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Decision No. 88993 JUN 27 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AD VISOR, INC., a California corporation, authorized exclusive agent for: INLAND EMPIRE SEPTIC & ROOTER, JOE L. FERNANDEZ, GODDARD'S SERVICE AND CLINT'S SEPTIC TANK SERVICE, Complainants, vs. PACIFIC TELEPHONE AND TELEGRAPH COMPANY OF CALIFORNIA, Defendant.	Case No. 9824 (Filed November 15, 1974)

Norin T. Grancell, a Professional Corporation, by Norin T. Grancell, Attorney at Law, for Ad Visor, Inc., authorized exclusive agent for Inland Empire Septic & Rooter, Joe L. Fernandez, Goddard's Service, and Clint's Septic Tank Service, complainants.
Norah S. Freitas and Michael J. Ritter, Attorneys at Law, for The Pacific Telephone and Telegraph Company, defendant.

O P I N I O N

Ad Visor, Inc. (Ad Visor) brings this complaint on behalf of its clients Inland Empire Septic & Rooter, Joe L. Fernandez, Goddard's Service, and Clint's Septic Tank Service (complainants), as their authorized exclusive agent.

It is alleged that defendant The Pacific Telephone and Telegraph Company (Pacific) violated its multiple display standard by accepting and publishing certain advertising for Aerojet Septic and Rooter (Aerojet) and California Septic Tank & Sewer Company

(California) under the classification "Septic Tanks" in the April 1973 and April 1974 Colton directory yellow pages. The Colton directory serves the communities of Bloomington, Colton, Fontana, Highland, and Rialto.

It is also alleged that Pacific violated its headings standard in publishing advertisements for Aerojet and California under the classification "Second Hand Dealers" in the April 1973 Colton directory yellow pages, and its trademark standard by publishing an in-column trademark ad for All-California Septic Tank & Sewer Company (All-California) in the 1973 and 1974 Colton directory yellow pages.

It is further alleged that Pacific is continuing the publication of the complained-of ads.

Ad Visor seeks the following relief: that Pacific be enjoined from continuing the conduct complained of; that Pacific be ordered to administer its standards equally for all subscribers; that Pacific be ordered to refund any monies collected from complainants, with interest; and that Pacific be ordered to not collect any future monies from complainants on the existing contract. It is also requested that Pacific be found to have violated its multiple display and headings advertising standards, and in doing so is guilty of gross negligence, and willful misconduct.

Ad Visor seeks reparations for its clients in the following amounts:

Complainant	Adv. Year	Advertising Charges	Telephone Charges
Clint's Septic Tank Service	1973	$ 918.00	$ 512.10
	1974	740.00	1,024.20
		$1,658.00	$1,536.30
Joe L. Fernandez	1973	$ 573.00	$1,351.20
	1974	604.80	1,351.20
		$1,177.80	$2,702.40
Inland Empire Septic & Rooter	1973	$2,163.00	Amt. billed
	1974	1,015.80	less MMU &
		$3,178.80	toll chrgs.
Goddard's Service	1973	$ 849.00	Amt. billed
	1974	576.60	less MMU &
		$1,425.60	toll chrgs.

Pacific admits that it published display ads for California and Aerojet under the classification "Septic Tanks" in its April 1973 and 1974 Colton directory yellow pages. It denies that those ads violate any provision of law or any order or decision of this Commission or any tariff rule or directory advertising standard of Pacific. It further denies that their publication involved the unreasonable or discriminatory application of Pacific's tariffs or directory advertising standards.

Three affirmative defenses are asserted: (1) The Commission has no jurisdiction to decide whether the alleged errors resulted from gross negligence; (2) complainants have not alleged sufficient facts to state a cause of action; and (3) the complaint is defective in that it does not comply with Rule 10 of the Commission's Rules of Practice and Procedure.

Four days of hearings were held beginning on February 3, 1976. The matter was submitted on February 18, 1976 subject to the filing of concurrent written briefs. The briefs have been timely filed and the matter is ready for decision.

