

ORIGINAL

Decision No. 71932

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LOUISE REYNOLDS, doing business as
 ACME SURGICAL APPLIANCE CO.,
 Complainant,
 vs.
 THE PACIFIC TELEPHONE AND TELEGRAPH
 COMPANY, a corporation,
 Defendant.

Case No. 8183
(Filed May 17, 1965)

Pillsbury, Madison & Sutro, by Richard W. Odgers,
for defendant.

David C. Levenson, for complainant.

O P I N I O N

The Commission granted interim relief herein on June 1, 1965, on complainant's (Acme) formal complaint, by Decision No. 69153. This order was served on The Pacific Telephone and Telegraph Company (Pacific) on June 4, 1965. Pacific answered on June 22, 1965. Public hearing was held before Examiner Power at Los Angeles on May 3, 1966, and the matter was submitted.

The complaint alleges that Acme was a subscriber and user of Pacific's telephone service at Room 300, 2024 West 6th Street, Los Angeles, under number 483-6002. On January 22, 1965, these facilities were disconnected for about 5 hours and 45 minutes. They were restored after an "informal complaint" to this Commission's Los Angeles office and staff request to Pacific.

Acme complains of this disconnection and of an advertisement alleged to have been negligently and incorrectly inserted in the 1964 edition of the Los Angeles classified telephone directory.

Pacific's answer alleges that it restored telephone service when notified of the interruption complained of. The answer avers that on January 22, 1965, Pacific was notified and determined that the telephone service furnished to Acme under telephone number 483-6002 had been interrupted, and that upon said notification and determination Pacific immediately restored Acme's telephone service.

The answer goes on to allege nonpayment of directory ad and telephone bills. It further alleges that the advertisement in question differed from what complainant ordered only in minor and insignificant particulars, e.g., insufficient space was allowed between the words "Wristlet" and "Hernia".

At the hearing Jack Bingham, Acme's manager (Bingham), testified as did two members of Pacific's directory sales force. Twelve exhibits were received.

Bingham testified that Acme's business telephone number 483-6002 was disconnected for a few hours during the work hours of January 22, 1965. Bingham sought reconnection of said telephone service from Pacific without success, and obtained reconnection with the assistance of the Commission's staff in Los Angeles. The particular tariff provision which applies is Schedule Cal. P.U.C. No. 36-T, 2nd Revised Sheet 53, which reads as follows:

RULES AND REGULATIONS

11. DISCONTINUANCE OF SERVICE - Continued

(F) Non-Compliance with the Company's Rules.

The Company may discontinue service if a subscriber fails to comply with any of the Rules and Regulations herein, provided such failure is not remedied within a reasonable time, after due written notice has been given, except as otherwise provided in the Rules and Regulations.

Except as provided by these Rules and Regulations, the Company will not temporarily or permanently discontinue telephone service to any subscriber for violation of any rule or regulation except upon written notice of at least five days, advising the subscriber in what particular such rule or regulation has been violated for which telephone service will be discontinued if the violation is not remedied. This notice may be waived in cases of an emergency or in the event of the discovery of a dangerous condition on the subscriber's premises or in the case of the subscriber's utilizing the telephone service in such a manner as to make it dangerous for occupants of the premises, thus rendering the immediate discontinuance of service to the premises imperative. EFFECTIVE DATE: 7/23/59. (Emphasis added.)

Acme deals in the commodities indicated by its classified directory listing, i.e., surgical corsets, belts, etc. In the 1964 Los Angeles classified telephone directory it had several listings and two display ads. These included ads of abdominal supports, elastic hosiery, foot appliances, orthopedic appliances, trusses, and on page 1851, the one we are concerned with in this case, surgical corsets and belts. It is the display ad for surgical corsets, and other related items, which was the main source of complaint.

The display advertisement to which objection was taken was about 5 inches by 3-1/2 inches in size. It displays a stylized human figure. Eleven braces have been indicated, from a cervical

collar on the neck to arch supports and anklets at the feet. A series of legends on both sides of the figure identify the particular appliances. The proof for this advertisement, Exhibit 7, has at the top, in red print, the request "PLEASE READ INSTRUCTIONS CAREFULLY" followed by ".1. This Proof is for the purpose of copy clarification. Please check NAME, ADDRESS, TELEPHONE NUMBER AND SPELLING" in black print, with emphasis as shown in capital letters. At the bottom, a black line, enclosed box shows "CORRECTIONS MADE BY" and a signature of "Bingham," title "Manager" appears.

Bingham's most serious objections to the ad were its failure to include the room number, and that the statement regarding "free parking in rear" was misleading. Minor objections were made to the aesthetics of the human figure and the fact that insufficient space intervened between two legends on the left hand side of the figure. These, "Wristlet" and "Hernia Control," thus could be read "Wristlet Hernia Control." This last phrase obviously makes no sense and the witness stated some persons were confused by it. As for the alleged aesthetic shortcomings in the human figure, it is impossible from this record to determine whether as shown it had any deleterious effect.

A Pacific salesman, witness Chapin, testified that he had called upon Acme on or about March 3, 1964, during which time he had a lengthy discussion with Bingham over a proposed ad.

