

ORIGINAL

Decision No. 75019

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

VICTOR VIVIANO
DBA VICTOR DRAPERY CLEANERS - COMPLAINANT)

VS)

PACIFIC TELEPHONE & TELEGRAPH CO.
A CORPORATION - DEFENDANT)

Case No. 8754

Victor Viviano, in propria persona, complainant.
Robert E. Michalski, for The Pacific Telephone
and Telegraph Company, defendant.

O P I N I O N

This is a complaint by Victor Viviano, doing business as Victor's Drapery Cleaners (hereinafter referred to as Viviano), against The Pacific Telephone & Telegraph Company (hereinafter referred to as PT&T). Viviano seeks herein an order which would (1) require PT&T to accept an advertisement in the yellow pages of the Southern Alameda County Directory using a superlative word or (2) which would preclude the use of superlatives in any advertisement for any advertiser in the yellow pages.

A duly noticed public hearing was held in this matter before Examiner Jarvis at San Francisco on May 28, 1968. The matter was submitted subject to the filing of a late-filed exhibit which was received.

Viviano commenced his present business in February of 1967. A few months thereafter he was solicited by a representative of PT&T to place classified advertising in the yellow pages of the

Southern Alameda County Directory.^{1/} Viviano authorized the placement of an advertisement in the yellow pages which included as part of its text the words "East Bay's Largest Drapery Cleaners". PT&T, after discussions and correspondence with Viviano, refused to include the language in the ad and the present proceeding ensued.

PT&T contends that the concern of government is focusing more and more on the exploitation of the consumer; that legislation has been enacted or introduced dealing with "truth in labeling", "truth in packaging", "truth in lending", and "truth in advertising"; that PT&T considers itself a leader in the field of truth in advertising in connection with the yellow pages; that PT&T has cooperated with Better Business Bureaus and Consumers Counsels to prevent misleading advertising in the yellow pages and that its regulations and restrictions dealing with the use of superlatives in the yellow pages are a vehicle to assist in providing for truth in advertising therein. The Commission takes official notice that various advertisers in the yellow pages use superlatives. There is nothing in this record which would indicate that the use of superlatives in yellow page advertising is illegal; that it is illegal for PT&T to promulgate regulations dealing with the use of superlatives in yellow page advertising or that the application of PT&T's rules dealing with the use of superlatives in yellow page advertising is generally carried out in such a way that it is illegal. Unless, as hereinafter indicated, portions of the regulations are illegal, unjust or arbitrary on their face, it would be manifestly unfair to consider the question of whether

^{1/} Viviano claims that the solicitation occurred on May 1, 1968. PT&T contends that it occurred on July 7, 1968. The precise date of the solicitation is not determinative of any matter herein and need not be further considered.

superlatives should be eliminated from yellow page advertising without affording the opportunity to those presently using superlatives to participate in the proceeding. The Commission is of the opinion that there is nothing in this record which would justify a finding that all superlatives should be eliminated from the text of advertisements appearing in the yellow pages.

Viviano contends that in the present situation PT&T's application of its regulations dealing with superlatives has been unjust, arbitrary and discriminatory as to him. Items 7 and 10 of PT&T's Tariff No. 39-T provide as follows:

"7. The Company reserves the right to accept or refuse any advertising when such action will not result in unlawful discrimination. Such acceptance or refusal is subject to the review of the Public Utilities Commission of the State of California."

"10. Reasonable care will be exercised to prevent the publication of advertisements or listings which may be misleading, and the Company assumes no responsibility with respect to the authenticity of advertising copy furnished by any advertiser."

Under the authority of these tariff provisions, PT&T has promulgated yellow page regulations and restrictions. These include the following:

"SUPERLATIVES

"The use of superlatives like 'greatest,' 'largest,' 'best,' 'most complete,' etc. in advertising copy is NOT permitted unless, in fact, it be a true statement. Before any superlative may be used, it must not only be true, but must also be recognized by others in the same line of business, or recognized trade associations.

"The sales person should investigate the superlative and obtain proof of its claim BEFORE it is accepted by the sales management.

"The following are examples of superlatives stated in an objectional manner and similar statements that are acceptable:

OBJECTIONABLE:

The finest.
The lowest price ever offered.
The best buy in town.
Unrivalled in fine quality.
Unheard of prices.
We give you the most for your dollar.

ACCEPTABLE:

No finer.
The lowest price WE ever offered.
ONE of the best buys in town.
Unexcelled in fine quality.
Amazingly low prices.
We give you exceptional value for your dollar.

