

Decision No. 89320 SEP 6 1978**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AD VISOR, INC., a California  
Corporation, authorized  
exclusive agent for: Joe L.  
Fernandez, Inland Empire Septic  
& Rooter Service, Curtis Pumping,  
Patrick's Septic Tank Service,  
Goddard's Cesspool Service,  
Association of Liquid Waste  
Haulers,

Complainant(s),

vs

GENERAL TELEPHONE COMPANY OF  
CALIFORNIA,

Defendant.

AD VISOR, INC., a California  
Corporation, authorized exclusive  
agent for: Joe L. Fernandez,

Complainant(s)

vs

GENERAL TELEPHONE COMPANY OF  
CALIFORNIA,

Defendant.

Case No. 9848  
(Filed December 23, 1974)

Case No. 9853  
(Filed January 5, 1975,  
amended July 2, 1976)

Fred Krinsky and Jack Krinsky, for Ad Visor, Inc.,  
for complainants.

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

These complaints are brought by Ad Visor, Inc. (Ad Visor) as an exclusive agent for its clients. In Case No. 9848 the client-complainants are Joe L. Fernandez (Fernandez), Inland Empire Septic & Rooter Service (Inland), Curtis Pumping (Curtis), Patrick's Septic Tank Service (Patrick's), Goddard's Cesspool Service (Goddard), and Association of Liquid Waste Haulers (Association). It is alleged

that General Telephone Company of California (General) violated its multiple display<sup>1/</sup> and columnar<sup>2/</sup> advertising standards, and Section 453 of the Public Utilities Code<sup>3/</sup> by publishing advertisements in various directories for Aero Jet Septic & Rooter (Aero Jet), California Septic Tank and Rooter (Cal-Rooter), and California Septic Tank and Sewer Co. (Cal-Septic), all three companies being owned by the same individual R. Mixon (Mixon). Such violations resulted in the domination of the yellow pages thus reducing the effectiveness of complainants' advertising. The relief sought is an immediate injunction to prevent General from continuing such preferential conduct; a refund with interest of any monies collected from complainants for advertising in the 1974 Redlands and Banning directories under the Septic Tanks classification and for telephone service during the period these directories were in effect. It is also requested that a finding of multiple counts of gross negligence and willful misconduct on the part of General be made, and that penalties be imposed for each count pursuant to Section 2107<sup>4/</sup> of the Public Utilities Code.

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<sup>1/</sup> In substance, the multiple display standard prohibits the publication of more than one display advertisement for a single advertiser except under certain conditions not applicable here.

<sup>2/</sup> The columnar advertising standard prohibits the publication of more than one Custom Trademark advertisement.

<sup>3/</sup> "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."

<sup>4/</sup> "2107. Any public utility which violates or fails to comply with any provision of the Constitution of this State or of this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) for each offense."

In Case No. 9853 the complainant is Joe L. Fernandez (Fernandez). It is alleged that Fernandez never received his free listing in the 1971, 1972, 1973, and 1974 yellow pages of General's Hemet directory; that in the 1973 San Bernardino directory yellow pages Fernandez did not receive the free additional line of information to which he was entitled; that in the 1971 and 1972 Redlands directory yellow pages General violated its multiple display advertising standard by publishing more than one display advertisement for Cal-Septic, Curtis, and Patrick's; that in the 1973 Redlands directory yellow pages General violated its heading and copy advertising standard by placing a double half column (D½ col.) display advertisement in the Second Hand Dealers classification which precedes the Septic Tank classification for Cal-Sewer thus giving it a preferential position; and that in the 1972 and 1973 Banning directory yellow pages General violated its multiple display advertising standard by publishing more than one display advertisement for Cal-Septic. It is also alleged that these actions constitute a violation of Section 453. It is further alleged that the multiple display violations occurred in the 1974 Redlands and Banning directory yellow pages, which violations are the subject of Case No. 9848. An immediate injunction is sought as well as reparations for the monthly telephone service rate for the period of time of the appearance of the 1971, 1972, 1973, and 1974 Hemet directories for the omission of the free listing therein; reparations for the money collected on the 1973 San Bernardino directory advertising contract plus the amount of money collected for monthly telephone service for the life of the 1973 San Bernardino directory; reparations for the amount of money collected from claimant on the 1971 Redlands directory advertising contract and damages ensuing therefrom; reparations for the amount of money collected from claimant on the 1972 and 1973 Redlands advertising contracts together with the amount of the monthly telephone service rate collected for the life of the directories and damages ensuing therefrom; reparations for the amount of money collected from claimant on the 1972 and 1973 Banning directory advertising contracts together with the amount of the

monthly telephone service rate for the life of the directories and damages ensuing therefrom, all with interest thereon. Findings of gross negligence and willful misconduct on several counts are sought as well as the imposition of penalties for each count under Section 2107. By its amendment complainant seeks further findings consisting of violations of Sections 532<sup>5/</sup> and 2106<sup>6/</sup>.

