

ORIGINALDecision No. 82886

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ANGEL APPLIANCE SERVICE,
a Corporation,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a Corporation,

Defendant.

Case No. 9494
(Filed January 9, 1973;
amended March 1, 1973)Hal Kassner, for Angel Appliance Service,
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 Angel Appliance Service (Angel) against The Pacific Telephone and Telegraph Company (PT&T). A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis in Los Angeles on June 25, 1973, and it was submitted on July 5, 1973.

Angel complains of various practices of PT&T in connection with yellow page advertising.^{1/} It seeks herein an order directing PT&T to combine all individual major appliance headings, except for heating and air conditioning into one heading, or, in the alternative, that all headings for individual major appliances be combined into one single heading for such appliance. Angel also seeks reparations

^{1/} Angel is a PT&T customer which advertises in the yellow pages of PT&T's North Hollywood Directory. Unless otherwise indicated, facts dealing with specific transactions between the parties relate to the North Hollywood Directory.

for certain acts alleged to have been done by PT&T. Finally, Angel seeks a change in the rule limiting PT&T's liability for errors or omissions.

The material issues presented herein are as follows:

(1) Should PT&T be required to combine all individual major yellow page appliance headings, except for heating and air conditioning, into one heading? (2) Should PT&T be required to combine yellow page headings for individual major appliances into a single heading for each appliance? (3) Has PT&T improperly or arbitrarily applied its yellow page tariff provisions or business practices to Angel? (4) Should the Commission change the limitation of liability provisions applicable to PT&T?

The record indicates that when the yellow page heading for a particular appliance does not combine sales and repairs but contains separate categories, the sales heading precedes the one for repairs.^{2/} Angel's president testified, on the issue of combining headings, that on many occasions when a customer needs an appliance repairman more than one type of appliance may be in need of repair. He also testified that most appliance purchasers shop for the lowest price; that yellow page advertising has little influence on appliance sales but does have a significant impact on the appliance repair business and that various firms seek to gain an advantage in attracting repair business by placing predominantly repair advertisements under the sales headings of the particular appliance involved. Angel's president also contends that the use of multiple yellow page headings causes him to place additional advertising and generates, unnecessarily, greater revenues for PT&T.

PT&T's staff manager - directory testified that a majority of yellow page directory users look for specific appliance headings rather than for one broad heading. He also testified that some firms

^{2/} The repairs heading sometimes refers to repairs and parts and is sometimes called service or servicing.

sell appliances, some service them, and some do both. PT&T surveyed eight directories and found that less than 45 percent of the firms listed in appliance headings advertised under both the sales and repair headings of a particular appliance. It was his opinion that putting both sales and repairs under a single heading for each appliance would be a disservice to a directory user. The staff manager also testified that PT&T periodically surveys various headings and that when there is a high percentage of duplicate advertising, headings are consolidated. For example, when a PT&T survey showed more than a 90 percent duplication of listings in the headings of Radio and TV Sales and Radio and TV Service the headings were combined into one heading of Radio and TV Sales and Service.

On the record herein presented the Commission cannot find that PT&T has acted arbitrarily or improperly by not combining yellow page headings for all individual major appliances into one heading or combining the sales and repairs headings for each individual major appliance into one heading.

Angel next complains about PT&T's refusal to list it under various appliance brand names or trademarks and the inclusion of firms and persons it claims should not have been included in such listings. In Viviano v PT&T (1968) 69 CPUC 158 the Commission held that:

"PT&T's duty, under Item 10 of its tariff, is to use reasonable care in preventing the publication of misleading advertising. It is not a guarantor of the truth of an ad. Section 17500 of the Business and Professions Code provides that:

'It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to

make or disseminate or cause to be made or disseminated before the public in this State, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any such person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell such personal property or services, professional or otherwise, so advertised at the price stated therein, or as so advertised.'