NOTE: If an advertiser qualifies to use a superlative as outlined above and wants to use it in copy such as: 'The largest transmission firm in the West.' The Sales person might want to attempt to further qualify this statement by asking the advertiser what he means by 'largest.'

Is it the size of his building that make his firm the largest?

Is it the number of employees that makes this firm the largest?

Is it the number of outlets that makes his firm the largest?

Is it the stock of transmissions he has on hand that makes his firm the largest?

It would be far better for the advertiser to convey the correct message to the directory user.

Some copy suggestions that could be used are as follows:

'Our shop is the largest exclusive transmission firm in the West.'

'Our 40 specialists are the largest group of exclusive transmission repairmen in the West.'

'With our thirty outlets, we are the largest chain in the West.'

'We have the largest selection of ready to install transmissions in the West.'

"SUPERIORITY CLAIMS

"Copy that infers or states claims of superiority over competing products and services will not be accepted unless proof of such claim is obtained from recognized trade associations, or others in the same line of business.

Examples of Superiority claims are:

1. 'An auto paint job that lasts twice as long as any other at the same price.'
2. 'Doughnut machine that increases profits by 42%.'
3. 'Reducing method that does the same job as others but in half the time.'
4. 'Weatherstripping that reduces heat bills 32% more than any other on the market.'
5. 'Spark plug adapter that reduces gasoline bills at least 18 dollars a year.'

"Unless such 'questionable' claims can be substantiated by reasonably accepted proof, they will not be permitted. The sales person should investigate the superlative and obtain proof of its claim BEFORE it is accepted by the advertising sales manager."

"SLOGANS

"Many firms have for years promoted slogans containing aggressive statements which they are willing to stand behind. These slogans have become more or less accepted by the public over a period of time, possibly because the public remembers that the quality of the product has been consistently high. It may be that the public does not take such slogans literally or at face value and is inclined to discount them unconsciously without being irritated by them. Examples of such slogans are: 'When better automobiles are built, Buick will build them,' 'The choicest product of the brewer's art' (Falstaff Beer).

"In some cases the advertiser purposely uses a slogan in a figurative sense and does not intend to be taken in a literal sense. The Sherwin-Williams trademark is a can of paint pouring over the earth's globe and the associated phrase, 'SWP covers the earth,' could be interpreted only as a figure of speech and not as a matter of fact. The slogan, 'A steak with a sauce out of this world,' is obviously not intended to be interpreted literally.

"Slogans which have been promoted over a long period of time have a value which the advertiser often cannot afford to relinquish. They identify the product in the public mind, and are accepted by the public without challenge; also by other reputable advertising media. Such slogans will not be rejected for directory advertising. Care should be exercised, however, against the acceptance of so-called slogans of extravagant and exaggerated wording, coined for the obvious purpose of directory advertising."

Before considering the evidence dealing with the Viviano's contention, we note that the Commission is of the opinion that the portion of PT&T's regulations dealing with the use of superlatives which states that "Before any superlative may be used, it must not only be true, but must also be recognized by others in the same line of business or recognized trade associations" is on its face arbitrary, unjust and unreasonable insofar as it requires more than the establishment of the truth of the statement. For example, if laboratory tests of all brands of milk sold in the City of Los Angeles indicate that Brand X has more cream in it than any of the other brands and that Brand X has a higher butterfat content than any of the other brands and Brand X desires to include in an advertisement in the yellow pages of the Los Angeles Telephone Directory that its milk is the "creamiest" it should be entitled to do so whether or not its competitors or a dairymen's association affirmatively support the contention. As hereinafter indicated, whether or not something is recognized by others in the same line of business or recognized by trade associations may be two tests of whether something is true. However, if the truth of the superlative is established by other means, it is unfair, unjust and arbitrary to deny the advertiser the right to use the truth in an advertisement because of inaction on the part of competitors or trade associations. In fact, PT&T's directory sales supervisor

testified that in practice the company would accept a superlative if the truth were established whether or not it was recognized by competitors or a trade association:

"EXAMINER JARVIS: As I read the face of this instruction, it is not only that it has to be true, but in addition to the truth of it, it must also be recognized by a trade association and by competitors.

"THE WITNESS: I see your point, Mr. Examiner, now that I look at this closely.

"In actual practice, if a man wishing to claim a superlative can establish the truth of the superlative, it would be accepted for publication without the second qualification which you read here.

