

## How to prevent and handle disputes in contracts between an Advertising Agency and their customer?<sup>1, 2</sup>

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### ABSTRACT

The advertising industry is developing on every communication media, it can be TV, radio, internet or point of sales. To date, many companies do not do their own advertising campaign but they under treat to advertising agency that are specialized in the creation of add. However, the disputes between companies and advertising agency is becoming a real problem. When disputes and conflicts happens, the production process of the advertising campaign is affected and delayed. To do so, it is an emergency to solve them in an appropriate and durable way. Throughout this paper and by referring to different documents, we choose six feasible alternatives. Thanks to different criterions we select the best alternative which is prevention by using Compensatory Model Additive Weighting Technique that is the more efficient way to solve the dispute from the root.

**Key words:** advertising, disputes, customers, contracts, prevention, control

### INTRODUCTION

A project according to Max Wideman<sup>3</sup> is « A process or undertaking that encompasses an entire set of activities having a definable starting point and well defined objectives the delivery of which signal the completion of the project. Projects are usually required to be accomplished within limited resources.”

In that sense, in an advertising company each new ad is a project because according to Planning Planet<sup>4</sup> a project is the objective to product within a fixed period of time and limited resources. To do so, for each ad they will have deadlines fixed with their customers and suppliers, the project

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<sup>3</sup> Wideman, M. (2018). Wideman Comparative Glossary of Project Management Terms v5.5. Retrieved from [http://www.maxwideman.com/pmglossary/PMG\\_P12.htm#Project](http://www.maxwideman.com/pmglossary/PMG_P12.htm#Project)

<sup>4</sup> programme project controls - planning, scheduling, cost management and forensic analysis (planning planet). (2009). Retrieved from <http://www.planningplanet.com/wiki/422363/programme>

manager will be in charge of setting up a working schedule. All those ads that are project are under a huge program that is the advertising campaign. According to Planning planet<sup>5</sup> a program is containing multiple projects with a common purpose. To succeed in this program within projects each advertising companies must have a portfolio of assets that are all the methods, technologies and process use in the making of advertising campaigns.

The difficulty between the Advertising Agency and their customer is to find the common interest in order to avoid conflicts and so avoid a waste of time. The Advertising Agency regularly faces disputes with their customer which can arise at any stage of the project, and that can often have a strong negative impact on one or both parties to the conflict and thus, on the project. To succeed in agreeing and implementing an advertising contract, both parties need to have strong competencies in management and conflict management.

The main causes of disputes<sup>6</sup> between the different stakeholders are related to money issues such as payment or even sometimes the customer thinks that the quote is way to expensive and that it does not respect the contract. Disputes can also happen when the Advertising Agency does not respect the specifications from A to Z for some reason. Also, in advertising contract, conflicts can happen when one of the parties does not respect the confidentiality of the project. But beyond all this, the main reasons of disputes in advertising contracts are: plagiarism and non-respect of the dead lines. In any case, solutions must be found quickly to avoid the failure of the project and that of one or both parties end in conflict.

