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Decision No. 87959 OCT 12 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AD VISOR, INC., a California Corporation, authorized exclusive agent for: GENERAL VAN & STORAGE CO., INC. and TORRANCE VAN & STORAGE CO. dba S & M TRANSFER & STORAGE CO., Complainant(s), vs. PACIFIC TELEPHONE AND TELEGRAPH COMPANY OF CALIFORNIA, Defendant.	Case No. 9931 (Filed June 18, 1975; amended July 25, 1975)

Norin T. Grancell and Fred Fenster, Attorneys at Law, and Fred Krinsky and Jack Krinsky, for Ad Visor, Inc., complainant.
Michael J. Ritter, Attorney at Law, for The Pacific Telephone and Telegraph Company, defendant.

O P I N I O N

This complaint was filed by Ad Visor, Inc. (Ad Visor) on behalf of complainants, General Van & Storage Co., Inc. (General Van) and Torrance Van & Storage Co., dba S & M Transfer & Storage Co. (Torrance). The complaint alleges that The Pacific Telephone and Telegraph Company (Pacific) violated several of its standards for yellow page advertising content and certain provisions of law, and acted in a wilful or grossly negligent manner when it accepted advertising for Harbor Storage & Moving (Harbor), Balboa Transfer Co. (Balboa), All American Van & Storage (All American), United American Van & Storage (United), World Van & Storage (World), La Bore's Moving & Storage (La Bore), Pan American Van & Storage (Pan American), Sav-On Moving & Storage (Sav-On), American United Van & Storage

(American), A-All American Van & Storage (A-All American), AA-All American Moving & Storage (AA-All American), A (same as World Van & Storage) (A), Office and Industrial Movers (O&I), and Garden Grove Moving & Storage (Garden Grove), also referred to as the Eytchison Companies, for whom one or more advertisements were published in one or more of the following directories: 1972, 1973, and 1974 Orange County and the 1975 South Orange Coast.

More specifically, the complaint and the amendment thereto contend that Pacific violated its multiple display advertising standard, duplicate in-column advertising space standard, duplications of trademark and/or trade name service trademark standard and trade name service standard because all of the above-named companies were owned by the same person, had the same corporate officers, used common personnel and operated from the same location and that, therefore, they did not qualify for separate advertising. Ad Visor sought interim relief in the form of a temporary restraining order. This relief was denied.[1/]

Pacific admits that it published display advertisements and trademark items for the above-listed companies under the classification "Moving & Storage Service" in one or more of the following directories: 1972, 1973, and 1974 Orange County and 1975 South Orange Coast. However, Pacific denies that the publication of any of these advertisements violated any provision of law or any order or decision of this Commission or any tariff rule of Pacific and, with the exceptions noted below, did not violate any of Pacific's directory advertising standards or practices.

1/ D.84725 dated July 29, 1975.

Six days of hearing were held before Examiner Bernard. A. Peeters beginning on April 12, 1976. At the conclusion of the hearings, the matter was submitted subject to the filing of concurrent written briefs due on October 6, 1976. The briefs were timely filed.

The Issues

There is no dispute with respect to the ownership of the Eytchison Companies. Furthermore, this issue was determined by D._____ dated_____in C.9936. It was found in D._____ that Arthur Eytchison owned all of the corporations and operated them with a commonality of personnel, equipment, and facilities.

The material issues, therefore, are:

1. Was Pacific's policy of recognizing separate corporations as separate legal entities and therefore allowing each separate corporation to have its own display ad under the multiple display, and other limiting advertising standards reasonable?

2. If the answer to the first issue is no, what advertising standards, tariff provisions, or laws were violated as a result of Pacific's actions?

3. If it is found that Pacific violated its advertising standards, tariff provisons, or the law, to what relief are complainants entitled?

Motions

Pacific filed a motion to dismiss the complaint on the grounds that it constitutes an assignment of a reparation claim contrary to the provisions of Section 734 of the Public Utilities Code.[2/] This motion has been made in numerous prior Ad Visor cases

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2/ All references are to the Public Utilities Code unless otherwise noted.

"734. ...no assignment of a reparation claim shall be recognized by the Commission except assignments by operation of law as in the cases of death, insanity, bankruptcy, receivership, or order of court."

wherein we set forth our reasons for denying the motion.[3] We will not repeat those reasons here. Pacific's motion will be denied.

Statute of Limitations

Pacific alleges that portions of the complaint are barred by Section 735,[4] and therefore complainants are not entitled to any relief for advertising and telephone service rendered by Pacific to the complainants prior to June 18, 1973. We agree with Pacific that the two-year statute of limitations contained in Section 735 applies, since the tariff rate charged for the advertising is not challenged. Therefore, any cause of action arising out of Pacific's conduct prior to June 18, 1973 is not only barred (Cortez v PT&T Co. (1966) 66 CPUC 197), but the right itself is extinguished (Southern Pacific Co. (1959) 57 CPUC 328, 330, and cases cited therein; Pacific Mercury Television Mfg. Corp. v Cal Water & Tel. Co. (1955) 55 CPUC 721, 725). The complaint in this case was filed on June 18, 1975. Pacific's Orange County directory was published in November 1972, more than two years prior to the filing of the complaint. Since the statute of limitations for complaints for directory errors and omissions begins to run when the directory is published, any claims based on the 1972 Orange County directory are barred and extinguished.

Stipulations

Pacific stipulated at the hearing that the publication of the display advertisement for World in the 1972, 1973, and 1974 Orange County directories violated Pacific's multiple display standard and that the custom trademark advertisement published for

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3/ D.85334, C.9800; D.87239, C.9834; and D.87240, C.9833.

4/"735. . . . All complaints for damages resulting from a violation of any of the provisions of this part, except Sections 494 and 532, shall either be filed with the commission, or where concurrent jurisdiction of the cause of action is vested by the Constitution and laws of this State in the courts, in any court of competent jurisdiction, within two years from the time the cause of action accrues, and not after."

American in the 1972, 1973, and 1974 Orange County directories violated Pacific's duplications of trademark and/or trade name standard and Section 3.0202 of Pacific's Trade Item Requirements Practice.

The Evidence

The following table sets forth, by directory and year, the number and type of ads published in the Moving and Storage classifications for the complainants, and for the Eytchison Companies whose ads allegedly violated Pacific's tariff and advertising standards.

TABLE I

Complainants		No. & Type of Ads	Alleged Violating Ads	
1972 Orange County (Jt. Exh. 3)				
General Van	page 904	1-2½ col.*	Harbor	page 901
		1-2½ col.	Balboa	page 902
		1-2½ col.	All American	page 904
		1-2½ col.	La Bore	page 906
		1-2½ col.	World	page 911
		1-2½ col.	Pan American	page 911
		1-3¾ col.**	Sav-on	page 914
		1-2½ col.***	World Van	page 915
General Van	page 916	1-CTM****	All American	page 902
		1-CTM	American United	page 904
		1-CTM	United American	page 917
		1-in-col.	A-All American	page 901

* Double half column.
** Triple quarter column.
*** Double quarter column.
**** Customer trademark.

