

Decision No. 76738**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BOULEVARD RAMBLER, INC., a California
corporation,

Complainant,

vs.

GENERAL TELEPHONE COMPANY OF CALIFORNIA,

Defendant.

Case No. 8945
(Filed July 28, 1969)Lawton, Christensen, Flynn, Fazio &
McDonnell, by William A. Fazio, for
complainant.Albert M. Hart, H. Ralph Snyder, Jr., and
Walter Rook, by Walter Rook, for
defendant.O P I N I O N

The complainant requests an order disallowing charges for advertising in the defendant's classified directory (yellow pages), returning monies paid under protest for said advertising, and awarding attorney's fees.

A public hearing on the complaint was held in Los Angeles on December 19, 1969 before Commissioner Vernon L. Sturgeon and Examiner Rogers and the matter was submitted.

The defendant had filed with its answer a motion to dismiss the complaint (in effect a demurrer) and a motion to strike the portions of the complaint praying for costs and attorney's fees.

At the hearing the motion to dismiss and the motion to strike portions of the complaint were denied. We concur in this ruling. The complaint relates to charges for directory advertising of which we do have jurisdiction (Section 1702, Public Utilities Code). We do not have jurisdiction to award costs and attorney's fees (Postal Telegraph Cable-Company v. Pacific Gas and Electric Company, Decision No. 12358 dated July 14, 1923, in Case No. 1362 - 23 C.R.C. 729 at 734, C.C.P. 1021).

The complainant sells new and used American Motors products (Ramblers). The complaint is based on the assertion that complainant's telephone directory advertisement was so placed by defendant in the 1968 directory for Covina, Azusa, Baldwin Park, Glendora, Hacienda Heights, Industry, Irwindale, La Puente, Rowland Heights, West Covina, San Dimas and Walnut, that it appeared in the used automobile section of the directory rather than the new car portion of the directory and that complainant principally deals in new cars.

The defendant introduced a copy of the pertinent portions of the yellow pages (Exhibit No. 2). This exhibit shows on page 47 under the heading "Automobiles", a two-column ad by the complainant. The upper left hand column of the directory is headed "Automobile Dealers - New Cars". The center section contains three two-column ads, the top of which is for new Toyotas; the second of which is for new Volvos, and the third is complainant's. These ads are contiguous to each other and of equal size.

Exhibit No. 1 is a copy of the defendant's printed directive relative to advertising practices. Page No. 1 of said exhibit contains a heading "Listings", which among other things, contains Item No. 5 as follows:

"Listings and their related display advertisements should touch. This principle is satisfied if the advertisement touches its listing column, or if it borders on other related advertisements which in turn touch the listing column. The gutter of the directory is not considered to break this continuity."

Defendant's tariff, Schedule Cal PUC No. D-1 Original Sheet 8 Item 2 g provides:

"A listing shall be established for the applicant, at the rate applicable, under each classified heading where the applicant orders a display advertisement. No specific position for display advertising is guaranteed."

The record herein shows that the complainant's advertisement was ordered on September 3, 1968, long after the other comparable ads had been placed in the yellow pages. This placing is in conformity with defendant's practices as set out in its rules (Exhibit No. 1). These rules provide that:

"Position preference in the same advertisement size and classification is awarded as follows:

1. Existing advertisements in order of seniority.
2. Advertisements increased from a smaller size.
3. Advertisements moved from other classifications.
4. Advertisements reduced from a larger size.
5. New advertisements, in order of date of purchase."

Findings

We find that:

1. The complainant's display advertisement was placed in a location in the classified directory in conformance with defendant's standard practices relative to the placing of display advertisements.
2. The complainant's display advertisement was junior in time of purchase to all other equal size new car ads in defendant's classified directory and was placed in said directory in conformance with defendant's standard practices relative to the placing of display advertisements.

We conclude that:

1. The complaint states a cause of action.
2. The Commission cannot award damages or attorney's fees.
3. The defendant has complied with its tariff provisions and its rules relative to placing of ads.
4. The complainant not having adduced evidence supporting the allegations of the complaint, the same should be dismissed.

ORDER

IT IS ORDERED that the complaint is dismissed.

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

Dated at San Diego, California, this 3rd day of FEBRUARY, 1970.

William L. Swanson, Jr.
President

[Signature]

[Signature]

Vernon L. Stevenson
Commissioners

-4- Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.