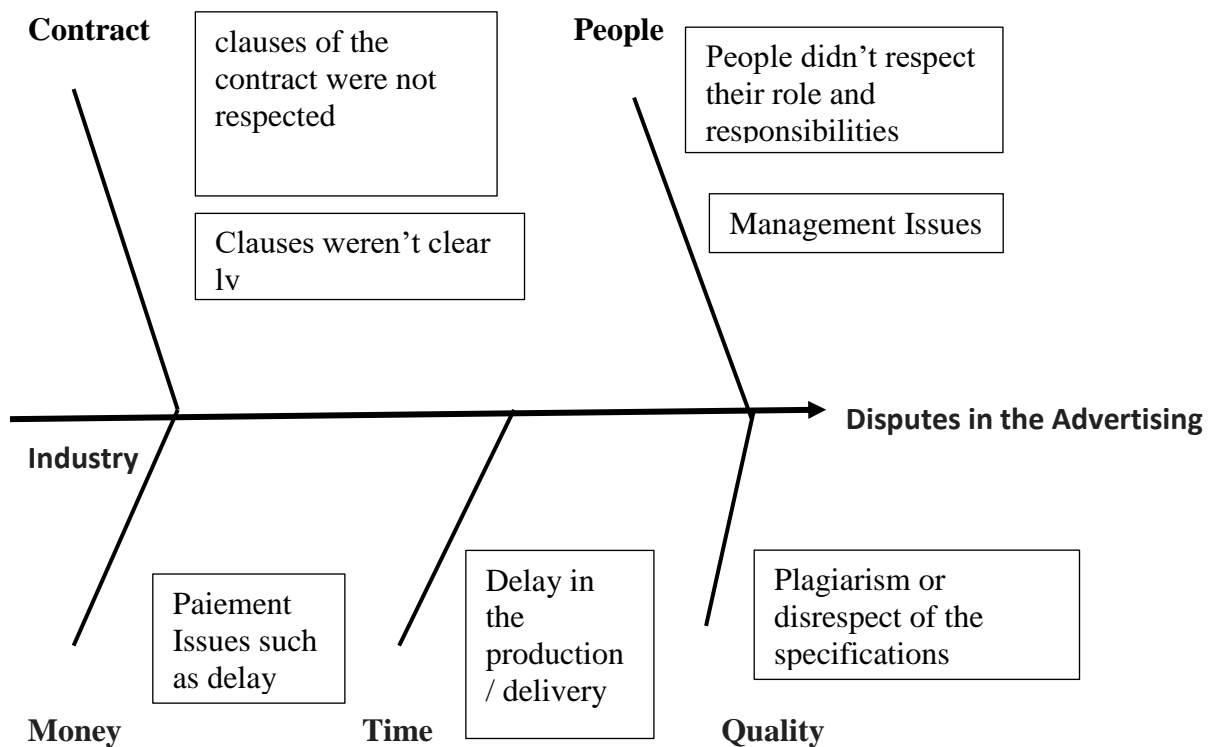
This Fishbone Diagram<sup>7</sup> below illustrates the problem and its main causes:

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<sup>5</sup> Planet, P. (2009). programme | project controls - planning, scheduling, cost management and forensic analysis (planning planet). Retrieved from <http://www.planningplanet.com/wiki/422363/programme>

<sup>6</sup> Hiscox, M. (2015, July 1). How to manage risk in marketing, advertising and communications - the ultimate guide Hiscox Business Blog. Retrieved from <https://www.hiscox.co.uk/business-blog/how-to-manage-risk-in-marketing-advertising-and-communications-the-ultimate-guide/>

<sup>7</sup> By author



Many companies make the mistake of defining the method of conflict resolution after the dispute is already engaged. However, if you want to avoid the conflict and solve the conflict quickly, you should always set up the dispute resolution method before signing the contract between the different parties. All the problems I mentioned above can be limited or even avoided thanks to clauses in the contract that the Advertising Agency and their clients will negotiate. However, handling conflict resolution can be very costly for Advertising agency and the customer, in order to not exceed the budget, the contractors should use adapted methods and techniques.

After some research and thanks to a comparative analysis of the “best tested and proven” references, the objective of this report is to analyze what are the different disputes resolutions methods and techniques and to recommend which one is the best to avoid dispute in Advertising Industry.

This paper has been researched and written to answer the following questions:

- What are the different alternatives in order to resolve disputes in the Advertising Industry?
- Which criteria needs to be taken into consideration in order to evaluate these different alternatives?
- What is the most effective dispute resolution method in the Advertising Industry?
- What is the worst dispute resolution method?


## METHODOLOGY

### Step 1: Objective statement

The objective is to solve and mitigate the disputes between Advertising companies and their customer. According to those different dispute resolution method: EJCDC, CSI Manual Practice, FIDIC and AIA, I will argument the development of each alternative, I will compare through different criteria and finally, I will select the best alternative to resolve disputes in Advertising industry.

