

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	02 Cr. (WHP)
v.	:	Filed: 9/26/02
GABRIEL CASAS,	:	Violations: 15 U.S.C. § 1
Defendant.	:	18 U.S.C. § 371

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INFORMATION

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

1. Gabriel Casas ("Casas") is hereby made a defendant on the charges stated below.

COUNT ONE -- SHERMAN ACT CONSPIRACY  
(15 U.S.C. § 1)

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Casas, a resident of Lebanon, New Jersey, was employed as a salesperson for The Color Wheel, Inc. Casas was primarily responsible for servicing one of its clients, Grey Global Group, Inc., or its predecessors or affiliates, including Grey Advertising, Inc. (collectively "Grey").

3. Grey, headquartered in Manhattan, New York, provided advertising, marketing, public relations, and media services. Grey was one of the largest advertising agencies in the world, with as many as 12,000 employees and offices in 90 countries. Grey, which had approximately \$8.3 billion in billings in 2000, had a client roster that included major consumer brand companies such as Brown & Williamson Tobacco Corp., The Procter & Gamble Co., GlaxoSmithKline p.l.c., Mars Inc., Hasbro, Inc., Eli Lilly & Co., 3M Co., and Joseph E. Seagram

& Sons, Inc.

4. Brown & Williamson Tobacco Corp. (“B&W”) marketed tobacco products. B&W, the third largest cigarette manufacturer and marketer in the United States, was headquartered in Louisville, Kentucky. B&W was a subsidiary of British American Tobacco p.l.c. It had approximately 5,000 employees. B&W’s principal brands were Kool, Lucky Strike, Carlton, Kent, Capri, and Pall Mall.

5. The Color Wheel, Inc., a company located in Manhattan, New York, was a supplier of graphic services, including retouching and separation services, to Grey. The Color Wheel, Inc. was wholly owned by Haluk K. Ergulec. In 1999, The Color Wheel, Inc. merged with two other companies also wholly owned by Haluk K. Ergulec, Manhattan Color Graphics, Inc., and A2, Inc., with The Color Wheel, Inc. being the surviving corporate entity. Manhattan Color Graphics, Inc., A2, Inc., and the pre- and post-merger The Color Wheel, Inc. are hereinafter collectively referred to as “Color Wheel.”

6. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. These included a Color Wheel executive; Mitchell Mosallem (“Mosallem”), an executive vice president and director of graphic services at Grey; John F. Steinmetz, a vice president and associate director of graphic services at Grey; John Ghianni, an independent salesperson for a graphic services company; Lori Montgomery, a part-owner of a graphic services company; James Rattoballi, a part-owner of a graphic services company and a broker for other graphic services companies; a Grey employee whose primary responsibility was overseeing prepress services and printing; and other individuals representing certain graphics

services companies.

## II. DEFINITIONS

7. “Retouching” is the process of editing or otherwise manipulating a photograph or digital image to achieve an aesthetically desired result. The process employs a range of image processing tools which can be used to compose, change, and improve any type of image.

8. “Separation” is the act of decomposing an image or photograph into single-color layers, so that it may be printed with a printing press.

9. “Prepress services” are the services and materials necessary to provide magazines and other print media with the images that they manufacture and publish. These services include retouching and separation services.

10. “Printing” is the use of a commercial printing press to produce multiple, printed copies of images inserted in print media or otherwise distributed to potential consumers.

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

## III. BACKGROUND

12. Grey developed advertising and marketing campaigns on behalf of its clients. Some of the advertising that Grey developed appeared in printed form, such as advertisements consisting of pictures and words in magazines. On behalf of its clients, through its graphics services department, Grey contracted with third parties that were suppliers of graphics services (“graphics suppliers”) to provide services and materials related to advertising that appeared in print, including prepress services and printing. Mosallem was responsible for establishing procedures for the selection and supervision of graphics suppliers, including the initial review and authorization of their bills for payment.

13. Pursuant to agreements with certain of its clients, Grey was paid a fee for its creative work on behalf of the client, and for its supervision of the production of various components of a campaign, including supervision of prepress services and printing. In addition, pursuant to express written agreements with certain of its clients, Grey paid third parties, and was reimbursed by its clients, for “out-of-pocket” costs, including the actual costs of prepress services and printing provided by graphics suppliers. Typically, Grey received no markup or other profit on these “out-of-pocket” costs. Grey’s clients relied on Grey’s representations regarding the accuracy of the bills it presented for reimbursement or the amounts for which it sought reimbursement.