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5/ "532. Except as in this article otherwise provided, no public utility shall charge, or receive a different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals, and charges applicable thereto as specified in its schedules on file and in effect at the time, nor shall any public utility engaged in furnishing or rendering more than one product, commodity, or service, charge, demand, collect, or receive a different compensation for the collective, combined, or contemporaneous furnishing or rendition of two or more of such products, commodities, or services, than the aggregate of the rates, tolls, rentals, or charges specified in its schedules on file and in effect at the time, applicable to each such product, commodity, or service when separately furnished or rendered, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals, and charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons. The commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility."

6/ "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.

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General's Answer in Case No. 9853 admits that complainant signed the alleged advertising contracts for advertising in the yellow pages of the various directories; that complainant did not receive free listings in the 1971, 1972, and 1973 Hemet directory yellow pages; that complainant did not receive free lines of information in his advertising in General's Redlands, Banning, Ontario, and Pomona directory yellow pages for which applications for directory advertising were signed on January 15, 1973; that the application for advertising in General's 1973 San Bernardino directory was not left with claimant at the time he signed for such advertising; admits that it published more than one display advertisement for Cal-Septic, Curtis, and Patrick's in the yellow pages of various directories under the Septic Tank classification; that General made adjustments to Goddard's, Clint's Septic Tank Service, Inland, and Valley Drilling Co. involving the multiple display standard; and that it published a D½ col. display advertisement for Cal-Septic in the 1973 Redlands directory yellow pages under the classification Second Hand Dealers, which classification comes immediately before the classification Septic Tanks; that the words Used Pipe appear in said advertisement; that General has an established directory heading entitled Pipe, Used; and it generally denies all other allegations. Two affirmative defenses are raised: (1) the complaint fails to state facts sufficient to constitute a cause of action and (2) the statute of limitations in Section 735<sup>1/</sup> on any causes of action that may have occurred prior to January 6, 1973. ✓

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<sup>6/</sup> (Continued)

"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."

<sup>1/</sup> "735. If the public utility does not comply with the order for the payment of reparation within the time specified in the order, suit may be instituted in any court of competent jurisdiction to recover the payment within one year from the

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On July 8, 1976 General filed a motion to dismiss both cases on the grounds that complainants' claims involve an assignment of reparation claims in violation of Section 734.<sup>8/</sup> The matters were consolidated and after due notice 5 days of public hearings were held on July 12-16, 1976 in Los Angeles. The matter was submitted on the last date subject to the filing of briefs due November 12, 1976. This date was subsequently extended to December 17, 1976.

#### Motions

General's motion to dismiss both complaints on the grounds that they constitute an assignment of a reparation claim in violation of Section 734 has been made before. We will deny the motion for the reasons set forth in our prior decisions.<sup>9/</sup>

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#### 7/ (Continued)

date of the order, and not after. All complaints for damages resulting from a violation of any of the provisions of this part, except Sections 494 and 532, shall either be filed with the commission, or where concurrent jurisdiction of the cause of action is vested by the Constitution and laws of this State in the courts, in any court of competent jurisdiction, within two years from the time the cause of action accrues, and not after."

8/ "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."

9/ D.85334, C.9800; D.87240, C.9833, rehearing denied, D.87597; D.87239, C.9834, rehearing denied, D.87596; and D.88090, C.9861.

At the hearing General moved to dismiss the Amendment to Case No. 9853 on the grounds that it did not have adequate time to respond to the allegations made. This motion was denied by the Administrative Law Judge. We affirm his ruling.

Statute of Limitations

General asserted the statute of limitations contained in Section 735 as an affirmative defense in Case No. 9853. The Administrative Law Judge ruled that the two-year statute contained in Section 735 was applicable here and therefore no evidence would be taken on any allegations of violations occurring prior to January 6, 1973. This defense has been raised before against Ad Visor in connection with alleged violation of yellow page advertising standards. For the reasons set forth in our prior decisions,<sup>10/</sup> which we will not repeat here, we affirm the Administrative Law Judge's ruling. Thus, the only directory violations we are concerned with here will be those alleged to have occurred in the Redlands, San Bernardino, Banning, and Hemet directories published after January 6, 1973.