The Issues

Questions of both law and fact are involved here. Ad Visor contends that the issues are: (1) Did Pacific violate its multiple display, headings, and trademarks advertising standards? (2) Do these violations constitute discrimination? (3) Were complainants injured by the unfair competition resulting from the unlawful ads? and (4) Does Pacific take into account prior Commission decisions to resolve complaints?

Pacific, on the other hand, contends that the principal issue is whether it acted reasonably in accepting and publishing the ads at issue. A secondary issue advanced is: To what standard of care is a directory salesperson to be held in accepting advertising orders?

The material issues are:

1. Did California and Aerojet conduct business at two separate addresses?

2. If the answer to the first issue is no, then did Pacific have reasonable cause to believe that business was conducted at two separate addresses?

3. If the answer to the second issue is no, then what law, tariff, or advertising standards were violated by the publication of the ads for California and Aerojet?

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

Motions

Pacific made a motion during the course of the hearing that the complaint be dismissed. The basis for the motion was that the complaint involved an assignment of a reparations claim in violation of Section 734 of the Public Utilities Code.[1/] Pacific withdrew the motion after the examiner pointed out that it did not comply with Rule 56 of the Commission's Rules of Practice and Procedure.[2/] Pacific now renews this motion on brief.

We have previously denied this particular motion several times.[3/] Our reasons were set forth in detail in the prior decisions. We will not repeat them here. Pacific's motion will be denied.

The Facts

The following facts are uncontested:

Pacific did publish one each double half-column (D-½) display ad for California and Aerojet in the yellow pages of the 1973 and 1974 Colton directories under the classification heading

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

2/ "56. (Rule 56) Motion to Dismiss. A motion to dismiss (other than a motion based upon a lack of jurisdiction) any proceeding before this Commission, which is based upon the pleadings or any matter occurring before the first day of hearing may only be made upon five days' written notice thereof duly filed and served upon all parties to the proceeding and all other parties upon whom service of copies of the pleadings are therein shown to have been made."

3/ C.9800, D.85334 dated 1/13/76; C.9833, D.87240 dated 4/26/77, rehearing denied, D.87597; C.9834, D.87239 dated 4/26/77, rehearing denied, D.87596; and C.9861, D.88190 dated 12/6/77.

"Septic Tanks". It also published a D-½ display ad for California and Aerojet under the classified heading "Second Hand Dealers" in the 1973 Colton directory yellow pages.

Pacific also published a D-½ display advertisement in its 1973 and 1974 Colton directory yellow pages for Inland Empire Septic & Rooter, Goddard's Service, and Clint's Septic Tank Service, and a quarter column display ad for Joe L. Fernandez under the "Septic Tanks" heading.

Pacific canceled the display advertising under "Second Hand Dealers" of California and Aerojet for its 1974 Colton directory.

In-column trademark advertising was published for All-California under the heading "Septic Tanks" in the 1973 and 1974 Colton directory yellow pages.

California and Aerojet are both owned and operated by Richard Mixon.

Shortly after the publication of the 1973 Colton directory, complaints were received by Pacific from Ad Visor and other septic tank operators.

During the course of the hearings, the parties entered into the following stipulations:

> "Pacific stipulates that it violated its heading standard in publishing two double half-column ads, one each for California Septic and Sewer Company and Aerojet Septic Tank and Rooter under the heading 'Second Hand Dealers' in the 1973 Colton directory."4/
>
> "That the business service application for the telephone number 822-4143, which was a listing for Aerojet Septic Tank and Rooter Service, that that application shows that the service terminated in an answering service with an address other than the address listed for Aerojet in Fontana."5/

4/ RT, page 14.

5/ RT, page 118.

"On the copy sheets for the California and Aerojet ads for the 1973 Colton directory, the sales manager's initials appear but those of the district sales manager do not. And for the 1974 Colton, for California and Aerojet the district sales manager's initials do not appear."6/

Discussion

Issue 1. Did California and Aerojet conduct business at separate locations? The answer is no.

