

*SAG v. Bates, Ted 4/93
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AMERICAN ARBITRATION ASSOCIATION

VISA Credit Card

In the matter of the Arbitration
 between
 SCREEN ACTORS GUILD
 and
 TED BATES NEW YORK ADVERTISING

:
 :
 : DECISION OF THE ARBITRATOR:
 :
 : Case No. 1330 0458 78
 :
 :

INTRODUCTION

The undersigned was selected as the arbitrator with regard to a dispute between the parties concerning the "VISA" commercial for television use.

SCREEN ACTORS GUILD (or SAG) was represented by Alter, Lefevre, Raphael, Lowry & Gould, esqs., DIRK GOULD, esq., Counsel. TED BATES NEW YORK ADVERTISING (or BATES) appeared by ELHANAN C. STONE, esq., General Counsel of BATES.

All witnesses were sworn and briefs were submitted on behalf of the respective parties.



SCREEN ACTORS GUILD

KEN ORSATTI
National Executive Director
JOHN T. McGUIRE
Associate National Executive Director
JOHN H. SLICKE
New York Executive Director

NEW YORK BRANCH OFFICERS

MEL ROUDRICK
PRESIDENT
KIM SYKES
1ST VICE PRESIDENT
JORDAN DESAIN
2ND VICE PRESIDENT
SKIP HINNANT
3RD VICE PRESIDENT
LESLIE SHREVE
4TH VICE PRESIDENT
TANDY CROSYN
RECORDING SECRETARY
JOANNA MYERS
TREASURER

NATIONAL BOARD

NEW YORK DIRECTORS
HANRY ALFARO
MICHAEL ARKIN
MEL ROUDRICK
JIM BRACCHITTA
COLETTE BRUCE
TANDY CROSYN
JORDAN DESAIN
MAUREEN DONNELLY
EILEEN GALINDO
CELINA GOODWIN
PHILIP HENRY
SKIP HINNANT
TIM JEROME
LARRY KEITH
OSWALD KLIN
RUTH LASH
BLAINE LEGARD
JIM MURTAUGH
JOANNA MYERS
CAROL RICHARDS
MARLYN ROBERTS
CLIFF ROBERTSON
LISA SCAROLA
LESLIE SHREVE
KIM SYKES

NATIONAL OFFICERS

NEW YORK
MEL ROUDRICK
PRESIDENT
KIM SYKES
1ST VICE PRESIDENT
MAUREEN DONNELLY
2ND VICE PRESIDENT
LARRY KEITH
3RD VICE PRESIDENT

NEW YORK EXECUTIVE STAFF

ROGER LATHEINER
SUSAN ROSE
WILLIAM WEINER
ICAN GREENSPAN
SARAH C. WISWIK
ANTHONY L. LEGRAND
BON BENNETT
JUDYTHE L. SIMMONS

BETH KAPLSTE

ELLEN BALES
JIM DAMIS
DAN GROVA
JAY JENKINS
VICTORIA KANTOR
JOANNE MORELLI
MARSHIE O'MALLEY
MARISA RECH
ROSE ELLE RUBIN
CARESSA JANCEF
FERRI WAKNEIN
MAURA WALKER
LOWELL WILLIAMS

RICHARD MASUR

NATIONAL PRESIDENT
SEMI HARRI
NATIONAL RECORDING SECRETARY
F.J. O'NEIL
NATIONAL TREASURER
LEON JAMES
PRINCIPAL EXECUTIVE
GIL PERKINS
TRAVELER PERKINS

KATHERINE ANNI MICHOU
NATIONAL DIRECTOR OF COMMUNICATIONS

HAMIE ALTER
SOLANDEEN ELLENORFF
PERENY & SHINDLER
LEGAL COUNSEL

to: Elkie Stone
from: Patricia (Commercials dept.)

Elkie -
it only goes thru page 7 -
I am re-sending, though, for your
review.

Patricia

NEW YORK BRANCH

1515 BROADWAY, 44TH FLOOR * NEW YORK, NEW YORK 10036 * TELEPHONE (212) 944-1030 * TELEFAX (212) 944-6774

SUMMARY OF FACTS

A television commercial was made by BATES on behalf of VISA credit cards. Observing the commercial, one noticed that the VISA credit card was held in hand by various persons, each hired as a "GENERAL EXTRA." From Joint Exhibit #2 we observe that only the hands of the persons hired are exhibited holding the VISA credit card in the commercial.

Testimony brought forth by SAG tended to show that the BATES casting director asked the persons later hired about their hands. A variety of discussions were held regarding their hands. Thereafter several takes were made before the completion of the assignment.

In addition, the testimony of the Assistant Secretary of the New York branch of SAG, Elinor London, stated that a "hand model" referred to in the SAG EXTRA PLAYERS Television Commercials Agreement provided for a higher rate for "hand model" than was set for the Commercial Extra Players.

In this current agreement a modification took place as-compared with the 1969 agreement. Under the 1969 agreement a category of "General Extra" existed. In addition, rates for "Product Extra Players," "Hand Models" and "Physical Demonstrators" were set higher than for the "General Extra."

Pursuant to the current agreement the terms "Product Extra Players" and "Physical Demonstrators" were eliminated leaving the category of "General Extra" and the category of "Hand Model," the latter at a rate of \$60.00 above the former.