The Issues

Case No. 9848

1. Whether under General's multiple display advertising in effect at the time General's 1974 Redlands and Banning directories were published, one person could buy display advertising for more than one business under the same classified directory heading.
2. Whether General was reasonably led to believe that Cal-Septic, Cal-Rooter, and Aero Jet were separate businesses at the time it accepted their display advertisements under the Septic Tanks classification in these two directory issues.
3. Whether General's application of its multiple display advertising standard was reasonable.
4. Whether General violated its columnar advertising standard by publishing custom trademark advertisements for Cal-Rooter and Aero Jet in its 1974 Redlands directory under the Septic Tanks classification.

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<sup>10/</sup> D.87959, C.9931; and D.87958, C.9936.

Case No. 9853

5. Whether General violated its multiple display advertising standard by publishing two one-quarter page display advertisements for Cal-Septic under the Septic Tanks classification in General's 1973 Banning directory.

6. Whether General violated its heading and copy advertising standards by publishing a one-quarter page display advertisement for Cal-Septic under the Second Hand Dealers classification in its 1973 Redlands directory.

7. Whether General erred in not providing Fernandez with the additional line of information without charge (OAF) "Serving Since 1953" under its bold type listings in General's 1973 San Bernardino directory.

8. Whether General erred in not providing Fernandez with a free listing in General's 1973 Hemet directory.

9. Whether General erred in providing Fernandez with its free listing in the 1974 Hemet directory under an improper classification.

Cases Nos. 9848 and 9853

10. If it is found that General violated any of its directory advertising standards, whether reparations or any of the other relief requested in the complaints should be granted.

The Evidence

Ad Visor presented its case through 8 witnesses and 81 exhibits. General presented 3 witnesses and 48 exhibits, including the deposition of the salesman who handled the complained of advertising.



Ad Visor attempted to put in evidence concerning alleged violations of directory advertising standards in the 1971, 1972, and 1973 Redlands, San Bernardino, and Hemet directories. The Administrative Law Judge would not accept evidence of these allegations in view of his ruling on the statute of limitations. Thus the only directory violations with which we are concerned here are those alleged to have occurred in the June 1973, and July 1974 Redlands, San Bernardino, Banning, and Hemet directories.

The individual complainants represented by Ad Visor appeared and testified substantially as follows: That they depend almost exclusively upon yellow page advertising for their business; that the excessive number of display advertisements published for Mr. Mixon under the business names of Cal-Septic, Cal-Rooter, and Aero Jet caused them to lose business; that they had brought the alleged violations to the attention of their Association in an attempt to correct the problem; that the Association and some of the members conducted an investigation to determine whether Cal-Septic, Cal-Rooter, and Aero Jet were actually owned by Mixon and operated at one address; that their investigation showed Mixon to be operating all three businesses from a single address; that one of the complainants visited Mixon's place of business and attempted to buy used pipe, but was unable to because selling used pipe was not part of the business; that Fernandez is in the business of installing septic tanks and drilling as differentiated from the rest of the complainants who are in the septic tank pumping business; that Fernandez was always present at the meetings with General Telephone Directory Co. (Directory Co.) salesmen; that he could not recall whether a copy of the advertising contract was left with him at the time of signing; that he thoroughly went over the advertising items with the salesman at the time of the signing, but after that he did not bother to look at the contract again; that he did not understand the abbreviations on the contract, but he knew what he ordered; that he was not aware

that he was entitled to a free listing, however, he did not discuss this with the salesman; that he did not reject the free listing; and that Fernandez did not receive an adjustment from General in connection with prior advertising violations as did the other complainants and noncomplainants.

On cross-examination the complainant witnesses admitted that a certain amount of their business comes from referral and repeat business, and that they had recently increased their rates. Requests for specific facts, other than general impressions, to substantiate their claims of lost business due to the excessive number of advertisements by Nixon, were met with vague and conflicting answers, and admissions that their businesses had generally grown over the period involved herein, and that Nixon generally charged less for his work than complainants did.<sup>11/</sup>

The president and executive vice president of Ad Visor testified as to their interpretation of the advertising standards and the effect of the alleged violations upon their clients, and to the investigation into the ownership of Cal-Septic, Cal-Rooter, and Aero Jet, which they concluded were owned and operated by one Mr. Nixon operating at one address. They also testified to extensive correspondence and conferences with General and Directory Co. employees regarding the application and interpretation of the multiple display rule; the adjustments requested for their clients based upon their interpretation of the multiple display rule; and the fact that General had given their clients and other nonclients adjustments in prior years involving the same offending advertiser, but now refuse to consider any adjustments for the same type of violations.

