

es/avm

Decision No. 89116 JUL 25 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

POSTAL INSTANT PRESS, a corporation, )

Complainant, )

vs. )

PACIFIC TELEPHONE & TELEGRAPH  
COMPANY, a corporation, )

Defendant. )

Case No. 10235  
(Filed January 11, 1977)

Jonas, Fern & Simpson, by Terry Kinigstein,  
Attorney at Law, for complainant.  
Duane G. Henry, Attorney at Law, for  
defendant.

O P I N I O N

Complainant, Postal Instant Press (PIP), alleged that defendant, The Pacific Telephone and Telegraph Company (Pacific), was grossly negligent in failing to print a requested yellow page advertisement in the 1976 Los Angeles yellow page directory. The relief requested by PIP was \$10,000 damages plus costs. Pacific filed its answer on February 10, 1977, denying that PIP was entitled to any relief. Two days of hearings were held on this matter in Los Angeles before Administrative Law Judge Main on October 14 and October 24, 1977. The case was submitted upon the filing of reply briefs on February 3, 1978.

PIP/PP/PG

PIP is in the business of instant printing, primarily as a franchising company. There are several hundred shops nationwide, some of which are company-owned. PIP is a California corporation; 60 percent of its stock is owned by Postal Press, Inc. (PP), and the remainder is publicly held.

PP is otherwise a multifaceted printing business, one part of which is a PIP franchise. For the remainder of its multifaceted operations it does business as Postal Graphics (PG).

The Advertisements (Ads)

The dispute involves two proposed PIP double-half column display ads and one proposed PG double-half column display ad. The two PIP ads<sup>1/</sup> contain virtually the same copy in that each serves to provide the locations and telephone numbers of 27 PIP shops. Some of the shops are PIP owned; most, however, are independently owned, but one is the PP-held PIP franchise mentioned above.

The PG ad<sup>2/</sup> covers the PP-owned shop as a printing business with the following divisions: Commercial Division, Forms Division, Envelope Division, Menu Division, and PIP Division. The copy pertaining to PIP in the PG ad can be interpreted to portray either PP/PG as the parent company to PIP or PP/PG as holding a PIP franchise.

The PG ad and one of the PIP ads were published under the classification "Printers". The other PIP ad had been accepted for publication under that classification but was omitted as the result of an inadvertent clerical error.

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<sup>1/</sup> Included as Appendix A to this decision.

<sup>2/</sup> Included as Appendix B to this decision.

Pacific contends, however, that complainant was not entitled to the publication of the omitted ad because, among other things, it would violate Pacific's standard for multiple display advertising.

The Multiple Display Standard

Pacific's Multiple Display Standard (MDS), circa 1976, provides in pertinent part as follows:

"Display advertising space under any single classified heading in the Yellow Pages of a directory for any one person, firm, partnership, association, corporation, company or organization of any kind conducting a business or businesses under one or more names, shall be limited to one and only one D-1/2 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-1/2 column display advertisement or its equivalent under the same classified heading. Under no condition shall any firm have more than two D-1/2 column display advertisements or their equivalent under the same classified heading...

"CONDITION 1:

"If an advertiser actually conducts business with the public at two or more locations, he may buy two D-1/2 column advertisements or their equivalent under a single classified heading. . . ."

Pacific's MDS has been the subject of a number of decisions by this Commission. In Ad Visor, Inc. (Stan Berko) v Pacific Telephone and Telegraph, Decision No. 84068 dated February 11, 1975, the Commission said:

"PT&T may adopt reasonable standards for advertising copy which appears in its yellow pages. There are various reasons why PT&T

may desire to enforce high standards of advertising in its yellow pages. Among these reasons is that, to the extent the yellow pages are relied upon and utilized by customers, additional and continuing advertising revenues will likely be generated for PT&T. The record indicates that the multiple display advertising standards were adopted in response to the attempted domination of yellow page classifications by large advertisers. Furthermore, these standards are consonant with the state and national policies of fostering competition. [Citations omitted.] In the circumstances, we cannot hold that the standards are unjust, unreasonable, or arbitrary." (Mimeo. pages 7 and 8.)

The MDS limits display advertising for any one person, firm, corporation, company, or organization to one double-half column. Where an advertiser has multiple locations it may have an additional double-half column. A critical factor is the separateness of each of the business firms or organizations seeking a separate display ad.

