

Decision No. 50883

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA REFRIGERATOR REPAIR SHOP,
a corporation, and CHARLES L. FINK,

Complainants,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.)

Case No. 5545

Bertram H. Ross for California Refrigerator Repair Shop and Charles L. Fink, complainants.
Pillsbury, Madison & Sutro, by Dudley A. Zinke, and Lawler, Felix & Hall, by L. B. Conant and Arthur T. George, for The Pacific Telephone and Telegraph Company, defendant.
Melvin E. Mezek, for the Commission staff.

O P I N I O N N

Complainants, California Refrigerator Repair Shop and Charles L. Fink, allege that defendant, The Pacific Telephone and Telegraph Company, arbitrarily and capriciously discriminated as to them by refusing to accept and publish complainants' telephone listings in the current "Yellow Pages" of the classified telephone directories, and they pray that this Commission order said defendant to accept and publish the listings in subsequent issues.

Defendant has denied that its refusal to carry the listings was either arbitrary, capricious or discriminatory, and further defends its position on the grounds that complainants are not conducting business under the names and styles of the listings which complainants desire to maintain, and, therefore, under its tariff rules and regulations are not entitled to maintain the listings.

A public hearing was held in Los Angeles before Examiner Mark V. Chiesa. Complainants having offered oral and documentary evidence and rested their case, defendant moved for a dismissal of the complaint on the ground that the evidence does not support the charge of discrimination, and that its action was in accordance with the published rules and regulations of its tariff on file with this Commission.

Defendant, by its attorneys, offered in evidence the pertinent tariff rules and regulations, but no other evidence was presented pending the Commission's decision on its motion.¹

The evidence shows, and we find, that California Refrigerator Repair Shop is a California corporation engaged principally in the business of repairing refrigerators and washing machines at 7003 South Western Avenue in Los Angeles; that said corporation is owned and/or controlled by Charles L. Fink; that California Refrigerator Repair Shop and Charles L. Fink, prior to September 1953, maintained listings in the "Yellow Pages" of the Los Angeles directory and various Los Angeles Section directories published by defendant, The Pacific Telephone and Telegraph Company, as follows:

Main Listings

Majestic Appliance Co.	PLeasant 1-9896
Crosley Refrigerator Repair Shop	PLeasant 1-1694

¹ Both parties agreed to a continuance of the hearing pending decision on the motion. Defendant's attorneys stated that at least three days would be required to present defendant's case and they desired to save the time and expense in case defendant prevailed on the motion.

Joint User Service Listings

Frigid Repair Shop	PLeasant 3-2435
Delco Electric Motor Repair Shop	PLeasant 1-9896
Wagner Electric Motor Repair Shop	PLeasant 1-9896
Century Electric Motor Repair Shop	PLeasant 1-9896
Frigid Repair Shop	PLeasant 1-9896
Majestic Appliance Co.	PLeasant 1-4194
Copeland Refrigerator Repair Shop	PLeasant 1-4194
Gibson Refrigerator Repair Shop	PLeasant 1-4194
Majestic Refrigerator Repair Shop	PLeasant 1-4194
Savage Washing Machine Shop	PLeasant 1-4194
Thor Washer & Ironer Repair Shop	PLeasant 1-4194
Mayflower Refrigerator Repair Shop	PLeasant 1-4194
Grunow Refrigerator Repair Shop	PLeasant 1-4194
Frigid Repair Shop	PLeasant 1-4194

That sometime prior to September 22, 1953, California Refrigerator Repair Shop and/or Charles L. Fink requested defendant, The Pacific Telephone and Telegraph Company, to continue the publication of said listings in the 1954 and subsequent editions of the "Yellow Pages" of its various directories; that on September 22, 1953, defendant, The Pacific Telephone and Telegraph Company, informed the California Refrigerator Repair Shop and Charles L. Fink that it would refuse to publish said listings in the absence of satisfactory evidence that either California Refrigerator Repair Shop or Charles L. Fink was "actually conducting business under the various trade names" used in said listings; that said defendant has omitted said listings from its current directories except that listings and advertising have been accepted and published under the names of California Refrigerator Repair Shop and Charles L. Fink.

The evidence also shows and we find that neither California Refrigerator Repair Shop nor Charles L. Fink was actually conducting a refrigerator or washing machine repair shop business under any of the Main Listings or Joint User Service Listings as hereinabove set forth; that neither complainant herein is authorized to use the company or trade names appearing in the said listing; that the business was, and is, conducted at 7003 South Western

Avenue in Los Angeles under the name of California Refrigerator Repair Shop and/or Charles L. Fink; that although several certificates of fictitious firm name have been filed with the Clerk of Los Angeles County, no persons were employed by, nor were books and records kept, nor work performed and billed under any of the various names used in said listings; that Charles L. Fink actually conducted a refrigerator and washing machine repair shop business at 7003 South Western Avenue as a "one man business" under the name of California Refrigerator Repair Shop or under the name of Fink's.

That at the time defendant, The Pacific Telephone and Telegraph Company, refused to accept the aforesaid listings for publication in the "Yellow Pages" of its current directories, said telephone company's published tariff contained, among other things, certain rules and regulations pertaining to directory listings as follows:²

"Business primary listings of individuals, firms, companies, corporations, or associations must be the names under which the subscribers are conducting business.

"A trade name may be used as a listing when the business of an individual, firm, company, corporation, or association is conducted under that name. A fictitious name made up by adding a term, such as company, agency, shop, works, etc., to the name of a commodity will not be accepted as a listing unless the subscriber is conducting the business under that name. Listings are not accepted which appear to be designed primarily to give publicity to a commodity or service.

"Joint user primary listings of individuals, firms, companies, corporations, or associations must be the names under which the joint users are conducting business."

² Excerpt from Exhibit No. 3. Although some of these rules and regulations have recently been revised (See Exhibit No. 2), there has been no material change in the requirement that listings must be in the name under which the subscriber is conducting business.

The record further shows and we find that defendant has accepted and published in the "Yellow Pages" of its current Los Angeles area directories, some 13 trade name listings from one other subscriber and one trade name listing from still another subscriber, being listings under which said subscribers are not actually conducting business although they have received authority to use the company or trade name and have, in most instances, filed the certificates of fictitious names with the Clerk of Los Angeles County;³ that publication of said trade name listings is in violation of defendant's published tariff rules and regulations.

Upon the findings of fact, as hereinabove set forth, we conclude that The Pacific Telephone and Telegraph Company, defendant herein, has unlawfully discriminated in the application of its published tariff rules and regulations, but that it was justified, under said rules and regulations, in its refusal to accept the listings requested by the complainants. The following order will be made.

O R D E R

A public hearing having been held in the above-entitled proceeding, the Commission having been fully advised in the matter and good cause appearing,

IT IS ORDERED that:

1. That Pacific Telephone and Telegraph Company, defendant, shall accept listings and advertising only in accordance with its published tariff rules and regulations, and shall refrain from engaging in any unlawful preference or discrimination relating thereto.

³ Witness Leonard A. Ellison (TR. pp. 3-10), and witness Earl Sillson Chase (TR. pp. 65-67).

2. The complaint of California Refrigerator Repair Shop, a corporation, and Charles L. Fink, in Case No. 5545, be and it hereby is dismissed.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 17th day of JANUARY, 1955.

John E. Mitchell
President

Justus F. Caswell

Raula Antero

William J. Kelly

Commissioners