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Decision No. 78211

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Gertrude Saks,
Complainant

vs.

Pacific Telephone Company,
Defendant.

Case No. 9106
(Filed August 17, 1970;
Amended December 8, 1970)

Gertrude Saks, in propria persona, complainant.
Richard Siegfried, Attorney at Law, for defendant.

O P I N I O N

After due notice a public hearing on the complaint was held before Examiner Rogers in Los Angeles on December 18, 1970, and the matter was submitted.

The original complaint is lengthy. The gist thereof is that complainant is an electrologist specializing in the removal of unwanted hair; that she had placed advertisements in The Pacific Telephone and Telegraph Company's yellow page advertising section under the heading "Electrolysis Treatments" which contained the language "Scientific elimination of bacteria, germs, impurities"; and that the Electrologists Association of which she is a member threatened to expel her unless she removed this language from her advertisements as it implied that she was the only one who removed germs. This language first appeared in her advertisements in 1968 and she complained. It was nevertheless reinserted in the advertisements in two yellow page directories (Beverly Hills and Culver City) in 1970.

She wants the cost of these advertisements repaid. In addition, it appears that complainant is dissatisfied with the cut (picture) of herself appearing in the advertisement.

The amendment to the complaint simply is to the effect that she was required to pay for yellow page advertising, under protest, in order to be assured of advertising in the yellow pages in 1971.

The defendant's answer generally denies the complaint but admitted that on September 23, 1969 complainant renewed her advertising in defendant's 1970 Beverly Hills and Culver City Directories, complainant asked if the picture which had previously appeared in her 1/4 column advertisements in both directories could be improved, complainant was advised that this could not be done without either removing some copy or enlarging the advertisements and complainant declined to do either, and the advertisements were printed and published in the two directories pursuant to contracts signed by complainant on September 23, 1969.

As an affirmative defense, defendant alleges that the substance of the complaint is that defendant erred by not deleting a line of copy and changing complainant's picture in the 1/4 column advertisements which were published in defendant's February, 1970 Beverly Hills and Culver City Directories. Defendant alleges that the complaint does not set forth facts sufficient to state a cause of action and that the relief to which she is entitled, if any, is specified by its Schedule Cal. P.U.C. No. 40-T, 11th Revised Sheet 5, Special Condition 10 which provides as follows:

"In case of the omission of a part of or other error in an advertisement, the extent of the Utility's credit allowance shall be a pro rata abatement of the charge in such a degree as the error or omission shall affect the entire advertisement which may amount to abatement of the entire charge and in case of the omission of an entire advertisement, the extent of the Utility's credit allowance shall be an abatement of the entire charge."

Defendant alleges no such error was committed and alleges that the advertisements were printed pursuant to signed contracts.

The complainant testified that the allegations of her original complaint were true. The original complaint, omitting the heading, salutation and affirmation reads as follows:

"This complaint is between myself Gertrude Saks, self employed, Electrologist, and the Pacific Telephone Company. The phone number that this applies to is 271-8851. I had informed the sales representative of the phone Co. Mr. Quarry that the Feb. 1969 Yellow Page ad had to be changed from the 1968 advertisement, as the Association that I belong to, the Electrologist's Association of California, had called me on the carpet on the wording of the ad and had told me I would be dismissed from the association, if I reinserted that particular ad. I told this to Mr. Quarry, that I wanted the same size ad in both the Yellow Pages of the Beverly Hills directory, and the Culver City directory. Mr. Quarry tried very much to persuade me to purchase a larger ad, and I told him I definitely did not want a larger ad. As a matter of fact every year when the representative comes out to sell you an ad they ALWAYS try to sell you a larger ad.

