

ORIGINAL

Decision No. 88460 FEB 7 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AD VISOR, INC., a California Corporation,)
authorized exclusive agent for:)
AIR COMFORT AIR CONDITIONING & HEATING,)

Complainant,)

v.)

GENERAL TELEPHONE COMPANY OF CALIFORNIA,)

Defendant.)

Case No. 9837
(Filed November 29, 1974)

Fred Krinsky and Jack Krinsky, for Ad Visor, Inc.,
exclusive agent for Air Comfort Air Conditioning
& Heating, complainant.

A. M. Hart, H. R. Snyder, Jr., and Kenneth K. Okel,
Attorneys at Law, for General Telephone Company
of California, defendant.

O P I N I O N

This case involves the advertising for Air Comfort Air Conditioning & Heating (Air Comfort) that appeared in General Telephone Company of California's (General) 1972 Covina directory yellow pages which was published in December 1972. Complainant alleges that Air Comfort signed a contract for directory advertising in General's 1972 Covina directory on September 13, 1972 (Exh. C-2-A and Exh. D-5) listing its business name as Air Comfort Air Conditioning & Heating with the main classified heading of Air Conditioning Contractors. At a date subsequent to the execution of the contract General, through its agent General Telephone Directory Company (Directory Company), changed the business name appearing on that contract to Meade's Air Comfort

Air Conditioning & Heating (Meade's Air Comfort), and changed the main classified heading to Air Conditioning Equipment and System-Repairing. As the result of the name change General removed from the contract two bold type listings under the name Meade's Air Comfort which, prior to the name change, appeared on the contract as alternate listings under the Heaters and Air Conditioning Contractors classifications.

Ad Visor, Inc. (Ad Visor) contends that these changes were made without Air Comfort's consent and constitute a violation of General's tariff Schedule Cal. PUC No. D-1, Original Sheet 17, Special Conditions 3b.

The complaint alleges that as the result of the aforementioned name change, Air Comfort did not receive its regular directory listing without additional charge (free listing) under its correct name. Instead, the listing appeared under the Meade's Air Comfort name in the classification Air Conditioning Equipment and Systems-Repairing.

The complaint also alleges that General violated its tariff Schedule Cal. PUC No. D-1, Sheet 19, Special Conditions 3h by refusing to furnish Air Comfort with proof copies of its two display advertisements that subsequently appeared in the 1972 Covina Directory.

Another allegation is that General erred in failing to establish rotary telephone service for Air Comfort when Air Comfort established foreign exchange service (FX) in July 1972 from General's Covina exchange to Air Comfort's San Dimas office located in General's Pomona exchange. As a result, when Air Comfort contacted General in May 1973 to install a second line of the rotary sequence, General was unable to provide such service, thereby compelling Air Comfort to change its telephone number.

It is further alleged that General's actions were done willfully, arbitrarily, and on a unilateral basis in violation of its

tariffs, and Sections 451 and 2106 of the Public Utilities Code.^{1/} In Exhibit C-3, a summary of the alleged violations, Ad Visor adds violations of Sections 453 and 532.^{2/}

Ad Visor alleged for the first time at the hearing that as a result of General's refusal to provide Air Comfort with proofs of its display advertisements, General erroneously published in Air Comfort's display ad under the Heaters classification (Exh. D-21) the line of copy "Serving All Pomona Valley" (Exh. C-1, pp. 2-3).

Ad Visor seeks reparations for Air Comfort in a total amount of \$3,501.56 as follows: \$119.80, the total minimum monthly charge for telephone service from August 1, 1972 to December 5, 1972; \$606.34, the total minimum monthly charge for telephone service from December 1972 to November 1973; \$39.42 installation charge for rotary service; and \$2,736.00^{3/} in advertising charges for the 1972 Covina directory advertising, plus interest on these amounts.

In its answer to the complaint General admitted that it changed Air Comfort's Covina application after it had been signed. Except for this specific admission, General denied all of the material allegations of the complaint. As affirmative defenses, General alleged (1) that the complaint failed to state a cause of action; and (2) that Air Comfort was negligent in applying for directory advertising using a business name other than that used by it at the time it requested General to establish foreign exchange service from General's Covina exchange. As a result of such negligence, and in accordance with General's established practices and procedures, General changed the business name and main classified heading appearing on Air Comfort's Covina directory application to conform to General's telephone service records.

^{1/} Section 451 provides that charges and service shall be just and reasonable; Section 2106 provides for damages for violations of law.

^{2/} Section 453 refers to discrimination and preferences; Section 532 prohibits charging rates different from filed tariffs.

^{3/} We will discuss this \$2,736.00 figure later.

Hearing was held before Administrative Law Judge Bernard A. Peeters at Los Angeles in May 1976.

