



STATE BOARD OF EQUALIZATION

April 8, 1965

To: Los Angeles Dist. - Auditing
From: Tax Counsel (RHA)
Subject: Animated Commercials for Television

Reference is made to your memo of March 26, 1965 to Mr. Doyle, and "X" memo with storyboard enclosures addressed to you.

First, I shall comment on the second paragraph of "X" memo in which he quoted me from a letter I wrote in June of 1963. As you may know, my suggested approach to the television film commercial problem shocked a few people in the industry. It was revolutionary to say the least. However, I still feel that TV commercials should be treated differently than motion pictures as we know them and within their meaning when Ruling 19 and Bulletin 61-4 were adopted. The TV commercials are concededly a motion picture, but it is a "different breed of cat" and should be handled differently. With sponsors, ad agencies, studios, cartoonists, actors, billboards, logos, etc., involved, we are constantly confronted with an almost impossible task of finding who, in fact, is the producer under the Ruling 19 test and whether the film is a production. Frankly, I don't think everyone in the industry is being treated exactly the same under present conditions. To treat TV commercials, logos, billboards (10, 20, 30 and 60 second spots) separate and apart from the feature, story documentary or entertainment type of movie would not be an unreasonable approach and could well work to the best interests of both the state and the industry.

I think we all can agree that the responsible party for producing nearly all commercials is the advertising agent. He is responsible to his client who in the end pays the bill. Admittedly, the studio is responsible to the ad agent and where there are numerous parties or firms involved in the production someone is responsible to someone else all along the way. The present approach leads to nothing but confusion, and it would appear reasonable from a tax administration standpoint to look to the top of the pyramid whereon sits the ad agency rather than everyone along the way. Our auditors wouldn't have as great a problem with the "complete production" question or the "producer" question.

However, until we adopt some changes we still have the problem and in support of this is "X" memo.

It appears that the storyboard has become the thorn in many problems of determining who produced the film and whether the film was a complete production. Also, the complete production problem is complicated by integrating live action with animation.

The "storyboards" submitted by "X" are, in my opinion, nothing more than storyboards and to this extent they are exactly like preliminary art. Productionwise, the storyboards submitted could not become a part of the movie. Even the few cartoons shown would not be traced, inked, colored and photographed. They are nothing more than a guide or, as has been said, an idea that for all practical purposes must be set down on paper rather than conveyed by word. Presently we consider the storyboard to be the conveyance of an idea and not (when sold to someone who wants to make a commercial) a sale of tangible personal property. This seems reasonable in light of our position with respect to preliminary art. Thus, if we ignore the source of the storyboard in looking for a producer, we will eliminate one big area of confusion. I would say that whenever a charge is made for putting together a storyboard (since it is not considered a sale of tangible personal property) the charge should be exempt except in cases when the charge is not separately stated from other charges for sales of tangible personal property.

The test for a complete TV commercial production should not include the production of the storyboard since it does not become a part of the finished product and it is not physically used in making the finished product (as in tracing pictures or cartoons, etc.).

It is at this point that "X" and I are not in agreement. I see no difference between a complete production that is all animation, all live action or part live and part animation. I agree with "X" 100 percent that the animated motion picture is the product of highly skilled technicians (who draw pictures and photograph them). But so is a live action movie the product of highly skilled technicians. Each one involves (basically) the same thing to wit: photography, film developing, sound, etc. I do not think we should distinguish between a talented director or producer who directs talented actors into poses, etc., to be photographed and a talented director or producer who has talented artists and cartoonists draw pictures to be photographed. The end result is the same -- a motion picture. In other words, we should not be concerned with how the scenes were made or what techniques were used to make them.

One of our problem areas is where the studio draws the storyboard for the agency (pursuant to an oral idea the agency gives the studio) and then produces the picture as compared to the studio which does everything but draw the storyboard. Some feel that where the storyboard was not produced or drawn by the studio which makes the picture, the studio making the picture cannot be the producer. To this I disagree for the simple reason that the storyboard is not a part of the picture itself. It is nothing more than an idea conveyed on a piece of paper. Suppose there was no storyboard (on paper) but merely oral instructions --- could we say that the firm making the picture did not produce it? Could we say the agency giving the oral instructions produced the picture? Probably not. The oral instructions are not the production and they obviously cannot be incorporated physically into it. The same applies to the pictured storyboard.

Under the circumstances, so long as we treat TV commercials, billboards and logos like any other motion picture, and, so long as the ad agencies are not considered consumers of TV commercial productions they contract to have produced for their clients, we should ignore the storyboard phase of the operation as far as making decisions on who is or is not the producer since it only adds to the confusion and makes a bad situation worse.

Summarily, "X" analysis supports my argument that TV commercials should be treated differently.

RHA:o'b [lb]