Violation of Section 17500 is a misdemeanor punishable by a maximum of six months imprisonment, or a fine of \$500, or both. (Business & Professions Code §17534; Penal Code §19.) It has been held that:

'Irrespective of its truth or falsity, any statement which is deceptive or merely misleading, without intent to deceive, violates the statute. People v. Wahl, 1940, 39 Cal. App. 2d Supp. 771; 100 P.2d 550.' (Audio Fidelity, Inc. v. High Fidelity Recordings, Inc., 283 F. 2d 551, 555.)

If PT&T acts properly under Item 10 of its tariff it is also protected under Section 17502 of the Business and Professions Code which provides that:

'This article does not apply to any visual or sound radio broadcasting station or to any publisher of a newspaper, magazine, or other publication, who broadcasts or publishes an advertisement in good faith, without knowledge of its false, deceptive, or misleading character.'" (68 CPUC 158, 167.)

PT&T's staff manager testified that the owner has complete jurisdiction over the use of its brand name or trademark. He stated that some brand name and trademark owners purchase listings and furnish PT&T with the names of dealers to be included thereunder. When

this occurs, only the names furnished are included in the listings. Where a brand name or trademark owner does not indicate who may be included in a listing under its name or trademark, PT&T will accept a listing if an advertiser supplies evidence that he is authorized to use the name or trademark. This policy is consonant with the duty to use reasonable care articulated in the Viviano case. The record indicates that PT&T applied its brand name and trademark listing policies to the listings challenged by Angel. This did not constitute arbitrary or improper action by PT&T.

Angel next challenges PT&T's refusal to accept without modification the text of proposed advertisements. In 1972, Angel proposed to include in certain of its advertisements the statement "we guarantee all parts for one year." PT&T refused to include the statement as proffered and required its modification. The advertisements, as published, contained the statement that: "We guarantee all parts for one year on an exchange basis. Notify us."

PT&T, under the authority of its tariffs, has promulgated various yellow page regulations. Included in its Directory Department Standards for Yellow Pages Advertising Content are the provisions dealing with guarantees, which provide as follows:

"GUARANTEE

"The use of the words 'guarantee' or 'guaranteed,' or words of similar meaning, is permitted if the terms or qualifications are clearly and completely stated including full disclosure of:

The nature and extent of the guarantee, including:

1. What product or part, thereof, is guaranteed.
2. What characteristic or properties of the product or part, thereof, are covered by or excluded from the guarantee.
3. What is the duration of the guarantee.
4. What anyone claiming under the guarantee must do before the guarantor will fulfill his obligation, and the manner in which the guarantor will perform, e.g., a statement that the guarantor will repair, replace or refund on either a full or pro rata basis, and The identity of the guarantor, e.g., clearly identifying whether the manufacturer or retailer is the guarantor.

"Where a full disclosure is to be made, a copy of the written guarantee should be obtained by the sales representative.

"If the advertiser can not fulfill all of these requirements, he may employ one of the following statements. Variations are not acceptable.

'Ask us about our conditional guarantee.'

'Let us tell you about our conditional guarantee for your protection.'

"NOTE: Variations of wording for the two short phrases are not acceptable as experience indicates; even minor changes, such as addition of 'written' before 'guarantee,' can sometimes change meaning and create an erroneous impression or confuse the user. With advertisers in the same line of business, appearing side by side in the Yellow Pages, it is especially important to both users and advertisers that copy be factual.

"Both users and advertisers are Telephone Company customers. The Telephone Companies, as publishers of the Yellow Pages, must be ever mindful of this fact in maintaining high standards of copy. 'Guarantee' copy usually serves the purpose of conveying reliability. Where a guarantee has many conditions, or is otherwise not clear, the advertiser may be much better off to use any one of a large number of copy factors indicating reliability such as: years in business, prestige brands handled, references, etc.

"Some alternative copy suggestions to indicate reliability are:

Expert services (workmanship)
Quality service (workmanship)
Personal supervision on each job
Work done by expert craftsmen
Quality since (year established)

See also 'Bait Advertising Copy' and 'Misleading Advertising Copy.'"

