

ORIGINAL

Decision No. 72770

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Peter J. Morrison DBA
Expert Drapery Cleaners
737 S. La Brea, Los Angeles, Calif.

Complainant,

vs.

Pacific Telephone Co., a corporation
and
DRAPERY CLEANING EXPERTS, or ABA
Cleaners, 1061 S. Fairfax Ave., Los
Angeles, Calif. in 1965 ads published
without any firm name only Norge Equip
Cleaning which is a description of the
Coin-Op cleaning process.

Defendant.

Case No. 8611
(Filed March 17, 1967)

(Answers filed May 1
and May 4, 1967)

(Motion to Dismiss
filed May 18, 1967)

P. J. Morrison DBA Expert Drapery
Cleaners, in propria persona,
complainant.

Robert E. Michalsky, for Pacific
Tel. & Tel. Co., and Vladimir
Palashewsky, in propria persona,
defendants.

O P I N I O N

Complainant, Peter J. Morrison, an individual, allegedly doing business under the fictitious name of Expert Drapery Cleaners, requests an order that Pacific Telephone Co.^{1/} not permit the use of his registered firm name, Expert Drapery Cleaners, or any variations thereof, such as Drapery Cleaning Experts, in the 1967 or subsequent yellow pages. Refund in toto of 1965 advertising charges

^{1/} Officially, The Pacific Telephone and Telegraph Company, and hereinafter referred to as Pacific Telephone or Pacific.

and cancellation of all 1966 advertising charges are also requested. Complainant referred to Decision No. 71207, dated August 23, 1966, in Case No. 8498 as an analogy. Said decision dismissed the complaint of Robert McWilliams against General Telephone Company of California seeking a restraining order and injunction against the company's cancelling the complainant's classified directory listing under the heading "Catalina". The basis of the dismissal was that the listings violated General's tariffs inasmuch as, among other things, he had used the name "Catalina" solely for the purpose of obtaining a preferential listing.

In its answer, defendant Pacific Telephone alleged that the complaint was defective in that it did not state facts sufficient to constitute a cause of action by not alleging any breach of any of Pacific's tariffs and, further, the complaint was defective in that it alleges a cause of action for civil damages against Drapery Cleaning Experts over which this Commission has no jurisdiction. Pacific further averred that it had no liability for the authenticity of advertising copy and that it did not guarantee any specific position for display advertising. Finally, Pacific referred to a letter dated September 6, 1965, addressed to the Commission by complainant attempting to deposit his check with the Commission to pay his current bill under protest and the fact that said letter and check were returned to complainant by the Commission on September 16, 1965, advising him that Pacific was not in violation of any tariff and, therefore, could not accept his claim. Pacific prayed that the complaint be dismissed, and supplemented

its prayer with its filed Motion to Dismiss. Said Motion was renewed at the hearing.

Defendant, Drapery Cleaning Experts, denied that that was its name, and alleged that Vladimir Palashewsky, an individual, was doing business as A.B.A. Cleaners, and that the alleged name of its business was just a description of the offered service and its quality. Dismissal of the complaint was also requested by this defendant.

Hearings were held before Examiner Warner on May 23 and 24, 1967, at Los Angeles.

Exhibits Nos. 1, 2, 3 and 4 constitute correspondence or copies of correspondence between the parties and the Commission commencing with March 28, 1967, and ending April 19, 1967, by which complainant was informally advised by counsel for the Commission that the complaint did not state facts sufficient to constitute a cause of action. Complainant requested a hearing.

Exhibit No. 6 contains pages 461 and 462 of Pacific's 1964 yellow pages from its advertising directory under the classification of "Cleaners" which show on page 461 a one-column advertisement of complainant in the second column from the right together with a one-column advertisement of Norge Equipped Cleaning Store in the extreme lower right hand corner of said page.

Exhibit No. 6 contains page 624 of the 1965 yellow pages under the classification "Drapery" which shows complainant's two-column advertisement in the extreme upper left hand corner together with an advertisement of Norge Equipment Cleaning containing the phrase "Drapery Cleaning Experts", with a two-column advertisement of Christensen's Cleaners intervening.

Also, Exhibit No. 6 shows that on page 653 of the 1966 yellow pages under the classification of "Drapery" there is an alphabetical listing of Expert Drapery and Cornice Cleaners with reference to its advertisement on the same page. Said advertisement appears as a two-column ad entitled "Expert Drapery Cleaners" in the righthand two columns, together with a two-column advertisement of A.B.A. Cleaners with the phrase "Drapery Cleaning Experts" immediately beneath it. Page 470 of the 1966 directory, also shown in Exhibit No. 6 under the classification "Cleaners", contains a one-column advertisement of complainant.

