

Decision No. 71207

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROBERT McWILLIAMS doing
business as CATALINA,

Complainant and
Petitioner,

vs.

Case No. 8498

GENERAL TELEPHONE COMPANY OF
CALIFORNIA, A CORPORATION, and
GENERAL TELEPHONE DIRECTORY
COMPANY, A CORPORATION,

Defendants and
Respondents.

CATALINA MOTOR CRUISERS, INC.,
Intervenor on behalf of Defendant
and Respondent General Telephone
Company of California.

Edmund I. Read, Read and Miguelez, for Robert
McWilliams, complainant and petitioner.

A. M. Hart and Donald J. Duckett for General
Telephone Company of California, defendant
and respondent.

James H. Lyons for Catalina Motor Cruisers,
Inc., intervenor on behalf of General
Telephone Company of California, defendant
and respondent.

Andrew Tokmakoff, for the Commission staff.

O P I N I O N

On August 12, 1966, Robert McWilliams, doing business as Catalina, complainant and petitioner, filed his petition for a temporary restraining order and injunction requesting that defendants and respondents General Telephone Company of California and General Telephone Directory Company be required to show cause why they should not be enjoined and restrained from cancelling petitioner's one-inch informational listings carrying the name "Catalina" under the heading of Travel Bureaus in the classified section of the Long

Beach, Downey and Redondo Beach telephone directories, and that pending the hearing on the order to show cause the General Telephone Company be ordered and directed forthwith to withdraw its cancellation of the aforesaid advertisements and to accept the same for publication in the classified directories of the Long Beach, Downey and Redondo Beach areas of Los Angeles County.

On August 16, 1966, the Commission issued an order to show cause requiring defendants to show cause, if any they have, why the relief sought by complainant should not be granted.

Hearing on the order to show cause was held before Examiner Cline in Los Angeles on August 18, 1966, and the matter was taken under submission upon the filing of late-filed Exhibits 5-9 on August 22, 1966.

At the hearing it was stipulated by the parties that the petition against the General Telephone Directory Company be dismissed based on the representation of the General Telephone Company of California that its agent the General Telephone Directory Company will be required by General Telephone Company of California to obey any order by the Commission issued in these proceedings against the General Telephone Company of California. The stipulation is accepted by the Commission, and this proceeding will be dismissed as to General Telephone Directory Company.

Special Condition No. 12. appearing in General Telephone Company of California Tariff Schedule No. A-14 on Cal. P.U.C. Sheets Nos. 10819-T and 10183-T, one of the tariff rules which applies to this proceeding, provides as follows:

- "12. Business additional listings under Rate (3)(a) and cross reference listings under Rate (3)(f) may be of the following classifications:
- (a) Those of members of firms, the officers of corporations or the names of employees, departments or branches of the subscriber's business, etc. Departments or branches will be included under the primary service listing only. A listing may include the name portion of the primary listing and also the same business designation or a designation descriptive of the connection with such name.

- (b) Other names under which the business of the subscriber may be known to the public where such name is applicable to identically the same business operation in scope and character as that covered by the primary service listing.
- (c) A cross reference listing will include a name and a reference to another listing which would carry the telephone number. This type of listing may be furnished at the option of the telephone company at no charge when it appears necessary in connection with telephone service in general provided the listing would have no value to the subscriber.
- (d) A listing under 12(b) or (c) will be furnished only where there is sufficient evidence that the business may be known to the public under such name, provided that:
The listing has not been designed solely to secure preferential location in the alphabetical or classified sections.

The principles of joint-user service are not violated.

The inclusion of such a listing in the telephone directory will aid other telephone subscribers in locating the subscriber to the telephone service."

Special Condition B.3 appearing in General Telephone Company of California Tariff Schedule No. D-1 on Cal. P.U.C. Sheet No. 10924-T also applies to this proceeding and reads as follows:

"B. General - Continued

- 3. The company may require the subscriber to furnish evidence satisfactory to the company that he is authorized to advertise the business, service, product, or use the Trade Mark or Trade Name described in the copy and listing furnished, and that the business is actually being conducted under that name.

- (a) If, upon request of the Company the subscriber for any reason does not furnish such evidence, the Company may refuse to furnish the requested advertising. Acceptance or refusal of the Company of the advertising is subject to the review of the Public Utilities Commission of the State of California."

