

SW/ek \*

ORIGINAL

Decision No. 81527

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

INTERNATIONAL ASTRO INDUSTRIES,  
INC.,

Complainant,

vs.

GENERAL TELEPHONE DIRECTORY  
COMPANY AND GENERAL TELEPHONE  
COMPANY OF CALIFORNIA,

Defendant.

Case No. 9420

(Filed August 8, 1972)

Irving N. Hartman, Attorney at Law,  
for complainant.

A. M. Hart, H. Ralph Snyder, Jr.,  
and Dennis L. Dechert, by Dennis L.  
Dechert, Attorney at Law, for  
defendants.

O P I N I O N

Omitting the caption, signatures, and authentication,  
the complaint, filed by Julius Lakey, president, and Loui F.  
Caspary, vice president of International Astro Industries, Inc.,  
reads:

"The complaint of International Astro Industries Inc.  
14918 Hawthorne Blvd Lawndale, California 90260 Tel: 6448631  
respectfully shows:

"1. That the defendants are General Telephone Directory  
Company, 6820 La Tijera Blvd. suit 111, Los Angeles Calif 90045  
and General Telephone Company of California 100 Wilshire Blvd.  
Santa Monica, Calif. 90406.

"2. The defendants discriminated against International Astro Industries Inc. - a minority owned corporation - by refusing to accept Yellow Pages advertisements in LONG BEACH, REDONDO-SOUTH BAY, DOWNEY, LAGUNA BEACH AND HUNTINGTON BEACH directories.

"International Astro Industries Inc. has advertised in the General Telephone Yellow Pages and paid all the bills to the defendants.

"Further more the defendants tried thru coercion, that International Astro Industries Inc. pay another company's/J. Laky dba a-astro driving school/ Yellow Pages bills, by telling the complainant unless they pay a-astro driving school's bills beside their own, the defendants will not allow International Astro Industries Inc. into the General Telephone Yellow Pages.

"By the action of the defendants, International Astro Industries Inc. cannot offer its services to more than 2 million people and suffered a severe loss of business.

"WHEREFORE, complainant request an order, ordering the defendants to stop discrimination against the complainant, by accepting Yellow Page advertising without any restrictions.

"Also order the defendants not to charge for these advertisements for the next two years, thereby making up some of the loss to the complainant, caused by the defendants action."

On September 7, 1972 the defendants, General Telephone Company of California (General) and General Telephone Directory Company (Directory) filed an answer to the complaint, and a motion to dismiss as to Directory. On October 4, 1972 defendants<sup>1/</sup> filed an amendment to their answer.

---

<sup>1/</sup> For the purposes of this decision we will use the word defendant to refer to either or both of the companies.

Public hearings were held before Examiner Rogers in Los Angeles on January 30 and February 13, 1973, briefs were filed, and the matter was submitted.

The motion for dismissal as to Directory is well taken and will be granted. We have frequently held, and we reiterate, that General is responsible to its subscribers for all phases of telephone service, including directory service.

The prayer that defendants not be permitted to charge for yellow page ads for two years is a request for monetary damages. We do not have jurisdiction to award such damages (Marie Quan Mak, aka Quan Back Lean v The Pacific Telephone and Telegraph Company, Decision No. 79468 dated December 14, 1971 in Case No. 9087). This request will be denied.

The Evidence

Julius Laký testified that he is the president and general manager of the complainant which was incorporated in June 1971; that the incorporators were Louis Caspary, Monica Laký, (wife of Julius Laký) and Julius Laký; that the primary business of complainant is a driving school; that the complainant runs ads in telephone yellow pages; that the first ad was in the defendant's Redondo-South Bay directory in July 1971; that this ad continued until February 1972; that the ad was billed to complainant at 14918 Hawthorne Boulevard; and that all bills were paid.

Mr. Laký further testified that in February 1972 the ad was terminated because of the rearrangement of telephone numbers in the area; that complainant placed a new ad with a new telephone number with defendant; that defendant accepted the ad but the ad was not published because the present controversy arose; and that he has contracts with defendant for the publication of the ads.