The Issues

1. Whether General acted in accordance with its tariffs and established business practice and procedure when it changed Air Comfort's application for advertising in the 1972 Covina directory yellow pages?
2. Whether General's failure to provide Air Comfort with show proofs of its advertising in the 1972 Covina directory was justified?
3. Whether General committed an error by including a line of copy "Serving All Pomona Valley" in Air Comfort's display ad under the Heaters classification in the 1972 Covina directory yellow pages?
4. Whether General properly advised Air Comfort with respect to setting up rotary telephone service when it requested foreign exchange telephone service in connection with the Covina directory?
5. Whether General's interpretation of the phrase "minimum monthly charge for exchange service", contained in its tariff Schedule Cal. PUC No. D & R, Rule 26, paragraph C,^{3/} is reasonable?

4/ "LIMITATION OF LIABILITY"

A. Liability

1. The provisions of this rule do not apply to errors and omissions caused by willful misconduct, fraudulent conduct, or violations of laws.
2. In the event an error or omission is caused by the gross negligence of the Utility, the liability of the Utility shall be limited to and in no event exceed the sum of \$10,000.
3. Except as provided in Sections 1 and 2 of this rule, the liability of the Utility for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in any of the services or facilities furnished by the Utility (including exchange, toll, private line, supplemental equipment, directory and all other services) shall in no event exceed an amount equal to the pro rata

(Continued)

6. If it is found that General violated any of its tariffs or the law, what amount of reparations should be awarded to Air Comfort?

4/ (Continued)

charges to the customer for the period during which the services or facilities are affected by the mistake, omission, interruption, delay, error or defect, provided, however, that where any mistake, omission, interruption, delay, error or defect in any one service or facility affects or diminishes the value of any other service said liability shall include such diminution, but in no event shall the liability exceed the total amount of the charges to the customer for all services or facilities for the period affected by the mistake, omission, interruption, delay, error or defect."

* * *

"C. Credit Allowance - Directory

Subject to the provisions of Section A.3 of this rule the Utility shall allow, for errors or omissions in telephone directories, an amount within the following limits:

1. For listings in telephone directories furnished without additional charge, an amount not in excess of the minimum monthly charge to the customer for exchange service during the effective life of the directory in which the error or omission occurred.
2. For listings and lines of information in alphabetical telephone directories furnished at additional charge, as set forth in Schedule No. D-1 an amount not in excess of the charge for that listing during the effective life of the directory in which the error or omission occurred.
3. For listings, additional lines of information and advertisements in classified directories, in accordance with Schedule No. D-1 an amount based upon pro rata abatement of the charge in such degree as the error or omission affected the advertisement, listings or additional lines of information.
4. For listings in information records furnished without additional charge, an amount not in excess of the minimum monthly charge to the customer for exchange service during the period the error or omission continued.

(Continued)

Ad Visor presented three witnesses and 26 exhibits in support of its case. Phil Meade (Meade), owner of Air Comfort, testified in regard to his contacts with the Directory Company salesman and the telephone company business office personnel (Exh. C-1); Fred Krinsky, executive vice president of Ad Visor, testified in regard to the alleged violations of General's tariffs, practices, and the law (Exh. C-2); and Jack Krinsky, president of Ad Visor, testified, in rebuttal, in regard to his interpretation of the phrase "minimum monthly charge for exchange service" as used in General's Rule 26 (Footnote 3, supra).

General presented three witnesses and 23 exhibits in its direct case and one rebuttal witness. The Directory Company salesman, John F. Samson, testified in regard to his contacts with Meade (Exh. D-1); Maria Gilpin, customer service supervisor in General's Pomona Division, testified in regard to the business records establishing telephone service for Meade (Exh. D-7); Blanche Rivera, clerical supervisor - Production Department of Directory Company, testified in regard to the functions of the production department (Exh. D-19), and rebuttal witness, Charles L. Jackson, rates and tariffs administrator - Revenue Requirements Department of General, testified in regard to General's policy in applying the term "minimum monthly charge" for exchange service as used in Rule 26 (Exh. D-24).

4/ (Continued)

5. For listings in information records furnished at additional charge, an amount not in excess of the charge for the listing during the period the error or omission continued.
6. For listings in telephone directories furnished in connection with mobile telephone service, an amount not in excess of the guarantee and fixed charges for the service during the effective life of the directory in which the error or omission occurred." (Exh. D-20; Exh. C-2-D.)

The Evidence

The evidence shows that Meade signed a contract and related copy sheets with General on September 13, 1972 for advertising in the 1972 Covina directory yellow pages for telephone number 966-0017 under the business name of Air Comfort Air Conditioning & Heating as shown below:

Table 1

<u>Type of Ad</u>	<u>Classification</u>	<u>Publ. on Page</u>
2½ col.	Air Conditioning Contractors	12
Bold Type	Air Conditioning Contractors	17
2½ col.	Heaters	289
Bold Type	Heaters	290
ABT*	White pages	530
BT(AL)**	Air Conditioning Contractors	
BT(AL)	Heaters	

* Alpha bold type.