"If it is true, it is true and we would accept it.

"EXAMINER JARVIS: Well, supposing you have the first discounter in the history of San Francisco and he is competing with department stores, who are his competitors, and the Retail Dry Goods Association represents essentially the department stores, and he wants to say, 'I do the greatest volume in radios,' or men's suits, or something like that.

"Now, do you realistically expect that the Association, which is attempting to thwart this new type of economic endeavor, is going to give an endorsement or that the department stores are going to give the first discount store an endorsement?

"THE WITNESS: Well, I can only say this, Mr. Examiner, if the claimant can establish his superlative claim as being

true, then we would accept it regardless of the fact that some association might not subscribe to it.

"As a matter of fact, I think you have called our attention to perhaps even a typographical error in this. We would not deny a true superlative just because a trade association did not subscribe to the truth of it. It was, in fact, true.

"Do you follow me?"

"EXAMINER JARVIS: Yes."

The Commission is of the opinion that PT&T's yellow page regulations dealing with superlatives should be changed to provide for acceptance of a superlative when the truth thereof has been established, whether or not the superlative is recognized by competitors or trade associations.

Viviano does not dispute that in order to advertise in the yellow pages that he is the "East Bay's Largest Drapery Cleaners" he must establish the truth thereof. He contends, however, that PT&T has been arbitrary, unreasonable and discriminatory with respect to the mode of proof which is acceptable. The evidence indicates that PT&T told Viviano that he could establish the truth of the requested superlative by an unspecified number of letters from others in the same line of business or by a letter from a trade journal or trade association.

Viviano, in attempting to comply with the requirements, obtained a letter from Brite Cleaners located in Alameda, California, which stated that to the owner's belief Viviano was the largest drapery cleaner in the East Bay. The evidence indicates that at the time the letter was furnished Brite Cleaners did approximately

one-third of the drapery cleaning for Viviano, and that at the time of hearing, it did approximately all of the drapery cleaning for Viviano. Viviano also furnished PT&T copies of advertisements which appeared in newspapers in the East Bay. Some of these advertisements contained the statement that Viviano was the East Bay's largest drapery cleaner. At the hearing Viviano testified that he had advertised on two radio stations in the San Francisco Bay Area and that these radio advertisements contained the statement that he was the East Bay's largest drapery cleaner. Viviano also sent a letter to PT&T which indicated that his claim to be the East Bay's largest drapery cleaner was based upon volume and alleged that his volume exceeded \$2000 per week and was increasing. PT&T did not accept the proffered material as proof of the superlative. Viviano was informed that in order to prove the superlative, it was necessary for him to secure an unspecified number of additional letters from persons in the same business or a letter from a trade association or trade journal.

Viviano contends that it is unfair and unrealistic to make him go to his competitors to obtain proof of his statement. He indicates that even if a competitor believes the superlative to be true, there is no compulsion to require the competitor to write the requested letter or in any way state his belief. Viviano also contends that there is no trade association or trade journal which deals with drapery cleaners. He bases this contention upon a distinction between drapery cleaners and dry cleaners. In support of this contention, he points to the fact that drapery cleaners and dry cleaners are given separate listings in the yellow pages of the telephone directory and alleges that it is not necessary for a

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drapery cleaner to be licensed by the State of California whereas it is necessary for a dry cleaner to be so licensed.

PT&T contends that since the life of a telephone directory is approximately 12 months, it has a greater duty than a newspaper or radio station to scrutinize the content of an advertisement to be sure that it is not misleading. It contends that the letter from Brite Cleaners and the newspaper ads proffered by Viviano were not sufficient to establish his claim that he is the East Bay's largest dry cleaner and that it acted reasonably within its rules to deny the use of the requested superlative. PT&T takes the position that a drapery cleaner is a type of dry cleaner; that the fact that drapery cleaners and dry cleaners have separate listings in the yellow pages of the telephone directory is for the convenience of the directory user and does not indicate an inherent difference between the two categories listed; that if the State of California does not require licensing of drapery cleaners, it is due to an oversight rather than an inherent difference between the two types of dry cleaners; that there is a dry cleaners association and trade magazine in California and that the requirement that Viviano obtain letters from those engaged in the same business or from the trade association or journal indicating that he is the East Bay's largest drapery cleaner is not unreasonable.

