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Decision No. 78580

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Walnut Creek Insulation and Acoustical, Inc.)

Complainant,

vs.

Pacific Telephone Company, a corporation,

Defendant.

Case No. 9083
(Filed June 19, 1970)

Mrs. Frances C. O'Brien, for complainant.
Robert E. Michalski, for The Pacific Telephone
and Telegraph Company, defendant.

O P I N I O N

After due notice hearings in this complaint were held on August 14 and November 2, 1970, in Concord. The matter was submitted on November 9, 1970, with the receipt of the transcript.

Complaint

The substance of the complaint is that The Pacific Telephone and Telegraph Company (Pacific) failed to include an advertisement for Walnut Creek Insulation and Acoustical, Inc. (complainant) in the classified section of its 1969 Contra Costa Directory. As a result, complainant requests that one year's exchange charges, including answering service charges, be cancelled and that Pacific pay the costs of its bringing suit.

Pacific concedes that an error was made in not printing the ordered advertisement, but since complainant is not being charged for the advertisement that was not printed, Pacific denies that the complainant is entitled to any relief and prays that the complaint be dismissed.

In the complaint, the Commission is requested to order the following:

1. Cancellation of all telephone charges on 933-3686, except long distance and message units until the current issue of the directory expires.
2. Cancellation of answering service charges required because of the omission, \$12.50 per month and calls.
3. Cost of complaint, if any.
4. For such other relief as commission deems just.

At the hearing, complainant modified this request by eliminating the second and third of the above items.

The amount of the first request is \$107.56, being the total of charges for a main business telephone and a secretarial line for the period July, 1969 to August 30, 1970.

Complainant's Presentation

Complainant is the only acoustical tile contractor located in Contra Costa County, installing tile and suspension acoustical systems in residences and commercial establishments. Other than a bookkeeper, the business is operated by one woman, complainant's owner, who estimates, buys material and arranges for installation. For 8 to 10 years prior to December 1969, complainant obtained service and maintained office space at 1291 Boulevard Way, Walnut Creek, to meet with contractors to discuss plans. Finding such meetings rarely necessary, complainant's owner decided to discontinue this office and to operate from her home. On May 27, 1969, complainant requested the advance assignment of a new business telephone number, to be installed on July 21 at owner's home.

Having maintained a classified advertisement for several years, complainant on May 15, 1969, signed a contract to continue the same advertisement with the exception of the number change. On or about June 10, not having received a proof of the advertisement as

had been furnished by defendant in previous years and being concerned about the new number, complainant queried defendant about the proof and was advised that all was in order and that a proof is not sent unless a major change is made in the advertisement.

On July 20, 1969, a new Contra Costa telephone directory was received by complainant, without said advertisement. Said directory includes the new number in the alphabetical and classified sections and does not list the superseded previous listing and the "if no answer" alternate thereto.

In August, a representative of defendant initially advised complainant that an adjustment would be made limited to the cost of the advertisement. When complainant protested that the entire service of the business depended on the advertisement and advised that the correctness of the proposed adjustment would be reviewed with this Commission, defendant's representative called complainant back, admitted that a greater-than-realized problem existed, promised more investigation and indicated more adjustment would probably be made. Not having heard from defendant, complainant in September contacted defendant's representative who requested additional time for the investigation and restated the limitation of the amount of the adjustment to the cost of the advertisement.

Complainant initially planned to have the bookkeeper answer the telephone at the owner's residence. Due to the small number of calls, complainant decided the use of a full-time employee to answer the telephone was not feasible. The number of calls having decreased and it being essential that no business opportunity be missed, complainant on September 10, 1969, arranged for the installation of an answering service. On December 1, 1969, complainant vacated the office space.

Defendant did not contact complainant regarding the adjustment and did not ask for payment of service charges for approximately six months. On February 13, 1970, defendant demanded full payment of the telephone bill, threatening service discontinuance. Complainant requested defendant to review the matter with the representative who had requested time for the investigation.

On February 17, 1970, defendant's customer service representative and complainant discussed the matter. Defendant requested permission to send the advertising salesman and supervisor to meet with complainant.

