kd/ddb

Decision No. 87239

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AD VISOR, INC., a California corporation, authorized exclusive agent for: Downey Dental Center, Complainant(s), vs. GENERAL TELEPHONE COMPANY OF CALIFORNIA, Defendant.	Case No. 9834 (Filed November 25, 1974; amended April 2, 1975 and July 8, 1975)

Norin T. Grancell, Attorney at Law, for Ad Visor, Inc., authorized agent for Downey Dental Center, complainant.
A. M. Hart, H. R. Snyder, Jr., and Kenneth K. Okel, by Kenneth K. Okel, Attorney at Law, for General Telephone Company of California, defendant.

O P I N I O N

This complaint was filed by Ad Visor, Inc. (Ad Visor), a California corporation, on behalf of its client, Downey Dental Center (DDC), alleging that defendant General Telephone Company of California (General), through its agent General Telephone Directory Company (GTDC), violated its tariff and advertising standards in accepting certain yellow page advertisements under the classification "Dentists" in General's 1974 Downey and Whittier yellow page directories to the detriment of its client, DDC.

This case involves the publication of double-half column display and custom trademark advertisements allegedly in violation of tariffs, which resulted in the domination of the dentist classification by certain dental groups and dentists thus causing a diminution of growth in DDC's dental practice for which it seeks reparations, damages, and penalties. Additionally, findings of gross

negligence, willful misconduct, conspiracy, and a violation of the Business and Professions Code are sought.

The Pleadings

More specifically, the complaint and its amendments, allege that General violated:

1. Its multiple display advertising standard[1/] by publishing double-half column display advertisements under the "Dentists" classification for:
   a. Dr. Stein, Dr. Howard M. Stein Dental Group, and Dr. Porter, 1974 Downey directory.
   b. Dr. Stein, Dr. Howard M. Stein Dental Group, and Dr. Rips, 1974 Whittier directory.
   c. Dr. Philip Megdal and Megdal Dental Center (MDC) 1974 Downey and Whittier directories.
2. Its Columnar Advertising, Trademark, and Trade Name Service standards, and its Tariff Schedule Cal. PUC No. D-1[2/] by publishing custom trademark advertisements for:
   a. Dr. Howard M. Stein, Inc.; Dennis S. Jaffe; Edward N. Porter; Michael I. Rips; and five information directional advertisements for Stein, Howard M.; Jaffe, Dennis S.; Porter, Edward N.; Rips, Michael I.; and Stein, Howard M. Dr. Inc., in the 1974 Downey directory;
   b. Dr. Howard M. Stein Professional Dental Corporation; Jaffe, Dennis S.; and Rips, Michael I., and four information directional advertisements in the 1974 Whittier directory (for convenience, hereinafter the above doctors will be referred to as the Stein Group);
   c. Dr. Philip Megdal and MDC in the 1974 Downey and Whittier directories;
   d. Dr. Paul A. Kaye and Dr. S. J. Schwartz (Kaye Dental Group) in the 1974 Downey and Whittier directories.

1/ All footnote references are contained in Appendix A. All references to code sections are to the Public Utilities Code unless otherwise specified.

3. Its Tariff Schedule Cal. PUC No. A-13[3] pertaining to Joint User Service by establishing joint user telephone service for the Stein Group in connection with multiple display columnar advertising in the 1974 Downey and Whittier directories.

4. Civil Code Section 1668[4] by conspiring to set up a fictitious joint user telephone service for the Stein Group to obtain additional multiple display and custom trademark advertisements.

5. Its Dentist Information Bureaus and Heading Standards, and Section 17500 of the Business and Professions Code[5] by publishing a custom trademark advertisement under the classification Dentist Information Bureaus for the American Society of Family Dentists (Victor E. Israel, DDS, Inc.) in the 1974 Whittier directory which is misleading.

6. Its Dentists Service Organizations and Headings standards[6] by publishing an advertisement under the classification Dentists Service Organizations for Union Affiliated Dental Service (UADS) in the 1974 Downey and Whittier directories which is misleading.

7. Section 453[7] by providing preference and advantage to certain advertisers to the detriment of DDC on multiple occasions and in multiple directories.

8. That General's conduct in accepting and publishing these advertisements was willful, grossly negligent, and that it was conspiratorial.

Complainant seeks reparations in the amount of $1,623 for the 1974 Downey directory advertising contract, and $1,464 for the 1974 Whittier directory advertising contract of Downey Dental Center, plus interest, and reparations in the amount of the monthly telephone service billed for the year October 1974 to December 1975. DDC also seeks, in addition to findings that General violated its tariffs and advertising standards, that General be found guilty of multiple counts of gross negligence, willful misconduct, and violations of Section 453 of the Public Utilities Code, Section 1668 of the Civil Code, and Section 17500 of the Business and Professions Code.

General combined a motion to dismiss with its answer. The motion is based upon the grounds that the complaint is deficient in that it fails to state "the injury complained of" as required by

Rule 10 of our Rules of Practice and Procedure. The answer admits publishing the advertisements complained of and that an adjustment was made in 1973 to DDC in connection with yellow page advertising for Drs. Stein and Megdal in the Downey directory. In all other respects General denies the allegations.

For affirmative defenses, General pleads that the amendment to the complaint fails to state facts sufficient to constitute a cause of action; that General conducts a reasonable investigation of the status of its advertising customers; that it acted in good faith in accepting the directory advertising complained of; and that it did not have cause to disbelieve the information provided by said advertisers.

Four days of public hearings were held before Examiner Bernard A. Peeters in Los Angeles beginning on July 8, 1975. The matter was submitted subject to the filing of briefs. The matter is ready for decision.

The Issues

Ad Visor sets out three general issues:

1. Did General violate its tariffs, rules, and standards pertaining to directory advertising?
2. Did General have prior notice of the alleged violations?
3. Do the alleged violations constitute a violation of Section 453?

General contends that the issue is not whether it violated its tariffs and standards, but whether General reasonably believed that it was selling advertising to separate business entities or dentists conducting separate practices?

The material issues are:

1. Were the individual dentists in fact conducting separate practices (businesses)?
2. If the answer to the first issue is no, then, did General have reasonable cause to doubt that it was selling advertising to dentists conducting separate practices?

3. If General did have such reasonable cause, what violations of law resulted from General's actions?

4. If it is found that General violated the law, to what relief is DDC entitled?

Motions

During the course of the hearing, General moved to dismiss the complaint on the grounds that it involves an assignment of a reparation claim in violation of Section 734.[8] In this connection we refer General to Rule 56 of our Rules of Practice and Procedure.[9] This same motion was made by General in C.9800. We denied the motion there (D.85334, stayed by petitions for rehearing by both parties on other grounds). Since D.85334 was handed down subsequent to the submission of this matter, we will repeat our discussion in the light of the record made in the case at bar, and of the record made in C.9833, Ad Visor v Pacific Telephone and Telegraph Company (PT&T) of which we take official notice.

In the case at bar, the president of Ad Visor testified extensively with respect to Ad Visor's relationships with its clients.[10] The executive vice-president of Ad Visor also testified at length with respect to the Agency Contract, a separate document from the Agency Authorization, and the provision therein with respect to the 50-percent claim on any refunds procured by Ad Visor.[11] None of this testimony was controverted.

The evidence clearly shows that the agency contract is in the nature of a contingency contract. It is not an assignment of a claim. Ad Visor acquires no rights to any recoveries. It can only bill for services performed, if successful in its negotiation or litigation. Furthermore, the following language in the contract relates to advertising of the client:

> "In the event you receive a refund or credit from the advertising media due to an error or omission in your advertising program then, in addition, one half of such reduction or refund will be remitted to Ad Visor, Incorporated." (Exh. D-5, underscoring added.)