The Commission expresses no opinion as to whether a drapery cleaner is required to obtain a license from the State of California. (See Business and Professions Code § 9501, 9540-42.) It is not necessary to resolve this question in the determination of the proceeding presently before us. The Commission is of the opinion that PT&T acted reasonably on the evidence initially before it in denying Viviano the use of the superlative. At the time the

denial was made, Viviano had been in business less than one year and the only evidence in support of his claim was a letter from one of his subcontractors and self-serving advertisements. The Commission is, however, of the opinion that PT&T's insistence that the superlative may only be proved by letters from competitors or a letter from a trade journal or association is unjust, unreasonable and arbitrary.

The California Supreme Court has held that PT&T, as a regulated public utility, is subject to constitutional restrictions which may not apply to nonregulated private enterprises (Huntley vs. Public Utilities Commission - Adv. Cal., 69 Cal. Rptr. 605, 610). In this connection the courts have held that an economic right cannot be made dependent upon the unrestricted discretion or whim of one's competitors (Blumenthal vs. Board of Medical Examiners, 57 Cal. 2d, 228, 235-36; Wilka & Holzhauser, Inc. vs. Dept. of Alcoholic Beverage Control, 65 Cal. 2nd, 349, 366; Allied Properties vs. Dept. of Alcoholic Beverage Control, 53 Cal. 2nd, 141, 151; State Board vs. Thrift-D-Lux Cleaners, 40 Cal. 2nd, 436, 448). In Blumenthal the California Supreme Court struck down Section 2552, Subsection (a) of the Business and Professions Code because that section limited the requirements for obtaining an optician's license to two ways, neither of which was necessarily superior to others, and gave virtually absolute economic control of entry into that profession to existing opticians.

The court stated:

"The conclusion is inescapable that the experience necessary to qualify a person to dispense optical goods, whatever level of expertise is demanded, is obtainable in a variety of ways. By prescribing that such experience may be obtained in only two ways, neither of which may reasonably be thought to be

superior to others, subdivision (a) contravenes the constitutional requirement that regulatory legislation avoid arbitrary and unreasonable classifications."

"The conclusion that Section 2552, subdivision (a) is invalid is reinforced by other considerations. It confers upon presently licensed dispensing opticians the unlimited and unguided power to exclude from their profession any or all persons. 'While the delegation of governmental authority to an administrative body is proper in some instances, the delegation of absolute legislative discretion is not. To avoid such a result it is necessary that a delegating statute establish an ascertainable standard to guide the administrative body. Here the statute assumes to confer legislative authority upon those who are directly interested in the operation of the regulatory rule and its penal provisions with no guide for the exercise of the delegated authority.'"

* * *

"The absence of such standards, or safeguards (see 1 Davis, Administrative Law Treatise, §2.15, pp. 148-151), renders effective review of the exercise of the delegated power impossible. If Section 2552, subdivision (a) is sustained, persons excluded from the occupation of optical dispensing because of the refusal of licensed opticians to employ them for the five-year period, no matter what the reason for such refusal might be, will have no remedy, for licensed opticians are under no duty to employ anyone, for five years or for any other period. Moreover, presently licensed dispensing opticians will be given virtually absolute economic control over those employees who are required to serve under them in order to attain future professional objectives." (57 Cal. 2d, 228, at pp. 235-36.)

Here also PT&T's regulations are too restrictive with respect to permitting an advertiser to establish the truth of a superlative.

By the foregoing, the Commission does not mean to imply that in establishing the truth of a claimed superlative, PT&T may not rely upon statements of persons engaged in similar businesses or statements made by trade associations or trade journals. We do hold that PT&T must accept other reasonable modes of proof.

The Commission agrees with the contention of PT&T that the burden of establishing the truth of a superlative rests with the person asserting it. As indicated, we believe that PT&T initially acted reasonably in denying Viviano the use of the superlative on the proofs submitted. However, the Commission is of the opinion that PT&T should now be required to accept Viviano's ad with the proffered superlative. The record indicates the basis upon which Viviano claims to be the East Bay's largest drapery cleaner, that he has advertised himself as such in newspapers and on radio and that no one complained about any of these ads or challenged the superlative therein. The only evidence in the record to negate the claimed superlative is the testimony of PT&T's directory sales supervisor who stated that his subordinates contacted two dry cleaners in Oakland, that each said they would not "undertake a judgment as to who was the largest" drapery cleaner in the East Bay, but that someone connected with one of the firms said that, in his opinion, Viviano was not the largest. The Commission believes that little weight should be given to this testimony. None of the parties to the conversations testified at the hearing. What was said or represented is not before us. The facts, if any, upon which the Oakland dry cleaner relied in forming his opinion are not disclosed. The record indicates that the Oakland dry cleaner was not informed of Viviano's alleged volume and newspaper advertising using the superlative.

