency. The copy and art departments are known as the "creative" departments of an advertising agency.

¹²This section is largely taken from "The World of Advertising," Advertising Age. January 15, 1963, p. 50.

(4) Media department--responsible for the placing of commercials and advertising messages in suitable media. Sometimes the functions are divided by the media, such as specialized print buyers, radio buyers, and television buyers.

(5) Research department--personnel in this department may be trained psychologists, statisticians, economists, and mathematicians. They analyze markets, suggest copy themes, recommend media to use, and conduct consumer or dealer surveys and supervise pretesting of advertisements.

(6) Radio-television department--the department selects programs for clients and determines where and when programs will be run. Creative work for commercials, staged rehearsals, and other film production duties are accomplished.

(7) Production department--responsibility for converting the art work into finished products such as printing plates. Personnel have a knowledge of printing, typography, electrography, and photography. Some materials such as printing plates may be purchased outside the agency.

(8) Traffic department--keeps a schedule of all work in progress and checks to find when the advertising will be completed for the client.

(9) Public relations department--many clients need product publicity and promotion, and large agencies may have a department which specializes in this function.

(10) Merchandising department--consists of specialists who contact dealers, plan contests, or help clients expand distribution for a product.

Combinations of these methods are numerous, since no two agencies are organized alike. Top management usually decides which method will best suit the agency and its clients.

National Agencies

Large advertising agencies, national in scope of operations, are organized by one of the three methods listed above. The agency group plan prevails among these large advertising agencies as the most numerous type of organization.

North Dakota Advertising Agencies

Agencies in North Dakota are organized by a combination of the group plan and the departmentalized plan. This combination plan stems from the fact that North Dakota agencies are small. Consequently, the advertising program, art, copywriting, production, and completion schedule of clients are the responsibility of the owner-executive of the agency. He will distribute the work to the members of his agency and supervise the advertisement until completed.

There are twenty-five people employed by the five advertising agencies in North Dakota including artists, secretaries, account executives, and copywriters, as well as the owners, themselves. There is an average of one

artist per North Dakota advertising agency, with six artists employed by the five agencies. Also, two agency-owners serve as artists. There are eleven account executives employed by North Dakota advertising agencies.

The departmentalized functions listed previously in this chapter are extensively merged in North Dakota agencies. This is due to the small size of the agencies. Executives of the agencies do all the contact and service work with clients. Administrative duties are completed by the owner-executive or, in the several large agencies, are left to a subordinate. Two agencies in North Dakota have all the contact and client service duties, art work, and production responsibility in the hands of the chief executive.

Agency Policies

National Agencies

The policies of accredited national advertising agencies are four: (1) clients shall be of sound financial credit, (2) clients must be limited to those areas where the agency has the most knowledge and experience, (3) competing accounts are not to be solicited, and (4) agencies shall take only those accounts that are large enough to bear a certain portion of agency overhead. (Large agencies with branch offices operating as an individual unit sometimes take competing accounts.)

North Dakota Agencies

Agencies in North Dakota follow the same policies as national agencies. The five agencies do not solicit competing accounts. One agency took a competing account only at the client's insistence. All agencies stated that the account must be profitable from the standpoint of agency operations before it will be accepted by any of the agencies. Three agencies emphasized their most important policy was to obtain competent personnel for their agency.

Soliciting Clients

National Agencies

Agencies obtain clients by: (1) advertising in newspapers and business papers, (2) writing letters to prospective clients or regular mailings, and (3) personal solicitation.

North Dakota Agencies

Personal solicitation is the method all agencies in North Dakota rely on foremost. Letter writing is secondary. All solicitation was done by the owner-executives of the agencies. None of the interviewed agencies advertised in newspapers or business papers for clients.

CHAPTER III

CLIENTS AND SERVICES OF ADVERTISING AGENCIES

Agencies and Their Clients

The advertising agency's relationship with a client must be one of mutual cooperation. The agency needs product information, market projections, marketing plans, and other specific knowledge from the advertiser before it can develop an effective advertising program. If a poor client-agency relationship exists, the advertiser may transfer his account to another advertising agency. Among nationally accredited advertising agencies in 1965, there were over 300 clients who changed advertising agencies--a loss of over \$300,000 in billings to their previous agencies. Of these, ten large accounts transferred a total of \$112,750,000 in billings.¹

Advertiser-Agency Contracts

National Agencies

Nationally accredited advertising agencies seldom use a formal written contract. An informal letter from

¹"'65 Was Biggest Year for Account Changes," Advertising Age. January 17, 1966, p. 3.

the client often serves to cement the relationship with the agency. The letter authorizes the advertising agency to handle the client's current advertising program.

North Dakota Agencies

Virtually all advertiser-agency contracts involving North Dakota agencies are verbal agreements. North Dakota advertising agencies and clients seldom use a written contract. This stems from the fact that a client may wish to terminate his relationship at a particular agency and a written contract would be a possible legal hinderance. Contracts are used only for media placement. (Media placement contracts are used by the agency to confirm advertising and lineage rates for the agency and client from the printer of the media.)

Clients of North Dakota Agencies

Industrial Classification of Clients

North Dakota advertising agencies reported that they represented a total of 65 advertisers as of November, 1966. These clients are classified in accordance with the Standard Industrial Classification of the United States. A description of the number and percentage of clients of North Dakota advertising agencies by the categories employed in the Standard Industrial Classification are as follows:

(1) Manufacturing--Twenty firms (31 percent of agency clients) were manufacturers. Of these manufacturers

eight clients were machinery manufacturers. There were four firms who were food and kindred products processors. The stone, clay and glass producers, and the electrical machinery, equipment and supplies manufacturing industries were each represented by two clients. One client comprised each of the four manufacturing categories of: professional, scientific, controlling instruments, photographic and optical goods; chemical and allied products; furniture and fixtures; and printing, publishing, and allied industries.

(2) Services--Nineteen clients (29 percent of all firms) of advertising agencies in North Dakota were firms in the service industries. Of these clients, sixteen were non-profit organizations. Three clients were miscellaneous service firms.

(3) Wholesale and Retail Trade--Twelve clients (18 percent) which employed the services of advertising agencies in North Dakota were engaged in wholesale and retail trade. The automotive dealers or gasoline service stations, and the furniture, home furnishings, and equipment businesses were each represented by three clients. The building materials, hardware, and farm equipment and the miscellaneous retail stores businesses were each represented by two clients. The apparel and accessories business and the general merchandise distributors were each represented by one client.

(4) Finance, Insurance, and Real Estate--Eight clients (12 percent) who procured the services of North Dakota advertising agencies were engaged in the general field of finance, insurance, and real estate. Of these firms, five were principally in banking. Three clients were insurance carriers.

(5) Transportation, Communication, Electric, Gas and Sanitary Services--Five firms (8 percent of the total) in this field employed an advertising agency in North Dakota. Of these five, four were electric, gas and sanitary service firms. One client was a transportation equipment manufacturer.