1973 Orange County (Jt. Exh. 4)				
General Van	page 989	1-2½ col.	Harbor	page 986
		1-2½ col.	Garden Grove	page 987
		1-2½ col.	Balboa	page 987
		1-2½ col.	All American	page 989
		1-2½ col.	United American	page 990
		1-2½ col.	La Bore	page 991

(Continued)

TABLE I - (Continued)

Complainants		No. & Type of Ads	Alleged Violating Ads	
		1-2½ col.	World	page 995
		1-2½ col.	Pan American	page 995
		1-2½ col.	O&I	page 998
		1-3½ col.	Sav-on	page 1,000
		1-3½ col.	World	page 1,002
General Van	page 1,004	1-CTM	A-All American	page 986
		1-CTM	American United	page 994
		1-CTM	United American	page 1,004
		1-in-col.	All American	page 990
		1974 Orange County (Jt. Exh. 5)		
General Van	page 1,067	1-2½ col.	Harbor	page 1,064
Torrance	page 1,078	1-2½ col.	Garden Grove	page 1,065
		1-2½ col.	Balboa	page 1,065
		1-2½ col.	All American	page 1,067
		1-2½ col.	United American	page 1,068
		1-2½ col.	La Bore	page 1,069
		1-2½ col.	Pan American	page 1,073
		1-2½ col.	World	page 1,073
		1-2½ col.	O&I	page 1,075
		1-3½ col.	Sav-on	page 1,080
		1-3½ col.	World	page 1,081
		1-CTM	Garden Grove	page 1,080
		1-CTM	Harbor	page 1,081
		1-CTM	La Bore	page 1,082
		1-CTM	Pan American	page 1,083
		1-CTM	Sav-on	page 1,083
		1-CTM	O&I	page 1,083
		1-CTM	World	page 1,084
		1-CTM	United American	page 1,084
		1-CTM	Balboa	page 1,074
		1-CTM	United American	page 1,084
		1-in-col.	A(Same as World)	page 1,064
		1975 So. Orange Coast (Jt. Exh. 6)		
General Van	page 223	1-2½ col.	Harbor	page 222
		1-2½ col.	O&I	page 222
		1-2½ col.	Harbor	page 224
		1-2½ col.	Pan American	page 224
		1-in-col.	A-All American	page 221

Ad Visor presented its case through five witnesses and 35 exhibits. Pacific presented its case through five witnesses and 46 exhibits. Thirty-five additional exhibits were sponsored by Ad Visor and Pacific jointly.

Ad Visor called Charles L. Rogers, an attorney for Pacific, under a subpoena duces tecum as its first witness. Special counsel was engaged by Ad Visor for the purpose of examining Mr. Rogers on the so-called evolution of Pacific's interpretation and application of its multiple display advertising standard.

Essentially Mr. Rogers' testimony is that he and his law firm have been doing legal work for Pacific for many years; that he has been involved in directory work and interpretation of advertising standards since 1960; that he conducted an investigation of the companies involved in this complaint; that he was familiar with the multiple display advertising standard and the reason it was promulgated; that the standard was promulgated because it was found there was a proliferation of advertising by one or more advertisers under certain headings which had the effect of dominating the headings. This domination, in turn, could cause confusion for the directory user by leading him to think that he was dealing with separate advertisers whereas, in fact, he was dealing with only one, using a multiplicity of business names and trade names.

Rogers claims that the attorneys in his firm consistently interpreted the multiple display rule so that where there were separate legal entities, each such entity was entitled to a double-half column display ad, or its equivalent, under a single heading. Rogers also stated that since yellow page advertising is under Commission jurisdiction, it has been his firm's view that if Pacific should err, it should err on the side of allowing the space if there were separate legal entities because the risks of not doing so were fairly high, namely, the wilful refusal to provide a public utility service. Such refusal could subject the utility to civil liability,

including punitive damages under Section 2106 of the Code,[5] in appropriate cases. He pointed out that until the time of the Berko case[6] there was no formal case filed with the Commission involving the multiple display advertising standard. Mr. Rogers stated that there has been no change in the interpretation of the standard, but rather there was an evolution. He pointed out that where there is a single person conducting the same business under several names but, there is a oneness or sameness about them so that it appears the separate entities were created simply as a subterfuge to allow the purchase of additional advertising space, it was his opinion that Pacific would be justified in denying additional advertising space. This view, he stated, was subsequently upheld in the Berko case.

He was also involved in another matter involving the interpretation and application of the multiple display advertising

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5/ "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.

"No recovery as provided in this section shall in any manner affect a recovery by the State of the penalties provided in this part or the exercise by the commission of its power to punish for contempt."

6/ D.84068 dated February 11, 1975 in C.9605, Ad Visor (Stan Berko) v PT&T. The complaint was filed August 16, 1973 and heard on February 1, 1974.

standard, viz., the Howard M. Stein dental corporation investigation.7/ The extensive investigation made of Dr. Stein was because Rogers felt that legally there is a substantive difference between professional corporations, and the average manufacturing or industrial corporations. Rogers then stated that while not involving corporations, the Berko decision allows, if not requires, the utility, if it suspects a possible violation, to look behind the facade of separate entities regardless of their nature, in order to affect compliance with the spirit as well as the letter of the standard. Rogers maintains that where there are separate corporate entities it is not necessary to look further and that each entity is entitled to its own advertising.

Ad Visor's executive vice president's testimony shows that he first contacted Pacific on April 1, 1975 concerning the alleged violations involved here (Exh. C-3-A). Pacific's reply was that since no printed errors were involved, no adjustment was warranted (Exh. C-3-B). Ad Visor then filed this complaint. His testimony (Exh. C-3) gives a detailed account by years and directory pointing

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7/ D.87240 dated April 26, 1977 in C.9833, Ad Visor (Downey Dental Center) v PT&T. See Exhibits D-1-F and C-3-T a Pacific memo to file by K. F. Dietzel, memorializing Attorney Rogers' investigation of the Dr. Stein Group wherein the following statements are made:

> "These two dentists [Dr. Froh and Dr. Rips] are in fact part of the Stein corporation. . . . It would be a violation of multiple display copy standards to permit these dentists to purchase advertising in their own name. . . ."
>
> "Chuck Rogers is in the process now of investigating the corporate structure of the two professional corporations, ... If the officers of the corporation seem to be the same they would not qualify for multiple advertising under the classification of 'Dentist'".

out the ads in violation of specific advertising standards, and also presents various documents purporting to show that Pacific was aware of a relationship between the Eytchison Companies all along. He points out that the ads in Table I under Alleged Violating Ads violate the following advertising standards and practices of Pacific in the following manner:

a. The Multiple Display advertising standard in that this standard permits only one double-half column display ad under any single classification for "any one person, firm, partnership, association, corporation, company or organization of any kind conducting a business or businesses under one or more names." It is contended that since one man owns the Eytchison Companies and operates them with a commonality of equipment, personnel, management and location, only one double-half column ad is authorized, not one per company or corporation as published.

b. The Duplications of Trade Mark and/or Trade Name Service standard (Exhs. C-3-D & D-1-L) in that this standard permits "Only one Trade Mark or Trade Name Service order, local or national, for the same product or service, is accepted under the same classification." More than one trademark ad under the same classification was published for the Eytchison Companies.

