

Decision No. 87240

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AD VISOR, INC., a California Corporation, authorized exclusive agent for: DOWNEY DENTAL CENTER; DAVID MIZRAHI, DDS; and JAMES D. HOLECHEK, DDS;

Complainants,

vs.

PACIFIC TELEPHONE AND TELEGRAPH COMPANY OF CALIFORNIA,

Defendant.

Case No. 9833  
 (Filed November 25, 1974;  
 amended April 4, 1975,  
 October 29, 1975, and  
 November 26, 1975)

Norin T. Grancell, Attorney at Law, Jack Krinsky, and Fred Krinsky, for Ad Visor, Inc., authorized agent for Downey Dental Center, David Mizrahi, DMD, and James D. Holechek, DDS, complainants.

Michael J. Ritter, Attorney at Law, for defendant. Arthur M. Applebaum, Attorney at Law, for Paul A. Kaye, DDS; Leo Aultshuler, Attorney at Law, for Howard M. Stein, DDS; and Lynard C. Hinojosa, Attorney at Law, for Jerry Gordon, DDS, and Sally Williamson; interested parties.

O P I N I O N

This is a complaint by Ad Visor, Inc. (Ad Visor) filed on behalf of its clients, Downey Dental Center (DDC), David Mizrahi, DMD (Mizrahi), and James D. Holechek, DDS (Holechek), against The Pacific Telephone and Telegraph Company (Pacific). The complaint involves Pacific's application of its multiple display and other yellow page advertising standards in various southern California directories during the years 1973, 1974, and 1975.

The Pleadings

More specifically, the complaint and its three amendments allege in 33 counts that Pacific violated its "Standards For Yellow Page Advertising Content", certain provisions of law, and acted in a willful or grossly negligent manner when it accepted advertising for Doctors Stein, Rips, Jaffe, Porter, Kaye, Schwartz, Wong, Tarr, Christensen, Gordon, Dr. Howard M. Stein Dental Group, Dr. Kaye Dental Group, Dr. Christensen Dental Group, Union Affiliated Dental Service (UADS), American Academy of Family Dentists (AAFD), American Credit Dentist Association (ACDA), and American Academy of Dentists (AAD) for each of whom one or more ads were published in the 1973, 1974, and 1975 Mid-Cities, 1974 and 1975 Montebello, 1973, 1974, and 1975 South Bay, and 1974 and 1975 Airport directories.

It is contended that Pacific violated its multiple display, duplicate in-column advertising space, trademark duplication, and trademark and trade name service standards for yellow page advertising<sup>1/</sup> essentially because certain of the above-named dentists did not conduct separate dental practices as required by the standards, but were part of what Ad Visor characterizes as the Stein Group, the Kaye Group, and the Christensen Group. By permitting the individual dentists to advertise, Pacific permitted these groups to obtain more ads than authorized under the standards, resulting in a domination of the yellow pages contrary to the purpose of the standards with the consequence that complainants' advertising and telephone service were diminished in value.

The complaint also alleges that Pacific violated its "Headings", "Dentists", "Dentists Service Organizations", and "Dentist Information Bureaus"<sup>2/</sup> standards when it accepted certain advertisements for UADS, ACDA, AAD, and AAFD because these organizations are

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<sup>1/</sup> Exhibits C-9-A, C-9-B1, and C-9-B2. See Appendix A.

<sup>2/</sup> Exhibits C-9-KK3, C-9-KK2, and C-9-UU. See Appendix A.

not only a part of one of the above dental groups, but also are not in the business described by the classification-heading under which the ads appeared.

It is also alleged that Pacific violated the "Position Priority Principle" of its directory practices<sup>3/</sup> with Dr. Porter's ad in the 1974 Mid-Cities directory, and that Pacific improperly canceled the wrong ad for Dr. Holechek in the 1975 Airport directory.

Pacific admits publishing the ads in issue. It admits that the cancellation of the incorrect ad for Dr. Holechek, the incorrect paging of an advertisement for Dr. Porter in the 1974 Mid-Cities directory, the publication of three ads for Dr. Schwartz in the 1975 Mid-Cities directory, and the publication of a product sell ad for ACDA in the 1973, 1974, and 1975 South Bay directories were errors caused by inadvertent clerical mistakes.

Pacific denies that the publication of any of the ads in question violated any provision of law or any order or decision of the Commission or any tariff rule of Pacific and, with the exception of its admissions, did not violate any of its directory advertising standards or practices.

Seven days of public hearings were held in Los Angeles beginning on January 19, 1976 before Examiner Bernard A. Peeters. At the conclusion of the hearings, the matter was submitted subject to the filing of written briefs due June 3, 1976. The briefs were timely filed.

#### Motions

During the course of the hearing Pacific moved to dismiss the complaint on the ground that it involves an assignment of

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<sup>3/</sup> Exhibit C-9-CC. See Appendix A.

a reparation claim in violation of Section 734 of the Code.<sup>4/</sup> This motion has been made twice before against Ad Visor on the same type of contract.<sup>5/</sup> We denied the motion each time. We set forth our reasons in detail in the prior decisions and will not repeat them here. We will deny Pacific's motion.

The Issues

In its brief, Ad Visor sets forth seven issues. Pacific, on the other hand, states that the essential issue is whether Pacific reasonably believed that it was accepting the advertising in dispute from dentists conducting separate dental practices and from organizations which are separate business entities engaged in the activity represented.

The material issues are:

1. Were the individual dentists conducting separate dental practices, and the various organizations conducting the business under which they were classified?
2. If the answer to the first issue is no, then did Pacific have reasonable cause to doubt that it was selling advertising in conformance with its advertising standards?
3. If Pacific did have such reasonable cause, what violations of law resulted from Pacific's actions?
4. If it is found that Pacific violated the law, to what relief are complainants entitled?

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<sup>4/</sup> "734. ...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."

All references are to the Public Utilities Code, unless otherwise stated.

<sup>5/</sup> C.9800, D.85334, dated January 13, 1976; C.9834, D. 87239  
dated APR 26 1977.

The Evidence

Ad Visor presented its case through 8 witnesses (3 adverse), and 87 exhibits. Pacific's defense was presented through 8 witnesses, and 70 exhibits.

A summary of the evidence pertaining to the first issue, i.e., the separateness of the dental practices, will be set forth by dental group.

The Stein Group

The Stein Group (Drs. Stein, Rips, Jaffe, Porter, Dr. Howard M. Stein Dental Group, Dr. H. M. Stein, Inc., and UADS were the subject of the complaint in C.9834, Ad Visor v General Telephone Company of California (General) decided today in D. 87239, of which we take official notice. We found there that the dentists in the Stein Group were not conducting their own individual dental practices.

The evidence presented here by Ad Visor consisted of the depositions taken of Drs. Rips, Stein, and Porter (adverse witnesses) in C.9834, and introduced as Exhibits C-1, C-3, and C-5 here. The testimony of Drs. Stein and Porter in C.9834 was introduced as Exhibits C-4 and C-6 here. These exhibits were received on the stipulation that only matters therein pertaining to Pacific were being offered. Drs. Stein and Rips also gave oral testimony in this matter. It was stipulated that if Dr. Porter had testified here, he would have stated that he never had any conversations with Pacific's representatives about his yellow page advertising (RT 227-228). Essentially the testimony of the doctors is that they were employees of the Stein corporations and did not conduct their own separate practices. Furthermore, Dr. Stein denied that he told Pacific that the dentists in his group conducted separate dental practices.

Dr. Carl Staciewicz, partner in complainant DDC, testified (Exh. C-2) in this proceeding essentially the same as he did in C.9834. The executive vice president of Ad Visor, Fred Krinsky, conducted an investigation of the Stein Group, visited the offices and took photos of them (Exh. C-9) similar to the investigation he did in C.9834. He also introduced numerous documents with respect to the advertising contracts, copy sheets, memoranda and letters between Pacific employees concerning this group, as well as letters to and from Dr. Stein. Essentially Ad Visor's evidence pertaining to the Stein Group is the same as that presented in C.9834, except the documents and testimony are related to dealing with Pacific and advertisements in Pacific's directories rather than General's. We will not repeat that discussion here.

Pacific presented Matthew Colucci, district production manager of directories, as its principal witness in connection with the Stein Group (Exh. D-1). Two supporting witnesses in this area were also presented, Mr. William W. Harris, district sales manager (Exh. D-2), and Davis B. Leonard, directory editor (Exh. D-4). The purpose of Mr. Colucci's testimony was to explain the applicable "Directory Department Standards for Yellow Pages Advertising Content"; describe the results of his investigation (when he was District Sales Manager-Directory in Los Angeles) into the Stein Group and the alleged violations; and explain why the ads were published.

Generally, Colucci's testimony is contradictory to that of Dr. Stein, in that Colucci claims that Dr. Stein had stated that the members of his group conducted separate dental practices. It is admitted by Colucci that as of the time of this hearing, he would not now accept the advertising for the Stein Group as it was published without further questioning. Colucci further admits that prior to the publication of the 1973 Mid-Cities directory, the Directory

Editor challenged the multiple display ads and as a result this account was classified as a "Red Book" account, meaning that such accounts must be personally handled by the sales managers.

The Stein account was assigned by Colucci to a sales manager, since deceased, who investigated and concluded that the dentists were conducting separate dental practices, based upon statements of Dr. Stein. Colucci accepted the recommendation and authorized the publication, although the ads contained a line of copy reading "Member of Dr. Howard M. Stein, Inc.". Subsequent investigations were made, none of which were conclusive in Colucci's opinion.

During June, 1974 advice was sought from Pacific's attorney regarding the Stein account. Exhibits D-1-K through D-1-Q contain a series of memoranda and letters pertaining to this investigation. The substance of these exhibits is that it was recognized that the individual dentists were employees of Dr. Stein's corporations; that the letters from Dr. Stein's attorney and accountant did not satisfy Pacific's requirements regarding the separateness of the dental practices; and that because of the imminent closing date for the directory advertising, the program agreed upon would be published. For the future, however, more substantive proof of separate dental practices would be required. Pacific's attorney also pointed out that if the advertising was not accepted, there was a strong likelihood that Dr. Stein would sue and thus open up Pacific for possible punitive penalties for refusing to provide utility service.

Mr. Harris explained the circumstances surrounding his decision to accept advertising for the Stein Group in the 1972 Mid-Cities directory since the advertising in the 1973 Mid-Cities directory was virtually identical. He points out that his salesman, John Clark, called upon Dr. Stein on July 21, 1972, the closing date for the directory. Dr. Stein ordered advertising for each of his

dentists for two locations. Mr. Harris states that the request is supported by Dr. Stein's representations to Mr. Clark that the dentists each worked as a separate entity and would be working out of two locations. Harris states that his sales representative, Mr. Clark, was convinced of the separateness of the dental practices. Harris confirmed this by a phone call to Dr. Stein who, it is stated, reaffirmed Clark's opinion and said that each dentist was a separate entity sharing office space. However, since only one location was in evidence at the time, the ads for the second location were refused.