(6) Hotels, Rooming Houses, Camps, and Other Lodging Places--In terms of its business operation, one agency client was in the hotels, tourist courts, and motels category.

Geographical Classification of Clients

Seven firms (11 percent) of the sixty-five advertisers served by North Dakota advertising agencies in 1966 were national advertisers. (National advertisers are, as considered in this paper, to be those firms that advertised their products in more than five states.) Two clients who were national advertisers were machinery manufacturers. One client in each of the following industries was a national advertiser: chemical and allied products; transportation equipment; printing, publishing, and allied industries; non-profit organizations; and electrical machinery, equipment and supplies.

Twenty clients (31 percent) of the sixty-five advertisers who employed the services of a North Dakota advertising agency were regional advertisers. (Regional advertisers are, as indicated in this paper, firms which advertised their products in more than one but less than six states.) Six clients who were regional advertisers were machinery manufacturers. Four firms were regional non-profit organizations. Two firms respectively were regional advertisers in the electric, gas and sanitary service industry and the insurance industry. One firm in each of the six following fields was a regional advertiser: furniture and fixtures; furniture, home furnishings, and equipment; food and kindred products; electrical machinery, equipment and supplies; building materials, hardware, and farm equipment; and professional, scientific, controlling instruments, photographic and optical goods.

The remaining thirty-eight clients (58 percent) were local advertisers. (Local advertisers are those whose advertising was limited to one state or a portion thereof.) These local firms were of lesser importance to North Dakota agencies in terms of billings than the large national or regional firms but were needed to supplement agency income from the large national and regional firms. A probable reason agencies in North Dakota serve numerous local firms is because of their (agencies') knowledge of local media and market characteristics. Another possible reason is that local firms probably have never been contacted by advertising agencies from outside the state of North Dakota. A third

reason local firms used North Dakota advertising agencies is the direct personal service North Dakota agencies can offer local firms.

As few as three or four of the large national or regional advertisers (42 percent of all clients) accounted for between thirty and forty percent of each agency's monthly billings. These large advertisers most likely employed the services of North Dakota advertising agencies because of knowledge and familiarity of the latter with local markets and media. North Dakota advertising agencies could thus "tailor" advertising to meet the needs of the North Dakota market and that of the surrounding area better than large national advertising agencies. Because of the importance in terms of billings of the large national or regional advertisers, the termination of the relationship between one of these firms and an agency could severely affect the agency's operation. As is true of national agencies, North Dakota agencies find these large accounts crucial to their success.

Agency Services to Clients

Agency service, according to the American Association of Advertising Agencies Service Standards is "interpreting to the public, or to that part of it which it is desired to reach, the advantages of a product or service."²

²Gamble, Fredric R. What Advertising Agencies Are--What They Do and How They Do It. 5th ed. (New York: American Association of Advertising Agencies, January, 1966), p. 6.

(A copy of the Service Standards of the American Association of Advertising Agencies is shown in Appendix A.)

Agencies perform many services for their clients. The principle function of the agency is the formulation and execution of an advertising plan for its clients. In executing an advertising plan, agencies perform such services as the creation of art, copywriting, layout, and media placement. Special services the agency may execute for the client are research on markets, products, and copy, advise on package design, and assistance in publicity and public relations.

Copywriting

National Agencies

Copywriting is one of three creative services rendered by the advertising agency. The others are art and layout. Copywriting involves three techniques:³

(1) Copythinking--This is the gathering of essential facts on who will buy the product, the product's advantages and disadvantages, competition, pricing, and other facts on the product and consumer. This information may be gathered by agency personnel or may be furnished by a "fact sheet" from the manufacturer. ("Fact sheets" are descriptive sheets telling the selling points and product's features as prepared by the manufacturer.) Copywriters

³John S. Wright and Daniel S. Warner, Advertising (New York: McGraw-Hill Book Co., 1962), p. 291.

analyze this material for selling points and benefits and draw up appeals to be used in the advertisement. Various psychological factors are also put into use such as status, income, and benefits to influence the consumer to buy the product.

(2) Copy structure--This is the formulation of the ad headline with emphasis on attracting the reader's or viewer's attention, interest, and desire to buy the product or service.

(3) Copy style--This is primarily concerned with how the message is said and its believability and readability to the reader or viewer.

North Dakota Agencies

North Dakota advertising agencies perform all of the copywriting activities mentioned above.

Art and Layout

National Agencies

The art and layout services performed by advertising agencies are concerned with the preparation of the visual communication of the advertisement. Agencies determine the layout of the advertisement in terms of symmetry and balance, whether the ad should be in color or black and white, size of each element in the advertisement, and the eye movement. Illustrations within the advertisement are also considered in art and layout of the advertisement.

North Dakota Agencies

North Dakota advertising agencies provide the same art and layout services for their clients as do national agencies.

Research

National Agencies

Often marketing facts are needed by national agencies in the preparation of a client's advertising plan. Agencies obtain additional facts through marketing research which are needed in the formulation and execution of a successful advertising program. Three types of research completed by advertising agencies are:

(1) Internal research--research within the client's own business. Agencies use such techniques as questionnaires, data books, and company records to secure information on their client's business.

(2) General research--the use of government publications, trade association material, and other printed sources of information on markets, channels of distribution, and statistics needed to formulate an advertising program for their clients.

(3) Field research--the use of mail or personal interview to secure data from consumers, salesmen, retailers, wholesalers, and other sources.⁴

⁴What Advertising Agencies Are--What They Do and How They Do It, loc. cit. p. 9.

North Dakota Agencies

The two large agencies (in terms of billings) in North Dakota carry out all of the kinds of research mentioned above. Extensive agency research is confined to large national and regional accounts. Smaller local accounts usually do not require research services.

The three small agencies in North Dakota (in terms of billings) do limited research. Their research is mostly confined to general research in trade association material and libraries. Some field research is completed by the agencies in which the agency personnel survey potential dealers or outlets for their clients' products. Also knowledgeable persons in the areas of promotion and distribution are interviewed to obtain information for the advertising program of a client.

The amount of research that can be completed by agencies in North Dakota is entirely dependent on the available time of agency personnel and the willingness of their clients to pay for these extra services.

Package Design

National Agencies

Large national advertising agencies assist in the design of product packages for clients. Agencies evaluate the attractiveness, shape, materials, ease of identification, economy, size, convenience, and protection of the product package of their clients.

North Dakota Agencies

The two large agencies in North Dakota have assisted clients with package design. This service is again dependent on the amount of available time agency personnel can devote to the client's account and the willingness of the client to pay for this service.

Three small agencies in North Dakota usually do not perform this service. The reasons are that many clients cannot afford this expense and that the activity consumes an excessive amount of agency time.

Publicity

National Agencies

Publicity is "a story or message about a product or a company prepared as editorial rather than advertising material."⁵ National agencies attempt to obtain favorable television, radio, newspaper, and magazine publicity coverage for their clients' products.