Pacific made no effort to determine whether business was actually being conducted at 14792 Iris Drive, Fontana, other than to accept Mr. Mixon's word that he would conduct business at this address. The salesman, Mr. Barker, who handled this account, testified that he did not check out the address, but accepted the word of Mixon. Although Pacific investigated this matter after Ad Visor and others had complained, the manager who did the investigation also relied upon Mixon's statements and did not check the Iris Drive address. He was told that Mixon's aunt and uncle resided there, were employed by Mixon, and managed the office there. The location provided housing and storage facilities for equipment and supplies used in the Fontana-Colton area operations. Also customers mailed payments and other correspondence to the Fontana address (Exh. D-3-B).

On the other hand, complainants testified that they drove by the address and saw no evidence of equipment and supplies being stored there; that a neighbor was contacted who stated that they never noticed any commercial activity; that a phone call to the number listed in Aerojet's ad reached California and the party answering had no knowledge of the Fontana operation and said that any business to be transacted would have to be done at California's Mentone address. An associate of Ad Visor made a visit to the premises (Exh. C-6-H) and found no evidence of business activity. He checked the street address directory and found that the telephone

6/ RT, page 222.

number for that address was 823-3592, not 822-4143 as shown in the Aerojet ad. It was also determined that this latter number terminated in an answering service located at a different address. Exhibit C-6-H is a copy of the 1974 Redlands directory white pages. This exhibit shows that California and Aerojet are both located at 1711 E. Colton Avenue, Mentone.

Issue 2. Did Pacific have reasonable cause to believe that Mixon was conducting his business at two separate addresses and was therefore eligible for a second D-½ display ad? The answer is no.

The circumstances surrounding the placing of Mixon's initial advertising in the 1973 directory indicate that Pacific did not implement its standards relating to multiple display advertising nor its heading and trademark standards. Initially Barker contacted Mixon in November of 1972 to renew a D-½ display ad and a bold type listing. He also sold additional advertising for California (Exh. C-6-J) which included a custom trademark for All-California. The contract is dated December 2, 1972 and was accepted by Pacific on the same date according to the Exhibit. However, Barker testified that the contract was finally accepted on January 19, 1973. He also testified that only the following items were on the contract on December 2, 1972 when he had Mixon sign: a D-½ display ad for California; a bold type for California; a custom trademark for All-California, all under the "Septic Tanks" classification. The contract was returned to Barker three times for correction of errors. During this period Barker had further meetings with Mixon. Additional advertising was placed on the December 2 contract consisting of a D-½ display ad under the "Second Hand Dealers" classification. The December 2, 1972 contract was finally accepted in an amount of $129.25, having been increased from $71.50.

During the period the original contract was being corrected and changed, Barker worked up an advertising program for Aerojet which was signed and accepted on January 2, 1973 (Exh. C-6-J, page 1). This contract provided for a D-½ display ad and a bold type listing under the "Plumbing Contractors" classification, address omitted, for Aerojet; a D-½ display ad and bold type listing under the "Second Hand Dealers" classification, address omitted; a D-½ display ad and bold type listing under the "Septic Tanks" classification, address omitted; and a D-½ display ad and bold type listing under the "Sewage Disposal Systems" classification, address omitted; and an item under the "Plumbing-drain and Sewer Cleaning" classification, address omitted; for a total amount of $219.75 per month. This was to be billed to Mixon at his Mentone address. The contract was submitted as an amendment to the December 2 contract and was processed at a later time. At the time the Aerojet order was written, Mixon had not yet ordered telephone service at the second address, therefore the contract was held up. Barker later checked with the business office representative of Pacific and requested the name, address, and phone number for Aerojet. He was given the name "Aerojet, omit address, and phone number 822-4143" which he put on the face of the contract.

While Barker stated that he was familiar with the multiple display standard, he was not aware that the address of the second location must be shown in the display ad, although he knew that the phone number for the second address must be shown. Condition 1 of the multiple display standard reads as follows:

> "Condition 1: If an advertiser <u>actually</u> conducts business with the public at two or more locations, he may buy two D-½ column advertisements or their equivalent under a single classified heading. The second or additional display space <u>must include the address</u> and telephone number of the second location.

