

Are (More) Good Things on the Horizon for SAG-AFTRA Agencies and Advertisers?

5th Edition: Trends in Marketing Communications Law

Heading into the last round of collective bargaining that resulted in the 2016 SAG-AFTRA Commercials Contract (Commercials Contract), signatory advertising agencies and advertisers voiced concerns about the challenges they faced when competing with their non-signatory counterparts. Most troubling was the comparatively high talent cost tied to an increased demand for digital content, and, to a lesser extent, the use of non-professional talent (i.e., real people) in commercials. Some prominent SAG-AFTRA advertisers withdrew from the Commercials Contract, leaving signatory agencies more vulnerable to non-union agencies able to “buy-out” talent for flat fees, ready to swoop in and take away their business.

The Commercials Contract introduced beneficial waivers aimed at reducing talent costs for the short-term use of commercials in social media and the use of real people in certain types of commercials. However, even with the new waivers, signatory agencies and advertisers have found it increasingly difficult to produce low-budget digital content with multiple performers at the current rates.

In October 2017, SAG-AFTRA and the Joint Policy Committee on Broadcast Talent Union Relations (JPC) responded to these concerns and created a rare mid-contract waiver for low-budget digital commercial productions – and the reviews have so far been positive. The new waiver allows for “free bargaining” with talent (i.e., there is no required minimum pay rate), union or non-union, in connection with digital commercial productions with budgets of \$50,000 and under. The digital waiver signaled recognition by SAG-AFTRA and the JPC that relief was necessary for signatory agencies to compete on the digital front, and may serve to mitigate the potential termination and withdrawal by signatory agencies and even more advertisers at the expiration of the current Commercials Contract in the Spring of 2019.

Among other things, agencies and advertisers have clamored for a blanket waiver for the use of non-professional “real people” that appear or perform non-scripted work in commercials. There are existing waivers for the use of the advertiser’s employees, people at live events, people filmed with hidden camera productions, testimonial givers and the use of certain non-professionals. Some have suggested that SAG-AFTRA and the JPC simplify and close the gap by collapsing these waivers into a blanket waiver.

As the expiration of the current Commercials Contract looms ahead in 2019, SAG-AFTRA and the JPC have much to consider as they attempt to level the playing field for signatory agencies, which may make negotiations for the next Commercials Contract even more complicated.

Key Takeaways

- Beneficial waivers introduced after the 2016 Commercials Contract went into effect have not helped dampen concerns raised by signatory agencies about talent costs.
- An October 2017 mid-contract waiver was created to allow for “free bargaining” with talent, union or non-union, in connection with digital commercial productions with budgets of \$50,000 and under.

- Some question whether SAG-AFTRA and the JPC should consolidate different waivers into a single blanket waiver to reduce talent costs across the board for non-scripted “real people” advertising.
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