

**ORIGINAL**

Decision No. 75435

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Lange Industries, Inc., a California corporation, )

Complainant, )

vs. )

Pacific Telephone Company and General Telephone Company, )

Defendant. )

Case No. 8836  
Filed August 19, 1968

Clifford B. Lange and William Lange,  
for complainant.  
Robert E. Michalski, for The Pacific  
Telephone and Telegraph Company;  
and Robert A. Joyce, for General  
Telephone Company of California,  
defendants.

O P I N I O N

Lange Industries, Inc., a California corporation, and a general contractor, does business under several fictitious names. It deals in sauna bath equipment, the stoves for which are manufactured and distributed to complainant by Northwest Foundry and Furnace Company of Portland, Oregon. As Ambassador Sauna, complainant installs the stoves and builds the stalls for the baths under contract with house and apartment builders, including developers and private parties. Another of complainant's fictitious names is Finlandia Sauna Repair Service, under which it repairs sauna baths.

Complainant's present address is 1542 Embassy Avenue, Anaheim, California 92802, and its telephone number (714) 635-3270. For a portion of the time covered by the complaint, complainant also had a Burbank answering service telephone number (213) 845-3052, and also maintained a private telephone account listing, for billing purposes, in Pasadena. During the year 1967, complainant moved its Anaheim offices from 2275 West Lincoln Avenue, which is the address appearing in complainant's alphabetical and display pages directory advertising, except that the city of Anaheim was omitted from Pacific Telephone's 1967-1968 Compton, Inglewood, San Pedro and Beverly Hills display advertisement of Ambassador Sauna in said directories.

During the years 1967 and 1968, defendant Pacific carried complainant's various advertisements in its Orange County (11-1-67),<sup>1/</sup> Pasadena (12-1-67), North Hollywood (3-1-68), Compton, Inglewood and San Pedro (10-1-67), Los Angeles (8-1-67), Riverside (9-1-67), and Beverly Hills (2-1-68) directories, all as shown in Exhibit No. 10, and as contracted for by advertising orders, copies of which are contained in Exhibit No. 16.

The complaints against Pacific are that commencing in 1965 complainant attempted to secure a listing under a "Sauna Equipment & Supplies" classification rather than under the classification "Baths Equipment & Supplies" (during 1964-1965 the

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<sup>1/</sup> Date of issue.

classification was "Baths"),<sup>2/</sup> and such classification was not established until after complainant had filed an informal complaint with this Commission in 1965 and had secured the support of and petition to defendant by sauna dealers, including complainant, (Exhibit No. 21) in August 1967; the classifications "Baths" and "Baths Equipment & Supplies" were misleading and resulted in innumerable nuisance, and sometimes obscene, calls at all hours of the day and night from the public seeking steam baths or massages, whereas complainant was not in that type of business; Pacific omitted the city of Anaheim from those certain display advertisements heretofore detailed; Pacific had continued to list complainant's business under the classification "Baths Equipment & Supplies" in the Beverly Hills (2-1-68) directory after the "Sauna Equipment & Supplies" classification had been established by Pacific on August 27, 1967 (available in directories issued subsequent to November 1, 1967) and had been contracted for by complainant on August 24, 1967; and, finally, that Pacific continued to list non-sauna equipment and businesses such as "Roman Holiday Health Club" and "Marshall's Roman Spa", whose principal business is baths and massages, without investigating or establishing the true nature of the sauna equipment advertisers.

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<sup>2/</sup> In October 1965 (Exhibit No. 1), after an informal complaint and investigation by the Commission staff, Pacific abated 50% of complainant's directory advertising charges for the past year after having classified complainant's businesses, in error, under "Baths".

Pacific admitted the omission of Anaheim in Ambassador Sauna's address from its Compton, Inglewood and San Pedro directories, and offered a 25 percent abatement to complainant of the charges therefor. Pacific also admitted the omission of Anaheim from complainant's address and the classification error in the Beverly Hills directory published February 1, 1968, and offered a 100 percent abatement. All other allegations by complainant were denied. Exhibit No. 22 shows that Pacific claims that complainant was delinquent as of August 23, 1968, in the amount of \$2,683.32 (including the charges for the admittedly erroneous advertising) and stated that if such delinquencies were not paid in full by September 4, 1968, complainant's advertising would not be published in the future. However, the record shows that complainant's advertising is being carried in all of the 1968-1969 directories to the extent that complainant requested such advertising in the 1967-1968 directories, subject to certain cancellations by complainant as shown in Exhibit No. 27.