c. Section 3.0202 - Trade Item Requirements of Directory Practice 780 (Exhs. C-3-E & D-1-N) which prohibits rearrangements of the normal sequence of words in a brand name for the same product or service under the same heading. It is pointed out that United American Van & Storage has a custom trademark and that American United Van & Storage also has a custom trademark with the same logo and the same list of names in each ad which are both under the same heading. The dba names for United American Van & Storage, Inc. are World Van & Storage and Sav-on Moving and Storage & Sales (Exh. C-3-K). Because of this alleged violation the Eytchison Companies received two ads for the one advertiser and achieved a preferential positioning in the listing columns by a rearrangement of the finding line.

d. Trade Mark and Trade Name Service standard (Exhs. C-3-F & D-1-K) which prohibits using the letter 'A' in combination with other letters in a name solely to gain preferential positioning in the directory heading. Here ads were sold under the name of A-All American Moving & Storage and American United Van & Storage, neither name being registered as a fictitious name (dba).

e. Moving and Storage Service - Household Goods Carriers standard (Exhs. C-3-G & D-1-O & P) which provides that a carrier shall not represent itself under any name different from the name or names listed as dba's on their Public Utilities Commission (PUC) permit, and that carriers using more than one name in a directory must cross reference them to all other names listed. It was shown that 'A', A-All American, AA-All American, and American United are not dba's listed with the PUC and that there were no specific cross referrals between the companies in the display ads.

f. Rate Practice Schedule No. 17-T, Sheet 7 (Exh. C-3-H) and Section 3 of Directory Practices 740 which prohibit listings set up strictly to secure preferential position by any means unless the customer actually conducts business under the name so listed. It was shown that ads were sold for 'A', A-All American, AA-All American, and American United, which were not names under which business was actually conducted.

g. Duplicate In-column Advertising Space standard (Exhs. C-3-I & D-1-Q) limits informational listing advertising space to "one and only one informational listing." An additional listing may be had under certain conditions such as a business conducted at two different locations. It was shown that 2-inch informational listings were published for 'A', and All American, both at the same address.

Exhibit C-7 is a memorandum of a conference held on May 23, 1972 between Pacific's attorney Rogers and Pacific employees Sheffer and Steif. The subject matter of the conference was the multiple display advertising standard which was brought about by a household goods carrier complaining that a mover in Orange County who owns 9 or more companies was misrepresenting itself in the yellow pages. It is noted that the complained of mover had ten different telephone numbers all of which terminated on one key telephone service (KTS), and that Rogers was to check with various governmental agencies concerning this mover.

A letter dated July 26, 1972 from Rogers to Pacific, attention R. P. Pleitz of the directory department (Exh. D-1-B), is a follow-up on the above conference. It sets forth the facts Rogers obtained from the PUC regarding the household goods carrier permits of the Eytchison Companies. The letter closes with an offer to discuss the matter further in an attempt to apply the information to the letter and spirit of the copy regulations.

Exhibit D-1-D is a memo dated July 31, 1972 from R. P. Pleitz to Mr. Steif of Pacific's directory department which states, in part, that "Per C. Rogers' letter Pleitz concurs separate corporations involved therefore no violation of multi display and he authorized publication of ads."

Exhibit C-3-M is a study entitled "Moving & Storage Project - Orange County, 11/72" obtained by Ad Visor from Pacific through discovery. This document shows the various advertising items, phone numbers and addresses for the Eytchison Companies. It also shows that all telephone numbers terminate on KTS 540-3880, and that all billing is to All American.

Among other exhibits introduced by Ad Visor were Exhibits C-3-N, O, P, Q, and R which are Advertising Sales Queries from the directory department to the sales department. These show that as

far back as 1973 questions were being raised about the multiple display and customer trade mark ads for the Eytchison Companies. Sales' reply was to the effect that the same owner was involved and cleared the ads.

Exhibits C-3-L and D-3-E, dated June 19, 1975 and June 24, 1975, respectively, are copies of essentially the same memorandum by L. W. Smith, District Manager, to R. P. Colson, Staff Manager, Regulatory, Los Angeles on an informal complaint filed with the PUC by United American. The following statements are contained in the memorandum:

> "All the above mentioned steps [investigative steps] followed in determining our customer is in fact violating our Multiple Display Standards."
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> "Allowing our customer continued display advertising for the affiliated companies would clearly violate our Multiple Display Standards."

The memo then makes reference to D.84068, the Berko decision[8/] and concludes:

> "The Utility is of the opinion our customer is not entitled to continued display advertising for his affiliated companies, but will be allowed the maximum amount of display advertising consistent with existing standards for multiple display advertising."

The president of Ad Visor testified (Exh. C-4) that he turned down the Eytchison account because after the hearing in the Berko case he determined it would not be right to take on an account whose advertising program grossly violated the multiple display standards of the telephone companies; that it is his opinion that there is an inherent damage to all other advertisers in a yellow page classification when one advertiser is permitted to dominate the classification because the market share of each advertiser becomes

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8/ Footnote 6, supra.

smaller as the big advertiser draws more of the market through increased numbers of ads; that the yellow pages are a specialized medium directing customers to specific businesses at the time they are ready to buy or are in need of a service; the yellow page advertising differs from newspaper and radio advertising in that the latter are not usually there at the time someone needs the service; that when one advertiser is permitted to flood the classification with ads, he can literally drive the others out of the market place; that both General Van and Torrance were forced to give up the Huntington Beach market because of the unfair advertising granted the Eytchison Companies; that the Eytchison Companies profited from this advertising (Exh. C-4-A); that the purpose of the multiple display standard is to protect the majority of advertisers and directory users from a large advertiser monopolizing the classification; that Ad Visor has done studies to determine the effects of unfair advertising upon other advertisers which show a correlation between the amount of unfair competition and the number of jobs each complainant received for the periods in question; that he brought the advertising of the Eytchison Companies to Pacific's attention right after the hearing in the Berko case (February 6, 1974); and that Pacific did not correct the violations in the 1974 directories, but did for 1975.

Gerald Stadler, vice president of Torrance, testified (Exh. C-1) that advertising in the Orange County directory yellow pages was begun in November of 1974; that a good response from this advertising was not received because, in his opinion, the large number of ads for one advertiser created unfair competition with which the large advertiser was able to dominate the classification, a situation with which Torrance was unable to cope. Torrance had advertised for many years in both Pacific's and General Telephone Co. of California's San Pedro, Redondo Beach, and Huntington Beach

directory yellow pages. Good responses were received from the San Pedro and Redondo Beach directories, but the response from the Huntington Beach directory was small because there were unfair competitive ads in that directory. No response was received from the Orange County directory advertising for the first six months. To make up for this lack of response, radio advertising, personal calling upon leads, and post card mailings were used. The Orange County office of Torrance was directed to start keeping records, beginning with January of 1975, to show the source generating the business calls. The record was kept on the job estimate memo for all of 1975 and the first two months of 1976. A review of this record for the period of January through October, 1975, showed that 64 calls were generated by the yellow pages advertising. It is claimed that this is a small response. A comparison was made between the first three months of 1975 and the period January through March 9, 1976. These are relatively slow periods for the household goods moving industry. In 1975 only 12 calls were generated from the yellow pages, whereas for the shorter period in 1976 20 calls had been generated. This increase is attributed to the fact that the unfair competitive ads were not published in the 1975 Orange County directory yellow pages.9/ With respect to the injury suffered by Torrance from the additional ads sold to the Eytchison Companies, the witness had this to say:

> "I think it is obvious that the more ads that appear in the classification, the smaller share each of the ads will receive of the market. When one advertiser is able to dominate the classification with a large number of ads, all the other businesses have to suffer by getting less business. The overhead goes up while the income goes down. This can force the smaller business

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9/ The 1975 Orange County directory was published in November 1974.

