

ORIGINAL

Decision No. 79095

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.

A. J. S. AUTO PARTS, INC., a
California corporation,

Complainant,

vs.

PACIFIC TELEPHONE COMPANY,
a California corporation,

Defendant.

Case No. 9143

(Filed October 30, 1970)

Philip Gordon, Attorney at Law,
for complainant,
Richard Siegfried, Attorney at
Law, for defendant.

O P I N I O N

Complainant alleges that defendant made an error in a quarter-page advertisement placed by complainant in defendant's November 1969 Orange County yellow page directory. Complainant asks general damages in the amount of \$10,000. Defendant denies that it made an error and asserts that in any case its tariff limits its liability to the amount of the charges for the advertisement.^{1/} The case was heard and submitted on February 9, 1971, before Examiner Robert Barnett at Los Angeles.

^{1/} "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's Schedule Cal.P.U.C. No. 40-T, 11th Revised Sheet 5, Special Condition 10.

After the case was called, but prior to the taking of evidence, the presiding examiner informed complainant that the Commission did not have jurisdiction to award general damages (Schumacher v. P.T.&T. (1965) 64 CPUC 295). The examiner offered to suspend proceedings in this matter while complainant pursued its remedy, if any, in an appropriate forum. As an alternative the examiner informed complainant that it could proceed before the Commission, but the Commission could award no more than an abatement of charges for the advertisement for one year. The charge for complainant's advertisement was \$125 a month. Complainant elected to go forward before the Commission.

The advertisement in question is set out in Appendix A No. 2. The portion of the advertisement that complainant asserts was omitted is shown in Appendix A No. 1. The principal difference between No. 1 and No. 2 is the letters "AJS" in No. 1 which were omitted from No. 2. Complainant asserts that the advertising copy it submitted to defendant included the letters "AJS"; defendant asserts that the letters "AJS" were not on the original copy submitted to defendant, but were submitted to defendant after the closing date of the Orange County telephone directory. Complainant asserts that there were other minor discrepancies in the ad, e.g., the lettering in "foreign car parts" on the copy that complainant submitted to defendant is different from the lettering "foreign car parts" in the ad as published. In our discussion we will refer to the drawing with the words "foreign car parts" as a tower.

Complainant's secretary testified as follows:

Complainant has been doing business with defendant for over 15 years. Since 1966 complainant has advertised in defendant's Alhambra yellow page book for its automobile parts supply business. Early in 1969, complainant purchased some stores in Orange County as part of an expansion program. Up to this point, all advertising done by complainant in the yellow pages was done under the name of "Foreign Car Parts" or "Foreign Car Parts Co." After starting business in Orange County complainant decided to change its name to "AJS Foreign Car Parts." As part of its campaign it decided to put the "AJS" in its yellow page advertising. On August 15, 1969, when complainant and defendant entered into their yellow page advertising contract, complainant did not have the necessary artwork for defendant to develop the ad. Therefore, defendant's salesman returned the next day to pick up the artwork. On August 16, 1969, among other material given to defendant, was an art board picture of a tower with a gendarme (Exhibit 1). There was no writing or letters on the picture, but on a transparent tissue covering the picture there is an ink-marked "X" over the tower with the statement written on the transparency "use new art (enclosed) in place of this logo." Also, at this time the salesman received the drawing of the tower with the letters "AJS" as set forth in Appendix A No. 1 (Exhibit 2). On Exhibit 2 are the words "use this art in place of art on Board - reduce to fit layout." In early October 1969 complainant received the proof of its ad from defendant and immediately saw that the ad was not as complainant prescribed. Complainant, on October 9, 1969, returned the proof with corrections. This was received by defendant on October 10. [The closing date for changes in the Orange County book was October 7, 1969, so the changes requested by complainant were not made.] This same ad was to appear in the Alhambra yellow page book [which closed after October 10, 1969] and the changes

were made in that book. The Alhambra book had the ad as complainant prescribed. The ad as printed in the Orange County book has no value to complainant, and is detrimental because it gives complainant a bad image. "It's like as if we are inefficient. We have been trying to promote that logo, you know, AJS Foreign Car Parts, and we have done all of our signs to show this logo the correct way, and we have made new stationery, new business cards, everything."

Defendant's salesman who took the order testified as follows: Complainant signed a yellow page advertising contract on August 15, 1969. On August 16 he picked up the artwork from complainant, but the tower set forth in Appendix A No. 1 was not among the documents received. He could not remember whether there was a transparency over the picture of the tower and gendarme. He said that he first saw a copy of the tower shown in Appendix A No. 1 sometime in mid-October 1969. He saw it in time to change the ad for the Alhambra book, but since the Orange County book was at the printer's, it could not be changed.

Another witness for defendant testified that in his opinion the error, if the fault of defendant, did not cause any damage to complainant. He said that "based on national and local usage studies, we know how people use the yellow pages. They use the yellow pages like you and I, basically in two ways: either they are going into the directory looking for a specific business firm, a business firm that they know, or they turn into the directory looking for a new source of supply or of service. Now the person that turns into the directory looking for a specific business firm, they already know the name. We are very reluctant to admit this. Some of these people even look in the alphabetical directory.

