

**ORIGINAL**

Decision No. 74834

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Margot Young Personnel Agency,  
a partnership,

Complainant,

vs.

Pacific Telephone and Telegraph  
Company, a corporation,

Defendant.

Case No. 8804

(Filed May 10, 1968)

Melvin G. Young, for complainant.  
Robert E. Michalski, for defendant.

O P I N I O N

Margot Young Personnel Agency, a partnership, complainant, represented by Melvin G. Young, the husband partner, seeks an order from the Commission abating all monthly charges for the agency's one-quarter yellow pages display directory advertisement appearing in defendant's Yellow Pages Directory No. 54 covering the Canoga Park, North Hollywood, Reseda and Van Nuys exchanges for the directory year 1968.

Complainant alleges that subsequent to its approval of the final proof, Exhibit No. 1, on or about January 30, 1967, and when the directory was published and his advertisement appeared therein as Exhibit No. 2, the cut of the female profile head silhouette was so distorted that instead of being refined and attractive, the art work was rendered ugly and repulsive and that

instead of a "halo" image of the agency which had been built up assiduously through advertisements and office decor, manners and attitude toward clients, a "negative" image was created which damaged the agency to an unknown and indeterminable degree. Although defendant offered no abatement to complainant upon the latter's original complaint in March immediately after the directory appeared, following an informal complaint to the Commission, defendant offered a 20 percent adjustment, which complainant rejected.

In its answer, defendant denied that any defect in complainant's directory advertising was due to any negligence on its part, and further denied that complainant had suffered any damages as a result of the acts of any of defendant's officers, agents, or employees. As a first separate and affirmative defense, defendant alleged that complainant had not pointed out or alleged that defendant had in any way breached any legal duty. As a second separate and affirmative defense, defendant quoted its tariff provisions with respect to directory advertising liability and reminded the Commission of its offer of an adjustment of 20 percent, or \$134.40, of a total bill of \$672 for the directory year commencing March 1968. Defendant prayed for dismissal of the complaint except to the extent of said offer of settlement.

Public hearing was held before Examiner Warner on July 16, 1968, at Van Nuys and the matter was submitted on July 18, 1968, following the receipt of copies of Exhibits Nos. 10 and 11.

The record shows that complainant has operated a high-class personnel agency for at least seven years, and for the last four years, at a "prestige" location and in "decorous" quarters in Suite 419, American Savings Building, 15,300 Ventura Boulevard, corner of Sepulveda Boulevard, in Sherman Oaks. Its clients, as advertised, are, on the one hand, executive secretaries, legal secretaries, professional executives, accounting, advertising, studio, television, and bookkeepers and specialized office skills for men and women, and, on the other hand, such employers as CBS, RCA, Warner Brothers Productions, ITT, and other major employers in the San Fernando Valley and Hollywood. It has, however, specialized in recruiting and placing highly attractive and qualified female executive and legal secretaries.

The record reveals that complainant purchased a one-quarter page display advertisement in the Yellow Pages Directory No. 54 covering the Canoga Park, North Hollywood, Reseda and Van Nuys exchanges. Any damage caused by an error or omission in the ad would be governed by defendant's tariff.

Defendant's tariff Schedule P.U.C. No. 40-T, 8th Revised Sheet 5, Classified Telephone Directory Advertising - Southern California, Special Condition 8, provides as follows:

"In case of the omission of a part of or other error in an advertisement, the extent of Company's credit allowance shall be a pro rata abatement of the charge in such a degree as the error or omission shall affect the entire advertisement which may amount to abatement of the entire charge and in case of the omission of an entire advertisement, the extent of the Company's credit allowance shall be an abatement of the entire charge."

The record also shows, and defendant admitted, that it was not complainant's responsibility to see that the display advertisement ordered by it was printed correctly.

Exhibit No. 5 is page 486 of defendant's March 1967 Canoga Park, North Hollywood, Reseda and Van Nuys classified telephone directory showing complainant's one-quarter page advertisement as it was published and appeared during 1967. Complainant alleged that it was correct and satisfactory according to its standards and desires as approved and ordered by it.

Exhibit No. 6 is page 537 of the March 1968 issue of defendant's Canoga Park, et al., classified telephone directory showing complainant's display advertisement as it appeared in its distorted form, which was not according to complainant's standards as approved and ordered by it.

The record shows that the distortion was caused by a defect in the lead cut, which somehow acquired a fine lead border which, in turn, smeared the ink in the printing process.

Defendant's witness testified that a prerun of its directory was never checked for accuracy or appearance because of the costs involved, and that this was not done in the March 1968 printed directory for that reason.

Complainant's witness testified that he had no way to correct the distortion, or even be aware of it, until the directory had been printed and distributed and then it was too late to rectify the error in printing.