Complainant and defendant stipulated that contracts for advertising in the yellow page directories listed in the complaint were executed by Julius Laký for complainant and that defendant refused to insert the ads.

Julius Laký testified that when he signed the advertising contracts complainant did not owe defendant any money; that in July 1972, complainant owed defendant \$336.32 for advertising and he made a mistake and paid the bill on July 17, 1972 with his personal check drawn on the account of a-Astro Driving School (Mr. Laký, doing business as); that this sum was the then balance due on complainant's account; and that the payment was for the then current bill.

Mr. Laký further testified that after the complainant's telephone bill was paid by his personal check he tried to get the check back and pay with complainant's check; that the defendant advised him that it would not permit complainant to advertise in the yellow pages until complainant paid the a-Astro Driving School bills; that thereafter yellow page advertising was refused; and that Mr. Laký received a letter dated July 27, 1972 which, omitting the heading and signature, reads:

"This will confirm your telephone conversation with the General Telephone Directory Company on July 27, 1972 concerning directory advertising in the 1972 directories for Downey, Huntington Beach, Laguna Beach, Long Beach and Redondo, as described directory advertising, has been cancelled because of the unpaid amount of \$9,018.83 under the business name of Astro Driving School."

Mr. Laky stated that he only owned one company, a-Astro Driving School; that he is just a stockholder in the complainant; that in 1957 he first advertised in yellow pages; and that a-Astro Driving School did business at 14916 Hawthorne Boulevard, Lawndale, in the same building as the complainant whose address is 14918 Hawthorne Boulevard. The witness further stated that he started the a-Astro Driving School in February 1969; and that complainant never did business as a-Astro Driving School.

Mrs. Sees, defendant's centralized account supervisor, testified that her work includes applying defendant's tariffs and collections; that she was familiar with the names a-Astro Driving School and complainant; that she knew Julius Laky; that she first became aware of the account of a-Astro Driving School in October 1971 and of complainant's account in August 1972; that the bill for \$336.32 dated June 30, 1972 referred to by Mr. Laky was a current bill of complainant; that complainant was billed monthly for its telephone advertising and the bill referred to was paid late; and that, at the time of the hearing, there were six accounts due to defendant from a-Astro Driving School in the total sum of \$14,487.

Mrs. Sees referred to the letter of July 27, 1972 and stated that since that letter was written, additional monthly billing for a-Astro Driving School directory advertising has accrued.

Mrs. Sees further testified that defendant's records reflect that it has denied advertising for International Astro Industries for the reason that there is money due from a-Astro Driving School.

Defendant introduced Exhibit No. 1, Original Sheets 17 and 18, Schedule Cal. P.U.C. No. D-1, of its tariff with special reference to paragraph 3.c. on Sheet 18 which reads:

"3.c. An applicant or advertiser who has failed to pay charges for advertising service in the current or a preceding directory in accordance with Special Condition No. 3.b. above may be refused further advertising or may be required, prior to the closing date of the subsequent directory, to pay the amounts which had been previously billed, and also to pay in full for all advertising desired in such subsequent directory."

Mrs. Sees said defendant has refused advertising service to complainant in the yellow pages for failure to pay charges and that the quoted tariff item was the basis for refusal. Mrs. Sees stated that the reason for denying the advertising was the past due bill (or bills) of a-Astro Driving School and complainant; that she was tying the two together; that, in her opinion, the refusal of advertising was based on paragraph 3.c. regardless of whether it was complainant or a-Astro Driving School; and that both of the companies were considered at the time the decision was made for cancelling the advertising contract. The witness further testified that at the time the advertising was cancelled there was nothing due and owing on complainant's account.

Defendant introduced into evidence Exhibit No. 2 which is a copy of a fictitious business name statement filed with the Los Angeles County Clerk on June 30, 1971, which, in its pertinent portion provides: "The following person...is...doing business as: a ASTRO Driving School at 14916 Hawthorne Blvd., Lawndale, California 90260. International Astro Industries, Inc., a California corporation. . . . This business is conducted by International Astro Industries, Inc., a corporation. Julius Laky".