There are various reasons why PT&T may desire to enforce high standards of advertising in its yellow pages. Aside from lending support to a public policy calling for truth in advertising, it is to PT&T's advantage to require high copy standards. To the extent the yellow pages are relied upon and utilized by consumers, additional

advertising revenues will likely be generated for PT&T. Furthermore, the life of a directory is approximately 12 months. Advertising which appears therein is not as transitory as that which appears in certain other media. As a practical matter, a misleading advertisement is not correctable for the life of a directory. PT&T may adopt reasonable standards for advertising copy which appears in its yellow pages. Such standards must be applied equally, to all advertisers, without arbitrariness or discrimination. The standards applicable to the use of the word guarantee in yellow page advertising are not unreasonable. There is no evidence to indicate that PT&T has treated Angel in a different manner than any other advertiser in applying these standards.

Angel complains that PT&T does not furnish it timely proofs for it to review and make changes in its advertising copy. PT&T's staff manager testified that its yellow page advertising orders are not taken subject to approval of proofs prior to publication. A proof is furnished to an advertiser to check for accuracy, not for the purpose of making changes. Angel has not established herein that this practice is unreasonable. The record indicates that there was a delay in furnishing Angel proofs for its 1972 yellow page advertising. However, this delay was occasioned by a dispute between the parties over a delinquent advertising bill. PT&T refused to accept and process any yellow page advertising from Angel until the delinquent bill was paid. After the bill was paid and the 1972 advertising was accepted there was no time to furnish proofs to Angel prior to the publication date of the directory. We find that PT&T did not act arbitrarily or unreasonably in connection with the 1972 proofs.

Angel next contends that PT&T has not properly applied its copy standard rules with respect to the contents of advertisements under a particular heading. PT&T's staff manager testified that:

"A very basic rule that we apply to all businesses is that: All firms listed under a classified heading must be in the business defined by that heading, as interpreted by the telephone company. Where separate headings are provided for various features of a business, that is, sales and service or repairing, wholesale and retail, et cetera, advertisements of firms qualified to list thereunder must predominantly feature the business described by the heading.

"This is a judgmental process; and if ads are requested that do not predominantly feature the business as described by the heading, we talk to the advertiser and ask that they either feature the business described the heading or put the ad under the proper heading.

"However, this does not prevent an advertiser from advertising other phases of his business in the same ad. For example, a sales ad may also emphasize repairing so long as that isn't the predominant copy in the ad." (RT 50.)

There is evidence which indicates that PT&T has not properly applied its rule to various appliance sales advertisements.

In the 1971 directory, there appeared at page 883 under the heading Refrigerators & Freezers (the sales heading) an advertisement for General Appliance Service. The text of the one quarter page advertisement, omitting logos, telephone numbers, and addresses, reads as follows:^{3/}

"Specialists On
GENERAL ELECTRIC
HOTPOINT
Immediate
24-HOUR SERVICE
GENERAL APPLIANCE SERVICE
THREE SERVICE STATIONS"

^{3/} The example does not completely reflect differences in the size of type which appear in the advertisement.

The General Appliance Service advertisement clearly violates the predominant content rule. The advertisement which was under the sales heading deals entirely with service. It is unnecessary to enlarge the text of this decision by discussing the other violations indicated by the record. Specific findings with respect thereto will hereafter be made.

Angel contends that PT&T's violation of its predominant content rule, by including repair advertisements under sales headings, diminished the value of its repair advertisements in the categories where such violations occurred. We agree. The Commission finds that the value of Angel's repair advertisements was diminished by 10 percent in the instances during 1971, 1972, and 1973, where we have found that PT&T improperly listed a repair advertisement under the preceding sales heading.

Angel also contends that the Commission should change the rules limiting the liability of PT&T, so that it could seek full compensation in court for the alleged negligent conduct of PT&T. The rules dealing with PT&T's limitation of liability were established in an investigation on the Commission's own motion into the question of the limitation of liability for all telephone corporations in California. (71 CPUC 229.) The Commission's decision in the Limitation of Liability case was based upon extensive hearings in which members of the public, the Commission staff, and telephone corporations participated. Angel has produced no evidence in this record which would indicate that the Commission should order that PT&T's limitation of liability rule be changed. No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. When the yellow page heading for a particular appliance does not combine thereunder sales and repairs but contains separate categories therefor, the sales heading precedes the one for repairs.

