

Dear Friends:

As we move into the latter half of the year (how did summer go by so fast?), I think it's a good time to review some basics that can help not only to determine a credit applicant's general creditworthiness but also to reduce the risk of collection problems later. In addition to "Cover Your Bases!," we've also included our recommended wording for "terms and conditions of credit sales," which illustrates many of the suggestions included in the feature article.

Our fall/winter calendar includes the Advertising Media Credit Executives Association at the Sonesta Beach Resort in Key Biscayne, Florida, October 14th through 18th. We also look forward, as always, to a great time at the annual Szabo Christmas Party at the Hellenic Center in Atlanta on December 2nd. Hope to see y'all there!

Best wishes for a terrific autumn, a wonderful Thanksgiving, and a joyous holiday season!



Pete Szabo, President
Szabo Associates, Inc.

COVER YOUR BASES! Up-Front Diligence Can Help Avoid Costly Disputes

Media is certainly one industry that never fails to surprise, infuriate, and entertain its participants with the unexpected. We at Szabo have noticed over the years, however, some patterns of unexpected (and unfortunate) occurrences in the area of credit and collections that our clients might have avoided. So ... we would like to put forth, amid all the situations in which you do not have any control whatsoever, a few in which you do. Here is a list of practices that, when executed "up front," can help you avoid problems later.

1. Give some "teeth" to your credit application. In a perfect world, a signed credit application is followed by a signed contract. An unfortunate reality in the media industry is that waiting for a signed contract can sometimes mean losing a sale. For example, if a rep firm representing an agency which in turn represents an advertiser buys time from you and wants it the next day, getting a signed contract prior to airing is virtually impossible. In such an instance, the credit application is probably the single most important piece of paper you have.

Of course, the initial purpose of the credit app is to help you determine whether or not to extend credit. To that end, it should include the year that the agency or company was estab-

lished; its structure (proprietorship, partnership, corporation, or other); number of full-time employees; annual sales; business license number; the principals of the company, their addresses and home phone numbers; bank references; and at least three trade references, preferably including media.

Beyond the purpose of establishing a potential customer's creditworthiness, a signed credit app can help to further reduce your risk down the road. Put in your credit app the terms of the business agreement, including clauses defining your position on liability.

2. Communicate with your sales force. Because they deal directly with prospective customers, salespeople often pick up important information that you might not otherwise find out initially. Hold frequent meetings with salespeople to teach them about credit and collections. In return, encourage your credit and collections staff to develop a sales oriented attitude.

3. Determine with whom you are entering an agreement. Is the agreement with the advertising agency, with the advertiser, or with both? Put it in writing. State clearly

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Cover Your Bases

—continued from page 1

who is responsible for payment. If the agreement is between you (the media provider) and the agency only, and there is no reference to the advertiser in the contract, you may have difficulty seeking recourse against the advertiser (even though the advertisement was for the benefit of the advertiser).

Of course, even if such a reference exists, the advertiser

may deny the agency's authority to enter into the contract. One approach to a situation in which the advertiser does not actually sign the contract is to clearly state in the contract that the agency is unconditionally and primarily liable for all payment due, regardless of whether or not the advertising agency is paid by the advertiser. If you choose this course, you should also make sure that the agency is able to satisfy the obligation without reimbursement from the advertiser. An alternative approach is to require that the

agency present written confirmation from the advertiser that the agency is authorized to negotiate and enter into a binding contract on behalf of the advertiser. This confirmation should also state that, if the advertiser entrusts the agent with funds with which to pay the media, the advertiser will remain liable in the event of non-payment by the agency. (More on "joint and several liability" later.)

Send copies of everything, including copies of the confirmation order and the contract

Szabo Associates' Recommended Wording for the "Terms and Conditions of Credit Sales"

The following wording clearly sets forth the terms of the agreement, defines the responsibilities of the parties involved, and clearly establishes a position on joint and several liability. Check with your management on policy and with local counsel on any state statutes that may conflict with terms or conditions.

In consideration of the providing of advertising services, production services, or related services by WSZB Television (the "Media Provider") now and/or in the future, the undersigned Applicant (the "Applicant") agrees and shall be governed by the following:

Applicant acknowledges that services from Media Provider may be purchased by Applicant on behalf of an advertiser if Applicant is an agency, and such services may be purchased from Media Provider on behalf of Applicant through the efforts of an advertising agency or other service entity if Applicant is an advertiser; for purposes hereof, the advertiser, advertising agency, or other service entity on behalf of which or through which Media Provider provides services shall be known as "Third Parties."