"A. Continuous property with one or more street addresses, shall be considered as one location.

"B. An address where arrangements are maintained only for the answering of telephone calls and/or as a mailing address, shall not be considered as a second location.

"C. An off premise extension is not considered as a second location, unless the location is a bonafide place of business." (Underscoring added.)

If, as Mr. Barker states, he was aware that the phone number must be shown in the second display ad, it is difficult to accept his statement that he was not also aware that the address of the second location also must be shown. In view of the number of display ads sold for Aerojet on California's amended contract it would only be reasonable to expect that a salesman would check the standard, which is contained in his salesman's handbook, before completing the order. This is no more than what a reasonably prudent salesman would do under the circumstances, particularly where, as admitted, he was not thoroughly familiar with all of the details and conditions of a lengthy standard such as the multiple display standard. Furthermore, Barker was aware at the time he wrote the contract that Mixon had not actually established his business at a second location. Again, if Barker was aware that a phone number was required for the second ad, he must also have been, or should have been, aware that Condition 1 requires the advertiser to be actually conducting business at the second location. Knowing this he should have questioned, and/or investigated further whether business was actually being conducted at the second address, especially since the information he received from the business office did not show an address for the phone number given for Aerojet.

Pacific's attempt to gloss over its failure to enforce its standards by saying that the Aerojet advertising order was processed after the California order had been completed is negated by the fact

that the Aerojet order was an amendment to the California contract. Therefore, Pacific should have been alerted to the situation and looked at both contracts together. If this had been done, the situation would have been obvious, and if nothing else, an Editor's Advisory should have been issued pointing out the violations of the standards, and corrective action taken before the offending ads were published. Even though the Aerojet order was processed subsequent to the California order, there was still time to correct the matter since the Aerojet contract was signed and accepted on January 2, 1973, as stated on the contract.

Furthermore, the fact that Pacific investigated this matter only after receiving complaints from affected advertisers, and still relied upon the word of the advertiser without checking to see if business was actually being conducted at a second address, does not support its argument that it had reasonable cause to believe that business was being conducted at the second address.

We are not convinced that Pacific had reasonable cause to believe at the time the Aerojet order was written and processed that business was actually being conducted at the second address.

Issue 3. What law, tariff, or advertising standards were violated?

Ad Visor alleges that Pacific violated its multiple display, headings, and trademark advertising standards, and Rate Practice 17-T. It also alleges that those violations constitute a violation of Section 453 of the Public Utilities Code.[7/] It is further alleged that Pacific's conduct constitutes multiple instances of gross

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7/ "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."

negligence, willful misconduct, and a violation of Section 2106 of the Code.[8/]

Pacific denies that it has violated any law, tariff, decisions of the Commission, or its advertising standards.

At the outset we must point out that the directory advertising standards and rate practices published for internal use by Pacific do not attain the standing of tariffs, which have the force and effect of law. This is not to say that a violation of the standards or practices may not result in a violation of some statutory provision. If the violation of a standard or rate practice 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 violation of the standard or rate practice may result in a determination that a rate charged another advertiser is unreasonable.

Pacific's multiple display advertising standard in effect during the times involved here provides in pertinent part that:

> "All new sales or renewals involving multiple display under a single classified heading, require the approval of the Directory Sales Manager.
>
> "Display advertising space under any single classified heading in the Yellow Pages of a directory for any one person, firm, partnership, association, corporation,

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8/ "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."

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 or its equivalent under the same classified heading. Under no condition shall any firm have more than two D-½ column display advertisements or their equivalent under the same classified heading except under Condition 4." (Exh. C-6-C.)

Pacific admits having published all the ads complained of here in its 1973 and 1974 Colton directory yellow pages. We have already determined that Mixon's Aerojet firm was not conducting business at a second address, and that Pacific did not have reasonable cause to believe that it was. It therefore follows that Mixon was entitled to only one D-½ column display ad, and did not qualify for the second display ad as authorized by Condition 1, of the multiple display standard. Nor would he be entitled to the additional ad because of operating two businesses, since he comes under the rule of the Berko case,[9/] which provides that where one person owns the equipment, stock-in-trade, and operates with common personnel he comes within the restriction of the standard prohibiting the domination of the yellow pages by a large advertiser.