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I know this to be so because I have ads in the Malibu area, Beverly Hills Directory, Culver Directory, Central Directory, and used to have one in the Inglewood Directory. I also told Mr. Quarry that the picture in the phone book was terrible and that I wanted a new picture, which I supplied him with. He told me that the wording would be as I request and the picture changed, and that he would get back to me with the proof for approval. He subsequently left the proof under my door because I was not in. The proof did not have all the copy in it but was twice the size of the ad I had requested. I phoned the Pacific Telephone and told them to have Mr. Quarry contact me. When I saw I did not get a call from him, (I have two offices and divide my time between them) I realized that the book would be going to press, I phoned in and said to leave word with Mr. Quarry that under no circumstances would I pay for the ad which he had left under my doorway. When the Beverly Hills directory came out, the ad which I had requested was not in, but rather the ad that had appeared the previous year and for which my association held me in violation appeared in the Yellow Pages. Needless to say I was very angry and sent the following telegram to the telephone company, Feb. 19, 1970. RE PHONE NUMBER 271-8851 AS PER MY CONVERSATION WITH YOUR OFFICE, SINCE IN ERROR, YOU INSERTED LAST YEARS AD IN THE YELLOW PAGES OF BOTH THE CULVER CITY AND BEVERLY HILLS DIRECTORIES, I WILL NOT PAY FOR EITHER OF THESE ADS. A HEARING BEFORE THE UTILITIES COMMISSION WOULD BE IN ORDER GERTRUDE SAKS 8879 WEST PICO BLVD. LOS ANGELES CALIF 90035. On the 17th of April I received a letter from Barbara Miller of the Pacific Telephone Company. 'This is in reference to your claim regarding the directory advertising appearing in the Beverly Hills

and Culver City February 1970 Directories. On February 17, 1970 you registered a claim stating you requested your directory sales representative to make copy changes in your ads appearing under the Classified Heading of "Electrolysis Treatment." According to your sales representative, C. Quarry, the only change you requested was the picture in your ads. You were advised to make a larger picture would mean to either increase the size of the ad or remove some of the copy in the size ad you now have. You would not concur to either. He also stated you told him you called our Customer Service Office to make the copy changes. We show no record of this call. We do show record of a request you made to change the billing of the advertising charges from telephone bill to separate billing. I am sorry, but this change cannot be made until February 1971 when your 1970 contracts expire. In view of the above information, I can see no basis for an adjustment and have noted your records to contact you early at the start of the 1971 sales campaign to make any necessary changes you wish.' My reply to Miss Miller, a copy of which I also mailed to the Public Utilities Comm. on the 5th of May, was 'This is in response to your letter of April 17, 1970, re directory advertising for Beverly Hills and Culver City February 1970 Directories.

Mr. Quarry of your office phoned me, and at the time he claimed he did not recall our conversation too well. I had mentioned to him that I had been called in by the Electrologists association of which I am a member and had been told that the on (sic) line "Scientific Elimination of Bacteria Germs Impurities" in the ad inferred that none of the other electrologists removed germs and that only I did,

I GAVE THEM MY WORD THAT THIS LINE WOULD BE DELETED FROM THE SUBSEQUENT ISSUE, and as you will make note, it was deleted from the central directory. I also told Mr. Quarry that the picture in question was a bad picture, and that not as your letter states I wanted a larger picture, but to the contrary I said you can make the picture as small as you want, but I do want my new picture as well as an oval put around the picture. Your representative chose fit to try and push a larger ad on me and left a copy of one twice the size of the one in the directory and never made further contact with me. I called your office many times to say I would not pay for the larger ad and to have the representative call me. Your office chose to just reinsert last years ad for which I was in violation with my association. In view of the above information, I will not pay for these ads, and insist on a hearing before the Utilities and Exchange Commission, (sic) who are receiving a photostatic copy of this letter. I hope that you will take adequate steps in clearing up this matter, Gertrude Saks. R.E.

Since this letter went out to the phone company, I have received several notices threatening cut off service on my telephone. The billing on one of the ads, the Culver ad was separated to separated billing, and a girl at the phone company told me that I must pay it or have my phone cut off. I explained to the girl that it was I that had requested separated billing, and that this was a disputed bill. After a heated discussion she said she would note my records. The company has goofed, and they want me to pay for it, for money which is hard earned. I have three telephones, answering service on two of

of them, and four yellow page directory ads in different areas. I would appreciate if you would settle this very aggravating situation."

The only testimony complainant added was generally that the cuts in the 1970 advertisements were not as good as those in the 1969 advertisements.

Defendant's advertising sales representative who handles the defendant's complaints relative to its Beverly Hills and Culver City directories testified that he met with complainant on September 23, 1969 relative to her yellow page advertising; that she was well pleased with the results of her advertisements but asked him what he thought about the picture and he told her he thought it looked good, particularly since photos do not reproduce too well in the yellow pages when they are small; that complainant signed the advertising contracts (Exhibit No. 2); that after signing the contracts, complainant showed the witness a photo and stated the photo in the advertisement was the one from which the advertisement was made and asked him to take the picture and improve on the advertisements; that he told her he did not think anything could be done to improve on the picture as it appeared in the advertisements; that the photo she handed to him was the one by which the prior advertisement was made; that he knew this to be true because the picture had been marked by the defendant's art department; that complainant did not, to his recollection, suggest any changes in the text of the advertising; that he understood the advertisements were to be the same as 1969 except that he would see if a better picture could be inserted.

