

ORIGINAL

Decision No. 84854

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

General Medical Company and
Alpha Advertising Agency, Inc.,

Complainants,

vs.

Pacific Telephone and Telegraph
Company,

Defendant.

Case No. 9769
(Filed July 18, 1974;
amended August 29, 1974)

Robert Tapper and Jack B. Ripsteen, Attorney
at Law, for complainants.

Michael J. Ritter, Attorney at Law, for
defendant.

O P I N I O N

This complaint presents two separate but related disputes. Complainant General Medical Company (General Medical), a corporation, desires to place a yellow page advertisement (Attachment 2 to the amended complaint) under the heading "Electrolysis" (formerly "Electrolysis Treatments"). The Pacific Telephone and Telegraph Company (PT&T) refuses. Alpha Advertising Agency, Inc. (Alpha) seeks to obtain a 15 percent agency commission from PT&T for placing the General Medical advertisement. PT&T refuses.

A public hearing was held on April 10, 1975 before Examiner Charles E. Mattson in San Francisco. The matter was submitted on oral argument.

The General Medical Advertisement

The advertisement in question (Appendix A attached hereto) offers do-it-yourself electrolysis equipment and is included in Exhibit 11-GM. Exhibit 11-GM is a request to PT&T to place the ad under the heading "Electrolysis Treatments". It is undisputed that the heading is now "Electrolysis", and General Medical requests that the ad be placed under the new heading. It is also undisputed that PT&T refuses to place the ad under the requested heading.

The evidence is overwhelming that General Medical's ad belongs under the heading requested. The only apparent explanation for PT&T's refusal is a lack of understanding of the electrolysis field. PT&T states that the heading "Electrolysis" is for people who perform that service. PT&T would place the ad for a do-it-yourself device under a product heading such as "Electrolysis Equipment and Supplies" or "Hair Removing Equipment".

As complainant pointed out, electrolysis is defined as the removal of unwanted hair from the body by destroying the hair roots with an electrified needle. The basic question is whether a directory user will expect to find General Medical's product under the requested heading. The ad in question offers do-it-yourself electrolysis equipment, and is an alternative to the service offered by others listed under "Electrolysis" available by "salon treatment". The testimony of the president of General Medical establishes that the do-it-yourself device he sells is directly competitive with those who perform the service.

The Alpha Complaint

The president of General Medical conducts his business by means of two separate corporate entities. General Medical conducts the marketing operations while Alpha conducts an advertising business and obtains income from agency commissions available from advertising placed for General Medical.

The Alpha dispute arises from the application of certain requirements established by the advertising agency accounts practice of PT&T. A 15 percent agency commission is paid to an advertising agency which complies with certain conditions. PT&T alleges that Alpha fails to meet conditions requiring advertising outside the Southern California Region in order to qualify as a "national advertiser". Alpha admits it has not yet met the conditions regarding out-of-region advertising, but points out that to do so would be futile since PT&T would deny Alpha the commission under Section 2.0208 of PT&T's Directory Practice 771.3. That section requires compliance with the following condition:

2.0208 The agency is an independent agent;
i.e., not a member, a branch, or affiliated
with the subscriber's firm in any way.

PT&T applies Section 2.0208 to disqualify Alpha.

The undisputed evidence is that the two complainants are separate corporations, with common ownership. Mr. Tapper, the president of each corporation, is also the stockholder of each corporation. The corporations each maintain separate records. Mr. Tapper created Alpha to operate as an advertising agency, and Alpha has derived its income from advertising placed for General Medical. Alpha's separate corporate existence enables Mr. Tapper to operate an advertising agency at a profit. The PT&T rule, as applied, would pierce the corporate veil and deny Alpha's right to operate as an advertising agency for General Medical.

In view of the apparent legality of the separate corporate existence and operations of Alpha PT&T must justify the treatment of Alpha as contrasted to other corporate advertising agencies. The rationale is that the granting of a commission to Alpha would accrue to the benefit of General Medical, and would, in effect, be an improper discount of advertising to General Medical.

PT&T believes that to grant the commission to Alpha (assuming it qualified as a national advertiser) would result in a discount to the advertiser (General Medical) and violate the Public Utilities Code and the filed tariffs.

The claim of Alpha is that it should have a right to the commission (if it otherwise qualifies) for no reason exists to disregard its separate corporate existence.

We agree with PT&T. In order to apply PT&T's Section 2.0208 requirement to Alpha we should have some reason to distinguish Alpha from corporate advertising agencies in general. The evidence is that Alpha conducts extensive advertising operations for General Medical, its affiliated company. Alpha's income is derived from advertising agency commissions from the media. We assume it is to Mr. Tapper's advantage to conduct his own advertising agency. Presumably other advertisers could also create and operate their own separate corporate advertising agencies. This corporate device would permit a rebate to the affiliate.

Findings

1. General Medical seeks to place an advertisement (attached hereto as Appendix A) under the yellow page heading of "Electrolysis".
2. PT&T refuses to place such advertisement under the requested heading.
3. The advertisement content is within the commonly understood and accepted meaning of "Electrolysis".
4. Alpha Advertising Agency, Inc. (Alpha) requests recognition from PT&T as an advertising agency entitled to a commission for

advertising it places for General Medical despite the fact that both corporations have a common stockholder and president.

5. PT&T alleges that Alpha has not qualified as a national advertiser entitled to a commission. However, should Alpha qualify as a national advertiser, it would be disqualified by reason of the following requirement: "2.0208 The agency is an independent agent; i.e., not a member, a branch, or affiliated with the subscriber's firm in any way."

6. Alpha admits it has not yet qualified under PT&T's requirement that only national advertising may qualify for a commission. Alpha alleges that it intends to qualify as a national advertiser, but so long as PT&T applies Section 2.0208 further action would be an idle act so far as available commission income is concerned.

7. Alpha is a corporate advertising agency operating as the advertising agency for General Medical.

8. The principal stockholder of Alpha is also the principal stockholder of General Medical, and the president of both.

Conclusions

1. General Medical's advertisement, set forth as Appendix A hereto, should be listed under the yellow page heading "Electrolysis" by PT&T.

2. Alpha Advertising Agency, Inc. is not entitled to treatment as an independent agency. PT&T has applied its Section 2.0208 in a reasonable manner.

O R D E R

IT IS ORDERED that:

1. Defendant The Pacific Telephone and Telegraph Company place General Medical Company's advertisement (Appendix A hereto) under the category of "Electrolysis".

2. Defendant The Pacific Telephone and Telegraph Company should deny Alpha Advertising Agency, Inc. eligibility for an agency commission by reason of the provisions of Section 2.0208. ✓

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

Dated at San Francisco, California, this 3rd day of SEPTEMBER, 1975.

*I abstain
Leonard R. Ross*

*I abstain
Robert B. Brown*

[Signature]
President
William J. [Signature]
[Signature]

Commissioners

APPENDIX A

6499—General Medical—4-22—GG

ELECTROLYSIS TREATMENT

Do it yourself with

Perma Tweez

- The Perma Tweez method has been used by over 1/2 million persons 15,000 by physicians alone!
- Easy to use, easy to learn. Do away with unwanted hair FOREVER
- Total cost is less than the usual 1 hour salon treatment

UNCONDITIONAL 14 DAY MONEY BACK GUARANTEE
(No Exclusions)

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GENERAL MEDICAL CO., Dept. TLA-1, 5701 W. Adams Blvd., Los Angeles, CA 90016

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