Thus, the 50 percent refund can only be applied to the situation where an error or omission was found in the client's advertising published prior to becoming a client of Ad Visor. As stated by Ad Visor's vice-president, once they undertake to handle a client's advertising and an omission or error is found and a refund or reduction obtained, Ad Visor makes no claim to any part of such refund since it occurred under their handling of the account which is covered by their ten percent fee.

In case at bar the client's advertising is not in issue, therefore, the refund provision is not operative. Even if it were operative, it is a contingency and Ad Visor acquires no rights to any recoveries. It can only bill for services performed if successful in its litigation.

General argues that Ad Visor's agreement with its client has to be an assignment, otherwise it has no standing to bring this action in its own name. This argument is specious. First, General overlooks the uncontroverted testimony pointed out above. Second, as we pointed out in D.85334, we find nothing in the statutes administered by us, nor in our rules of procedure which prohibits Ad Visor from bringing this action. However, as pointed out in D.85334 issued after this complaint, Ad Visor was cautioned to bring future actions in the name of its client, which it has been following. We therefore reaffirm our ruling in D.85334 and will deny General's motion.

The Evidence

Ad Visor presented its case through seven witnesses and sixty-eight exhibits. General presented four witnesses and thirty-nine exhibits.

A summary of the evidence pertaining to the separateness of the dental practices follows.

The Stein Group

Ad Visor's vice-president made several physical inspections of, and telephone calls to, the premises where Dr. Stein conducted a dental practice (Exh. C-3, pp. 12-14). It was determined that

dentistry was practiced at two locations, one in Bellflower, and the other in West Covina; that the offices at both locations consist of a small, two story building with a large sign on one side showing "Dr. Howard M. Stein Dental Group" and a smaller sign underneath showing "Union Affiliated Dental Service."; that both offices use common personnel, equipment, and telephone service; that when telephone calls were placed to the numbers listed in the various advertisements involving the Stein Group, viz., Drs. Porter, Rips, Jaffe, and the Stein corporations, at both addresses they were answered "Dr. Stein Dental Group"; and that when inquiry was made of the person answering the telephone whether Drs. Porter, Rips, and Jaffe had their own dental practice, the reply was that they were part of the group.

The depositions of Dr. Rips (Exh. C-5), Dr. Stein (Exh. C-6), and Dr. Porter (Exh. C-7), as well as their oral testimony at the hearing show that Drs. Porter, Rips, and Jaffe were employees or part owners of the Stein corporations, and that Drs. Porter and Rips each managed one of the two offices operated by the Stein corporations. Also, Dr. Stein testified at length regarding the many meetings with General and PT&T representatives regarding the advertising he wanted, and the corporate and individual relationships, culminating in a letter to General, at General's request, stating the compliance with certain criteria General provided (Exh. D-3-E).

The advertisements themselves show a relationship between the Stein corporations and the individual dentists (Exh. C-3-F and C-3-H).

Exhibits pertaining to the advertising contracts for Drs. Porter, Rips, and Jaffe show that Dr. Stein signed and paid for the advertising ordered.

It has also been shown that General made a 100 percent refund of advertising monies paid by DDC for its 1973 advertising due to a complaint about the excessive advertising of the Stein Group in the 1973 Downey and Whittier directories, which is admitted by General.

Other evidence was presented which shows the relationship of the individual doctors with the Stein corporations and that General had prior notice of this relationship before accepting advertising for the 1974 directories. All of the evidence combined shows that General was not dealing with separate dentist practitioners (businesses) but rather with two entities, the Stein corporations.

Dr. Stein's testimony exemplifies the method General took to accommodate the advertiser's wishes and attempt to give a color of compliance with the tariff and advertising standards requirements (RT pp. 64-82). In substance, he stated that both PT&T and General's sales representatives had many meetings with him about his yellow page advertising program. To accommodate his requests they would resort to various devices such as, having another telephone line installed, setting up a joint user service, and in the current situation, having his employees advertise as if they had their own separate dental practice. Certain criteria were given to him by General, after being worked out during one of these meetings, that would show that the individual dentists had separate practices. These were set forth in a letter by Dr. Stein (Exh. D-3-E) and sent to General at General's request for its records.

Dr. Carl Staciewicz, partner in complainant DDC, testified he was employed by the Dr. Howard M. Stein Professional Dental Corporation during 1972 and 1973, prior to establishing his own dental practice (Exh. C-1). During his employment he was paid a salary, as were all the other dentists employed by the corporation, except Drs. Rips and Jaffe who managed the Bellflower and West Covina locations. The managers received a percentage of the profits. There were no fixed rooms for the dentists, nor were there regular patients with respect to general dentistry.

General presented the Long Beach Division Manager of GTDC, Mr. Paul Corsaro, who testified with respect to the issue of the separateness of the practice of dentistry by the Stein group, among

other things. Prior to the salesperson's first contact with Dr. Stein for advertising in the 1974 Downey directory, Corsaro told the salesperson that Dr. Stein's advertising program was being questioned since the display ads for Drs. Rips and Jaffe did not appear to qualify for multiple display under the 1974 standards.

After the first meeting, Stein's advertising program was canceled. However, Dr. Stein insisted on his program. After many conferences, some of which included PT&T representatives, Corsaro approved the advertising Dr. Stein wanted upon receipt of a letter from Dr. Stein (Exh. D-3-E) stating that the criteria General wanted had been met.

Among other things, Corsaro contacted General's legal counsel outlining the problem (Exh. D-3-A) and requested guidance in handling the matter. The reply from counsel (Exh. D-3-B) set forth certain criteria to be met in order to qualify for additional display ads. Cross-examination of Corsaro established that these criteria were not followed because Corsaro thought it was only counsel's opinion and not a standard of GTDC (RT pp. 347-351).

Megdal Dental Center (MDC)

Part of the investigation conducted by Ad Visor's vice-president into the separateness of the dental practice of Dr. Philip Megdal and MDC consisted of a telephone call to MDC. The phone was answered "Dr. Megdal's office." Upon inquiry as to the difference between MDC and Dr. Megdal, the reply was : "No difference, they're the same."

The advertisements in Exhibits C-3-F and C-3-H show the same dentist under two different business names conducting the same business at the same address. The same photograph appears in both display ads in each directory.

The copy sheets for the 1974 Downey directory are stamped "Multiple Display Advertisement, Division Manager's approval, Paging Position Preference" (Exh. C-3-J).

The advertising order for the Center is signed by Dr. Megdal as owner (Exh. D-2-C).

With respect to the separateness of the dental practice of Dr. Megdal and MDC, General presented its Long Beach District sales manager, Mr. Charles T. Dalziel, who handled the advertising for Dr. Megdal in the 1974 Downey and Whittier directories, when he was division manager of the San Bernardino Division.

MDC had not advertised in the 1973 Downey directory. Prior to the first meeting with Dr. Megdal it was learned that he had closed one of his locations. Dr. Megdal wanted to keep two display ads in the Downey and Whittier directories, but was informed that with only one location, only one display ad would be permitted. Whereupon Dr. Megdal stated that MDC should be listed as a separate entity for phone number 941-2226. Upon inquiry, it was stated that MDC was a corporation. After conferring with two regional managers, it was concluded that since Dr. Megdal and MDC were separate entities, the multiple display advertising would be acceptable. As a precaution, Dr. Megdal was requested to verify by letter that two separate entities were being dealt with (Exh. D-2-E).