14. The advertising Grey developed and produced for each client often consisted of many separate jobs, with separate, corresponding contracts between Grey and various third party graphics suppliers. In many cases, Grey provided the initiative and exercised its discretion in selecting a graphics supplier and awarding a contract for a particular job or a related group of jobs (a “campaign”) after seeking what purported to be competitive bids from multiple graphics suppliers. Usually, by the time a contract was awarded, Grey and its client had established a budget for the job, in part by referring to the prices quoted by the competing graphics suppliers. Employees of Grey’s graphics services department were responsible for monitoring jobs to determine whether they would be completed within the established budgets and, if not, for seeking the client’s approval to increase the budgets. The actual value of work done in connection with each job ultimately could be lower than, equal to, or higher than the established budget.

15. The graphics suppliers issued invoices to Grey, corresponding to the contracts

they had been awarded, when those contracts were completed. Employees of Grey's graphics services department were responsible for reviewing the invoices for accuracy and authorizing them for payment. In situations where the graphics supplier's price for the work exceeded the budget for a particular job, the graphics supplier often knew, at the time it was prepared to seek payment, that it would not be paid in full for the work it had done.

16. On approximately July 1, 1994, B&W retained Grey as its agent to provide advertising and marketing services on behalf of its various brands. The agreement between B&W and Grey and all succeeding agreements (hereinafter collectively "the agreement") stated that Grey owed the highest fiduciary duties to B&W, and obliged Grey to exert its best efforts and apply its highest professional skill on B&W's behalf.

17. As part of the agreement, Grey, acting on B&W's behalf, procured various goods and services from third parties. These goods and services included retouching and separation services from graphics supply companies. To ensure that B&W received the best value on purchases made on its behalf by Grey, the agreement between B&W and Grey required that Grey obtain at least three competitive bids before entering into any single contract for goods or services in excess of \$25,000, and at least once a year to obtain competitive bids for any other goods or services purchased on B&W's behalf.

#### IV. TRADE AND COMMERCE

18. From approximately late 1994 until approximately 2001, pursuant to contracts that are the subject of this Count, B&W, through its agency Grey, purchased substantial quantities of retouching and separation services from members of the conspiracy. Materials and equipment were transported across state lines for use in performing some of the aforementioned

retouching and separation services.

19. During the period covered by this Count, the defendant and certain of the co-conspirators performed retouching or separation services on advertisements, including advertisements completed pursuant to contracts that are the subject of this Count, which were thereafter shipped across state lines in a continuous and uninterrupted flow of interstate commerce for inclusion in magazines and other media manufactured and produced outside the State of New York. These magazines and other media were also shipped across state lines in a continuous and uninterrupted flow of interstate commerce from their places of manufacture to customers located throughout the United States.

20. The activities of the defendant and certain of the co-conspirators with respect to the sale of retouching and separation services to B&W, purchased through its agency Grey, including the sale of retouching and separation services pursuant to contracts that are the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

#### V. DESCRIPTION OF THE OFFENSE

21. From approximately late 1994 until approximately 2001, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

22. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of retouching and separation services to B&W, contracted through its agency Grey.

23. From approximately late 1994 until approximately 2001, as a result of the conspiracy charged herein, Casas, acting at the direction of a Color Wheel executive submitted bids on behalf of Color Wheel to Grey for certain B&W contracts. During the conspiracy, the Color Wheel executive informed Casas that Color Wheel would be awarded all the B&W contracts for retouching work and directed the defendant to increase the prices in Color Wheel's bids. Casas submitted bids with inflated prices for B&W retouching contracts knowing that Color Wheel would be awarded each of those contracts irrespective of bids that were being submitted by certain other graphic services companies for the same contracts.

24. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and conspired to do, including, among other things:

(a) Co-conspirators designated in advance that Color Wheel would be the winning bidder, among the co-conspirators, on contracts to supply retouching services, and that another graphic services company would be the winning bidder on contracts to supply separation services on behalf of B&W brands;

(b) Defendant and co-conspirators discussed and agreed on the prices that would be bid on contracts to supply retouching services on behalf of B&W brands and submitted bids reflecting those prices; and

(c) Co-conspirators submitted, or caused to be submitted, intentionally high, noncompetitive bids (i.e., "cover" bids) on contracts to supply retouching and separation services on behalf of B&W brands, with the understanding that certain of these graphics supply companies would be allowed to submit bids for, and under certain circumstances allocated

contracts to supply, various graphic services in connection with advertising for other Grey clients. The intentionally high bids relating to work Grey procured for B&W were submitted in order to make it appear to B&W that there had been competition for its contracts when, in fact, there had not.

