

Decision No. 84068

**ORIGINAL**

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  
(Filed August 16, 1973)

Jack Krinsky, for Ad Visor, Inc. and Stan Berko,  
complainants.

Michael J. Ritter and Richard A. Siegfried,  
Attorneys at Law, for defendant.

O P I N I O N

This is a complaint by Ad Visor, Inc. (Ad Visor) against The Pacific Telephone & Telegraph Company (PT&T). The complaint involves PT&T's yellow page multiple display advertising rules.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis in Los Angeles on February 1, 1974 and was submitted on March 12, 1974.

Ad Visor is a firm which, among other things, represents telephone users in connection with telephone directory advertising. In the first half of 1973, Ad Visor entered into an agreement to represent Stanley Berko (Berko) and Ad Visor has acted as Berko's agent in dealings with PT&T from that time until the present time.

Berko is in the television sales and service business. Most of the business involves TV repairs. In 1972 Berko owned and operated eight separate businesses at the same address, namely 9312 Katella Avenue, Anaheim, California. The businesses were known

as Chapman TV & Electronics, Royal TV Service, Zerko TV Service, Don's Color TV Service, Arrow Television, Arco TV, Ohio TV, and Ohio TV Sales & Service. Each business had a separate telephone number. Each business was registered with the California Department of Consumer Affairs, Bureau of Repair Services.<sup>1/</sup> All the businesses used common personnel. The servicemen used the invoice of the business called.

Berko had three double half-column ads under the heading "TV and Radio Dealers - Sales and Service" in the yellow pages of PT&T's 1972 Orange County directory. The ads were for Chapman TV & Electronics, Royal TV, and Ohio TV. After publication of the 1972 Orange County directory, PT&T determined that the three ads violated its multiple display advertising standard.

PT&T's multiple display advertising standards provide in part as follows:

"I - MULTIPLE DISPLAY ADVERTISEMENTS

ALL NEW SALES OR RENEWAL INVOLVING MULTIPLE DISPLAY UNDER A SINGLE CLASSIFIED HEADING, REQUIRE THE APPROVAL OF THE DIRECTORY SALES MANAGER.

"Display advertising space under any single classified heading in the Yellow Pages of a directory for any one person, firm, partnership, association, corporation, company or organization of any kind conducting a business or businesses under one or more names, shall be limited to one and only one D-1/2 column display item or its equivalent in space. When one or more of the following conditions exist, the advertiser may have one and only one additional D-1/2 column display advertisement or its equivalent under the same classified heading. Under no condition shall any firm have more than two D-1/2 column display advertisements or their equivalent under the same classified heading except under Condition 4."<sup>2/</sup>

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<sup>1/</sup> Registration is accomplished by submitting the required information and payment of a \$50 fee. There are no standards required for registration.

<sup>2/</sup> The entire standard, including the four conditions which would permit an advertiser one additional D-1/2 column ad, are attached hereto as Appendix A.

On September 13, 1972, PT&T sent Berko a letter which indicated that his 1973 directory advertising would have to comply with its multiple display standards. In the first half of 1973, Berko retained Ad Visor as his agent to handle all of its telephone directory advertising.

After the issuance of the 1972 Orange County directory, Berko acquired Mobile TV Service, Adco TV Service, and Central Service TV which are located at 9312 Katella Avenue, Anaheim, and Olson and Crawford and Factory Service TV which are located at 2300 West Commonwealth Avenue, Fullerton. Berko stopped doing business as Arco TV and Don's Color TV Service. Adco TV Service appears to be the successor of Arco TV. In 1973 Adco took over the telephone number which Arco had in 1972. Factory Service TV appears to be the successor of Don's Color TV Service. In 1973 Factory Service TV took over the telephone number which Don's Color TV Service had in 1972.

Ad Visor entered into discussions with PT&T about Berko's 1973 directory advertising. Ad Visor was told that under the multiple display standards Berko would be entitled to purchase two double half-column ads under the TV and Radio Dealers - Sales and Service heading. PT&T indicated that Berko could have one such ad for each of the two locations where he was conducting the various businesses. Ad Visor transmitted this information to Berko.