** Alternate listing under name of Meade's Air Comfort Air Conditioning & Heating.

The bold type ads which were published appeared under the name Meade's Air Comfort; the display ads (2½ col.) were published as ordered except for the allegation that the display ad under the Heaters classification contained the line of copy "Serving All Pomona Valley" which had been ordered taken out. The alternate listing bold type ads were canceled, and the business name Air Comfort was changed to Meade's Air Comfort by the Directory Company. Air Comfort had previously used the name Meade's Air Comfort as an alternate listing in General's 1972 Pomona directory published in May (Exh. D-2).

General's sales representative admitted that he did not properly check to see if the business name and phone number on the application agreed with the business office records for telephone service in accordance with established procedure (RT 230).

In accordance with Directory Company's procedures then in effect, a copy of the completed application was not left with Meade. Instead, a letter was left with him stating that a confirming copy would be mailed after it has been checked for accuracy. Such confirming copy was mailed to Meade, which he admitted receiving (RT 78), and he also received a second letter to which was attached a copy of his application with the changes on it, including a reduced amount for the advertising (RT 79).

Meade's Covina application was worked in the Directory Company's production department on October 16, 1972. This department's responsibility is to compare the information on the telephone company's service orders with the information on the directory company's advertising applications to see if the listings on the two documents agree with each other. Under General's tariffs, all yellow page listings must conform to the listings in the alphabetical section of the directory (Exh. C-2-D, Para. 3.a; Exh. D-19, p.2). If a discrepancy is detected between the business name and main classified heading listed on General's latest service order and the directory advertising application, the production department must take action to resolve the conflict. If the discrepancy is discovered before the close of the directory to advertising, the department would first contact General's business office to see if updated service order information would be forthcoming which would eliminate the discrepancy. If the business office had no such additional information, the service order information would be transmitted to the appropriate Directory Company sales division to recontact the customer, if possible. If the discrepancy was discovered after the close of the directory to further advertising,

but before the final service order date (the cut off date after which General cannot accept any service changes from the subscriber), the same procedure would be followed. If, however, the discrepancy was uncovered after the final service order close, the production department would simply contact the sales division to advise it that the application would be conformed to the service order and that production would make the correction.

In the instant case the application was not received by the production department until October 3, 1972, and was worked on October 16, 1972, after the final service order date of October 12, 1972. Following the procedure described above the production department changed the name of the business on the advertising application, as well as the main classified heading, to conform to General's most current telephone service order information (Exh. D-19, pp. 6-7). In addition, the production department removed from the application the two bold type alternate listings under the name Meade's Air Comfort because that was the new primary listing and the classifications involved already had bold type listing under the Meade's Air Comfort name (Exh. D-19, pp. 6-7).

After the name and main classified heading were changed, a copy of the revised application was sent to Air Comfort to make it aware of the change in monthly billing (Exh. D-19, p. 7, Exh. C-2-C, and D-5). Meade admitted on cross-examination that he received the revised application (RT 78-79).

Meade testified and General's business records showed that on July 5, 1972, Meade personally contacted General's business office to establish FX service in General's Covina exchange so that potential customers calling his business in San Dimas from the Covina directory area would not have to pay a toll charge. General's customer representative prepared a service order (Exh. D-16) on

which she wrote the primary business name requested by Meade, Meade's Air Comfort Air Conditioning & Heating. She also wrote down as its heading Air Conditioning Equipment & Systems-Repairing (Exh. D-16, p. 3).

Meade testified on direct examination that when he called General in the summer of 1972 to establish FX service in the Covina directory area, he gave the name Air Comfort as his primary business listing rather than Meade's Air Comfort, and that he requested three telephone lines, with one to be installed in December when the Covina directory was published, and the other two sometime in May or June of 1973 (Exh. D-1). He further stated that General's representative indicated such an arrangement would be acceptable (RT 38, 43, 45, 46). However, on cross-examination, it was evident that Meade's recollection of what he told General's employee was far from certain. Since, as we will explain, our conclusions in this proceeding do not turn on the business name employed by Meade in the July 1972 service request, we need not do more than note that the evidence on this issue was inconclusive.

Meade also testified that at the time of the sales call of September 13, 1972, he requested proof copies of his two Covina display advertisements. One such advertisement appeared under the classification Heaters (Exh. D-21). The other appeared under the classification Air Conditioning Contractors (Exh. D-22, C-1, p. 3). On cross-examination, however, it was evident, and Meade admitted, that his recollection regarding his request for show proofs is open to question. He testified that he may not have requested show proofs at the time of the sales call after all, but instead, may have requested them several weeks later (RT 54-55).

