

Decision No. 87972 OCT 12 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

KENNETH B. TAGGART dba AIRCO
HEATING CO.,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY,

Defendant.

Case No. 10355
(Filed June 17, 1977)

Kenneth Taggart, doing business as Airco
Heating Co., for himself, complainant.
N. H. Krause, Attorney at Law, for The
Pacific Telephone and Telegraph
Company, defendant.

O P I N I O N

Complainant seeks an order from the Commission (1) relieving him from paying \$1,975.20 for two separate 2 x 4 inch display ads which were printed in the yellow pages of the September 1975 issue of the San Francisco Telephone Directory under the classification headings Furnaces-Heating-Sales and Service and Plumbing Contractors, and (2) for an adjustment of the \$213 charge for a one-inch column ad under the heading Insulation Contractors-Home and Building. Defendant alleges that the charges are correct and should be paid in full and that complainant has paid only \$20.65 on the amount owed. Defendant requests that the complaint be dismissed.

Column ads are placed along with the subscriber's alphabetical listing under the heading in the yellow pages under which he is listed. Display ads are separately placed under the heading in

the yellow pages with which they are associated and are generally larger and more informative than column ads. Both defendant's Schedule Cal. P.U.C. 39-T and the back of the order form signed by the subscriber provide that no specific positioning in the directory is guaranteed for display ads. Defendant's Directory Practices provides that such ads are placed according to size and seniority.

Pursuant to Rule 13.2 of the Commission's Rules of Practice and Procedure, all parties consented to the Expedited Complaint Procedure and waived the presence of a court reporter and a record of the hearing and findings of fact and conclusions of law. The matter was heard September 14, 1977 by Administrative Law Judge Arthur M. Mooney.

According to complainant's evidence, he is in the residential heating, sheet metal, plumbing, and insulation business and serves primarily the San Francisco and Daly City areas; because of the many competitors in this business, advertising is extremely important; since his business name began with "A", he was of the opinion that the display ads would be at or near the front of the yellow page sections in which they were to appear; defendant's salesman who took the ads did not inform him otherwise; both ads were placed at or near the end of the pages of display ads in the sections of the 1975 directory in which they appeared; when he complained of this, he was then informed of defendant's placement policy; had he known of this, he would not have taken the ads; their placement made them valueless to his business; and for those reasons, he should not be required to pay for them.

With respect to the column ad, complainant testified that the order he signed for the ad showed Airco as the company name; whereas, the name Airco Plumbing and Heating Co. was printed in the directory. He stated that since the ad was under the heading "Insulation," which he wanted to emphasize, the addition of plumbing

and heating in the company name detracted from this. He asserted that because of this error, he should receive an adjustment in the charge for this ad. Complainant also alleged that he had paid the charges for the 1975 ads for a number of months, but apparently defendant had credited these payments on his telephone bills.

According to defendant's evidence, complainant was advised of defendant's display ad placement policy by the salesman who took his ads and the statement on the back of the order form he signed, and the use of the name Airco Plumbing and Heating Co. in the one-inch column ad under the insulation heading in no way detracted from the value of that ad. Defendant asserted that there is no basis for any adjustments in the 1975 yellow page charges it assessed complainant.

Even accepting complainant's statement that he was not informed of defendant's display ad policy by the salesman, the fact remains that the terms and conditions on the back of the order form stated that no particular placement was guaranteed. Furthermore, no errors in the printing or format of the ads were alleged. No adjustment will be made in the charges assessed for them. As to the column ad, defendant did make an error in the business name requested by complainant, and a 50 percent adjustment should be made in the charge assessed for this ad.

O R D E R

IT IS ORDERED that defendant shall adjust its billing for complainant's one-inch column ad under the heading Insulation

Contractors-Home and Building in the 1975 directory to \$106.50 and that in all other respects 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 12TH day of OCTOBER, 1977.

Robert Batistich
President
William J. Sproule
Vernon L. Livingston
Richard D. Howell
Clare L. Delrie
Commissioners