Based upon the evidence introduced in this proceeding the Commission finds as follows:

1. The attorney and officers of General Telephone Company upon a review of the information and documents in their files such as business cards, stationery, and travel brochures, and an inspection of the outside of the business premises of Robert McWilliams concluded that he was not doing business under the name of "Catalina".

2. The names "Catalina Ticket Office" and "Holiday Travel Service" appear as signs on the outside of the premises. The name "Catalina Reservation Co." appears on the door to the premises.

3. Names appearing on stationery, business cards, and advertising brochures and media reviewed by the representatives of General Telephone Company include "Holiday Travel Service", "Catalina Reservation Company" and "Catalina Accommodation and Reservation Co."

4. Catalina Motor Cruisers, Inc., did business with Robert McWilliams under the name of "Holiday Travel Service".

5. Proof of publication of doing business under the fictitious firm name of "Catalina Reservation Company" and/or "Catalina" was filed by Robert McWilliams in the office of the Los Angeles County Clerk on April 16, 1965.

6. Robert McWilliams has published advertisements under the name of "Catalina" in the "South Bay Daily Breeze".

7. Robert McWilliams has a bank account in the name of Holiday Travel Service Agency or Catalina Reservation Co. in the Wilmington, California Branch of the Crocker-Citizens Bank.

8. Copies of three checks payable to "Catalina" for travel services rendered by Robert McWilliams were received in evidence. Approximately twenty other checks for travel services rendered by Robert McWilliams were made payable to "Catalina Reservation Company" or "Catalina Reservations".

9. Robert McWilliams includes all his income on one income tax return but lists his income under the name "Catalina" separately on such return.

10. Robert McWilliams uses the following fictitious names in his travel business:

- (a) "Catalina"
- (b) "Catalina Accommodation and Reservation Company".
- (c) "Catalina Reservation Company".
- (d) "Hawaii Accommodation and Air Tours - Hotel - Travel Reservations".
- (e) "Holiday Travel Service".
- (f) "Mexican Air Accommodation and Hotel Reservations".
- (g) "Las Vegas Reservations".

11. The first three of the foregoing names listed in 10(a), (b) and (c) above are used for travel operations of Robert McWilliams of the same scope and are used for the Catalina division of Mr. McWilliams' travel agency. The names listed in 10(f) and 10(g) above are used by Mr. McWilliams for the Mexican division and the Las Vegas division of his travel agency, respectively.

12. Mr. McWilliams first listed his Catalina division in the telephone directories under the name "Catalina Reservation Company", and then changed the name to "Catalina Accommodation and Reservation Company".

13. After Mr. Bine changed the listing of his travel agency to "Catalina Accommodation Air Boat and Steamship Reservation Agency", Mr. McWilliams changed the listing of his Catalina division to "Catalina".

14. If he cannot list as "Catalina" in the telephone directory Mr. McWilliams would like to list as "Catalina Accommodation Air Boat and Hotel Agency".

15. Mr. McWilliams has carried on some of the business of the Catalina division of his travel agency business under the name of "Catalina" but his travel agency business is not generally known and conducted under the name "Catalina".

16. Mr. McWilliams has used the name "Catalina" solely for the purpose of obtaining a preferential listing in the telephone directories of General Telephone Company of California.

The Commission concludes that the listings of Robert McWilliams under the name "Catalina" in the telephone directories of General Telephone Company of California which have been canceled are in violation of the foregoing noted provisions of the Tariffs of General Telephone Company of California and that Robert McWilliams is entitled to no relief in this proceeding. The complaint and petition will be dismissed.

O R D E R

IT IS ORDERED that the complaint and petition for temporary restraining order and injunction of Robert McWilliams against General Telephone Company of California and General Telephone Directory Company is dismissed.

General Telephone Company of California is admonished to observe its Special Condition 12(a) and (b) of Tariff Schedule No. A-14 and not to publish additional listings and lines of information for Robert McWilliams unless the names used in such additional listings and lines of information are applicable to identically the

same business operation in scope and character as that covered by the primary service listing.

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

Dated at San Francisco, California, this 23rd day of AUGUST, 1966.

John E. Mitchell
 President

Augusta

George J. Hoover

 Commissioners

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.

*I would grant the
 relief requested.*

William L. Bennett