Exhibits Nos. 7, 8, 9, 10, 11, 12, 25, 26, 27, 28 and 31 comprise correspondence between complainant and defendants, with copies to the Commission, for the period between August 6, 1965, and May 2, 1966. Exhibits Nos. 24 and 29 are copies of memoranda prepared for their files in the usual course of business by Pacific's directory advertising sales personnel following conversations with complainant. All of these exhibits show the development of the dispute and the results of telephone conversations and conferences between the parties. They show substantially the positions which the parties have taken on the record herein.

Exhibit No. 13 is a copy of a letter dated June 8, 1966, to complainant from a customer pointing out the similarity of names between Expert Drapery Cleaners and Drapery Cleaning Experts.

Exhibits Nos. 14 and 15 are copies of contracts between Expert Drapery and Cornice Cleaners and Pacific for display advertising, executed March 25, 1965, and May 31, 1966, respectively.

Exhibit No. 16 is a certified copy of a Certificate of Business - Fictitious Firm Name filed by Peter J. Morrison under the fictitious firm name "Expert Drapery and Cornice Cleaners", together with an affidavit of publication of certificate of business under that fictitious name on April 5, 12, 19 and 26, 1956, in the Wilshire Press, Los Angeles.

Exhibit No. 17 comprises page 18 of The Pico Post-The Beverly Post, dated Thursday, May 18, 1967, containing two-column newspaper advertisements of Automatic Cleaners offering expert drapery cleaning service and a two-column ad of defendant A.B.A. Cleaners offering service as drapery cleaning experts. Said advertisements are located in adjacent columns, but four advertising spaces apart. Said exhibit, together with Exhibits Nos. 18, 19 and 23, were submitted by defendant Pacific to show the common usage of similar terms, such as "expert", "specialist", and other terms, in classified directory advertising.

Exhibits Nos. 30, 32 and 33 were submitted by defendant A.B.A. Cleaners to show by photograph the premises of Expert Drapery Cleaners; the former fictitious name under "Norge Dry Cleaning" on an envelope and sales slip; and the fictitious name under "A.B.A. Cleaners" by a business card and a sales slip.

Copies of Pacific's tariffs were submitted as Exhibits Nos. 22 and 23. They show in Rule 10, among other things, that

Pacific must exercise reasonable care to prevent the publication of advertisements or listings which may be misleading.

Defendant Pacific's principal witness, its statewide directory sales manager from Pacific's San Francisco headquarters, testified that Pacific's long-standing policy and practice were to place ads on the yellow section pages according to size and the seniority of the contracts for such advertisements. He further testified, among other things, that Pacific rejected advertisements which employed superlatives and which might mislead customers. It was his opinion that neither of the advertisements involved herein were so categorized in either manner.

Complainant claims the loss of two-thirds of his business due to the alleged infringement of his registered name in the yellow page directory advertising.

Based on the evidence, the Commission finds that:

1. Complainant's registered fictitious name is Expert Drapery and Cornice Cleaners rather than Expert Drapery Cleaners.
2. Peter J. Morrison, an individual, has been doing business as Expert Drapery and Cornice Cleaners under his registered name since 1956, and has been an advertising customer of Pacific Telephone for many prior years.
3. Vladimir Palashewsky, an individual, has been operating a coin-operated drapery cleaning establishment and has been advertising his service as a drapery cleaning expert since at least 1964 under the designations Norge Equipment Cleaning, Norge Equipped Cleaning Store and A.B.A. Cleaners.

4. The word "expert" is commonly used in headlines of advertisements in both newspapers and the yellow pages of the telephone directory.

5. The positional placement of advertisements in the yellow pages is made by Pacific according to a size and seniority rule, and there has been no preference or discrimination in such placement of either complainant's advertisements for the years 1964, 1965 and 1966, or defendant's, A.B.A. Cleaners, Norge Equipped Cleaning Store, or Norge Equipment Cleaning, advertisements for said years.

6.a. Although a customer of complainant, as shown in Exhibit No. 13, confused the titles in the advertisements of complainant and defendant, A.B.A. Cleaners, there is insufficient evidence to support a general finding of confusion and loss of business.

b. Complainant has failed to show that defendant Pacific did not exercise reasonable care to prevent the publication of advertisement or listings which may be misleading.

c. Pacific Telephone has in no way violated its tariffs, and A.B.A. Cleaners, as such, is not subject to the Commission's jurisdiction in this matter.

7. The issues and findings of Decision No. 71207 in Case No. 8498, which involved the heading of listings in a classified telephone directory, are not analogous herein.

The Commission concludes that the complaint should be dismissed.

ORDER

IT IS ORDERED that this complaint is dismissed.

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

Dated at San Francisco, California, this 18th day of JULY, 1967.

[Signature]
President

[Signature]

[Signature]

[Signature]
Commissioners