Harris backed up his acceptance of Dr. Stein's word by calling his own dentist to inquire about whether it is a common practice for dentists operating on an independent basis to share telephone service and office space. This was confirmed by his dentist who stated that three other dentists share his office, but operate as separate entities.

Mr. Leonard testified that as directory editor he is responsible for reviewing and analyzing new directory publications for violations of tariffs, standard or yellow pages advertising content, brand name control, and practices. He then described how he performs this responsibility and the purpose of an editor's advisory. He stated that he cannot tell, at the time an advisory is issued, whether or not there is a violation, but only that the matter looks suspicious, and that it is up to the sales department to investigate further. He also pointed out that he is involved with over 800,000 advertising items, that on an average 3,500 editor's advisories are issued annually, and that approximately 2 percent of these pertain to multiple display situations. With respect to the Stein account, he issued his first advisory in August, 1973 after checking the status of another advisory issued by his predecessor. His next involvement was in January, 1974 in connection with a complaint by Mr. Jack Krinsky concerning violations of the multiple display standard by the Stein Group ads.

This caused Mr. Leonard to review the ads placed in preceding directories by the Stein Group. The result of this analysis was reviewed with the Division Sales Manager, Mr. K. F. Dietzl, who directed Leonard to write two memos, one to Mr. Colucci (Exh. D-4-D) and the second requesting special manager contact (Exh. D-4-E) on all accounts involving the Stein Group. The results of this latter memo were testified to by Mr. Colucci. In addition to the memos, another editor's advisory was issued for the 1974 Mid-Cities directory, as well as the 1975 Montebello, Alhambra, and Mid-Cities directories.

Listed below are the ads that Pacific published for the Stein Group in its various directories for various years, which are alleged to violate Pacific's multiple display standard, duplicate in-column advertising space and trademark standard, dentists standard, dentists service organizations standard, headings standard, and the position priority principle of the directory practices.

1973 Mid-Cities directory (Exh. C-9-C)

Page 92 - D-1/2 col. Dr. Jaffe  
 " 92 - D-1/2 col. Dr. Rips  
 " 92 - D-1/2 col. Dr. Stein  
 " 94 - CTM, Dr. Jaffe  
 " 95 - CTM, Dr. Rips  
 " 95 - CTM, Dr. Stein

1974 Mid-Cities directory (Exh. C-9-F)

Page 91 - D-1/2 col. Dr. Porter  
 " 91 - D-1/2 col. Dr. Stein  
 " 91 - D-1/2 col. Dr. Rips  
 " 93 - D-1/2 col. Dr. Stein Dental Gp.  
 " 95 - D-1/2 col. Union Affiliated Dental Service (UADS)  
 " 95 - CTM, Dr. Porter  
 " 95 - CTM, Dr. Rips  
 " 96 - CTM, Dr. Stein

1975 Mid-Cities directory

Page 85 - D-1/2 col. Dr. Stein  
 " 86 - D-1/2 col. Dr. H. M. Stein Dental Gp.

1974 Montebello directory (Exh. C-9-D)

Page 71 - D-1/2 col. Dr. Jaffe  
" 72 - D-1/2 col. Dr. Rips  
" 72 - D-1/2 col. Dr. Stein  
" 72 - D-1/2 col. Dr. H. M. Stein  
" 74 - D-1/2 col. UADS  
" 74 - CTM, Dr. Stein  
" 75 - CTM, Dr. Jaffe  
" 75 - CTM, Dr. Rips

1974 South Bay directory (Exh. C-9-NN)

Page 186 - D-1/2 col. Dr. H. M. Stein Dental Gp.  
" 186 - D-1/2 col. Dr. Stein  
" 187 - D-1/2 col. Dr. Rips  
" 187 - D-1/2 col. Dr. Porter  
" 190 - CTM, Dr. Porter  
" 190 - CTM, Dr. Rips  
" 191 - CTM, Dr. Stein  
" 192 - D-1/2 col. UADS  
" 192 - CTM, UADS

(D-1/2 col. = double half column; CTM - custom trademark.)

Discussion

Pacific does not dispute the publication of the above ads for the Stein Group, nor does it seriously dispute the fact that the dentists in the Stein Group were not conducting their own separate dental practices. Pacific's evidence as to the separateness of the dental practices related primarily to the second issue, i.e., whether Pacific had reasonable cause to believe that the dental practices were indeed separate.

Findings of Fact

1. Pacific published the above listed ads for the Stein Group in its directories for the years and directories indicated under the "Dentist Information Bureaus", and "Dentists" classifications of the yellow pages.

2. Drs. Rips, Jaffe, Porter, and Stein, and UADS did not conduct separate dental practices during the periods covered by the directories in issue.

The Kaye Group

The Kaye Group (Drs. Kaye and Schwartz) like the Stein Group, was also involved in C.9834. We determined there that the Kaye Group did not consist of dentists conducting their own separate dental practices. The dentists involved here are Drs. Kaye, Schwartz, and Wong.

Ad Visor made an investigation of this dental group similar in manner to that for the Stein Group. The physical inspection of the Downey office, and photographs thereof, showed that the building is marked with a sign "Dr. Kaye Dental Group" (Exh. C-9-FF), 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. It was also shown that Dr. Kaye operated out of two offices, Bellflower, and Downey; that Dr. Schwartz worked in the Downey office and Dr. Wong in the Bellflower office. Documentary evidence in the form of advertising contracts and copy sheets (Exhibits C-9-GG, HH, II, & JJ) show that Dr. Kaye signed for the advertising of Drs. Schwartz and Wong and was billed for the advertising.

Ad Visor's investigation was confirmed by the testimony of Dr. Kaye who testified in response to a subpoena that he operated a sole proprietorship; that Drs. Schwartz and Wong were contract employees of his; that Dr. Schwartz managed the Downey office; that Dr. Wong managed the Bellflower office; that Dr. Wong brought two rooms of dental equipment with him when he came to work for Dr. Kaye in 1968 or 1969; that all dentists used this equipment as well as Dr. Kaye, that sometime in 1973 Dr. Wong left Dr. Kaye's employ and opened his own practice at Lomita, and took his equipment with him. Dr. Kaye stated that he had other dentists in his employ, and that all patient billing was identical and the receipts went into a general fund as opposed to individual dentists' accounts.

Dr. Kaye could not recollect whether he ever told a Pacific representative that Drs. Schwartz and Wong conducted their own separate dental practices. He also stated that he paid for the ads of Drs. Schwartz and Wong which pertained to the Bellflower and Downey offices, and that the signatures on the advertising contracts were his.

The 1973 Mid-Cities directory contains two display ads for Dr. Wong showing two addresses, one for Carson and one for Lomita (Exh. C-9-C). The 1974 Mid-Cities directory contains two display ads for Dr. Wong showing the same two addresses and telephone numbers, except the Carson address and telephone number are de-emphasized (Exh. C-9-F). Exhibits C-9-GG and C-9-II contain the advertising contracts for the 1974 Mid-Cities directory. They show that the advertising is to be billed to the primary account, Dr. Kaye. Dr. Kaye further testified that he would generally purchase all the advertising offered to him by the directory salesman, and that he usually signs all the documents presented without close scrutiny.

Pacific presented its district sales manager, William W. Harris, to explain the circumstances surrounding the acceptance of the ads for the Kaye Group, in addition to Mr. Colucci. Essentially Harris' testimony shows that these dentists had advertised in directories prior to the 1974 Mid-Cities directory and that the salesman was told that each doctor was conducting a separate practice, but sharing common office facilities and telephone service, in that they were joint users.

Mr. Harris approved the publication of the ads on the basis of information given him by his manager and the appearance of the ads themselves. Although he did not recall all that his manager told him, he did remember that the manager said that he (the manager) had carefully weighed the evidence with the criteria for separate entities and concluded that the dentists qualified for separate advertising programs. Harris accepted this recommendation and approved the copy sheets.

Colucci stated that the ads for Dr. Schwartz in the 1974 Mid-Cities directory were accepted on the basis that he was a joint user on Dr. Kaye's telephone service which was set up by General. Colucci pointed out that at the time, Pacific considered the Kaye Group ads were in compliance with its standards because each dentist was considered as a separate entity. Today, however, the ads would not be accepted, if requested, because Dr. Schwartz has not presented Pacific with sufficient evidence that he is conducting a separate dental practice.

With respect to Dr. Wong's ads in the 1974 Mid-Cities directory, Colucci stated these were published on the basis that Dr. Wong was a joint user and maintained a separate practice at the two locations.

Insofar as the ads for Dr. Schwartz in the 1974 Mid-Cities directory are concerned, Colucci stated that Dr. Schwartz was now considered an employee of Dr. Kaye and that Dr. Kaye had purchased the maximum amount of advertising authorized, therefore the ads for Dr. Schwartz were canceled. The fact that Dr. Schwartz's ads, even though canceled, appeared in the 1975 directory was to be explained by another witness, Gloria Stellabotte, supervisor of an advertising record control unit (ARC).

The essence of Stellabotte's testimony is that the ads for Dr. Schwartz appeared as the result of a clerical error; that approximately 1,500 to 1,600 advertising contracts per month, per clerk, are handled by her group of 8-12 clerks; and that the 12-month average basis for errors for the 16 ARC's is less than 1/10 of 1 percent of all accounts processed.

Mr. Douglas W. Prince, an advertising sales representative, who handled the Kaye Group advertising for the 1973 Mid-Cities and the 1974 Montebello directories, was presented to explain his part in Pacific's acceptance of Dr. Kaye's advertising. His testimony

shows that since Dr. Schwartz was a joint user on Dr. Kaye's telephone service, as well as Dr. Wong, they were entitled to the ads he sold them. He stated that the ads were not in violation of Pacific's advertising standards because these dentists were joint users and therefore had to have their own separate dental practices in order to qualify as a joint user. He recognized that the joint user had been set up by General, but made no check to determine whether General's joint user tariff criteria were the same as Pacific's. He stated that he spoke with Dr. Schwartz who gave him the requirements for his ad. He also believes what his customers tell him.

In rebuttal, Ad Visor called Dr. Schwartz who appeared in response to a subpoena. His testimony was that he did not meet with Mr. Prince in 1973; that he does not conduct his own separate dental practice; that he is an employee of Dr. Kaye, as an independent contractor.