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<sup>11/</sup> Since evidence relevant to the impact vel non of the alleged violations on the complainant's businesses was presented at hearing, we note it herein. However, as we have stated several times recently, "we reject any requirement that a subscriber show injury resulting from an error or omission in order to be awarded reparations". (Ad Visor (Dilday Bros. et al.) v. General Telephone Co., Decision No. 88120, Case No. 9800 (November 22, 1977). Pet. Writ Rev. Den. SF No. 23752 (April 14, 1978).)

Ad Visor seeks reparations for their clients as follows:

	<u>Advertising</u>	<u>Telephone</u>
<u>Association of Liquid Waste Haulers:</u>		
1974 Redlands--Septic Tanks classification	\$110.40	Willing to stipulate to actual.
1974 Banning--Septic Tanks	58.80	
<u>Inland Empire Septic &amp; Rooter:</u>		
1974 Redlands--Septic Tanks classification	728.40	\$556.80
--Sewage Disposal system classif.	8.40	
<u>Goddard's Cesspool Service:</u>		
1974 Redlands--Septic Tanks classification	736.80	Willing to stipulate to actual.
--Oils-Waste classif.	110.40	
<u>Curtis Pumping:</u>		
1974 Redlands--Septic Tanks classification	728.40	\$30.20 est.
--Plumbing-Drain & Sewer Cleaning	110.40	
1974 Banning--Septic Tanks classification	340.80	
--Plumbing-Drain & Sewer Cleaning	58.80	
<u>Patrick's Septic Tank Service:</u>		
1974 Redlands--Septic Tanks classification	728.40	\$364.20 est.
--Septic Tanks Consultants	8.40	
--Toilets-Portable classification	110.40	
1974 Banning--Septic Tanks	345.60	
--Toilets-Portable classification	9.60	
<u>Joe L. Fernandez:</u>		
1971 Redlands--Septic Tanks classification	360.00	Willing to stipulate to actual.
--Contractors Equip. & Suppl.-Renting	192.00	
--Drilling Companies	192.00	

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Joe L. Fernandez (Contd.):AdvertisingTelephone

1972 Redlands--Septic Tank classification	\$384.00	
--Contractors Equip. & Suppl.-Renting	204.00	
--Drilling Companies	204.00	
1973 Redlands--Septic Tanks classification	384.00	
--Contractors Equip. & Suppl.-Renting	204.00	
--Drilling Companies	204.00	
1974 Redlands--Septic Tanks classification	384.00	
--Contractors Equip. & Suppl.-Renting	204.00	
--Drilling Companies	24.00	
1972 Banning--Septic Tanks classification	96.00	
--Drilling Companies	96.00	
--Contractors Equip. & Suppl.-Renting	96.00	
1973 Banning--Septic Tanks classification	96.00	
--Drilling Companies	96.00	
--Contractors Equip. & Suppl.-Renting	96.00	
1974 Banning--Septic Tanks classification	96.00	
--Drilling Companies	96.00	
--Contractors Equip. & Suppl.-Renting	96.00	
1971 Hemet	n/a	\$380.00 est.
1972 Hemet	n/a	384.40 est.
1973 Hemet	n/a	394.20 est.
1974 Hemet	n/a	433.80 est.
1973 San Bernardino	729.00	Willing to stipulate to actual.

together with all applicable taxes and interest at the appropriate legal rate, plus attorney's fees, costs of preparation and hearing, other costs, and any other relief deemed appropriate by the Commission. Further, a requested finding of violations by defendant of PU Code Sections 453, 532, and 2106, plus finding of gross negligence and willful misconduct. (Exh. C-8, C-8-Z, and C-7-MM.)

General's evidence shows in the deposition (Exh. D-1) of the salesman who sold the advertising to Mixon that he admitted he sold more than one display advertisement to Mixon; that the

customer told him that he conducted three businesses, one being geared to septic tank and sewer line installation, one being strictly rooter (cleaning out sewer lines), and the other was located at a different address; that he observed the Mentone location and assumed that Nixon had a similar setup at his other address for Aero Jet; and that he did not believe the multiple display advertising standard was applicable since he believed Nixon's advertisements were appealing to two different phases of the market. Furthermore, he admitted that he was only renewing these advertisements and since no one was challenging them at the time he saw no reason to get involved with the multiple display standard. His explanation of how he applied the multiple display standard (Exh. D-1-GG) is set forth in the following testimony:

"Q. Under the standard, how many display advertisements under a single classified heading could be purchased by a business subscriber?

"A. Two.

"Q. Under any conditions, could a person purchase more than two advertisements?

"A. My interpretation was he could have two for business and this gentleman had three businesses.

