

ORIGINAL

Decision No. 74646

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. 8732
(Filed December 1, 1967)

Jack Krinsky, 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 December 1, 1967, Ad Visor, Inc. (Ad Visor), the complainant herein and the agent for its principal, Community Garage, a partnership, 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. The matter was heard and submitted before Examiner Main in Los Angeles on March 1, 1968.

At the hearing defendants renewed their motion to dismiss.

Since General Telephone Company alone is responsible for all phases of telephone utility service rendered to its subscribers, including directory service, said motion will be granted.

Ad Visor, a California corporation, is engaged in the business of an advertising agency, and one of its functions is to review the telephone directory advertising of its clients. Community Garage is the entity whose classified advertising is at issue in this proceeding.

The pivotal issue in this case is the sum to which Community Garage is entitled for an omission in the address shown in its quarter-page display advertisement (Display Ad) which appeared under the classification Transmissions Automotive in the classified section¹ of the Northeastern Section telephone directory for December 1966. Azusa, the city within which Community Garage is located, was omitted from that address; the street address, 809 N. Azusa Ave., was correctly shown.

Complainant contends that because of this omission Display Ad was worthless and requests that the defendants be ordered to refund in full the monthly charges of \$64 (\$768 for the year) for Display Ad. The complainant further contends that the loss of business by Community Garage because of such omission was of a value in excess of said entire charges. Telephone Company states that it offered Community Garage an adjustment of \$16 per month (\$192 for the year), since Display Ad in all respects other than the omission of the word "Azusa" was accurate. Telephone Company contends that said adjustment is reasonable under the circumstances.

1. For Covina, Azusa, Baldwin Park, Glendora, Industry, Irwindale, La Puente, Rowland Heights, West Covina and portions of Diamond Bar, San Dimas and Walnut.

We have previously held that refunds or reductions in charges for classified directory advertisements should be commensurate with the impaired effectiveness of such advertisements as a result of errors, omissions or changes in their textual content (see Decision No. 67781 dated August 25, 1964 in Case No. 7868, and Decision No. 68482 dated January 13, 1965 in Cases Nos. 7830, 7835 and 7840).

Complainant's witness, a former telephone company directory advertising salesman, testified to the effect that the street address shown in Display Ad would not enable prospective customers to locate Community Garage because Azusa Avenue traverses many communities.

Complainant sponsored Exhibit 2 which consists of three pages taken from a brochure used in selling directory advertising. Said exhibit sets forth the following points concerning directory advertising generally: (1) Buyers looking for a new supplier or service selected particular firms according to the following breakdown: 58 percent were selected because of the size and completeness of information of the advertisement; 42 percent were selected because of location and areas served. (2) Such buyers are influenced by the copy or textual content of a display advertisement; location and area served are considered as one of seven influencing factors. (3) All buyers want to know (a) who sells what they are ready to buy, (b) what services or name brands are available, and (c) where to call or where to go.

Complainant did not relate the contents of Exhibit 2 to an adjustment in charges for Display Ad commensurate with the extent the specific omission involved affects Display Ad's effectiveness. In this regard complainant takes two not wholly consistent positions which, in substance, are: (1) Display Ad was worthless because of the omission; (2) Since the omission in Display Ad deprived Community Garage of an opportunity to gain additional business to the extent Display Ad was impaired, and since Community Garage contracted for Display Ad to receive the benefits of its full effectiveness, the omission involved warrants a refund of the charges in full for Display Ad.

Defendant's witness, a supervisor responsible for all commercial functions in its Baldwin Park service office, testified to the effect that prospective customers could determine the community within which Community Garage is located through the anchor listing for Display Ad or through the listing of Community Garage in the alphabetical section of the directory; that the telephone number of Community Garage is 334-5407; that telephone numbers of the 334 prefix are working numbers in the community of Azusa and portions of Irwindale only; and that the basic purpose of directory advertising is to get prospective customers to call and the telephone number of Community Garage was correctly shown in Display Ad. He also testified to the effect that one of his functions is to determine adjustments for errors or omissions in directory advertisements; that defendant does not have set standards to arrive at such adjustments; that each adjuster develops his own criteria to evaluate the extent an error or omission affects an

entire advertisement; that, as his criteria, the telephone number, the address and the display portions of an advertisement each initially represent one-third of the cost of the advertisement and are then adjusted upward or downward as the facts in individual cases indicate; and that for Display Ad he adjusted the one-third assigned to the address component downward to one-fourth in view of other listings of Community Garage in the directory, especially the anchor listing.