North Dakota Agencies

North Dakota agencies obtain favorable publicity for their clients whenever possible and particularly when clients introduce new products. Publicity services performed by agencies in North Dakota consist of press releases which are mailed to media for print or broadcast. Publicity is a "free" service provided by North Dakota advertising agencies for clients.

⁵Advertising, loc. cit. p. 630.

Public Relations

National Agencies

Public relations is "any communication created primarily to build prestige or good will for an individual or an organization."⁶ National agencies assist clients in obtaining favorable public images for their products, services, or organizations.

North Dakota Agencies

All agencies in North Dakota provide services in the area of public relations for their clients. Two small agencies in North Dakota received thirty percent of their agency income in 1966 from public relations activities for their clients. Public relations activities of North Dakota advertising agencies are dependent on the funds available from agency clients for public relations.

Compensation of Agencies

The compensation which agencies receive for the performance of their services comes in part from media in the form of commissions and in part from the payment of fees by clients.

Compensation by Commissions

National Agencies

Commissions received from newspapers, magazines, radio, television, farm and business publications, and

⁶Ibid.

transit media by agencies are based on fifteen percent of the dollar value of all advertising the agency places with these media. Outdoor plants allow a commission of sixteen and two-thirds percent on advertising placed by the agency with their medium. Since the medium pays the agency, the client receives the agency's services "free" of charge.

North Dakota Agencies

North Dakota agencies receive the fifteen percent commission from media. The standard commission of sixteen and two-thirds percent is allowed the agency by outdoor plant owners. The minimum amount of advertising an agency in North Dakota will contract for a client for a fifteen percent commission from media is \$100 per advertisement placed. If the client requires less than this amount of advertising, the agency is unable to provide "free" services for the fifteen percent commission.

Compensation by Fees

A fee is a sum of money agreed upon by the client and agency and is payable to the agency for services rendered to the client's account. Fee systems are computed on the basis of labor costs. Fees are usually computed either by the amount or percentage of time spent by agency personnel on a client's account multiplied by the salaries or tabulated hourly wages of agency personnel. Overhead and profits may be estimated by the use of historical data or may be determined from data on current costs. Media commissions are usually rebated or deducted from the fee.

If a commission exceeds the fee, the excess is either retained by the agency or split with the advertiser. Marketing research, art work, counseling, and other special projects which require agency time and talent over and above normal costs are usually tabulated and separately billed to the client. The charge for these services varies, since it is often impossible to determine their cost in advance.

Some fee arrangements used by advertising agencies are as follows:

(1) Minimum annual fee--the advertiser pays the agency the difference between earned commissions and a minimum annual amount agreed to by the agency and client. The advertising agency retains the commission if in excess of the fee.

(2) Over-all fee--as based on estimated service requests for the budget period ahead. Media and other costs are billed net, and the commissions are credited to the client.

(3) Annual basic fee--established to cover agency overhead and profit and is supplemented by payments for specific services. Media and other costs are billed net, and the commissions are credited to the client.

(4) Cost plus a percentage--it provides for payment to the advertising agency of actual costs incurred in the servicing of a client's account, plus a markup to cover indirect costs and profits.

(5) An incentive arrangement--it provides for the sharing of agency profit above a set specific figure agreed upon by the agency and client.

(6) The agency bills monthly for all services by the agency, and the commissions are credited to the advertiser.

(7) Fixed fee--covers the direct salaries of mutually accepted agency personnel and their overhead plus an override of three percent of billings with minimum and maximum limits agreed upon by the agency and client.

The advantage of the fee system is that it makes the agency and client aware of the workload of the agency and the value of services the agency performs. In addition, the client is inclined to believe the agency's recommendations are more objective.

The disadvantage of the fee system is that the client may feel that the agency will become complacent as a consequence of a guaranteed profit from the client's account. Time devoted to the client's account by agency personnel may also increase due to overestimating the time necessary to service the account.

National Agencies

Large national advertising agencies use fees to cover costs of the purchase of outside art and printing services. Some agencies charge such fees only after a specific profit percentage is established for a client's account. A fee method of compensation is shown by the

nationally accredited advertising agency of Batten, Barton, Durstine, and Osborn.

BBDO [Batten, Barton, Durstine, and Osborn] found by review of past years that a profitable account would yield a profit of 1.5-2.2% of billings. BBDO then set that range as its so-called profit target. The system provides that if the agency realizes a smaller profit on a given account, the client will make up the difference and that if the work yields more than 2.5% profit, agency and advertiser will split the gravy.⁶

Another arrangement is that of the Ogilvy & Mather Advertising Agency which, in 1960, introduced the cost-plus method of compensation with the agency's Shell Oil account.

Ogilvy has found that over the years total overhead (comprising indirect salary costs, or employee benefits, plus indirect expenses such as supplies and taxes), plus direct expenses (travel, reports on competition, and so forth), plus a profit factor equal to 25% of costs, adds up to 2.25 times the amount of salaries paid to those working on a particular account. So Ogilvy calculates its fee generally by multiplying the salaries of account personnel by two factors: the percentage of time they spend on the account and then 2.25 for overhead, expenses, and profit. Fees resulting are subject to periodic review by both client and agency.⁷

These systems encourage the advertising agency to be efficient and provides the client with the knowledge of what his advertising budget is being spent to accomplish.

North Dakota Agencies

Agencies in North Dakota usually employ the over-all or retainer fee. The popularity of this type of fee is due to the fact that it compensates agencies for services that

⁶"Commission or Fee?" Sales Management, April 1, 1966, p. 40.

⁷Ibid.

are normally not commissionable. This type of fee is explained by the following comments of an agency executive:

We will put a fee on an account--let us say \$200.00 a month. Each month that there are media commissions earned by the agency, we credit those commissions against the \$200.00 monthly fee. Let us say in a given month, the client spends \$1,000.00 in commissionable media. Our commission is \$150.00, which we credit against the fee . . . and in that particular month the fee billing would be only \$50.00. Such arrangements are subject to review every few weeks.⁸

The retainer fee is used with those clients who are local (in the same town the agency is), thus it will enable the agency to make a profit whereas the fifteen percent commission allowed by local media would not. Local media charge local rates for advertising, thus a profit is not possible for a local agency. The agency will increase the retainer fee if the client needs more services or requires more time of agency executives. The fee is subject to review with the client either on a monthly or yearly basis.

A direct fee is charged for special art services, design, and printing services completed for the client. The direct fee is used mostly for brochures and pamphlets. This fee ranges from ten to twenty dollars per hours, with the large national or regional advertisers receiving the lower rates.

⁸Letter from Mr. Harold E. Flint, President of Harold E. Flint & Associates Advertising Agency, Fargo, North Dakota, October 29, 1966.