The complaints against General Telephone Company are that it improperly classified complainant's business in the 1965-1966 and 1966-1967 directories by not having established a classification of "Sauna - Equipment & Supplies" and by listing complainant's business names and advertising under the classification "Baths - Equipment & Supplies"; and by having carried complainant's yellow pages advertising, both alphabetical and

display, in some 11<sup>3/</sup> directories without a signed contract therefor.

Defendant General, whose directory advertising is solicited and whose directories are published by General Telephone Directory Company, a nonutility affiliate of General, admitted that no signed contract (multi-signature advertising order) for the 11 directories could be found, and it was presumed to have been lost. General's collection agency, on December 11, 1968, filed suit against complainant (Action No. 50070 in the Anaheim Municipal Court) for collection of \$2,005.20 which General claims to be past due for complainant's directory advertising, including the advertising for which complainant claims it did not contract. Trial was set for January 15, 1969, but said trial date has been continued for 90 days at the request to General's chief counsel by the presiding officer.

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<sup>3/</sup> For the Ambassador Sauna, A/C 192-9372, in directories for Whittier, \$6.50 per month per "sig on multi", dated 9-7-66, p.7, Ex. 17, & Pomona, \$6 per month, per "sig on multi", dated 9-6-66, p. 9, Ex. 17; for Finlandia Sauna Repair Service, A/C 190-1315, in directories for Santa Monica, \$18 per month; Malibu, \$5.50 per month; Sunland, \$8.20 per month; San Bernardino, \$12.65 per month; Ontario, \$11.05 per month; and Pomona, \$14.25 per month; all per "sig on multi", dated 7-23-66, pp. 2 through 7, Ex. 18; and for Finlandia Sauna Repair Service, A/C 193-0350, in directories for Monrovia, \$9.55 per month; Sierra Madre, \$8.20 per month; and San Fernando, \$17.75 per month; also per "sig on multi", dated 7-23-66, pp. 1 through 3, Ex. 19. Total charges per "sig on multi" - \$1,312.80 based on the number of months charged for.

Public hearings were held before Examiner Warner on October 15, 16 and 29, 1968, at Anaheim. Complainant's witnesses were its president, Clifford B. Lange, and his son, William Lange. Pacific's witnesses were its directory sales supervisor in directory operations and general administration from San Francisco, and an advertising salesman from Los Angeles. General's witnesses were a former directory sales representative (April 1964 until December 1966) of its directory company, and its centralized accounts supervisor from Santa Monica.

Late-filed exhibits and briefs were filed on or before November 25, 1968. The matter stands submitted and is ready for decision.

The record is replete with confused communication and lax relations between the complainant and the two defendant public utility telephone companies' directory advertising departments. Such confusion and laxity commenced prior to or during 1965 when, as shown in Exhibit No. 1 and testimony, complainant attempted to secure a distinct classification of its business. The record shows that Pacific's directory salesmen, yellow pages customers' service representatives, the Anaheim customers' service office manager, and finally, the general directory manager for Southern California, have from time to time attempted to execute and renew advertising orders, correct errors, change classifications, collect charges due, file suits for collection, and finally defer filing suit for collection of the alleged amount past due to Pacific of \$2,683.32. Complainant has refused to pay Pacific for advertising charges levied pending clarification of the bases of such charges.

Complainant also had great difficulty with General to be properly classified in its yellow pages directory; and complainant also refused to pay advertising charges levied by General pending clarification of the bases of such charges and the bases of advertising for which complainant claimed it had not contracted; whereupon General cancelled complainant's accounts; and General's collection agency filed Action No. 50070' (supra).

General claimed that, according to its directory company's sales procedures and its own accounting procedures, there must have been a signed multi-signature application form for complainant's yellow pages advertising in the eleven directories disputed as non-contracted-for by complainant. Despite General's witnesses' testimony, complainant denied having ordered, either verbally or in writing, such advertising, and no documentary evidence was produced to support General's claims of the prior existence of signed contracts, allegedly "lost" or "not able to be found" or produced for this record. Of particular significance are the three separate dates (7-23-66, 9-6-66 and 9-7-66) on which signatures on multi-signature forms purportedly were obtained from complainant by defendant General. No such signatures are of record herein, and are denied by complainant to have been given by it. Defendant's tariffs contain sample advertising order forms, all of which are contractual in nature, when signed by the parties.