Whether sums are due under contract or open account, it is understood that all invoices are due upon receipt and are considered delinquent if not paid within fifteen (15) days from the date of invoice. Should timely payments not be made as stated, Applicant agrees to pay all collection agency fees and expenses, and other costs of collection, including reasonable attorney fees and court costs which may be incurred by Media Provider in pursuing and collecting payment. The liability of Applicant shall be joint and several with Third Parties.

Any dispute by Applicant with any telecast, commercial announcements, any services provided by Media Provider or the amount charged for the same shall be reported to Media Provider in writing within thirty (30) days from the date of invoice relating to the same, time being of the essence (but any such dispute shall not affect Applicant's obligation to make payment within 15 days as set forth above). Failure to report any such dispute within such time shall constitute a waiver of any claim by Applicant with respect to such dispute.

The terms and conditions outlined herein shall govern and control all future services which may be provided by Media Provider from time to time for the Applicant. The party executing this agreement on behalf of Applicant acknowledges that it has the authority to do so and that by its execution it has caused Applicant and Third Parties to be

jointly and severally bound by the terms hereof.

Applicant represents that Third Parties will immediately be notified of the terms hereof.

If credit is approved, Media Provider reserves the right to cancel credit at any time with or without notice for whatever reason.

Notwithstanding to whom bills are rendered, Applicant and Third Parties shall remain jointly and severally obligated to pay to Media Provider the amount of any bills rendered by Media Provider within the time specified and until payment in full is received by Media Provider. Payment by Applicant to Third Parties or by Third Parties to Applicant shall not constitute payment to Media Provider.

Applicant understands that should Applicant place advertising through an advertising agency (or other Third Parties) that Applicant will continue to be responsible to Media Provider for payment of such advertising. In the event Applicant is an agency requesting advertising on behalf of a client, Applicant acknowledges its joint and several liability for the payment of such advertising under the terms set forth herein above.

If Applicant is an advertiser, all agencies which place advertising buy orders with Media Provider shall be conclusively deemed to be authorized agents for Applicant; without limiting the generality of the foregoing, the following agencies are expressly included among the agencies which are authorized to place advertising buy orders on behalf of and as authorized agent for Applicant: (list here)

Applicant certifies that all statements and information included in this application (including all financial statements and attachments) are true, correct, and complete and are made for the purpose of obtaining credit and that all officers, owners, or employees are authorized to purchase advertising. Media Provider is hereby authorized to verify any and all statements through any source available to them.

COMPANY: _____
AUTHORIZED SIGNATURE: _____
PRINT NAME: _____
DATE: _____

(don't forget to copy the back side!) to all parties involved in the transaction.

4. Research the identity of your customer. Once you know the party, or parties, with whom you're entering a business agreement, find out exactly what those entities are. Before you establish a commercial account, get the exact name of the corporate customer, and find out if the corporation is in good standing with the state. In most states, a letter to the Corporation Division of the Secretary of State accompanied by a check for a few dollars will get you this information. If the firm is not a corporation, find out who the owner is, where the owner lives, and his/her business background.

5. Identify the representatives of the parties to the agreement. The person signing the contract on behalf of a legal entity (corporation, partnership, etc.) should clearly

indicate the legal capacity in which they are signing. The agency or advertiser may not be legally bound to a contract if signed by an individual who did not have the proper legal authority to enter into contracts on behalf of the entity. Unless this authority is evident by the person's position (president or vice-president), get written confirmation regarding the person's authority to bind the legal entity.