The following ads were published by Pacific for the Kaye Group in the directories and years indicated, which are alleged to violate Pacific's multiple display, duplicate in-column, and trademark standards:

1973 Mid-Cities directory (Exh. C-9-C)

Page 90 - D-1/2 col. Dr. Kaye  
" 93 - D-1/2 col. Dr. Wong  
" 93 - D-1/2 col. Dr. Wong  
" 94 - D-1/2 col. Dr. Kaye  
" 95 - CTM, Dr. Kaye  
" 95 - CTM, Dr. Schwartz  
" 96 - CTM, Dr. Wong

1974 Mid-Cities directory (Exh. C-9-F)

Page 90 - D-1/2 col. Dr. Kaye  
" 93 - D-1/2 col. Dr. Kaye  
" 93 - D-1/2 col. Dr. Schwartz  
" 94 - D-1/2 col. Dr. Kaye  
" 94 - D-1/2 col. Dr. Schwartz (Product Sell)  
" 92 - D-1/2 col. Dr. Wong  
" 92 - D-1/2 col. Dr. Wong  
" 95 - CTM, Dr. Kaye  
" 96 - CTM, Dr. Schwartz  
" 96 - CTM, Dr. Wong

1975 Mid-Cities directory (Exh. C-9-G)

Page 86 - D-1/2 col. Dr. Kaye  
" 87 - D-1/2 col. Dr. Schwartz  
" 87 - D-1/2 col. Dr. Schwartz  
" 88 - CTM, Dr. Kaye  
" 89 - CTM, Dr. Schwartz

1974 Montebello directory (Exh. C-9-D)

Page 70 - D-1/2 col. Dr. Kaye  
" 71 - D-1/2 col. Dr. Kaye (Spanish)  
" 73 - D-1/2 col. Dr. Schwartz  
" 75 - CTM, Dr. Kaye  
" 75 - CTM, Dr. Schwartz

1975 Montebello directory (Exh. C-9-EE)

Page 71 - D-1/2 col. Dr. Kaye  
" 71 - D-1/2 col. Dr. Kaye (Spanish)  
" 73 - D-1/2 col. Dr. Schwartz  
" 73 - D-1/2 col. Dr. Schwartz (Spanish)  
" 75 - CTM, Dr. Kaye  
" 75 - CTM, Dr. Schwartz

1974 South Bay directory (Exh. C-9-NN)

Page 185 - 2 D-1/2 col. Dr. Wong-Lomita

Discussion

Pacific does not seriously dispute the issue of whether or not the dentists in the Kaye Group conducted their own separate dental practices. In fact they admit, inferentially, that they do not conduct their separate practices in that they would not accept the ads published, if requested today, without further proof from Dr. Schwartz that he was conducting his own practice. Also they canceled Dr. Schwartz's ads for 1975 since they now considered Dr. Schwartz an employee of Dr. Kaye, who had already purchased the maximum number of ads authorized.

There is no reason, or evidence, to find any differently, with respect to the Kaye Group, than we did in C.9834 as to the separateness of the dental practices of Drs. Kaye and Schwartz.

The record is clear that Dr. Wong was an employee of Dr. Kaye until sometime in 1973, when he left Dr. Kaye's employ and opened his own office in Lomita. However, Dr. Wong was still employed by Dr. Kaye for 9 or 10 months after moving to the Lomita location where he was starting his own independent practice. Drs. Kaye and Wong, as partners, purchased the Lomita building where Dr. Wong set up his practice.

Findings of Fact

3. Pacific published the above listed ads for the Kaye Group in its directories for the years and directories indicated under the "Dentist" classification of the yellow pages.

4. Dr. Schwartz is an employee of Dr. Kaye and did not conduct his own separate dental practice during the period involved here.

5. Dr. Wong was an employee of Dr. Kaye, and did not conduct his own separate dental practice until the latter part of 1973.

The Christensen Group

The dentists and organizations involved in this group are: Dr. Christensen, Dr. Gordon, and AAFD.

Ad Visor's executive vice president made a personal investigation of this group, which consisted of personal visits to the premises in Lawndale and telephone calls to the number listed in the ads for the dentists involved.

The visual inspection revealed there is a large revolving sign above the building at the address indicated in the ad which reads: "Christensen Dental Center" (CDC). Next to the entrance to the building are small signs containing the names of Dr. Christensen and Dr. Gordon. Inside, there is one waiting room and one reception room. There is a sign-in book at the reception window which is for all patients visiting the center. Inquiry made at the reception desk as to which dentists were members of the group revealed the names of Drs. Christensen, Gordon, and Chadburn. Further inquiry

as to whom checks for dental services should be drawn produced the response they were to be made out to CDC regardless of who performed the dental work. A phone call at a later time produced information similar to that obtained on his personal visit.

The ads published, except for names and photographs, are identical. Both have the same telephone number, same address, and same copy.

An investigation of AAFD revealed that the contract for its advertising (Exh. C-9-VV) was sold to CDC, and that there is a notation "closed" on the contract. This notation indicates that no one else was allowed to list under this trademark since it was controlled by CDC. A check made with the Secretary of State shows that AAFD is not incorporated, nor is it filed as a fictitious business name.

Exhibit C-9-XX contains the contracts for the 1974 South Bay and Airport Area directories. These contracts show that the advertising for both Dr. Christensen and Dr. Gordon are written on the same contract, and signed by a third person as, "Manager, Christensen Dental Center". Billing for all the advertising is to be sent to CDC.

Pacific presented Jim Saxton, advertising sales representative, whose purpose was to explain his involvement with the ads of Drs. Christensen and Gordon which appeared in the 1974 South Bay and Airport directories (Exh. D-8). His testimony was very short. It consisted of statements that he accepted the ads in question because he was told by Dr. Gordon that he (Gordon) rented space from Dr. Christensen, that he conducted his own separate practice, was therefore entitled to buy advertising for himself, and that he was a joint user on Dr. Christensen's telephone service.

With respect to the AAFD ad in the 1973 South Bay directory, Colucci admitted that the ad does not comply with Pacific's standard for "Dentist Information Bureaus" and that it has since been canceled.

In rebuttal Ad Visor called Dr. Gordon who appeared in response to a subpoena. Dr. Gordon's testimony contradicts Saxton's. Dr. Gordon testified that he was an employee of Dr. Christensen as of June, 1973. Cross-examination brought out that he became a partner of Dr. Christensen in January or February of 1974.

The following ads were published by Pacific for the Christensen Group in the directories and years indicated, which are alleged to violate Pacific's multiple display, duplicate in-column, trademark, dentist information bureaus, and headings standards.

1974 Airport directory (Exh. C-9-PP)

Page 137 - D-1/2 col. Dr. Christensen Dental Center  
" 138 - D-1/2 col. Dr. Jerry Gordon  
" 139 - CTM, Dr. Christensen Dental Center  
" 139 - CTM, Dr. Gordon

1974 South Bay directory (Exh. C-9-NN)

Page 186 - D-1/2 col. Dr. Christensen Dental Center  
" 187 - D-1/2 col. Dr. Jerry Gordon  
" 186 - CTM, Christensen Dental Center  
" 188 - CTM, Dr. Gordon

1973 South Bay directory (Exh. C-9-QQ)

Page 167 - CTM, American Academy of Family Dentists

Discussion

It is apparent from Saxton's testimony, and more particularly, his cross-examination, that in spite of his ten years' experience as a yellow page salesman, he was not very familiar with Pacific's advertising standards; he could not remember very much about his contacts with Dr. Gordon; that he generally relied upon his manager's review as well as audit controls to pick up errors in his

contracts; that his manager informed him that advertising under the "Dentists" heading was being investigated; and that he did not observe the premises to determine if separate dental practices were being conducted, but relied solely upon the word of the advertisers and the joint user arrangement.

Pacific had reason to doubt that Drs. Christensen and Gordon were conducting separate dental practices, and that AAFD was a separate organization entitled to its own advertising, yet Pacific failed to inquire sufficiently to determine the question of separateness.

#### Findings of Fact

6. Pacific published the above listed ads for the Christensen Group in its directories for the years and directories indicated, under the "Dentists" and "Dentist Information Bureaus" classifications of the yellow pages.

7. Dr. Gordon was an employee of Dr. Christensen, is now a partner, and does not conduct his own separate dental practice.

8. AAFD is not a separate business entity, nor is it a bona fide bureau providing lists of dentists to people who do not have their own dentist, or need a specialist.

Did Pacific Have Reasonable Cause to  
Doubt That It Was Selling Advertising  
to Separate Entities and Dentists  
Conducting Their Own Separate Dental  
Practices?

#### The Evidence

Ad Visor's evidence on the issue of whether Pacific had reasonable cause to believe it was selling advertising to separate entities and dentists conducting their own separate dental practices is divided into two periods. The first period is denominated pre-Berko, and the second period is post-Berko.<sup>6/</sup>

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<sup>6/</sup> Berko refers to C.9605, Ad Visor, Inc., representing Stan Berko v PT&T, heard on February 1, 1974 and decided February 11, 1975 in D.84068. Pacific's multiple display standard was involved in this case in that it refused to publish more than two display ads for Berko who operated several businesses with common personnel, and the Stein Group advertising was discussed in the case.

The pre-Berko period involves the ads for the Stein Group in the 1973 Mid-Cities and the 1974 Montebello directories. These directories are published in October and January of each year, respectively.

Exhibit C-9-I contains the advertising contracts pertaining to the ads for Drs. Rips, Jaffe, and Stein in the 1973 Mid-Cities directory. All advertising for all the doctors is on one contract, signed by Dr. Stein as owner. The copy sheets (Exh. C-9-J) show that the audit department questioned the ads as to whether it was correct for Dr. Stein's name to appear in Jaffe's and Rips's ads. Sales department's reply was in the affirmative. An editor's advisory for the 1973 Mid-Cities directory (Exh. C-9-K) points out that there were three display ads in the prior directory for Drs. Stein, Rips, and Jaffe, and refers to a possible violation of the multiple display standard. Action taken by the sales department was to state that this account would be taken care of and treated as a multiple display for the January, 1974 Northeast directories. This recommendation was questioned by a directory department employee in the form of a handwritten memo which was attached to the editor's advisory obtained by Ad Visor through discovery.<sup>7/</sup>

The advertising sales queries were issued on this advertising. One on July 9 (Exh. C-9-L), the other on August 6 (Exh. C-9-M). The first one was to clear the editor's review attached regarding Drs. Stein's and Rips's ads. The answer stated "District signed OK (Colucci)". The second requested clarification on the maps on Drs. Jaffe's and Rips's ads because Dr. Stein's name is included on all the maps in the ads. The answer stated that the maps were correct.

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<sup>7/</sup> "Byrd, the copy has not been changed only Colucci sig is on D1280s - I don't feel that's answering the Editors Review - what do you think? Vicque." (Exh. C-9-L.)

Exhibits C-9-0 and D-1-T contain the advertising contracts for the 1974 Montebello directory for the Stein Group. All are dated October 12, 1973, and signed by Dr. Stein to whom all billing was to be sent. One sales representative handled all the contracts. Exhibit C-9-Q contains the copy sheets for this advertising. The copy sheets show that the advertising is essentially the same as in the 1973 Mid-Cities directory, except there are two more display ads, including one for UADS and two more CTM's.