On February 20, 1970, without further notice or meeting, defendant again demanded payment and threatened discontinuance. Complainant thereupon asked to speak to defendant's local manager, who promised to investigate. On February 24, the local manager advised complainant that the amount of the advertisement was the maximum adjustment. When complainant indicated the proposed settlement was not acceptable and would present the case to this Commission, the local manager again requested complainant wait.

On February 27, defendant's local manager offered to credit the charge for the answering service if complainant would discontinue the answering service. Complainant rejected the offer since the answering service was essential due to the small number of calls.

Complainant testified that the local manager tried to discourage a complaint to this Commission by advising, "you have to have a lawyer if you go to the PUC" at \$50 per hour; that unless a lawyer was engaged, defendant's lawyers would cut complainant to shreds; and that of six similar complaints to the Commission, none had been successful. Thereupon complainant informally complained to the Commission.

During the pendency of the informal complaint, while complainant was out of town on vacation, defendant's representatives called complainant's bookkeeper a number of times and threatened service disconnection.

After further meetings and conversations with various representatives of defendant, complainant paid the bill since illness had prevented prompt filing of a formal complaint.

Complainant testified that the business depends on the classified advertisement since no salesmen or contractor contacts are employed, that contractors look for sub-contractors in the classified directory, that being the only acoustical contractor in the area is conducive to being called, and that individuals had advised that they were unaware of complainant's service during the absence of the advertisement.

Complainant testified that defendant's classified salesman had advised that the "free" classified listing in fine print indicates to callers a lack of subscriber interest in work, that the subscriber should have a line of dark print and preferably an advertisement should be used, expanded to two or three inches. Complainant maintained its situation was greatly diminished due to the location of its listing in fine print next to last under the class heading.

Complainant testified that total sales were \$21,847.84 for the period August 1968 to July 1969 and were \$11,549.73 for the period July 30, 1969 to August 1, 1970. Complainant indicated that the validity of comparing the amounts as an inclination of damage or diminution of service is questionable since building activity was abnormal during the periods. However, complainant maintains that the omission of the advertisement had a substantial negative effect on the business. After observing the effect of the omission for two months, complainant realized that one missed call could have had a great

impact on the business and consequently had the secretarial line installed.

Defendant's Presentation

Defendant's vice president for directory operations confirmed that complainant's advertising had in fact been omitted from the 1969 Contra Costa Directory under the heading of "Acoustical Contractors". The processing of such advertising and the steps taken to minimize errors and omissions were reviewed in detail. In Northern California about 960,000 advertising items are processed. Of these items which were to appear in directories, 513 did not. The most prevalent omission is the light-type listing. The omission of the advertisement resulting from multiple orders regarding the advertisement, service connection and service disconnection orders combined into an unusual case at a critical time of high directory compilation activity just before directory advertising was closed to listings.

Defendant's witness maintained that the omission of the advertisement did not diminish the value of complainant's basic telephone service in any manner. Defendant's witness supported this position at transcript page 97 as follows:

"While we feel the Yellow Pages is an excellent medium for advertising, the fact remains that not all our business accounts advertise in them. In Contra Costa only 5,500 of the some 9,500 actually advertise. Many use other media such as newspapers, radio, television, direct mail, personal contact and so forth.

"Further, a glance at this particular heading as shown in Exhibit 5, Sheet 2 behind the cover sheet, will disclose that there are eight firms listed under Acoustical Contractors. These firms appeared in various ways, some with large and some with small advertising items. Three appeared as regular type listings only, one of which was Walnut Creek Insulation.

"Further, a more detailed look will reveal that of the eight firms listed, only one was from Walnut Creek, as reflected by the telephone number. And the name of the firm, of course, ties in with Walnut Creek.

"The rest of the firms listed were either from Oakland, Orinda, San Rafael or from some other area not closely related to Walnut Creek.

"I fail to see how the omission of an ad, a promotional ad, under these conditions would possibly affect the value of the basic telephone exchange service."

Defendant does not accept the thesis that every error in, or omission of, an advertisement under a subscriber's dominant heading affects the value of basic telephone service. Defendant maintains that such an error may affect the value of an advertising program, but not always the value of the basic telephone service. Defendant's position is that each case must be analyzed on the basis of its own facts to establish the extent to which basic telephone service may be affected by any such error or omission. Defendant "feels" that error or omission in advertising which involve classified headings other than the dominant heading in the primary directory for a subscriber should never be considered as a reason for adjusting basic telephone exchange rates.