The stamp (multiple display) on the copy sheets for the Downey directory (Exh. C-3-J referred to above) was in error and was not necessary since a multiple display situation was not involved. No stamp was put on the copy sheets for the 1974 Whittier directory. The reason given for the stamp being on the copy sheets was that in prior years this was a multiple display situation, and having multiple display in mind the copy sheets were signed.

Kaye Dental Group

The investigation by Ad Visor's vice-president of the Kaye Dental Group (Kaye Group) as to the separateness of dental practice shows that he telephoned Dr. Schwartz's number several times and each time the telephone was answered "Dr. Kaye's office." When Dr. Schwartz was asked for and whether this was the right office,

the reply was: 'Yes, Dr. Schwartz is a member of Dr. Kaye's Dental Group." Other information from the telephone conversations indicated that although Dr. Schwartz was off for the day, other dentists could be of help; that Dr. Schwartz was a member of the group and that he was not conducting a private practice of his own.

The complained of advertisements (Exhs. C-3-F and C-3-H) show the same telephone number and address in the Downey directory and the two ads in the Whittier directory show the same telephone number and address. Dr. Kaye signed all advertising contracts for both the 1974 Downey and Whittier directories (Exh. C-3-K). The Directory Listing Request (Exh. C-3-L) setting up a joint user for Dr. Schwartz is signed only by Dr. Kaye. Photographs of the Downey office (Exh. C-3-M) show the building is identified as "Dr. Kaye Dental Group" and that at the main entrance is a list of doctor's names who are members of the group. A physical inspection determined that there is a common waiting room, common receptionist, and that the dentists do not have their own private work rooms, but use them interchangeably depending upon the type of work being done.

General presented GTDC's western region manager, Mr. Warner McFaddin, to explain the circumstances surrounding the Kaye Group. As the Downey division manager, McFaddin set up the advertising for the Kaye Group and joint user for Dr. Schwartz in the 1973 Downey directory, based upon a conversation with Dr. Kaye. McFaddin was informed that Dr. Schwartz was practicing in Dr. Kaye's Downey office and needed advertising. McFaddin concluded from the conversation that Drs. Kaye and Schwartz were separate practices and therefore qualified for joint user service and the additional advertising. McFaddin also concluded that Dr. Kaye was acting as Dr. Schwartz's agent and therefore Dr. Kaye was authorized to sign the various documents involved since Dr. Kaye was the primary subscriber.

The advertising in the 1974 Downey and Whittier directories was set up based upon the pattern established by McFaddin.

American Society of Family Dentists (Victor E. Israel, DDS, Inc.)

A telephone call made on March 14, 1975 by Ad Visor's vice-president to the telephone number listed in the custom trade-mark ad for American Society of Family Dentists (ASFD) was answered with the reply: "Dr. Israel's office." When the party answering the phone was asked for a list of dentists who might be of help in an emergency, it was stated that an appointment could be made with Dr. Israel, but that referral to other dentists could not be made, and that Dr. Israel's office was not an information bureau. Exhibit C-3-A shows that there is a line of advertising reading "For Information Call" and then Dr. Israel is listed at his various locations. No other dentists are listed. Exhibits C-3-C, C-3-D, and C-3-E are copies of the 1974, 1973, and 1972 Whittier advertising contracts showing that Dr. Israel purchased the custom trademark under the heading "Dentist Information Bureaus-American Society of Family Dentists".

General's witness Noble stated that the directory standard involved here (Exh. C-3-B), although dated May 1974, was not circulated to sales until July 29, 1974, which was after the advertising had been sold; that prior to circulation there was no standard for this heading in the Western Region Sales Information (WRSI) manual which contains the advertising standards; that his investigation showed that ASFD was a bona fide organization; and that GTDC had no notice of any restrictions on who could advertise under the ASFD trademark. Noble concluded that under the published standard in WRSI the advertisement will have to be removed from the heading "Dentist Information Bureaus" in future directories.

On the other hand, General concedes that the WRSI standard is identical with the standard that appeared in the Directory

Regulation and Restrictions (DR&R) as testified to by its witness McFaddin. However, the DR&R is an obsolete document. Witness Corsaro testified that while the DR&R was available to him, he was uncertain as to what function, if any, the DR&R filled at the time the 1974 Whittier and Downey directories were being canvassed.

Union Affiliated Dental Service (UADS)

Ad Visor's vice-president testified that calls to the advertised telephone number of UADS resulted in an answer: "Dr. Stein's office". That during meetings and telephone calls with General's and GTDC's personnel concerning the advertising of Dr. Stein, it was pointed out that Dr. Stein was wrongly advertising under the heading "Dentists Service Organizations"; that Donald Duckett, an attorney of General's stated that it had been agreed at a meeting of General and GTDC personnel that UADS should not be listed under the heading "Dentists Service Organizations"; and that he had recommended removing the ad from future directories and granting an adjustment to DDC.

Exhibit C-4-NN is a series of four memos on GTDC notepaper regarding an investigation into UADS's status between October 8 and October 15, 1973. The results indicate that UADS was not registered as a health plan or dentist with the Board of Dental Examiners ,. and indicate a violation of the Business and Professions Code Section 1625.

General's evidence shows that Mr. Corsaro confirmed the conversation between Ad Visor's president and Mr. Duckett who, at that time, was of the opinion that UADS did not perform the services necessary for a listing under the "Dentists Service Organizations" classification. After many subsequent conversations with Dr. Stein regarding UADS, and receipt of written material and brochures, Corsaro concluded that UADS was a separate entity and could qualify for the advertising sought. Corsaro advised Mr. Duckett, by letter dated May 1, 1974, that there were other headings under which UADS could advertise and that Dr. Stein was a very irate customer ready to take

court action to get satisfaction (Exh. D-13). Mr. Duckett changed his mind and recommended that UADS be permitted to advertise under "Dental Service Organizations" (Exh. D-15).

Discussion

Were the Individual Dentists Conducting Separate Dental Practices (Businesses)?

The evidence establishes the fact that the individual dentists were not conducting separate dental practices in the sense that they were conducting their own businesses. It has been demonstrated that in the case of the Stein group, the corporation employed the individual dentists, either on a salary, commission, or percentage of profits basis, depending upon the specific job they performed, as testified to by both Dr. Staciewicz, a former employee, and Dr. Stein, the employer. The physical inspection of the premises showed that the dentists used common offices, personnel, telephone equipment, and were assigned patients on an availability basis rather than to a specified dentist. Documentary evidence points to the fact that Dr. Stein was acting on behalf of his corporations in securing advertising and setting up a joint user telephone service rather than the individual dentists as separate practitioners. As stated by Dr. Stein, his whole objective was to maximize his advertising as much as he could.

In the Megdal Dental Center situation, it is obvious from the ads themselves (same person, address, telephone number, and photo) that MDC and Dr. Megdal are one and the same. Dr. Megdal's signature on the advertising contract for MDC shows him to be the owner of MDC. Insofar as the public is concerned, both MDC and Dr. Megdal are one and the same. Regardless of which ad generates the call, the phone is answered "Dr. Megdal's office".

The Kaye Dental Group is a situation similar to the Stein Group. A physical inspection of the premises showed the same commonality as in the Stein Group; the telephone was answered in a

similar manner; and Dr. Kaye arranged for all the advertising and set up a joint user telephone service for the benefit of the group, not for individual dentists conducting their separate practices.