The Montebello directory is part of the Northeast group of directories. This would have been the first directory in which the multiple display problems with the Stein Group could have been taken care of as indicated by the sales department in its response to an editor's review.

One of the ads contains the photos of all three doctors (Stein, Rips, and Jaffe) and a line of copy reading "Dr. Howard M. Stein Professional Dental Corp.". It is alleged that if these doctors were conducting their own separate dental practices, then the three photos and line of copy in the ad would constitute a violation of Pacific's "Classified Telephone Directory Advertising Special Condition 11",<sup>8/</sup> since this would constitute a resale of space if the doctors had their own separate dental practices. It is also pointed out that the fact that Dr. Stein signed for all of the contracts, not only shows that the individual doctors did not conduct their own separate dental practices, but if they did, that the salesman

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<sup>8/</sup> "11. The Company will not enter into or continue any contract involving the resale of space." (Sched. Cal. P.U.C. No. 40-T. Effective August 8, 1972 this item and other material was consolidated with material in Sched. Cal. P.U.C. No. 39-T.)

did not comply with the signature requirements for an advertising order.<sup>9/</sup> Two editor's reviews were issued on the Stein account in early 1973 to alert the sales department for the 1974 Montebello directory.<sup>10/</sup>

After the publication of the 1974 Montebello directory in January of 1974, Ad Visor informed Pacific of the above ads pointing out that they believed the ads violated Pacific's multiple display and trademark duplication standards in the 1973 Mid-Cities and 1974 Montebello directories. Pacific replied that such allegations are referred to the directory editor, Mr. Dave Leonard, who investigates, and where violations are found, an editor's review is issued to prevent the violation from appearing in subsequent issues (Exh. C-9-U).

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9/ "25.D The following are the only signatures acceptable for authorization of advertising: (1) The owner of an individually owned business. (2) Any partner in a partnership. (3) The President, Vice-President, Secretary or Treasurer of a corporation. (4) Any person who has power of attorney for a particular firm or corporation. The signature must be followed by the letters P.O.A. NOTE: The person signing must also enter the letters P.O.A. in the title space. (5) Any person who has been authorized to negotiate and sign for the advertising; e.g., General Manager, Comptroller." (Exh. C-9-E. Directory Advertising Sales Manual, Section 6, page 2.)

10/ Exh. C-9-R. "Problem: If Dr. Rips and Dr. Jaffe are individual owners, then they cannot refer to 'Member of Dr. Stein'. Please consult Directory Editor before contacting sub. Also - D-1/2 pg. 67 does tie in all doctors as one organization."

Exh. C-9-S is a copy of page 67 of the 1973 Montebello directory ad which contains photos of all three doctors in one ad.

A series of documents presented by both complainant and defendant appear to be a complete chronological record of Pacific's investigation into the separateness of the dental practices of the dentists in the Stein Group.<sup>11/</sup> The period covered is between February 14, 1974 and September 20, 1974. This period is subsequent to the hearings in the Berko case where Pacific testified with respect to the enforcement of its multiple display standard.

The substance of this series of documents is that Pacific's management was not only fully aware that there were no individual separate dental practices involved, but that these ads constituted a gross violation of the multiple display standard (Exh. C-9-V and D-13). Certain file memoranda and letters by Pacific's attorney concerning his investigation show that he pointed out to Dr. Stein's attorney that his investigation is a result of the Berko decision (Exh. D-1-L), that Pacific's attorney knew that the dentists were employees of the Stein group, and that it would be in violation of the multiple display standard to permit ads in the individual doctors' names (Exhibits C-9-Z and D-1-K). In Exhibit D-1-M, a letter from Pacific's attorney to Colucci dated July 9, 1974, the following opinion is given:

"Based upon our discussion of last Wednesday, it is my opinion that Pacific Telephone would be taking a serious risk of being second-guessed by the Commission if the Telephone Company refused advertising for Drs. Porter and Rips. The consequences of being wrong is a suit for wilful refusal to render a utility service and attending such a cause of action is the possibility of punitive damages."

Subsequent to this letter Colucci sent a memo to K. F. Dietzl (Exh. D-1-N) wherein he points out that one of the letters of Dr. Stein does not meet Pacific's standard; that he, and Pacific's attorney concurred on this, but that there is nothing that can be

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<sup>11/</sup> Exhibits C-9-V, W, X, Y, Z, AA, BB, D-1-J, K, L, M, N, O, P, Q, and D-13.

done at this time except to accept the advertising as planned. He goes on to point out that Pacific is in an extremely vulnerable position. There is a handwritten note in the upper right hand corner of this document<sup>12/</sup> that apparently is the note made of a phone call to Colucci to the effect that the advertising for the Northeast directory should not be taken.

Evidence as to the reasonableness of Pacific's belief that it was dealing with separate dental practices in the Stein Group was presented primarily through Mr. Colucci. His testimony is that it is Pacific's general practice to accept a customer's word about his business; that although there were questions about the Stein Group ads as far back as the 1972 Mid-Cities directory, Colucci's sales manager at the time convinced Colucci that there were separate dental practices involved, although Colucci did not review the actual ads, nor make any investigation himself; that subsequent editor's reviews were issued and investigations made, but Colucci concluded the results were not conclusive and continued to authorize the publication of the ads. This went on for a period of 2-1/2 years in various directories before the Stein Group advertising program was cut down.

Colucci explained the system of standards and other procedures used by Pacific to prevent the publication of ads that would be in violation of its standards or tariffs. He testified that the letter from Pacific's attorney had considerable influence on his decision to continue to publish Dr. Stein's ads, although the letters as to the separateness of the dental practices provided by Dr. Stein were not sufficient evidence to justify his action.

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<sup>12/</sup> "Call to Colucci: Should not take adv for NE dir unless Stein furnishes more definitive information of the independence of these Drs. KFD 7/15/74".

Colucci admitted that the publication of Dr. Porter's ad in Dr. Jaffe's position in the yellow pages of the 1974 Mid-Cities directory was wrong and occurred through a clerical mistake on the part of the salesman.

With respect to the ads for UADS, he considered these to be in compliance with the multiple display standard at the time, but that today he would not accept them. It was admitted by Colucci that the Stein ads in the 1975 Mid-Cities directory are in violation of the multiple display standard. He denied that any of the ads violated the duplicate in-column advertising standard on the grounds that separate dental practices were involved.

Colucci pointed out that in connection with the 1974 Mid-Cities directory, a change had been made in the duplicate in-column standard in 1973. This change did not have an effect on the 1974 Mid-Cities directory since the canvass had already been started for the 1974 issue. It would not be a reasonable business practice to recontact all the customers affected in the middle of a canvass and thus have an effect on the closing date for the directory.

#### The Kaye Group

Ad Visor contends that the advertising contracts for the Kaye Group show that Pacific had prior knowledge that Drs. Kaye, Schwartz, and Wong were not conducting separate dental practices,<sup>13/</sup> and therefore could not have a reasonable belief as to the separateness of the dental practices.

Pacific admits that it published ads for Dr. Wong in its 1973 and 1974 Mid-Cities directories, and that Dr. Kaye signed for the advertising and that the telephone number and address to which bills are to be sent are Dr. Kaye's, but maintains that the 1974 advertising was billed to Dr. Wong.

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<sup>13/</sup> Exhibits C-9-GG & C-9-II show Dr. Kaye signed for advertising of Drs. Schwartz and Wong, as well as his own. The billing telephone number belongs to Dr. Kaye and the address to which bills are to be sent is Dr. Kaye's.

Ad Visor points out that for the 1975 directory, Pacific's advertising copy sheet, which contains a notation,<sup>14/</sup> is a further admission by Pacific of the relationship between Drs. Kaye and Wong which Pacific knew about.

With respect to Dr. Kaye's advertising contracts for Drs. Schwartz and Wong in the 1975 Mid-Cities directory, Ad Visor presented Exhibit C-9-JJ, copies of the signature pages of the advertising contracts only, which show cancellation of all advertising for Drs. Schwartz and Wong. This occurred after the filing of this complaint. The following note appears on the contracts:

"Cancel All 150.25 - (15025) Multiple  
Disp. No. Comm. D39 2/11/75 Benedict  
for un loss"

It is stated that "un loss" means uncontrollable loss. Two double-half column display ads appear for Dr. Schwartz in the 1975 Mid-Cities directory.

Pacific presented Mr. Prince, the salesman involved, Mr. Harris, and Mr. Colucci to explain why the Kaye Group ads were accepted. They testified that the ads were accepted on the basis that Drs. Schwartz and Wong were joint users on Dr. Kaye's telephone service, which service was established by General. Exhibit D-1-Y sets forth the conditions under which a Pacific joint user can be established.

In the Kaye instance it is stated that two individuals sharing the same location can be joint users if they conduct separate dental practices. Exhibit D-1-E contains the criteria to be considered to determine the separateness of a business. The witnesses concluded that since Pacific considered the doctors as

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<sup>14/</sup> "Dr. Kaye paying for old D-1/2 C's or Wongs. Sub. not entitled to seq. date per Frank Benedict. C-8-19-75 V.H." (Exh. C-9-HH.)

conducting their own individual dental practices, the ads published were in compliance with the multiple display and in-column advertising standards. However, it was stated that if these ads were requested today they would not be accepted. The reason for not accepting similar advertising today was that the investigation, after this complaint was filed, showed that Dr. Schwartz worked for Dr. Kaye on a contract basis. Pacific admits the canceled ads were published, but that such publication was the result of a clerical error.

Gloria Stellabotte, a supervisor of an ARC unit was presented and testified how the clerical error occurred. Initially she pointed out that on the contract canceling Dr. Schwartz's ads (Exhibits D-5-C and C-9-JJ) the date of June 23, 1974 on the contract signature line should be July 23, 1975 because the closing date for the directory is shown as July 11, 1975 and, therefore, the salesman made a mistake since he could not hold a contract for a year.

Although there was an order canceling Dr. Schwartz's ads, it was not associated by the clerk, who was working with several advertising orders related to several master records at the time, to the master record of Dr. Schwartz. Not having done this, the rest of the check points would not pick up the error, because no ordering slip was prepared by the initial clerk.

#### The Christensen Group

Pacific's testimony concerning the reasonableness of its belief that Drs. Christensen and Gordon were conducting their own separate dental practices is not convincing. Once again their witness relied upon the fact that there was a joint user arrangement and the bootstrap argument that there was no violation of the standards because of the separate dental practices since they were joint users of telephone service. No investigation was made to justify the conclusion that because there was joint user service they must have conducted separate dental practices.

Discussion

We are not convinced that Pacific had reasonable cause to believe that the dentists involved here were conducting their own separate dental practices.

