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ORIGINAL

Decision No. 87596 July 12, 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AD VISOR, INC., a California corporation, )  
authorized exclusive agent for: )  
Downey Dental Center, )

Complainant(s), )

vs. )

GENERAL TELEPHONE COMPANY OF CALIFORNIA, )

Defendant. )

Case No. 9834  
(Filed November 25, 1974;  
amended April 2, 1975  
and July 8, 1975)

ORDER DENYING REHEARING OF,  
AND MODIFYING, DECISION NO. 87239

On May 12, 1977, General Telephone Company of California (General) filed its application for rehearing of Decision No. 87239. The Commission has considered each and every contention made by General and concludes that good cause for rehearing has not been made to appear and that rehearing should be denied.

However, Decision No. 87239 should be modified to revise the interpretation given to General's multiple display rule therein. Additional findings concerning the advertising of Dr. Philip Megdal and of the Megdal Dental Center (MDC) should be added to Decision No. 87239.

The Commission finds that:

1. Dr. Philip Megdal and MDC are not separate corporate entities, but rather Dr. Philip Megdal does business both in his own name and as MDC;
2. Since separate business entities are not involved, Dr. Megdal was not entitled to two display advertisements in the 1974 Downey and Whittier yellow page directories;

3. The facts known to General's employees at the time they approved the display ads, i.e. the similar advertising copy, including identical pictures of Dr. Megdal, the identical location, the involvement of Dr. Megdal in both entities, the signature of Dr. Megdal on MDC's ad application as "owner", rather than as president or other corporate officer, and the lack of designation of either Dr. Megdal or MDC as corporations in the advertising copy, should have suggested to reasonable men that the claim of separate corporate entities was at the very least questionable. In light of these facts Dr. Megdal's letter of July 1, 1974, (Exhibit No. D-2-E) is entitled to little, if any, weight.

4. It was inadvertently stated at p. 14 of Decision No. 87239 that the telephone numbers in the ads for MDC and Dr. Megdal are the same, whereas they are in fact different.

The foregoing additional findings of fact should suggest that it is not necessary to give to the multiple display rule the interpretation given it in Decision No. 87239 (p. 16-17), in order to arrive at the same result. Upon further consideration it is apparent that the term "single advertiser" as it is used in the rule (see p. 1 of Appendix A to Decision No. 87239) is defined by the rule itself to mean "... any one person, firm, partnership, association, corporation, company or organization of any kind conducting a business or businesses of any kind under one or more names ...". Thus, under the rule as presently framed, if two corporations are involved, each may purchase a display ad in a directory; but, if only one entity is involved, operating under different names, then only a single ad may be purchased. When General has reasonable cause to doubt that it is dealing with separate corporations, it should require its advertisers to prove their separate corporate statuses by presenting certificates of incorporation from the Secretary of State. In the alternative, General could take action to ascertain the statuses of the alleged corporate entities from the Office of the Secretary of State.

The interpretation given herein to the multiple display rule attempts to give effect to all of its terms. However, this approach can be troublesome where, for instance, two separate corporations, engaged in the same kind of business at the same location, are formed and exist merely to double the advertising exposure of the same stockholder or stockholders in a single classification of the yellow pages. The literal language of the multiple display rule would allow a highly motivated advertiser to obtain such an unfair advantage. Such a result is inconsistent with the purposes of General's advertising rules, standards, and policies, some of which are quoted at pp. 15-16 of Decision No. 87239. Thus, the rule as presently drafted does not completely achieve its purposes of "protecting advertisers from unethical competition through misleading advertisements" or of maintaining in the directory user a "high degree of confidence in the reliability of the information published" in the directories.

Although the problem suggested by the above example does not directly confront us in this proceeding (where we have found Dr. Megdal and MDC to be a single entity) yet the potential for further litigation regarding the rule and its application remains while the rule is in its present form. The resolution of this problem does not necessarily require formal Commission action, however. Since the multiple display rule is not part of General's filed tariffs but is an internal company policy, it would be appropriate for General to propose amendments to the rule consistent with the above discussion. Such amendments should be submitted to the Commission staff within 30 days of the effective date of this order. It is reasonable to expect that within 90 days of the effective date of this order a modified version of the multiple display rule satisfactory to General and to the Commission staff could be implemented.

We conclude that Decision No. 87239 should be modified by the addition of findings 1 through 4 herein and by the substitution of the discussion contained herein, concerning the multiple display advertising rule, for the corresponding discussion which appears at mimeo pp. 16 and 17 of Decision No. 87239. Therefore,

IT IS ORDERED that:

1. Decision No. 87239 is modified by the addition of findings 1 through 4 herein and by the substitution of the discussion concerning the multiple display advertising rule contained herein for the corresponding discussion which appears at mimeo pp. 16 and 17 of Decision No. 87239.

2. In all other respects, the application of General for rehearing of Decision No. 87239 is denied.

The effective date of this order is the date hereof.

Dated this 12<sup>th</sup> day of JULY, 1977, at

San Francisco, California.

*I abstain*  
*Robert Barneisel*

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President  
*William Lyman Jr.*  
*Veron L. Sturgen*  
*Robert D. Howell*

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Commissioners

Commissioner CLAIRE T. DEDRICK did not participate in the disposition of this proceeding.