> out and this is what happened to us down there, we were forced to a great deal of additional expense to try to generate business we normally receive from the yellow pages, because of the unfair competition which was set up in the Orange County directory."

Under cross-examination of Mr. Stadler (RT pp. 238-292) it was developed that Torrance started business in Orange County in August of 1974; that if there was no ad in the 1974 Orange County directory yellow pages far fewer than the 64 calls testified to would have been received; that with respect to the statement concerning the good response from the San Pedro and Redondo Beach directories and the poor response from the Huntington Beach directory, this statement is not based upon a tally similar to the one kept for Orange County; that the estimate memos would not be representative of the actual number of calls generated by the yellow page advertising; that mail outs and personal calls on leads started at the time the Orange County office was opened in August of 1974, and radio advertising was started in October or November of 1975, not six months after the 1974 Orange County directory was published; that the estimate memos from which a chart was made showing which medium generated the calls (Exh. D-9) was not accurate since not all calls were logged or counted; and that the month of December 1975 on Exhibit D-9 shows no calls generated from the yellow pages, yet this is after the 1975 Orange County directory was published from which the excessive ads of the Eytchison Companies were removed, which conflicts with testimony that responses from the yellow pages increased after the offending ads were removed.

William Brooks, vice president of General Van, testified (Exh. C-2) that General Van owns No. American Van Lines Agency, formerly called Sierra Van and Storage located in Laguna Niguel, which location was purchased in April of 1974. In early 1973 he noticed a decline in responses from his yellow page advertising and that this decline has continued until 1976. He was informed

that during this time one advertiser was getting more and more ads each year in the directories involved here; that since November of 1975 (publication date of the Orange County directory) and January 1976 (publication date of the South Orange County directory) an increase in responses from yellow pages advertising was observed, and that he was informed that the unfair yellow page ads had been removed from these directories. He stated that 70 percent of General Van's business consists of household moving and is highly dependent upon yellow page advertising. In order to overcome the fall-off of business in Orange County, he resorted to sending salesmen on door-to-door canvasses and started to mail out post cards. This post card mailing costs about $5,000 per year, which is still being spent. Its Anaheim office serves Orange County and Huntington Beach areas. A loss of $13,307 was experienced in 1975 for these areas which is attributed to the decline in responses from advertising in the yellow pages of the Huntington Beach and Orange County directories. Thirty percent of General Van's business consists of shipments from electronics firms and regular accounts which are highly profitable, and this business is not dependent upon yellow page advertising. However, this was more than offset by the decline in responses from yellow page advertising.

A study was made of the number of jobs received for various periods, at Ad Visor's request and with its assistance, which consisted of going through all of the bills of lading for 1974 and 1975 and separating out the jobs received from yellow page advertising responses. For 1973 only the local bills of lading were examined. The results of the study are set forth in the following table:

TABLE II

Year	No. of Local Moves	Avg. Rev. Per Move*	No. of Long-haul Moves	Avg. Rev. Per Move*	Total Y. P. Moves
Orange County Directory					
1973%	129**	$159.63	n/a	-	-
1974%	109	242.87	186	$ 983.38	295
1975%	118	263.44	127	1,337.78	245
South Orange Coast Directory					
1974#	174	242.87	99	983.38	273
1975	132	263.44	20	1,337.78	152
1976@	34	-	14	-	48

* 20 moves randomly selected and averaged.
% January to October.
** Includes one month's strike.
# 3 months - heavy period.
@ January 1 - March 9 - slow period.

The above average revenues were applied to the number of moves. The results were compared for 1974 and 1975, which showed a loss of $64,519.94 in 1975 for the Orange County area, and $116,749.10 for the South Orange Coast area. Brooks claims that after the unfair ads were removed from the yellow pages, the response increased during a time which is normally a slow period.

Cross-examination developed that General Van has been operating in Orange County since 1945. It has one location at Laguna Niguel, one at Anaheim, and one at Irvine. The Irvine location was sold in December 1975. Sierra Van and Storage was purchased in April 1974 and is the present Laguna Niguel operation, but was formerly the Irvine operation; that general economic conditions have an effect on the growth of General Van's business; that the figures presented above (Table II) represent total jobs and that he has no way of knowing how many came from yellow page advertising. This statement was later corrected to show that all

of the jobs in Table II resulted from yellow page advertising. While he believed that the excessive number of ads in the yellow pages had an adverse effect upon the responses General Van received from its yellow page advertising, he could not explain the increase in the number of local moves from the Orange County directory in 1975. He further admitted that the total number of moves shown in Table II does not relate to the total number of responses received from yellow page advertising; that there was no way of determining from the bills of lading whether the move was obtained from a response to yellow page advertising; that he had to rely upon his secretary for the figures and did not know how she could determine whether the move was the result of a response from yellow page advertising, except her memory and the name of a salesman on the bill of lading. No records were kept to show the difference in calls received before and after the appearance of the unfair ads; that he had no knowledge of what the response from yellow page advertising was for any year; however, if there had been no yellow page advertising they would not have obtained the moves reflected in Table II. Finally it was shown that the $5,000 annual expenditure for post card advertising, which is continuing, includes auto expenses for the salesmen. (RT pp. 229-336.)

Pacific's Evidence

Patrick H. Hames, District Staff Manager, Directory Department, testified (Exh. D-1) that he investigated the matter under consideration by interviewing numerous Pacific personnel to obtain their best recollection of the events leading up to the acceptance of the advertising, and analyzed the ads published to determine whether they were in compliance with the Standards for Yellow Pages Advertising Content which were in effect at the time of their acceptance.

In addition to the stipulation as to violations of the multiple display standard and the duplications of trademark and/or trade name standard, and Section 3.0202 of the trade item requirements practice, Hames admitted that trademark violations occurred in the 1975 South Orange Coast directory; that the cross-reference requirement of the moving and storage standard was violated in the 1972, 1973, and 1974 Orange County directories and that Tariff 17-T violations occurred in the various Orange County directories.