The evidence shows that Pacific conducted an investigation of the Stein Group from 1972 to well after this complaint was filed and still had not resolved the question of whether there were separate dental practices or not. Numerous editor's advisories were issued subsequent to 1972 calling the sales department's attention to possible violations of the advertising standards, and a complaint was filed calling Pacific's attention to the violations, yet the ads continued to be published.

Under the circumstances presented in this case, we are compelled to quote the following portion of the first page of Pacific's "Standards For Yellow Page Advertising Content":

"GENERAL

"The success of any advertising publication is dependent, in large part, on the publisher's earning a reputation for integrity. The Telephone Company has achieved this status through its continuing efforts to serve directory users by establishing and protecting the reliability of advertisements appearing in its directories. As a result, directory users have a high degree of confidence in these advertisements. Directory advertisers benefit from this confidence, as well as from assistance in minimizing possible consequences which would arise out of the use of misleading statements. Therefore, it is extremely important to preserve the faith of directory users and directory advertisers in the advertising appearing in The Telephone Company's directories.

\* \* \*

"The Telephone Company exercises control over Acceptability Standards and applies them in a non-discriminatory manner to all its customers. It is the Telephone Company's responsibility to prevent violations of these standards and to correct a violation when it occurs. To fulfill this responsibility, the procedures described below under the heading of 'Administration of Acceptability (Group I) Standards' will be followed." (Exhibit D-10. Underscoring added.)

Pacific's actions, as evidenced by this record, belie its stated intent and objectives. We are hard pressed to believe that Pacific is sincerely carrying out its stated policy. It has permitted advertising to be published which purports to be for an individual dentist, but in reality is an organization which employs him, and others. The public is thus lead to believe it is reaching a private dentist when the phone number in the ad is dialed. Publishing misleading advertising is serious enough, but to compound it by continuing the deception year after year is inexcusable.

Although investigations were made, they appear to have been more cursory than thorough. The motivation seems to be more profit oriented rather than the avoidance of discrimination by strict adherence to its stated policy and standards. Where profit is involved, the ingenuity of man spawns limitless varieties of unfairness.

While Pacific did restrict the advertising of the Stein Group to conform to its standards after the Berko decision, it did not do so insofar as the Kaye Group was concerned. The record shows that the violations continued in the 1975 Montebello and Mid-Cities directories. The record also shows that Dr. Schwartz's ads were canceled for the 1975 Mid-Cities directory, yet they were published.

In addition to the advisories issued by the editor's department concerning possible violations, which were handled in a cavalier manner prior to the Berko decision and the filing of this

complaint, and then in an indecisive manner subsequently, the testimony of the adverse witnesses (the dentists who benefited from Pacific's actions) contradicts Pacific's witnesses who claim they relied upon the advertiser's word that the dentists conducted their own separate dental practices.

In addition to relying upon the advertiser's word, the record also shows that Pacific placed considerable reliance upon the fact that there was a joint user status in connection with the dentists for its conclusion that there were separate dental practices. The fallacy of this reliance is shown by Colucci's testimony under cross-examination.<sup>15/</sup> Furthermore, the record shows that Pacific did not follow its acceptability standards<sup>16/</sup> before accepting the ads, but relied instead upon the joint user status and what they claimed the dentists told them. Such self-serving arguments do not enhance Pacific's credibility.

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15/ "Q. Isn't it true that according to Pacific's practices, that establishing two persons as joint users does not in and of itself entitle them to display ads if they are, in fact, not separate entities?

"A. That is correct.

"Q. So two persons can be joint users if they don't conduct separate practices?

"A. Yes.

"Q. And two persons can be joint users if they do conduct separate practices?

"A. Yes." (RT page 364.)

16/ See Appendix A.

In view of the total record we cannot accept Pacific's argument that it had reasonable cause to believe the dentists of the Stein, Kaye, and Christensen Groups were conducting their own separate dental practices.

Findings of Fact

9. Pacific did have reasonable cause to doubt that the dentists in the Stein Group were conducting their own separate dental practices, nor that UADS was an organization separate and apart from the Stein Group; Pacific failed to inquire sufficiently to ascertain the truth of the matter.

10. Pacific did have reasonable cause to doubt that the dentists in the Kaye Group were conducting their own separate dental practices; Pacific failed to inquire sufficiently to ascertain the truth of the matter.

11. Pacific did have reasonable cause to doubt that the dentists in the Christensen Group were conducting their own separate dental practices; Pacific failed to inquire sufficiently to ascertain the truth of the matter.

Violations of Other Advertising Standards

It is alleged that the following advertising published by Pacific violated advertising standards pertaining to "Duplicate In-column Advertising Space", "Dentists", "Position Priority Principle", "Dentist Information Bureau", "Dentists Service Organizations", and "Headings":

Duplicate In-Column Advertising Space

American Credit Dentists Assoc. (ACDA)

1974 South Bay directory (Exh. C-9-NN)

Page 182 - CTM, ADCA  
" 188 - CTM, Ernest J. Tarr  
" 189 - CTM, J. Ernest Tarr  
" 191 - CTM, Tarr, Ernest J.

Dentists Standard

Union Affiliated Dental Service (UADS)

1974 Montebello directory (Exh. C-9-D)

Page 74 - D-1/2 col. UADS

ACDA

1973 South Bay directory (Exh. C-9-QQ)  
Page 170 - D-1/2 col. ACDA (Prod. Sell)

1974 South Bay directory (Exh. C-9-NN)  
Page 182 - CTM, ACDA  
" 184 - D-1/2 col. ACDA (Prod. Sell)

1975 South Bay directory (Exh. C-9-SS)  
Page 182 - D-1/2 col. ACDA (Prod. Sell)

Paging Principles

Dr. Stein Group

1974 Mid-Cities directory (Exh. C-9-F)  
Page 91 - D-1/2 col. Dr. Porter

1974 Airport directory (Exh. C-9-RR)  
Page 134 - D-1/2 col. Dr. Holechek

Dentists Service Organizations & Headings

UADS

1974 Mid-Cities directory (Exh. C-9-F)  
Page 96 - D-1/2 col. UADS

1974 South Bay directory (Exh. C-9-NN)  
Page 192 - D-1/2 col. UADS  
" 192 - CTM, UADS

1975 Montebello directory (Exh. C-9-BE)  
Page 76 - D-1/2 col. UADS

American Academy of Dentists (AAD)

1974 Airport directory (Exh. C-9-NN)  
Page 142 - CTM, AAD  
" 142 - CTM, ACDA

1974 South Bay directory (Exh. C-9-NN)  
Page 192 - CTM, AAD

Dentist Information Bureaus & Headings

American Academy of Family Dentists (AAFD)

1973 South Bay directory (Exh. C-9-QQ)  
Page 167 - CTM, AAFD

Erroneous Advertisement

1975 Airport directory (Exh. C-9-RR)  
Page 134 - D-1/2 col. Dr. Holechek

UADS

The evidence shows that Dr. Stein testified that UADS was not registered as a professional dental corporation; that it was not licensed to provide dentistry; that it was never registered as a health plan; and that it never provided dental service.

The UADS ad appeared under the classification of "Dentists", and "Dentists Service Organizations". The "Dentists" classification is for those individuals and professional corporations which provide dental service (see Footnote 2D in Appendix A). The "Dentist Service Organizations" classification is limited to organizations performing administrative and marketing functions (see Footnote 2B in Appendix A).

Pacific's evidence shows that it based its belief that UADS could properly advertise under the classifications upon the fact that letters and brochures provided by Dr. Stein described the services which fit under the classifications, and that Dr. Stein stated that UADS was registered as a professional dental corporation.

ACDA and AAD

According to the evidence ACDA is a California non-profit corporation whose primary purpose is to promote development and research of dental science and dental techniques, and to encourage education in dentistry. AAD was not listed as a corporation or as a fictitious business name, nor is it in the business of providing prepaid dental plans. A phone call by Ad Visor's executive vice president made to the number listed in the ads resulted in reaching Dr. Tarr's dental office. An inquiry about the two organizations produced the reply that the party answering the telephone knew nothing about ACDA and AAD. It is alleged that ACDA and AAD were not qualified to advertise under the headings of "Dentists" and "Dentists Service Organizations" with a custom trademark ad.

Pacific presented a sales representative, Scott McComas, who handled the ads for ACDA, AAD, and Dr. Tarr in the 1974 Airport and South Bay directories. Mr. Marshall was also presented and testified about this account for the 1972 and 1973 ads.

Marshall stated that he canceled the double half column product sell ad of ACDA for the 1973 directories. The ad appeared, however, in the 1973, 1974, and 1975 directory issues. Under cross-examination Marshall admitted that he did not follow the instructions in the Saleman's Handbook for the cancellation of display ads where more than one is involved. Consequently the copy sheet was not made up showing which ad was to be canceled and, therefore, the master records were not corrected to show the cancellation.

McComas, when he sold the 1974 advertising, merely followed the previous advertising program, assumed that the canceled ad had been taken care of, even though he saw it had appeared in the 1973 directories. He stated that he sold the custom trademark ads as open ads, i.e., any dentist could use the trademark if authorized by the owner of the trademark. The contract shows that insofar as the trademark is concerned, it is closed, i.e., only Dr. Tarr could use it. McComas did not know how this change occurred. McComas was furnished with brochures and letters, and saw plaques in Dr. Tarr's office showing the logo used in the ads. From this material he concluded that Dr. Tarr was able to offer the services advertised.

AAFD

Ad Visor alleges that Pacific violated its standard for "Dentist Information Bureaus", its "Headings" standard, and its "Trademark and Tradename Service" standard (see Footnotes 2C, 2A, and 1D in Appendix A) when it published a custom trademark advertising item under the heading "Dentist Information Bureaus" in the 1973 South Bay directory for AAFD.

The "Dentist Information Bureaus" standard restricts advertising under this heading to information bureaus maintained by bona fide dental associations. It goes on to state that a group of dentists associated in business together or a clinic, is not qualified to list under this heading.

The AAFD ad was published in the 1973 South Bay directory and was sold to the Christensen Group. The ad contains the telephone number and address of the Christensen Dental Center. The advertising sales contract shows that the item of advertising involved is a closed ad. AAFD is not a California corporation, nor is it listed as a fictitious business name.

Pacific's defense is that this advertising was handled through an advertising agency, all transactions were handled by mail, and this same ad appeared in General's 1973 Santa Barbara directory. Pacific's witness Colucci admitted that the ad in question does not appear to have been in compliance with Pacific's standard for "Dentist Information Bureaus", and that the ad has been canceled. Pacific argues that, at the time, it acted reasonably in accepting the ad.

Dr. Holechek

It is alleged in the matter of Dr. Holechek that the ad he canceled for the 1975 Airport directory was published, whereas the ad he ordered did not appear. A consequence of this mistake was a loss of business from this area and the loss of his positioning priority for the placement of the ad. (See Footnote 3 in Appendix A.)

Pacific admitted the error, and the violation of the positioning priority claiming that it was an inadvertent clerical error, rather than the salesman's error.

