

ei

Decision No. 87718 AUG 16 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORANGE COUNTY SECURITY CONSULTANTS,)
 INC., a California corporation,)
)
 Complainant,)
)
 vs)
)
 THE PACIFIC TELEPHONE AND TELEGRAPH)
 COMPANY,)
)
 Defendant.)

Case No. 10390
(Filed August 11, 1977)

ORDER DENYING A MANDATORY INJUNCTION
 DIRECTING DEFENDANT TO ACCEPT
 A YELLOW PAGE ADVERTISEMENT

Complainant seeks to have the Commission order defendant to place its ad in defendant's Orange County yellow page directory for 1977. Complainant alleges:

1. Complainant is a California corporation whose principal business is to provide "lock and key" services to both business and residential customers.
2. Complainant's business is primarily local in character and a significant portion of it is derived from its advertisements in the annual Orange County yellow page directory published by the defendant.
3. Prior to June 1977 complainant had two stores: Anaheim Lock and Key, located in Anaheim, California, and Orange Lock and Key, located in Orange, California.
4. Each store had its own one-quarter page advertisement in the Orange County yellow pages.
5. In June 1977 complainant purchased an existing lock and key business which it operates under the name of Fullerton Lock and Key in Fullerton.

6. At all times pertinent to the complaint, complainant did no business under its corporate name Orange County Security Consultants, Inc.; all of complainant's business was done under the fictitious business names which reflect the community served by each store.

7. In July 1977 complainant sought to place a one-quarter page advertisement for its Fullerton Lock and Key store in defendant's forthcoming 1977 edition of the Orange County yellow page directory.

8. Defendant refused to place the additional one-quarter page advertisement unless complainant eliminated one of its other one-quarter page advertisements for one of its other stores, on the ground that defendant was precluded from accepting three one-quarter page advertisements by the rules of this Commission and by defendant's own rules.

9. Complainant relies almost exclusively on the yellow page advertisements to reach the local citizens who need lock and key services. Complainant relies almost exclusively on yellow page advertisements to reach its potential customers, spending approximately 85 percent of its advertising budget on yellow page advertising.

10. Complainant asserts that the locksmith trade in Orange County utilizes in large part defendant's yellow page directory for its method of reaching the public in much the same way as does complainant.

11. Complainant asserts that it is being denied the opportunity to inform the public of the availability and nature of local locksmiths to serve the needs of the public in the localities of Anaheim, Orange, and Fullerton. Other forms of advertising available to complainant are costly, are less likely to reach a person seeking the information, and are generally less effective media for communicating the message than is the one-quarter page advertisement in the yellow pages.

12. By virtue of the foregoing, complainant asserts that defendant's position results in a violation of complainant's First and Fourteenth Amendment rights granted by the United States Constitution; results in an impermissible discrimination against complainant in violation of California Public Utilities Code Section 453; and is arbitrary and capricious and is neither just nor reasonable, in violation of California Public Utilities Code Section 451. Complainant asserts that unless the Commission orders defendant to include complainant's advertising by August 31, 1977 the Orange County book will have gone to the publisher, and complainant would have no opportunity to place its ad for the forthcoming year. In the alternative, complainant requests the Commission to order defendant to delay publishing its Orange County yellow page directory until this matter is heard.

Defendant's standards for yellow page advertising content state:

"MULTIPLE DISPLAY ADVERTISEMENTS

Policy

"It is the policy of the Company not to permit any individual or single business entity to dominate a classified heading in its Yellow Pages through the use of an excessive number of display advertisements. Such domination would discourage other business firms from advertising, thereby reducing the value of the Yellow Pages by depriving users of a complete selection of firms from which to choose when shopping for products and services. Display advertising under any single classified heading for a single business entity shall be limited to one D1/2 column or its equivalent. Exceptions are described under 'Conditions' of the Multiple Display Standard.

"A single firm and/or any combination of business interests operated by an individual or individuals which, in effect, are a single business entity, regardless of whether the business(es) is operated as a sole proprietorship, partnership, or corporation shall be limited to one D1/2 column or its equivalent under any single classified heading in the Yellow Pages of a directory.

"When one or more of the following conditions exist, the advertiser may have one additional D1/2 column or their equivalent under the same classified heading. Under no condition shall any firm have more than two D1/2 column display advertisements or their equivalent under the same classified heading except under Condition 3." (Condition 3 is not applicable to this matter.)

A D1/2 column is equivalent to a one-quarter page advertisement. Complainant seeks three D1/2 column ads. By PT&T's rules complainant is entitled to two D1/2 column ads.

In Ad Visor v PT&T, Decision No. 84068 dated February 11, 1975 in Case No. 9605, the Commission considered the reasonableness of PT&T's multiple advertising standards and found that those standards did not violate any provision of law or order or rule of the Commission. We further found that the standards were not unjust, unreasonable, or arbitrary. We said:

"PT&T may adopt reasonable standards for advertising copy which appears in its yellow pages. There are various reasons why PT&T may desire to enforce high standards of advertising in its yellow pages. Among these reasons is that, to the extent the yellow pages are relied upon and utilized by customers, additional and continuing revenues will likely be generated for PT&T. The record indicates that the multiple display advertising standards were adopted in response to the attempted domination of yellow page classifications by large advertisers. Furthermore, these standards are consonant with the state and national policies of fostering competition. /Citing cases./ In the circumstances, we cannot hold that the standards are unjust, unreasonable, or arbitrary."

The holding in Ad Visor is applicable to this case. PT&T's multiple display standards have been found reasonable and PT&T has correctly applied them to the facts as stated by complainant. No sufficient reason has been set forth which would persuade us to grant an exception to the multiple display standards, nor do we feel that it is appropriate to reconsider our ruling in Ad Visor in a temporary restraining order proceeding where the matter is being considered solely on the pleadings. Nor would we consider delaying publication of the yellow page directory thereby inconveniencing and damaging thousands of advertisers and tens of thousands of customers while this complaint is being heard.

Complainant is not without remedy. Complainant may reduce its advertising space for its Anaheim and Orange stores and use that additional space for its Fullerton store or complainant may combine the advertising of any one, two, or three of its stores as long as it does not exceed the space limitations set forth in defendant's multiple display advertising standards.

Therefore, for the reasons stated above,

IT IS ORDERED that complainant's request for a mandatory injunction directing the defendant to accept complainant's one-quarter page ad for its Fullerton store or an order in the nature

of a prohibitory injunction directing the defendant to delay the publishing of the Orange County yellow page directory until such time as we can render a decision in this matter is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 16th day of AUGUST, 1977.

Robert B. [Signature]
President
William [Signature]
[Signature]

Commissioners

Commissioner CLAIRE T. DEDRICK
present but not voting

I dissent:

This factual situation and the geography of Orange County indicate to me that three D 1/2 page ads would not be unreasonable for complainant.

Robert D. [Signature]