Berko believed that without multiple display ads his business would decline and this would be detrimental to him and his employees. In July or August 1973, Berko sold some of his businesses to his office manager, to his service manager, and to his son, who is a field electronics technician and an employee of Berko.<sup>3/</sup> The businesses were

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<sup>3/</sup> Berko testified that he sold Olson & Crawford TV, Chapman TV, Central TV, and possibly Royal TV. Berko testified that he sold Central TV to his son. The record does not indicate the specific businesses which the other employees purchased.

sold on long-term contracts. Only the business titles and telephone numbers were sold. No equipment or stock in trade was included in the sales. The operations of the businesses continued in the same manner as before the sale. Berko contacted PT&T and submitted the documents necessary to have the telephone numbers of the businesses which were sold superseded to the employees who purchased them. Thereafter, Ad Visor contacted PT&T and requested display advertising for each of the sold businesses and for Berko. PT&T refused relying on its multiple display advertising standards. It only accepted for the 1973 Orange County directory two double half-column ads; one for Olson & Crawford at the Fullerton location and one for Chapman TV Service at the Anaheim location. This complaint followed.

Ad Visor presented evidence of instances where it claims PT&T permitted others to have more double half-column ads than provided for in the multiple display advertising standards. None of these instances involved the TV and Radio Dealers - Sales and Service listing in the Orange County directory or any other directory.

PT&T's directory staff manager testified about the reasons for the multiple display advertising standards. He indicated that the yellow pages are successful because they serve as a complete buyer's guide. PT&T has statistics which indicate that 85 percent of California adults over the age of 20 use the yellow pages. PT&T believes that in order to maintain this percentage of use it is necessary that the users have confidence that the directory contains a complete selection of firms from which to choose. If one or more advertisers were permitted to dominate a yellow page heading users would not have a true choice in selecting firms with which to deal, and smaller firms might be discouraged and not advertise at all. This would diminish the effectiveness of the yellow pages.

PT&T introduced evidence demonstrating the domination of certain yellow page headings by large advertisers before the adoption of the multiple display advertising standards. The directory staff manager testified that when violations of the multiple display advertising standards occur, PT&T takes steps to eliminate them. He also testified that in September 1973 PT&T adopted a standard for informational listings similar to the one for display advertising. This standard also limits informational listings to no more than two under any classified heading.

The program manager of the Bureau of Repair Services, California Department of Consumer Affairs (Bureau) testified on behalf of PT&T. He testified that the Bureau supported PT&T's multiple display advertising standards. He read into the record a statement on behalf of the Bureau. The statement indicated that the Bureau had an interest in any activity of repair dealers and consumer complaints which fall under its jurisdiction; that the primary means of advertising for repair dealers is telephone directory advertising; that PT&T's multiple display advertising standards help protect the general public; that without these standards the large dealers would saturate the yellow pages isolating the smaller dealers; that the number of complaints received by the Bureau in connection with yellow page advertising is extremely low, which is in contrast to complaints received about other forms of advertising and that the Bureau believed the standards to be fair and equitable.

The Bureau's program manager testified that in his opinion 50 percent of persons seeking a TV service dealer rely upon yellow page advertising. He also testified that multiple ads could mislead the public. He cited as an example a single business conducting operations and advertising under 15 names. A consumer contacts the business under one of these names for television repairs and is

dissatisfied with the results. On a subsequent occasion the dissatisfied consumer seeks a different repair service. If unrestricted multiple display advertising were permitted, he might contact the same organization with which there was dissatisfaction under one of the other 14 names and be dealing with the same personnel.

The general counsel and assistant to the executive director of the California Moving and Storage Association testified in support of PT&T. He testified that if unlimited multiple display advertising were permitted, it would discourage smaller moving companies from advertising at all; that if most companies engaged in multiple display advertising it would result in increased costs which would be passed on to the consumer in higher moving and storage rates and that multiple display advertising by one business using several different names would be deceptive for the reasons heretofore stated.

The vice-president of the California State Electronics Association testified in behalf of PT&T. He indicated that the association supported PT&T's multiple display advertising standards.

The material issues presented in this proceeding are as follows:

(1) Do PT&T's multiple display advertising standards violate any provision of law or order or rule of the Commission?

(2) Are the multiple display advertising standards unjust, unreasonable, or improper?

(3) Has PT&T's application of the multiple display advertising standards resulted in unjust discrimination?

(4) Is Berko entitled to any relief in connection with PT&T's application of its multiple display advertising standards?

There is no evidence in the record which would sustain a finding that PT&T's multiple display advertising standards violate any provision of law or order or rule of the Commission. This issue will not be further considered.