In our opinion, there is no question that the various dentists were not conducting separate dental practices (businesses).

Did General Have Reasonable Cause to Doubt It Was Selling Advertising to Dentists Conducting Separate Practices?

It is General's contention that they did not violate their tariffs, advertising and copy standards, or the law because it reasonably believed it was selling advertising to separate entities.

For reasons which follow, we do not believe that General acted reasonably in accepting the ads which brought about this complaint. General had reason to doubt the separateness and was on notice to inquire further to ascertain the truth of the matter. This they failed to do.

As background, we set forth GTDC's general policy as a publisher found on the first page of its WRSI:[12/]

> "An important ingredient to the success of any advertising medium is the known integrity of the publisher. The Directory Company has achieved this status largely by its effort in protecting advertisers from unethical competition through misleading advertisements in its directories. Directory users have profited from this effort and have a high degree of confidence in the reliability of the information published in our directories. It is of primary importance that this faith on the part of directory advertisers and directory users be preserved." (Exhs. C-8 and D-10)

The guidelines for the administration of this policy are also set forth on the first page of the WRSI, part of which is quoted below:

> "2. SALES MANAGEMENT in their review of completed sales shall give close scrutiny to advertising orders and copy sheets to avoid the publication of advertising which may be unethical, misleading, objectionable or is contrary in any way to existing practices."

Lastly, for background purposes, the following is set forth under the standard for columnar advertising in the WRSI:

> "The rules which are to govern the uses of these items are no better than the intent of the person selling the items. Therefore, the intent should be examined when a possible abuse may be indicated." (Exh. D-4-B, see also Footnote 2.)

Considering only the policy and guidelines set out above for the moment, it taxes one's credence to accept General's position that it had reasonable cause to believe it was dealing with separate dental practices here. General claims that it must accept the word of its advertisers, and under these conditions it acted reasonably in believing that it was dealing with separate dental practices, and therefore was not in violation of any of its standards or tariffs. This claim shows that General has disregarded its own policy and guidelines.

The multiple display standard is quite clear. It starts from the following premise:

> "The following points are to be observed regarding the acceptance of multiple display advertisements for a single advertiser under the same classification in any directory." (Underscoring added.)

From this premise the standard prescribes the specific guidelines and conditions for applying the standard. All of the guidelines and conditions make specific reference to "the advertiser", or "an advertiser" thus emphasizing the basic premise of a single advertiser. If the language used is unambiguous, there is no room for construction; the provision must be applied in accordance with the literal meaning of the words used. (Chas. Brown & Sons v Valley Express Co. (1941) 43 CPUC 742, 728-729.) Therefore, it is in the context of a single advertiser that the standard must be applied, and not from the viewpoint of separate practices or businesses enumerated in point 2 of the standard as General would have us view it. It follows that the separateness of the businesses or practices is not the dominant factor.

What must be determined is whether or not there is a single advertiser. This is consistent with the purpose of the standard which is to prevent domination of the yellow pages by one advertiser, and is consistent with our determination of PT&T's multiple display standard in D.84068, C.9605, Ad Visor v PT&T (1975).

When the factual situation is considered along with the policy and guidelines, General's position becomes untenable. Not only did General have knowledge of the prior violations in its 1973 directories, but it also had ample documentary evidence in the signed contracts prior to the publication of the 1974 Downey and Whittier directories that a single advertiser was involved to cause it to question seriously the separateness of the dental practices, and not blindly accept the advertiser's word.

While General did investigate the question of the 1974 advertising, it apparently was more interested in giving the customer all the advertising he wanted to buy, rather than adhering to its own stated policy and guidelines. It is apparent that the investigation and conferences held with Dr. Stein were not to determine the true nature of the dental practices, but were to determine how the customer's wishes could be accommodated. General's own witness testified that he sought legal advice on the matter, received it, and then did not follow it.

Among other things, the record shows a lack of proper management control with respect to the publication and dissemination of the advertising standards. Considerable confusion existed over whether certain standards were in effect during the period involved here. For example, it was stated that the publication entitled Directory Regulations and Restrictions (Exh. C-15) was obsolete; that the Western Region Sales Information (WRSI), although published in July 1974, was not distributed to the sales force until several months later; and that management wasn't certain whether certain standards were in effect, although the index in the WRSI made reference to the

DR&R for these standards. Also, General admits that some of its standards were oral and not generally disseminated to the sales force, and that a 180 degree change was made in the particular standard in 1973, which also was not generally disseminated. Such action and testimony by General's management denigrates its credibility.

General attempts to excuse this situation by claiming that the process of revision is a difficult task and cannot be accomplished promptly and thoroughly. In an area as important as copy and advertising standards such an excuse is not acceptable. In this connection it is noted that as the multiple display standard was revised, starting with the November 1969 version (Exh. D-10-A), the strict application requirements appear to be lowered with each revision. For example: in Exhibit D-10-A several examples of acceptable and nonacceptable situations are provided; it is required that the division manager review and specifically approve all multiple display advertising; each multiple display account must be requalified each issue; and the emphasis is on the single advertiser. In Exhibit D-10, the October 1973 revision, the standard has been considerably condensed. The requalification provision has been omitted. In Exhibit C-3-I, the May 1974 revision, the rule has been further condensed. The requirement of division manager's approval has been dropped as well as the emphasis on the single advertiser. It appears that more than simplification of the standard is involved in these revisions. The standard seems to become more flexible with each revision thus tending to create more potential problems in its application by the sales force.

General also attempts to excuse its actions by saying that the multiple display situation comes up infrequently. Of course, it does not when General is prone to find separate businesses. Such an excuse is frivolous.

After reviewing the entire record, we cannot agree with General that it acted reasonably in believing that it was dealing with separate dental practices or businesses.

If General Did Have Reasonable Cause to Doubt the Separateness of the Practices, What Violation of Law Resulted From Its Actions?

It is alleged that General violated its advertising standards, tariff provisions, and statutory law. At the outset, we must point out that the directory advertising standards published in WRSI do not attain the same standing as do General's tariffs, which have the force and effect of law. This is not to say that a violation of the standards may not result in a violation of some statutory provision. If the violation of a standard results in a practice over which we have jurisdiction, such as discrimination, or the giving of an undue advantage or preference to one customer over another, Section 453 is brought into issue.

General has admitted publishing all of the advertisements at issue. The record indicates that General had reason to doubt that the published advertisements for the various dental groups, organizations, and individual dentists did not conform to the applicable tariff and advertising standards, but that General failed to inquire sufficiently to ascertain the truth of the matter.

The multiple display advertisements published for the Stein Group, the Kaye Group, and Dr. Megdal exceed the number authorized for a single advertiser under General's multiple display standard set forth in Footnote 1. Although different individual dentist's names and corporate names are used, the evidence clearly shows that in each of the groups only a single advertiser is involved, viz.: Dr. Stein, Dr. Kaye, and Dr. Megdal.

The same situation obtains with the custom trademark, trade name, and columnar advertisements. The standards, and tariff schedule CPUC D-1, in Footnote 2, permit only one custom trademark per advertiser.

Since only single advertisers are involved, it follows that the joint user services set up do not comply with special conditions 2a and 2b in Schedule Cal. PUC No. A-13, set forth in Footnote 3.

Likewise, General did not comply with its standards pertaining to Dentist Information Bureaus, Dentists Service Organizations, and Headings set forth in Footnotes 5 and 6, in the advertisements for ASFD of Dr. Israel, and UADS of Dr. Stein. The organizations were used to obtain additional advertising, and did not perform the services set forth in the standards.