### Step 2: Development of the feasible alternatives

Here I found six alternatives<sup>8</sup>:

1. Prevention
  2. Negotiation
  3. Standing Neutral
  4. Non Binding Resolution
  5. Private Binding Resolution
  6. Litigation
- 
- increasing in Hostility,  
Adversity, Cost, Time and  
Aggravation

### Step 3: Development of the outcome for each alternative

#### 1) Prevention

Most of the time the management of conflict is included in most of the contract, usually in the supplementary conditions. What owner and contractor have to understand is that prevention is not only a way to aware them of the risk of dispute, but also a way to offer them a reasonable way to control those disputes before it goes worse. To do so, we are now going to identify how to avoid the dispute by taking preventative measures.

#### 2) Negotiation

Most of the conflict and dispute can be solve thanks to negotiation, both owner and contractor can find a compromise. In the advertising industry, the advertising agency and its customer will have to communicate together. A third party can intervene in the negotiation but they have to be independent and impartial.

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<sup>8</sup> Plannet, P. (2009). guild of project controls compendium and reference (car) | project controls - planning, scheduling, cost management and forensic analysis (planning planet). Retrieved from <http://www.planningplanet.com/guild/gpccar/formal-disputes-resolution>

### 3) Standing Neutral

In order to be as neutral as possible, both parties can ask for an independent third that can be the dispute review board. The Dispute Review Board also known as the DRB is a “job-site” dispute adjudication process. Most of the time it is composed of one to three independent and impartial people who will assist in the negotiation and in the management of conflicts and disputes. To do so, the Dispute Review Board must be familiar with the project and they will also conduct the hearings. However, it is not the role of the DRB to take a decision or a resolution, they will propose to the owner and contractor some advice but the two parties have the right to refuse it.

### 4) Non-Binding Resolution

A non-Binding resolution can be characterized by mediation. Usually Mediation will be done by a single mediator that will not judge the case but will just help to facilitate the problems and propose some resolution for the conflicts and disputes. Mediation is becoming more and more popular in companies because it is an external and effective manner to solve conflicts and disputes.

### 5) Private Binding Resolution

A private binding resolution can be characterized by arbitration. Arbitration is an alternative mode of conflicts and disputes resolution through an arbitral tribunal composed of one or more arbitrators. Usually, each party choose an arbitrator, then the two arbitrators will choose a third one. The arbitrators make decisions that may be binding on litigants subject to certain qualifications. Arbitration allows the settlement of a dispute by entrusting the dispute to one or more individuals chosen by the parties. It is therefore a mode of extra-judicial settlement of conflicts.

### 6) Litigation

Litigation is the ultimate legal method for resolving disputes between owner and contractor. To do so, the case will be taken to a court of law that will make a judgement.

## **Step 4: Selection of criteria**

In order to compare those alternatives, we will use 4 criteria<sup>9</sup> that will help us to find out the best alternative.

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<sup>9</sup> Proskauer, D. (2016). perceived advantages and disadvantages of international arbitration - proskauer on international litigation and arbitration. Retrieved from <https://www.proskauerguide.com/arbitration/19>

	Time	Cost	Binding	Flexibility	Total	Rank
Time		1	1	1	3	1
Cost	0		1	1	2	2
Binding	0	0		1	1	3
Flexibility	0	0	0		0	0

After a prioritization of the criteria<sup>10</sup>, we can analyze that the criteria “Time” is the most important one. This conclusion sounds logical because in the advertising industry time is usually a synonym of money. Indeed, advertising companies have deadlines with their customer (TV Chanel, Restaurants, Outfits companies) that cannot be changed. To do so, both advertising agency and customer cannot waste their time with disputes and conflicts.

## FINDINGS

### 5. Analysis and comparison of the alternatives

Thanks to these attributes, we can compare different criteria through a multi attribute decision making (MADM)<sup>11</sup> analysis by using Compensatory model of Additive Weighting Technique.

