

Pause... Pitch... Engage!



By [Danie Strachan](#)

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Pause before you pitch... With the [Loerie Awards](#) around the corner South African agencies are holding thumbs in the hope that they will walk away with the coveted 'bird'. At this time, however, it is a good idea to look back at the pitches that are done in order to persuade a client to go ahead with an advertisement.

Advertising agencies normally put a huge amount of effort into creating concepts, campaigns and proposals. Often, they approach clients with new ideas, hoping that the client will like it and commission the agency to put it together. In their enthusiasm, agencies often don't pause to check whether they need to get any documentation in place before they do the pitch.

One of the most important documents to consider prior to commencing a pitch is a non-disclosure and confidentiality agreement. This is often informally referred to as an "NDA". If an advertising agency approaches a potential client, it is always worth considering such an agreement. Particularly, if the agency does not get the green light from the client and wishes to approach other potential clients.

Clear terms and conditions

The non-disclosure agreement should define the confidential information that will form part of the pitch in broad terms. It should make it clear that the client will not be entitled to use the information or idea unless the client subsequently uses the agency for the particular project.

One could also deal with issues such as exclusivity and non-circumvention in a non-disclosure agreement. This would entail that the client agrees not to use another agency for the specific project. The exclusivity could be limited to a specific period.

I also want to stress the importance of dealing with copyright and other intellectual property rights in the non-disclosure agreement. The advertising agency should reserve its rights in the agreement and make it clear that the client will not obtain any rights to use any material presented to the client unless the use complies with the non-disclosure agreement or any subsequent agreement concluded by the parties.

Although dealing with agreements could be seen as tiresome and disruptive to the marketing process, they do play an important part and could avoid potential disputes between the parties.

One should be careful of using standard non-disclosure agreements that can be found on the internet, since the provisions

will not necessarily be appropriate. In many events, the standard agreements will not even have been with South African law in mind. As such, it is always a good a idea to consult an attorney that has knowledge of this field."

ABOUT DANIE STRACHAN

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