Conflict Policy and Advertising Agency–Client Relations: The Problem of Competing Clients Sharing a Common Agency
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Conflict Policy and Advertising Agency–Client Relations: The Problem of Competing Clients Sharing a Common Agency*

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Abstract

What restrictions should be placed on advertising agencies with respect to serving accounts or clients who are competitors of one another in order to avoid conflicts of interest? In recent decades, the advertising and marketing services industry has undergone a number of structural changes that forced an ongoing re-examination and modification...

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of traditional norms and policies emphasizing exclusivity in agency–
client relationships. A typology of conflicts that have arisen in the U.S. shows the variety and complexity of contemporary conflicts. Cases of conflicts reported in the trade literature are used to illustrate policy issues as well as the spillover effects and resolution of disputes.

To cope with these developments, two significant changes in conflict policies evident in current U.S. practice are identified. First, safeguards to preserve proprietary information that function as organizational, location, and personnel mobility barriers among quasi-autonomous units within a mega agency or holding company have become an essential component of conflict policies. Subject to the protection against security breaches afforded by safeguards, rival clients may be served by separate organizational units that are under common control and/or ownership. Second, a family of hybrid conflict polices has evolved that feature elements of the split account system long practiced in Japan, augmented by safeguards that serve as partial substitutes for the umbrella prohibition on serving rivals imposed by exclusivity. By relying on safeguards and splitting account assignments in a variety of ways among different organizational units within a given mega-agency or holding company that may also serve rivals (or across different mega agencies or holding companies), clients exert a measure of control over the access of those agencies to confidential information while also offering them incentives to avoid conflicts of interest.

Findings from the existing body of conceptual and empirical research bearing on the sources and consequences of conflicts are reviewed and directions for further research are discussed.
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“Conflicts in advertising are taboos as religious as any you would find in the Middle Ages.”


It has long been recognized that advertising agencies in the U.S. and Europe generally do not simultaneously serve accounts and/or clients who are competitors of one another. Seeking to avoid the risk of conflicts of interest with their agencies, clients were averse to sharing a common agency with a rival, a position that gradually was accepted by agencies. Thus, over the course of the first third of the twentieth century, “exclusivity” became the prevailing norm in the U.S. advertising industry. However, a 1979 position paper on conflicts issued by the American Association of Advertising Agencies (AAAA) forewarned that “Because of the proliferation of mergers, acquisitions, and new product introductions by clients, the potential for client–agency product conflicts has increased dramatically to the point it is of considerable concern to client and agency management alike” (p. 1). In line with that assessment, disputes relating to the interpretation and violation of this longstanding prohibition have been reported with
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varying regularity in the U.S. trade press, along with discussions of their disruptive effects on agency–client relations, often culminating in agency dismissals or account resignations; sometimes accompanied by litigation. Two decades later, a subsequent AAAA’s (2000) position paper began by noting that “Little has been published on conflict policies” and went on to suggest that: “The definition of conflict is becoming more liberal, i.e., less restrictive, due to current business trends” (p. 2), citing consolidation and globalization as developments precipitating the change. These observations raise a fundamental question: what do we know about how and why conflict norms and policies have changed?

Despite its history as a contentious issue in agency–client relations, conflicts of interest remain a relatively undeveloped topic in both the professional and academic literature on advertising and marketing. As a step toward the development of a deeper understanding of the state of contemporary practices relating to conflict norms, this monograph surveys and integrates three somewhat disparate bodies of relevant material that are available. First, an examination of the history of the advertising industry in the U.S. and Japan serves to inform our understanding of the development and functioning of the principal contending policy options: the exclusivity norm and the “split account system,” respectively. Second, analysis of press accounts of specific conflicts and policy guidelines issued by trade associations illustrates how the re-structuring of the U.S. advertising industry over the past three decades has affected potential threats of conflicts and means for addressing them. Third, a handful of theoretical and empirical studies are available that offer valuable insights into the issues and controversies surrounding conflicts that have been raised in the trade literature.