The effect of General's noncompliance with its tariffs and advertising standards is to have accorded the complained of advertisers a preference and an advantage over complainant to his detriment. Preference and prejudice, to be unlawful, must be unjust or undue, and to be undue, the preference or prejudice must be shown to be a source of advantage to the parties allegedly favored and a detriment to the other parties. (California Portland Cement Co. v U. P. RR Co. (1955) 54 CPUC 539, 542; Western Airlines, Inc. (1964) 62 CPUC 553, 562; and that the discrimination is the proximate cause of the injury. California Portland Cement Co. v U. P. RR Co. (1959) 56 CPUC 760, 766.)

The record shows that these violations occurred not once but several times in different directories for at least two consecutive years. Such repeated action in the face of having made an adjustment to DDC for similar action in prior years, and the receipt of a complaint concerning these matters is sufficient to find that General's actions were not only unjust, but undue in that the complained of advertisers received an undue advantage by dominating the yellow pages contrary to the purpose of the multiple display standard to the detriment of DDC which had only recently opened up for business. Such action gave favored treatment to certain advertisers which reduced the drawing power, and thus the value of DDC's ad. This action violates the provisions of Section 453.

It is also requested that we find that General was grossly negligent, guilty of willful misconduct, guilty of conspiracy to avoid the tariff provisions regarding joint user telephone service in violation of Section 1668 of the Civil Code, violated Section 17500 of the Business and Professions Code for publishing misleading advertising, and that penalties be imposed on General pursuant to Section 2107. Such findings would go to the issue of consequential damages, not reparations. The Commission has repeatedly held that it has no jurisdiction to award damages for tortious conduct by a public utility toward its customers (Sonnenfeld v General Telephone Co. of Calif. (1971) 72 CPUC 419, 421; and cases cited therein). The only relevant jurisdiction conferred upon the Commission to grant monetary awards is contained in Sections 734, 735, and 736 which deal with reparations (Mak v PT&T (1971) 72 CPUC 734, 738). Only a court has the power to award consequential damages as opposed to reparations (PT&T (1971) 72 CPUC 505).

In view of our lack of jurisdiction to award consequential damages, it is not necessary to this decision, nor do we deem it advisable to make the requested findings of gross negligence, willful misconduct, and violations of the Civil Code and Business and Professions Code.

We cannot, and will not, condone deviations from a utility's tariffs, and standards designed to implement the tariff provisions. General and GTDC, and their officers, agents, and employees, are placed on notice that strict adherence to the tariffs and advertising standards must be observed. Discriminatory practices in applying the tariffs and standards will not be

tolerated. The order which we will direct to General to take should ensure that, for the future, General will adhere to its utility duty to apply its tariffs and advertising standards equally to all customers, and that where judgment is required in their application, it will be exercised in such manner as to avoid conflict with the law and its tariffs.

If It Is Found That General Has Violated the Law, What Relief Is Complainant Entitled to?

DDC seeks reparation in the amount of $1,623, plus interest, on the 1974 Downey advertising contract; $1,464, plus interest, on the 1974 Whittier advertising contract; the amount charged for telephone service on telephone number 869-4532, plus taxes and interest from October 1974 to December 1975; and that General be ordered not to collect any future money on existing contracts with respect to the Downey and Whittier directories.

Dr. Staciewicz, a partner in DDC, testified that their dental practice is dependent upon the number of advertisements appearing under the dentist classification of the yellow pages. He maintains records which show the source of new patients, and provided comparative statistics for the 1973 directory year (January-September 1974) and the 1974 directory year (October 1974 - May 1975). (Exh. C-1-AAA & BBB.) These statistics show that approximately 87 percent of new patients are generated from yellow page advertising. For 1973 a total of 997 new patients were acquired, of which 868 were generated by yellow page advertising (80 from PT&T directories, 30 from the Long Beach directory, and 758 from the Downey and Whittier directories). For 1974 the total number of new patients amounted to 976, of which 850 were generated by yellow page advertising (86 from PT&T directories, and 764 from the Downey and Whittier directories. No advertising was done in the Long Beach directory). The statistics show a decline of 21 new patients from all sources, but an increase of 6 new patients for the Downey and Whittier directories. These are not comparable figures, however, since there are different time periods involved. Reducing these figures to a monthly basis, an increase in all categories is shown

amounting to 14.65 new patients per month of which 10.9 are from the Downey and Whittier directories.

Dr. Staciewicz stated that this increase is due to fewer advertisements appearing under the dentist classification in the 1974 directories than in 1973. He also stated he would have done substantially more business in 1974 if all of the improper advertisements had not appeared, and that the loss of these additional new patients due to the unfair competition represents an immeasurable long-term loss of repeat, family, and referral business from such patients.

Before reparations can be awarded, the claimant must show that there has been a violation by a utility of a duty imposed by one of the provisions in Section 734 (Los Angeles Gas & Electric Corp. (1937) 40 CPUC 451, 455), and that he has been injured thereby (Mendence v PT&T (1971) 72 CPUC 563, 566). DDC refers us to Chromcraft Corp. v Davies Whse. Co. (1960) 57 CPUC 519, 522 for the proposition that it is not necessary to prove damages where there is a tariff violation because the utility is bound by law to observe its published and filed tariff. Chromcraft is distinguishable from the case at bar. In Chromcraft specific rates were involved and the measure of reparations was the amount of overcharges. Here we are not concerned with rates, but tariff rules and advertising standards which limit the number of advertisements per single advertiser, the violation of which resulted in an excessive number of advertisements for some advertisers. Thus, Chromcraft is consistent with the requirement that an injury, or damages, be shown before a complainant is entitled to reparation. On the other hand, we have held that a showing of diminished value of a service, or advertising, is compensable under Section 734. (Angel Appliance Service v PT&T, mimeo. D.83886, page 312, dated May 21, 1974 in C.9494; Faia v PT&T (1969) 69 CPUC 338; Beckman v PT&T (1964) 63 CPUC 305, 310.)

It appears to us that the excessive number of advertisements did diminish the value of DDC's advertising in that the drawing power of its advertising was diminished by the domination of the yellow pages by the excessive number of advertisements which were published in violation of General's tariffs and standards. It is our opinion that the advertising value was diminished by 50 percent.

In addition to reparations on the advertising, DDC asks that we order General not to collect future monies on its existing advertising contracts, and that full reparations be awarded on its telephone exchange service for the period October 1974 to December 1975. There has been no showing that the same circumstances obtain with respect to 1975 advertising as in 1974. We will deny this request. The facts do support a finding that the value of the telephone service was diminished by 10 percent for the 1974 directory year.

There remains to be disposed of the following additional requests:

1. That the Commission institute an investigation on its own motion, using the facts of this case as a starting point, into all the activities, procedures, rules and statements of defendant, and that no further rate increase applications be considered or approved until such investigation has been completed.
2. That the Commission review its formal complaint procedure to find a way that the public would not be burdened with costs which make it impractical for a consumer to bring a complaint action against the utility, and either make provisions for the recovery of costs, and attorney's fees, or also change the limitation of liability rules to account for the costs to the consumer in having to face such acts on the part of the utility.
3. That the Commission impose the severest penalties possible on defendant, under Section 2107 on behalf of the People of the State of California to make it clear to defendant that such actions will not be tolerated by the Commission.

With respect to the first request, C.9911 was instituted by the Commission in connection with General's A.55383 to increase its rates and charges. The examiner ruled in that proceeding that the evidentiary record was adequate to resolve the ratemaking aspects, but that for matters other than rates, such as this request, it was appropriate for C.9911 to remain open.

