

Decision No. 83536

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Theodore E. P. Sallume,

Complainant,

vs.

The Pacific Telephone and
Telegraph Co.,

Defendant.

Case No. 9708
(Filed April 12, 1974)

ORDER OF DISMISSAL

Complainant alleges that defendant "subscribed" to a Bell System advertisement for products for which no tariff had been filed.

The advertisement in question appeared in the March 27, 1974 issue of Computerworld. It described a new family of Bell System Dataphone services, offering a wide variety of transmission speeds, and automatic equalization, solid-state integrated circuit design, and built-in diagnostic features.

Complainant sought an order that defendant "...not support any advertisement by AT&T wherein his [sic] participation is not readily identifiable by their being signed AT&T and Associated Companies [sic]". He also sought an order that defendant not support any advertisement for products for which there is no tariff on file. The answer asserts the following affirmative defenses:

1. That the conduct complained of does not constitute a breach of any legal duty (Public Utilities Code § 1702).
2. That the advertisement refers to products for which Pacific has filed tariffs.

On July 10, 1970, defendant filed a motion to dismiss which reiterated the grounds stated in the answer. The motion, in addition, indicated that similar issues had been considered by the Commission in Case No. 8774, Theodore E. P. Sallume v PT&E Co. (Decision No. 74652). The decision in that proceeding (issued after hearing) found that defendant had not violated any of its tariffs and dismissed the complaint.

Discussion

While this complaint purports to involve a new incident, it is plain from the relief sought that complainant is attempting to retry one of the primary issues determined in the last proceeding, i.e., the scope of The Pacific Telephone and Telegraph Company's (Pacific) responsibilities for discrepancies between its tariffs and American Telephone and Telegraph Company's (American) product advertisements. That issue has already been decided and no grounds have been asserted to justify reopening the proceeding.

The complaint is not saved by the novel forms of relief sought. The complaint fails to allege any facts which would justify this Commission in assuming jurisdiction to regulate the text of American's advertisements. Any order purporting to restrain Pacific from making payments due under its contracts with American would be contrary to the holding in Pacific Tel & Tel Co. v P.U.C. (1950) 34 Cal 2d 822.

We take official notice that:

1. Complainant has previously brought and lost a complaint against defendant dealing with a discrepancy between American's product advertisements and Pacific's tariffs.
2. American is not a California public utility.

We conclude that:

1. Complainant has not alleged facts sufficient to justify relitigating issues determined in Decision No. 74652 in Case No. 8774.

2. Complainant has not alleged facts sufficient to support direct regulation of the content of American's advertising by this Commission.

3. An order that Pacific not pay sums due and owing to American would be unlawful.

IT IS ORDERED that this complaint is dismissed.

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

Dated at San Francisco, California, this 15th
day of OCTOBER, 1974.

Vernon L. Stevenson
President
William J. Symonds, Jr.
William J. Symonds, Jr.
William J. Symonds, Jr.
William J. Symonds, Jr.
Commissioners