"Q. Are you saying then that in handling this account, was it treated as an account involving multiple display advertising?

"A. No, I treated as three separate businesses. If I would have treated it that way, I would have had six ads in there instead of three, two for each business. That to me would have been multiple display.

"Q. Under your interpretation of the multiple display advertising standard that was then in effect was each of these businesses entitled to advertise separately?

"A. Yes.

"Q. At the time you handled the accounts, were you aware who the owner of these businesses was?

"A. Yes.

"Q. Who was the owner?

"A. Richard Nixon."

(Exh. D-1 pp. 63-65)

With respect to the display advertisement for Cal-Septic under the Second Hand Dealers classification, the salesman's deposition reveals the following answers with respect to this advertisement:

"I tried to discourage it because I felt it was a case of class jumping; however, we didn't have anything in our practice and to my knowledge that would have disqualified him from going under the nebulous heading of the secondhand dealers. And in reviewing the Orange County directory and the L.A. directory under secondhand dealers, I noted that everybody and their brother was under that heading and I didn't see a way that we could stop them." (Exh. D-1, p. 31)

Upon reviewing the matter with his division manager, the salesman provided the following answer:

"I suggested that the customer was obviously trying to jump classification; however, the advertising had been accepted by Pacific Telephone. I had confirmed that by calling Pacific Telephone's sales manager over in the Riverside directory at that time, that they had accepted an ad under the secondhand dealer classification for the customer and I didn't see anything in our practice that could keep them from doing it. Dalzell agreed so the ad was submitted." (Exh. D-1, p.32)

General next presented the Western Regional sales manager of Directory Co. His testimony generally covered the manner in which the various advertising standards involved here were interpreted and applied during the time period covered by this complaint. He pointed out that under the multiple display standard in effect at the time it was possible for a business to obtain as many as three display advertisements under a single classification if the customer operated his business at more than one location; if one of the advertisements catered to a different phase of the business; if the second advertisement was in a foreign language; and a third advertisement could be bought if it were a product sell advertisement which does not contain an address or telephone number. At the time it was Directory Co.'s practice to accept the word of the customer with respect to the content of an advertisement and also as to whether

separate businesses were being conducted; that it was general practice to consider situations such as here, where there is one owner (advertiser) with separate business names to consider each name as a separate business entity entitled to as many display advertisements as could be qualified for under the multiple display standard; that the in-column advertising standard was interpreted and applied in the same manner as the multiple display standard; that there was a standard in effect at the time involved here which required that the majority of the copy in a display advertisement had to conform with the heading, or classification, under which it was placed; that since the majority of the copy in Cal-Septic's advertisement under the Second Hand Dealers classification pertained to Used Pipe it was approved for publication since the classification Second Hand Dealers was a catch-all heading for anyone selling a used product, although there was a Used Pipe heading; that the multiple display standard was never intended to prevent display advertising by legitimate businesses, but only to prevent a few businesses from totally dominating a single classification; that with respect to the advertising for Fernandez, this was handled by a salesman still employed by the company, but who was out of the country at the time of the hearing; that the regional sales manager had discussed the circumstances with him prior to leaving; that the salesman told him that all of the Fernandez's advertising was what is called in the trade, foreign advertising, which means that the telephone service in this case was provided by Pacific Telephone and Telegraph Company (Pacific) although advertising was in General's directories except, for the Hemet directory where General provided telephone service to Fernandez; that in the case of foreign advertising the customer is not entitled to a free listing; that the majority of the advertising the salesman handled was foreign advertising; that the salesman discussed various other headings under which Fernandez could advertise; that it was the salesman's customary procedure to write MCL Rejected, (free listing declined) on the advertising application after he discussed the free listing

and the customer decided not to take advantage of it; that the cost of a regular type listing was 70¢ per month or \$8.40 per year; that with respect to the free line of advertising (OAF) to which the customer was entitled it was an optional matter with the customer; that Fernandez received a free line of information in every directory he advertised in except the 1973 San Bernardino directory; that the application for directory advertising for this directory shows that the customer declined the free line of information; and that an OAF is equivalent to a paid item of advertising consisting of a line of copy placed between the line on which the customer's address and telephone number appears and known as an AF which costs \$.80 per month or \$9.60 per year.

General's next witness was the Long Beach Division District sales manager of Directory Co. His testimony essentially supports that of the Western Regional sales manager insofar as the interpretation and application of the multiple display advertising standard is concerned, and he verified his signature on various documents introduced.