General's witness Samson testified that he had no present recollection of a request by Meade for show proofs either during the September 13 sales call or at any later date (Exh. D-1, p. 13; RT 180). However, if Meade had requested show proofs a month after the sales call, Meade would have been told that they could not be provided since it would have been too late to make any further changes in the advertisements (RT 180). The copy sheets prepared by Samson during the sales call contain no indication that show proofs had been requested (Exh. D-6). If show proofs had been requested, the box labeled "S.P." in the upper left-hand corner of the copy sheet would have been checked (Exh. D-1, p. 9; RT pp. 179-180). Neither copy sheet for Air Comfort's Covina display advertisements is so marked (Exh. C-2-G, Exh. D-6).

A further indication that show proofs were not requested at the September 13, 1972 meeting is the fact that during the previous meeting between Samson and Meade in February 1972, regarding Air Comfort's 1972 Pomona directory advertising, Meade requested and Samson provided show proofs (Exh. D-1, pp. 9-10; RT 25-26). Based on the salesman's conduct at this earlier meeting, and that there is a specific box to check when show proofs are requested, it is reasonable to conclude that Samson would have complied with a similar request if it had been made at the September meeting.

With respect to the allegation that General did not remove the line of copy "Serving All Pomona Valley" from one display ad, both Meade and Samson testified that during the September 13, 1972 meeting they reviewed the text of Meade's display ads that were to appear in the 1972 Covina directory. Changes were made in the text of both ads, including the deletion of certain information. After Samson had made the changes requested by Meade on the copy sheets, Meade reviewed the changes and indicated his approval by signing the copy sheets (RT 55-56, 258-261). An examination of the copy sheet for the Heaters display advertisement (Exh. D-6, p. 3) clearly shows that the line of copy "Serving All Pomona Valley" was not deleted and that Meade signed the copy sheet with this line of copy still appearing in the advertisement.

With respect to Meade's request for rotary service on his FX number the record shows that the FX number assigned to Air Comfort (966-0017) at the time of the request was not part of a number group assigned for rotary service. General has had a policy for many years that requires subscribers to rotary service to install at least the first two lines of the rotary sequence at the time when the service is installed (Exh. D-7, p. 12; RT 274-277). General's business records prepared in the regular and ordinary course of business at the time the request for FX service was made do not indicate that Meade requested rotary service. Prior to July, 1972, Meade had obtained rotary telephone service for Air Comfort in General's Pomona exchange (Exh. D-7, p. 5; RT 47).

The evidence does not support the allegation that Meade requested General to delay installation of the Covina FX service until publication of the Covina directory. General's business records do not indicate that Meade requested that installation be delayed until publication of the Covina directory. General had previously agreed to advance Air Comfort's Pomona number to the effective date of that directory (Exh. D-7, p. 4). Meade's memory of events at this time was hazy, and he was confused with respect to his notes presumably made on this matter (Exh. C-1-A).

Ad Visor contends that the phrase "minimum monthly charge for exchange service" used in Rule 26 is the monthly service rate shown on the customer's bill (RT 356, Exh. C-6). To support its position Ad Visor relies upon two Commission decisions: In re Limitation of Liability of Telephone Corps. (1970) 71 CPUC 229 and Ad Visor, Inc. (Bob Downey) vs. General Telephone Co. (1968) D.74892, C.8809.

General believes that the correct interpretation of the tariff section was that expressed by Witness Jackson. Jackson testified that the minimum monthly charge for exchange service consists of "the initial equipment necessary to provide a means of communication..." (Exh. D-24, p. 3). It does not include the charges for peripheral equipment such as "extension telephones, long cords, keys, gongs, buzzers, the attendant cabinet located on a switchboard installation, etc. ..." (Exh. D-24, pp. 3-4). If the customer is able to show that some exchange service not included in the minimum service was affected by a free listing error, Jackson agreed that an adjustment could be made therefor since subparagraph C.1 of Rule 26^{5/} is specifically made subject to paragraph A.3, which authorizes adjustment when an error or omission in one service affects another service.

Jackson testified that the charges for exchange service which Meade had during the time period involved here prior to June 1, 1973 were as follows:

One-party business line	\$20.00	per month
Mileage charge	6.40	" "
Line appearance	.75	" "
Line equipment	3.30	" "
	<u>\$30.45</u>	

and that the minimum monthly charge for telephone exchange service during this period would be the sum of the charges for the business line and mileage charges, or \$26.40 per month.

^{5/} See Footnote 4, supra.

Subsequent to June 1, 1973, the following charges for Meade's exchange service applied:

2 one-party business lines @ \$21.00	\$42.00
Mileage charge - 2 lines @ \$6.40	12.80
1 extension	n/c
Line equipment	6.60
4 key appearances @ 75¢	3.00
2 alternate listings, alpha	1.50
	<u>\$65.90</u>

of which the minimum monthly charge for exchange telephone service would be the sum of the charges for the lines and mileage, or \$52.80 [sic] (RT 334-337). Jackson admitted that it was an error that there was no charge for the extension.

