

ORIGINAL

Decision No. 73387

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mrs. Myrtle F. Asquith,
 Complainant,
 vs.
 General Telephone Company,
 Defendant.

Case No. 8668
 (Filed August 11, 1967)

Morris M. Conklin, for complainant.
Albert M. Hart, H. R. Snyder, and
Robert A. Joyce, by Robert A.
Joyce, for defendant.

O P I N I O N

Myrtle F. Asquith of Baldwin Park, an individual, and a distributor of Amway Home Products, cleaning compounds, complains that General Telephone Company of California (General) accepted and published her 1965-1966 and 1966-1967 yellow pages telephone directory advertisement listing in its Covina, Whittier and Sierra Madre^{1/} directories without verifying with Amway whether she was so authorized to advertise. She alleges that she has received complaints from other distributors on her advertisements having been placed without Amway's approval; much ill feeling has been caused; she has been placed in a most embarrassing, awkward and perplexing position, and she seeks refund of charges paid for all advertising in all district books; restoration of telephone service to residence private line service; refund of

^{1/} Formerly California Water and Telephone Company, now General.

the difference in cost of a business telephone and private line service; and refund of any overpayment she may have made to have telephone service restored.

General answered that it had determined that the listing complainant requested was not of the type for which complainant needed the authorization of Amway; the condition of the application for directory advertising was therefore deemed satisfied; and General could and did therefore list complainant in its directories exactly as she requested and under the conditions set forth in the application. General further averred in its answer that General Telephone Directory Company (Directory) is not a public utility and is not subject to the jurisdiction of this Commission and that there was no violation of any order of the Commission or any of General's authorized filed tariffs. General moved that the complaint be dismissed.

Public hearing was held before Examiner Warner on September 27, 1967, at Los Angeles whereupon the matter was submitted.

The evidence shows that Mrs. Asquith, sometime after the middle of the year 1965, met a lady friend in the laundromat; said friend was a distributor of Amway cleaning compounds and suggested that complainant might like to sell Amway products; complainant agreed to act as a sub-distributor or "regular",^{2/} as contrasted to "direct"^{2/} distributor of Amway products; in September she made a Directory Listing Request of the telephone company, which also involved a request that her residence telephone service be upgraded to business service (page 1 of Exhibit No. 1); applications for directory advertising with General were completed; the charge for

^{2/} As later so designated by Amway in an official letter to Directory.

the Covina directory was \$2.20 and for Whittier and Sierra Madre \$2.10 per month; the applications were marked "(conditional)", which complainant was given to understand meant that the advertising request would be accepted subject to verification by Directory of her authority to use Amway's trade name (pages 2, 3 and 4 of Exhibit No. 1); subsequently her ads appeared in the directories as requested in the form shown in Exhibit No. 4 (for the year 1965- Covina); immediately, complainant began receiving complaints and inquiries from "direct" distributors since it was their understanding that they, only, were permitted to advertise, not "regular" distributors; before publishing complainant's requested advertisement, Directory processed complainant's request in a routine manner and verified that Amway had not filed a stated policy with Directory as is the custom of all large trade names such as "Chevron" for Standard Oil Company and any others who designate particularly their authorized dealers and distributors by name and classification; immediately upon becoming a "regular" Amway distributor, complainant underwent a training program during which, purportedly, she was advised of all of Amway's selling and operating practices; she advised her "direct" distributor about her advertising, but did not contact Amway headquarters since she was advised by her "direct" distributor that she was supposed to make all contacts through her direct distributor, only; early in 1966, complainant cancelled her 1965-1966 Sierra Madre listing upon having learned that she

was not authorized to sell in the Sierra Madre area; when the deadline date approached for the renewal of complainant's 1965-1966 advertisement, telephone contact was made by Directory's supervisor of sales and at that time complainant requested that she be given a different listing title as "Amway Home Products" and her home address instead of under the general caption "Amway Home Products, Distributors", with her name and address and telephone number; she was advised that this would require a new application and a form was mailed to her which was never returned, and Directory, following its customary practice, republished her advertising for the second year.

The deadline date for placing directory advertising was September 28, 1967, and complainant was asked by defendant's counsel at the hearing whether she wanted to renew her advertising. Her response was that she did not wish to renew it. She had previously stated that she had made very few, if any, sales over the telephone; had received few calls as a result of the yellow pages advertising; most of her sales contacts were made on a person-to-person basis; and she wished to have her residence private line service restored.

Exhibit No. 5 is a copy of General's tariffs defining business service which states in part "Business service is exchange service furnished individuals . . . conducting any business or practicing a profession having no other office than their residence and where the actual or obvious use of the service is principally or substantially of a business, professional or occupational nature". Complainant testified that, until last

year, she had maintained a nurses' placement and answering service office in Arcadia; she was a registered nurse; she conducted some of her Amway business from her Arcadia office; but now conducted all of it from her home in Baldwin Park; her husband was employed; and her Amway products sales were her principal source of income.

The Commission finds as follows:

1. The facts substantially outlined hereinbefore are true and correct.
2. No showing was made that defendant, General Telephone Company, violated its filed tariffs.
3. It was complainant's responsibility to determine whether she was authorized to use Amway Home Products' trade name as a "regular" distributor, as distinguished from a "direct" distributor.
4. Amway had no stated policy about the use of its trade name on file with General Telephone Directory Company, and both "regular" and "direct" distributors advertised in other yellow page directories without complaint.
5. Amway proposed to publish a request that distinction be made in the future, in telephone directory or any other advertising between "regular" and "direct" distributors, and General Telephone Directory Company will make such a future distinction.

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 21st day of NOVEMBER, 1967.

[Signature]
President

[Signature]

[Signature]

[Signature]
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.