General also presented its rates and tariff administrator from its Revenue Requirements Department. His testimony consisted of explaining how he interpreted and applied the term "minimum monthly charge" as used in paragraph C.1 of Rule 26 (Exh. D-5). He pointed out that General's tariffs do not define the term; that his interpretation of minimum monthly charge is the fixed periodic charge, or the basic monthly charge, plus the applicable increments in the case of measured or message rate service and that this is the manner in which he consistently defined the term; that this charge would not include the charge for extension telephone, long cords, key, gongs, the attendant's cabinet on a switchboard installation, etc; that all of the charges which are included in the monthly minimum charge are bulk billed to the customer as one rate; and that additional listings or lines of information which are to appear in the alphabetical or white pages of the directory only are also included in this one bulk rate.



Discussion

General's Multiple Display Standard in effect at the time of the publication of the display ads in question provided that:

"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 2½ 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 2½ column display advertisement or its equivalent under the same classified heading. Under no condition shall any firm have more than two 2½ column display advertisements or their equivalent under the same classified heading except under Condition 4.

"Condition 1

"If an advertiser actually conducts a business with the public at two or more locations, he may buy two 2½ column advertisements or their equivalent under a single classified heading. Identification of the second location must be shown in at least one 2½ column advertisement or its equivalent.

"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 bona fide place of business.

"Condition 2

"An advertiser may have an additional 2½ column advertisement or its equivalent if he caters to a different type of market.

"Condition 3

"An advertiser may have an additional 2½ column advertisement or its equivalent if the ad is a duplicate of the primary advertisement, under the same classification and is printed in a language other than English.

"Condition 4

"In addition to whatever display items the advertiser may be entitled under a classified heading, an additional display item not to exceed one 2½ column is acceptable when such a display item is a 'Product Sell Ad'. See 'Product Sell Advertisement' for definition."

In Decision No. 88993 in Case No. 9824, Ad Visor (Inland Empire Septic and Rooter et al. v. Pacific Telephone and Telegraph), we concluded that Mr. Mixon's Aero Jet and California enterprises were not operated in such a fashion as to qualify for multiple display ads under Pacific Telephone's MDS which is almost textually identical to General's MDS. Since the record shows that Mixon's Cal-Rooter was operated at the same address we may conclude that General's MDS did not permit the publication of the Cal-Rooter ad under the same classified heading as either the California or Aero Jet ads. We have previously held that the use of separate names for businesses conducted by one person does not change this result.<sup>12/</sup>

General contends that its MDS allows one advertiser to buy more than one display ad under a single classified heading where that advertiser operates more than one similar business at the same location. The only possible support for this position is Condition 2 of General's MDS which permits an additional display ad where that additional ad is for a business that "caters to a different type of market".

Even if we accepted General's interpretation of its MDS, which we do not, it is unclear whether the three Mixon ads would qualify. The three display ads all basically advertise Mixon's availability to install and clean septic tanks and sewer lines. The ad's level of identity would seem to go beyond mere similarity and if they "cater... to different...market(s)" it is only by chance. We are of the opinion that in order to have qualified for publication under Condition 2 of General's MDS the additional ad would have had to contain copy the majority of which was addressed to a different phase of the advertiser's business. Of course, were this the case a question could arise as to whether the ad was properly classified in the directory. However, we need not resolve any possible internal inconsistencies in General's MDS to conclude that under no reasonable interpretation of the MDS did the three ads for Mixon qualify for publication under a single classification.

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<sup>12/</sup> See, e.g., D.87239, C.9834, and D.87596 denying rehearing and modifying D.87239 and D.87240, C.9833.

Free Line of Information

The evidence with regard to the free line of information to which Fernandez was entitled was conflicting and inconclusive. General's witness stated that General's records indicated that Fernandez declined the free line of information. After reviewing the record we conclude that Fernandez has not met the burden of proof with regard to this facet of his complaint.

Listing Without Additional Charge (Free Listing)

The evidence showed that Fernandez did not receive, and did not reject, the listing without additional charge (free listing) to which he was entitled in the 1973 Hemet directory. He received an additional listing in the 1974 Hemet directory but it was under a classification other than that which he requested.

Improper Classification of the Cal-Septic Display Ad

General admitted that it published a display ad for Cal-Septic in the 1973 Redlands directory under the classification Second Hand Dealers, the classification immediately preceding Septic Tanks. General asserted at hearing that that classification was proper since part of the ad's copy pertained to used pipe and the classification Second Hand Dealers was a catch-all heading for anyone selling a used product. However, one of Ad Visor's witnesses stated that when they visited Nixon's place of business and attempted to buy used pipe they were told that selling used pipe was not part of Nixon's business.