The witness further testified that the art department made a suggested sketch of a larger advertisement; that after attempting to reach complainant by phone with no success he wrote the complainant a note and left the note, together with the sketch of the suggested advertisement under the door; that complainant called and said she did not want the larger advertisement; and that after complainant filed her complaint he called her on the phone on March 23, 1970, reminding her that he and complainant had never discussed copy changes and she acknowledged that this might be true but claimed she called the directory customer service about it.

The defendant also called as a witness its directory personnel supervisor who testified that he is in charge of the investigation and settlement of claims of errors in the alphabetical and yellow page directories of defendant; that he is familiar with the complaint of complainant; that he could find no record of complainant having requested deletion of the language "Scientific elimination of bacteria, germs, impurities"; that complainant complained she wanted a new picture in her advertisement; that complainant gave defendant the same picture used for prior advertisements for use; that the picture could be improved only by making it larger; that in order to enlarge the picture it would be necessary to either remove some of the copy or go to a larger advertisement; that complainant did not indicate that any copy was to be changed or eliminated; and that a larger sized advertisement was prepared and delivered to complainant who advised defendant she did not want it.

Findings

On the record, we find that:

1. Gertrude Saks, complainant, is an electrologist specializing in the removal of unwanted hair from humans. During the years 1969 and 1970 complainant maintained two offices, one in Los Angeles and one in West Los Angeles. During said years The Pacific Telephone and Telegraph Company (defendant) furnished complainant's telephone service at said places of business. Complainant's telephones were listed in the regular directory and in the yellow pages (business directories) for Beverly Hills and Culver City under the classification "Electrolysis Treatments".

2. In the yellow page advertisements for 1969 in the defendant's Beverly Hills and Culver City yellow page directories, complainant had a one column advertisement inserted advertising her business and containing the language "Scientific elimination of bacteria, germs, impurities" together with a cut (picture) of her face.

3. Complainant is a member of an association called the Electrologists Association of California. This association, when the 1968 advertisement appeared in the yellow pages, informed complainant that the language quoted was objectionable and advised her not to use such language in future advertisements.

4. Prior to the publication of the 1969 yellow page directories complainant informed defendant that the quoted language was objectionable and should be deleted from the 1970 advertisement in the two directories. Complainant also advised defendant that the cut (picture) was objectionable to her and asked to have it improved. The cut complainant furnished to defendant for use on the advertisement was the same cut she had used in the 1969

advertisement. Complainant did not give defendant a new or different cut. When the advertisement was ordered by complainant, defendant was not told by complainant or any other person not to print the advertisements unless a better picture could be printed.

5. The language "Scientific elimination of bacteria, germs, impurities" was included in the 1970 yellow pages contrary to complainant's desires and damaged her with her professional association. Defendant was informed by complainant prior to the insertion of the language that the language should not be included. The cut was the cut furnished by complainant and was included at complainant's request.

6. Complainant paid the defendant \$21.75 per month for 12 months for the improper advertisement in the Beverly Hills yellow pages and \$15.00 per month for 12 months for the improper advertisement in the Culver City yellow pages. These advertisements were erroneous and said error was caused by defendant's negligence. Complainant did, however, receive some benefit from each advertisement. The defendant should remit to complainant 50 percent of the cost of each advertisement for the period of the advertisement.

Conclusion

We conclude the defendant should remit to complainant the sum of \$220 as one half the cost of the Beverly Hills and Culver City advertisements in the 1970 yellow page directories.

O R D E R

IT IS ORDERED that The Pacific Telephone and Telegraph Company pay to Gertrude Saks the sum of \$22.0 as reimbursement for improper advertisements in the 1970 Culver City and Beverly Hills yellow page directories. This order shall be served on defendant personally or by registered mail.

The effective date of this order shall be twenty days after the date of service on defendant as stated above.

Dated at San Francisco, California, this 26th day of JANUARY, 1971.

[Signature]
Chairman
William Lyons - J
[Signature]
Vernon L. Stinson

Commissioners