The comparison is as follow<sup>12</sup>: Here we quantify each criterion with the score from 1 to 4

Time		Cost		Binding		Flexibility	
very fast	4	very low	4	very strong	4	very high	4
fast	3	low	3	strong	3	high	3
long	2	high	2	weak	2	low	2
very long	1	very high	1	very weak	1	very low	1

<sup>10</sup> By author

<sup>11</sup> Planing planet, P. (2009). guild of project controls compendium and reference (car) project controls - planning, scheduling, cost management and forensic analysis (planning planet). Retrieved from <http://www.planningplanet.com/guild/gpccar/managing-change-the-owners-perspective>

<sup>12</sup> By author

	Prevention	Negotiation	DRB	Meditation	Arbitration	Litigation
Time	4	3	3	2	2	1
Cost	4	4	2	2	2	1
Binding	4	2	2	3	3	4
Flexibility	2	4	3	2	2	1
Total	14	13	10	9	9	7

Up to now, we calculate the score of each alternative. Then we need to use the additive weighing for each alternative:

attribute	Relative Rank	Normalized Weight	Prevention	Negotiation	DRB	Meditation	Arbitration	Litigation
Time	4	4/10 = 0.4	1.6	1.2	1.2	0.8	0.8	0.4
Cost	3	3/10 = 0.3	1.2	1.2	0.6	0.6	0.6	0.3
Binding	2	2/10 = 0.2	0.4	0.4	0.4	0.6	0.6	0.8
Flexibility	1	1/10 = 0.1	0.2	0.4	0.3	0.2	0.2	0.1
sum	10	1	3.4	3.2	2.5	2.2	2.2	1.6

## 6. Selection of the preferred alternative

After a short analyse we can point out that litigation is obviously the least method to consider. Indeed, in the most attributes except the binding, it ranks the lowest, however, binding in our case is not the most important criterion. Then, the preferred alternative would be grade in this order: Prevention > Negotiation > DRB > Meditation > Arbitration > Litigation.

Thereby, our preferred alternative is prevention. To ensure prevention in our case we can do:

First, dispute resolution has to be given attention in the contract; it means that the responsibility of possible issues should be written clearly when making the contract. For instance, for a new advertising campaign the contractor should include a clause with penalties if the other part has payment delay. Also, the most important thing to do to avoid dispute and conflict at this stage is that both parties should read carefully and accept all the clauses and conditions. In other words, before the problem happens, owner and contractor should anticipate possible outcomes and call on the explicit responsibility. Also, both parties have to be sure that everything is fully understand otherwise a lack of understanding of the contract leads to owners and contractors who cannot work efficiently after the contract is signed and this can lead to disputes. Finally, it is very important that the contract is well defined, understood and accepted from both parties because if the owner