Estimates of Costs

The small agencies in North Dakota do not supply estimates of the costs of their advertising programs to clients. (Small agencies in North Dakota are defined as those agencies whose billings were \$500,000 or less during the fiscal year of 1965.) Costs are only computed after the agency has completed its work due to the difficulty involved in attempting to estimate costs of uncompleted services.

Large agencies do give an approximation of the costs involved in a client's advertising program, but these are only estimates. (Large agencies in North Dakota are those agencies whose billings were over \$500,000 in the fiscal year of 1965.)

Minimum Charges

Agencies in North Dakota do not have stated minimum charges for small accounts, although minimum billing of \$100 per advertisement is required. The minimum charges of North Dakota advertising agencies are left to the discretion of the executives of the agencies. All executives base minimum charges on the growth potential of each client, what industry the client is engaged in, and the amount of service the client needs. These factors are evaluated, and the agency executives determine the minimum charge.

Billings of AgenciesNorth Dakota Agencies

The total billings for 1962 to 1966 of the five advertising agencies in North Dakota are presented in Table 1. Four agencies reported billings in 1962 and 1963. The fifth agency did not commence operations until 1964.

TABLE 1

TOTAL BILLINGS OF NORTH DAKOTA AGENCIES 1962-1966^a

Year	Billings ^b	Mean Billing Per Agency
1962	\$1,615,000	\$403,000
1963	1,588,000	397,000
1964	2,097,000	423,000
1965	2,260,000	452,000
1966	2,215,000 ^c	443,000

^aSurvey of North Dakota advertising agencies.

^bTotals include four agencies for 1962 and 1963 and five agencies for 1964 to 1966.

^c11th month totals and 12th month estimates.

To be profitable to the large advertising agencies in North Dakota, a client must bill \$5,000.00 a year in commissionable media. To the three small agencies in North Dakota, \$1,000.00 a year is considered sufficient to be profitable. These estimates may vary by the amount

of service needs of the client, the extent of the advertising program of the client, how much of the agency's time will be involved in the account, and the growth potential of the client in billings to the agency.

Summary

Agencies in North Dakota perform the services of copywriting, art work, and layout for their clients. Additional services such as research, public relations, package design, and publicity are also completed by all agencies.

All services mentioned above are dependent upon the amount of available funds from agency clients for these services and the amount of agency time which can be devoted to the client's account.

Compensation of agencies located in North Dakota is through the fifteen percent commission allowed by media and the payment of fees. The retainer or over-all fee is the most popular types of fee used by North Dakota agencies. A direct fee is used for special art services and the design of brochures and pamphlets.

The agency service of media placement has not been discussed in this chapter. Due to the importance of media placement, Chapter IV has been devoted to this agency service.

CHAPTER IV

THE AGENCY-MEDIA RELATIONSHIP

Media

Associations of magazines, newspapers, radio and television stations, business publications, and individual media extend recognition to advertising agencies for the placement of a client's advertising message. Recognition entitles agencies to a fifteen percent commission on the value of all advertising placed by the agencies in these media. Advertising agencies in turn select the medium or media that will best carry the client's product or service to customers. Media time or space are contracted by the agencies, and their clients are billed by the agencies for the placement of the advertisement.

Media Recognition of Agencies

National Agencies

Established national advertising agencies are recognized by virtually all media. Recognition implies that the agency has a satisfactory financial status to warrant a publisher's or broadcaster's association such as the Agricultural Publishers Association, Associated Business Publications, National Magazine Publishers Association,

American Newspapers Association, and the Transit Advertising Association to extend the agency credit. In addition, recognition is given by individual newspapers, magazines, and radio and television stations.

North Dakota Agencies

All of the North Dakota advertising agencies are recognized by a number of media associations such as the Agricultural Publishers Association. Recognition is also extended to advertising agencies in North Dakota by individual media.

Media Selection¹

Media selection is "the choosing of channels of communication through which to distribute the advertising message."² The advertising agency determines the approximate kind and number of potential consumers and chooses the media which will get the message effectively to the consumer. The choice between individual types of media is enormous, although most advertisers cannot afford the expense of all types of available media.

To make a correct selection of available media, agencies may refer to several sources of data on media:

(1) Reports of the Audit Bureau of Circulations (ABC). These reports contain a measurement and analysis

¹This section and the following three sections are largely derived from Fredric R. Gamble, What Advertising Agencies Are--What They Do and How They Do It. 5th ed. (New York: American Association of Advertising Agencies, Inc., January 1966), pp. 11-13, 24.

²Ibid., p. 11.

of the circulation of those publications with paid circulations who are members of the Bureau. Many newspapers, magazines, and farm publications belong to the Audit Bureau of Circulations, and those who are not often make a comparable audit available to agencies.

(2) Reports of the Business Publications Audit (BPA). This organization measures and reports the circulation of business publications with free circulation or controlled circulation, or both.

(3) Reports from the Traffic Audit Bureau. This bureau authenticates the data in traffic-flow maps which are published by the owners of outdoor advertising plants for the use of prospective advertisers.

(4) Reports from marketing research services such as A. C. Nielsen Co. and Trendex who measure the audiences of radio and television stations and programs.

(5) Reports from various transit companies which estimate the number of passengers who use the transit facilities and view advertisements on such facilities.

(6) The Standard Rate & Data Service Publications. These publications give lineage rates, circulations, market characteristics, medium mechanical requirements, and other information supplied by various classes of media.

In addition to these published sources of information, representatives of various media may be called upon to furnish other kinds of information on the media they represent.

Contracts for Time and Space

In 1956, the American Association of Advertising Agencies developed and copyrighted order and contract blanks for the placement of advertisements with media. These order blanks are accepted by both agencies and media. Some of the kinds of order and contract blanks used are: The Copyrighted Order Blank for Publications, The Copyrighted Contract for Spot Broadcastings, The Copyrighted Contract for Spot Telecastings, and The Copyrighted Order Blank for Transportation Advertising. (A copy of the Copyrighted Order Blank for Publications as used by North Dakota advertising agencies and media is shown in Appendix B.)

National Agencies

National agencies use the order and contract blanks provided by the American Association of Advertising Agencies.

North Dakota Agencies

Agencies in North Dakota also use media orders or contract forms provided by the American Association of Advertising Agencies. (See Appendix B.)

Some principles involved in contracting for time and space agreed upon by agencies and media are specified below:

(1) Agencies usually are liable for payment to media. Should an advertiser fail to pay an advertising

agency, it is not the medium's loss, but the agency's. If an advertiser pays an agency and the agency fails to pay the medium, it is the medium's loss. The medium is dependent on the advertising agency for payment. The client is thus protected against having to pay twice for the same advertising. The agency contracts for time and space with the medium under the agency's own name as an independent contractor.

(2) The medium publishes all its rates. The rates represented in the contract with the agency are the lowest rates which can be secured by the agency at the time of entering into contract.

(3) The advertisement which the agency desires to place is subject to approval by the medium. However, the medium cannot change the content of the advertisement without the agency's permission. Also, any changes in the content of the advertisement must be approved by the advertiser.