Pacific's headings standard provides in pertinent part:

"Where separate headings are provided for various features of a business, i.e., sales and service or repairing, wholesale and retail, etc. advertisements of firms qualified to list thereunder must predominantly feature the business described by the heading." (Exh. C-6-D.)

Pacific admitted and stipulated to a violation of the above portion of its headings standard.

9/ C.9605, D.84068 dated February 11, 1975, Ad Visor, Inc. representing Stan Berko v PT&T.

The pertinent part of the Trade Mark and Trade Name Service standard involved here is:

> "3. Trade mark 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 headings 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." (Exh. C-6-E.)

The offensive ad which Mixon ordered, and was accepted by Pacific, as a closed ad, involves the name All-California Septic Tank & Rooter Line Co. which was published as a custom trademark under the heading of "Septic Tanks" in the 1973 and 1974 Colton directory yellow pages.

Ad Visor alleges that Mixon did not conduct business under the name All-California and therefore the publication of this in-column custom trademark ad gave him a preferential listing by appearing near the very beginning of the "Septic Tanks" classification ahead of the normal alphabetical sequence he would be entitled to. This constitutes a violation of the above headings standard according to Ad Visor.

Ad Visor contends that the policy against preferential listing is also set forth in Pacific's Rate Practice 17-T on 2d revised page 7 (Exh. C-6-F) which pertains to directory listings of business service primary listings. The following is set forth in part therein:

> "b. Names Designed to Secure Preferential Publicity or Position
>
> "Listings are not accepted which appear to be designed to secure preferential publicity or position by the use of a brand name or by other means, unless the customer or joint user actually conducts business under the name to be listed. Such listings may be

accepted only after sufficient evidence of the type outlined under GENERAL 3., Primary Listings - Name Under Which Business is Conducted, has been examined and it is determined that the business is conducted under the name."

The Rate Practices are an in-house publication for use with Pacific's tariffs by its employees. These practices are filed with the Commission and we take official notice of them. The instructions for their use contain the following statement, among others:

"Reference should first be made to the tariff schedules for information desired as to the applicability of rates, charges, conditions, and rules and regulations. Further information may then be obtained by reference to the Rate Practices. . . ."

Tariff Schedule Cal. P.U.C. No. 17-T, Original Sheet 6-B contains the following statement:

"2. Business Service Listings - Continued
b. Alphabetical Section Business Service Additional Listings - Continued
(1) Name - Continued
(a) - Continued
Listings to secure preferential publicity or position by the use of a brand name or by other means are not accepted unless the customer or joint user actually conducts business under the name to be listed."

It was shown that Mr. Barker did not apply the criteria set forth in Pacific's Directory Practices pertaining to acceptability of listings although he admitted familiarity with it. This practice provides in pertinent part as follows:

"Section 3 - Acceptability of Listings

"Acceptable Listings

3.03 Names which the business wishes to list but which are not acceptable as Main Listings may be acceptable as Additional Listings. Refer to Tariff Schedule 17-T for acceptability.

"Unacceptable Listings

3.04 Listing names which appear to be designed to secure preferential position or publicity in

the directory by spelling, by unauthorized use of a brand name, or by other means are not acceptable.

3.0401 Names such as 'AAB Plumbing Company' may be designed to give a firm preferential publicity or advertising in the directory. Unless it is the name under which the firm is doing business, such a listing is unacceptable."

* * *

"Evidence of Acceptability

3.05 The telephone company may require a customer to furnish satisfactory evidence that he is conducting business under the name to be listed."

* * *

"3.0503 The following are considered 'Questionable evidence' that a firm is doing business under a given name. This type of evidence is not sufficient to warrant the acceptance of a listing:

(a) business cards.

(b) registered name.

(c) letter from a well-known firm stating that they don't object to the use of their name.

(d) a signed statement by the customer or joint user that he is doing business under the name to be listed.

* * *

3.0504 All types of evidence may not be applicable to any one subscriber, but adequate proof that the firm is doing business under a requested listing name should be considered before the listing is accepted." (Exh. C-6-C.)

In its brief Pacific argues that trademark and trade name advertising is governed by a separate standard (Exh. C-6-E); that the acceptability of listings standard (Exh. C-6-G) does not apply to trademark and trade name advertising; that this latter standard is generally applied by business office personnel when accepting business service applications at which time the standard for the acceptability of the listings may be applied, and that the trademark and trade name service practice does not prohibit the use of "All-California" in a trademark advertisement.

Pacific makes a point in its argument that the standards and practices relied upon by Ad Visor to support its position do not relate to yellow page advertising. This is a technical distinction of no significance. All of the practices, standards, and the tariffs set forth a consistent policy against preferential listing. Even Mr. Barker was suspicious that the use of the name All-California might be for the purpose of preferential listing. He checked the prior year's directory to see if such listing would put All-California at the head of the list. Although this was a prudent move on his part, such action did not comply with the requirement of the trademark standard, which is mandatory that such a request be referred to the Directory Sales Manager who is then required to review the matter with the attorney. Barker stated that he was familiar with this standard, as well as others, yet he did not see fit to follow them. Rather, he relied upon the word of the advertiser which is unacceptable evidence according to the directory practice pertaining to acceptability of listings quoted above. We are aware that this practice pertains primarily to white page listings; however, any other interpretation would create a discriminatory situation. We cannot accept Pacific's argument that it acted reasonably in accepting the All-California custom trademark ad for the 1973 Colton directory and again for the 1974 Colton directory, nor that it did not violate its tariffs or standards.

It is clear from the record that Pacific did not enforce its multiple display advertising standard as it asserted it does in the Berko case; that it violated its headings advertising standard, and that it also violated its trademark and trade name service standard and the rate practice.

When complainants purchased advertising from Pacific, they were entitled to have the value of that advertising protected by the proper application of Pacific's advertising standards and practices. To the extent that the aforementioned violations of those standards resulted in a diminution of the value of the complainants' advertising, plaintiff is entitled to reparations in the amount of that diminution in value. (Ad Visor (Nowlin Fence and Garage Door) v General Telephone Co., Decision No. 88190, Case No. 9861.) (Mimeo. pp. 9-10.) We must now proceed to determine the amount of reparations, if any, to which complainants are entitled.

The Commission has recently had an opportunity to make its position clear with respect to the frequent assertion in this type of case that actual damages must be proven before reparations for the diminished value of advertising may be awarded. In Ad Visor (Dilday Bros. et al) v General Telephone Co., Decision No. 88120, Case No. 9800, we stated that:

> "We are aware of language in prior decisions of this Commission which could be construed to require a subscriber seeking reparations to show some harm as a consequence of the omission other than the diminished value of service inherent in the omission itself. (See for example Mendence vs. P.T.&T. Co. (1971) 72 Cal PUC 563, 566-67.) Whether past decisions required such a showing has been the principal subject of controversy in this proceeding as well as others pending before this Commission. However, no one should be confused as to today's holding. We reject any requirement that a subscriber show injury resulting from an error or omission in order to be awarded reparations. To the extent that our prior decisions may be construed to provide for such a requirement they are overruled. Proof that the subscriber did not get what it bargained and paid for is sufficient to award reparations for the diminished value of service."

(On April 13, 1978 the California Supreme Court denied General's Petition for Writ of Review of Decision No. 88120.)

Further, we have recently had an opporunity to express our views on the practice of "heading jumping" which the record disclosed occurred here. In Ad Visor (Nowlin Fence and Garage Door) v General Telephone Co., Decision No. 88190, Case No. 9861, the complainant had purchased display ads over the years and had obtained the senior display ad position within the classification "Door Operating Devices." A competitor's display was improperly placed in the classification "Door Frames" which immediately preceded "Door Operating Devices." We determined that the misclassification of the competitor's ad resulted in a diminution in value of Nowlin's ad and awarded Nowlin 40 percent of the charge for his display ad. In that decision we stated (at mimeo. pp. 9-10):

> "In making the decision to purchase directory advertising, however, Nowlin had the right to assume that other display ads would be correctly placed. He had the right to expect that the value of the senior position within the classification would be protected by General's proper classification of other display ads. (The testimony of Ad Visor's witness as to the value of the senior page position would seem to be corroborated by both the existence of the seniority system as a practice of the directory company and the efforts of Daniel's, which both parties admit to be successful, to circumvent that system.) Nowlin's ad did not receive this protection and hence its value was diminished."

The same reasoning applies to Pacific's failure to properly apply its multiple display rule and trademark standard.

While we thus easily conclude that the value of the complainants' advertising was diminished, we are faced with the difficult question of determining the proper amount of reparations. As we have noted in three recent directory advertising decisions (Ad Visor (Dilday Bros. et al), supra, Ad Visor (Nowlin), supra, and Ad Visor (Air Comfort) v General Telephone Co., Decision No. 88460,

Case No. 9837), the applicable tariff rules provide us with little or no guidance. We issued OII No. 5 partially to correct this deficiency in our rules.[10/]

While we cannot, however, state the precise amount of the diminution in value of the complainants' advertising, we can approximate that amount based on an analysis of the facts in this case and our recent decisions. In Nowlin we awarded the complainant 40 percent of the advertising charges. In that case, however, certain facts were in evidence that are not evident in this proceeding. But for General's error, Nowlin would have had the senior display ad position on the first page of the directory where display ads appeared for doors and door-related products and services. No such special circumstances were adduced or proven in the instant proceeding. However, in Nowlin, the only diminution in value found was that resulting from the "heading jumping" improperly permitted by General. In the instant proceeding we have found two other advertising standard violations that contributed to the diminution of the complainants' ads--the multiple display rule violation and the Trade Mark and Trade Name Service advertising standard violation. We conclude that the record supports a finding that the value of the complainants' display advertising was reduced by 50 percent for the 1973 directory and 25 percent for the 1974 directory.

Ad Visor alleges that the complained of practices are continuing. There is no evidence of record to support the allegation. Therefore, there is no basis for invoking the sanction of Section 2102 of the Code.

10/ OII No. 5, issued November 22, 1977, opened an investigation into the whole field of directory advertising.

Insofar as Ad Visor's allegations of gross negligence, willful misconduct, and violation of Section 2106[11] 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).

Findings of Facts

1. Pacific published the following advertisements for Mr. Mixon in the yellow pages of its Colton directory for the years indicated:

Advertiser	Type Of Ad	Classification Heading
1973		
Aerojet	1 - D-½	Septic Tanks
California	1 - D-½	Septic Tanks
Aerojet	1 - D-½	Second Hand Dealers
California	1 - D-½	Second Hand Dealers
All-California	1 - CTM	Septic Tanks
1974		
Aerojet	1 - D-½	Septic Tanks
California	1 - D-½	Septic Tanks
All-California	1 - CTM	Septic Tanks

2. Aerojet and California are owned and operated by Mr. Mixon.

3. Aerojet did not conduct business at a separate location from that of California.

4. Pacific's multiple display rule does not permit a second D-½ display ad for an advertiser if he does not actually conduct business at a second location. Pacific violated this rule by publishing the ads for Aerojet and California.

5. Pacific admitted that it violated its heading standard by publishing ads for Aerojet and California under the "Second Hand Dealers" classification heading in the yellow pages of its 1973 Colton directory.

6. Mr. Mixon was not actually conducting business under the name All-California at the time advertising was accepted under the name.

11/ Footnote 8, supra.

7. Pacific's Trade Mark and Trade Name Service advertising standard, Rate Practice 17-T, and Tariff Schedule Cal. P.U.C. No. 17-T prohibit advertising that is designed to obtain a preferential position in the directory, unless the customer is actually conducting business under that name.

8. Pacific's Trade Mark and Trade Name Service advertising standard requires, among other things, that a request containing the letter "A", the letter "A" combined with other letters, and which are designed primarily to secure preferential position must be referred to the directory sales manager who will review the case with the attorneys to assure consistent treatment.

9. Mr. Barker, the salesman who sold the ad, suspected the name All-California was probably being used to obtain a preferential position, but did not refer the matter to his Directory Sales Manager as required.

10. Pacific did not check to see whether business was actually being conducted by Mixon at a second address, but relied upon Mixon's word that he would be conducting business at a second address at a future time.

11. Complaints from Ad Visor and the individual complainants herein were registered with Pacific after the publication of the 1973 Colton directory concerning the ads of Aerojet and California.

12. Pacific made an investigation, after the receipt of these complaints, which was inconclusive in regard to the actuality of business being conducted at the Iris Drive address by Aerojet.

13. Pacific's standards and practices were violated by the publication of the All-California listing.

14. As a result of the violations described in Findings 4, 5, and 13, the value of complainants' advertising in the 1973 Colton directory was diminished by 50 percent.

15. As a result of the violations described in Findings 4 and 13, the value of complainants' advertising in the 1974 Colton directory was diminished by 25 percent.

16. Based on Finding 14, complainants' advertising in the 1973 Colton directory was diminished by the following amounts:

a.	Clint's Septic Tank Service	- $ 459.00
b.	Joe L. Fernandez	- $ 286.50
c.	Inland Empire Septic & Rooter	- $1,081.50
d.	Goddard's Service	- $ 424.50

17. Based on Finding 15, complainants' advertising in the 1974 Colton directory was diminished by the following amounts:

a.	Clint's Septic Tank Service	- $185.00
b.	Joe L. Fernandez	- $151.20
c.	Inland Empire Septic & Rooter	- $253.95
d.	Goddard's Service	- $144.15

Conclusions of Law

1. Pacific violated its multiple display, headings, and trademark standards, and its Tariff Schedule Cal. P.U.C. No. 17-T.

2. Clint's Septic Tank Service is entitled to reparations in the amount of $459 for the 1973 Colton directory advertising and $185 for the 1974 Colton directory advertising, plus interest.

3. Joe L. Fernandez is entitled to reparations in the amount of $286.50 for the 1973 Colton directory advertising and $151.20 for the 1974 Colton directory advertising, plus interest.

4. Inland Empire Septic & Rooter is entitled to reparations in the amount of $1,081.50 for the 1973 Colton directory advertising, and $253.95 for the 1974 Colton directory advertising, plus interest.

5. Goddard's Service is entitled to reparations in the amount of $424.50 for the 1973 Colton directory advertising and $144.15 for the 1974 Colton directory advertising, plus interest.

O R D E R

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company shall pay to Clint's Septic Tank Service reparations as follows:

$459.00, with interest at the rate of 7 percent per annum from the end of the life of the 1973 Colton directory to date of payment.

$185.00, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Colton directory to date of payment.

2. The Pacific Telephone and Telegraph Company shall pay to Joe L. Fernandez reparations as follows:

$286.50, with interest at the rate of 7 percent per annum from the end of the life of the 1973 Colton directory to date of payment.

$151.20, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Colton directory to date of payment.

3. The Pacific Telephone and Telegraph Company shall pay to Inland Empire Septic & Rooter reparations as follows:

$1,081.50, with interest at the rate of 7 percent per annum from the end of the life of the 1973 Colton directory to date of payment.

$253.95, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Colton directory to date of payment.

4. The Pacific Telephone and Telegraph Company shall pay to Goddard's Service reparations as follows:

$424.50, with interest at the rate of 7 percent per annum from the end of the life of the 1973 Colton directory to date of payment.

$144.15, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Colton directory to date of payment.

5. The Pacific Telephone and Telegraph Company shall cease and desist its discriminatory practices in applying its tariffs and advertising standards.

6. All other requests for relief are denied.

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

Dated at San Francisco, California, this 27th day of JUNE, 1978.

President

Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.