In regard to matters not covered by stipulation or admission, Hames claims that none of the standards were violated because each advertising corporation was considered as a separate entity entitled to the full benefit of the standards. Although the main substance of the multiple display standard did not change during the period here involved, Pacific did change its interpretation and application of a key principle in the standard after the Berko[10/] decision was issued. The change was in the way Pacific applies the standard to corporations. Prior to the Berko decision, Pacific applied the multiple display standard on the basis that any one person, firm, partnership, association, corporation, company, or organization of any kind conducting business or businesses under one or more names would be limited to one double-half column display item or its equivalent in space under the same classified heading. The standard is still applied in the same way, except Pacific no longer considers incorporation as sufficient in itself to prove separateness in the conduct of a business. Pacific began to realize that to meet the spirit and intent of the multiple display standard, it may be necessary to look beyond the surface organization and determine how the business is really being operated. Otherwise, an advertiser might technically meet the standard and be allowed an excessive number of display ads. This would defeat the very purpose of the standard which

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10/ Footnote 6, supra.

is to prevent domination of a single heading by a single advertiser. The advertising at issue here was accepted under Pacific's prior interpretation of the standard, that a corporation is a separate entity and entitled the full benefit of the standards. Also, Hames stated that the advertiser was insistent upon obtaining his advertising program, that Pacific felt there was no need to verify the corporate status of a customer if he requested telephone service or advertising in the name of a corporation; that it is extremely rare for customers to try to violate the multiple display standard, or to give false or misleading information in an attempt to gain an advantage in the telephone directories.

The investigation of the Eytchison Companies was undertaken initially because the salesman assigned in 1972 questioned the advertising because of the complexity, amount, and having one person responsible for so many different companies. The investigation was conducted by management personnel and legal counsel. After the advertising for 1972 was approved, succeeding years' advertising was published without further investigation, reliance being placed upon the prior acceptance. It was pointed out that the business organization of the Eytchison Companies evolved over a period of years; that the principal had developed a business strategy whereby he would systematically buy established individual moving companies and, with each purchase, he gained the right to the use of the company name and any attendant good will, its equipment, and the yellow pages advertising which they had at the time of purchase. Although there were commonalities of equipment and personnel, the advertiser steadfastly represented that he was operating each corporation as an independent business. Pacific considered United as the key company because it was an interstate carrier; all of the other companies were licensed only as intrastate carriers, which accounts for the continuous references to United by the other companies.

Cross-examination of Mr. Hames (RT 476-603) brought out, among other things, that there is no substantive difference in the multiple display standard set forth in Exhibits D-1-G, H, and I; that Pacific's investigation of the Eytchison Companies did not go to determining the ownership of the corporations, but rather to the form of the business organization, i.e., whether it was a single proprietorship, partnership, corporation, etc.; that the salesman who sold the ads in 1972 did question whether the ads were in violation of the multiple display rule, which was taken up through the different levels of management, including the seeking of legal advice; that he was not produced as a witness because of the complexity of the case and the number of different issues involved, but that it was decided Mr. Hames would be the witness since he was knowledgeable and Pacific did not want to waste the Commission's time by bringing in additional witnesses; that paragraph 2 of the Moving and Storage standard is an acceptability standard, i.e., one which is Pacific's responsibility to enforce; that the use of the letter 'A' in connection with the advertising in question would be considered as a preferential listing; that the statement of Mr. Tillman, Staff Manager - Directory for Pacific in C.9605,[11/] of

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11/ "Q. And I would like your comment on this:

"Display advertising space under any single classified heading in the Yellow Pages of a directory for any one single person, firm, partnership, association, corporation, company, or organization of any kind conducting a business or businesses under one of [sic] more names shall be limited to one and only one double half-column display."

"If they are separate corporations, can they buy multiple display ads?

"A. Well, going back, if they are separate corporations using the same personnel, same billing, same location, same people doing everything, like one of the prior witnesses, the movers -- they would be entitled to one ad. The intent of the rule is one ad to a business.

"Q. Who evaluates this?

(Continued)

which we were requested to take official notice, is not the same interpretation of the multiple display rule used by Pacific in the pre-Berko period; that Mr. Hames does not find that Mr. Tillman's statement is inconsistent with Pacific's policy which was to look at the way a business was being operated; that after Berko it was felt that it would be appropriate and reasonable to look beyond the basic business organization and determine how it affects yellow page advertising; that Exhibit D-7, a letter from Attorney Rogers dated June 14, 1968 stating that Pacific could pierce the corporate veil, but that since there appeared to be two separate corporations each is entitled to a double half-column ad; Hames stated that this is not a policy letter, but that its interpretation would depend upon how you wanted to interpret it, and that this letter suggests to him that in the pre-Berko period individuals and corporations were treated differently for purposes of the multiple display advertising standard.

In rebuttal Hames presented the results of a comparison of the number of ads under the Moving & Storage classification in the 1970 through the 1974 editions of the Orange County directories. These are:

TABLE III

Directory Year	Total No. Of Display Ads	No. of Eytchison Co. Ads	Total No. In-col. Ads	No. of Eytchison In-col. Ads
1970	51	8	42	4
1971	55	10	48	4
1972	65	10	45	5
1973	70	11	-	-
1974	73	11	-	-

11/ Continued.

"A. We do. The Yellow Page Salesmen's manager.

"Q. The same every time, in every instance?

"A. We try to apply it as uniformly as possible."

(RT p. 92, C.9605.)

From the above comparisons Hames concluded that while complainants' allege that their business had been growing until 1973 when the unfair ads appeared, and then it dropped off because of the unfair ads, their alleged reason for the drop is not supported by the facts.

With respect to Pacific's general policy for its advertising department[12/] Hames stated that it is contained in Exhibit D-1-R dated June 1975 and that this policy has been in effect since at least October 1972; that the key to the policy and the multiple display advertising standard is the determination of what constitutes a single advertiser or business entity; that with respect to Exhibit C-3-R, an Advertising Sales Query regarding the logos of United American which were authorized to be published by the manager in charge of display production, the standard procedure would be to refer the matter to the directory editor for an Editor's Advisory to Sales for an opinion. In this case the query was prepared too close to the closing date of the directory making it impracticable, although physically possible, to institute changes.

With respect to Exhibit C-3, an alleged policy with respect to the multiple display advertising standard, this document was prepared for an agenda item in connection with an American Telephone & Telegraph Co. (AT&T) committee meeting. The recommendations contained therein were not adopted by Pacific. However, Pacific is recognized as a leader in the establishment of yellow page standards. Pacific's standards are generally more comprehensive and more complete than those of other AT&T operating companies.

12/ "The success of any advertising publication is dependent, in a 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 could 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."

Keith L. Sheffer was presented by Pacific to testify as to his involvement with the advertising in question here (Exh. D-2). Sheffer was the sales manager in 1972 and was responsible for the Eytchison Companies' account from the start of the campaign on May 8, 1972 until June 16, 1972 when he left because of a heart attack. The salesman brought these accounts to his attention at the time since he was suspicious that there might be a violation of the multiple display standard. Sheffer discussed them with Directory Editor Don Steif. It was decided that a legal opinion should be obtained before going further. Mr. Sheffer's heart attack occurred before such opinion was obtained.

Cross-examination of Mr. Sheffer brought out that he had brought to Mr. Rogers attention the fact that the corporations involved had a common telephone number, common location, and common billing responsibility; that he had had experience with multiple businesses requesting display advertising a number of times, such as dentists, an auto parts house, and a group of hotels under common ownership trying to establish separate ownership for directory advertising purposes. He admitted that ownership was a criterion to be looked into for determining compliance with the multiple display rule, but he claimed he was never involved where there were multiple corporations all pooled together for the purposes of doing business under one classified heading. That is why he brought it to Mr. Steif's attention and ultimately sought advice from legal counsel.

