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ORIGINAL

Decision No. 87900 SEP 27 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PHYLLIS SCHROBSDORFF, dba
BOCACCIO EUROPEAN MASSAGE
STUDIO,

Complainant,

vs.

PACIFIC TELEPHONE &
TELEGRAPH COMPANY,

Defendant.

Case No. 10358
(Filed June 22, 1977;
amended July 19, 1977)

Michael J. Kutsko and Patrick T. Hall,
Attorneys at Law, for complainant.
Norah S. Freitas, Attorney at Law, for
defendant.

O P I N I O N

Complainant alleges that defendant breached its written contract by refusing to publish a second display ad for business conducted at her home address and seeks a temporary restraining order requiring defendant to continue publication of five display ads for the business conducted at 428 O'Farrell Street or, in the alternative, to require the publication of the ad for complainant's home address. On August 16, 1977 we denied complainant's motion for a temporary restraining order.^{1/} An amended complaint was filed on July 19, 1977.

^{1/} Decision No. 87711, dated August 16, 1977, Case No. 10358.

Defendant's answer filed July 27, 1977 admits that complainant had prior listings and advertising in its yellow pages for several years; that its representative met with complainant and advised her that a second ad would be accepted if it met the conditions of defendant's multiple display standard; and that on or about June 8, 1977, defendant, subsequent to an investigation, advised complainant that the requested advertising did not meet defendant's standards. All other allegations are denied. For an affirmative defense, defendant states that the requested ad was for a residential address at which no apparent business was being conducted nor was a telephone installed, all of which are required by the multiple display standard.

A hearing under the Commission's expedited complaint procedure was held on August 12, 1977 before Administrative Law Judge Bernard A. Peeters in San Francisco.

The evidence shows that even if complainant was conducting business from her home address, it was an out-call type of business (therefore, business would not be conducted at the second address) that her license to operate as a masseuse prohibited conducting business in her home; that no telephone was connected at the home address, although one had been ordered; and that the conditions under which a second display ad could be provided

under the same classification heading were not met, i.e., the advertiser must actually be doing business with the public at the second address. Complainant testified that because of the restriction in her license, she could not show the second address in the ad. The multiple display standard requires that the address and telephone number of the second location be shown in the ad. With respect to the breach of contract allegation, it only need be pointed out that the terms and conditions of the contract show that it is subject to defendant's tariffs on file with the Commission. Defendant's Tariff Schedule Cal PUC No. 39-T, Special Conditions 9 states that, "The Utility reserves the right to accept or refuse any advertising when such action will not result in unlawful discrimination. Such acceptance or refusal is subject to the review of the Public Utilities Commission of the State of California." The multiple display standard is an implementation of this tariff provision. We have found that "Pacific's multiple display advertising standards are not unjust, unreasonable, or arbitrary. They are consonant with the state and national policies of fostering competition."^{2/}

Complainant has not proved that she is entitled to a second display under the same classification. We will, therefore, deny relief.

^{2/} Decision No. 84068, dated February 11, 1975 in Case No. 9605, Ad Visor, Inc. v PT&T.

O R D E R

IT IS ORDERED that the relief requested is denied.

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

Dated at San Francisco, California, this 27th day of SEPTEMBER, 1977.

Robert Bateman
President

Verizon L. Sturgeon
Richard D. Lively
Clair J. Desich
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.