ddb

Decision No. 86497

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WERNER DIETRICH (BUD DIETRICH'S ORINDA SHELL), Complainant, vs. THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, Defendant.	Case No. 10119 (Filed June 10, 1976)

Werner Dietrich, for himself.
Duane G. Henry, Attorney at Law, for The Pacific Telephone and Telegraph Company, defendant.

O P I N I O N

This complaint is concerned with the Michelin Tire Company (Michelin) advertisement in the yellow pages of the 1976 central Contra Costa County telephone directory. That directory includes a list of dealers and concludes with the statement "end of list of authorized Michelin dealers". Complainant sells Michelin tires and argues that he should be included in the list of dealers. Complainant is listed as a Michelin Tire dealer in an advertisement in the same phone book, paid for by Murphy's Tires, the distributor who sells Dietrich his Michelin tires. Dietrich stated the Michelin representative told him that only those who purchase tires exclusively from Michelin are listed as Michelin dealers. He does not qualify because he buys his tires from a wholesaler. Dietrich wants to be included as a dealer in the Michelin advertisement and to have the statement "end

of list of authorized Michelin dealers" removed from the text. He alleges that the position of the tire company is unfair and prejudicial to the tire wholesalers and small garages and service stations, since the latter may be forced to purchase directly from Michelin rather than through a wholesaler. His complaint requests that the Commission require the defendant to correct the yellow page advertisements as previously described.

Defendant advised that it listed the dealers approved by Michelin, as requested. Defendant investigates all customers who claim to be manufacturers or distributors to be sure the authority actually exists, but no effort is made to settle disputes for those who may be inconvenienced by the text of an advertisement. Defendant argues that it has no authority to satisfy the complaint, since complainant is not an authorized dealer according to Michelin.

Prehearing conference was held before Examiner Edward Fraser on August 30, 1976, when the matter was submitted as the facts are not in dispute.

Findings

1. The Michelin Tire Company lists all those it considered its authorized dealers in the 1976 central Contra Costa County directory directory.

2. Complainant is not included as an authorized dealer because he does not purchase his tires directly from the Michelin Tire Company.

Conclusions

1. A manufacturer or distributor has the authority to designate who its authorized agents and distributors will be.

2. The telephone company is required to accept an entry for the yellow pages listing the authorized dealers of a tire manufacturer and distributor.

3. The telephone company is not responsible to those omitted from the list of dealers on the theory that the manufacturer did not include everyone who sells its products.

4. Merely selling a product is not a sufficient basis to require the telephone company to list the seller as an authorized dealer in the yellow pages, where the manufacturer of the product sold does not consider or list the seller as an authorized dealer. The complaint should be denied.

O R D E R

IT IS ORDERED that the complaint in Case No. 10119 is denied.

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

Dated at San Francisco, California, this 13th day of OCTOBER, 1976.

President
William Symons, Jr.
Vernon L. Sturgeon
Leonard Ross
Robert Batinovich
Commissioners