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Decision No. 88401 JAN 24 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOANNE BOCKIAN,
dba BOCKIAN & HANIFIN,
Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY,
Defendant.

Case No. 10434

(Filed October 3, 1977)

ORDER OF DISMISSAL

Complainant is an attorney who requested defendant to place a 2-inch columnar advertisement for legal services in the yellow pages of the Montebello, Alhambra, and Pasadena directories for 1978. Defendant refused and continues to refuse to place said advertisements. Complainant alleges that such refusal constitutes a significant infringement upon her rights of free expression as guaranteed by the First Amendment to the United States Constitution. Complainant seeks an order that will require defendant to publish the requested advertising in the 1978 Montebello, Alhambra, and Pasadena directories.

Defendant admits that it has refused to print the advertising in question and raised two separate affirmative defenses. The first defense recognizes that lawyers are entitled to advertise in accordance with Bates v State Bar of Arizona 53 L.Ed. 2d 810, rendered on June 27, 1977, and as a consequence has determined that defendant should commence accepting attorney advertising. However, in order to avoid discriminatory circumstances it determined that such advertising would be accepted in all directories whose sales campaigns started on or

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after July 11, 1977 in the Northern California Region and on or after July 18, 1977 in the Southern California Region, thus giving all attorneys equal notice and full opportunity to advertise by providing for a reasonable amount of time between notification of Pacific's new policies and the closing deadline for advertising. The selling campaign for the Montebello, Alhambra, and Pasadena directories started on June 20, 1977, and closed to advertising on September 30, 1977. For its second affirmative defense, defendant points to the fact that the issue raised by the complaint is moot since the closing deadline for advertising in the directories involved, September 30, 1977, has already passed; that the Commission has refused similar requests in D. 87644 and D. 87645 under similar circumstances; and that a Writ of Mandamus was sought from the Supreme Court of D. 87645, C-10378, which was denied.

We agree with defendant's argument that to permit complainant to advertise after having refused other attorneys in the same directory would give complainant an unfair advantage over those other attorneys, and that the campaign start date plan for advising attorneys of availability of advertising is fair to all under the circumstances, and provides an orderly transition from the old rules to the new. To do otherwise would be to grant a preference and advantage to complainant contrary to Section 453 of the Public Utilities Code. Furthermore, the matter is moot since the complaint was filed after the close to advertising date of September 30, 1977, and the sales campaign for the directories involved started prior to July 18, 1977.

1/ S.F. No. 2366b dated July 28, 1977.
 2/ 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.

Therefore, IT IS ORDERED that Case No. 10434 is dismissed.

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

Dated at San Francisco, California, this 24th day of JANUARY, 1978.

Robert Bateman
President
William Sproull Jr.
Veron L. Steigen
Richard D. Swale
Clare L. Daniels
Commissioners