Since defendant's witness was of the opinion that the value of complainant's basic telephone service was not affected by the error, defendant maintains that no adjustment is warranted in this case.

Defendant's witness argued that the circumstances of this complaint were not comparable with the Faia case, Case No. 8647, Decision No. 75379, March 4, 1969, in which Pacific was ordered to make reparation to the subscriber in the amount of station exchange charges for one year because of diminished utility of the main business exchange listing caused by Pacific's failure to include requested lines of information with the classified directory listing.

Defendant considers the omission of complainant's advertisement to be separate and distinct from complainant's main exchange alphabetical and classified service listings. Since basic telephone service includes alphabetical, classified and information directory listings, defendant argues that the Faia lines of information are an integral part of the basic telephone service and that the omission herein being considered is not a part of the alphabetical and classified service listings. Defendant also differentiates the Faia case and the complaint by considering Faia to deal with the identification of a professional man and this complaint to relate to a promotional advertisement for a commercial business.

Findings and Conclusion

We find that:

1. Complainant in the classified sections of Pacific's 1968-1969 and 1970-1971 Contra Costa telephone directories used a one-inch advertisement under complainant's dominant business heading in place of the one-line, light-type, classified listing under said dominant heading.
2. Said one-inch advertisement in the classified sections of Pacific's 1968-1969 and 1970-1971 Contra Costa telephone directories is part of Pacific's basic exchange service to complainant in lieu of the one-line, light-type, classified listing under the dominant business heading in the classified section normally considered to be a part of basic telephone service.
3. Pacific, in error, substituted a one-line, light-type, classified listing under complainant's dominant business heading for a one-inch advertisement in the 1969-1970 telephone directory.

4. Complainant has never been billed for and has not paid for the advertisement requested for Pacific's 1969-1970 Contra Costa telephone directory.

5. Complainant has paid all exchange service charges incurred during the life of the 1969-1970 Contra Costa telephone directory.

6. Complainant is the only installer of acoustical tile in Walnut Creek listed under the classified "Acoustical Contractors" in Pacific's 1968-1969, 1969-1970, and 1970-1971 Contra Costa telephone directories.

7. Complainant relies on Pacific's exchange telephone service, including said advertisement, for new and repeat business, since no other promotional media are utilized.

8. Complainant had telephone answering service installed to mitigate the effects of Pacific's error.

9. Complainant's total sales decreased from \$21,847.84 during the life of the 1968-1969 Contra Costa telephone directory to \$11,549.73 during the life of the 1969-1970 Contra Costa telephone directory, but it is not possible to determine from this record what portion of the decrease may have resulted from the omission of said advertisement.

10. Pacific's failure to include the advertisement requested by complainant diminished the utility of the main business exchange listing for the year in which the 1969-1970 Contra Costa telephone directory was in use.

11. It is reasonable that Pacific should make reparation to complainant in the amount of charges for secretarial line service during the life of the 1969-1970 Contra Costa telephone directory.

12. \$107.56 is the amount of total charges paid by complainant for a main business telephone and a secretarial line during the life of the 1969-1970 Contra Costa telephone directory.

13. Complainant has suffered damage as a result of Pacific's aforesaid conduct of at least \$107.56.

14. Complainant should receive from Pacific \$107.56. No discrimination will result from the payment of interest on reparation for said amount.

We conclude that Pacific should be ordered to pay complainant reparations of \$107.56, being the total of monthly charges during the life of Pacific's 1969-1970 Contra Costa telephone directory for a main business telephone and a secretarial line, with interest at 7 percent per annum on each payment made by complainant for said service during life of said directory.

O R D E R

IT IS ORDERED that The Pacific Telephone and Telegraph Company shall pay to Walnut Creek Insulation and Acoustical, Inc. reparations, based on the monthly charges for a main business telephone

C. 9083 JMD

and a secretarial line during the life of the 1969-1970 Contra Costa telephone directory, amounting to \$107.56 with interest at 7 percent per annum on each payment made by Walnut Creek Insulation and Acoustical, Inc.

This order shall become effective twenty days after the date hereof.

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

William Synovec, Jr. Chairman
[Signature]
[Signature]
[Signature] Commissioners

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