There is no dispute that the advertisement was contracted for by complainant according to defendant's advertising order

form, Exhibit No. 13; nor is there any dispute that the final proof was approved by complainant and accepted by defendant; nor that the female profile head silhouette was distorted by defendant's printer, the Times-Mirror Company; nor is the annual charge of \$672 disputed; nor is there any dispute that defendant offered a 20 percent abatement of the annual charge. The question for the Commission to decide is whether abatement is warranted by defendant's tariffs and if so, to what extent.

Complainant testified that, in his judgment, the effect of the distortion created a "negative halo effect" which, he claimed, entitled him to full abatement of his payments for the display ad in question. According to the witness, "halo effect is the effect of having a highly favorable attribute with respect to one quality of a person, place or thing, that tends to raise all of the other attributes of that thing above their actual level." Any damage to complainant's "halo effect", notwithstanding the correctness of the portion of the display ad which included the proper telephone number and address, warrants full abatement in the opinion of the complainant. Admittedly, the complainant could neither document nor ascertain the extent of his damage.

Defendant's witness, Mr. W. C. Henderson, the statewide general directory sales supervisor, testified that in his judgment the distortion affected the value of the ad in "a very minor degree." He noted that a reader of the ad would not only be properly informed about the nature and scope of complainant's agency, but also would receive the correct address and phone number. In his judgment, as supervisor of the directory sales, the distortion had only a "minimal effect on the pulling power of the ad."

Findings

The Commission finds as follows:

1. Complainant is a long-established personnel agency in Sherman Oaks, at a prestige location and in decorous quarters designed to attract high-class men and women, but particularly female executive and legal secretaries, and that it has emphasized and striven to attain in its advertising and location quarters and manners an ultradistinctive and high-class "halo" image.

2. Complainant approved a final proof of a one-quarter page display yellow pages advertisement, with a female profile head silhouette exactly as it was submitted to it by defendant and as it had appeared in the March 1967 yellow pages directory.

3. The female profile head silhouette, which appeared in the March 1968 directory, was inadvertently distorted because of a fault in the lead cut utilized by defendant's contract printer.

4. The extent of the damage, if any, caused by the distortion is not ascertainable.

5. The responsibility for the advertisement is not complainant's, but rather defendant's. It is up to defendant to assure itself that its contract printer does not deviate from the proposed ad.

6. In all respects, other than the distortion of the female profile, the contents of the display ad were complete and accurate. In our opinion, we find that the display ad was not rendered less than 75% effective by the inadvertent alteration.

Conclusion

In absence of concrete evidence indicating the extent of the damage, the Commission can only exercise its judgment as to the

extent of the abatement warranted by the alteration. Since we found that the ad was not rendered less than 75 percent effective by the distortion, we conclude that a 25 percent abatement would be fair and reasonable. ✓

ORDER

IT IS ORDERED that The Pacific Telephone and Telegraph Company, within thirty days after the effective date of this order, shall pay to Margot Young Personnel Agency the sum of \$168, plus interest at 7 percent per annum to be computed on a pro rata basis, for the alteration which exists in the latter's classified telephone directory advertising in Pacific's March 1968 issue of the Canoga Park, North Hollywood, Reseda and Van Nuys classified directory.

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

Dated at San Francisco, California, this 15<sup>th</sup> day of OCTOBER, 1968.

William Symons, Jr.  
President

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Sheel P. Monrosey  
Commissioner

*I dissent.  
I would have  
ordered a 100%  
refund.  
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C. 8804

WILLIAM M. BENNETT, Commissioner, Dissenting Opinion

I dissent. The contract obligation between the subscriber and the utility created an obligation upon the Pacific Telephone and Telegraph Company to use care and diligence in preparing an advertisement consistent with the contract arrangements. The Pacific Telephone and Telegraph Company failed in that respect as the majority opinion makes abundantly clear but despite that fact the majority arbitrarily reaches into air and awards complainant a 25% abatement. The telephone company is wrong here but only 25% wrong according to the majority. Such a thin air finding and conclusion is contrary to the language of the majority which holds "It is up to defendant to assure itself that its contract printer does not deviate from the proposed ad." In terms of fairness the original judgment of the examiner awarding a complete abatement was rejected. The examiner, of course, is the Commission employee who heard the evidence and judged the credibility of the witness and determined the truth. Today's order is written by a staff member not in attendance at the hearing and not called upon because of his anonymous role to explain to Commissioners let alone the parties hereto the rationale for a 25% abatement. Until examiners who hear cases are permitted to write decisions or failing that the parties affected are placed upon notice that other persons are about to write decisions then and only then will fair play and proper judgments emanate from this Commission.

  
WILLIAM M. BENNETT  
Commissioner

DATED: October 15, 1968

San Francisco, California