PIP contends that it and PP are separate corporations, conduct separate businesses, perform separate functions, have separate locations, and, with the exception of one individual, have separate management and separate employees. Management decisions are made by the executive officers of PIP and in the absence of unusual circumstances, these decisions are not interfered with by the shareholders or by the board of directors. Although it is true that PP is a majority shareholder of PIP, PIP asserts that its actions have not permitted that fact to blur the distinction between the two entities and that PIP,

as a public corporation, cannot operate to the benefit of PP, a closely held corporation. PG is not a subsidiary of PP but in some fashion may serve as a dba for PP.<sup>3/</sup>

Pacific contends that PIP, PP, and PG are one organization conducting a business under one or more names as provided in Pacific's MDS. The PG ad itself states that PG is a PP subsidiary, and thus they have common ownership. PG's address is contained in both PIP ads and PG's telephone number given in the PG ad is 655-8311, which is an additional main listing on primary telephone number 655-8810, the latter being the number listed for PG's address in both PIP ads. PP owns 60 percent of PIP in addition to owning one PIP franchise, and thus PP has the power to control both PIP and PG. PIP and PP have been intimately connected and intertwined in each other's evolution. Both PIP and PP are engaged in the same type of business, the printing business, and, according to PIP's vice president, they have common directors. With regard, at least, to major policy, this witness conceded that PP actually exercises control over PIP.

According to Pacific, the fact that the PIP/PP/PG organization is viewed as one organization by the people who had dealings with it is indicated by a number of factors. For one thing, all three ads (two for PIP and one for PG/PP) were submitted by the Selten Agency to the selling company, General Telephone Directory Company, and by the selling company to Pacific on one order form listing a single client

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<sup>3/</sup> The copy of one of the ads published (Exhibit 3) was changed from Postal Press Incorporated to Postal Graphics, a subsidiary of Postal Press Inc. (sic).

name of "Postal Press". Also, the location of the address associated in the PG ad with the name PG, 8646 West Pico Boulevard, is one building with signs indicating "World Headquarters of Postal Instant Press". There were no signs at all regarding "Postal Graphics". Furthermore, in the 1976 Los Angeles white pages, the telephone number 655-8810 (the primary number for PG's listed number 655-8811) is listed for both PIP and PP at 8646 West Pico Boulevard. Finally, the billing responsibility for both numbers, 655-8810 and 655-8811, which are numbers interchangeably listed for PG, PP, and PIP, are all billed to a Mr. Levine at 8646 West Pico Boulevard (the common address of all three). These numbers are on rotary with 8811 being an additional main listing on the 8810 number.

According to Pacific, we are not dealing with separate businesses and separate markets, but with slight variations on the same business and market. To comply with the MDS the advertiser in the situation of PIP/PP/PG has two choices--it can easily feature both facets of its business in the maximum of two double-half column ads to which it is entitled, or it can buy smaller ads (accumulating to the same maximum space) and feature its various facets separately.

#### Discussion

PIP and PP are evolving into separate businesses in which some substantial ties remain. For PIP and PP to have qualified as separate advertisers in these circumstances, either the copy pertaining to PIP should not have been included in the PG ad or the 8646 West Pico Boulevard address and the 655-8810 telephone number should not have been included in the PIP ads.

From another vantage point, we see that if PP/PG were a separate advertiser with one location, then its address, and also either telephone number 655-8810 or 655-8811, should not appear in two MDAs. Conversely, for that dual appearance to meet the criteria of the MDS, PIP and PP/PG cannot be construed to be separate advertisers (i.e., the ties between the two companies permit them to be considered as one advertiser and eligible as such under the MDS for two double-half column ads because of multiple locations).

PIP attached importance to the fact that General Telephone considered the PIP/PP/PG organization as separate. However, General Telephone's MDS is different than that of Pacific in that General Telephone recognizes separate corporate status as a significant basis for separate treatment. This difference in policy stemmed from the Berko decision, supra, and has become more definitive in subsequent decisions.

In Ad Visor, Inc., (General Van & Storage Co., Inc.) v Pacific Telephone and Telegraph, Decision No. 87959 dated October 12, 1977, we said:

"Although the main substance of the multiple display standard did not change during the period here involved, Pacific did change its interpretation and application of a key principle in the standard after the Berko /Footnote omitted/ decision was issued. The change was in the way Pacific applies the standard to corporations. Prior to the Berko decision, Pacific applied the multiple display standard on the basis that any one person, firm, partnership, association, corporation, company, or organization of any kind conducting business or businesses under one or more names would be limited to one double half column display item or its

equivalent in space under the same classified heading. The standard is still applied in the same way, except Pacific no longer considers incorporation as sufficient in itself to prove separateness in the conduct of a business. Pacific began to realize that to meet the spirit and intent of the multiple display standard, it may be necessary to look beyond the surface organization and determine how the business is really being operated. Otherwise, an advertiser might technically meet the standard and be allowed an excessive number of display ads. This would defeat the very purpose of the standard which is to prevent domination of a single heading by a single advertiser. . . ."  
(Mimeo. pages 20 and 21.)

