

ORIGINAL

Decision No. 74600

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AD VISOR INC., a California
Corporation,

Plaintiff,

vs.

GENERAL TELEPHONE COMPANY of
California, a California Corp.,
aka ASSOCIATED TELEGRAPH CO.,
GENERAL TELEPHONE DIRECTORY CO.
a Delaware Corporation,

Defendants.

Case No. 8731
(Filed November 29, 1967)

Maurice A. Benson, for complainant.
A. M. Hart and H. Ralph Snyder, Jr.,
by H. Ralph Snyder, Jr., for
defendants.

O P I N I O N

On November 29, 1967, Ad Visor Inc. (Ad Visor), the complainant herein and the agent for its principal, Edward Davenport doing business as Del Amo Drapery Cleaners (Del Amo), filed the above-entitled complaint. On December 26, 1967, General Telephone Company of California (Telephone Company) and General Telephone Directory Company (Directory Company), defendants, filed their answer to the complaint and their motion to dismiss the complaint as to Directory Company. On January 9, 1968, complainant moved to dismiss defendants' answer on the ground that the answer was not filed, as required by Rule 12 of the Commission's Rules of Procedure, within ten days after service of the pertinent Commission order dated December 5, 1967. The matter was heard and submitted before Examiner Main in Los Angeles on February 26, 1968.

In the circumstances, we deem it proper not to grant complainant's motion, to admonish the defendants to the extent the filing of their answer exceeded the ten-day requirement, and to proceed to decide this case on the merits. To proceed in this manner, we observe that Telephone Company alone is responsible for all phases of telephone utility service rendered to its subscribers, including directory service. The motion to dismiss the complaint as to Directory Company will be granted. ✓

Ad Visor is engaged in the business of an advertising agency, and one of its functions is to review the telephone directory advertising of its clients. Del Amo is the entity whose directory advertising is at issue in this proceeding.

The principal issues in this proceeding are (1) whether a free listing for Del Amo should have appeared in the 1966 and the 1967 classified directories for Redondo Beach and (2) whether the charge of \$2 per month for art work performed in the preparation of the display advertisement of Del Amo appearing in the 1967 classified directory for Laguna Beach is excessive.

Findings and Conclusions

Upon a consideration of the record in this proceeding the Commission finds as follows:

Redondo Beach Directory (Free Listing Issue)

1. No regular type or free listing appears for Del Amo Drapery Cleaners in the classified section of the 1966 and 1967 Redondo Beach directories; a bold type listing appears for said customer under the major classification of DRAPERY CLEANERS in the classified section of said directories.

2. Telephone Company's Tariff Schedule A-14, Special Condition 2., reads in part as follows:

"If a directory has a classified section, each business listing furnished under Rate A may appear in regular type once in the classified section at no additional charge . . ."

3. Directory advertising service practices of Telephone Company (implemented through Directory Company) provide that if a bold type listing replaces a regular type listing that is furnished to the customer with his exchange service at no charge, a regular type listing may be inserted under another classified heading. If it is not possible to transfer the regular type listing to another heading, only the bold type may be published. Directory salesmen are aware of this practice and are instructed to inform the customer that a regular type listing may be furnished at no additional charge under another appropriate classified heading if requested.

4. The bold type listing mentioned in Finding 1 above replaced the free listing for Del Amo.

5. Complainant did not establish that the directory service advertising practices set forth in Finding 3 above are unreasonable, and also did not establish that Del Amo was not properly informed as to such practices.

6. The evidence does not support complainant's contention that Del Amo requested a free listing prior to retaining Ad Visor.

7. Ad Visor was retained by Del Amo to handle its advertising matters on August 7, 1967. The agency authorization (Exhibit A attached to the complaint) of record in this proceeding is dated August 28, 1967.

8. The 1967 Redondo Beach classified directory was closed to solicitation of advertising on July 21, 1967; said directory was closed to service order activity, i.e., corrections of errors, omissions and the like, on August 9, 1967.

9. Complainant failed to establish that a valid request for a regular type or free listing of Del Amo in the 1967 Redondo Beach directory was in the possession of either Telephone Company or Directory Company on or before the final closing date of August 9, 1967 of said directory. (The record indicates that the complainant made an oral request to a Mr. Mixer of Directory Company on or after August 15, 1967 to have a free listing provided Del Amo under the classified heading of CARPET DEALERS NEW. It further appears from this record, in view of the rather extensive advertising of Del Amo in numerous telephone directories, that a three-day period from the time Ad Visor was retained by Del Amo to the final closing date of the directory made it improbable that a valid request for the free listing was made on or before August 9, 1967.)

10. Complainant's contention, that basing compensation of directory salesmen in part on commissions could result in some such salesmen neglecting to inform directory advertisers of the provisions relating to free listings, may have merit;^{1/} this contention is not a substitute, however, for complainant carrying the burden of proof as to Del Amo not being informed of such provisions (see Finding 5 above).

1/ As a suggestion, in instances where no free listing is furnished, the Application for Directory Advertising with General Telephone Company of California might show:

"Applicant informed re: provisions for free (RT)
listing under another appropriate heading * "

*To be initialed by applicant

11. No evidence with probative value was presented to the effect that Telephone Company has either violated its filed tariff provisions or departed from its regular practices in its handling of the free listing for Del Amo or, conversely, to the effect that Del Amo or Ad Visor had fulfilled the prerequisites for the free listing to appear in the classified section of the 1966 or 1967 Redondo Beach directories.

12. Relative to the free listing issue in this proceeding, no abatement of charges levied by Telephone Company for Del Amo's directory advertising or exchange service is warranted.

Laguna Beach Directory (Art Work Issue)

13. The double half-column display advertisement of Del Amo in the 1967 Laguna Beach directory required art work, which was performed by Directory Company. The charge levied for this art work was \$2 per month over the active life of the directory.

14. Telephone Company's Tariff Schedule D-1, Special Condition 2.e., reads as follows:

"The rates as set forth in the schedule do not include photographs, art work or engravings. Such items may be furnished to the advertisers at actual cost."

15. It is the practice of Telephone Company to apply a standard art work charge for all advertisements requiring art work regardless of their size, which, prior to October 1967, was \$2 per month.

16. The evidence does not show Directory Company's cost for the art work on Del Amo's display advertisement but indicates that normal outside or contract service for such art work would have cost more than \$24.

17. While Ad Visor and Del Amo approved the charge for art work on or about September 5, 1967, the circumstances indicate that Telephone Company should be, and is hereby, admonished for not accurately informing them as to the nature of the art work, or as to the advertisement on which it was performed and for not including the charge for such art work earlier in the solicitation procedures. However, the art work was performed, the charge was not shown to be excessive, and the charge was consistent with the standard practice.

18. No abatement of charges levied by Telephone Company for art work on Del Amo's display advertisement is warranted.

The Commission concludes as follows:

1. Complainant's motion to dismiss defendants' answer to the complaint should be denied.
2. Defendants' motion to dismiss this complaint as to General Telephone Directory Company should be granted.
3. The complaint should be dismissed.

O R D E R

IT IS ORDERED that:

1. Complainant's motion to dismiss defendants' answer is denied.
2. The complaint is dismissed as to General Telephone Directory Company.
3. The complaint in Case No. 8731 is dismissed.

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

Dated at San Francisco, California, this 27th
day of AUGUST, 1968.

William Lyons
President
Ed. M. Hill
August
W. P. Morrissey
Commissioners

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