2. There is no evidence in this record which would justify a finding that PT&T has acted improperly or arbitrarily in refusing to combine all individual major appliances, except for heating and air conditioning into one yellow page heading.

3. There is no evidence in this record which would justify a finding that PT&T has acted improperly or arbitrarily in refusing to combine the categories of sales and repairs into a single yellow page heading for each individual major appliance.

4. There is no evidence in this record which would indicate that PT&T acted arbitrarily or improperly with respect to including or refusing to include Angel and others under brand name or trademark listings in the yellow pages.

5. PT&T's Standards for Yellow Page Advertising Content provide, with respect to the use of the word guarantee, as follows:

"GUARANTEE

"The use of the words 'guarantee' or 'guaranteed,' or words of similar meaning, is permitted if the terms or qualifications are clearly and completely stated including full disclosure of:

The nature and extent of the guarantee, including:

1. What product or part, thereof, is guaranteed.
2. What characteristic or properties of the product or part, thereof, are covered by or excluded from the guarantee.
3. What is the duration of the guarantee.
4. What anyone claiming under the guarantee must do before the guarantor will fulfill his obligation and

The manner in which the guarantor will perform, e.g., a statement that the guarantor will repair, replace or refund on either a full or pro rata basis, and

The identity of the guarantor, e.g., clearly identifying whether the manufacturer or retailer is the guarantor.

"Where a full disclosure is to be made, a copy of the written guarantee should be obtained by the sales representative.

"If the advertiser can not fulfill all of these requirements, he may employ one of the following statements. Variations are not acceptable.

'Ask us about our conditional guarantee.'

'Let us tell you about our conditional guarantee for your protection.'

"NOTE: Variations of wording for the two short phrases are not acceptable as experience indicates; even minor changes, such as addition of 'written' before 'guarantee,' can sometimes change meaning and create an erroneous impression or confuse the user. With advertisers in the same line of business, appearing side by side in the Yellow Pages, it is especially important to both users and advertisers that copy be factual.

"Both users and advertisers are Telephone Company customers. The Telephone Companies, as publishers of the Yellow Pages, must be ever mindful of this fact in maintaining high standards of copy. 'Guarantee' copy usually serves the purpose of conveying reliability. Where a guarantee has many conditions, or is otherwise not clear, the advertiser may be much better off to use any one of a large number of copy factors indicating reliability such as: years in business, prestige brands handled, references, etc.

"Some alternative copy suggestions to indicate reliability are:

- Expert services (workmanship)
- Quality service (workmanship)
- Personal supervision on each job
- Work done by expert craftsmen
- Quality since (year established)

See also 'Bait Advertising Copy' and 'Misleading Advertising Copy.'"

There is no evidence in the record which would support a finding that this standard is improper or unreasonable or that it has been applied to Angel in an improper or unreasonable manner.

6. PT&T yellow page advertising orders are not taken subject to approval by the customer of proofs prior to publication. A proof is furnished to an advertiser to check for accuracy, not for the purpose of making changes. There is no evidence herein which would sustain a finding that this practice is unreasonable.

7. There was a delay by PT&T in furnishing Angel proofs for Angel's 1972 yellow page advertising. This delay was occasioned by a dispute between the parties over a delinquent advertising bill. PT&T refused to accept and process any yellow page advertising from Angel until the delinquent bill was paid. After payment was made

and the 1972 advertising accepted, there was no time to furnish proofs to Angel prior to the publication of the directory. PT&T did not act arbitrarily or unreasonably in connection with the 1972 proofs.

8. One of PT&T's yellow page classification rules provides that in order to be included under a heading, an advertisement must predominantly feature the business described by the heading.