While under cross-examination, Jackson was shown invoices for telephone service on number 966-0017 for Meade's Air Comfort covering the months of February, March, and April 1973. He was asked to explain why the monthly service rate billed was \$39.45 during that time period. He was unable to explain the difference. Exhibit C-6 was introduced (a phone bill for service on number 966-0017 for Meade's Air Comfort dated October 23, 1972) which shows a monthly service rate of \$29.95. When asked what the subscriber's monthly minimum service charge would be for this bill, Jackson stated it would be \$2.95, [sic] (\$29.95) whether the phone was used or not. He also admitted that a subscriber would only be aware of the rate shown on the bill as his minimum monthly service charge (RT 338-340). Jackson further admitted that tariff Schedule Cal. PUC No. D-1, Original Sheet 17 (Exh. C-2-D) requires that the application for directory advertising show the month and year of the first issue in which the advertising is to appear, but that the printed form implementing this requirement does not provide a place for this information to appear. He further admitted that the Directory Company's practice which states: "The use of show proofs is discouraged and is to be limited to those advertisers that have had errors in the previous issue or those subscribers demanding they have one" (Exh. C-2-F) does not conform to the tariff requirement that an

advertiser will be given a show proof copy of his advertising if he requests it (Exh. C-2-E).

The evidence presented with regard to Meade's claim for reparations was meager, inconclusive, and mostly relevant to Meade's damages rather than the diminished value of his advertising.^{6/} Meade testified that he relies almost exclusively on yellow page advertising, but that he also gets referral and repeat business. He stated that he did not get the calls he expected from the Covina area because his advertising showed up under Meade's Air Comfort rather than Air Comfort; and that he had several people tell him that they were unable to find him during the year 1973 and therefore he got very few jobs in the Covina area in 1973. He had to repaint his trucks with a new telephone number and change all his stationery after he had his rotary service installed in May of 1973, and the 966-0017 FX number was changed. He stated that "If I ever decided to sell my business, it would not be worth anything to the new owner as 'Meade's' but, 'Air Comfort' would have a value as a well-known business name in our field in the Covina and Pomona areas. By not having our name in there that year, the goodwill and reputation of the firm was set back also."

^{6/} As we recently stated in Ad Visor (Dilday Bros. et al.) v. General Telephone Decision No. 88120 (November 22, 1977) at mimeo pp. 3-4, the Commission may not compensate for damages arising out of an error or omission in the publication of a telephone directory. Nor may the Commission require the proof of such damages as a prerequisite to an award of reparation based on the diminished value of the advertising. Ad Visor (Nowlin Fence and Garage Door Company) v. General Telephone Co. Decision No. 88190 (December 6, 1977) mimeo at p. 8.

Cross-examination brought out that Meade continued to advertise under both names, Meade's Air Comfort and Air Comfort, in the 1973 Pomona and Covina directories; that he had no documents or statistics to show the extent of his injury from the name change, but felt that he should have received more business out of the Covina area than he did; that he performed 242 services and 17 installation jobs in Covina during the 1972 Covina directory period; that he received no work in this area prior to the publication of the 1972 Covina directory; that he received calls other than those involving the jobs he performed; that the average revenue from a service call is \$30 or \$40, and an installation job is \$1,800. When he called to have the second line installed on his rotary service in May 1973, he was already getting sufficient business calls to warrant putting in the second line to avoid losing calls. He stated that he was having problems with the referral service on 966-0017 after the rotary lines were put in on numbers 966-8375 and 966-8376, and considered filing a complaint with the Commission but did not.

Discussion

Was the name and classification change on Meade's advertising application done in accordance with General's tariffs, practices, and procedures? We are of the opinion that the answer is no. We note that but for the failure of the salesman to properly verify the business name and classification on the application with the telephone company's service order record, the circumstances giving rise to this

complaint would undoubtedly have been avoided.^{7/}

General argues that it had no choice but to conform the application to its service order record in order to comply with its tariffs. Compliance with that tariff requirement, however, does not excuse the negligence of the directory company salesman, which negligence resulted in the tariff provisions being applied to deny Meade the directory listings that he ordered. It would be absurd to require Meade to be aware of the tariff requirements. Regardless of what business name Meade used in the July 1972 service request, when Meade placed his order for directory advertising he rightfully assumed that the salesman would take the necessary steps to see that his listings were included in the Covina directory as ordered in September. The directory company's salesman simply failed to take those steps.

7/ The directory advertising salesman noted on the contract for 1972 Covina advertising (Exhibit C-2A) that he had verified Meade's phone number and address by calling information for Meade's alphabetized, "alpha," white page listing (RT 229). However, at the hearing he testified that his notation indicating that verification procedure was inaccurate. (RT 230). At RT 230-231 the following exchange appears:

Q. So then, your per Alpha is not actually correct there? You didn't actually check out that name, address, and phone number properly in that case, did you, Mr. Samson?