Dr. Holechek testified that he requested the sales representative to delete the second ad, which was for orthodontics (he had two display ads, one for general dentistry and the other for

orthodontics) and to maintain the ad for general dentistry. He explained that orthodontics is a very specialized field and represented only a small part of his practice; that his practice is built on general dentistry and he could not continue without the general dentistry business.

Cross-examination of Pacific's witnesses (the salesman who handled the account was not produced) developed the fact that it was not a clerical error, but rather that the salesman did not follow the procedure in the Salesman's Handbook for the identification and cancellation of the proper display ad when there are two involved. The salesman set forth specific instructions of his own, beyond what he was required to do according to established procedures, which the clerks followed, with the result the wrong ad was canceled.

#### Discussion

We appreciate Pacific's argument that their actions must be looked at in the light of the circumstances at the time, and not circumstances as they are known after the time the sale was made.

In view of the long, on-going investigation of the Stein Group, and Pacific's propensity to go along with statements and demands of the advertiser, we find it difficult to believe that Pacific had a reasonable belief that UADS was not just another means of giving Dr. Stein all the advertising he wanted.

With respect to ACDA and AAD it is apparent that at the time the custom trademark ads were sold, the salesperson received sufficient evidence from Dr. Tarr, plus his own observations, to warrant a reasonable belief that the organizations were what they purported to be. The ad was sold on the basis that it was open to other dentists which would qualify it for placement under the heading used. The evidence also shows that the advertising contract was changed so that the ad was closed and thus limited to Dr. Tarr only. This change occurred subsequent to the salesperson's turning in the

contract. No explanation of why or who caused this change to be made was given. Actions such as this do not comport with Pacific's stated policy of earning a reputation for integrity.

The double half column product sell ad of ACDA is admitted by Pacific to have been published as the result of an error. The consequence of this error was that the ad continued to be published in the 1973, 1974, and 1975 South Bay directories. No satisfactory explanation was given for this, nor could one be given. We are concerned with the looseness of Pacific's practices which would permit the publication of an ad for three consecutive years after it had been canceled.

While the evidence appears to be convincing that the salesperson had reasonable cause to believe ACDA and AAD were what they purported to be, the subsequent events, particularly the changing of the contract from an open CTM to a closed one and the continued publication of a canceled ad casts serious doubts on Pacific's evidence. This is especially so when the salesperson was aware the ad had been canceled on the previous contract and, seeing that the ad was published anyway, did not investigate further, thus permitting the ad to continue to be published. Such action does not add to the credibility of Pacific's defense.

Under the circumstances we are of the opinion that Pacific had no more reasonable cause to believe ACDA and AAD were what they purported to be than it had with UADS.

The fact that the advertising for AAFD was handled by mail with an advertising agency and that the ad appeared in General's Santa Barbara directory does not relieve Pacific from responsibility. To hold otherwise would permit Pacific to accept any advertising with impunity under these circumstances and completely disregard its advertising standards, particularly the acceptability standard.

While Pacific admits that the wrong ad was published for Dr. Holechek, it attempts to excuse it by saying that it was a clerical error. Although it could have, Pacific did not produce as a witness, the salesperson who handled the account, but relied upon secondary witnesses. Where a percipient witness is not produced, it is presumed that his testimony would be damaging (Shapiro v Equitable Life Assurance Society (1946) 76 CA2d 75, 93). In view of the cross-examination we cannot accept Pacific's claim that the error was merely an inadvertent clerical mistake.

Findings of Fact

12. Pacific published the advertising listed above under "Violations of Other Advertising Standards".

13. Pacific did have reasonable cause to doubt that UADS, ACDA, AAD, and AAFD could properly advertise under the "Dentists", "Dentists Service Organizations", and "Dentist Information Bureaus" classification headings in the yellow pages; Pacific failed to inquire sufficiently to ascertain the truth of the matter.

14. Pacific did not publish the ad ordered by Dr. Holechek in its 1975 Airport directory, but did publish an ad that was ordered to be canceled.

15. The failure to cancel the correct ad and the publication of the wrong ad was not due to an inadvertent clerical error.

If Pacific Did Not Have Reasonable Cause to Believe, What Violations of Law Resulted From Pacific's Conduct?

It is alleged that Pacific violated many of its advertising standards,<sup>17/</sup> and statutory law. At the outset we must point out that the directory advertising standards published by Pacific do not attain the standing of tariffs which have the force and effect of law. This is not to say that a violation of the

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<sup>17/</sup> Multiple Display; Duplicate In-Column; Trademark Duplication; Trademark & Tradename Service; Dentists; Dentists Service Organizations; Dentist Information Bureaus; Headings; and the position priority principle (see Appendix A for the standards).

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.<sup>18/</sup>

Pacific denies that the publication of any of the ads in question violated any provision of law or any order or decision of the Commission or any tariff rule of Pacific and, except as it has made admissions, did not violate any of Pacific's directory advertising standards or practices.

The display ads published for the three dental groups exceed the number authorized by Pacific's multiple display standard. Pacific attempts to bootstrap itself into compliance by considering each dentist in the groups as a separate practicing entity. Obviously, such characterization would place the ads within the confines of the standard if the dentists were truly conducting separate dental practices. The facts, however, are otherwise - the dentists were not conducting their own separate dental practices. Realizing this, Pacific attempts to excuse its actions by claiming that it had reasonable cause to believe that it was dealing with individual dentists conducting their own separate dental practices. It has already been shown that there is no basis for this argument.

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<sup>18/</sup> "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.

"(d) The commission may determine any question of fact arising under this section."

Similarly, the standards pertaining to customer trademarks, tradename, and columnar advertisements permit only one ad per advertiser, as with the multiple display standard. Thus Pacific's actions also violate these standards.

With respect to the advertising standards pertaining to "Dentists", "Dentists Service Organizations", "Dentist Information Bureaus", and "Headings", and the position priority principle in connection with the ads for UADS, ACDA, AAD, and AAFD, it is apparent from the record that these organizations were used to obtain additional advertising for Pacific's advertisers, and that Pacific was aware, or should have been aware, that a subterfuge was being carried out to obtain the maximum amount of advertising. Thus, the advertising under classification headings which did not pertain to the type of service being advertised violated the various standards mentioned above.

The effect of Pacific's noncompliance with its advertising standards is to have accorded the complained of advertisers a preference and an advantage over complainants to their 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 Airline, 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 - three years in one instance. Such repeated

action, even after a third party complaint to Pacific, is sufficient to find that Pacific's conduct was not only unjust, but undue in that the complained of advertisers received an undue advantage by dominating the yellow pages over a lengthy period of time in the directories involved contrary to the purpose, intent, and specific wording of the standards. This domination of the yellow pages was detrimental to the complainants in that it reduced the drawing power of their ads and thus lessened their value. This type of conduct violates the provisions of Section 453.

It is also requested that we find that Pacific was grossly negligent, guilty of willful misconduct, violated Section 2106,<sup>19/</sup> and that penalties be imposed on Pacific pursuant to Section 2107.<sup>20/</sup> Such findings would go to the issue of

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19/ "2106. Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was wilful, it may, in addition to the actual damages, award exemplary damages. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person."

20/ "2107. Any public utility which violated 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."

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 (Gheno v PT&T (1976) D.85464, in C.9883; Sonnenfeld v General Telephone Co. of Calif. (1971) 72 CPUC 419, 421; Walker v PT&T (1971) 71 CPUC 778, 780). 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 finds of gross negligence, willful misconduct, and violations of Section 2106.

As we stated in D.84068 dated February 11, 1975 in C.9605, enforcement rather than abolition of the standards is more in the public interest. We cannot, and will not, condone deviations from a utility's tariffs, and standards designed to implement the tariff provisions. Therefore, we will order Pacific to strictly comply with its advertising standards, placing it on notice that future violations may be considered as a failure to comply with a Commission order, punishable by contempt under Section 2113.<sup>21/</sup>

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<sup>21/</sup> "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."

We believe that close supervision of Pacific's future conduct is required under the circumstances revealed in this matter. In addition to close supervision, Pacific is directed for the future, that where judgment may be required in the application of its advertising standards, it will be exercised in such a manner as to avoid conflict with the law, its tariffs, and advertising standards.

Findings of Fact

16. The following standards for yellow page advertising content, and directory practice were violated many times, in various directories over several years by Pacific: "Multiple Display"; "Duplicate In-Column Advertising Space"; "Trademark and Tradename Service"; "Dentist Information Bureaus"; "Dentists"; "Duplications of Trademark and/or Tradename Service"; "Dentists Service Organizations"; "Headings", and the position priority principle of its directory practices.

17. The violations in Finding 16 gave the advertisers an unfair preference and advantage over complainants by domination of the yellow pages to complainants' prejudice and disadvantage.

If It Is Found That Pacific Has Violated  
the Law, To What Relief Are Complainants  
Entitled?

Reparations are sought by the several complainants in the amounts set forth below:

<u>Complainant</u>	<u>Directory &amp; Year</u>	<u>Advertising Charges</u>	<u>Telephone Service Charged</u>
Downey Dental Center	Mid-Cities 1973	\$1,114.20	None
	Mid-Cities 1974	986.40	
	Mid-Cities 1975	1,064.50	
	Montebello 1974	849.60	
	Montebello 1975	165.00	
		<u>\$4,179.70</u>	
Dr. James Holechek, DDS	Airport Area 1974	\$2,433.00	As billed, excluding message units and toll charges
	Airport Area 1975	1,470.60	
	South Bay 1973	1,020.00	
	South Bay 1974	1,116.00	
	South Bay 1975	1,186.20	
		<u>\$7,225.80</u>	
Dr. David Mizrahi, DMD	Airport Area 1974	\$1,680.00	As billed, excluding message units and toll charges.
	South Bay 1974	1,818.00	
	South Bay 1975	1,839.00	
		<u>\$5,337.00</u>	

(Exh. C-9-DDD)

The above reparations are sought on the basis that the following ads, published in excess of those authorized, diminished the value of complainants' advertising and telephone service.