In response to the second request, we set forth the following quotation:

> "Once an individual chooses to litigate, he should be prepared to bear the ordinary and reasonable burdens of litigation -- whether those be in the preparation of the case for trial, discovery, pre-trial conferences, trial or post trial proceedings." (Wisniewsky v Clary (1975) App. 120 Ca. Rptr. 176, 181.)

There is no statutory authority authorizing the Commission to award costs. (Bohan v San Miguel Tel. Co. of California (1967) 66 CPUC 821.) The request to change the limitation of liability rule for the purpose of awarding costs is denied. If the liability of the utility were to be increased to cover such costs, it would be necessary to increase its rates for telephone service and directory advertising, since the present rates are predicated upon a limitation of liability.

We see no need to implement the third request.

Findings of Fact

1. General published advertising in the yellow pages of its Downey and Whittier directories as follows:

THE STEIN GROUP

1974 Downey Directory (Exh. C-3-H)

a. Three double-half column display advertisements appearing on pages 226, 227, and 228;

b. One double-half column product sell display advertisement appearing on page 228;

c. Four custom trademark advertisements appearing on pages 226, 230, and 231;

d. Five two-inch information directional advertisements appearing on pages 226, 228, 229, 231, and 232;

e. A three-inch custom trademark advertisement for Union Affiliated Dental Service under the classification of Dentists Service Organizations appearing on page 233;

1974 Whittier Directory (Exh. C-3-F)

f. Three double-half column display advertisements appearing on pages 204, 205, and 206;

g. One double-half column product sell display advertisement appearing on page 204;

h. Three custom trademark advertisements appearing on pages 203, 207, and 209;

i. Four information directional advertisements appearing on pages 203, 207, 209, and 210;

j. A four-inch custom trademark advertisement for Union Affiliated Dental Service under the classification Dentists Service Organizations appearing on page 211;

MEGDAL DENTAL CENTER

1974 Downey Directory

k. Two double-half column advertisements appearing on pages 224 and 226;

l. Two custom trademark advertisements appearing on page 230;

1974 Whittier Directory

m. Two custom trademark advertisements appearing on page 209;

THE KAYE GROUP

1974 Downey Directory

n. Two trademark advertisements appearing on pages 230 and 232;

1974 Whittier Directory

o. Two trademark advertisements appearing on pages 208 and 210;

VICTOR E. ISRAEL DDS INC.

1974 Whittier Directory

p. A three-inch custom trademark advertisement for American Society of Family Dentists under the classification Dentist Information Bureaus appearing on page 198.

2. General established a joint user telephone service for the Stein and Kaye Dental Groups.

3. There is no written directory company standard with respect to joint user telephone service in connection with advertising.

4. The oral standard pertaining to joint user telephone service has been changed since 1973 and is not disseminated generally to the advertising sales force.

5. General is waiting the outcome of this proceeding before promulgating a written advertising standard in connection with joint user telephone service.

6. General's multiple display standard permits a maximum of three display advertisements per advertiser. General published four in each directory.

7. The tariff and advertising standards pertaining to custom trademark, and trade name advertising permit only one such advertisement per advertiser. General published five CTM's in the 1974 Downey directory, and four CTM's in the 1974 Whittier directory.

8. The letter from Dr. Stein to Paul D. Corsaro of General (Exh. D-3-E) does not prove that each dentist was conducting his own separate dental practice (business).

9. Dr. Howard M. Stein Professional Dental Corporation is located at 17660 Lakewood Blvd., Bellflower, and 1215 W. Covina Parkway, West Covina.

10. Drs. Rips, Jaffe, and Porter were employed by Dr. Stein's corporation.

11. Drs. Stein, Rips, Jaffe, and Porter did not practice dentistry separate and apart from the Stein corporation.

12. General was aware of prior violations of its tariffs and advertising standards in connection with the Stein Group's advertising.

13. General's motivation in selling advertising to the Stein Group was oriented more toward selling a maximum number of advertisements, as requested by Dr. Stein, rather than toward a strict compliance with its tariffs and advertising standards.

14. General did have reasonable cause to doubt it was dealing with separate dental practices in accepting the 1974 advertising from the Stein Group, but General failed to inquire sufficiently to ascertain the truth of the matter.

15. Dr. Megdal and Megdal Dental Center (MDC) are located at 12052 E. Imperial Hwy., Norwalk.

16. MDC and Dr. Megdal do not conduct separate dental practices (businesses).

17. General did have reasonable cause to doubt it was dealing with separate dental practices in accepting the 1974 advertising from Dr. Megdal, but General failed to inquire sufficiently to ascertain the truth of the matter.

18. The Kaye Dental Group practices dentistry at 17803 S. Clark Ave., Bellflower, and 11849 S. Paramount Blvd., Downey.

19. Dr. Schwartz is a member of the Kaye Dental Group.

20. Dr. Schwartz does not conduct a dental practice (business) separate and apart from the Kaye Dental Group.

21. General did have reasonable cause to doubt it was dealing with separate dental practices in accepting the 1974 advertising from the Kaye Dental Group, but General failed to inquire sufficiently to ascertain the truth of the matter.

22. The American Society of Family Dentists is organized as a nonprofit corporation for the purpose of improving the general practice of dentistry and to promote continuing programs in education, research, and legislation in the field of dentistry. Dr. Victor Israel, DDS, was one of the eight initial directors of the American Society of Family Dentists.

23. The telephone numbers listed in the American Society of Family Dentists advertisement are the numbers of Dr. Israel's various dental offices. Telephone calls by the public to those numbers do not reach the Society, but rather the office of Dr. Israel's dental practice. It was not possible to obtain a list of dentists after a test call to one of these numbers.

24. While ASFD may be a bona fide dental association, the advertisement lists only telephone numbers of Dr. Israel's offices and does not comply with the advertising standard for Dentist Information Bureaus.

25. General did not comply with its Dentist Information Bureaus standard in accepting the 1974 advertisement of ASFD.

26. Union Affiliated Dental Service was organized March 21, 1972 as a nonprofit corporation for charitable, educational, and scientific purposes; its specific and primary purpose being to make available complete dental health service on a nonprofit basis.

27. Drs. Stein and Jaffe were two of the three original directors of UADS.

28. UADS's advertisement lists the same address as Dr. Stein's dental group. The advertisement predominately features a dental practice rather than administrative and marketing services.

29. Dr. Stein testified that UADS referred callers to other dentists. He also testified that he wanted the maximum advertising he could obtain in the yellow pages.

30. General made an investigation of UADS to determine the existence, validity, and purpose of UADS to qualify it for advertising under the Dentists Service Organizations classification.

31. While General apparently had no advertising standard of its own pertaining to the classification Dentists Service Organizations, it obtained from, and used PT&T's qualifications (Exh. C-4-MM) for this classified heading group. These qualifications require that the

organization perform the administrative and marketing functions between consumer groups and dental groups.

32. If UADS did perform administrative and marketing functions at all, they were deminimis. UADS was used by Dr. Stein to obtain additional advertising.

33. UADS was dissolved on April 15, 1975.

34. General did not comply with the Dentists Service Organizations standard it adopted from PT&T in accepting the 1974 advertising of UADS.

35. General violated its multiple display, custom trademark, trade name, in column advertising and copy standards, and its tariff provisions relating to joint user telephone service.

36. General accorded the advertisers in issue an undue preference and an undue advantage to the disadvantage and detriment of complainant DDC.