A. No.

Q. If you had checked directly in the Covina alpha in September, 1972, could you have instituted procedures to insure that the name Air Comfort would be listed as Mr. Meade's actual primary name in the '72 Covina directory as he had requested you to do?

A. Yes.

The complaint alleges that Meade requested show proofs of his display ads and General refused to provide him with such documents. Again, we are convinced that General's business records are more reliable in ascertaining the truth of the matter rather than Meade's memory.

With respect to the alleged error of General in publishing a line of copy "Serving All Pomona Valley" in the display ad under the Heaters classification in the 1972 Covina directory yellow pages, the copy sheet (Exh. D-6, p. 3) does not show that this line of copy was to be deleted, but does show that Meade signed the copy sheet with the line of copy in the ad.

Did General properly advise Air Comfort with respect to rotary telephone service when FX service was requested in connection with the Covina directory?

We are of the opinion that the weight of the evidence supports a finding that General acted properly at the time under the circumstances. Meade's admitted faulty recollection of other conversations he had with employees of the Directory Company in 1972 mitigates against his claim that he requested the establishment of rotary service at the time he requested FX service in the Covina exchange, and that he requested General to delay the in-service date until the publication of the Covina directory in December.

We are thus left with the failure of the salesman to properly verify Meade's business name and main classification. We must determine the appropriate amount of reparations to compensate Meade for the

diminished value of the advertising service^{8/} provided by General.

Advertising Charges

In determining the proper award of reparations, we are faced with a threshold dilemma created by the record. The complaint seeks, inter alia, reparations in the amount of all monies paid to General for advertising in the 1972 Covina directory. Ad Visor, in Exhibit C-2, states that that amount is \$2,736. However, Exhibit C-2-C, the contract for the subject directory advertising, indicates a monthly charge of \$238 which would suggest that Air Comfort's total advertising cost for the 1972 Covina directory was \$2,856 ($\238×12). This suggestion is buttressed by the fact that the \$2,856 figure is cited by Ad Visor in a letter to General (Exhibit C-2-K). It appears that the \$2,736 figure that appears in the prepared testimony of Fred Krinsky (Exhibit C-2) is based on the charges for the two display ads only ($\$114 \times 2 \times 12$). No breakdown of the total advertising charges paid for the 1972 Covina directory was provided by either party.

Fairness to the defendant requires that we adopt the \$2,736 figure for purposes of determining the appropriate award of reparations in this proceeding. The inconsistency in the complainant's exhibits should not be resolved to the detriment of the defendant. We note that the \$2,736, which we will determine to be the amount paid for the two display ads, represents 96% of the \$2,856 suggested by Exhibits C-2-C and C-2-K. ✓

^{8/} See footnote No. 6. ✓

General published Meade's display ads as ordered. However, the bold type anchor listings (alphabetical listings that refer the customer to the subscriber's display ad at a certain page) were not listed as Air Comfort Air Conditioning and Heating, as requested by Meade. Rather, they were listed as Meade's Air Comfort Air Conditioning and Heating. As a result, any potential customer looking for Air Comfort's ad could not be referred to it through an anchor listing under the name under which Meade was doing business, Air Comfort Air Conditioning and Heating. Further, the change from Air Comfort Air Conditioning and Heating to Meade's Air Comfort Air Conditioning and Heating moved the anchor listings from the A's at the front of the classification to the M's near the middle.

While the anchor listing for a display ad contributes to the effectiveness of that ad, quantifying the extent of that contribution is difficult. If one assumes that many customers look only at display ads themselves, a position that Ad Visor has asserted in prior proceedings before this Commission^{9/} then the importance of an anchor listing is minimal. If many customers look to the alphabetical listings first and then are referred from a particular listing there to a display ad, the anchor listing assumes a greater importance. Ad Visor adopted the latter position in this proceeding and contended that such a position is not inconsistent with prior positions it has taken with regard to directory user behavior (RT 142-152). While we cannot quantify the exact percentage of

9/ Ad Visor (Nowlin Fence and Garage Door Company) v. General Telephone Co. of California, C. 9861, Decision No. 88190 (December 6, 1977), mimeo p. 11.

customers that fall into either category, or some other, we are not persuaded that the value of a display ad is as dependent on the anchor listing as is asserted by Ad Visor. In the Nowlin case^{10/} we awarded the complainant 40% of his charge for display ads based on General's misclassification of a competitor's ad which resulted in a partial negation of the complainant's senior page position. We regard the diminution in the value of the display ad in that case to be more severe than that which has been established in this proceeding. We conclude that Meade is entitled to reparations in the amount of 30% of the charges for the two display ads.

We are not persuaded that the shift of the anchor listing from the A's to the M's is of significance. Ad Visor's case for the value of the anchor listing was predicated to a large extent on the assumption that the potential customer already knew the name of the company for which he was looking (hence the reduction in the value of the display ad when that name did not appear). If such is the case, the alphabetical position of that listing should be of no consequence.