As defined by the Witness London, a "hand model" is an extra ". . . used to demonstrate the product . . ." It is urged by SAG that the persons in the VISA commercial are used in precisely that fashion; therefore they should be paid the difference between the rate for a General Extra and the rate for a Hand Model, or \$60.00 for each of the persons since their hands were the parts exclusively used. In addition, \$30.60 in toto for pension and welfare contributions is claimed. In the claim for arbitration, a request is made that BATES be charged with the "late payment clause" requiring an assessment of a specific amount of money per day. See Article 47 of Joint Exhibit #3.

On its behalf BATES has submitted the testimony of its casting director, Bester, and a former Vice President, Saz, now retired, but one who was involved in the industry negotiations with the unions on previous occasions.

Witness Bester described a "hand model" as one who has "steady and accurate precision in handling the product." A distinction made by this witness indicated that in the case before us the accent was on the product and not on the hands.

Although at first doubting her qualification to state whether the commercial in Joint Exhibit #2 involved the use of hand models, after some consideration she modified her testimony to say that she thought the persons in the VISA commercial were General Extras.

In questioning the persons later used, Ms. Bester did not seek any information as to any particular skill with hands because none was required.

The Witness Saz, former Vice President, testified as to his role in the modifications of the contract eliminating the two categories referred to above, "Product Extras" and "Physical Demonstrators."

Testifying to a conversation he had with an official of a related union which was involved in the negotiations, but who is not an official of Petitioner's union, we are advised that the term "hand model" would be retained but would only apply to persons who, for example, either had "beautiful hands," "workman hands," "fisherman hands," etc.

Under the 1969 agreement the persons used in this commercial, says Mr. Saz, would have been defined as "product extras." At that time, he said, no distinction between "product extras" and "hand models" existed.

Almost immediately thereafter the witness corrected this to point out that "hand model" still exists as a category.

At the same time he expressed some disagreement with the Witness Bester as to the emphasis on the hands being required to categorize the person as a "hand model."

Described by the Witness Saz, nevertheless, this subject was not discussed across the bargaining table. Although BATES urges that the SAG representative, Mr. Harold Hoffman, must have known of this arrangement, no testimony has been offered as to this other than this witness, nor is there any specific language in the agreement after 1969.

Recalled by SAG, Witness London offered a commercial made by Young & Rubican (SAG #3) in which, because of the use of hands,

a settlement was reached in which the agency accepted SAG's position without going to arbitration. SAG urges that no essential difference exists regarding the term "hand model" between this case and the use of hands in SAG #3.

On cross examination it was brought forth that this was a private settlement, not binding on the industry.

OPINION

In none of the exhibits is the term "hand model" defined with any clarity. Although the 1969 agreement had three categories above "General Extra," in no way were any of them defined or the distinction among them clarified.

Whatever the reasons, despite the private conversation between Witness Saz and a representative of another union during the negotiations, no contractual explanation was set forth defining what was meant by the term here in dispute or illustrating the nature of the uses involved which would categorize a person as a "hand model." While Mr. Saz gave us some history and other witnesses attempted to give some illumination, what we see before us is a commercial in which the hands play a substantial part; no other part of the body is shown.

What makes this all the more difficult is an apparent lack of complete agreement between the witnesses for BATES. Is the emphasis on special kinds of hands, as Witness Saz says, or is the emphasis on steady and accurate precision as indicated by Witness Bester?

While the persons were hired in the "General Extra" category, we must examine the evidence. That evidence will determine the rate at which the persons will be paid rather than the category in the hiring statement.

Although no emphasis was made in hiring as to any special hand skill any of the persons hired may have had, or should have had, according to Ms. Bester the emphasis was on the product and not the hands.

Nothing was shown, however, in the commercial except the credit card and the hands. While the hands had no special qualities as Witness Saz says was intended, he and Ms. Bester disagree on this point. He would not place the emphasis on either the hand or the product in defining the term "hand model," but on special kinds of hands.

Given this lack of contractual clarity, beyond the words of the agreement, the arbitrator has to examine carefully the language of the agreement itself. From this language the failure to define the term, the lack of clear-cut history, and the open and simple use of the hands, with no other part of the body of the persons hired being shown, I am constrained to uphold the Grievance.

At the same time because there is a bona fide dispute, clearly the parties are acting in good faith, no late payments shall be assessed. Welfare and pension payments shall be assessed.

AWARD

The Grievance is granted; the six persons involved shall receive \$60.00 each, payable to the SCREEN ACTORS GUILD on their behalf. Appropriate welfare and pension payments totaling \$30.60 shall likewise be paid by Respondent to the SCREEN ACTORS GUILD.



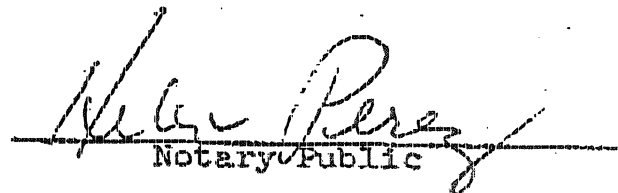
CARL RACHLIN, Arbitrator

STATE OF NEW YORK

ES:

COUNTY OF NEW YORK

On this 10th day of November, 1978, before me personally appeared CARL RACHLIN, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


Notary Public

HELEN PEREZ
Notary Public, State of New York
No. 41-383923
Qualified in Queens County
Commission Expires March 30, 1981