

ORIGINAL

Decision No. 78575

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

William Kenneth Owens,
Complainant,
vs.
The Pacific Telephone and
Telegraph Company,
Defendant.

Case No. 9122
(Filed September 17, 1970)

William Kenneth Owens, Sr., for Owens &
Sons Cesspool Service, for himself,
complainant.
Richard Siegfried, Attorney at Law, for
The Pacific Telephone and Telegraph
Company, defendant.

O P I N I O N

This is a complaint by William Kenneth Owens (hereinafter referred to as Owens) against The Pacific Telephone and Telegraph Company (hereinafter referred to as PT&T). A duly noticed public hearing was held in this matter before Examiner Jarvis in Fresno on January 21, 1971. The matter was submitted on January 29, 1971.

Preliminarily, it is noted that at the hearing PT&T acknowledged that the affirmative defense of the statute of limitations, raised by its answer, is not applicable to the facts of this case, and it will not be further considered.

The dispute herein involves admitted errors by PT&T in a white page listing and two yellow page advertisements. Owens is engaged in the business of installing and cleaning septic tanks and cesspools. In 1967 Owens' post office address was Fresno but he was a telephone subscriber of General Telephone Company in its Fowler Exchange.

On August 29, 1967, Owens entered into contract with PT&T for the following listings and advertisement for the 1967 PT&T Fresno Directory.

- a. A bold type listing for Owens & Sons Cesspool Service in the alphabetical section,
- b. A similar bold type reference in the classified section, and
- c. A 1/8 (double quarter column) display advertisement in the classified section.

The text of the requested listings and advertisement requested by Owens and shown on the face of the contract indicated that Owens was located in Fresno. PT&T's employees unbeknownst to Owens and without his consent changed the listings and advertisement so that when they appeared in the 1967 Fresno Directory they indicated that Owens was located in Fowler rather than Fresno.

The dispute herein centers over the amount of credit allowance which should be allowed Owens in the circumstances. PT&T credited him with \$8.25 per month, which amounted to 25 percent of the advertising charge. Owens contends that the amount should be greater because he lost a substantial amount of business from persons in Fresno who would have utilized his services if the directory had shown him to be a local businessman.

The charge for the boldface listing in the alphabetical pages of the directory was \$3.25 per month. The charge for the boldface display reference was \$1.75 per month and the charge for the 1/8 page display advertisement was \$28 per month.

The Commission is of the opinion and finds that Owens suffered at most only nominal damage because of the error in the boldface listing in the alphabetical pages and should not be entitled to a credit allowance with respect thereto. Any person looking for the Owens & Sons Cesspool Service listing in the alphabetical (white)

pages of the directory would almost certainly be an existing customer or someone who had heard of Owens and would not be influenced by the error in the listing. It is clear that Owens was damaged by the errors in the other listings. Owens, who was not a PT&T subscriber at the time, would not normally have appeared in the Fresno Directory. The primary purpose of his placing the yellow page listings therein was to attract business. The error in incorrectly listing the situs of his business substantially thwarted this purpose to the detriment and damage of Owens. The Commission finds and concludes that Owens should be allowed a credit allowance of 100 percent for the 1/8 page display advertisement and 50 percent for the boldface display reference.

As indicated, PT&T gave Owens a credit allowance of \$8.25 per month for a total of \$99. The total amount of the credit allowances hereinafter ordered is \$346.50. PT&T will be ordered to give Owens an additional credit allowance of \$247.50. The record indicates that in October 1970 PT&T, acting through the Merchants Credit Association of Fresno, secured a default judgment against Owens for approximately \$670. Included in that amount were the charges herein considered and other charges not in dispute. PT&T will be ordered to credit the sum of \$247.50 in partial satisfaction of the aforesaid judgment.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. At all times herein mentioned Owens was engaged in the business of installing and cleaning septic tanks and cesspools.
2. In 1967 Owens' post office address was Fresno, but he was a telephone subscriber of General Telephone Company in its Fowler Exchange.

3. The Commission takes official notice that Fowler is located in close proximity to Fresno.

4. On August 29, 1967 Owens entered into a contract with PT&T for the following listings and advertisement for the 1967 PT&T Fresno Directory:

- a. A bold type listing for Owens & Sons Cesspool Service in the alphabetical section,
- b. A similar bold type reference in the classified section, and
- c. A 1/8 (double quarter column) display advertisement in the classified section.

5. The text of the requested listings and advertisement requested by Owens and shown on the face of the contract indicated that Owens was located in Fresno.

6. Employees of PT&T unbeknownst to Owens and without his consent, changed the listings and advertisement so that when they appeared in the 1967 Fresno Directory they indicated that Owens was located in Fowler rather than Fresno.

7. The charge for the boldface listing in the alphabetical pages of the 1967 Fresno Directory was \$3.25 per month. The charge for the boldface display reference was \$1.75 per month and the charge for the 1/8 page display advertisement was \$28 per month.

8. Owens suffered at most only nominal damage because of the aforesaid error in the boldface listing in the alphabetical pages of the 1967 Fresno Directory.

9. The primary purpose of Owens placing the aforesaid yellow page listings in the 1967 Fresno Directory was to attract business. The error in incorrectly listing the situs of Owens' business substantially thwarted said purpose to the detriment and damage of Owens.

10. Owens is not entitled to a credit allowance for the error in the boldface listing in the alphabetical pages of the 1967 Fresno Directory. Owens is entitled to a 100 percent credit allowance for the error which appeared in the 1/8 display advertisement in yellow pages of the 1967 Fresno Directory. Owens is entitled to a 50 percent credit allowance for the error which appeared in the boldface display reference in the 1967 Fresno Directory.

11. The total amount of the credit allowances provided for herein is \$346.50.

12. PT&T has given Owens a credit allowance of \$99 in connection with the aforesaid errors.

13. PT&T should be ordered to give Owens an additional credit allowance of \$247.50.

14. In October 1970 PT&T, acting through the Merchants Credit Association of Fresno, secured a default judgment against Owens in the Fresno Municipal Court for approximately \$670. Included in said judgment were the charges herein considered and other charges not in dispute.

Conclusions of Law

1. PT&T should be ordered to give Owens an additional credit allowance of \$247.50 in connection with the errors respecting Owens' listings and advertisement in the 1967 Fresno Directory.

2. PT&T should be ordered to apply the amount of the credit allowance herein ordered in partial satisfaction of the judgment which it procured against Owens in October 1970 through the Merchants Credit Association of Fresno.

O R D E R

IT IS ORDERED that:

1. In addition to the credit allowance of \$99 heretofore voluntarily granted Owens by The Pacific Telephone and Telegraph Company in connection with errors in Owens' listings and advertisement in the 1967 Fresno Directory, The Pacific Telephone and Telegraph Company shall grant Owens a credit allowance of \$247.50 so that the total amount of credit allowances shall be \$346.50.

2. The Pacific Telephone and Telegraph Company shall apply the additional credit allowance of \$247.50 ordered in Paragraph 1 hereof in partial satisfaction of the judgment for approximately \$670 which it procured through the Merchants Credit Association against Owens in the Fresno Municipal Court in October 1970.

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

Dated at San Francisco, California, this 20th day of APRIL, 1971.

Chairman
William J. Owens
James M. [illegible]
Vernon L. Sturgeon
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.