This Commission recently found that placement of ads for Nixon's other two businesses, Aero Jet and Cal-Septic, under the Second Hand Dealers classification was improper. (Ad Visor (Inland Empire et al.) v. Pacific Telephone and Telegraph, D.88993, C.9824 (June 27, 1978).) In that decision we stated (at mimeo.p. 18) that:

"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.)"

The above is equally applicable herein and we will award reparations for the diminution in the value of Fernandez's advertising caused by General's misapplication of its heading standard. Interpretation of "Minimum Monthly Charge"

General interprets the term "minimum monthly charge" to include the basic monthly charge and to exclude charges for extension telephones, long cords etc. In Ad Visor (Air Comfort) v. General Telephone, Decision No. 88460, Case No. 9837 we stated (at mimeo.p. 22) that:

"In determining the proper amount of reparations, we will follow our recent Dilday Brothers decision (Ad Visor (Dilday Bros.) v. General Telephone D.88120, C.9800) 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."

We will follow our decisions in Dilday Brothers and Air Comfort in determining the amount of reparations to which Fernandez is entitled for the omission of his listings without additional charge in the 1973 and 1974 Hemet directories.

#### Award of Reparations

In Ad Visor (Inland Empire et al v. Pacific Telephone, supra, we noted (at mimeo.p. 19) that:

"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."

As we did in the Inland Empire case cited above, we will herein look to our recent decisions for guidance in determining the proper amount of reparations.

In the Inland Empire, supra, we awarded the complainants 25% of the charges for their display advertising. That award was predicated on a finding that Pacific had violated its standards and practices by publishing a second display ad for Mixon under the Septic Tanks classification. (Decision No. 88993, Findings Nos. 4, 13, and 15). In Case No. 9848, General improperly published a second and third display ad for Mixon under the Septic Tanks heading. We conclude that the publication of those ads diminished the value of the complainants' advertising in C. 9848 by 35%. In Case No. 9853, General, as in Inland Empire, supra, improperly published one additional ad. We therefore conclude, as we did in Inland Empire, supra, that the value of the complainant's advertising was diminished in the amount of 25%.

We next proceed to determine the proper amount of reparations with regard to the remaining contentions in Case No. 9853. With regard to the omission of the listings without additional charge we will, as we did in Dilday Brothers and Air Comfort award the complainant 20% of the minimum monthly charge for the life of the directories in which the omissions occurred.

With regard to the publication of the Cal-Septic ad under the classification Second Hand Dealers we must distinguish this proceeding from the similar facts in Ad Visor (Inland Empire et al) v. Pacific Telephone, supra. In that case Pacific improperly published two ads for two Mixon companies under the Second Hand Dealer classification. In the instant proceeding only one such misclassified ad is involved. Therefore rather than awarding the complainant 25% of the charges for his advertising as we did in the earlier proceeding we will award the complainant 15% of the charges.

Other Allegations

Insofar as Ad Visor's allegations of gross negligence, willful misconduct and violation of Section 2106 are concerned, we have repeatedly held that these matters are beyond our jurisdiction (Sonnenfeld v. General Telephone Co. of California (1971) 72 CPUC 419, 421; Jones v. PT&T (1963) 61 CPUC 674, 675). We will however direct General to apply its advertising standards and practices in a uniform and nonarbitrary fashion.

Findings of Fact

1. In its 1973 Redlands directory, General published a one-quarter page display advertisement for Cal-Septic under the Second Hand Dealers classification.
2. General admitted that it published two one-quarter page display advertisements for Cal-Septic under the Septic Tanks classification in the 1973 Banning yellow pages directory.
3. At the time of the publication of General's 1973 San Bernardino directory, Fernandez was entitled to receive a free line of information under each of its bold type listings pursuant to Commission Resolution No. T-7893.
4. Fernandez declined General's offer of these free lines of information in its 1973 San Bernardino directory.
5. In its 1973 Hemet directory complainant Fernandez did not receive the regular type listing without additional charge to which he was entitled by General's tariff Schedule Cal. PUC No. D-1, Special Conditions 3.a.; however, he did not reject his free listing in the 1973 Hemet directory.
6. In its 1974 Redlands and Banning yellow pages directories under the classification Septic Tank, General published three one-quarter page display advertisements, one each for Cal-Septic, Cal-Rooter, and Aero Jet.
7. General also published in its 1974 Redlands directory, custom trademark advertisements for Cal-Rooter and Aero Jet.
8. In General's 1974 Hemet directory, Fernandez received his regular type free listing under the classification Contractors Equipment and Supplies, which was not the heading under which Fernandez requested that said listing be placed.