Telephone Service Charges

General also changed the "free listing" or, more properly, the listing without additional charge to which Meade was entitled from Air Comfort Air Conditioning and Heating to Meade's Air Comfort Air Conditioning and Heating. Thus, Meade did not receive the

^{10/} Ibid, mimeo p. 12.

listing without charge to which he was entitled and is due reparations for the diminished value of his telephone service.

In determining the proper amount of reparations, we will follow our recent Dilday Brothers decision^{11/} which held, inter alia, that the amount referred to in General's Rule 26 as the "minimum monthly charge for exchange service" is the actual monthly service charge to the customer rather than the minimum monthly charge that any customer must pay to obtain service.^{12/} We also held that our determination of the diminution of value resulting from the omission should not be made with regard to the cost of advertising.^{13/} Finally, and most significantly, we noted that Rule 26 provides us with little or no guidance in determining the proper award of reparations.^{14/} We stated there, and optimistically repeat here, our desire to modify our directory advertising rules, a desire that has spawned OII No. 5 issued November 22, 1977.

Here Meade was given a listing without charge in the yellow pages but not under the name he ordered, the name under which he was

^{11/} Our most recent discussion of reparations for omitted listings is contained in Ad Visor (Dilday Brothers) v. General Telephone, Case No. 9800, Decision No. 88120.

^{12/} Ibid, mimeo p. 5a.

^{13/} Ibid, mimeo p. 4-4a.

^{14/} Ibid, mimeo p. 5.

doing business. After an evaluation of the record and with the same dissatisfaction with the present rules that we have expressed in other proceedings, we conclude that the omission of the proper listing without charge resulted in a 20% diminution of Meade's telephone service. He is, therefore, entitled to reparations in the amount of 20% of his minimum monthly charge during the period covered by the 1972 Covina directory.

The last item that requires attention is Ad Visor's request that we impose \$8,000 in penalties on General for willful misconduct and gross negligence. As there has been no showing of willful misconduct or gross negligence we need not pursue this issue.

Findings of Fact

1. On July 5, 1972 Phil Meade, owner of Air Comfort, requested General to establish single line business FX service from General's Covina exchange to be terminated at Air Comfort's business location in San Dimas in General's Pomona exchange in order to permit potential customers in the Covina exchange to call the San Dimas location without additional charge.

2. Air Comfort requested the service to be established under the name Meade's Air Comfort Air Conditioning & Heating with Air Conditioning Equipment & Systems-Repairing as its main classified heading under which its free yellow pages listing should appear.

3. Air Comfort had previously established the name Meade's Air Comfort Air Conditioning & Heating as an alternate listing in General's Pomona directory area. The heading Air Conditioning

Equipment and Systems-Repairing was also Air Comfort's main classified heading in the Pomona directory area.

4. On September 13, 1972 Air Comfort contracted with General for advertising in General's 1972 Covina directory. Prior to the publication of this directory in December 1972, Air Comfort had not engaged in any advertising in the Covina area.

5. On the Covina directory application, the Directory Company's sales representative wrote the name Air Comfort Air Conditioning & Heating as Air Comfort's primary business listing, and the name Meade's Air Comfort Air Conditioning & Heating as an alternate listing. Air Conditioning Contractors was listed as Air Comfort's main classified heading.

6. The 1972 Covina application was completely filled in by the Directory Company's sales representative and then signed by Phil Meade. Pursuant to General's policy then in effect, a copy of the completed application was not left with the customer. Instead he was left with a memorandum stating that after the contract had been reviewed for accuracy, a confirming copy would be sent to him. In accordance with this procedure, a confirming copy of the contract was sent to Air Comfort on October 2, 1972.

7. At the September 13, 1972 meeting Phil Meade also signed copy sheets for two quarter page display advertisements that were to appear under the Heaters and Air Conditioning Contractors classifications. These display advertisements were published exactly as they appeared on the signed copy sheets.

8. The evidence does not support Air Comfort's allegation that it requested proof copies of its 1972 Covina display advertisements

during the September 13, 1972 sales call.

9. The Directory Company's representative did not properly verify the business name and main classification on the advertising application with the telephone company's business office latest service order for Meade, which showed the business name as Meade's Air Comfort at the time.

10. General's tariffs require that the primary business name and main classified heading shown on the application for directory advertising agree with the information shown on General's service records.

11. As a result of the failure of General's salesman to properly verify the business name and classification, when Air Comfort's 1972 Covina application was processed, the publishing department found a discrepancy between the customer's business name under which the service appeared on company records and main classified heading appearing on the application. In accordance with General's standard practice and procedure, the publishing department properly corrected the listings on the application to agree with the telephone service records. The business name on the application was changed from Air Comfort Air Conditioning & Heating to Meade's Air Comfort Air Conditioning & Heating. The main classified heading was changed from Air Conditioning Contractors to Air Conditioning Equipment and Systems-Repairing.

