

ORIGINAL

Decision No. 84634

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EUGENE B. SHUMATE,

Complainant,

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY,

Defendant.

Case No. 9729
(Filed May 2, 1974)

Eugene B. Shumate, for himself, complainant.
Michael J. Ritter, Attorney at Law, for
The Pacific Telephone and Telegraph
Company, defendant.

O P I N I O N

This is a complaint by Eugene B. Shumate (Shumate) against The Pacific Telephone and Telegraph Company (PT&T). The complaint involves a dispute over yellow page advertising in PT&T's 1973 and 1974 Los Angeles directories.^{1/}

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis in Los Angeles on August 23, 1974 and it was submitted on September 11, 1974.

The material issues presented in this proceeding are as follows: (1) Did PT&T publish Shumate's advertisement in an improper manner in the 1973 yellow pages? If so, is Shumate entitled to any reparations? (2) Did PT&T properly refuse to accept any advertising from Shumate for the 1974 directory?

^{1/} All references herein are to PT&T's Los Angeles directory.

The Commission makes the following findings of fact.

1. At all times herein mentioned Shumate conducted a business at 4332 West Sunset Boulevard, Los Angeles, California, under the fictitious names of The Hollywood Coffee Club and AAA Coffee Service.

2. In 1972, Shumate placed a one-half column advertisement in the directory under the classified heading of "Coffee Break Service & Supplies". The 1972 directory was distributed in August of that year. After the directory was distributed, Shumate complained about the appearance of his advertisement. Shumate's reasons for complaint were as follows: (1) The border was not as dark as requested. (2) Some of the lettering was not the size requested. (3) The bottle and decanter were not completely black with yellow lettering within, as requested. (4) The free trial box was not shaded as requested. (5) The border within the ad was not as jagged as requested.

3. The 1972 ad was prepared by PT&T's personnel. PT&T granted Shumate a 100 percent credit allowance for the charges in connection with the 1972 ad because Shumate was not given the opportunity to accept or reject the finished copy which was subsequently published.

4. Shumate hired a commercial artist to prepare the artwork for his proposed 1973 ad. The cost of the artwork was \$100. Shumate ordered a one-half column ad under the heading "Coffee Break Service & Supplies" for the 1973 directory. Shumate submitted the artwork he had prepared as the text of the ad.

5. Shumate received a xerox copy proof of the proposed ad with which he was dissatisfied. He prepared a letter of complaint to PT&T. The letter was not mailed because a yellow page salesman and the advertising sales manager visited Shumate at his place of business and its contents were told to the PT&T representatives. The letter stated:

"Gentlemen:

"Enclosed please find your proof of our ad mailed under date of 4/12/73, a copy of our original artwork for the ad. Please note that the background in the proof is not as dark as in our copy nor is it as dark as in the ad that you printed last year.

"Secondary, the darkening line along the edges of the jagged break in the background has disappeared in your proof. Both of these things are most important to obtain the necessary contrast in the ad.

"We wish to be advised immediately that these two matters have been corrected. If they can't be corrected, we would expect to be so advised before we approve the printing.

"Please also return to us the original artwork which was submitted for the ad.

"Thank you. Yours truly."

The salesman told Shumate that the actual ad would appear in the directory as clear and crisp as in the artwork submitted.

6. Shumate was dissatisfied with the 1973 ad, as published. His dissatisfaction was as follows: (1) The background was not as dark as contemplated in the artwork submitted. (2) The artwork included a double line, intended to give a jagged broken glass effect, around some of the text. In the published ad the background blended into the outer line so as to diminish this effect.

7. Shumate complained to PT&T about the ad. There were negotiations between the parties. PT&T's best offer during the negotiations was a credit allowance of 25 percent of the advertising charges for the year 1973 plus the sum of \$100 for the artwork procured by Shumate. Shumate rejected the offer.

8. The charges for the 1973 ad were \$99.50 per month giving a total of \$1,194 for the 12 months during which the directory was in use. Shumate refused to pay any of that amount to PT&T. Shumate did not deposit any of that sum with the Commission.

