

ORIGINAL

Decision No. 75061

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Christopher Glass Company,)
 Complainant,)
 vs.)
 The Pacific Telephone and)
 Telegraph Company,)
 Defendant.)

Case No. 8776
Filed March 13, 1968

Frank R. Barbaccia, for Christopher
 Glass Company, complainant.
Robert E. Michalski, for The Pacific
 Telephone and Telegraph Company,
 defendant.

O P I N I O N

This is a complaint by Frank R. Barbaccia and Harold N. Christopher, Jr., copartners, doing business as Christopher Glass Company, against The Pacific Telephone and Telegraph Company (hereinafter referred to as PT&T). Complainants allege that PT&T inserted in its 1968 San Jose directory an advertisement in the yellow pages larger than that contracted for by complainants. Complainants seek: (1) reparations for the difference between the amount they paid for the larger ad and the lesser amount they would have been required to pay if the alleged smaller ad had been run; and (2) an order reducing the cost of their monthly advertising for the remaining life of the 1968 San Jose telephone directory to an amount which would reflect the cost of the alleged smaller ad.

A duly noticed public hearing was held in this matter before Examiner Jarvis in San Francisco on September 26, 1968. The

matter was submitted subject to the filing of the transcript which was filed on October 18, 1968.

On or about September 20, 1967, Donald Driggs, an advertising representative of PT&T, called upon complainants to solicit advertising for the yellow pages of the 1968 San Jose telephone directory. Complainants were busy and a subsequent appointment was arranged for September 27, 1967. Driggs met with the complainants on September 27, 1967. They discussed complainants' advertising for the 1968 directory. Complainants had advertisements in the 1967 yellow pages under the headings of "Shower Doors", "Store Fronts", "Mirrors" and "Glass". Complainants decided to revise their ad under the "Glass" heading for the 1968 directory and to delete their ad under the heading of "Mirrors" and substitute therefor a new ad under the heading of "Screens, Doors and Windows". The mirror ad which was to be deleted was a double quarter column ad. Complainant Barbaccia told Driggs that he would like the replacement ad to be the same size. He gave Driggs a copy of a newspaper advertisement which included a cut of a fly approaching a screen window. Barbaccia indicated that if possible he would like a facsimile of the cut to appear in the yellow page ad. What transpired next is a matter of dispute between the parties.

The record clearly indicates that on September 27, 1967, complainant Christopher signed two PT&T D-12A's, one of which authorized extensive changes in the advertisement under the "Glass" heading. The other provided for a double half column ad under the "Screens" heading. Christopher also, on September 27, 1967, signed an advertising contract with PT&T which authorized, among other things, the placement of a double half column ad in the "Screens, Doors and Windows" section. Barbaccia, who testified on behalf of

complainants stated that at the time the forms and contract were signed, he was under the impression that the double half meant inches rather than columns; that he understood the contract was not to go into effect until he had approved a proof copy of the ad and that the first time he became aware of the larger size of the ad was when PT&T furnished complainants a copy of the proof prior to publication in the yellow pages. Driggs testified that Barbaccia asked that the screen ad be the same size as the deleted mirror ad, if possible; that the parties discussed the text of the screen ad; that during the discussion of the text of the proposed screen ad it became apparent that the ad would not fit into a double quarter column ad, but that it was necessary to have a double half column ad; that he informed complainants it would be necessary to have a double half column ad and that they acquiesced to this. Driggs also testified that he reviewed the contract for advertising with complainants; that the contract indicates the screen ad was to be double half columns; that the contract price for the screen ad was shown to be the same as the contract price for complainants' existing glass ad which is a double half column ad and that after he explained the terms of the contract, Christopher signed it on behalf of complainants. Driggs testified that he did not represent that the contract was dependent on approval of any proofs of the ad to be submitted to complainants. He stated that the orders were taken with instructions to return the finished art work for complainants' approval before a plate was made therefrom in order to save complainants' money if they desired any changes in the art work. The record indicates that the art work was shown to complainant Christopher. Among the art work shown to complainant Christopher was the reproduction of the cut of the fly by the screen window. Observation of the physical size of the cut indicates that

it could not fit into a double quarter column ad along with the other textual material requested by complainants. Christopher approved the art work. On or about December 26, 1967 complainants received a proof of the screen ad. Complainant Christopher immediately wrote a letter to PT&T indicating that the ad was the wrong size. As a result of the letter, Driggs was directed to contact the complainants. Driggs met with the complainants on January 8, 1968. Driggs testified that he reviewed the transaction of September 27, 1967 with the complainants; that during the conversation Christopher stated that complainants' business had fallen on hard times and they had hoped to reduce the size of their ad; that Christopher acknowledged that complainants had contracted for a double half column ad and that Christopher indicated they would pay for the ad. On January 9, 1968 Barbaccia called PT&T and asked to speak to Driggs' supervisor. He indicated to the supervisor that he was dissatisfied with the results of the previous day's conference. Driggs, who was in the field, was contacted by his supervisor and directed to contact complainants. He testified that on January 10, 1968, he talked to Christopher (on the telephone) and Christopher again acknowledged that complainants had placed a double half column ad. The directory sales representative for PT&T testified that the company does not sell advertising on condition of approval of proofs.