## VI. JURISDICTION AND VENUE

25. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Count.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

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

The United States of America further charges:

26. Paragraph 1 and Paragraphs 2, 3, 5, and 7 through 15 of Count One of this Information are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

## VII. THE RELEVANT PARTIES AND ENTITIES

27. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. These included Birj Deckmejian (“Deckmejian”), a salesperson representing Color Wheel; Haluk K. Ergulec (“Ergulec”), the owner of Color Wheel; Mitchell Mosallem (“Mosallem”), an executive vice president and director of graphic services at Grey; Joseph Panaccione, aka Joe Payne (“Panaccione”), a vice president and manager of graphic services at Grey; and a Grey employee whose primary responsibility was print buying.

## VIII. DESCRIPTION OF THE OFFENSE



28. From approximately 1991 until approximately mid-2000, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, the defendant and co-conspirators unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to an commit offense against the United States of America, to wit, to violate Title 18, United States Code, Section 1341, in violation of Title 18, United States Code, Section 371.

29. It was a part and an object of the conspiracy that the defendant and others known and unknown, having devised and intending to devise a scheme and artifice to defraud clients of Grey, and for obtaining money and property from Grey clients by means of false and fraudulent pretenses, representations, and promises, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice, would and did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, in violation of Title 18, United States Code, Section 1341.

IX. THE MANNER AND MEANS BY WHICH THE  
CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

30. Beginning in approximately 1991, Casas agreed with certain co-conspirators to defraud certain Grey clients by causing Color Wheel to issue false and fraudulent invoices

relating to its contracts to produce graphic services and materials for advertising. Typically, pursuant to this scheme (hereinafter “the monies owed scheme”), the invoices were false and fraudulent in that the quantities -- and thus the prices -- of certain line items listed in the invoices were inflated to allow Color Wheel to recoup three specific types of expenses:

(a) Certain invoices were inflated to allow Color Wheel and Deckmejian to recoup the cost of tickets to theater, sporting, and cultural events it or Deckmejian had provided for the personal benefit of Mosallem, Panaccione, other senior employees and executives of Grey, and members of their families;

(b) Certain invoices were inflated to allow Color Wheel to recoup the cost of goods and services it had provided for the personal benefit of Mosallem, Panaccione, other senior employees and executives of Grey, and members of their families. These goods and services included the printing of graphics items such as wedding invitations, holiday cards, brochures, and family and other personal photographs; and

(c) Certain invoices were inflated to allow Color Wheel to recoup charges for work it had performed on earlier jobs, frequently for different Grey clients, for which it had not been fully paid. In these instances, Color Wheel had not received full compensation for the earlier work performed because those jobs had run overbudget, or because the client that had commissioned the advertising was unwilling or unable to pay its bills.

31. Ergulec and Mosallem instructed Casas to track the amounts of Color Wheel’s expenses, as described in Paragraph 30 above, and Mosallem instructed Panaccione to work with Casas to identify jobs to which those amounts could be added by fraudulently increasing the quantities and prices of certain line items in those jobs.

32. Between approximately 1991 and mid-2000, Casas created and maintained lists of expenses, as described in Paragraph 30 above, and discussed the lists with Panaccione. Panaccione then identified which jobs should be inflated and, in many cases, exactly where and how on the false and fraudulent invoices the inflated charges should appear. On many occasions, Panaccione consulted with other employees in Grey's graphics services department in order to identify the jobs to which monies could be added, normally in situations where the job was expected to run under budget or where the job had not yet been budgeted but Color Wheel could be given an opportunity to increase its bid or price quotation. Casas periodically showed the lists to Mosallem, Ergulec, and Deckmejian and updated them on the status of the monies owed scheme.

33. Between approximately 1991 and mid-2000, Casas and co-conspirators caused Color Wheel to issue to Grey numerous false and fraudulent invoices pursuant to the monies owed scheme.

34. Mosallem, Panaccione, and co-conspirators further caused Grey to pay the false and fraudulent invoices issued pursuant to the monies owed scheme and then to seek reimbursement for those invoices from its clients.

35. Certain of the checks issued by Grey to Color Wheel in payment of the false and fraudulent invoices issued pursuant to the monies owed scheme were sent via the United States mail.