Mr. Robert P. Pleitz, Pacific's District Sales Manager, testified as to his involvement in 1972 with the ads in question (Exhs. D-3 and D-3-A through I), and his ultimate refusal to publish the ads in the 1975 directory because now it was Pacific's policy to apply the Berko decision to corporations as well.

In rebuttal, Pacific presented two witnesses. Mr. Gerald J. Bongard, Chief Economist for Pacific, testified about the general economic conditions in Orange County in recent years as measured by all of the major economic indicators available in that area. He sponsored Exhibit D-17, a series of charts depicting the economic conditions in Orange County from 1971 to 1976. In summary, Mr. Bongard concluded that the Orange County economy reached its strong rates of growth and tended to peak out in 1973, and that with the advent of the national and statewide recession in 1973 and 1974 the county's growth either slowed perceptively or turned down, and that a moving and storage company located in Orange County could not reasonably have expected the same continued rate of growth it experienced prior to 1973 on into 1974, 1975, and 1976.

Pacific's second rebuttal witness was Mr. Jack C. Land. The purpose of his testimony was to rebut certain statements in Exhibit C-4 with respect to the circumstances under which Jack Krinsky notified him that certain ads in the November 1974 Orange County directory yellow pages might be in violation of the multiple display standard. Exhibits D-18 and D-19 were sponsored by this witness. The substance of the testimony and exhibits is that during the February 6, 1974 meeting between Jack Krinsky and Mr. Land no mention was made of multiple display violations under the Moving and Storage classification (Exh. D-18); that Land's first awareness of Krinsky's allegations with respect to this heading was sometime after the delivery of the November 1974 Orange County directory (Exh. D-19); and that it was very impractical to remove the ads so many weeks after the closing date - October 18, 1974 - although not physically impossible.

Ad Visor put on three witnesses in rebuttal - Fred Krinsky introduced Exhibit C-10, a letter from the Interstate Commerce Commission showing that only Balboa held any interstate operating authority, which was limited to boats. He testified that he had just made a study of the growth in the yellow pages for the Orange County directory, viz. that in 1972 there were 1,624 pages, 1973 there were 1,774 pages and in 1974 1,915 pages indicating a 9.2 percent rate of growth between 1972-1973, and 8 percent between 1973-1974. Under cross-examination Krinsky admitted that during a recessionary period there is more competition among businesses and that this is reflected in the acquisition of additional yellow page advertising. However, he adopted the following figures presented by Pacific: Under the Moving and Storage classification in the Orange County directory for 1972 there were 18 pages; 1973 - 18 pages; and 1974 - 19 pages.

Ad Visor's second rebuttal witness was Shirley Krinsky who testified generally as to the content of the February 6, 1974 meeting not mentioned in Exhibit D-18.

The third rebuttal witness for Ad Visor was Miner P. Gross, Jr., an associate and independent contractor with Ad Visor paid on a commission basis and who has had 12-½ years of experience with Pacific in yellow page advertising sales. The purpose of his rebuttal was to elaborate on Pacific's Exhibit D-18 by pointing out that specific classifications and advertisers were brought to Pacific's attention at the February 6, 1974 meeting wherein there were alleged violations of the multiple display standard; that the present multiple display standard was substantially the same as when he worked for Pacific; and that ownership was one of the criteria used in applying the standard.

Discussion

Pacific argues that it reasonably believed that it was accepting the advertising in dispute from companies that were separate legal entities; that it relied upon the representations of the advertisers, the evidence observable, the results of several intensive investigations and the opinion of legal counsel upon which to base its judgment that the Eytchison Companies were sufficiently separate to qualify for the advertising in dispute in accordance with its standards and practices during the period at issue due to their status as separate corporations. Pacific's policy, at the time the disputed advertising was accepted, was to allow a corporation to qualify as a separate entity for the purpose of its directory advertising standards. However, the Commission's decision in the Berko case resulted in an evolution of Pacific's interpretation of what constituted a "separate entity". Pacific states that the Berko decision gave it the authority to look behind the corporate organizational structure and, if not satisfied that there was an actual separateness of the business, to refuse to provide a utility service, i.e., advertising, without the fear of being liable for said refusal. Pacific points to the customer's threats to Pacific (Exhs. D-3, F, H, and I) and his filing a complaint with the Commission (Exh. D-3-D) in support of this fear. Pacific contends that the standard of care which should be applied to the directory salesperson when accepting directory advertising orders should be that of the reasonable salesperson; that the salesperson should be expected to apply business judgment to the facts as presented and observed, as well as the appropriate directory standards promulgated. Pacific also argues that the Commission has ruled that a utility is not to be held as a guarantor of the truth of advertisements appearing in its yellow pages because the problems and expense that would be incurred from any greater obligation such as visiting virtually every business

location, actually inspecting the customer's business records, questioning the customer's employees, and requiring documentary proof of his separate status or other qualifications would be overwhelming, and extremely offensive to the great majority of honest, reputable businessmen and professionals, creating a great amount of friction and ill will between the customer and Pacific.

In our opinion Pacific's argument that it reasonably believed that it was dealing with separate legal entities does not address itself to the real issue which is, whether or not it was dealing with a single advertiser, as set forth in the first paragraph of its multiple display standard.[13/] Pacific attempts to sidetrack the issue with the multiplicity of corporations. The standard is clear that it deals with a single advertiser, whether it be a person, firm, partnership, association, corporation, company, or organization of any kind conducting a business or businesses under one or more names. Pacific's own salesman recognized this fact and brought the problem to the attention of his manager, who also thought that there might be a violation of the multiple display standard. However, as the investigation worked its way up through the management levels, it appears that Pacific was more concerned with form rather than substance, and the fear that it might become involved in a lawsuit, rather than enforcement of its standards.

13/ "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-½ column display item or its equivalent in space. When one or more of the following conditions exist, the advertiser may have one and only one additional D-½ column display advertisement..." (Exh. D-1-G. Underscoring added.)

Pacific's own witnesses admit that the purpose of the multiple display standard is to prevent domination of a single classified heading by an advertiser. To argue that there are separate legal entities, in the form of corporations, and that it did not have the authority to go behind the corporate status until after the Berko decision ignores the facts that were available to Pacific. As a public utility, Pacific is bound to treat all of its customers equally and without discrimination. To rationalize that because there are separate legal entities involved, the multiple display standard does not come into play is to create a separate class of customers to avoid the application of the standard. This is a discriminatory act. Here, Pacific chose to ignore the requisite fact - the single ownership and single advertiser. The prudent course for a utility to follow in a situation such as we have here, is to enforce its standards, not to place a strained interpretation on the standard to avoid applying it. If a utility does err, it should endeavor to err on the side of applying its standards and tariffs, not in contravention of them.

We agree with Pacific's contention that the standard of care which should be applied to a directory salesperson should be that of a reasonable salesperson who is expected to apply business judgment to the facts as presented and observed as well as the appropriate directory standards. This is precisely what Pacific's salesman did. However, it was management that did not fulfill the standard of care.

Pacific's argument that it is not to be held as a guarantor of the truth of advertisements appearing in its yellow pages does not apply to misleading advertising which results when a single advertiser, using different business names, is permitted more ads than authorized by the multiple display or other advertising standards.