PT&T's duty, under Item 10 of its tariff, is to use reasonable care in preventing the publication of misleading advertising. It is not a guarantor of the truth of an ad. Section 17500 of the Business and Professions Code provides that:

"It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this State, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any such person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell such personal property or services, professional or otherwise, so advertised at the price stated therein, or as so advertised."

Violation of Section 17500 is a misdemeanor punishable by a maximum of six months imprisonment, or a fine of \$500, or both. (Business & Professions Code §17534; Penal Code §19.) It has been held that:

"Irrespective of its truth or falsity, any statement which is deceptive or merely misleading, without intent to deceive, violates the statute. People v. Wahl, 1940, 39 Cal. App. 2d Supp. 771; 100 P.2d 550." (Audio Fidelity, Inc. v. High Fidelity Recordings, Inc., 283 F. 2d 551, 555.)

If PT&T acts properly under Item 10 of its tariff it is also protected under Section 17502 of the Business and Professions Code which provides that:

"This article does not apply to any visual or sound radio broadcasting station or to any publisher of a newspaper, magazine, or other publication, who broadcasts or publishes an advertisement in good faith, without knowledge of its false, deceptive, or misleading character."

If Viviano's claimed superlative is false, he may be subject to criminal prosecution. In addition, anyone who can prove his use of the superlative to be false can bring an action in the Superior Court and have Viviano restrained from using it under Civil Code Section 3369 which provides in part that:

". . .

"2. Any person performing or proposing to perform an act of unfair competition within this State may be enjoined in any court of competent jurisdiction.

"3. As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, untrue or misleading advertising and any act denounced by Business and Professions Code Sections 17500 to 17535, inclusive.

"4. As used in this section, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

"5. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this State in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public."

While PT&T's yellow page regulations call for establishing the truth of a claimed superlative, what is really required is reasonable proof to satisfy its duty under Section 17502 of the Business and Professions Code and Item 10 of its tariff. This is so because PT&T has no legal power to compel the production of evidence which could bear upon the question. Its determination of truth or falsity of a claimed superlative is not binding on anyone. Furthermore, all superlatives are not immutable. Some may be transitory. Whoever is the largest merchant in an area today may not be tomorrow.

We have held that the use of a superlative cannot solely be dependent on action by competitors or a trade association. The record here discloses that Viviano has advertised himself in newspapers as the East Bay's largest drapery cleaner from March 1967 until the date of the hearing and, on occasion, has so advertised on two radio stations in the East Bay Area. If the claimed superlative is not true, this continuous course of conduct exposed Viviano to prosecution under Section 17500 of the Business and Professions Code and to injunctive sanctions under Section 3369 of the Civil Code. The record indicates that no one to date has sought to invoke either of these code sections against Viviano or complained about his advertisements using the superlative here in question. We do not mean to hold that in order for PT&T to refuse to permit the use of a claimed superlative it is necessary that there be a criminal prosecution or suit for injunctive relief. Other, less cumbersome or dramatic facts may suffice. In the present case the record discloses that except for hearsay testimony reflecting the unsubstantiated opinion of an unnamed Oakland dry cleaner, there is no evidence to controvert Viviano's claimed superlative. In the circumstances, the Commission is of the opinion that PT&T should be required to accept yellow page advertising containing the requested superlative until such time as facts may be brought to its attention that indicate it may not be true.

On September 27, 1968, Viviano filed a Petition to Set Aside Submission for the purpose of producing additional evidence. The Commission has considered the petition and is of the opinion that it does not state facts, which, if true, would justify reopening the proceeding at this time. There is nothing alleged in the petition which would tend to prove the truth of the requested superlative. The petition will be denied.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. Viviano commenced doing business as Victor's Drapery Cleaners in February of 1967.

2. Sometime during the period from May 1, 1968 to July 7, 1968, Viviano was solicited by a representative of PT&T to place advertising copy in the yellow pages of PT&T's Southern Alameda County Telephone Directory.

3. In response to the aforesaid solicitation Viviano tendered an advertisement which included in its copy the statement that Victor's Drapery Cleaners is the "East Bay's Largest Drapery Cleaners."

