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ORIGINAL

Decision No. 81825

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AD VISOR, INC., a California
corporation, representing
Stan Berko,

Plaintiff,

vs.

THE PACIFIC TELEPHONE &
TELEGRAPH COMPANY, a California
corporation,

Defendant.

Case No. 9605

ORDER DENYING REQUEST
FOR MANDATORY INJUNCTION

On August 16, 1973, the complainant, Stan Berko (Berko)^{1/}, filed his complaint against the Pacific Telephone and Telegraph Company (PT&T) alleging that PT&T refuses to accept classified advertising displays for six businesses owned by him. He asks that the Commission immediately order PT&T to accept his advertising in its directories for the six businesses listed in the complaint. One of the directories closed to advertising orders on August 24, 1973.

The remedy sought by Berko is in effect a mandatory injunction. Berko would have us require PT&T to accept and publish his advertising copy without granting to PT&T an opportunity to be

^{1/} Although AD VISOR, INC. appears in the caption as a complainant, Stan Berko is the real party in interest and will be considered the complainant hereafter.

heard. This we are asked to do on the basis of the mere conclusory allegation that "PT&T is acting willfully, arbitrarily, and unreasonably in refusing to accept the advertisements for these businesses." (Complaint, par. III.)

Although the complaint does contain a modicum of factual matter, those facts raise questions which are not answered by the complaint.

For instance, on April 12, 1973, AD VISOR entered into contracts with Berko to place his advertising in PT&T's directories and on April 16, 1973, PT&T was informed of AD VISOR'S representation of Berko (Complaint, par. III). Thus, between April 16 and August 16, when the complaint was filed, a period of four months elapsed. There is no indication in the complaint of the contacts Berko of AD VISOR had with PT&T during that period, or with whom they spoke or corresponded, or of when the advertising was first refused, or of reasons expressed for such refusal, if any. It seems logical to infer that the letter from a PT&T attorney received by AD VISOR on August 14, 1973 (Complaint, par. IV) was the culmination of a long series of negotiations.

Before granting extraordinary ex parte relief the Commission should be made privy to the full factual background of the matter. Moreover, conclusions, rather than facts, will not support the grant of injunctive relief. The California Supreme Court has held:

"A complaint for an injunction which alleges only general conclusions, not warranted by any pleading of facts, does not state a cause of action to enjoin the acts complained of."
(E.H. Renzel Co. v. Warehousemen's Union,
16 Cal.2d 369, 373 [1940].)

The Commission concludes that:

1. The complaint fails to state a cause of action for injunctive relief.

2. Berko's request for an immediate ex parte injunctive order should be denied.

IT IS ORDERED that the request of complainant, Stan Berko, for an immediate ex parte injunctive order is denied.

Dated at San Francisco, California, this 28th day of AUGUST, 1973.

Norman L. Stenger
President
William Synovitz

[Signature]

Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.

L. Tortani

[Signature], Commissioner.