

# Marque explainer: the issue with advertising agency transparency



Ad agencies have been under fire lately over non-transparent practices. Whether you're an agency, advertiser or media owner, it's worth getting across the issues. This is high stakes stuff.

## The problem

It all started when ad agencies wanted to make more money from advertisers without raising their prices. The solution? Sneaky kickbacks from media owners on media spend. The agency pockets the saving on the media costs and the advertiser is none the wiser.

## What is legal?

A rebate arrangement is not in itself illegal. If the advertiser agrees that the agency can receive benefits like rebates or bonus inventory and not pass on the cost saving, then there's generally no problem. That's why everyone's talking about transparency.

## What is illegal?

Agencies will run into problems where a rebate or other benefit isn't disclosed when it should be. Agencies have concocted some creative ways of hiding rebates and kickbacks, such as:

- having the rebate paid to a related entity;
- entering contracts to provide highly overvalued services to a media owner; and
- obtaining free 'value bank' inventory from the media owners and then selling it on to the advertiser for a tidy profit.

In the worst cases, this kind of conduct is criminal and can result in company fines and jail time for the individuals involved. Yes. An agency may also be in breach of its contract and can be liable for misleading or deceptive conduct or unconscionable conduct. If the ACCC gets interested and prosecutes, penalties are likely to be in the millions of dollars range. Media owners can face action too if they help to hide the money.

## Reputation

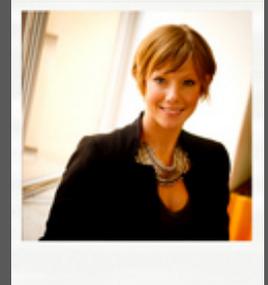
Legal consequences aren't the only thing to worry about. If an agency or media owner gets found out, you can bet your boots it will become public. The reputational damage will be huge, and may be irreversible. Mediacom faced this back in 2015 when it was outed for selling free inventory to advertisers. It avoided court, but got roasted in the media and reportedly lost accounts worth tens of millions.

## What to do

Well that all depends on who you are.

- Advertisers – check your contracts and maybe ask a few frank questions about media costs.
- Agencies – disclose rebates and specify in your advertiser contracts when you're going to keep them.
- Media owners – don't help an agency to hide a rebate.

Questions? Give us a call.



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