It is clear to the Commission that, from a public relations and customer relations standpoint, each defendant has acted poorly toward complainant. Yellow pages advertising is highly competitive with newspaper classified advertising, radio, television, magazine, billboard and all other advertising media; California is the only state which asserts public utility jurisdiction over yellow pages advertising because the revenues received by the utilities are directly related to the public utility telephone service; no public convenience and necessity is involved in yellow pages advertising; but each of the defendant utilities is required to file, and has filed, tariffs covering directory advertising. Contained in such tariffs are samples of the advertising order forms which must be signed by the customer-advertiser, and, when executed, such forms comprise the only contract between the parties. Any error or omission on the part of the contracting telephone utility may result, according to the prescribed tariffs, in abatement to the customer of charges for advertising in an amount not to exceed the total of such charges. According to the tariffs, it is incumbent on the utilities to make a reasonable effort to ascertain the validity of advertising, and to establish proper business classifications.

The Commission finds that:

1. Complainant, Lange Industries, Inc., a California corporation and general contractor, among other things, secures sauna bath stoves manufactured by Northwest Foundry and Furnace Company of Portland, Oregon, installs such stoves, and constructs



sauna bath stalls under the fictitious name of "Ambassador Sauna." As "Finlandia Sauna Repair Service", another fictitious name, complainant repairs such sauna bath installations. Complainant's headquarters are in Anaheim, California, and sauna baths and equipment have been installed and repaired by complainant throughout Southern California.

2. As shown in Pacific's Exhibit No. 16-A, commencing in 1964 complainant has purchased classified yellow pages alphabetical and display advertising from defendant, Pacific Telephone Company, under either or both fictitious names, in 17<sup>4/</sup> yellow pages directories. For the directory years 1968-1969, complainant has contracted for advertising in 7<sup>5/</sup> of Pacific's directories.

3. As shown in Exhibit No. 22, defendant Pacific claimed that complainant was delinquent in the amount of \$2,683.32 on August 23, 1968, including alleged delinquencies for Compton, Inglewood, San Pedro, and Beverly Hills directory advertising.

4.a. Pacific erred by omitting the name of the City of Anaheim in complainant's display advertising for Ambassador Sauna in the 1967-1968 Compton, Inglewood and San Pedro directories for which total charges of \$906.85 are claimed to be delinquent.

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<sup>4/</sup> Orange County, Pasadena, Beverly Hills, North Hollywood, Glendale, San Diego, South San Diego, North San Diego, Culver City, Riverside, San Pedro, Inglewood, Compton, Colton, Alhambra, Los Angeles and Montebello.

<sup>5/</sup> Riverside, Pasadena, Los Angeles, Beverly Hills, North Hollywood, Glendale and Orange County.

b. The value of complainant's display advertising in Pacific's Compton, Inglewood, and San Pedro directories was reduced by 50 percent (rather than the 25 percent suggested by Pacific) due to Pacific's errors and omissions in said directories. The aforementioned directories were not in the same county as complainant's headquarters, and public street map directories show 14<sup>6/</sup> Lincoln "avenues" in Los Angeles County, of which 2<sup>7/</sup> are in the areas covered by said directories, and 8<sup>8/</sup> are in Orange County. (Pacific claimed that there was no confusion as a result of the omission of the City of Anaheim from complainant's display advertisement address.)

c. Complete 100 percent loss of value of the advertisement due to Pacific's omission is offset by 50 percent due to the fact that complainant's telephone number was properly listed, and the bulk of complainant's business was and is conducted by telephone, as contrasted to walk-in business, according to complainant's testimony. Also, complainant's alphabetical classified yellow pages directory listing, which was anchored to Ambassador Sauna's display advertising, properly showed the Anaheim address.

5.a. Pacific erred by not classifying Ambassador Sauna under "Sauna Equipment & Supplies" in its Beverly Hills yellow pages

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<sup>6/</sup> Altadena, Culver City, Los Angeles, El Monte, Glendale, Monterey Park, Montebello, Pasadena, Pomona, South Gate, Torrance and Monrovia, Val Verde, and in Los Angeles County near Diamond Bar.

<sup>7/</sup> South Gate and Torrance.

<sup>8/</sup> Anaheim, Cypress, Fullerton Buena Park, Orange, Santa Ana, Huntington Beach, and Orange County.

directory issued in February 1968 for Beverly Hills. Pacific listed Ambassador Sauna in error under "Baths Equipment & Supplies" after the proper classification had been established on August 27, 1967, available for directories published after November 1, 1967, and after complainant, on August 24, 1967, signed an advertising order for the correct and agreed-to classification. Pacific also erred in the same Beverly Hills February 1968 directory by omitting Ambassador Sauna's Anaheim address.

b. Pacific's admission of complete error and offer of 100 percent abatement of charges totalling \$170.31 for complainant's display advertising in Pacific's February 1968 Beverly Hills directory is reasonable, and such abatement is pursuant to Pacific's tariffs.