Mrs. Sees stated that it was her understanding that the unpaid bill for a-Astro Driving School was the account to which the tariffs had been applied; that there were six unpaid accounts for different directories for a-Astro Driving School totaling \$14,000 plus; and that after June 30, 1972 unpaid directory advertising for a-Astro Driving School was as follows:

<u>Directory</u>	<u>Amount</u>
Huntington-Westminster	\$1,706.40
Santa Monica-West Los Angeles	1,720.00
Redondo	2,107.15
West Los Angeles	210.55
Long Beach	884.75
Downey	<u>1,922.73</u>
Total (sic)	\$8,531.78

Mrs. Sees stated that for the period prior to June 30, 1972 a-Astro Driving School's unpaid directory advertising bills amounted to approximately \$5,955.73.

Mrs. Sees stated that complainant's advertising was refused because of the foregoing unpaid a-Astro Driving School's bills.

Mrs. Sees further testified that at the time the July 27, 1972 letter was written, advising of Pacific's refusal to permit additional yellow page ads, Mr. Laky was told that \$9,000 was due from a-Astro Driving School. Subsequent billings brought the total up to over \$14,000, including billing for advertising placed prior to June 1971 which could not be stopped because the directories were in publication. Mrs. Sees testified that a-Astro Driving School had a different telephone number than complainant.

Mrs. Sees identified a group of documents as contact memos (Exhibit No. 3). Included were seven memos showing that in July 1972 the defendant determined that complainant had registered the fictitious firm name of a-Astro Driving School and had two businesses and two business licenses; that Mr. Laky called and told defendant that he had checked with his attorney who advised him that as long as he paid the complainant's bill he can have yellow page advertising; and that the memos show that legal counsel for the defendant advised that the a-Astro Driving School bill was correctly charged to the complainant's account.

Mrs. Sees further testified that in February 1972 complainant stopped its yellow page advertising because it discontinued a particular telephone number; that on March 17, 1972 Mr. Laky advised defendant that the complainant's number would be closed; that in May 1972 complainant made applications for directory advertising (Exhibits Nos. 4 and 5); that in January 1972 complainant was notified of a delinquent bill which was not paid until July 17, 1972; that beginning on May 24, 1972, she and a Mr. Howard of Directory had conversations relative to the accounts (a-Astro's and complainant's) and decided to apply the tariff provisions hereinbefore referred to.

Mrs. Sees further testified that complainant had been advertising in the yellow pages since October 8, 1971; and that she had been given information that a-Astro Driving School was a fictitious business name of complainant.

The Division Manager of Directory testified that he managed the division office; that prior to January 1973, he was a district sales manager; that two of his accounts were a-Astro Driving School and complainant; that he was familiar with Julius Laky; that in 1969 he first became involved with the Julius Laky doing business as a-Astro Driving School; that because of the



number of directories Mr. Laky advertised in the a-Astro Driving School account was considered large; that generally the account was delinquent; that generally when he talked to Mr. Laky it was relative to getting squared away; that he talked to Mr. Laky four or five times a year about the bills and tried to make satisfactory arrangements with the accounting office; and that he advised Mr. Laky that unless the account was kept current he could not place ads in the directories.

The witness further testified that in May, June, or July 1971, Mr. Laky placed an order with the witness for an ad for complainant; that this was at the office of the complainant next door to the a-Astro Driving School office; that an ad was ordered only for the Redondo Beach directory; that the witness understood that complainant and a-Astro Driving School were different companies; that subsequently he informed Mr. Laky that the ad would be discontinued because of the standard policy of the directory company due to monies owing, the proximity of the locations, and the fact that both names contained 'Astro'. The witness said legal counsel advised that a-Astro Driving School and complainant were the same account.

Mr. Howard testified that the name 'Astro' appeared in the corporate name; the office was next door to the a-Astro Driving School; that Mr. Laky made no effort to conceal the fact that he was a principal of complainant; that Mr. Laky ordered advertising for complainant to be placed in several yellow pages; and the advertising was placed commencing with October 1971; that Mr. Julius Laky's advertising was flagged to show delinquency in payment until June 1972; that there was a \$300 delinquency in payment as of April or May 1972; that Laky was advised that it was necessary that bills be up to date; that Laky paid the \$300; and that a determination was made that the accounts (complainant's and a-Astro Driving School's) were the same and the ad should not run.