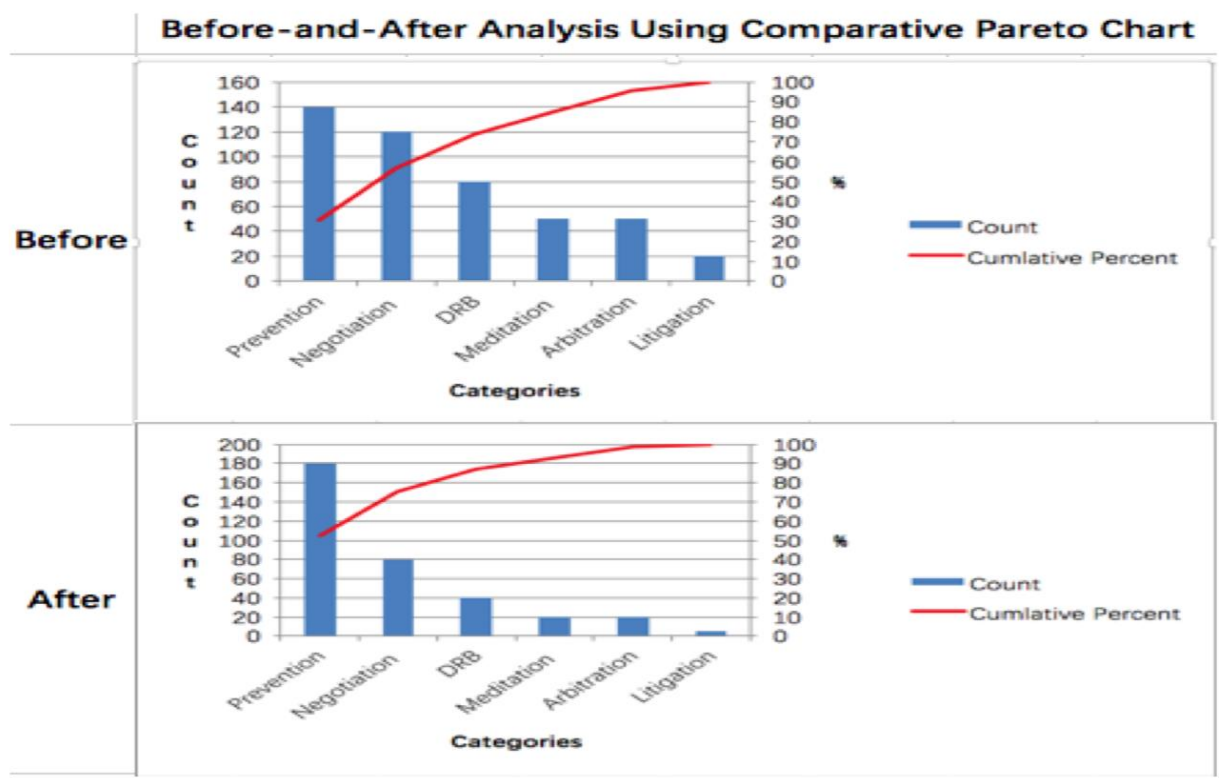


or the contractor complained about something that is not listed in the contract they will not reach their end.

Another alternative can also be considered as it is very close in the score from prevention is negotiation. Indeed, negotiating a contract is really important in order to avoid disputes or to solve disputes because it will enable them to reach a common agreement and so avoid a dispute.

## 7. Performance monitoring and post-evaluation results

To do our performance monitoring and post-evaluation results we can use the Comparative Pareto Chart<sup>13</sup>. The Pareto Chart<sup>14</sup> is very useful when you have to analyzed data about the frequency of problems or causes in a project. It enables to point out the most significant problem and then it is an useful tool to communicate on it.



As we can see and as mentioned through this paper, prevention is the most efficient way to deal with dispute in the advertising industry. The Pareto Chart above shows that prevention can solve almost 60% of the dispute.

<sup>13</sup> Nancy, R. (2005). pareto chart analysis (pareto diagram) | asq. Retrieved from <http://asq.org/learn-about-quality/cause-analysis-tools/overview/pareto.html>

<sup>14</sup> by author



## CONCLUSION

Throughout this paper, we analyze the dispute resolution in advertising industry. Most of the dispute happened between the owner and the contractor. All along our analysis we answer the following principal questions: what are the different alternatives to solve disputes in the advertising industry in the level of contract? and what is the most suitable dispute resolution process in this industry?

We can answer the first question according to the Planning Planet<sup>15</sup>; there are six ways of dispute resolution that are: prevention, negotiation, standing neutral, non-binding resolution, private binding resolution and litigation.

Then throughout different attributes and thanks to the non-compensatory model we selected the most important criterion that is: Time. After that, we used additive weighting method to measure different alternatives; we found that the most efficient method for dispute resolution was prevention. Finally, we move on to the performance monitoring and evolution. Here we adopt the Before and After analysis of Pareto Chart to prove the effectiveness of these method.

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<sup>15</sup> Plannet, P. (2009). guild of project controls compendium and reference (car) | project controls - planning, scheduling, cost management and forensic analysis (planning planet). Retrieved from <http://www.planningplanet.com/guild/gpccar/formal-disputes-resolution>

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## About the Author



### **Timothé Favier**

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**Timothé Favier** was born in Lyon, is 23 years old and is a graduate student of Project and Program Management and Business Development at Skema Business School in Paris. He has always been a strong entrepreneur with a strong desire to work worldwide.

His numerous international experiences include an internship in Canada, studies in Brazil, and many other trips that gave him the opportunity to understand culture differences, to open his mind and so to be able to solve problems easier and to become more innovative. He is highly interested in project management and his main upcoming challenges; he is pursuing certification in PRINCE2 and AgilePM.

Timothé is not only defined by professional experiences. He has also one principal passion: Basketball. He is passionate about basketball which he has practiced for more than 10 years, this sport enabled him to develop his team spirit and taste for competition.

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