In that decision, the Commission awarded reparations because Pacific failed to pierce the corporate veil in the application of its MDS.

PIP also attached importance to the fact that in the 1977 directory Pacific published three ads on behalf of the PIP/PP/PG organization. In that regard Pacific's witness testified that Pacific initially refused the three ads submitted by the PIP/PP/PG organization; that, in an apparent subterfuge to avoid the MDS, the PIP/PP/PG organization came up with a new company by the name of "Filet Menu"; and that the organization then submitted two ads under the name of PIP and one ad under the name of Filet Menu. It was his further testimony that Pacific did not notice the deception being perpetrated because different clerks handle ads for clients in different parts of the alphabet.

We hold that publication of the second PIP ad would have violated the MDS. Because of that holding and because the standard has not been shown to be unreasonable, it is unnecessary to reach the remaining issues. Those issues concern the resale of advertising space, the related assignment of reparation claims, and the limitation of liability in the national yellow page advertising contract vis-a-vis Pacific's tariff Rule 14.



Findings

1.a. The Selten Agency submitted an order with the client name of "Postal Press" to General Telephone Directory Company in April of 1976.

b. That order requested advertising under a number of different headings including the three double-half column ads, under the classified heading of "Printers" in the 1976 Los Angeles yellow page directory, which are at issue.

c. General Telephone forwarded the order to Pacific.

d. As a result of an inadvertent clerical error, one of the three double-half column ads at issue was omitted.

2.a. PIP and PP are evolving into separate businesses in which some substantial ties remain.

b. For PIP and PP to qualify as separate advertisers under Pacific's MDS, either the copy pertaining to PIP should not have been included in the PG ad (see Appendix B) or the 8646 West Pico Boulevard address and the 655-8810 telephone number should not have been included in the PIP ads (see Appendix A).

c. For the copy pertaining to PIP to appear in the PG ad and for the above-cited address and telephone number to appear in the PIP ad, as those ads were published, PIP and PP should not be construed to be a separate advertiser under the MDS.

3. Under the provisions of Pacific's MDS, PIP was not entitled to the publication of the omitted ad.

Conclusions

1. The Commission is without jurisdiction to award damages in the amount of \$10,000 plus costs as sought by PIP.
2. Consistent with the foregoing findings PIP is not entitled to reparations.

O R D E R


IT IS ORDERED that:

1. Postal Instant Press' request for an award of damages is denied on the grounds that the Commission lacks jurisdiction to grant such award.
2. Postal Instant Press is not entitled to reparations.

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

Dated at San Francisco, California, this 25<sup>th</sup>  
day of JULY, 1978.

Robert Bateman  
President  
William S. Lyons Jr.  
Vernon L. Sturgeon  
Charles W. Crowley  
Clair T. Deloria  
Commissioners



# POSTALO INSTANT PRESS


OVER 300 PIPs NATIONWIDE

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## PRINTING *While-U-Wait!*

Instant printing on all "Camera Ready" material

<p><b>ALBANY</b> 2095 Wilshire Dr. .... 483-6646</p> <p><b>ALBANY HILLS</b> 5012 Wilshire Dr. .... 278-3362</p> <p><b>ALBANY HILLS</b> 5532 Hillman Way. .... 274-7559</p> <p><b>ALBANY J. KOPKANGIE</b> 4504 Keweenaw Rd. .... 380-3640</p> <p><b>ALBANY</b> 3520 W. Maryland Rd. .... 849-7424</p> <p><b>ALBANY</b> 347 N. Central. .... 247-6020</p> <p><b>ALBANYWOOD</b> Foothill Mall 6723 W. Summit Rd. .... 465-1169</p> <p><b>ALBANYWOOD</b> 414 Highland &amp; Columbia 6614 Summit Dr. .... 465-4144</p> <p><b>ALBANY PARK</b> 2620 Sunset Ave. .... 588-4243</p> <p><b>ALBANYWOOD</b> 3175 Leland. .... 671-8269</p> <p><b>ALBANYWOOD</b> 451 N. Commercial. .... 659-4783</p> <p><b>ALBANY</b> 614 Broadway Ave. .... 433-6709</p> <p><b>ALBANYWOOD</b> 12121 Sunset Blvd. .... 489-2333</p>	<p><b>ALBANYWOOD</b> 2105 Hill. .... 749-5321</p> <p><b>ALBANYWOOD</b> 7455 Sunset. .... 622-6119</p> <p><b>ALBANYWOOD</b> Beverly Hills 5415 Sunset. .... 624-6501</p> <p><b>ALBANYWOOD</b> 10500 Pico Blvd. .... 655-8810</p> <p><b>ALBANYWOOD</b> 1100 Wilshire 2241 Wilshire Rd. .... 396-4200</p> <p><b>ALBANYWOOD</b> 1100 Wilshire 5100 Wilshire Dr. .... 931-7456</p> <p><b>ALBANYWOOD</b> 425 W. Washington Rd. .... 728-1272</p> <p><b>ALBANYWOOD</b> 3717 Leland Rd. .... 564-7996</p> <p><b>ALBANYWOOD</b> 1447 Huntington Dr. .... 759-4519</p> <p><b>ALBANYWOOD</b> 2424 Sunset Dr. .... 778-4028</p> <p><b>ALBANYWOOD</b> 2424 Sunset Dr. .... 656-2937</p> <p><b>ALBANYWOOD</b> 5425 Sunset Dr. .... 663-1239</p> <p><b>ALBANYWOOD</b> 10700 Sunset Blvd. .... 477-8529</p> <p><b>ALBANYWOOD</b> 12121 Sunset Blvd. .... 475-0656</p>
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APPENDIX A  
Page 2 of 2