The physical evidence in this matter strongly corroborates the contentions of PT&T. The D-12A form which was received in evidence as Exhibit 2 corroborates Driggs' testimony, where he states that he spent approximately one and one-half hours with complainants working out the copy for their ads, including the screen ad. The form indicates the text for the ad, including the

use of the proffered cut. As indicated, the size of the ad is stated on the form to be double half columns and the form was signed by complainant Christopher. The advertising contract which was received in evidence as Exhibit 4 indicates that the size of the screen ad was to be double half columns. It also shows that the dollar amount for the screen ad was to be the same as the dollar amount for the glass ad, a double half column ad, which complainants had run in the previous directory. The contract also shows, as a separate item, a net change of \$55 additional per month for complainant's yellow page directory advertising. After complainants had agreed to the text of the screen ad on Form D-12A and after complainants had agreed to the price of the ad in the advertising contract, it would be unrealistic to expect, as Barbaccia contends, Driggs to rework the ad in some unspecified way so as to reduce the size thereof. The Commission is of the opinion that complainants did, on September 27, 1967, enter into a valid contract for advertising in the yellow pages of the San Jose telephone directory for 1968 which contemplated a double half column ad under the heading of "Screens, Doors and Windows". They are, therefore, not entitled to any relief in this proceeding. No other points require discussion. The Commission makes the following findings and conclusion.

Findings of Fact

1. On September 27, 1967 Donald Driggs, a sales representative of PT&T, conferred with complainants in connection with soliciting yellow page advertisements from complainants for the forthcoming 1968 San Jose telephone directory. During the conference, which lasted approximately one and one-half hours, complainant Barbaccia indicated to Driggs that complainants would like to delete from the forthcoming directory a double quarter column ad under the

heading of "Mirrors" and substitute therefor an ad of similar size under the heading of "Screens, Doors and Windows". Barbaccia provided Driggs with a copy of a newspaper advertisement by complainants which included a cut of a fly approaching a screen window. He indicated to Driggs that complainants would like a facsimile of the cut to appear in the yellow page ad. Complainants and Driggs worked out the text of the ad. During the conversation about the text of the ad, Driggs indicated to the complainants that the text agreed upon and the facsimile cut would not fit in a double quarter column ad, but that it was necessary to have a double half column ad. Complainants did not dispute this or direct Driggs to delete any of the text from the proposed ad.

2. During the conference on September 27, 1967 between complainants and Driggs, complainant Christopher signed PT&T form D-12A which included the proposed text of an ad under the heading of "Screens, Doors and Windows" and provided that the ad should be in a size of double half columns.

3. During the conference on September 27, 1967 between complainants and Driggs, complainant Christopher signed a directory advertising order, which is a contract which provided for a double half column ad under the heading of "Screens, Doors and Windows". The contract also provided that the cost of the ad under the heading of "Screens, Doors and Windows" would be \$80 per month. The contract also provided for another double half column ad under the heading of "Glass" at a rate of \$80 per month. Complainants had previously run the glass ad in the yellow pages of the San Jose telephone directory and were aware of the size thereof. The contract also indicated, in a separate item on the face thereof, that there would be a net additional monthly charge of \$55 for the advertising therein. The contract was in accordance with PT&T's tariffs.

4. The aforesaid contract between complainants and PT&T was not dependent upon any subsequent approval of a proof of the ad by complainants.

5. Prior to making the cut for the aforesaid ad, PT&T showed to complainant Christopher the art work therefor. The art work included a reproduction of the cut from the aforesaid newspaper ad copy of the fly by the screen window, together with textual material requested by complainants. Observation of the physical size of the cut and the textual material indicates that they could not fit into a double quarter column ad. Complainant Christopher approved the art work.

6. On or about December 27, 1967, complainant Christopher, after receiving a proof of the aforesaid ad, complained to PT&T about the size of the ad. There was no legal basis for said complaint.

Conclusion of Law

Complainants are not entitled to any relief in this proceeding.

O R D E R

IT IS ORDERED that complainants are entitled to no relief in this proceeding and the complaint is denied.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 10th day of DECEMBER, 1968.

William S. ...
President

Richard P. Morrison
Commissioners

-7- Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.