We turn now to a determination of what advertising standards, tariff provisions, and law were violated by Pacific.

As shown in Table I multiple ads were published in various Pacific directories for several years for the Eytchison Companies. These involved display, customer trademark, trade name, and other in-column advertising items.

It is alleged that Pacific violated its multiple display advertising standard, duplicate in-column advertising space standard, duplications of trademark and/or trade name service standard, Directory Practice Procedures, Section 3, paragraph 3.0202; Moving and Storage Service - Household Goods Carriers advertising standard, and that violations of the above standards constitute a discriminatory practice in violation of Section 453.[14/]

The Multiple Display Advertisements standard (Exhs. C-3-C and D-1-G) provides that a single advertiser is entitled to one double half-column ad or, its equivalent in space, under a single classified heading, unless certain conditions, not relevant here, are met under which an additional ad is authorized. As shown in Table I Pacific published the following display ads under the Moving and Storage classification for the Eytchison Companies:

1972 Orange County directory - 8
1973 Orange County directory - 11
1974 Orange County directory - 11
1975 So. Orange County directory - 4

Pacific stipulated that the display ad for World in the 1972, 1973, and 1974 Orange County directories violated the multiple display standard.

14/ "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."

The Duplication of Trade Mark and/or Trade Name Service standard (Exhs. C-3-D and D-1-L) provides that only one trademark or trade name for the same product shall be accepted under the same classification. Table I shows that Pacific published the following trademark ads under the Moving and Storage classification for the Eytchison Companies:

1972 Orange County directory - 2
1973 Orange County directory - 3
1974 Orange County directory - 10

Pacific's Directory Practice Procedures 780 Section 3, paragraph 3.0202 (Exhs. C-3-E and D-1-N) provides that the rearrangement of the normal sequence of words in a brand name for the same product or service under the same classified heading is not acceptable. Table I shows customer trademark ads for United American and American United were published under the Moving and Storage classification, a reversal of the names. Pacific admits this violation.

Paragraph 3 of the Trade Mark and Trade Name Service advertising standard (Exhs. C-3-F and D-1-J) provides that:

> "Trademark 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."

Advertisements were published in the 1972, 1973, and 1974 Orange County directory yellow pages under the names A (same as World Van & Storage), A-All American, AA-All American, and American United; in the 1975 So. Orange Coast directory yellow pages an ad for A-All American was published.

The Moving and Storage Service - Household Goods Carriers advertising standard (Exhs. C-3-G and D-1-O) provides that "The Company Standards governing the acceptance of listings and advertising copy for household goods carriers conform with the PUC tariff and are as follows: 1. Carriers shall not advertise or otherwise represent themselves under any name (including the name of an individual) which is different from the name or names listed as dba's (doing business as) on the permit issued them by the Public Utilities Commission of the State of California. . . . 2. Carriers using more than one name in a listing column or in display copy in a classified directory must cross refer each such name to all other such names so listed. . . ." Pacific's witness Hames admitted that the cross-reference requirement of this standard was violated in the 1972, 1973, and 1974 Orange County directories (Exh. D-1). The evidence shows that the Eytchison Companies conducted business under 11 different names, some of which were fictitious names. Pacific argued that the first portion of the above standard has always been recognized as an "assistance" standard, one which is advisory only, the enforcement of which lies outside of Pacific, and not as an "acceptability" standard which is one generated by Pacific and the enforcement of which is Pacific's responsibility We see this portion of the standard as one for which Pacific is responsible since the wording of the standard itself shows that Pacific has adopted the language of the Commission's tariff. To interpret the standard in any other way would permit Pacific to publish misleading advertising without any responsibility therefor, contrary to its established policy of maintaining the integrity of yellow page advertising (see Footnote 12).

Pacific has admitted publishing all of the advertisements at issue, and that some of them violated some of their advertising standards. The record shows that the published ads for the Eytchison Companies do not conform to the applicable advertising standards, nor,

to the spirit and intent of Pacific's general yellow pages policy, in that they exceed the number authorized, are not cross-referenced, and tend to mislead a customer into believing he is dealing with a separate independent company, when in fact he is not.

The directory advertising standards do not attain the same standing as do Pacific's tariffs, which have the force and effect of law. This is not to say that a violation of the standards may not result in a violation of some statutory provision. If the violation of a standard results in a practice over which we have jurisdiction, such as discrimination, or the giving of an undue advantage or preference to one customer over another, Section 453 is brought into issue.

The effect of Pacific's noncompliance with its advertising standards is to have accorded the Eytchison Companies 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 760, 766); and that the discrimination is the proximate cause of the injury (California Portland Cement Co. v U.P.R.R. Co. (1959) 56 CPUC 760, 766).

The record shows that these violations occurred not once, but several times in different directories for at least two consecutive years. Such repeated action in the face of having received a complaint concerning these matters is sufficient to find that Pacific's actions were not only unjust, but undue in that the Eytchison Companies received an undue advantage by dominating the yellow pages contrary to the purpose of the multiple display and other limiting advertising standards to the detriment of complainants. Such action gave favored treatment to the Eytchison Companies and reduced the drawing power, and thus the value of complainants' ads. This action violated the provisions of Section 453.

Insofar as the allegations of gross negligence, wilful misconduct, and violation of Section 2106 are concerned, we have repeatedly held that these matters are beyond our jurisdiction (Sonnenfeld v General Telephone Co. of Calif. (1971) 72 CPUC 419, 421; Jones v PT&T (1963) 61 CPUC 674, 675).

Where discrimination is found to have occurred, it may be corrected in one of two ways. A utility may be ordered to discontinue the preference or advantage, or to make it available to others similarly situated. We shall order Pacific to discontinue the practice.

We turn now to the relief sought by complainants. Before reparations can be awarded, the claimant must show that there has been a violation by the utility of a duty imposed by one of the provisions in Section 734[15] (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).

Complainants seek reparations as follows:

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

TABLE IV

Complainant	Directory & Year	Advertising Charges	Telephone Service*
General Van	Orange Co. 72	$2,349.00	Actual
	Orange Co. 73	2,460.00	"
	Orange Co. 74	2,073.00	"
	So. Orange Coast 75	546.00	"
Torrance	Orange Co. 74	1,704.00	"
		$9,132.00	

* Charges for telephone service were not available and complainant is willing to stipulate to the amounts.

In addition to the above reparations, claimants seek interest on the above amounts and an award for costs suffered, including but not limited to attorneys' fees, and other expenses of investigation and preparation of the case. As pointed out previously 1972 is no longer in issue since any cause of action involving this period has been barred and extinguished pursuant to Section 735.

In considering whether or not to award reparations, "[I]t is essential that the Commission carefully scrutinize the proof in support of the complaint and determine that the proof shall measure up to the relief sought, lest by awarding reparations, it sanction what in substance and effect may constitute a rebate and result in unlawful discrimination." (Richardson Co. of Cal. v Pacific Motor Trucking (1965) 64 CPUC 398, 403.)

It is clear from the record that the Eytchison Companies' ads were published in violation of the advertising standards; that they dominated the moving and storage classification in the yellow pages; and that this domination was a factor in causing the decline in complainants' business. Therefore we must now examine the record to see if the proof measures up to the relief sought.