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY

Postal Instant Press

Omitted 1976

WHILE-U-WAIT... WHILE-U-WAIT... WHILE-U-WAIT...

# PRINTING

## *While-U-Wait!*

FINE QUALITY OFFSET PRINTING... FAST & INEXPENSIVELY!  
Instant printing on an "Camera Ready" material

ALVARADO 7009 Wilshire Bl. .... 483-4646	LOS ANGELES DOWNTOWN 7500 S. Hill ..... 749-5321
BEVERLY HILLS 9012 Wilshire Bl. .... 278-3392	LOS ANGELES DOWNTOWN 7325 Olive ..... 672-6119
BEVERLY HILLS 9672 Brighton Way ..... 274-7589	LOS ANGELES DOWNTOWN Beverly-Spring Arcade Bldg 541 S. Spring ..... 674-6501
BEVERLY & NORMAN 4708 Beverly Bl. .... 380-3640	LOS ANGELES-PICO/LA CIENEGA 8146 W. Pico Bl. .... 655-8810
BURBANK 3570 W. Myrtle Bl. .... 849-2424	MID-VILLE 3727 Wilshire Bl. .... 386-4700
CLIFDALE 347 N. Central ..... 747-6020	MIRACLE MILE 5106 Wilshire Bl. .... 531-1455
HOLLYWOOD Paladium Bldg 6723 W. Sunset Bl. .... 465-1169	MONTEBELLO 879 W. Washington Bl. .... 728-1272
HOLLYWOOD 601 Highland & Cahuenga 6613 Sunset Bl. .... 465-8144	SOUTH GATE 3717 Tenthon Pl. .... 564-7896
MUNTINGTON PARK 2620 Sunset Av. .... 588-4243	SOUTH PASADENA 1942 Huntington Dr. .... 799-9519
INGLENWOOD 3125 La Brea ..... 671-8249	SUNSET 9943 Sunset Pl. .... 278-4078
LA CIENEGA NORTH 451 N. La Cienega Bl. .... 659-4783	SUNSET-LA CIENEGA 7400 Sunset Bl. .... 656-2987
LONG BEACH 654 Hawthorne Av. .... 433-6709	SUNSET-WESTERN 5270 Sunset Bl. .... 663-1239
LOS ANGELES DOWNTOWN Armed Forces Plaza 5655 Broadway ..... 489-2333	WESTWOOD 1076 Gramercy Ave. .... 477-8529
	WESTWOOD 10441 Santa Monica Bl. .... 475-0656

**pip** POSTAL INSTANT PRESS

Photocopies Available

OVER 200 PIPs NATIONWIDE

WHILE-U-WAIT... WHILE-U-WAIT... WHILE-U-WAIT...

APPENDIX B

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY

Postal Press Advertisement #2

Published 1976  
in the Name of Postal Graphics


MANIFESTO • BROCHURES • INVOICES • MENUS

# TOTAL PRINTING

**POSTAL GRAPHICS**  
A SUBSIDIARY OF POSTAL PRESS INC.

THE TOTAL PRINTING  
COMPANY OF THE U.S.A.

- **COMMERCIAL DIVISION**  
*Brochures, catalogs, manuals, color printing*
- **FORMS DIVISION**  
*Invoices, purchase orders, computer forms*
- **ENVELOPE DIVISION**  
*Long & short run, custom & standard*
- **MENU DIVISION**  
*Ultra creative menus, placemats, guest checks*
- **pip<sup>®</sup> DIVISION**  
*Over 350 locations worldwide*



**POSTAL GRAPHICS**  
THE TOTAL PRINTING ORGANIZATION  
2646 W. PICO BL. (NR. LA CIENEGA)  
**655-8811**

pip<sup>®</sup>

MANIFESTO • BROCHURES • INVOICES • MENUS