

bp

Decision No. 85076

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

W. L. WATSON & SON, INC., a
California corporation dba
JOHN COBB SANITATION SERVICE,

Complainant,

vs.

PACIFIC TELEPHONE & TELEGRAPH
COMPANY, a corporation,

Defendant.

Case No. 9989
(Filed October 9, 1975)

ORDER DENYING REQUEST FOR INTERIM RELIEF

W. L. Watson & Son, Inc., doing business as John Cobb Sanitation Service (complainant) filed its complaint against Pacific Telephone & Telegraph Company (PT&T) alleging that PT&T has wrongfully refused complainant's application to place its yellow page advertising in PT&T's Newhall and Saugus directories. PT&T's denial of complainant's application was based upon PT&T's Multiple Display Advertising rule, which provides that any organization occupying a continuous business location shall be entitled to only one double one-half column ad under any single yellow page heading. Complainant occupies the same continuous business location as Watson-Rooter Corporation of America (Watson-Rooter).

Since Watson-Rooter already advertises under the headings which complainant seeks to use, and since complainant and Watson-Rooter occupy the same business premises, PT&T has treated them as a single business organization for the purposes of its Multiple Display Advertising rule and has refused complainant's advertising.

Complainant alleges that while it occupies the same physical business location and the same dispatching offices as Watson-Rooter, it is a separate entity in the following respects:

1. Complainant and Watson-Rooter are separate and distinct corporations.
2. Complainant is not owned by Watson-Rooter.
3. Complainant has a separate: (a) business license, (b) California State Seller's Permit, (c) employer's identification numbers for federal tax withholding and employee contributions, (d) books, payrolls and bank accounts, and (e) separate assets and liabilities, from Watson-Rooter.
4. Complainant and Watson-Rooter own and operate separate trucks. Complainant's trucks are identified by a distinctive "John Cobb" logo.
5. Complainant offers complete plumbing service in addition to sewer line cleaning, while Watson-Rooter offers only sewer line cleaning and septic tank services.
6. Complainant and Watson-Rooter have separate telephone numbers.

By Decision No. 84068 dated February 11, 1975, in Case No. 9605, we denied the complaint of Ad Visor, Inc. (Stan Berko, real party in interest) versus PT&T in a case raising similar issues of fact and law. In that decision we found that PT&T's Multiple Display Advertising standards were not unjust, unreasonable or arbitrary, either on their face or as applied to Berko.

The complainant herein has alleged insufficient facts to justify ex parte injunctive relief. While the complaint states certain facts concerning the operations of complainant and Watson-Rooter, other matters remain unclear. For instance, complainant does not state whether or not Watson-Rooter is a subsidiary of complainant, whether or not both corporations are owned by the same parent corporation, whether or not the same stockholders own stock in both corporations, whether or not there is any form of common ownership, management, or control, whether or not the two corporations use the same employees, or whether or not the two corporations are actually competitors.

Even if these questions could be answered in a manner most favorable to complainant, we cannot say as a matter of law that complainant would necessarily be entitled to exemption from the Multiple Display Advertising rule, in view of the finding we made

in Decision No. 84068, supra, that PT&T's rules are consonant with state and national policies of fostering competition.

In addition, there is no factual allegation in the complaint from which we can conclude that time is of the essence and that only an ex parte injunctive order will preserve complainant's rights.


Finally, irreparable damage and injury is alleged only in a conclusory manner, without supporting evidentiary facts.

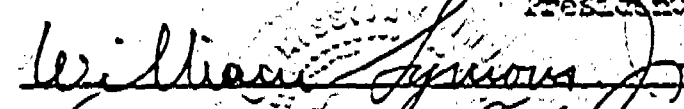
Conclusions of Law

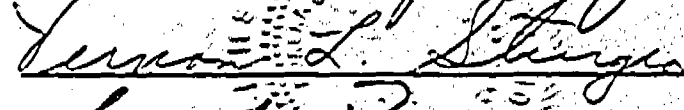
1. Complainant has alleged insufficient facts to state a cause of action for interim, ex parte injunctive relief.
2. Complainant's request for an ex parte, interim injunctive order requiring PT&T to provide to complainant any double one-half column display ads in any applicable classification and in any of PT&T's yellow page directories for which complainant has applied or may in the future apply, pending final decision of the Commission, is not justified by the allegations of the complaint and should be denied.

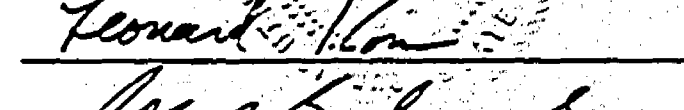
IT IS ORDERED that the request of complainant W. L. Watson, Inc. for an interim, ex parte injunctive order is denied without prejudice to complainant's right to renew its request for injunctive relief during public hearings to be held hereafter in this matter.

Dated at San Francisco, California, this 28th
day of OCTOBER, 1975.



President


William L. Sturgeon


Leonard H. Brown


Howard B. Baker
Commissioners