

ORIGINAL

Decision No. 74892

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AD VISOR, INC., a California  
Corporation,

Plaintiff,

vs.

GENERAL TELEPHONE CO. OF CALIFORNIA,  
a California Corporation,  
aka ASSOCIATED TELEGRAPH CO.

Defendant.

Case No. 8809

(Filed May 20, 1968)  
(Answered June 10, 1968)

Ad Visor, Inc., by Jack Krinsky,  
for Bob Downey's West Whittier  
Paint Co., complainant.  
Albert M. Hart, K. Ralph Snyder  
and Robert A. Joyce, by Robert A.  
Joyce, for defendant.

O P I N I O N

Ad Visor, Inc., <sup>1/</sup> (complainant) is an advertising consultant and agent retained by Bob Downey's West Whittier Paint Co. <sup>1/</sup> ("complainant"), a long-established and widely known paint dealer and supplier located at 11,408 East Whittier Boulevard, Whittier, California, with telephones listed in the alphabetical white page Northeastern Section of the December 1967 telephone directory (Area Code 213) of 692-7214 and from Los Angeles telephones, RA 3-5979. Service is provided by the defendant, General Telephone Company of California.

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<sup>1/</sup> Since Ad Visor, Inc., has filed this complaint on behalf of its client, Bob Downey's West Whittier Paint Co., the real complainant is Bob Downey, who will be referred hereinafter as "complainant". In the past, he has used various fictitious business names, but is now incorporated.

"Complainant" alleges that, as shown in Exhibit B of the complaint, he applied for directory advertising and signed an application form through his secretary, Betty Hall, on September 12, 1967. A primary listing (PL) under his full name was ordered anchored to a two and one-half-column display advertisement. His alternate listing (AL) under West Whittier Paint Co., and several alternate listings, were also ordered, with certain monthly charges. The total monthly charge was \$76.85, which was later reduced to \$74.10 because of the requested elimination of one listing. The complainant further alleges that, unbeknown to him and without his authority, defendant altered the application for directory advertising form on October 11, 1967, by deleting the caption "Bob Downey's" in the primary listing and changing such listing to "West Whittier Paint Co." and substituting the full name in the alternate listing, and further substituting an additional alternate listing under "Downey's Bob West Whittier Paint Co." after further altering the original order, all as shown in Exhibit C attached to the complaint.

"Complainant" seeks cancellation of all charges for advertising in the Whittier 1967 telephone directory in the amount of \$889.20, plus payment by the defendant of the amount of \$1,287.60, which is the amount of his base business service telephone rate for the 1967-1968 directory year, because the free listing requested by him does not appear in the directory. The total requested relief is \$2,176.80.

Defendant denies, generally and specifically, each and every, all and singular, of the allegations, and requests dismissal of the complaint.

Public hearing was held before Examiner Warner on July 11, 1968, at Whittier. The matter was submitted, subject to receipt of late-filed Exhibit No. 9, which was received on July 18, 1968, and is ready for decision.

Exhibit No. 1 is a copy of defendant's yellow pages directory for the year commencing December 1967 in which on pages 293, 295, and 296 appear "complainant's" alphabetical listings, all under "West Whittier Paint Co.", together with a one-quarter-page display advertisement for "Bob Downey's West Whittier Paint Co." on page 293, which is anchored to the alphabetical listing on page 296 by reference. This advertisement and these listings are incorrect according to "complainant", and he contends that they, as such, were unauthorized by him.

Defendant's applicable tariffs are:

Schedule Cal. P.U.C. No. D-1, Original Sheet 7 Cancelling Revised Sheet 10924-T, Telephone Directory Advertising Service, Special Condition 2.d., which provides 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."

and

Schedule Cal. P.U.C. No. D-1, Original Sheet 8 Cancelling  
Revised Sheet 10925-T, Telephone Directory Advertising Service,  
Special Condition 2.k., which provides as follows:

"The rates for classified display advertisements at the option of the advertiser may include a directional line of information under the classified listing with which the display advertisement is associated referring to the location of the advertisement."

and

Schedule Cal. P.U.C. No. D-1a, Original Sheet 5 Cancelling  
CWT Revised Sheet 2995-T, Telephone Directory Advertising Service,  
Special Condition 12, which provides as follows:

"Each primary business service listing and each joint user business service listing may receive, at the option of the advertiser and without additional charge, a regular type listing in the classified section of the directory under headings generally descriptive of the business as prescribed by the Company. Each such classified listing shall contain the same name, address, and telephone number as the corresponding listing provided in the alphabetical section, except that business or professional designations or titles will not be included."

The Commission takes notice of the white pages alphabetical listing of the December 1967 Northeastern Section of Area Code 213 showing on page 85 thereof the listing "Bob Downey's West Whittier Paint Co.", and respective telephone numbers.

Exhibit No. 2 is defendant's yellow pages directory for the year commencing December 1966, which shows "complainant's" classified directory listings on pages 277, 278, 279, and 280

under "Bob Downey's West Whittier Paint Co.", and in one instance, "Bob Downey's Paints", together with a one-quarter-page display advertisement on page 277, which is anchored to all of the alphabetical listings. This advertisement and these listings were correct according to "complainant".

Defendant's directory sales supervisor testified that she was familiar with the circumstances herein involved, and that she had prepared a contact memo on October 11, 1967, to correct the directory lines. A copy of said memo is Exhibit No. 5 and the corrected lines appear in Exhibit C. She testified that no Form No. 1396 had been forwarded to the subscriber-advertiser for signed authorization of a directory listing change, due to the press of the December 1967 directory's closing date, which was imminent.