Berko contends that PT&T's multiple display advertising standards are unjust, unreasonable, and improper. He argues that under the law he may operate businesses under as many names as he chooses and that he and his employees may conduct separate businesses with joint personnel. Berko asserts that PT&T's standards interfere with these legal rights. There is no merit in this contention.

The record indicates that PT&T will provide white and yellow page listings<sup>4/</sup> for each business name under which Berko operates upon payment of the requisite charges. Similarly, PT&T will provide white and yellow page listings for businesses operated by Berko's employees. The dispute herein involves advertising which Berko seeks to purchase in addition to the yellow page listing. Essentially, Berko's position is that PT&T's refusal to accept advertising from him for each name under which he conducts businesses at one address interferes with his right to operate such businesses.

PT&T may adopt reasonable standards for advertising copy which appears in its yellow pages. There are various reasons why PT&T may desire to enforce high standards of advertising in its yellow pages. Among these reasons is that, to the extent the yellow pages are relied upon and utilized by customers, additional and continuing advertising revenues will likely be generated for PT&T. The record indicates that the multiple display advertising standards were adopted in response to the attempted domination of yellow page classifications by large advertisers. Furthermore,

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<sup>4/</sup> The charge for commercial telephone service entitles a customer to a listing in the white and yellow pages.

these standards are consonant with the state and national policies of fostering competition. (Cartwright Act, Business & Professions Code, §§ 16700 et seq.; Sherman Antitrust Act, 15 USCA, §§ 1-7; Clayton Antitrust Act, 15 USCA, §§ 12-27; Speegle v Board of Fire Underwriters (1946) 29 C 2d 34, 44; In re Lynwood Herald American (1957) 152 CA 2d 901, 909; see also Northern California Power Agency v Public Util. Comm. (1971) 5 C 3d 370, 377.) In the circumstances, we cannot hold that the standards are unjust, unreasonable, or arbitrary.

It is unnecessary to consider whether the transfer of some of Berko's businesses to his employees were bona fide. The multiple display advertising standards apply to "any one person, firm, partnership, association, corporation, company or organization of any kind conducting a business or businesses under one or more names...." The evidence clearly indicates that all of the businesses here involved operate with common personnel. Furthermore, assuming that the transfers of title to some of the businesses to the employees was not a subterfuge, the record shows that Berko owns the equipment and stock-in-trade of these businesses. PT&T properly concluded that these arrangements constituted an organization within the meaning of the standards.

We next turn to the question of whether PT&T has discriminated against Berko in the application of the multiple display standards. Public Utilities Code Section 453 provides in part that:

"No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage."

Where discrimination is found to have occurred, it may be corrected in one of two ways. A utility may be ordered to discontinue the preference or advantage or to make it available to others similarly situated.



In the Limitation of Liability case it was stated that: "The record and common sense indicate that some directory errors and interruptions of service are inevitable in the operations of a telephone company." (In re Limitation of Liability of Telephone Corporations (1970) 71 CPUC 229, 242.) The record indicates that when PT&T discovers it has not properly applied its multiple display advertising standards its policy is to take steps to eliminate the violations which may have occurred. The Commission finds that enforcement rather than abolition of the standards is more in the public interest. Furthermore, where failure to properly apply standards has resulted in actual damage to another customer we have awarded reparations. (Angel Appliance Service v PT&T (1974) Decision No. 82886 in Case No. 9494.)

Examination of the record discloses that the alleged unfair application of the multiple display advertising standards occurred under the classified headings of dentists and plumbing contractors. Some of the alleged violations appeared in directories other than the Orange County one. Even if it be assumed that the alleged violations are in fact actual ones, Berko suffered no damage for which he would be entitled to reparations. PT&T indicated that if investigation discloses the alleged violations to be true it will correctly apply its multiple display standards to the persons or firms involved in the future. No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. Ad Visor is a firm which, among other things, represents telephone users in connection with telephone directory advertising. It has acted as the agent for Berko in dealings with PT&T from the first half of 1973 to date.

2. Berko is in the television sales and service business. Most of the business involves TV repairs. In 1972 Berko owned and operated eight separate businesses at the same address, namely 9312 Katella Avenue, Anaheim, California. The businesses were known as Chapman TV & Electronics, Royal TV Service, Zerko TV Service, Don's Color TV Service, Arrow Television, Arco TV, Ohio TV, and Ohio TV Sales & Service. Each business had a separate telephone number. Each business was registered with the California Department of Consumer Affairs, Bureau of Repair Services. All the businesses used common personnel. The servicemen used the invoice of the business called.

