

Handshakes and promises - a happily ever after or a marriage made in hell

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Sharon Bergmann, financial manager at the [Association for Communication and Advertising](#), argues that contracts are a critical part of the day-to-day operations of ad agencies. Here she unpacks the importance of contracts in multi-agency partnerships participating in the pitch process.

I have spent more years than I care to remember about working in finance within the advertising industry. Over the years, I have experienced the many pitfalls and costly (financial and operational) mistakes that have resulted from the lack of having water-tight contracts drawn up between parties. And you can take your pick – among others between agency and client, agency and staff or between agencies partnering on a pitch. It is the latter that most often is formalised with a handshake over lunch at a trendy restaurant or must-visit coffee shop.

In our profession, more often than not, agencies are partnering with other agencies and freelancers to deliver on pitch briefs and to service the business should the pitch be won. If one link in the chain breaks this could have a catastrophic effect, not only on client relationships, but also on partnerships that have been created.

If everything goes according to plan, there's a good chance no one will ever look back. But consider for a moment what would happen should something go wrong down the road, and all that solidified the partnership was a handshake and a promise? A situation such as this could lead to messy unfulfilled expectations, reputational damage and legal costs. Not to mention the time and energy needed to solve these issues. Added to this, clients are not interested in, nor willing to entertain agency internal issues and politics.



Sharon Bergmann, financial manager at the Association for Communication and Advertising

Agencies should ensure they have guarded against any eventuality when partnering with third parties, failing which they run the risk of losing an account when faced with unresolved internal issues.

Pitches by their nature are exciting opportunities but, unfortunately, the excitement all too often clouds good corporate governance. The only way to ensure protection for all parties is to have a signed contract in place prior to the commencement of any work. This is the safest route for all involved when considering entering a partnership for pitch purposes. The contract should, among other things, manage expectations and detail ways of working during the pitch process and beyond should the partnership be successful in winning the business.

Should a dispute arise, the foresight of having put a contract in place will provide protection and resolution processes to the parties involved.

Do's and don'ts of partnering

Don'ts

Do not engage in a partnership for a pitch process unless there is a signed contract in place.

Do's

Make sure all parties are clear with 'ways of working' from a financial, operational and back office perspective.

Financial

Clearly define who gets paid what and when. If pitch work is on-risk, this must be stated in the agreement. The split of pitch rejection fees - if paid to the unsuccessful agencies - must also be defined. Be clear with regards to rates payable to partners and, importantly, what will and will not be paid for. For example, clients often have immersion processes designed to onboard a new agency. This is sometimes a non-recoverable cost to the agency. Insert payment clauses.

Copyright

Include in the contract a clause detailing copyright ownership. Copyright, related to the work, vests with the client once the agency has been appointed.

Operational

Define operational roles and requirements for both during and post the pitch.

During pitch process and the pitch

Clearly define all roles, responsibilities and deliverables. At the pitch, be transparent about the partnership. Be transparent about the partnership with the prospective client at the pitch.

After the pitch

Clearly define the roles the partners will play. Add clauses to mitigate risk should either party not fulfil their obligations. These clauses must be fair on both parties.

Back office

Clearly define which party will be responsible for back office and administrative matters, and how they will recover the costs/bill for this undertaking.

Dispute resolution

Insert a clause that details a mechanism should a dispute arise.

If you are still not convinced here are six reasons why a contract is not only a good idea but a must

1. Contracts serve as a record of commitment to all parties
2. They prevent conflicts and mitigate risk
3. They assist in maintaining compliance
4. They serve as a collaboration and communication tool
5. They increase operational efficiency
6. They extend a company's brand and values

It is important to keep in mind that the points raised above are simply a guideline and not legal advice. It could be viewed as best practice or corporate governance advice if you wish. The development of contracts requires the services of a legal professional and I encourage all agencies to approach matters such as multi-agency partnership contracts with the same purpose and sense of importance that they apply to other areas of their business.

The ACA offers dedicated access to experienced and informed legal advice to all of its member agencies. While this does not extend to counsel or representation, it is particularly useful when requiring professional advice in mitigating risks that could possibly occur.

About the Association for Communication and Advertising

The ACA is the official, representative body for the communications and advertising profession in South Africa, representing agencies in the profession (who at present contribute approximately 95% of South Africa's measured ad spend) to government, media and the public. The ACA is a voluntary body formed by and for the industry, focused on and committed to self-regulation and to defending the highest standards of ethical practice.

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