The district sales manager of General Telephone Directory Company, which publishes defendant's yellow pages directories, testified that his company had received a teletype directive from defendant's directory sales office requesting the changes in the directory listing which were effected, as shown in Exhibit C. He stated that "complainant's" secretary, Betty Hall, had telephoned him early in October 1967 requesting changes, but that he had referred her to defendant and knew nothing further of her action or defendant's action, except the altered directory advertising order, Exhibit C.

"Complainant's" secretary, Betty Hall, was not called to affirm or deny the charge that she had verbally requested a change in the directory listing.

"Complainant" claimed, as an aside to the real issues of the complaint, which are the status and validity of the contract between the parties as provided by defendant's tariffs, that he was widely known as "Bob Downey", as shown in Exhibit No. 8, and that the elimination of his name from the yellow pages directory listings was damaging, although to what extent was not shown. Defendant claimed, as shown in Exhibit No. 9, that "complainant" was known under several different names and that the yellow pages directory listing, under a name other than requested by the "complainant" by his signed order, was not damaging, was not material, and that defendant's secretary, as shown in Exhibit No. 3, on September 25, 1967, had used one of "complainant's" alternate business names, "West Whittier Paint Co.", in requesting and signing an additional alternate directory listing as "Downey's Bob West Whittier Paint Co."

#### Findings

The Commission finds that:

1. Complainant Ad Visor, Inc., is agent for Bob Downey's West Whittier Paint Co., a long-established and widely known paint dealer and supplier located at 11,408 East Whittier Boulevard, Whittier, California. "Complainant" is Bob Downey's West Whittier Paint Co., a fictitious business name for Bob Downey, or as recently incorporated.

2. Bob Downey's West Whittier Paint Co. advertised in the December 1966 yellow pages directory of defendant General Telephone Company of California under said caption as a primary listing in

the alphabetical listings anchored to a one-quarter-page display advertisement. There were also several other alternate listings anchored to the display advertisement.

3.a. "Complainant" on September 12, 1967, through his secretary, Betty Hall, applied for directory advertising and signed an application form for a primary listing under his full name anchored to a two and one-half-column display advertisement. He also ordered certain alternate listings. The total monthly charge contracted for by said order was \$76.85, later reduced to \$74.10 to effect a minor change. The total annual cost to "complainant" for advertising in defendant's 1967 yellow pages directory was \$889.20.

b. "Complainant's" signed directory advertising order is the sole contract between the parties. The form of said order-contract is a part of defendant's tariffs.

c. The contract provides that any errors or omissions in directory advertising shall be subject to refund according to the damage done, but not to exceed the total charges for such advertising.

d. Without securing "complainant's" signed authority on defendant's Form 1396, defendant, on October 11, 1966, altered the application for directory advertising and instructed General Telephone Directory Company, defendant's yellow pages directories publisher, to change "complainant's" primary listing to "West Whittier Paint Co.". The caption, "Bob Downey's West Whittier Paint Co.", was deleted by defendant from the Paint Dealers-Retail alphabetical listing in its 1967 classified yellow pages.

e. Defendant erred in altering "complainant's" contract and "complainant" is entitled to a refund of amounts paid to date.

4.a. "Complainant" is a business telephone service subscriber of defendant. His total annual base rate is \$1,287.60. According to defendant's tariffs, "complainant" is entitled to a free yellow pages listing for a white pages alphabetical business telephone listing.

b. "Bob Downey's West Whittier Paint Co.", which is "complainant's" white pages listing, was omitted by defendant in the 1967 yellow pages listing.

c. Defendant erred in failing to provide "complainant" with a free yellow pages alphabetical primary listing in defendant's 1967 directory and "complainant" is entitled to a refund of at least a portion of his basic business service telephone rate. A refund of twenty-five percent of his basic rate paid to date is reasonable.

5. Interest on the refunds made by defendant of seven percent per annum is reasonable.

#### Conclusions

The Commission concludes that defendant, pursuant to the provisions of its tariffs, which it violated, should be directed to refund to "complainant" that portion already paid of the total sum of \$889.20 for altering, without "complainant's" signed consent, "complainant's" signed yellow pages advertising

directory order. Further, defendant should be directed to refund to "complainant" twenty-five percent of his base business telephone service rate of \$1,287.60 paid to date for failing to provide "complainant" with the free yellow pages listing to which he was entitled by defendant's tariffs. Interest at seven percent per annum on those portions of the total annual charges paid to date by "complainant" should be added to the total refund made. Also, continuing charges for the balance of "complainant's" annual directory advertising and basic telephone charges contract should be adjusted accordingly.

O R D E R

IT IS ORDERED that General Telephone Company of California, defendant, within fifteen days after the effective date hereof, refund to Bob Downey's West Whittier Paint Co., "complainant", that portion of the total sum of \$889.20 paid by "complainant" to date for yellow pages display advertising, and twenty-five percent of that portion of the total sum of \$1,287.60 paid to date by "complainant" for basic business telephone service, plus seven percent per annum on said portions paid to date and ordered herein to be refunded, and, within ten days thereafter, shall report to the Commission in writing its compliance herewith.

C. 8809 - SW \*

Continuing charges for the balance of "complainant's" annual contract for directory advertising and basic telephone charges shall be adjusted accordingly.

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

Dated at San Francisco, California, this 6<sup>th</sup> day of NOVEMBER, 1968.

William J. Moore Jr.  
President  
Ed P. Morrissey  
Commissioners  
Augusta