3. At all times herein mentioned PT&T's multiple display advertising standards were set forth in Appendix A attached hereto.

4. Berko had three double half-column ads under the heading: "TV and Radio Dealers - Sales and Service" in the yellow pages of PT&T's 1972 Orange County directory. The ads were for Chapman TV & Electronics, Royal TV, and Ohio TV. After publication of the 1972 Orange County directory, PT&T determined that the three ads violated its multiple display advertising standard. On September 13, 1972 PT&T sent Berko a letter which indicated that his 1973 directory advertising would have to comply with its multiple display standards.

5. After the issuance of the 1972 Orange County directory, Berko acquired Mobile TV Service, Adco TV Service, and Central Service TV, which are located at 9312 Katella Avenue, Anaheim and Olson and Crawford and Factory Service TV which are located at 2300 West Commonwealth Avenue, Fullerton. Berko stopped doing business as Arco TV and Don's Color TV Service. In 1973 Adco took over the telephone number which Arco had in 1972. In 1973 Factory Service TV took over the telephone number which Don's Color TV Service had in 1972.

6. Ad Visor entered into discussions with PT&T about Berko's 1973 directory advertising. Ad Visor was told that under the multiple display standards Berko would be entitled to purchase two double half-column ads under the TV and Radio Dealers - Sales and Service heading. PT&T indicated that Berko could have one such ad for each of the two locations where he was conducting the various businesses. Ad Visor transmitted this information to Berko.

7. Berko believed that without multiple display ads his business would decline and this would be detrimental to him and his employees. In July or August 1973, Berko sold some of his businesses to his office manager, to his service manager, and to his son, who is a field electronics technician and an employee of Berko. The businesses were sold on long-term contracts. Only the business titles and telephone numbers were sold. No equipment or stock-in-trade was included in the sales. The operations of the businesses continued in the same manner as before the sale. It is not necessary for the resolution of the issues herein to determine whether these sales were bona fide or devices to circumvent the application of the multiple display advertising standards. For the purposes of this decision we assume, without deciding, that they were bona fide.

8. Berko contacted PT&T and submitted the documents necessary to have the telephone numbers of the businesses which were sold superseded to the employees who purchased them. Thereafter, Ad Visor contacted PT&T and requested display advertising for each of the sold businesses and for Berko. PT&T refused relying on its multiple display advertising standards. It only accepted for the 1973 Orange County directory two double half-column ads; one for Olson and Crawford at the Fullerton location and one for Chapman TV Service at the Anaheim location.

9. Ad Visor presented evidence of instances where it claims PT&T permitted others to have more double half-column ads than provided for in the multiple display advertising standards. None of these alleged violations involved the TV and Radio Dealers - Sales and Service listing in the Orange County directory. They involved the classified headings of dentists and plumbing contractors. Some of the alleged violations appeared in directories other than the Orange County one.

10. Eighty-five percent of California adults over the age of 20 years use telephone directory yellow pages. PT&T believes that the yellow pages are successful because they serve as a complete buyer's guide. PT&T believes that in order to maintain the high percentage of yellow page use by customers it is necessary that the yellow pages contain a complete selection of firms from which to choose.

11. Domination of a yellow page classified heading by one or more advertisers tends to discourage smaller firms from advertising in that heading.

12. Prior to the adoption of the multiple display advertising standards there were instances of domination or attempted domination of advertising in certain classified headings in the yellow pages of various telephone directories.

13. When PT&T discovers that it has accepted advertising which contravenes its multiple display advertising standards its policy is to eliminate the violation.

14. In September 1973, PT&T adopted a standard for informational listings similar to the one for display advertising.

15. The primary means of advertising for television repair dealers is telephone directory yellow page advertising. The number

of complaints received by the Bureau of Repair Services, California Department of Consumer Affairs, in connection with yellow page advertising is extremely low, which is in contrast to complaints received about other forms of advertising.

16. Upon the payment of requisite charges, PT&T will provide a white and yellow page listing for each business name under which Berko or any of his employees operates.

17. PT&T's multiple display advertising standards are not unjust, unreasonable, or arbitrary. They are consonant with the state and national policies of fostering competition.