6. No other errors or omissions or violations of Pacific's tariffs have occurred, except that Pacific has listed certain non-sauna equipment and supply businesses, such as "Roman Holiday Health Club" and "Marshall's Roman Spa" under its classification of "Sauna Equipment & Supplies" without complete investigation of the advertisers' legitimate business.

7.a. As shown in defendant General's Exhibit No. 16-A, commencing in July of 1965, for the directory years 1965-1966 and 1966-1967, complainant contracted for classified yellow pages alphabetical and display advertising in 14<sup>9/</sup> of General's directories.

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<sup>9/</sup> Covina, Huntington Beach, Laguna Beach, Long Beach, Downey, Redondo Beach, West Los Angeles, Santa Monica, Whittier, Pomona, Malibu, Sunland, San Bernardino and Ontario.

b. No signed advertising order can be found by defendant, and none was produced for the record, contracting for complainant's advertising in 11<sup>10/</sup> of defendant General's 1966-1967 directories.

c. Defendant General's collection agency has filed suit against complainant, Action No. 50070 in the Anaheim-Fullerton Municipal Court, for collection of \$2,005.20, which General claims to be past due for complainant's directory advertising in the 1965-1966 and 1966-1967 directories, including the advertising for which complainant did not contract.

d. Defendant General erred and violated its tariffs by charging complainant for non-contracted directory advertising, the total of which is \$1,312.80.

e. Defendant General in no other way violated its tariffs, except that it failed to provide complainant with copies of directories in which its yellow pages classified alphabetical and display advertising appeared according to contract.

8.a. Both defendants, Pacific and General, have been lax and have acted poorly in their customer relations with complainant.

b. Defendants failed to heed complainant's request for the proper classification of its sauna businesses during the directory years 1965, 1966 and 1967.

Based on the foregoing findings, the Commission concludes that defendant Pacific should adjust its claimed charges against

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<sup>10/</sup> For Ambassador Sauna, Account No. 192-9372, Whittier and Pomona (Exhibit No. 17); for Finlandia Sauna Repair Service, Account No. 190-1315, Santa Monica, Malibu, Sunland, San Bernardino, Ontario and Pomona (Exhibit No. 18); and Account No. 193-0350, Monrovia, Sierra Madre and San Fernando (Exhibit No. 19).

complainant in the amount of \$623.73, and defendant General should adjust its claimed charges against complainant by the amount of \$1,312.80. Further, defendant Pacific should adjust all charges to a 12 month's basis where applicable.

Defendants Pacific and General should review the public relations aspect of their yellow pages directory advertising selling, accounting and billing practices looking toward their improvement and the elimination of the errors, omissions and tariff violations disclosed on this record.

Defendants should make a reasonable effort to determine that advertisers under the classification "Sauna Equipment & Supplies" are properly classified, pursuant to the defendants' tariffs.

In all other respects this complaint should be dismissed.

O R D E R

IT IS ORDERED as follows:

1.a. Defendant Pacific Telephone Company shall, within ten days after the effective date hereof, adjust the account of Clifford B. Lange, as set forth in Exhibit No. 22, by reducing the claimed charges as of August 23, 1968, against Lange Industries, Inc., Finlandia Sauna Repair Service, and Ambassador Sauna from \$2,683.32, by the amount of \$623.73, to the amount of \$2,059.59; shall so notify the complainant; and shall so notify the Commission in writing thereof.

b. Pacific also shall adjust all charges to a twelve months' basis, where applicable, and shall so report in writing to the Commission in compliance herewith.

2. Defendant General Telephone Company of California shall, within ten days after the effective date hereof, adjust complainant Lange Industries, Inc.'s accounts for Ambassador Sauna, Account No. 192-9372, and Finlandia Sauna Repair Service, Accounts Nos. 193-0350 and 190-1315, by reducing the claimed charges of \$2,005.20, as set forth in Action No. 50070 of the Anaheim Municipal Court, by the amounts of \$132.00, \$408.25 and \$772.55, for a total of \$1,312.80, to \$692.40; shall so notify the complainant; and shall so notify the Commission in writing thereof.

3. Defendants Pacific and General shall review the public relations aspects of their yellow pages directory advertising selling, accounting and billing practices looking toward their improvement and the elimination of the errors, omissions and tariff violations disclosed on this record.

4. Defendants shall make a reasonable effort to properly classify "Sauna Equipment & Supplies" advertisers pursuant to their tariffs.

5. In all other respects this complaint, Case No. 8836, is dismissed.

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

Dated at San Francisco, California, this 19th day of MARCH, 1969.

William J. ...  
President  
Augustus ...  
J. P. ...  
Commissioners

Commissioner J. P. VUKASIN, JR.  
Present but not participating.

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