

Decision No. 75232**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AUTOMATIC TRANSMISSION SERVICE, INC., )

Complainant, )

vs. )

THE PACIFIC TELEPHONE & TELEGRAPH )  
COMPANY, a corporation, )

Defendant. )

Case No. 8881

ORDER OF DISMISSAL

Complainant alleges it ordered insertion of advertisements in the classified pages of defendant's San Diego telephone directory, and that at page 812 of the directory distributed in December of 1967 complainant's name appears in bold print, followed by the address and telephone number of complainant's principal competitor, instead of complainant's address and telephone number.

The complaint alleges such listing was wilful, malicious and intentional, and the result of a conspiracy by and between defendant and various other parties not subject to Commission jurisdiction, and with the specific intent and design to injure complainant's business and divert same to a competitor. It is alleged that defendant has proposed to abate a portion of the charges to complainant for directory advertising, but that such proposal is grossly inadequate, unfair, and an improper remedy, particularly where the matter complained of was the result of activities of third parties, not subject to Commission jurisdiction, "who participated in a conspiracy, who were negligent, or wilfully injured plaintiff, and who attempt to clothe themselves with defendant's claimed immunities and limitations of liability, \* \* \*."

Complainant "recognizes the jurisdiction authority of this commission to award adequate remedy may be limited, and that this commission does not have jurisdiction of the third parties above mentioned, but complainant files the within formal complaint in an attempt to comply with any and all requirements of law and to seek a remedy in each forum necessary, but verily believes it cannot obtain adequate relief except by the filing of a civil action in the Superior Court of this State."

The complaint requests an order and decree granting complainant compensatory damages in the sum of \$100,000, together with punitive damages in the sum of \$100,000, or, in the alternative, an order that the Commission does not have jurisdiction of the matter, so that it may be tried in the civil courts.

The Commission is without jurisdiction to award damages for the reasons alleged in the complaint. (Schumacher v. Pacific Telephone, 64 Cal. P.U.C. 295 and cases there cited.)

Case No. 8881 is dismissed for failure to state a cause of action within the jurisdiction of the Commission.

Dated at San Francisco, California, this 21<sup>st</sup> day of JANUARY, 1969.

William Synora, Jr.  
President

Augusta

Frederic R. Monsey

Thomas Moran

[Signature]  
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.