Directory/ Advertiser	Total Ads Published		Total Ads Authorized		Complainant Affected
	:D- $\frac{1}{2}$ : :Col.:	:In- :Col.:	:D- $\frac{1}{2}$ : :Col.:	:In- :Col.:	
1973 Mid-Cities					
Stein Group	3	3	1	1	Downey Dental Center
Kaye Group	4	0	2	1	Downey Dental Center
1974 Mid-Cities					
Stein Group	4	3	2	1	Downey Dental Center
Kaye Group	7	3	2	1	Downey Dental Center
1975 Mid-Cities					
Stein Group	2	0	2	1	Downey Dental Center
Kaye Group	4	2	2	1	Downey Dental Center
1974 Montebello					
Stein Group	5	4	2	1	Downey Dental Center
Kaye Group	3	3	2	1	Downey Dental Center
1975 Montebello					
Stein Group	3	2	2	1	Downey Dental Center
Kaye Group	4	2	2	1	Downey Dental Center
1973 South Bay					
Kaye Group	2	2	2	1	Dr. Holechek
Christensen Group	1	2	1	1	Dr. Holechek
Dr. Tarr (ACDA)	3	3	1	1	Dr. Holechek
1974 South Bay					
Stein Group	4	4	2	1	Drs. Holechek & Mizrahi
Christensen Group	1	2	1	1	Drs. Holechek & Mizrahi
Dr. Tarr	2	4	1	1	Drs. Holechek & Mizrahi
1975 South Bay					
Dr. Tarr	2	2	1	1	Drs. Holechek & Mizrahi
1974 Airport					
Christensen Group	2	2	1	1	Drs. Holechek & Mizrahi
Dr. Tarr (ACDA & AAD)	0	2	0	0	Drs. Holechek & Mizrahi
1975 Airport					
Dr. Holechek					Wrong ad published Dr. Holechek

(Exhibits C-9-C, F, G, D, EE, QQ, NN, SS, PP, &amp; RR)

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).

We have determined that advertising by a third party under a wrong classification heading caused the value of a complainant's advertising to be diminished and awarded reparations (Angel Appliance Service v PT&T (1974) D.83886 in C.9494), and that the value of telephone service was diminished because a telephone company communications expert failed to advise the customer of a less costly service (Scan-a-Pad, Inc. v General Telephone Co. of California (1975) D.85142 in C.9892), and where a telephone company failed to perform its contractual obligation to provide yellow page advertising (Horwitz v PT&T (1971) 72 CPUC 505).

We have a similar situation here. The complained of advertising is that of a third party which it is alleged caused complainants to lose business. There is no dispute with respect to complainants' advertising, except in the case of Dr. Holecchek.

The evidence with respect to the harm caused complainants was adduced through the complainants themselves.

Dr. Staciewicz, a partner in DDC, testified that their dental practice is dependent upon the number of advertisements appearing under the dental classification of the yellow pages, i.e., the more ads competing for the same market, the less is DDC's share. DDC maintains records which show the source of new patients.

Comparative statistics pertaining to new patients acquired during the periods involved here were provided through Fred Krinsky of Ad Visor (Exh. C-9-ZZ). The statistics show that for the Montebello directory there was a decrease of advertising under the "Dentists" classification between the 1974 and 1975 issues. Fourteen new

patients were acquired from DDC's advertising in 1974 and 14 new patients were acquired in 1975, although DDC had cut its advertising budget from \$849.60 in 1974 to \$165.00 in 1975.

In the Mid-Cities directory, the 1973 and 1974 periods are compared. Here the advertising under the "Dentists" classification increased in 1974 by three double half-column and one trademark ads. The new patient statistics are shown for the January-September periods in 1974 and 1975, a period less than the time the directory was in effect (it is published in October). In the nine-month 1974 period 103 new patients were acquired, while in the same period in 1975 only 43 new patients resulted from DDC's advertising, a decrease of 60. DDC's budget remained essentially the same for the Mid-Cities directory during these years.

Dr. Staciewicz stated that the Stein and Kaye Dental Groups are direct competitors of DDC; that DDC suffered immeasurable losses due to the unfair competition because their excessive number of yellow page ads dominated the "Dentists" classification and hurt the growth of DDC's dental practice. In addition to the first-time loss of patients, Dr. Staciewicz pointed out that there are other long-term losses such as repeat business and patient referrals, upon which a practice is built up over the years. He stated that about 80 percent of the new patients generate repeat and referral business.

We are constrained to point out here that Dr. Staciewicz presented statistics on DDC's dental practice in C.9834 (Exhibits C-1-AAA and BBB) which appear to conflict with the statistics presented here. We recognize that a different utility, and that different directories are involved. Yet the statistics in C.9834 purport to represent the total new patients received in 1973 and 1974 directory years, including Pacific's directories. These latter directories account for 8 percent of the total new patients, and show an increase of 6 new patients and \$441 gross receipts between

1973 and 1974. Looking at the totality of the statistics it appears that they are incomplete, not fully comparable, but do tend to show a lessening response from the advertising, although not to the degree argued.

In C.9834 we found that the value of DDC's advertising was diminished by 50 percent, and that the value of the telephone service was diminished by 10 percent. We see no reason to deviate from our findings in C.9834 here, other than to recognize the fact that Pacific does not provide DDC's telephone service, and, therefore, a finding of diminished telephone service is useless.

Dr. Mizrahi's testimony (Exh. C-7) shows that he keeps records of where his business is derived. Twenty percent represents business generated from sources other than yellow page advertising; 16 percent represents new patients from advertising in General's directories; and 64 percent from Pacific's directories, which is divided equally between the Airport and South Bay directories. His main competitors are the Christensen and Stein Groups, and Dr. Tarr. He claims that the loss of a new patient involves more than just the immediate business, but involves an immeasurable loss due to the fact that the long-term repeat and referral business are also lost. He has lost business because of Pacific's actions in permitting his competitors to dominate the yellow pages. He also pointed out that ads featuring union dentistry which make it appear that only that advertiser can service these plans are erroneous and misleading since there are no special requirements to service these plans. Any dentist who desires to do so can service a plan, which is economically advantageous because of the assurance of payment.

Dr. Holechek testified (Exh. C-8) that he very clearly and distinctly requested the directory salesman to cancel a specific ad for the 1975 Airport directory. Up to this time, he maintained two display ads, one for general dentistry and the other for orthodontia. It was the orthodontia ad that was canceled. When the directory was published the general dentistry ad did not appear, but the orthodontia ad did. Dr. Holechek stated that the practice of orthodontia is a small part of his total practice; that 50 percent of his patients come from yellow page advertising; and that after his general dentistry ad was not published, his business from the airport area dropped off very markedly. He stated that the reason for canceling the orthodontia ad was for economy purposes since his business generally had dropped in 1974. The cause for the decline in business, according to the doctor, was that there was an increase in the number of ads by his competitors in the 1974 directories.

Although his repeat and referral business appeared not to suffer, the new patient business did suffer to the extent that he had to economize in his overall operations. Another factor resulting from the cancellation of the wrong display ad was that he lost his number one paging position which had taken a considerable amount of time to achieve.

It is apparent from the cross-examination of Pacific's witnesses that the cancellation of the wrong ad for Dr. Holechek was more than just an inadvertent clerical error, and that there was a direct and dramatic effect on Dr. Holechek's business.

There remains to be disposed of Ad Visor's request that Pacific be found guilty of violating Rule 1 (Code of Ethics) of the Commission's Rules of Practice and Procedure. We find no merit to this request and argument.

Findings of Fact

18. The value of DDC's yellow page advertising in the 1973, 1974, 1975 Mid-Cities directories, and the 1974 and 1975 Montebello directories was diminished by 50 percent.

19. The value of Dr. Mizrahi's advertising in the 1974 South Bay directory was diminished by 50 percent; in the 1975 South Bay and 1974 Airport directories by 35 percent. The value of Dr. Mizrahi's telephone service was diminished by 10 percent for the 1974 and 1975 directory years.

20. The value of Dr. Holechek's advertising in the 1975 Airport directory was diminished by 100 percent; in the 1973 and 1974 South Bay directories by 50 percent; and for the 1974 Airport directory 35 percent. The value of Dr. Holechek's telephone service was diminished by 35 percent for the 1973 directory year, and by 75 percent for the 1974 and 1975 directory years.

21. Pacific should be ordered to cease and desist its discriminatory practices in applying its advertising standards. Future violations may be subject to contempt proceedings pursuant to Section 2113 of the Code. ✓

22. Pacific did not violate Rule 1 of the Commission's Rules of Practice and Procedure. ✓

Conclusions of Law

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

2. Downey Dental Center is entitled to reparations on its advertising.

3. Dr. Mizrahi is entitled to reparations on his advertising and telephone monthly service charges.

4. Dr. Holechek is entitled to reparations on his advertising and telephone monthly service charges.

O R D E R

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company's (Pacific) motion to dismiss is denied.

2. Pacific shall pay to Downey Dental Center reparations in the following amounts for diminished value of advertising: \$557.10 for the 1973 Mid-Cities directory; \$493.20 for the 1974 Mid-Cities directory; \$532.25 for the 1975 Mid-Cities directory; \$424.80 for the 1974 Montebello directory; and \$82.50 for the 1975 Montebello advertising together with interest at the rate of 7 percent per annum computed from the end of each year's directory life to date of payment.

3. Pacific shall pay to David Mizrahi, DMD, reparations in the following amounts for diminished value of advertising: \$909.00 for the 1974 South Bay directory; \$643.65 for the 1975 South Bay directory; and \$588.00 for the 1974 Airport directory, together with interest at the rate of 7 percent per annum computed from the end of each year's directory life to date of payment.

4. Pacific shall pay to David Mizrahi, DMD, reparations for diminished value of telephone service in an amount equal to 10 percent of the billed monthly telephone service charge, excluding message unit and toll charges, computed from the first month the earliest South Bay or Airport directory was published for directory years 1974 and 1975, together with interest at the rate of 7 percent per annum computed from the first month's billing to date of payment.

5. Pacific shall pay to James Holechek, DDS, reparations in the following amounts for diminished value of advertising: \$1,186.20 for the 1975 Airport directory; \$510.00 for the 1973 South Bay directory; \$558.00 for the 1974 South Bay directory; and \$1,824.75 for the 1974 Airport directory, together with interest at the rate of 7 percent per annum computed from the end of each year's directory life to date of payment.

6. Pacific shall pay to James Holechek, DDS, reparations in the following amounts for diminished value of telephone service: 35 percent of the billed monthly service charge, excluding message unit and toll charges, for the 1973 South Bay directory year, computed from the first month of publication to date of payment; and 75 percent of the monthly telephone service charge, excluding message unit and toll charges, for the 1974 and 1975 directory years of the South Bay and Airport directories, computed from the first month of the earliest published directory, together with interest at the rate of 7 percent per annum computed from the first month of the earliest published directory to date of payment.

7. Pacific shall cease and desist its discriminatory practices in the application of its 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 26<sup>th</sup> day of APRIL, 1977.

Robert Bateman  
President  
William J. ...  
... ..  
Richard W. ...  
Commissioners

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1/ A. "MULTIPLE DISPLAY ADVERTISEMENTS

ALL NEW SALES OR RENEWALS INVOLVING MULTIPLE  
DISPLAY UNDER A SINGLE CLASSIFIED HEADING,  
REQUIRE THE APPROVAL OF THE  
DIRECTORY SALES MANAGER.

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 D-1/2 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 D-1/2 column display advertisement or its equivalent under the same classified heading. Under no condition shall any firm have more than two D-1/2 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 D-1/2 column advertisements or their equivalent under a single classified heading. The second or additional display space 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 bonafide place of business.