Even when they look in the yellow pages, we are inclined to think possibly, as often as not, they look in the alphabetical column rather than the display ads. They know specifically the firm by name that they want, and its just plain easier to find it normally in the alphabetical column than it is in the ad. Now the other way people use the yellow pages is to find any business firm. They just want a new source of supply or service. They just want to find somebody that will sell them what they need to buy. During the period in question, complainant's firm was doing business with the public in the name 'Foreign Car Parts.' He was correctly listed as such, with his correct locations and telephone numbers, in Orange County's white and yellow pages and his name was correctly shown in the advertisement being considered today." The witness said that he investigated all of defendant's directory records relating to complainant. He found that "complainant had been advertising with Pacific Company in our Alhambra directory since 1966 - show the firm's name, the main listing, to be 'Foreign Car Parts,' with no reference to, or additional listing for, 'AJS Foreign Car Parts.' In the 1969 issue of the four alphabetical directories wherein we find complainant listed, specifically Pacific's Northeastern and Orange County, and General's Pomona and Downey directories; and in the eight classified directories encompassed by these four alphabetical directories, complainant listed himself as 'Foreign Car Parts' with no listing for 'AJS Foreign Car Parts.' In addition, when complainant had applied for telephone service at the four locations which he acquired in Orange County, the application for service cards all showed the main listing to be 'Foreign Car Parts' with no additional listing for 'AJS Foreign Car Parts.' A letter which we received from complainant on August 19, 1969, showed a letterhead of 'Foreign Car Parts' with no mention or reference to 'AJS.'"

There are two issues in this case: (1) did defendant err in omitting part of complainant's advertisement?; and (2) if so, did the omission affect the advertisement? We find that defendant did make an error of omission, but that the omission did not affect the entire advertisement, or any part of it.

Complainant's secretary testified that she gave a copy of the tower with the proper lettering on it to defendant's salesman on August 16, 1969; defendant's salesman denies receiving this on that date. However, the secretary also testified that she gave a picture of the tower with no lettering but with the gendarme beside it (Exhibit 1) to defendant's salesman on August 16, 1969, which defendant's salesman admits receiving. This picture has a tissue transparency on its face which shows the tower crossed out and the words "use new art (enclosed) in place of this logo." Defendant's salesman stated that he does not remember seeing that transparency, but he said that artwork such as Exhibit 1 usually comes with a transparency over it.

We are persuaded by complainant's evidence that the tower with the lettering, as set forth in Appendix A No. 1, was given to defendant on August 16, 1969, and that defendant erred in omitting the letters "AJS" from complainant's ad. Even if we were to doubt that complainant's secretary gave the omitted artwork to defendant on August 16, 1969, we do not doubt that she gave the picture of the tower with no lettering but with the gendarme beside it to defendant on August 16, 1969. This picture had a tissue transparency cover with the tower crossed out and the writing on it, "use new art (enclosed) in place of this logo." That transparency itself should have put defendant on notice that something was out of order and that further inquiry should be made. We do not believe that complainant

prepared the tower ad (Appendix A No. 1) and altered the tissue transparency on the tower and gendarme picture after receiving the ad proofs in October 1969.

Nevertheless, not only does defendant's testimony persuade us that complainant suffered no detriment from the omission, but our observation of the ads as juxtaposed in Appendix A leads us to the same conclusion. We have given weight to the fact that complainant did not use the letters "AJS" in its application for advertising in the 1969 Orange County yellow pages, and especially that no request was made to have the letters "AJS" appear in any alphabetical listing, white pages or yellow pages, in the 1969 Orange County directories. Complainant has not sustained any damage within the meaning of the tariff and the complaint should be denied.

Findings of Fact

1. On August 16, 1969, complainant gave to defendant artwork depicting a tower with no lettering but with a gendarme beside it. This picture had a tissue transparency cover with the tower crossed out and the writing on it, "use new art (enclosed) in place of this logo." That transparency itself should have put defendant on notice that something was out of order and that further inquiry should be made.

2. Defendant published complainant's ad substantially as complainant wanted it in the Orange County yellow page book, except that defendant omitted to place the letters "AJS" in the tower portion of complainant's ad.

3. Complainant did not use the letters "AJS" in any alphabetical listing in defendant's 1969 Orange County yellow page or white page directories.

4. The omission described in Finding No. 2 did not affect the entire advertisement, or any part of it, and complainant has not been damaged.

The Commission concludes that the complaint should be denied.

C R D E R

IT IS ORDERED that the complaint is denied.

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

Dated at San Francisco, California,
this 31st day of AUGUST, 1971.

[Signature]
Chairman
William J. Lyons
[Signature]
L. L. Sturgeon
[Signature]
Commissioners



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No. 2

Appendix A