37. Complainant DDC opened for business in December 1973.

38. Detailed records of patients are kept by DDC including information about how the patient was led to select complainant.

39. Approximately 87 percent of DDC's new patients are generated from yellow page advertising.

40. During the 1973 directory year (January - September 1974) DDC had a total of 997 new patients, of which 868 came from yellow page advertising in both PT&T and General directories. 758 new patients were generated from the Downey and Whittier directories.

41. During the 1974 directory year (October 1974 - May 1975) DDC had a total of 976 new patients of which 850 were from yellow page advertising in both PT&T and General directories. 764 were generated from the Downey and Whittier directories.

42. On a monthly basis, DDC's total new patients increased by 14.65 of which 10.9 are allocated to the response from the advertising in the 1974 Downey and Whittier directories.

43. General made a 100 percent adjustment to DDC in 1973, its first year in business, for violations of its tariffs and advertising standards similar to those in this matter.

44. The value of DDC's 1974 yellow page advertising in the Downey and Whittier directories was diminished by 50 percent.

45. The value of DDC's telephone exchange service was diminished by 10 percent.

46. General should also be ordered to cease and desist its discriminatory practices in applying its tariffs and advertising standards. Future violations may be subject to contempt proceedings pursuant to Section 2113[16] of the Code.

Conclusions of Law

1. General's violations of its tariffs and advertising standards constitute a violation of Section 453 of the Code.

2. DDC is entitled to reparations in the amount of $1,543.50, plus interest, and reparations in the amount of 10 percent of the billed monthly service charge, exclusive of message unit and toll charges for the 1974 directory year, plus interest.

O R D E R

IT IS ORDERED that:

1. General Telephone Company of California shall pay to Downey Dental Center reparations in the amount of $811.50, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Downey directory to date of payment.

2. General Telephone Company of California shall pay to Downey Dental Center reparations in the amount of $732.00, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Whittier directory to date of payment.

3. General Telephone Company of California shall pay to Downey Dental Center reparations in the amount of 10 percent of the billed monthly service charge, excluding message units and toll charges for the 1974 directory year computed from the first month of the earliest published directory to the end of the directory life of the later published directory, together with interest at the rate of 7 percent per annum to date of payment.

4. General Telephone Company of California and General Telephone Directory Company shall cease and desist their discriminatory practices in applying the tariffs and advertising standards pertaining to yellow page advertising in its directories.

5. General Telephone Company of California and General Telephone Directory Company shall, for the future, strictly follow their tariffs and advertising standards. Future violations may be subject to contempt proceedings pursuant to Section 2113 of the Public Utilities Code.

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

Dated at San Francisco, California, this 26th day of APRIL, 1977.

Robert Batinovich
President
William Symons, Jr.
Vernon L. Sturgeon
Richard D. Gravelle

Commissioners

1/ "MULTIPLE DISPLAY ADVERTISEMENTS

"The following points are to be observed regarding the acceptance of multiple display advertisements for a single advertiser under the same classification in any directory.

1. All new sales or renewals involving multiple displays require the written approval of the Division Manager.

2. 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 2-½ 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 2-½ column display advertisement or its equivalent under the same classified heading. Under no condition shall any firm have more than two 2-½ 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 2-½ column advertisements or their equivalent under a single classified heading. The second or additional display spaces 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.

"Condition 2

An advertiser may have an additional 2-½ column advertisement or its equivalent if he caters to a different phase of business, different brand name product or different type of market.

"Condition 3

An advertiser may have an additional 2-½ column advertisement or its equivalent if the ad is a duplicate of the primary advertisement, under the same classification and is printed in a language other than English.

"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 2-½ column is acceptable when such display item is a "Product Sell Ad". (See glossary Directory Salesmen's Handbook, for "Product Sell Ad definition.)

REVISED: OCTOBER, 1973"

(Exhibit D-10, a loose leaf publication entitled "Western Region Sales Information," Page 23, also Exh. D-4-F dated January 1974.)

2/ "COLUMNAR ADVERTISING

"The rules which are to govern the uses of these items are no better than the intent of the person selling the items. Therefore, the intent should be examined when a possible abuse may be indicated:

A. Custom Trademark and Trademarks:

1. Limit of one per classification per business.

a. If a business has multiple locations, it will be limited to one CTM or TM with a listing for each location thereunder.

B. Other In-Column Items:

1. Advertisers may purchase another in-column item such as a BT, Informational or Directional Informational in addition to a CTM or TM.

a. The reasoning here is that display items cannot be anchored to listings under CTM's or TM's.

C. Additional Listings:

1. Additional Listings (AL-ALST)

Tariffs as filed with the California Public Utilities Commission read:

'ALST's are permissible where other names under which the business of the subscriber may be known to the public where such name is applicable to identically the same business operation in scope and character as that covered by the primary listing.'

Tariffs further state that the listing is permissible when it has not been designed solely to secure preferential location in either alpha or class.

Advertising written on Additional Listings is limited to columnar items: AF's, AC's, RT's, BT's and Informational Listings including Directionals. TM's and CTM's are not included.

REVISED: AUGUST, 1972"

(Exhibit D-10, a loose leaf publication entitled "Western Region Sales Information," Page 6a, also Exhibit D-4-B.)

"TRADEMARK AND TRADE NAME SERVICE (Cont'd)

* * *

"8. Duplications of Trademark and/or Trade Name Service:

Only one trademark or trade name service order, local or national, for the same product or service is acceptable under the same classification.

8.1 Requests for trademark or trade name service to identify different types of the same product can usually be met by using a single finding line and providing captions to distinguish the different types.

Example: Instead of separate items for 'Globe Fire Insurance' and 'Globe Life Insurance', a single item of 'Globe Insurance' could be used together with the italic captions of 'Fire Insurance' and 'Life Insurance' to designate the two different outlets.

8.2 Rearrangements of the normal sequence of words of a brand name for the same product or service for the purpose of providing an additional trademark or trade name service under the same classified heading is not acceptable.

8.3 All requests for duplicate trademark or trade name service must be approved by the Division Manager.

* * * "

(Exhibit D-10, a loose leaf publication entitled "Western Region Sales Information," Pages 39-40 also Exhibit D-4-C.)

"SCHEDULE Cal. P.U.C. No. D-1, 2nd Revised Sheet 20, Effective 8/15/69

"TELEPHONE DIRECTORY SERVICES

"SPECIAL CONDITIONS - Continued

3. - Continued

* * *

p. Only one trade name or trademark heading for a particular product or service will appear under a given classified heading.

* * * "

(Exhibit C-3 G2)

3/ "SCHEDULE Cal. P.U.C. No. A-13, 2nd Revised Sheet 283, Effective 8/15/69

"JOINT USER SERVICE

"SPECIAL CONDITIONS

"1. Joint User service is an arrangement whereby an individual, firm, corporation or association, doing business under a separate name, shares in the use of a primary customer's business telephone service. The customer's facilities are not to be extended off the premises on which the primary service is located to furnish joint user service only.

"2. The rate for joint user service includes a listing in the telephone directory and applies in addition to the rates and charges for the facilities and all other service furnished. Joint user service is applicable and is furnished upon application made by the customer as follows:

a. Application for the use of the customer's service by any individual, firm, company or association doing business under a separate name and occupying jointly, or in part, the premises on which primary service is located, or the premises on which the customer's off-premises service is located.

b. Application for the use of the customer's service for another business publicly conducted by the customer and differing in character or scope and in name from the business for which the facilities are furnished.

c. Application for service to be furnished over the facilities utilized in furnishing service to the customer, in the name of another individual, firm, company , corporation, or association represented by the customer and the use of the name to be listed is authorized by the owner of the name.

d. The directory listing representing the joint user service shall in all cases include the name under which the business is publicly conducted, an address of the business and the telephone number. The address may be that at which the primary telephone service represented by the telephone number is located, if acceptable to the primary service customer, the address from which the mobile equipment of the business operates, the address of the main or other office or of the factory of the business or other legitimate address of the business.