Mr. Howard further testified that he discussed with Mr. Laky the delinquency in the a-Astro Driving School bill. Mr. Howard testified that he told Mr. Laky that it seemed to him that both companies were in a similar business but that he does not make those determinations. The witness said he advised defendant's legal and accounting departments of the locations of the offices; that Mr. Laky was a principal of complainant and the proprietor of a-Astro Driving School; and that those facts were made known to the defendant at the time the original orders for complainant's ads were placed.

Mr. Howard further testified that he was in Mr. Dechert's (attorney for defendant) office on January 30, 1972; that at that time he called the number in the Western telephone directory yellow pages for complainant; that the telephone he called from was connected to a loud speaker; and that a female voice answered, "International Astro Driving School".

In rebuttal, Mr. Laky testified that other than the publication of the dba, a-Astro Driving School, complainant never represented itself to be a-Astro Driving School and the reason the dba got published was that "the lawyer that handled the corporation procedure I guess thought it was a good idea".

Complainant admits that it caused to be published the fictitious firm name of a-Astro Driving School but argues that other than this fact there is no evidence to establish an alter ego but, on the contrary, it is the uncontroverted testimony of Mr. Laky that, other than this one publication, the complainant never made use of the name a-Astro Driving School. We do not agree with this argument. In our opinion complainant's argument is no more than an attempt to obtain advertising without payment. A-Astro Driving School and complainant are one and the same.

Cases cited by complainant are not apposite. The facts are in no manner similar.

We agree with the defendants the complainant has failed to show that they violated any law or any order or rule of the Commission. International Astro Industries, Inc. is responsible for all of the yellow page advertising of a-Astro Driving School incurred after the fictitious firm name certificate was filed on June 30, 1971. We agree with defendant that to permit complainant to have yellow page directory service would result in injustice.

Findings

1. Prior to June 30, 1971 Julius Laky did business as a driving school at 14916 Hawthorne Blvd., Lawndale, California, under the fictitious name of a-Astro Driving School.

2. On June 30, 1971 Julius Laky, Monica Laky, and Louis Caspary incorporated International Astro Industries, Inc. The principal business of this corporation is a driving school. Its office is at 14918 Hawthorne Blvd., Lawndale, the same building in which Julius Laky did (or does) business. Julius Laky is the president of the corporation.

3. On June 30, 1971 International Astro Industries, Inc. filed a certificate of fictitious firm name showing it was doing business as a-Astro Driving School at 14916 Hawthorne Boulevard, Lawndale, California. This certificate was signed by Julius Laky.

4. During 1971 and 1972 a-Astro Driving School advertised in yellow page directories published by General Telephone Directory Company for Downey, Huntington Beach, Laguna Beach, Long Beach, and Redondo. It incurred advertising charges which have not been paid.

5. International Astro Industries, Inc. operates under the fictitious firm name of a-Astro Driving School.

6. International Astro Industries, Inc. is responsible for all advertising incurred by Julius Laky under the name of a-Astro Driving School, and defendant should not be required to publish yellow page advertising for International Astro Industries, Inc. until its yellow page advertising bills have been paid.

7. Between June 30, 1971 and February 1, 1972, International Astro Industries, Inc. advertised in various of General Telephone Directory Company's yellow page directories.

8. In 1972 the complainant's yellow page ad was discontinued because defendant had determined that complainant was responsible for the a-Astro Driving School advertising bill.

9. Defendant terminated the service to International Astro Industries, Inc. on the basis of its filed tariff which permits cancellation or refusal to accept further ads if existing ads are not paid.

The Commission concludes that the relief requested should be denied.

O R D E R

IT IS ORDERED that:

1. The complaint is dismissed as to General Telephone Directory Company.
2. The relief requested is denied.

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

Dated at Los Angeles, California, this 26<sup>th</sup> day of JUNE, 1973.

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

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

Verdon L. Sturgeon  
President

[Signature]  
[Signature]  
Commissioners