While both claimants testified that they believed their decline in business was due to the excessive number of ads published for the Eytchison Companies, and they presented certain figures to quantify their losses, cross-examination of both parties showed that the figures they presented were not reliable; that their business increased during the time when they testified it had been lost due to the Eytchison Companies ads, for which no explanation was provided; that certain additional advertising expenses alleged to have been incurred to overcome the advantage of the excessive ads were shown to include items other than advertising; that a period after the excessive ads were removed showed no responses from yellow page advertising, yet one complainant claimed that its business improved remarkably after the ads were removed. Claimants' testimony here is substantially the same as presented in C.9936 and is subject to all the infirmities set forth in D._____ of that case.

Ad Visor argues that it is not necessary to prove damages in order to be entitled to reparations, citing a number of Commission cases for this proposition. It also argues that the quantum of proof required should not be the same as would be required to sustain a claim for consequential damages, and that to do so would prevent any complainant from obtaining reparations. While it may be true that in some situations, the injury may be obvious from the violation, such as when an erroneous telephone number is placed in an ad, full reparations on the ad and telephone service may be warranted. When there is nothing wrong with the ad, however, and the injury is claimed because of unfair competition from excessive ads by a single advertiser, the extent of the injury is not so obvious, and it is therefore necessary that the claimant adduce sufficient proof to sustain his claim. Thus, Ad Visor's argument that it is not necessary to prove damages is erroneous notwithstanding the cited cases. Also

its argument that if there is diminished value in the advertising, there is also diminished value in the telephone service, depends upon the individual circumstances and must be proved. No evidence was produced to show diminished value of telephone service.

Here we have acknowledged experts in the field of yellow page advertising presenting complainants' case. They state that they have made studies which support their conclusions that the claimants are entitled to full reparations, yet they did not produce any of these studies so that the validity of the conclusions could be tested. It is not unreasonable to expect that the same diligence and effort put forth in proving the violations also be expended in providing a sufficient quantum of proof to substantiate the amounts claimed for reparations.

Having considered the evidence in support of reparations, we are of the opinion that excessive numbers of ads for a single advertiser in the same classification of the yellow pages do result in a harm to other advertisers in that classification in that some of the business they could expect from their ad is drawn off by the single advertiser. However, the quantum of proof in support of the sought reparations does not justify an award of full reparations for advertising and telephone service. We will award reparations in the amount of 50 percent of the advertising charges.

Ad Visor requests an award of costs of this proceeding. Our rules do not provide for this kind of relief. It will be denied.

Findings of Fact

1. Pacific's motion to dismiss the complaint on the grounds it constitutes an assignment of a reparation claim should be denied.

2. The 1972 Orange County directory was published in November 1972; the complaint was filed June 18, 1975, more than two years later.

3. The complaint does not challenge the rates for advertising.

4. The ads set forth in Table I were published in Pacific's directories.

5. Harbor, Balboa, United, La Bore, and Garden Grove were all owned by Arthur Eytchison and operated under a common management with a commonality of personnel, equipment, facilities, and location.

6. The companies listed in Finding 5 did business under the following names: Balboa, dba Office and Industrial Movers; Harbor, dba All American Van & Storage; Garden Grove Moving & Storage, Inc., and Pan American Moving and Storage of Orange County; United American, dba World Van & Storage, and Sav-on Moving & Storage & Sales; and Temple Terrace, Inc., dba All American Moving & Storage.

7. American, A-All American, AA-All American, A (same as World) were not valid fictitious form names, and were used to obtain preferential listings in the yellow pages contrary to the provisions of Pacific's Rate Practice Schedule No. 17-T and Section 3 of Directory Practices 740.

8. Pacific has admitted it violated its multiple display advertising standard with the publication of the World display ad in the 1972, 1973, and 1974 Orange County directories, and that the custom trademark advertisement published for American in the 1972, 1973, and 1974 Orange County directories violated its duplications of trademark and/or trade name standard and Section 3.0202 of its trade item requirements practice.

9. Pacific admitted that paragraph 2 of its moving and storage standard is an acceptability standard (cross-referencing) to be enforced by Pacific. Not all of the Eytchison Companies' ads were properly cross-referenced.

10. Pacific adopted the Commission's tariff language in its moving and storage standard thus making paragraph 1 (fictitious names) of this standard an acceptability standard to be enforced by Pacific. Pacific published ads for the Eytchison Companies under names listed in Finding 7 in contravention of this standard.

11. Pacific's multiple display advertising standard limits a single advertiser to one D-½ column display ad, or its equivalent in space, in the same classification, except under certain conditions not relevant here, when two ads are permitted.

12. Arthur Eytchison, the owner of the Eytchison Companies, is a single advertiser as contemplated in Pacific's multiple display advertising standard.

13. The ads listed in Table I for the Eytchison Companies exceed the number authorized by Pacific's multiple display, duplications of trademark and/or trade name standards and Section 3.0202 of the trade item requirements practice.

14. Pacific's interpretation of its multiple display standard, during the period involved here, to consider corporations as individual entities entitled to all the benefits of the standard even though owned by the same person, and operated with a commonality of management, personnel, equipment, and facilities was not in accordance with the purpose and intent of its standard.

15. Complainants suffered undue detriment and prejudice as a result of Pacific's actions in that the value of their advertising was diminished by 50 percent.

16. There is no evidence with respect to how much, if any, telephone service was diminished in value.

17. Pacific should be ordered to cease and desist its discriminatory practices.

Conclusions of Law

1. The two-year statute of limitations contained in Section 735 applies to the facts of this complaint.

2. Pacific violated its multiple display, duplications of trademark and/or trade name service advertising standards; Section 3.0202 - trade item requirements of Directory Practice 780; Moving and Storage Service - Household Goods Carriers, and duplicate in-column advertising space advertising standards, and Rate Practice Schedule No. 17-T.

3. The violation of Pacific's standards constitutes a discriminatory practice in violation of Section 453.

4. General Van is entitled to reparations in the amount of $2,539.50 for the 1973, 1974 Orange County and the 1975 So. Orange Coast directory yellow page ads, plus interest. General Van is not entitled to reparations for telephone service charges.

5. Torrance is entitled to reparations in the amount of $852.00 for the 1974 Orange County directory yellow page ads, plus interest. Torrance is not entitled to reparations for telephone service charges.

O R D E R

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company (Pacific) shall pay to General Van & Storage Co., Inc. reparations as follows:

$1,230, with interest at the rate of 7 percent per annum from the end of the life of the 1973 Orange County directory to date of payment;

$1,036.50, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Orange County directory to date of payment; and

$273, with interest at the rate of 7 percent per annum from the end of the life of the 1975 South Orange Coast directory to date of payment.

2. Pacific shall pay to Torrance Van & Storage Co., dba S & M Transfer & Storage Co., reparations as follows:

$852, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Orange County directory to date of payment.

3. Pacific shall cease and desist its discriminatory practices in applying its tariffs and advertising standards.

4. All other requests for relief are denied.

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

Dated at San Francisco, California, this 12th day of OCTOBER, 1977.

Robert Batinovich
President
William Symons, Jr.
Vivian L. Sturgeon
Richard D. Gravelle
Claire T. Dedrick
Commissioners