9. The 1971 yellow pages of the North Hollywood Directory included the following advertisements under the sales heading, for the type of appliances set forth, when these advertisements did not predominantly relate to sales:

<u>Advertiser</u>	<u>Heading</u>	<u>Page</u>
Grezer's Service	Dishwashing Machines	345
A-ABC Appliance of California	Refrigerators & Freezers	882
General Appliance Service	Refrigerators & Freezers	883

This advertising diminished the value of Angel's advertisements under the headings of Dishwashing Machines, Repairing & Parts, and Refrigerators & Freezers, Repairing & Parts, by 10 percent.

10. The cost of Angel's yellow page advertising for 1971 under the heading of Dishwashing Machines, Repairing & Parts, was \$134.75 per month for a total of \$1,617.00. The cost of Angel's yellow page advertising for 1971 under the heading of Refrigerators & Freezers, Repairing & Parts, was \$8.75 per month for a total of \$105.00. Angel should have received a credit allowance from PT&T of \$172.20 for the year 1971. No discrimination will result from the payment of interest on reparations for said amount.

11. The 1972 yellow pages of the North Hollywood Directory included the following advertisements under the sales heading for the type of appliances set forth when these advertisements did not predominantly relate to sales:

<u>Advertiser</u>	<u>Heading</u>	<u>Page</u>
Grezer's Service	Dishwashing Machines	353
A-ABC Appliance, Inc.	Refrigerators & Freezers	894
AMA Appliance Service	Refrigerators & Freezers	895

This advertising diminished the value of Angel's advertisements under the headings of Dishwashing Machines, Repairing & Parts, and Refrigerators & Freezers, Repairing & Parts, by 10 percent.

12. The cost of Angel's yellow page advertising for 1972 under the heading of Dishwashing Machines, Repairing & Parts, was \$126.00 per month for a total of \$1,512.00. The cost of Angel's yellow page advertising for 1972 under the heading of Refrigerators & Freezers, Repairing & Parts, was \$123.00 per month for a total of \$1,476.00. Angel should have received a credit allowance from PT&T of \$298.80 for the year 1972. No discrimination will result from the payment of interest on reparations for said amount.

13. The 1973 yellow pages of the North Hollywood Directory included the following advertisement under the sales heading for Dishwashing Machines, when said advertisement did not predominantly relate to sales:

<u>Advertiser</u>	<u>Heading</u>	<u>Page</u>
Grezer's Service	Dishwashing Machines	384

This advertisement diminished the value of Angel's advertisements under the heading of Dishwashing Machines, Repairing & Parts, by 10 percent.

14. The cost of Angel's yellow page advertising for 1973 under the heading of Dishwashing Machines, Repairing & Parts, was \$128.75 per month for a total of \$1,545.00. Angel should receive a credit allowance from PT&T of \$154.50 for the year 1973. No discrimination will result from the payment of interest on reparations for said amount.

15. There is no evidence in this record which would require the Commission to change or modify its rules dealing with the limitation of liability for California telephone corporations as promulgated in the Limitation of Liability case, 71 CPUC 229.

Conclusions of Law

1. PT&T should be ordered to pay Angel reparations of \$172.20 for the year 1971, with interest at the rate of 7 percent per annum from December 31, 1971.

2. PT&T should be ordered to pay Angel reparations of \$298.80 for the year 1972, with interest at the rate of 7 percent per annum from December 31, 1972.

3. PT&T should be ordered to pay Angel reparations of \$154.50 for the year 1973, with interest at the rate of 7 percent per annum from December 31, 1973.

4. Angel is entitled to no other relief in this proceeding.

O R D E R

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company is ordered to pay Angel Appliance Service reparations in the amount of \$172.20, with interest at the rate of 7 percent per annum from December 31, 1971 to the date of payment.

2. The Pacific Telephone and Telegraph Company is ordered to pay Angel Appliance Service reparations in the amount of \$298.80, with interest at the rate of 7 percent per annum from December 31, 1972 to the date of payment.

3. The Pacific Telephone and Telegraph Company is ordered to pay Angel Appliance Service reparations in the amount of \$154.50, with interest at the rate of 7 percent per annum from December 31, 1973 to the date of payment.

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

Dated at San Francisco, California, this 21st day of MAY, 1974.

Vernon L. Stinson
President
William L. Lyons
Michael J. ...
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

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