36. Certain of Grey's invoices to its clients requesting reimbursement for Grey's payment of fraudulently inflated invoices issued by Color Wheel pursuant to the monies owed scheme and corresponding checks issued by Grey's clients in payment of the Grey invoices,

were sent via the United States mail or by private or commercial interstate carrier.

#### X. OVERT ACTS

37. In furtherance of the conspiracy and to effect the illegal objects thereof, the defendant, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) On numerous occasions between 1991 and mid-2000, pursuant to the monies owed scheme, Casas and his co-conspirators caused Color Wheel to issue fraudulently inflated invoices to Grey, and Grey to issue checks in payment of these invoices to Color Wheel pursuant to the charged conspiracy. Some of those invoices and checks were sent through the United States mails; and

(b) On numerous occasions between 1991 and mid-2000, pursuant to the monies owed scheme, co-conspirators caused Grey to issue invoices to its clients requesting reimbursement for fraudulently inflated invoices received from Color Wheel and, in turn, Grey's clients sent checks in payment of those invoices to Grey. Some of those invoices and checks were sent through the United States mails.

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

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

The United States of America further charges:

38. Paragraph 1 and Paragraphs 2, 3, 5, and 7 through 15 of Count One of this Information are repeated, realleged, and incorporated in Count Three as if fully set forth in this Count.

#### XI. THE RELEVANT PARTIES AND ENTITIES

39. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. These included a Color Wheel executive (hereinafter "CC-1").

## XII. DESCRIPTION OF THE OFFENSE

40. From approximately 1991 until approximately 1999, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, the defendant and co-conspirators unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States of America, to wit, to violate Title 18, United States Code, Section 1341, in violation of Title 18, United States Code, Section 371.

41. It was a part and an object of the conspiracy that the defendant and others known and unknown, having devised and intending to devise a scheme and artifice to defraud clients of Grey, and for obtaining money and property from Grey clients by means of false and fraudulent pretenses, representations, and promises, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice, would and did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, in violation of Title 18, United States Code, Section 1341.

## XIII. THE MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

42. Beginning in approximately 1991, Casas agreed with CC-1 and certain co-conspirators who were Color Wheel employees to defraud certain Grey clients by causing Color Wheel to issue false and fraudulent invoices relating to its contracts to produce graphic services and materials for advertising. Typically, pursuant to this scheme (hereinafter “monies added scheme”), the invoices were false and fraudulent in that the quantities -- and thus the prices -- of certain line items listed in the invoices were inflated. Unlike the scheme alleged in Count Two where Grey employees and executives and others were aware of and participated in the agreement to allow Color Wheel to recoup certain expenses, the monies added scheme was carried out by CC-1, Casas, and other Color Wheel employees without the knowledge or assistance of Grey employees or executives.

43. Between approximately 1991 and 1999, Casas created and maintained lists of the monies added to Grey jobs and periodically showed them to CC-1 or reported to CC-1 about the progress of the monies added scheme.

44. Between approximately 1991 and 1999, pursuant to the monies added scheme, Casas and co-conspirators caused Color Wheel to issue to Grey numerous false and fraudulent invoices.

45. Certain of the checks issued by Grey to Color Wheel in payment of the false and fraudulent invoices issued pursuant to the monies added scheme were sent via the United States mail.

46. Certain of Grey’s invoices to its clients requesting reimbursement for Grey’s payment of fraudulently inflated invoices issued by Color Wheel pursuant to the monies added scheme and corresponding checks issued by Grey’s clients in payment of the Grey invoices,

were sent via the United States mail or by private or commercial interstate carrier.

#### XIV. OVERT ACTS

47. In furtherance of the conspiracy and to effect the illegal objects thereof, the defendant, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) On numerous occasions between 1991 and 1999, pursuant to the monies added scheme, Casas and his co-conspirators caused Color Wheel to issue fraudulently inflated invoices to Grey pursuant to the monies added scheme, and Grey to issue checks in payment of those invoices to Color Wheel. Some of those invoices and checks were sent through the United States mails; and

(b) In addition, pursuant to the monies added scheme, co-conspirators caused Grey to issue invoices to its clients requesting reimbursement for those fraudulently inflated invoices

received from Color Wheel and, in turn, Grey's clients sent checks in payment of those invoices to Grey. Some of those invoices and checks were sent through the United States mails.

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

Dated:

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