CONDITION 2:

An advertiser may have an additional D-1/2 column display item or its equivalent under the following headings providing each advertisement caters to a different place of business, different brand name product of different type of market. Following are the only headings that

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presently qualify under this rule. Request for additional headings should be made by the sales person through lines of organization. Final approval will be by the General Directory Sales Supervisor in General Administration.

AUTOMOBILE DEALERS-NEW CARS

Chrysler and Plymouth Lincoln and Mercury Etc.	(Different brand name product and different type of market.)
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AUTOMOBILE RENTING & LEASING

(1) Day to Day Renting	(Different phase of business and different type of market.)
(2) Contractual Leasing for Long Periods	

CARPET RUG & UPHOLSTERY  
CLEANERS

(1) Carpet & Rug Cleaning	(Different phase of business.)
(2) Upholstery Cleaners	

PLUMBING CONTRACTORS

(1) Industrial Equipment & Services	(Different type of market.)
(2) Residential Equipment & Services	

TRUCK RENTING & LEASING

(1) Day to Day Renting	(Different phase of business and different type of market.)
(2) Contractual Leasing for Long Periods	

CONDITION 3:

If the advertiser represents another firm and has a representative type of additional listing in that firm's name on his telephone service, he can then have an additional D-1/2 column or its equivalent under the same heading providing he also meets all of these other additional requirements:

- A. The copy must pertain solely to the company represented or its product or service.
- B. The copy must also contain the advertiser's main listing with the phrase 'represented by' or 'agent' associated therewith.

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- C. The reference to the advertiser's main listing must also be in sufficient size type and so arranged as to prevent being overlooked or not properly associated with the representative type of additional listing for which the advertisement is ordered.

A firm which is only an authorized dealer of a product or service does not fall within the meaning and intent of this condition and is therefore not entitled to the additional display space.

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 D-1/2 column is acceptable when such display item refers to trade mark or trade name representation for list of dealers or distributors, so called 'Product Sell Ad.' The advertiser's name and telephone number are not acceptable in the copy of such ads."

B. "DUPLICATE IN-COLUMN ADVERTISING SPACE

INFORMATIONAL LISTINGS

Informational Listing 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 business under one name and having one location shall be limited to ONE and ONLY ONE Informational Listing in any size applicable to the directory in which the advertising is scheduled to appear. When one or more of the following conditions exist, the advertiser may have ONE and ONLY ONE additional Informational Listing under the same classified heading. Under no condition shall any firm have more than two Informational Listings under the same classified heading.

CONDITIONS:

If an advertiser actually conducts business under two or more names, he may buy a maximum of two Informational Listings under a single classified heading.

OR

If an advertiser actually conducts business at two or more locations, he may buy a maximum of two Informational Listings under a single classified heading. At least two addresses must appear in one of the advertisements unless the addresses are different in each advertisement.

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The following restrictions are applicable to the above conditions:

- A. All other listings under the same heading, with the same or different finding words and/or the same or different addresses will be restricted to no more than a bold type unless a tie-back is required.
- B. Continuous property with one or more street addresses shall be considered one location.
- C. 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.
- D. An off premise extension is not considered as a second location unless the location is a bona fide place of business.

TRADE MARK HEADINGS

Trade Mark Heading service 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 shall be limited to ONE and ONLY ONE Trade Mark Heading.

EXCEPTIONS:

Requests are occasionally received for Trade Mark Service to identify different types of the same product. These requests can usually be met by using a single finding line and providing captions to distinguish the outlets handling the different types.

For example, instead of separate finding lines, 'Globe Fire Insurance' and 'Globe Life Insurance', a single finding line, 'Globe Insurance', could be used, together with captions 'Fire Insurance' and 'Life Insurance'.

However, where different types of the same product are manufactured by different concerns or different divisions of the same concern which have no connection with each other or operate independently, separate Trade Mark Headings may be purchased for the different brand names, e.g.

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1. Acme Television Sales Corp. is the authorized distributor for Emerson Television & Radio and also is the authorized distributor for Dumont Television. The distributor may purchase one Trade Mark Heading for each of the products under the same Yellow Pages Heading.
2. Hanover shoes for men are made by one manufacturer, those for women by another, and those for children by still another. A Trade Mark Heading for each may appear under the same Yellow Pages Heading.
3. The Delta Corporation manufactures room air conditioners and industrial air conditioners, each in a different division with its own funds, advertising manager and advertising agency. Where Yellow Pages Headings in the directories do not distinguish between different types of conditioners, a Trade Mark Heading of 'Delta Air Conditioners-Room' and one for 'Delta Air Conditioners-Industrial' may appear under the same Yellow Pages Heading."

C. "DUPLICATIONS OF TRADE MARK AND/OR TRADE NAME SERVICE

One of the principal aims of Trade Mark or Trade Name Service is to provide users of the directory with an easily found list of authorized dealers or representatives handling a branded product or service.

If more than one brand name line for exactly the same commodity appeared in the same classification, it is likely that directory users would become confused or uncertain as to which dealer list represented the authorized source of supply.

From the standpoint of advertisers, duplications of Trade Mark Service cause unnecessary expense and may lead to disputes over precedence.

Only one Trade Mark or Trade Name Service order, local or national, for the same product or service is accepted under the same classification.

Requests are occasionally received for Trade Mark Service to identify different types of the same product.

These requests can usually be met by using a single finding line and providing captions to distinguish the outlets handling the different types.

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For example, instead of separate finding lines, 'Globe Fire Insurance' and 'Globe Life Insurance,' a single finding line, 'Globe Insurance,' could be used, together with captions, 'Fire Insurance' and 'Life Insurance.'

However, where different types of the same product are manufactured by different concerns or different divisions of the same concern which have no connection with each other or operate independently, separate Trade Mark Service may be purchased for the different brand names, e.g.

Hanover shoes for men are made by one manufacturer, those for women by another, and those for children by still another.

A Trade Mark Heading for each may appear under the same classification.

The Delta Corporation manufactures room air conditioners and industrial conditioners, each in a different division with its own funds, advertising manager and advertising agency. Where classifications in the directories do not distinguish between types of conditioners, a Trade Mark Heading of 'Delta Air Conditioners-Room' and one for 'Delta Air Conditioners-Industrial' may appear under the same classification."

D. "TRADE MARK AND TRADE NAME SERVICE

1. Trade mark and trade name service is provided in the listing column under classified headings which are descriptive of the product or service being advertised. The purpose of the service is to enable the directory user to easily locate a local outlet for a specific brand name product or service.
2. In line with the policy in 1 above, trade mark and trade name service is also provided under the appropriate classified heading for associations and organizations which represent a substantial segment of a specific industry, trade or profession. The classified heading under which the trade mark or trade name appears must be descriptive of the particular industry, trade or profession which the association or organization represents and the firms listed under the heading must be members of the association or organization.

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Requests for trade mark or trade name service which do not meet the above requirements but merely provide a means of collectively grouping firms that have a common feature of operation, standard of quality or the approval or endorsement of a particular organization are not acceptable. Examples of unacceptable trade mark headings are the following: 'Duncan Hines Recommended Restaurants,' 'AAA Approved Motels,' 'S & H Green Stamps.' None of these meet the requirements stated above since the firms listed under the heading are not members of a representative association. While it is true that the American Automobile Association, through its affiliates, is an association of automobile owners, the motels that would be listed under a heading such as 'AAA Approved Motels' are not members of the association. Nor is the association, which is an automobile club, appropriate as a trade mark heading under the classified headings of Hotels, Motels or Restaurants. The above mentioned statements, such as 'AAA Approved Motels,' are more appropriately shown as copy in display ads and in informational listings and extra lines of information.

3. Trade mark headings and trade name listings in which the brand name or finding line consists of the letter 'A', the letter 'A' combined with other letters, numerals or names and which are designed primarily to secure preferential position under the directory heading involved are unacceptable. Before an advertising order covering such item is accepted, the request must be referred to the Directory Sales Manager who will review the case with the attorneys to assure consistent treatment.

See also 'Duplication of Trade Mark''

2/ A. "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.

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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."

B. "DENTAL SERVICE ORGANIZATIONS

Dental Service Organizations 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 these programs for their employees' dental care. Other organizations similar to this are Blue Shield and Kaiser Plan."

C. "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 who need a specialist. A group of dentists associated in business together, or a clinic, is not qualified to list under this heading."

D. "DENTISTS

Both the California and the Nevada Dental Practices Acts prohibit the following:

Advertising by a dentist under a fictitious name; making statements intending to mislead or deceive the public; advertising professional superiority; the use in advertising of any representation of a tooth, teeth, bridgework or any portion of the human head; the advertising of any free dental work or free examination; the advertising of the performance of any dental service without causing pain; the advertising of a guarantee of any

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dental-service. IN CALIFORNIA the advertising of definite or fixed prices for professional services is also prohibited. The Dental Board in California also considers the words 'special' or 'specialist' to be prohibited and suggests the use of a phrase such as 'Practice limited to...'

Section 14118 of the Welfare and Institutions Code of the State of California prohibits the providers of medical assistance under the California Medical Assistance Program (MEDI-CAL) from advertising that they are authorized to provide services under the MEDI-CAL program."

2/ "Position Priority Principle

2.02 Display ads within each classification are positioned on the pages according to size, the largest first and the smallest last. Ads of the same size within a classification are placed by sequence date, the oldest first and the most recent last. The ads are positioned in priority order, from the outside to the inside and from the top to the bottom. The ads then appear with the largest, oldest ad highest and toward the outside of the page and the smallest, most recent ad lowest and toward the inside of the page."

17/ "Evidence of Acceptability

"3.05 The telephone company may require a customer to furnish satisfactory evidence that he is conducting business under the name to be listed.

"3.0501 The following items are considered 'exceptional evidence' that a firm is doing business under a given name:

- (a) income tax filing
- (b) permit issued by the California Public Utilities Commission (PUC)
- (c) current city or state license
- (d) bank statement
- (e) retailer's sales tax license

"3.0502 The following are considered 'good evidence' that a firm is doing business under a given name. The appearance of the requested name on:

- (a) used letterheads
- (b) billheads
- (c) contracts

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- (d) buildings
- (e) trucks
- (f) published advertising

"3.0503 The following are considered 'questionable evidence' that a firm is doing business under a given name. This type of evidence is not sufficient to warrant the acceptance of a listing:

- (a) business cards
- (b) registered name
- (c) letter from a well-known firm stating that they don't object to the use of their name
- (d) a signed statement by the customer or joint user that he is doing business under the name to be listed

"3.0504 Many businesses register their name with the state to prevent others from using it. Registration only gives a business the right to use the name registered. It does not prove that the customer is conducting business under the registered name.

"3.06 All types of evidence may not be applicable to any one subscriber, but adequate proof that the firm is doing business under the requested listing name should be considered before the listing is accepted."