Agency Services for Media

Advertising agencies provide a number of services for media. The agency reduces the cost of operation of a medium by providing financial assistance. The agency pays the medium and thus receives payment from the advertiser for work completed, thus the medium is relieved of this responsibility. The medium is also relieved of the need to prepare advertisements and plan advertising strategy for advertisers as this is done by the agency. Large

accredited agencies also sell space or time for the medium, thus assisting the latter in obtaining advertisers.

Popularity of Media Among Agencies

National Agencies

Table 2, page 42, shows the percent of selected national advertising agency business done by types of media in 1965. Television and magazines were the most popular media, in billings, employed by these national advertising agencies. Newspapers, direct mail, and radio were relatively less popular media.

North Dakota Agencies

Table 3, page 43, indicates the percentage of North Dakota agency billings by types of media in 1965. The percent of agency business in television was small, with only one agency recording as much as sixteen percent of total billings in this medium. Newspapers were the principle medium used by North Dakota advertising agencies. Magazines accounted for a large share of agency business due to a substantial number of clients requiring trade, farm and communications journal advertisements.

As indicated in Tables 2 and 3, the relative importance of media to agencies differed between the selected national agencies and North Dakota agencies. This difference stemmed from many causes. Among these are variations in the types of institutions, industries, services, and the amount of funds available for media

TABLE 2

PERCENT OF AGENCY BUSINESS DONE BY TYPES OF MEDIA--NATIONALLY ACCREDITED
ADVERTISING AGENCIES, 1965

Media Used By Advertising Agencies	Television	Radio	Newspapers	Magazines (including Business Press & Farm Publications)	Outdoor	Miscellaneous (Direct mail & Point-of-sale)	Total
Batten, Barton, Durstine, & Osborn	44%	10%	16%	25%	4%	1%	100%
Ted Bates	80	4	3	9	1	3	100
Benton & Bowles	75	1	6	17	--	1	100
Leo Burnett Co.	72	2	5	19	1	1	100
Campbell-Mithun	40	10	--	31	4	15	100

Source: "It's a Record: 650 Agencies in U.S., Canada Bill \$7.2 Billion in 1965,"
Advertising Age. February 21, 1966, pp. 37, 40.

TABLE 3

PERCENT OF ESTIMATED AGENCY BUSINESS DONE BY TYPES OF MEDIA--NORTH DAKOTA
 ADVERTISING AGENCIES, 1965

Media Used By Advertising Agencies	Television	Radio	Newspapers	Magazines (including Business Press & Farm Publications)	Direct Mail	Miscellaneous (Outdoor & Point-of-Sale)	Total
Agency A	5%	7%	44%	33%	6%	5%	100%
Agency B	16	11	37	20	11	5	100
Agency C	1	13	14	29	43	--	100
Agency D	7	21	36	29	--	7	100
Agency E	10	15	66	6	1	2	100

Source: Survey of North Dakota advertising agencies.

advertising. Direct mail, in billings, was a very important source of income for North Dakota agencies and of minor importance for the national agencies. Specialization in media placement of advertisements is also evident. Two agencies in North Dakota indicated little specialization in media placement of advertisements. One agency in North Dakota specialized in media placement of newspaper advertisements. In addition, two agencies in North Dakota specialized in the service of public relations. Among national agencies, television was the most important medium in terms of specialized placement of advertisements with magazines ranking second.

Summary

Media such as newspapers, magazines, radio and television recognize advertising agencies by granting agencies a fifteen percent commission and extending agencies credit.

Media selection is an important function of advertising agencies. To aid in this function, agencies can use reports and information from the Audit Bureau of Circulations, Business Publications Audit, Standard Rate & Data Service Publications and other sources of data on media and their characteristics. The agencies contract for time or blank space with the media by using one of the contract or order forms of the American Association of Advertising Agencies.

Agencies have financial responsibility for obtaining funds from the advertiser to pay the media.

Television and magazines were the most popular media in terms of billings, among national agencies in 1965. Among North Dakota agencies, newspapers were the most popular medium, in terms of billings, with magazines ranking second.

CHAPTER V

RESTRICTIONS ON FALSE AND MISLEADING ADVERTISING

The purpose of this chapter is to describe those laws concerned with false and misleading advertising which regulate the efforts of advertising agencies. Attention will also be accorded to self-regulation by the advertising industry itself.

For the purpose of clarification, false and misleading advertising is "advertising which is misleading in material respect."¹

Federal Regulation

Federal Trade Commission Act of 1914

In 1914 Congress passed the Federal Trade Commission Act which was the first federal attempt to curb false and misleading advertising. Section Five of the act stated that "unfair methods of competition in commerce are hereby declared unlawful."² The courts initially did not uphold

¹Section Fifteen of the Wheeler-Lea Act of 1938, as cited by Morton J. Simon, The Law for Advertising and Marketing (New York: W. W. Norton & Co., 1956), p. 256.

²Section Five of the Federal Trade Commission Act of 1914, as cited by John S. Wright and Daniel S. Warner, Advertising (New York: McGraw-Hill Book Co., 1962), p. 603.

the law, and as a result it was ineffective in curbing false and misleading advertising.

The act that put "teeth" into the Federal Trade Commission Act was the Wheeler-Lea Act of 1938. Section Five of the former act was amended to include "unfair or deceptive acts or practices in commerce are hereby declared unlawful."³ This enabled the Federal Trade Commission to more effectively curtail false and misleading advertising than was possible under the original act.

Several sections were added to the Federal Trade Commission Act by the Wheeler-Lea Act of 1938, and among the most important to advertising was Section Twelve of the Wheeler-Lea Act which stated:

- (a) It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement--
- (1) By United States mails, or in commerce by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics; or
 - (2) By means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce of food, drugs, devices, or cosmetics.
 - (3) The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice⁴ in commerce within the meaning of Section 5.

Responsibility for the enforcement of the Federal Trade Commission Act is vested in five commissioners appointed

³The Law for Advertising and Marketing, op. cit.,
p. 505.

⁴Advertising, op. cit.

by the President and confirmed by the Senate. The operation of the commission is directed by two divisions: (1) anti-deceptive practices, and (2) restraints of trade. Nine field offices in the United States handle investigation of complaints. When a violation occurs, the commission staff issues a complaint against the advertiser or agency, or both. After an investigation is completed, a cease and desist order may be issued to the accused. If the order is ignored, a penalty of up to \$5,000.00 per violation may be assessed. In cases involving false and misleading advertising of food, drugs, cosmetics, or devices, a temporary injunction from a federal court may be obtained to suspend the advertising until a final ruling is made. Approximately eighty-five percent of all violations are settled without litigation.

The Federal Trade Commission also issues guides, trade practice rules, and trade regulations to illustrate legal regulations on all activities under its jurisdiction.

Federal Communications Act of 1934

The Federal Communications Act established the Federal Communications Commission. The commission is composed of seven persons. The commission regulates commercial television stations and commercial AM and FM radio stations in the United States. The Federal Communications Act specifically barred lotteries, fraud, and obscenity on the air.

The power of the Federal Communications Commission in the regulation of broadcast advertising rests with the licensing of stations. A license may be revoked if false and misleading advertising is broadcasted. Identification of all sponsored materials is required by the commission. If a complaint occurs in regards to misleading advertising, the commission can issue cease and desist orders and levy a "forfeiture" up to \$10,000.00. In severe cases the Federal Communications Commission can revoke a station's license.

The Federal Communications Commission works closely with the Food and Drug Administration and the Federal Trade Commission. Failure to halt misleading advertising by a station is regarded as an indication of irresponsible management and is considered at license renewal time.

Federal Food, Drug, and Cosmetic Act of 1938

The Federal Food, Drug, and Cosmetic Act supplanted the Food and Drug Act of 1906 which was relatively ineffective in regulating false and misleading advertising. The present act prohibits (1) the introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is misbranded; (2) the misbranding of any food, drug, device, or cosmetic in interstate commerce; and (3) the receipt in interstate commerce of any food, drug, device, or cosmetic that is misbranded.⁵ Misbranding occurs

⁵Federal Food, Drug, and Cosmetic Act of 1938, as cited by Albert Wesley Frey. Advertising (New York: Ronald Press Co., 1961), p. 566.

if the labels are not conspicuously placed, easily read, and if the quantity, packer, weight, and manufacturer are not contained on the package or label.

Investigators read advertisements; and if these ads do not coincide with the labels of the product advertised, the Food and Drug Administration files a seizure order for "mislabeling." If a seizure occurs, criminal action can be brought against individuals. The majority of seizures are settled by negotiation, but cases can go to trial at a federal district court.

Amendments have been added to the 1938 act such as the Hazardous Substance Labeling Act of 1960 which requires disclosure of household items that have toxic, corrosive, or similar characteristics. The Drug Act of 1962 gives the Food and Drug Administration authority to require disclosure of all side effects and other complications in labeling and advertising of prescription drugs.

Federal Alcohol Beverage Act of 1935

The Internal Revenue Service of the Treasury Department enforces the Federal Alcohol Beverage Act of 1935. This permits the Service to prohibit advertising which contains false and misleading claims concerning the therapeutic benefits of alcoholic beverages. The Internal Revenue Service also enforces the labeling of alcoholic beverages and has authority to prohibit any statement that is deceptive as to the quality or quantity of beverages. Violations of the labeling law may result in a fine of \$500.00 per

offense. However, the ultimate power of the Internal Revenue Service is in the ability to revoke the basic permit to make alcoholic beverages.

Securities Exchange Act of 1934

This act calls for truthful advertising in the sale of securities. In the event of misleading advertising, the Securities Exchange Commission has the power to refuse to list new securities, withdraw licenses of brokers, dealers, and advisors. In cases of fraud, the Securities Exchange Commission can bring criminal action against violators.

North Dakota False and Misleading Advertising Law

The false and misleading advertising laws of North Dakota are based on a model statute originated by the editors of Printers' Ink Magazine in 1911. This model statute was later passed into law in its entirety by twenty-seven states and the District of Columbia. In addition, variations of this model statute have been enacted in seventeen states. The original statute stated that the advertisement of services, merchandise, securities, or anything offered for sale to the public is prohibited if it "contains any assertion, representation or statement of fact which is untrue, deceptive or misleading."⁶

The North Dakota version of this model statute terms a false and misleading advertisement as "an advertisement which contains any assertion, representation, or

⁶Ibid., p. 568.

statement of fact, including the price thereof, which is untrue, deceptive, or misleading."⁷

Self-Regulation

Regulation by the Advertising Industry

The principle regulatory forces within the advertising industry are the American Association of Advertising Agencies and the Association of National Advertisers. In 1962, the American Association of Advertising Agencies established a Creative Code to be adhered to by member agencies. (A copy of the Creative Code is shown in Appendix C.) The code states that member agencies shall not knowingly create advertising which is misleading or has unsupported claims. If an agency knowingly violates the code, the consequence could be expulsion from the American Association of Advertising Agencies.

In order to enforce the code, the American Association of Advertising Agencies and the Association of National Advertisers have formed an interchange program. The program provides the following procedure for judging false and misleading advertising:

(1) Organizations which belong to either association are to record information on advertisements that seem objectionable. The time, station, date, network, newspaper, or magazine are recorded, and the information is sent to

⁷North Dakota Century Code, False Advertising, Section 51-12-01, p. 29.

the local AAAA or ANA representative. The representative forwards the message to national headquarters.

(2) Any pertinent information on the advertisement is then sent to a committee composed of ten members of the American Association of Advertising Agencies and ten members of the Association of National Advertisers. The members of the committee determine whether or not the advertisement is objectionable. If the advertisement is considered objectionable, the committee judges the seriousness of the offense. The committee sends its recommendations for change to the guilty advertiser and his agency.

(3) Within thirty days, if advertiser and agency do not take action to alter the advertisement, the committee notifies the board of directors of the AAAA and the ANA. The refusal of advertiser or agency to take action could mean expulsion from either association.

The interchange program deals largely with questions of taste and opinion in advertisements. Factual claims are not evaluated because of the inability of the committee to obtain accurate facts to determine the validity of an advertisement. (Factual claims are those claims concerning statistics, ingredients, and materials.) This is left to the federal and state regulatory bodies.

Media Regulation

Virtually all media in the United States either have their own guides which define false advertisements or use a guide supplied by the Better Business Bureau.

Some newspapers such as the New York Times contain a department whose purpose is to screen out objectionable advertisements before they appear in print. Most magazines actively screen out objectionable advertisements. Two prominent magazines go further and actually test products advertised in their magazines. These magazines are Good Housekeeping and Parents' Magazine. These magazines have a staff of engineers, home economists, beauty and textile experts, and chemists. To help magazines decide which ads to accept, the Magazine Publishers Association established a Magazine Advertising Bureau Committee in 1960. Questionable advertisements can be sent to this committee for evaluation and recommended changes, if necessary.

The National Association of Broadcasters has initiated advertising standards for television and radio stations. The National Association of Broadcasters enacted a television code in 1952 and established the Television Code Review Board to administer the code. Enforcement of good taste in television is largely based on persuasion from the Television Code Review Board which is composed of seven members from television stations in the United States. Seventy-five percent of eligible television stations in the subscribe to the television code.

Summary

The Federal Trade Commission Act of 1914 and the Wheeler-Lea Act of 1938 are the principal federal legislation which governs false and misleading advertising.

These acts prohibit false and misleading advertising in interstate commerce. The Federal Communications Act of 1934 permits the Federal Communications Commission to revoke the license of a radio or television station if false and misleading advertising is broadcast. The Federal Food, Drug, and Cosmetic Act of 1938 prohibits the mislabeling of any food, drug, or cosmetic in interstate commerce. The Federal Alcohol Beverage Act of 1935 prohibits false and misleading advertising of alcoholic beverages. Truthful advertising of securities is regulated by the Securities Exchange Act of 1934.

The North Dakota false and misleading advertising law is a version of the Printers' Ink Model Statute of 1911. The law prohibits any advertisement which asserts, represents, or states a fact that is deceptive or untrue.

Probably the most effective restrictive influence on false and misleading advertising is the advertising industry itself. The American Association of Advertising Agencies and the Association of National Advertisers attempt to curb false and misleading advertising of their member agencies and business firms. In addition, magazines, newspapers, radio and television stations refuse to communicate advertisements which are, by their standards, false and misleading.

CHAPTER VI

SUMMARY AND CONCLUSIONS

Summary

History of North Dakota Agencies

It is not known when the first advertising agency was established in North Dakota. The oldest North Dakota agency described in this study was founded in 1947 in Grand Forks, North Dakota.

Agency Internal Organization

Large, national advertising agencies are organized internally by departments (art department, research department, and others), by groups (agency personnel is teamed together to work on an account), or by a combination of both methods.

All North Dakota advertising agencies are organized by the combination of groups and departments. Because North Dakota agencies are comparatively small, the copywriting, art work, and production are the responsibility of their owner-managers.

There is an average of five employees per North Dakota agency which includes the owner-managers.

Agencies and Their Clients

National advertising agencies seldom use a written contract to establish a relationship with their clients. All advertiser-agency relationships involving North Dakota agencies are based on verbal agreements.

North Dakota advertising agencies reported a grand total of 65 advertisers as of November, 1966. Of these advertisers, twenty were manufacturing firms; nineteen were service establishments; twelve were engaged in wholesale and retail trade; eight were engaged in finance, insurance and real estate; five in transportation, communications, electric, gas and sanitary services; and one was a commercial hotel-motel.

Seven of these firms were national advertisers (advertising in six or more states); twenty firms were regional advertisers (advertising in more than one, but less than six states); the remainder were local advertisers (advertisers whose advertising was limited to one state or a portion thereof.)

The large national and regional advertisers accounted for between thirty and forty percent of each agency's monthly billings. National and regional advertisers most likely employed the services of North Dakota advertising agencies instead of large well-known agencies because of the knowledge of the former with local markets and media characteristics. North Dakota agencies could "tailor" the large national and regional advertisers'

programs to North Dakota and the surrounding area better than the large national agencies.

Local advertisers who employed the services of North Dakota advertising agencies probably did so because of the knowledge and familiarity of the agencies with local media and markets.

Agency Services to Clients

North Dakota agencies provide the major agency services of copywriting, art work, and layout as do large national agencies. Other services such as research, package design, publicity, and public relations are usually provided by the two large North Dakota agencies (the agencies which have billings of over \$500,000 per year). Such services are offered to the large national and regional accounts. The three small agencies (agencies with billings of less than \$500,000 per year) provide these additional services on a limited basis. Two of the three small agencies received thirty percent of their income from public relations.

National agencies provide services for their clients that are not performed by North Dakota agencies because of the limited facilities of the latter. Among these are the determination of channels of distribution for clients, test marketing, copy testing, and sales forecasting.

Compensation of Agencies

A commission of fifteen percent is given to advertising agencies by such media as newspapers, magazines, radio and television stations, and transit advertising companies. A commission of sixteen and two-thirds percent is allowed agencies by outdoor plant owners. The minimum amount of advertising an agency in North Dakota will contract to place in media for a client for a fifteen percent commission is \$100.

For some agency services such as research, art work, and public relations a fee is charged. Fees represent a sum of money agreed upon by the advertiser and the agency in payment for services rendered by the agency.

All fees are based on labor costs. North Dakota advertising agencies employ an "over-all" or "retainer" fee. This compensates these agencies for services that are normally not commissionable such as research, art work, and public relations. In addition, the retainer fee compensates agencies for their services to local clients (those advertisers located in the same town as the agency) since local media rates do not provide commissions on these firms.

Billings of Agencies

The mean (average) billings per North Dakota advertising agency was \$443,000 in 1966.

The two large advertising agencies in North Dakota stated that their clients had to place \$5,000 of advertising per year in commissionable media in order for these clients to be profitable to their agencies. The three small agencies stated that \$1,000 was sufficient. These estimates vary by the amount of service needs of the client, growth potential of the client, and agency personnel needed to service the account.

Media

Mass media such as newspapers, magazines, radio and television stations, and associations of media extend recognition to advertising agencies by granting agencies a fifteen percent commission on all advertising placed with these media or associations.

Agencies have the financial responsibility of obtaining funds from the advertiser for payment to media. Media are responsible for printing and quoting the lowest rates possible when contracting with an advertising agency. The media cannot change the content of advertisements placed with them without the approval of the advertiser.

Among national agencies, television and magazines were the most popular media in billings. Newspapers were the most popular medium, in billings, employed by North Dakota advertising agencies.

False and Misleading Advertising

The Wheeler-Lea Amendment in 1938 to the Federal Trade Commission Act of 1914 was the first effective federal attempt to restrict false and misleading advertising. The act prohibited false and misleading advertising in interstate commerce. The Federal Communications Act of 1934 prohibited false and misleading advertising from being broadcast. The Federal Food, Drug and Cosmetic Act of 1938 prohibited the mislabeling of any food, drug, or cosmetic in interstate commerce. The truthful advertising of securities is governed by the Securities Exchange Act of 1934. The Federal Alcohol Beverage Act of 1935 prohibits false advertising of alcoholic beverages.

The North Dakota false and misleading advertising law prohibits any advertisement which asserts, represents, or states a fact that is deceptive or untrue.

The advertising industry itself attempts to curb false and misleading advertising. The American Association of Advertising Agencies and the Association of National Advertisers formed an interchange program whereby advertisements that are believed by members to be objectionable are sent to the national headquarters of the AAAA. A board composed of both AAAA and ANA members decides if the advertisement is objectionable. If the advertisement is adjudged objectionable, the consequence of a refusal to change the advertisement could be expulsion of the offending advertiser and agency from their respective associations.

Finally, magazines, radio and television, newspapers, and other media have various rules and guides which they employ to preclude false and misleading advertising from being printed or broadcasted.

Conclusions

As compared to large national advertising agencies, North Dakota agencies are small with the latter averaging five employees per agency. Due to this small number of employees, job specialization within North Dakota agencies is limited as evidenced by the fact that owner-managers completely service and administrate their client's advertising programs. Moreover, the heavy workload placed upon North Dakota agency personnel makes it difficult for agencies to obtain and hold competent personnel.

The small size of North Dakota agencies restricts the variety of services that can be completed for advertisers. The large national and regional advertisers generally expect many services from agencies. Due to the importance of the billings of each of these accounts, North Dakota agencies must provide a relatively wide variety of services as compared to the services performed for small local advertisers.

At the same time, the large national and regional advertisers employ the services of advertising agencies in North Dakota primarily because of the knowledge and familiarity of the latter with media and market characteristics of North Dakota and the surrounding area. Of

possible lesser importance is the quality and quantity of the copywriting, art work, and other services performed by North Dakota agencies.

Small local advertisers of North Dakota advertising agencies are charged either a retainer fee or a minimum amount of commissionable advertising of \$100. These minimum charges enable North Dakota advertising agencies to profitably provide services for local advertisers. However, due to these minimum charges over and above the cost of advertising, many small firms who may find the services of North Dakota agencies of considerable value, cannot afford to purchase these services.

Therefore, to survive, North Dakota advertising agencies must provide services for firms outside the state of North Dakota as well as for firms within the state. All services which are provided by agencies in North Dakota are dependent upon the amount of available funds from accounts for advertising and the amount of time needed to service these accounts.

AGENCY SERVICE STANDARDS *of the* *American Association of Advertising Agencies*

FIRST ADOPTED OCTOBER 9, 1918—MOST RECENTLY REVISED FEBRUARY 15, 1956

Agency Service consists of interpreting to the public, or to that part of it which it is desired to reach, the advantages of a product or service.

INTERPRETING to the public the advantages of a product or service is based upon:

A study of the product or service in order to determine the advantages and disadvantages inherent in the product itself, and in its relation to competition.

An analysis of the present and potential market for which the product or service is adapted:

- As to location
- As to extent of possible sale
- As to season
- As to trade and economic conditions
- As to nature and amount of competition

A knowledge of the factors of distribution and sales and their methods of operation.

A knowledge of all the available media and means which can profitably be used to carry the interpretation of the product or service to consumer, wholesaler, dealer, contractor, or other factor.

This knowledge covers:

- | | | |
|-----------------------|---|---------------------------------|
| Character | } | Quantity
Quality
Location |
| Influence | | |
| Circulation | | |
| Physical Requirements | | |
| Costs | | |

THE ABOVE OUTLINE of agency service has been made by the Association more clearly to define what it is, so that advertisers and media may know what to demand and agencies may know what may be expected of them in dealing with the problems of advertising.

An individual agency is, of course, free to determine with its clients what services it will perform.

Acting on the study, analysis and knowledge as explained in the preceding paragraphs, recommendations are made and the following procedure ensues:

5. Formulation of a definite plan.
6. Execution of this plan:
 - (a) Writing, designing, illustrating of advertisements, or other appropriate forms of the message.
 - (b) Ordering the space, time or other means of advertising.
 - (c) The proper incorporation of the message in mechanical form and forwarding it with proper instructions for the fulfillment of the contract.
 - (d) Checking and verifying of insertions, display or other means used.
 - (e) The auditing and billing for the service, space and preparation.
7. Co-operation with the sales work, to insure the greatest effect from advertising.

The above delineation of the fundamentals, however, may serve a useful purpose and shows what types of services should be offered by applicants for membership in the Association. The more clearly agency service is understood by those who offer it and by those who receive it, the more adequate and intelligent advertising service will become, and those equipped to render a complete and effective service will be encouraged in doing so.

APPENDIX B

IF CHECKED HERE, THIS IS A SPACE CONTRACT

IF CHECKED HERE, THIS IS AN INSERTION ORDER

No 2459

TO PUBLISHER OF

DATE

CITY AND STATE

PLEASE PUBLISH ADVERTISING OF (advertiser)

FOR (product)

SPACE TIMES DATES OF INSERTION

POSITION

COPY KEY CUTS

ADDITIONAL INSTRUCTIONS

RATE

LESS AGENCY COMMISSION PER CENT ON GROSS LESS CASH DISCOUNT PER CENT ON NET

Subject to conditions stated below and on back hereof:

Per.....

CREATIVE CODE

American Association of Advertising Agencies

The members of the American Association of Advertising Agencies recognize:

1. That advertising bears a dual responsibility in the American economic system and way of life.

To the public it is a primary way of knowing about the goods and services which are the products of American free enterprise, goods and services which can be freely chosen to suit the desires and needs of the individual. The public is entitled to expect that advertising will be reliable in content and honest in presentation.

To the advertiser it is a primary way of persuading people to buy his goods or services, within the framework of a highly competitive economic system. He is entitled to regard advertising as a dynamic means of building his business and his profits.

2. That advertising enjoys a particularly intimate relationship to the American family. It enters the home as an integral part of television and radio programs, to speak to the individual and often to the entire family. It shares the pages of favorite newspapers and magazines. It presents itself to travelers and to readers of the daily mails. In all these forms, it bears a special responsibility to respect the tastes and self-interest of the public.

3. That advertising is directed to sizable groups or to the public at large, which is made up of many interests and many tastes. As is the case with all public enterprises, ranging from sports to education and even to religion, it is almost impossible to speak without finding someone in disagreement. Nonetheless, advertising people recognize their obligation to operate within the traditional American limitations: to serve the interests of the majority and to respect the rights of the minority.

Therefore we, the members of the American Association of Advertising Agencies, in

addition to supporting and obeying the laws and legal regulations pertaining to advertising, undertake to extend and broaden the application of high ethical standards. Specifically, we will not knowingly produce advertising which contains:

- a. False or misleading statements or exaggerations, visual or verbal.
- b. Testimonials which do not reflect the real choice of a competent witness.
- c. Price claims which are misleading.
- d. Comparisons which unfairly disparage a competitive product or service.
- e. Claims insufficiently supported, or which distort the true meaning or practicable application of statements made by professional or scientific authority.
- f. Statements, suggestions or pictures offensive to public decency.

We recognize that there are areas which are subject to honestly different interpretations and judgment. Taste is subjective and may even vary from time to time as well as from individual to individual. Frequency of seeing or hearing advertising messages will necessarily vary greatly from person to person.

However, we agree not to recommend to an advertiser and to discourage the use of advertising which is in poor or questionable taste or which is deliberately irritating through content, presentation or excessive repetition.

Clear and willful violations of this Code shall be referred to the Board of Directors of the American Association of Advertising Agencies for appropriate action, including possible annulment of membership as provided in Article IV, Section 5, of the Constitution and By-Laws.

Conscientious adherence to the letter and the spirit of this Code will strengthen advertising and the free enterprise system of which it is part. *Adopted April 26, 1962*

Endorsed by

Advertising Association of the West, Advertising Federation of America, Agricultural Publishers Association, Associated Business Publications, Association of Industrial Advertisers, Association of National Advertisers, Magazine Publishers Association, National Business Publications, Newspaper Advertising Executives Association, Radio Code Review Board (National Association of Broadcasters), Station Representatives Association, TV Code Review Board (NAB)

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