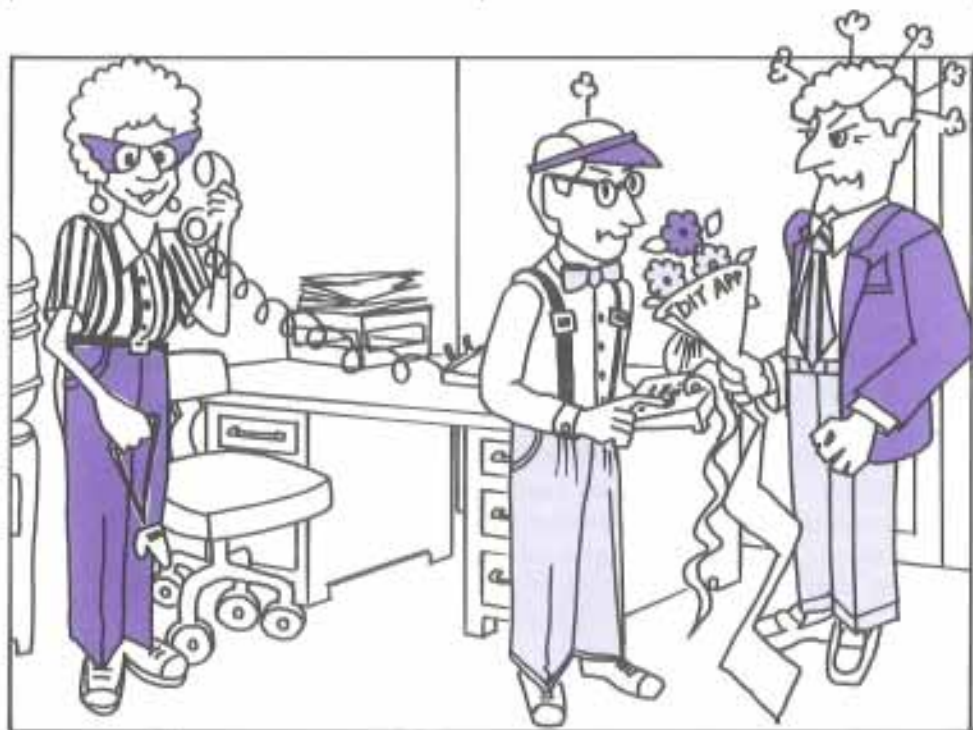
6. Closely review personal guarantees. Personal guarantees are advisable for borderline cases in which you would like to extend credit, but they fail to serve their purpose unless certain criteria are met. (a) A personal guarantee is only as good as the guarantor's ability to pay what is owed! Be sure of your guarantor's financial security. (b) The signature must show that the party is signing personally. The person's title must not appear after the name, and the company name must not appear directly above the signature. (c) The name of the account

being guaranteed must match the account shown on your books. (d) The guarantee must show it is binding upon the "heirs, executors, and administrators." (e) The guarantee must show clearly that it truly is a guarantee. (f) You must notify the guarantor in the event of a default.

7. Set forth the business terms of your contract with clarity and reasonable specificity. Contract problems arise most often because of vague or indefinite language or because the agreement is incomplete, making it difficult to enforce in a court of law. There should be no question about any aspect of the business arrangement: price, terms of payment, nature of the advertisement to be run, or timing of airing or publication. If your contract has "missing parts" or is ambiguous, a court may refuse to enforce it at all.

8. Establish a position of joint and several liability. As you probably are already aware, Szabo Associates is a strong proponent of the joint and several liability position because we believe it offers media the best protection if either the agency or advertiser fails to pay. It is important to establish this position in writing because it is unlikely that the courts will decide in opposition of a fully integrated written agreement. (See sidebar for recommended wording of liability statement.)

9. Congratulate yourself and your staff on their efforts. Even with the most diligent up-front efforts, the unforeseen unmitigated disaster will occur; however, with consistent application of a strong credit policy and the variety of tools available to you, those occurrences will be few and relatively manageable. Enjoy your successes. ♦



"UH BOSS? I THINK SALES AND CREDIT ARE ABOUT TO WORK THINGS OUT OVER THAT CREDIT APP!"

Why We Work the Way We Do Legal Resources

No one really wants to go to court to collect unpaid receivables. You go to court only after all of your more attractive options have failed.

We at Szabo believe in giving you the tools to make smart use of your legal power. The right moves can often persuade a debtor to settle to avoid the publicity and expense of a lawsuit.

But if you do have to go to court, make sure you can win. Good attorneys and research can make success more likely.

That's why we've put together a network of legal resources that's unsurpassed among collection services that work for media and

related companies.

In every corner of the U.S. and in many foreign countries, we call on the services of over 350 attorneys. We've selected them on the basis of their knowledge of media collection law.

We also have our own skilled paralegal specialists on staff. They're trained and experienced in media law. In many cases, they can get results without calling in an attorney. If litigation is needed, they monitor the attorney's performance for you.

To support our legal efforts, we maintain a current library of media/advertising law, debtor/creditor rights, ad agency and advertiser

liability, and court cases affecting the media industry. We don't know of any other collection service that has a library quite like it.

We also have a depth of experience in maneuvering through the complexities of debtor bankruptcy. Our people regularly work on bankruptcy committees, both in and out of court. We have an excellent record of negotiating good settlements for our clients in bankruptcy preference actions.

As you can see, there's a lot more to legal action than simply hiring an attorney. At Szabo, we take pride in giving you more value in legal resources than any other collection service. ♦

SZABO ASSOCIATES INC.



Collective Wisdom® is a publication of Szabo Associates, Inc., 3355 Lenox Rd., Suite 945, Atlanta, Georgia 30326, Tel: 404/266-2464, Fax: 404/266-2165

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