While defendant's witness is not an expert on directory advertising, the method he used appears to have yielded a reasonable result in this instance.

Findings and Conclusions

The Commission finds that:

1. Azusa was omitted as the locative city in the address shown in Display Ad.
2. Display Ad was of the double half-column size; the monthly charge for it was \$64 per month, or \$768 for the year; Community Garage has paid such charges in full.
3. Pursuant to Tariff Schedule D-1, Special Condition 2.d., the liability of defendants shall not exceed the amount charged for the Display Ad during the period of the active life of the directory issue in which it appeared. Said Special Condition of Tariff Schedule D-1 reads as follows:

"In case of error in or omission of an advertisement, the extent of the Company's liability shall be limited to a pro rata abatement of the amount to be paid to the Company to the extent that the error or omission affects the entire advertisement, except, however, that such liability shall not exceed the amount charged for the advertisement during the period of the active life of the directory issue from which the advertisement was omitted or in which the advertisement in error appeared."

4. In determining the abatement of directory advertising charges which should be made in this case, it is proper to give weight to the extent the omission of "Azusa" in Display Ad affects its effectiveness; such a determination ultimately requires the exercise of judgment.

5. The omission was not discovered by Community Garage but by Ad Visor, some eight months after the issuance of the Northeastern Section telephone directory for December 1966; complainant did not adduce evidence concerning actual business loss to Community Garage either attributable to the omission in Display Ad or to other causes; there is no evidence with probative value as to the extent of potential business loss attributable to said omission.

6. A bold type anchor listing for Display Ad with a referral line appears on the page following Display Ad under the classified heading Transmissions Automotive in the Northeastern Section telephone directory for December 1966; a bold type listing for Community Garage appears in the alphabetical section of said directory; said bold type listings were in all respects complete and accurate.

7. Community Garage's street address and telephone number are 809 N. Azusa Ave. and 334-5407, respectively, as shown in Display Ad; Azusa Avenue traverses at least several communities; telephone numbers with the 334 prefix are working numbers in the community of Azusa and portions of Irwindale only.

8. In all respects other than the omission of Azusa as the locative city for Community Garage, the contents of Display Ad were complete and accurate; Display Ad was not rendered less than 75 percent effective by the omission.

9. Community Garage is entitled to the sum of \$192, which represents 25 percent of the charges billed to and paid by Community Garage for Display Ad over the active life of the Northeastern Section telephone directory for December 1966, plus interest. The interest is to be at the rate of seven percent per annum and is applicable to 25 percent of each monthly payment made by Community Garage for Display Ad over the period each such payment has been held by defendant.

The Commission concludes that:

1. The motion to dismiss the complaint as to Directory Company should be granted.
2. Defendant should refund Community Garage the sum of \$192 plus interest.

O R D E R

IT IS ORDERED that:

1. The complaint is dismissed as to General Telephone Directory Company.
2. General Telephone Company of California, within thirty days after the effective date of this order, shall pay to Community Garage, a partnership, the sum of \$192, plus interest to be computed as set forth in Finding 9 of the foregoing Opinion, for omitting "Azusa" from the address of Community Garage in said customer's display advertisement in the classified section of the Northeastern section telephone directory for December 1966.

3. Except to the extent granted herein, the relief prayed for in the complaint herein is denied.

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

Dated at San Francisco, California, this 11th day of SEPTEMBER, 1968.

William Symons, Jr.
President

William L. Bernard

Augusta

Jack P. Morrissey
Commissioners