On April 13, 1964, Chapin again called on Bingham, bringing with him a pencil sketch of a proposed ad, Exhibit No. 9. This sketch showed no room number, and indicated that there was free parking in the rear.

On June 5, 1964, a proof of the ad was mailed to Bingham by Pacific's printer. On June 18 or 19, 1964, the other Pacific

witness, Van Puffelen, called on Bingham. Van Puffelen was serving on a so-called "cleanup" crew. The reason for the call was that Bingham had "requested changes," according to Van Puffelen. Bingham's version was that he had requested correction or cancellation. The principal discussion centered around the figure. Bingham had a drawing of his own that he wanted used. Van Puffelen advised him that it was too late to substitute an entirely new drawing, but felt that he could touch up the one in the ink drawing that he, Van Puffelen, had brought with him.

Van Puffelen's testimony was that when he returned, Bingham found the figure satisfactory. They also reviewed the printer's proof. Numerous corrections were made on this. After these conversations between Van Puffelen and Bingham, the proof was returned to the printer. By this time the printer's deadline was imminent and further corrections were impossible.

Bingham testified that all of Acme's telephone bills were paid except the amounts due for the disputed ad.

The basis of restitution for errors and omissions is covered by Pacific's filed tariff. The particular provision which applies is Schedule Cal. P.U.C. No. 40-T, 5th Revised Sheet 5, which reads as follows:

CLASSIFIED TELEPHONE DIRECTORY ADVERTISING - SOUTHERN CALIFORNIA REGULATIONS - Continued

8. In case of the omission of a part of or other error in an advertisement, the extent of Company's liability shall be a pro rata abatement of the charge in such a degree as the error or omission shall affect the entire advertisement; and in case of the omission of an entire advertisement, the extent of Company's liability shall be an abatement of the entire charge.
EFFECTIVE DATE: 10/1/60.

Acme had some parking available to it in the same block and apparently in the rear of the building in which its store is

located, but this could be reached from 6th Street only by going around the block and entering from Alvarado Street. Without specific instructions, one unfamiliar with the area may have difficulty in finding Acme's parking spaces.

Both of Pacific's salesman witnesses had called on Bingham at his office, and, Acme argues, should have been aware of and mentioned to Bingham the necessity for some indication that the business was not a ground-floor store.

In Acme's opinion, the omission of the room number and the incomplete language about parking combined to destroy completely any value that the advertisement would otherwise have had. The effect, in other words, would be the same as a total omission of the advertisement.

The Commission finds that:

1. On or about March 3, 1964, Louise Reynolds, doing business as Acme Surgical Appliance Co., through her manager Jack Bingham, entered into a contract with The Pacific Telephone and Telegraph Company for numerous listings and advertisements in the 1964 edition of the Los Angeles classified telephone directory.

2. One of the display advertisements involved in said contract subsequently appeared at page 1851 of the 1964 edition of the Los Angeles classified telephone directory. This advertisement was satisfactory to Acme's manager at the time he signed the proofs, and the text thus approved did not include: (a) Acme's room number at the address shown; (b) that its room was not on the ground floor at the address shown; or (c) instructions for reaching its free parking space.

3. Acme, having the burden to do so, did not establish that the absence of certain language which might have enhanced the

advertisement, were it to have been included, constitutes an "omission" as referred to in Schedule Cal. P.U.C. No. 40-T, 5th Revised Sheet 5.

4. Approved proof of ad indicates an agreed upon correction which would provide ample space between the words "Wristlet," on the one hand, and "Hernia Control," on the other. This was to make it amply clear to even the most careless of readers that two separate items were being indicated and not one item mistakenly identified as a "Wristlet Hernia Control."

5. In the ad as printed, the space between the words "Wristlet" and "Hernia Control" is a bare minimum and not in accordance with what had been agreed upon between Pacific and Acme that the spacing would be.

6. The amount by which the effectiveness of the entire ad was diminished, if any, by virtue of the error described in findings 4 and 5, however, is so small that it defies a meaningful measurement by this Commission.

7. The Pacific Telephone and Telegraph Company, without compliance with its own tariffs, disconnected Acme's business telephone number 483-6002 on January 22, 1965 from approximately 11:00 a.m. until approximately 4:45 p.m.

8. However improper this disconnection, applicable tariffs provide no relief unless the disconnection is for a period exceeding 24 hours.

O R D E R

IT IS ORDERED that:

1. Defendant, The Pacific Telephone and Telegraph Company, is entitled to assess and collect from Louise Reynolds, doing

business as Acme Surgical Appliance Co., all the sums to which it may be entitled under its rates and rules on file with this Commission and in effect at the time.

2. Defendant, The Pacific Telephone and Telegraph Company, is admonished not to disconnect a customer's telephone without thorough and precise compliance with the requirements of its appropriate tariffs.

3. The complaint is dismissed.

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

Dated at San Francisco, California, this 24th day of JANUARY, 1967

[Signature]
President

[Signature]

[Signature]

Commissioners

Commissioner WILLIAM SYMONS, JR. did not participate in the disposition of this proceeding.