18. Where PT&T's multiple display advertising standards are not properly applied enforcement of the standards is more in the public interest than the abolition of them.

19. PT&T has not applied its multiple display advertising standards to Berko in an unjust, unreasonable, or improper manner.

Conclusions of Law

1. There is no evidence in the record which would sustain a finding that PT&T's multiple display advertising standards violate any law or order or rule of the Commission.

2. PT&T's multiple display advertising standards are not unjust, unreasonable, or arbitrary as applied to the facts herein presented.

3. Berko has not suffered any damage for which he would be entitled to any reparations from PT&T.

4. Berko is not entitled to any relief herein.

O R D E R

IT IS ORDERED that the complainants are not entitled to any relief herein.

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

Dated at San Francisco, California, this 11<sup>th</sup> day of FEBRUARY, 1975.

Vernon L. Lutz  
President  
William L. Lutz, Jr.  
Donald Ross  
Commissioners

APPENDIX A  
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"I - MULTIPLE DISPLAY ADVERTISEMENTS

ALL NEW SALES OR RENEWALS INVOLVING MULTIPLE DISPLAY UNDER A SINGLE CLASSIFIED HEADING, REQUIRE THE APPROVAL OF THE DIRECTORY SALES MANAGER.

Display advertising space under any single classified heading in the Yellow Pages of a directory for any one person, firm, partnership, association, corporation, company or organization of any kind conducting a business or businesses under one or more names, shall be limited to one and only one D-1/2 column display item or its equivalent in space. When one or more of the following conditions exist, the advertiser may have one and only one additional D-1/2 column display advertisement or its equivalent under the same classified heading. Under no condition shall any firm have more than two D-1/2 column display advertisements or their equivalent under the same classified heading except under Condition 4.

CONDITION 1:

If an advertiser actually conducts business with the public at two or more locations, he may buy two D-1/2 column advertisements or their equivalent under a single classified heading. The second or additional display space must include the address and telephone number of the second location.

- A. Continuous property with one or more street addresses, shall be considered as one location.
- B. An address where arrangements are maintained only for the answering of telephone calls and/or as a mailing address, shall not be considered as a second location.
- C. An off premise extension is not considered as a second location, unless the location is a bona fide place of business.

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## CONDITION 2:

An advertiser may have an additional D-1/2 column display item or its equivalent under the following headings providing each advertisement caters to a different phase of business, different brand name product of different type of market. Following are the only headings that presently qualify under this rule. Request for additional headings should be made by the sales person through lines of organization. Final approval will be by the General Directory Sales Supervisor in General Administration.

## AUTOMOBILE DEALERS-NEW CARS

Chrysler and Plymouth	(Different brand name
Lincoln and Mercury	product and different
Etc.	type of market.)

## AUTOMOBILE RENTING &amp; LEASING

(1) Day to Day Renting	(Different phase of
(2) Contractual Leasing	business and different
for Long Periods	type of market.)

## CARPET RUG &amp; UPHOLSTERY CLEANERS

(1) Carpet & Rug	(Different phase of
Cleaning	business.)
(2) Upholstery Cleaners	

## PLUMBING CONTRACTORS

(1) Industrial Equipment	(Different type of
& Services	market.)
(2) Residential Equipment	
& Services	

## TRUCK RENTING &amp; LEASING

(1) Day to Day Renting	(Different phase of
(2) Contractual Leasing	business and different
for Long Periods	type of market.)



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CONDITION 3:

If the advertiser represents another firm and has a representative type of additional listing in that firm's name on his telephone service, he can then have an additional D-1/2 column or its equivalent under the same heading providing he also meets all of these other additional requirements:

- A. The copy must pertain solely to the company represented or its product or service.
- B. The copy must also contain the advertiser's main listing with the phrase 'represented by' or 'agent' associated therewith.
- C. The reference to the advertiser's main listing must also be in sufficient size type and so arranged as to prevent being overlooked or not properly associated with the representative type of additional listing for which the advertisement is ordered.

A firm which is only an authorized dealer of a product or service does not fall within the meaning and intent of this condition and is therefore not entitled to the additional display space.

CONDITION 4:

In addition to whatever display items the advertiser may be entitled under a classified heading, an additional display item not to exceed one D-1/2 column is acceptable when such display item refers to trade mark or trade name representation for list of dealers or distributors, so called 'Product Sell Ad.' The advertiser's name and telephone number is not acceptable in the copy of such ads."