"3. The minimum charge for joint user service shall be the monthly rate, provided that if the listing is included in the telephone directory the charge will continue until the end of the directory period unless:

The joint user vacates the customer's premises.

The customer's service is discontinued.

The business for which the joint user service is furnished is discontinued at the customer's premises.

The joint user becomes a customer to business service in the same exchange.

"4. Joint user service is not furnished in connection with farmer line service, interexchange receiving service or residence telephone service.

"5. Joint user service in connection with extended service will not be furnished to a customer to local service on the premises or in the same room where the local service is furnished, nor will joint user service in connection with local service be furnished to a customer to extended service on the premises or in the same room where the extended service is furnished."

4/ "1668. All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law."

5/ "DENTIST INFORMATION BUREAUS

"Representation under this classification is restricted to Information Bureaus maintained by bona fide dental associations. A bona fide bureau is one where those in this profession recognize the firm as being in the business of providing lists of dentists to people who do not have a dentist or need a specialist. A group of dentists associated in business together, or a clinic, is not qualified to list under this heading."

(Exhibit C-3-B, also Exhibit C-15, Page 12.)

"HEADINGS

"All firms listed under a classified heading must be in the business defined by that heading as interpreted by the Telephone Company.

"Where separate headings are provided for various features of a business, i.e., sales and service or repairing, wholesale and retail, etc., advertisements of firms qualified to list thereunder must predominantly feature the business described by the heading.

"The advertising of certain businesses and professions is subject to control or regulation by law. In addition to legal restrictions, certain rules and regulations have been established by the Company which apply to listings under particular classified headings.

"Specific headings that are affected by a restriction or condition are 'flagged' in the Approved Classified Heading List.

"Refer also to the heading appearing in this section for conditions or restrictions that apply to the specific heading."

(Exhibit C-15, Page 22, a loose leaf publication entitled "Directory Regulations & Restrictions", now superseded by Western Region Sales Information.)

"§ 17500. It is unlawful for any person, firm corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into

any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this State, or any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known to be untrue or misleading, or for any such person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell such personal property or services, professional or otherwise, so advertised at the price stated therein, or as so advertised."

6/ "DENTISTS SERVICE ORGANIZATIONS

"Your call 1/14/74

"Pacific Telephone Classified Headings Group advises the following qualifications for the subject classification:

They perform the administrative and marketing service between consumer groups and dental groups.

Schools, Unions, Municipalities and Non-Union Groups who want to save on dental care purchase programs for their employees dental care."

(Exhibit C-4-MM.)

7/ "453. (a) 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.

(b) No public utility shall establish or maintain any unreasonable difference as to rates, charges, service facilities, or in any other respect, either as between localities or as between classes of service. The Commission may determine any question of fact arising under this section."

8/ "734. When complaint has been made to the commission concerning any rate for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that any public utility, has charged an unreasonable, excessive, or discriminatory amount therefor in violation of any of the provisions of this part, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection if no discrimination will result from such reparation. No order for the payment of reparation upon the ground of unreasonableness shall be made by the commission in any instance wherein the rate in question has, by formal finding, been declared by the commission to be reasonable, and no assignment of a reparation claim shall be recognized by the commission except assignments by operation of law as in cases of death, insanity, bankruptcy, receivership, or order of court."

9/ "56. (Rule 56) Motion to Dismiss. A motion to dismiss (other than a motion based upon a lack of jurisdiction) any proceeding before this Commission, which is based upon the pleadings or any matter occurring before the first day of hearing may only be made upon five days' written notice thereof duly filed and served upon all parties to the proceeding and all other parties upon whom service of copies of the pleadings are therein shown to have been made."

10/ RT pp. 139-148, C.9834.

11/ RT pp. 52-61, C.9833.

12/"WESTERN REGION SALES INFORMATION

"General

"An important ingredient to the success of any advertising medium is the known integrity of the publisher. The Directory Company has achieved this status largely by its efforts in protecting advertisers from unethical competition through misleading advertisements in its directories. Directory users have profited from this effort and have a high degree of confidence in the reliability of the information published in our directories. It is of primary importance that this faith on the part of directory advertisers and directory users be preserved.

"Administration

"All employees engaged in the sale or checking of directory advertising, shall familiarize themselves with the practices governing the acceptability and unacceptability of directory advertising.

"To administer them effectively:

1. SALESPEOPLE who negotiate advertising contracts with the public shall assist their customers and assume the responsibility in the preparation of advertising copy, to be assured that it will conform to the established practices thus avoiding subsequent questioning of copy.

2. SALES MANAGEMENT in their review of completed sales shall give close scrutiny to advertising orders and copy sheets to avoid the publication of advertising which may be unethical, misleading, objectionable or is contrary in any way to existing practices.

3. POST SALES CLERKS shall carefully review all advertising copy with regard to its acceptability or unacceptability and shall return any questionable cases to the District Sales Manager to whom the salesperson is reporting.

"In the administration and adhering to the practices applicable to all acceptable advertisements, it is not intended that advertisers be subjected to detailed questioning concerning the statements made in their advertising. In general, the advertiser's affirmation will be sufficient, but, on the other hand, when inaccurate statements are subsequently called to the attention of the Company they shall be investigated immediately and if changes are necessary they shall be made in the next issue of the directory in accordance with the ascertained facts.

"Over and above the specific practices set forth in these instructions, the Directory Company, as publisher, has the right to refuse any advertisement or announcement which in their judgment is objectionable. When exercising judgment, the same standards must be applied to all customers to avoid discrimination between customers.

REVISED: NOVEMBER, 1969"

(Exhibit D-10.)

13/"2102. Whenever the commission is of the opinion that any public utility is failing or omitting or about to fail or omit, to do anything required of it by law, or by any order, decision, rule, direction or requirement of the commission, or is doing anything or about to do anything, or permitting anything or about to permit anything to be done, in violation of law or of any order, decision, rule, direction, or requirement of of the commission, it shall direct the attorney of the commission to commence an action or proceeding in the superior court in and for the county, or city and county, in which the cause or

some part thereof arose, or in which the corporation complained of has its principal place of business, or in which the person complained of resides, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction. The attorney of the commission shall thereupon begin such action or proceeding in the name of the people of the State of California, by petition to such superior court, alleging the violation or threatened violation complained of, and praying for appropriate relief by way of mandamus or injunction."

14/"2104. Except as provided by Section 2100, actions to recover penalties under this part shall be brought in the name of the people of the State of California, in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of has its principal place of business, or in which the person complained of resides. Such action shall be commenced and prosecuted to final judgment by the attorney of the commission. In any such action, all penalties incurred up to the time of commencing the action may be sued for and recovered. In all such actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State in any such action, together with the costs thereof, shall be paid into the State Treasury to the credit of the General Fund. Any such action may be compromised or discontinued on application of the commission upon such terms as the court approves and orders."

15/"2107. Any public utility which violates or fails to comply with any provision of the Constitution of this State or of this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000) for each offense."

16/"2113. Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the commission or any commissioner is in contempt of the commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. The remedy prescribed in this section does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto."