

ORIGINAL

Decision No. 42995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Walt Harrison,

Complainant,

vs.

Case No. 5075

The Pacific Telephone and Telegraph  
Company,

Defendant.

ORDER OF DISMISSAL

The complaint herein alleges in substance that in March of 1948 one of defendant's advertising solicitors called on complainant for a renewal of an advertisement in one of defendant's classified telephone directories, issue of June, 1948, under "Chiropractor and Psychologist"; that complainant decided to double the size of the prior advertisement, and outlined the copy in detail; that when the first proof was submitted on April 3, 1948, it was twice the size ordered; that a second proof received on April 12, 1948, was correct in size but erred in arrangement of content; that a third proof received on April 19, 1948, contained several errors and was returned with corrections within two hours; and that a fourth proof was refused.

The complaint then alleges that there were three gross errors in the advertisement, and that complainant insisted upon a 50 per cent discount and paid each month's bill accordingly; that the advertisement has not "even paid for itself, let alone brought me as much business as the previous advertisement of half the size and less than half the cost"; that complainant was refused display advertisement in

the March 1949 directory unless he accepted a 25 per cent discount and paid a deficit of approximately \$90; that the final run of the advertisement without a fourth proof resulted "in three gross errors and a depreciation of psychological value and commercial drawing power of the advertisement in general," and "unpredictable loss of what income should have accrued, had such negligence not have been the guilt of" defendant's advertising department.

Alleging that the Commission can compel defendant "to conform to business principles and be penalized for loss inflicted upon a patron and force them to reimburse for damage suffered," complainant asks the granting of his "claim for 50% reduction or \$20.00 on each of nine months or \$180.00 as actual minimum damage inflicted upon me."

A copy of the complaint was forwarded to defendant, pursuant to Rule 13 of the Commission's Rules of Procedure. <sup>(1)</sup> Defendant, in pointing out alleged defects, submits that the complaint fails to state a cause of action, and that the Commission is without jurisdiction to order the payment of damages for pecuniary losses alleged to have been suffered.

Under date of May 18, 1949, complainant was advised that service of the complaint was being withheld, and reference to the Commission delayed for fifteen days, to afford complainant an opportunity to consult counsel, and to consider whether he desired to amend, rely upon the present pleading, or dismiss the complaint. No reply to that letter has been received.

As the Commission may not determine the existence of or liability

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(1) Under Rule 13, when a complaint is filed, a copy is mailed to defendant, by way of information, allowing five days within which to point out in writing alleged defects in the complaint. If the Commission is of the opinion that the complaint is sufficient, a copy thereof is then served upon defendant, together with an order to satisfy or answer.

for alleged negligence, nor award damages for alleged negligence,  
the power to decide such matters resting with the courts, IT IS OR-  
DERED that Case No. 5075 is hereby dismissed for failure to state a  
cause of action within the Commission's jurisdiction.

Dated, San Francisco, California, this 14<sup>th</sup> day of  
June, 1949.

R. F. [Signature]  
Justice F. [Signature]  
[Signature]  
Harold [Signature]  
[Signature]  
Commissioners