The basic contribution of this monograph is to call attention to what I characterize as a family of “hybrid conflict policies” (HCPs) that has gradually evolved in the wake of the discordant agency–client relations that surfaced in the mid-1980s when the effects of consolidation, diversification, and globalization began to sweep through the advertising and marketing services (A&MS) industry and exposed the limitations of the traditional norm of exclusivity. The policies are hybrid in that they adopt elements of the split account system practiced in Japan,
augmented by safeguards that serve as substitutes for the traditional umbrella prohibition on serving rivals imposed by exclusivity. The critical feature of hybrid policies is the establishment of distinct organizational units operated separately, but in parallel, while under common control and/or ownership. Competing accounts/clients can then be served by quasi-independent units, subject to the protection against security breaches afforded by safeguards that serve as organizational and personnel mobility barriers. The system’s adaptive quality derives from flexibility in the manner assignments may be split across units and in the use of a variety of accompanying safeguards. This flexibility facilitates the selective relaxation of the demands of strict exclusivity and fosters the design of customized conflict policies to address the heterogeneity and dynamics of agency and client interests.

In these respects, HCPs are responsive to repeated calls of industry leaders for “balanced” conflict policies, developed through accommodation on the part of both agencies and clients. HCPs may also be viewed as a further step in the realization of Marion Harper’s vision of the holding company as an organizational form for circumventing the constraints placed on agency growth by exclusivity.

Viewed from a historical perspective, the recent evolution of conflict policy in the U.S. advertising and marketing services industry appears to have much in common with the changes that occurred in the first quarter of the twentieth century. During the latter era, the scope of functions performed by agencies expanded from media-related services as creative, research and strategic services were added to the mix and the full-service agency was born. With that diversification, the sharing of a common agency by rivals fell into disfavor with clients and the norm of exclusivity gained acceptance. It now appears that the latter trend has been at least partially reversed, with somewhat less restrictive policies being in the ascendency, particularly in relations between multiproduct clients and mega agencies or holding companies. What often goes unrecognized is that throughout both eras, a variety of conflict policies co-existed in the advertising industry. Then as now, industry practice encompasses a broad spectrum of conflict policies, ranging from acceptance by rivals of sharing a common agency to strict exclusivity. How conflict policies are distributed across
the population of advertisers and how that distribution has changed over time are, in principle, observable quantities but currently remain unmeasured. Nonetheless, what is apparent is that in governing advertising agency–client relations, as in other realms of business activity (Macaulay, 1963), heavy reliance is placed on “relational contracts” — “informal agreements sustained by the value of future relationships” (Baker et al., 2002, p. 36). To date, that perspective has been neglected in research on agency–client relations, an opportunity that warrants further analysis. For a recent review of the economics of relational contracting, see Malcomson (2010).

The remainder of the monograph is organized as follows. Section 2 outlines a conceptual framework for analyzing the antecedents and consequences of conflicts of interest encountered by professional service firms and discusses the role of safeguards in addressing threats of security breaches. Section 3 traces the evolution of the exclusivity norm in the U.S. and the split account system in Japan. Recent structural changes in the U.S. advertising industry are reviewed along with areas where agency and client perspectives on conflict policy diverge. Section 4 examines the use of safeguard and contractual provisions in limiting agency–client conflicts. Section 5 presents a typology of conflicts and policy guidelines issued by trade associations, followed by an analysis of a hybrid family of conflict policies that has emerged to accommodate the interests of holding companies and their large diversified, global corporate clients. The resolution of conflict disputes is also discussed. Section 6 reviews the limited body of analytical and empirical research available on the economics of conflict policies. Section 7 considers directions and opportunities for further research. Section 8 provides an overview of the current state of knowledge about alternative conflict policies followed in practice, the economic rationale underlying their use, and the effects conflict policy has on the industry’s efficiency and organization.


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