9. Paragraph 9.a. of the Special Conditions of PT&T's tariff Schedule Cal. P.U.C. No. 39-T (14th Revised Sheet 5) provides as follows:

"In addition to Special Condition, No. 9 above, any applicant or advertiser who has refused or failed to pay charges for advertising service in the current or a preceding directory or directories in accordance with terms and conditions of the signed advertising order, may be refused further advertising in any directory; 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 any such subsequent directory or directories."

PT&T applied paragraph 9.a. to Shumate and refused to accept yellow page advertising from him for the 1974 directory.

The yellow pages are a transitory advertising medium. The life of the directory in which they appear is approximately 12 months. It is not contemplated that they will be retained after the issuance of the next directory. They are not printed on high quality paper stock. Common sense indicates that with the large number of directories issued annually the end product is not intended to grace the shelves of a permanent collection. Of course, errors occur in the yellow pages. When they occur, a customer may be entitled to certain types of relief. (Limitation of Liability Case (1970) 71 CPUC 229.) In the case of a credit allowance the test for determining the magnitude thereof is not the sensibility of the advertiser but the extent to which the error diminished the value of the service or services contracted for by the customer. (71 CPUC at p. 247.)

In some instances, an innovative or aesthetically attractive ad may catch the eye of yellow page users and generate additional business for the advertiser. The Commission is of the opinion that

we are not here confronted with such a situation.^{2/} The ad as published was essentially the same as that submitted. All of the information contained therein was correct. We do not believe that the slightly lighter background than that contemplated by the artwork or the blending of the outer line into the background diminished the value of the ad. The Commission, is, however, of the opinion that the value of the artwork furnished by Shumate was diminished and that he should be awarded reparations for the amount thereof.

(B. W. Beckman (1964) 63 PUC 305.)

No other points require discussion. The Commission makes the following additional findings and conclusions.

Additional Findings of Fact

10. Yellow pages are not printed on a high quality paper stock. Because of the nature of the printing process used and the quality of the paper involved, the reproduction of minute detail in yellow page ads is subject to minor variations. The inking of the presses during the printing of any directory may cause the background to be darker in some ads than in others.

11. Shumate's ad which appeared in the 1973 directory was essentially the same one he submitted. The background of the ad as printed was slightly lighter than that in the artwork furnished PT&T, but this minor variation did not diminish the value of the ad. The double line provided in the artwork to give a broken glass effect was not as pronounced as printed, but this minor variation did not diminish the value of the ad.

12. The minor variations from the artwork furnished PT&T to that which appeared in the printed directory diminished the value of the artwork. Shumate is entitled to reparations in the amount of \$100. No discrimination will result from the payment of interest on reparations for said amount.

^{2/} Questions of innovation and aesthetics are to a degree subjective in nature. Because of our finding herein, we express no opinion about the quantum and mode of proof necessary to establish such facts.

13. PT&T reasonably applied the provisions of paragraph 9.a. of the Special Conditions of its Schedule Cal. P.U.C. No. 39-T to Shumate's request for advertising in the 1974 directory.

Conclusions of Law

1. PT&T should be ordered to pay Shumate reparations of \$100, with interest at the rate of 7 percent per annum for a period of one year, the total of said reparations including interest being the sum of \$107.

2. If Shumate presently owes PT&T money for service rendered by it, PT&T should have the option of offsetting the reparations awarded against the outstanding balance. If Shumate is current in his payment of all charges for service rendered by PT&T, the payment of said reparations should be by check.

3. Shumate is entitled to no other relief in this proceeding.

O R D E R


IT IS ORDERED that The Pacific Telephone and Telegraph Company shall grant Eugene B. Shumate a credit allowance of \$107, including interest, for the year 1973. The credit allowance may be offset against any accrued outstanding charges owed by Shumate to PT&T. If there are no accrued outstanding charges owed by

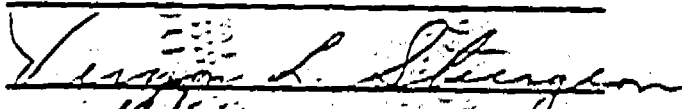
C. 9729 JR/NB


Shumate to PT&T, said credit allowance shall be paid to Shumate by check.

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

Dated at San Francisco, California, this 8th day of JULY, 1975.


President


Commissioners


Commissioners

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