9. General did not have reasonable cause to believe Nixon was conducting separate businesses at different addresses.

10. Nixon was the owner and operator of Cal-Septic, Cal-Rooter, and Aero Jet operating from a single address.

11. General's interpretation that its multiple display advertising standard allowed one advertiser to buy more than one display advertising under a single classified heading where that advertiser operated more than one similar business at the same location was incorrect. ✓

12. Under General's multiple display advertising standard then in effect, a business could qualify for a second display advertisement under a single classified heading if the majority of the copy of the second advertisement appealed to a different phase of the customer's business.

13. Publications of the display ads described in Findings Nos. 2 and 6 violated General's MDS then in effect.

14. Publication of the display ad described in Finding No. 1 violated General's heading standard.

15. As a result of the publication of the display ads described in Finding No. 6, the value of the advertising purchased by the complainants in Case No. 9848 in the 1974 Banning and Redlands directories was diminished by 35%.

16. As a result of the publication of the display ads described in Finding No. 2, the value of the advertising purchased by Fernandez in the 1973 Redlands directory was diminished by 25%.

17. As a result of the omissions described in Findings Nos. 5 and 7, Fernandez telephone service was diminished in value by 20% during the life of the 1973 and 1974 Hemet directories.

18. As a result of the publication of the display ad described in Finding No. 1, the value of the advertising purchased by Fernandez in the 1973 Banning directory was diminished by 15%.

19. We have previously determined the meaning of the phrase "minimum monthly charge" contained in General's tariff Schedule Cal. PUC No. DR, Rule 26, paragraph 3.1 in D.88460, C.9837. We reaffirm Finding 23 therein that 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".

20. Jurisdiction to award damages or to make findings of gross negligence or willful misconduct or to impose penalties pursuant to Section 2106 does not lie with the Commission.

Conclusions of Law

1. The two-year statute of limitations contained in Section 735 governs the allegations contained in C.9853.

2. Complainants are entitled to reparations on their advertising under the Septic Tanks classification only for the 1973 and 1974 directory years, as follows:

a. Case No. 9848

- i. Association of Liquid Waste Haulers 1974 Redlands directory - \$38.64; 1974 Banning directory - \$20.58.
- ii. Inland Empire Septic & Rooter Service 1974 Redlands directory - \$254.94.
- iii. Goddard's Cesspool Service 1974 Redlands directory - \$257.88.
- iv. Curtis Pumping 1974 Redlands directory - \$254.94; 1974 Banning directory - \$119.28.
- v. Patrick's Septic Tank Service, 1974 Redlands directory - \$254.94; 1974 Banning directory - \$120.96.
- vi. Joe L. Fernandez 1974 Banning directory - \$33.60; 1974 Redlands directory - \$134.40.

b. Case No. 9853 - Joe L. Fernandez

- i. 1973 Redlands directory - \$96.00
- ii. 1973 Banning directory - \$14.40
- iii. 1973 Hemet directory - 20% of monthly telephone charges for lives of the 1973 and 1974 Hemet directories.

O R D E R

IT IS ORDERED that:

1. General Telephone Company of California (General) shall pay to the Association of Liquid Waste Haulers reparations as follows:

\$38.64, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Redlands directory to date of payment;

\$20.58, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Banning directory to date of payment.



2. General shall pay to Inland Empire Septic & Rooter Service reparations as follows:

\$254.94, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Redlands directory. ✓

3. General shall pay to Goddard's Cesspool Service reparations as follows:

\$257.88, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Redlands directory.

4. General shall pay to Curtis Pumping reparations as follows:

\$254.94, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Redlands directory;

\$119.28, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Banning directory.

5. General shall pay to Patrick's Septic Tank Service reparations as follows:

\$254.94, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Redlands directory to the date of payment;

\$120.96, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Banning directory to date of payment.

6. General shall pay to Joe L. Fernandez reparations as follows:

\$14.40, with interest at the rate of 7 percent per annum from the end of the life of the 1973 Banning directory to the date of payment;

\$33.60, with interest at the rate of 7 percent per annum from the end of the life of the 1974 Banning directory to date of payment;

\$96.00 with interest at the rate of 7 percent per annum from the end of the life of the 1973 Redlands directory to the date of payment;

\$134.40 with interest at the rate of 7 percent per annum from the end of the life of the 1974 Redlands directory.

20% of Fernandez's monthly telephone charges for the lives of the 1973 and 1974 Hemet directory.

7. 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 6th day of SEPTEMBER, 1978.

*I dissent.*  
*William Symons Jr*

*Ralph Bahr*  
\_\_\_\_\_  
President

*Verizon L. Sturgeon*  
*Charles D. Hall*  
\_\_\_\_\_  
Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.