4. PT&T refused to accept the ad as long as it contained the superlative that Viviano is the East Bay's largest drapery cleaner.

5. PT&T told Viviano that before it would accept the requested aforesaid superlative it was necessary for him to establish the truth thereof. It further told Viviano that the only way he could establish the truth thereof was by an unspecified number of letters from persons in a similar business or by a letter from a trade association or a trade publication which indicated the truth of Viviano's contention.

6. On August 4, 1967 Viviano secured a letter from Brite Cleaners of Alameda, California, which stated that to the best of its owner's knowledge Viviano is the largest drapery cleaner in the East Bay. At the time said letter was obtained, Brite Cleaners did approximately one-third of the drapery dry cleaning for Viviano. At the time of the hearing, Brite Cleaners did almost all of the drapery dry cleaning for Viviano.

7. Viviano submitted to representatives of PT&T copies of advertisements which appeared in newspapers in the East Bay, some of which contained the statement that Viviano was the East Bay's largest drapery cleaner.

8. From March 27, 1967 until May 28, 1968, Viviano has frequently advertised himself in newspapers of general circulation as being the largest drapery cleaner in the East Bay.

9. Between March 27, 1967 and May 28, 1968, Viviano, on occasion, has advertised himself over radio stations KPAT and KNEW as being the East Bay's largest drapery cleaner.

10. No one has complained about or contended the accuracy of Viviano's claim in the aforesaid newspaper and radio advertisements.

11. PT&T acted reasonably in initially denying Viviano the use of the requested superlative on the evidence which was submitted to it.

12. There is nothing in this record which would support a finding that the use of all superlatives should be eliminated from the yellow pages of telephone directories.

13. The portion of PT&T's yellow page regulations and restrictions dealing with superlatives which provides that "Before any superlative may be used, it must not only be true, but must also be recognized by others in the same line of business, or recognized trade associations" is unjust, unreasonable and arbitrary.

14. PT&T acted in an unjust, unreasonable and arbitrary manner when it told Viviano that the only ways in which he could prove the truth of the requested superlative were by letters from others in the same line of business or by a letter from a recognized trade association or trade publication.

15. Viviano has done all that should reasonably be required to be permitted to use the requested superlative until such time as it may be shown that the superlative is not true.

16. On September 27, 1968, Viviano filed a Petition to Set Aside Submission. The petition does not state facts sufficient to warrant reopening of this matter.

Conclusions of Law

1. PT&T should be ordered to delete from its yellow page regulations and restrictions that portion dealing with superlatives which states: "Before any superlative may be used, it must not only be true, but must also be recognized by others in the same line of business, or recognized trade associations."

2. PT&T should be ordered, in the application of its yellow page regulations and restrictions dealing with superlatives, superiority claims and slogans, to cease limiting the mode of proof of such superlatives, superiority claims or slogans to those in the same line of business or recognized trade associations and permit the truth thereof to be established by any reasonable means of proof.

3. PT&T should be ordered to permit Viviano to use the superlative "East Bay's Largest Drapery Cleaner" in his yellow page advertising until such time as it may become aware of facts which indicate that the superlative is not true.

4. The Petition to Set Aside Submission should be denied.

O R D E R

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company (hereinafter referred to as PT&T) shall delete from its yellow page regulations and restrictions that portion of them dealing with

superlatives which states that: "Before any superlative may be used, it must not only be true, but must also be recognized by others in the same line of business or recognized trade associations." PT&T shall inform its employees, representatives and agents that if an advertiser establishes the truth of any superlative by any means it is not necessary that the truth be recognized by others in the same line of business or recognized trade associations in order to have the superlative appear in an advertisement in the yellow pages of a telephone directory.

2. PT&T shall revise its yellow page regulations and restrictions dealing with superlatives, superiority claims and slogans to provide that the mode of proving the truth of any claimed superlative, superiority claim or slogan shall not be limited solely to recognition by others in the same line of business or recognized trade associations, but shall include any reasonable method of establishing the truth of the superlative superiority claim or slogan asserted.

3. PT&T shall permit Viviano to include in his advertising in the yellow pages of any directory in which he may advertise the statement "East Bay's Largest Drapery Cleaner" until such time as PT&T may become aware of facts which indicate that said statement is not true.

4. The Petition to Set Aside Submission is denied.

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

Dated at San Francisco, California, this 31 day of DECEMBER, 1968.

William Agnew Jr.
President
William C. Bennett

Augustan
Robert P. Monrosey
Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.