12. At the time Air Comfort's 1972 Covina application was processed, no further changes could be made in the listings appearing on telephone service records. If any discrepancy was found between

General's service records and the advertising application, General was required to correct the application to agree with the service records.

13. Because of the required change in the customer's business name, two alternate bold type listings under the name Meade's Air Comfort Air Conditioning & Heating were eliminated from the application since they had become superfluous.

14. As a result of the removal of the two bold type listings, the total cost of Air Comfort's Covina advertising program was reduced. Therefore, the Directory Company sent, and Air Comfort received, a revised application showing the changes that had been made. This was also in accordance with General's standard procedures then in effect.

15. General's 1972 Covina directory was published in December 1972. Except for the elimination of two bold type listings under the Heaters and Air Conditioning Contractors classifications, all of the advertising shown on the 1972 Covina application was published as ordered.

16. Air Comfort received a listing without additional charge, "free listing," in the 1972 Covina directory under the name Meade's Air Comfort Air Conditioning & Heating rather than the name Air Comfort Air Conditioning & Heating, the name under which Air Comfort was doing business.

17. The omission of the proper listing diminished the value of Air Comfort's telephone service by 20%.

18. On May 3, 1973 Air Comfort contacted General to establish

rotary service on its Covina FX telephone service. Because Air Comfort had not requested rotary service when its Covina FX service was initially installed, Air Comfort had to have its telephone number changed. General agreed to and did place Air Comfort's old Covina FX number on referral to its new rotary number for the life of the 1972 Covina directory. The new rotary service became effective on June 1, 1973.

19. Although Phil Meade testified that he had trouble with the aforementioned referral service in the form of slow operator response time to calls on the old number, these problems were less serious than Meade indicated.

20. During the period covered by the 1972 Covina directory, Meade spent \$2,736 for two display ads anchored to bold type listings under the Heaters and Air Conditioning Contractors classifications.

21. As a result of the change in the business name on Air Comfort's application, referred to in Finding No. 11, and the deletion of the bold type listings, referred to in Finding No. 13, Air Comfort's display ads were not anchored to a listing under the name Air Comfort Air Conditioning & Heating as ordered.

22. General's failure to properly anchor the display ads, described in Finding No. 21, resulted in a 30% diminution in the value of the display ads.

23. The minimum monthly charge as used in Rule 26 refers to the amount shown on a subscriber's monthly bill under the heading Monthly Service Rate.

24. During the period covered by the 1972 Covina directory, Air

Comfort paid \$606.35 in minimum monthly charges.

25. Based on Findings Nos. 17 and 24, Air Comfort is entitled to \$121.27 in reparations for the diminished value of the telephone service provided by General during the period covered by the 1972 Covina directory.

26. Based on Findings Nos. 20 and 22, Air Comfort is entitled to \$820.80 in reparations for the diminished value of the display ads published by General in the 1972 Covina directory.

27. General's Application For Directory Advertising form does not provide a space to show the month and year of the first issue of the directory as required by tariff Schedule Cal. PUC No. D-1, Original Sheet 17, and should be modified accordingly.

28. General's Western Region Sales Information instructions pertaining to the discouragement of providing show proofs does not comport with its tariff requirement and should be changed.

Conclusions of Law

1. General did not violate its tariffs when it changed the name and main classified heading on Air Comfort's 1972 Covina directory application to agree with its telephone service records.

2. General did not err when it established business FX service in July of 1972 for Air Comfort from General's Covina exchange to Air Comfort's San Dimas location in General's Pomona exchange.

3. General's salesman did err when he failed to properly verify the business name and main classification on the application for advertising in the 1972 Covina directory with the telephone company's service order records.

4. General's salesman's error resulted in the errors in the publication of Air Comfort's directory listings and advertising described in Findings Nos. 13, 15, 16 and 21.

5. Air Comfort is entitled to reparations in the amount of \$942.07.

O R D E R

IT IS ORDERED that:

1. General Telephone Company of California shall pay reparations to Phil Meade, doing business as Air Comfort Air Conditioning & Heating, in the amount of \$942.07 plus interest at 7 percent per annum from July 1973.

2. General Telephone Company of California shall use the amount shown under Monthly Service Charge on the subscriber's monthly bill when making adjustments under Rule 26.

3. General Telephone Company of California shall correct the instructions regarding show proofs in its Western Region Sales Information to conform to the letter and spirit of its tariff schedule.

4. General Telephone Company of California shall correct its Application For Directory Advertising form to provide for the information of the month and year of first directory issue thereon as required by its tariff Schedule Cal. PUC No. D-1.

5. In all other respects the complaint is denied.

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

Dated at San Francisco, California, this 7th day of FEBRUARY, 1978.

I dissent.
William Symons, Jr.

Robert Batimish
President

Vernon L. Sturgeon
Richard D. Gualle
Clair J. [unclear]
Commissioners