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Decision No. 89388

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Estelle Hersh, dba Cal-State Sewing Machines, Complainant, vs. Pacific Telephone and Telegraph Company, Defendant.	(ECP) Case No. 10617

ORDER DENYING REHEARING

Estelle Hersh, dba Cal-State Sewing Machines, has filed a petition for rehearing of Decision No. 89585. The Commission has considered each and every allegation contained therein and is of the opinion that no good cause for granting rehearing has been shown; therefore,

IT IS ORDERED that rehearing of Decision No. 89585 is hereby denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 14th day of FEBRUARY, 1979.

President

Commissioner Leonard M. Grimes, Jr., being necessarily absent, did not participate.

Commissioners

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Decision No. 89585 OCT 31 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Estelle Hersh, dba Cal-State Sewing Machines, Complainant, vs. Pacific Telephone and Telegraph Company, Defendant.	(ECP) Case No. 10617 (Filed July 7, 1978)

Estelle Hersh, for herself, complainant.
V. Henderson, for defendant.

OPINION AND ORDER

Public hearing in this matter was held before Administrative Law Judge Mattson in Los Angeles on September 14, 1978, pursuant to Section 1702.1 of the Public Utilities Code.

Complainant placed an advertising order with defendant on December 14, 1977 for advertising in the March 1978 publication of the North Hollywood Yellow Pages Directory. The closing date for orders was December 16, 1977.

Complainant's display advertisement was placed under the heading "Sewing Machines - Industrial". The order (Exhibit 1) was for Cal-State Sewing Machines, and the items and monthly charges were:

White Pages (bold type)	$ 4.75
Sewing Machines - Household (bold type)	3.25
Display Advertising	32.10
Sewing Machines - Repairing (½-inch ad)	8.20
Sewing Machines - Industrial (listing under brand name CONSEW)	3.75
Total Monthly Rate	$52.05

Complainant testified that she had difficulty obtaining service in that she had to contact defendant and request that a Pacific Telephone salesman take her advertising order. After some difficulty, an order was taken two days before closing. A proof copy of the display advertising was received. No errors regarding the spelling of names, addresses, or telephone numbers were made.

Complainant alleges that the location of her display advertisement is improper, the anchor listing[1/] under "Sewing Machines - Industrial" was not in bold type as requested, and the layout within the display advertisement is not good.

Defendant's response is that the location of the display advertisement is proper and the advertising provided complies with the order signed by complainant.

Complainant's major claim is that the location of the display ad (Exhibit 3, page 1429, column 2) is two headings removed from the heading "Sewing Machines - Industrial". However, the evidence is that reasonable business practices constrain the defendant and dictate that result. For example, the first customer to place an order for a particular size ad is placed first in the book, and such priority is retained so long as the customer continues to reorder the same size ad in subsequent books. On Exhibit 3, page 1428, column 4, and page 1429, column 2, are three ads which have priority over complainant's display ad. (All three appeared in the prior book.) Display ads the size in question are not placed within the alphabetical listings or above alphabetical listings in the same column. In placing complainant's display ad on page 1429 it is difficult to see how defendant could readily improve the location of the display ad.

1/ An anchor listing is a listing in the yellow page alphabetical section that has the advertiser's name, address, and telephone number and a statement: "Please see advertisement page _____."

The complainant had a dispute with defendant five years ago regarding a yellow page advertisement. She feels that present service has been unsatisfactory. Failure to supply complainant with bold type on an anchor listing is evidence that the parties failed to communicate clearly when the order was taken. The evidence does establish that the display ad was written out in detail and a copy was supplied to complainant when the order was taken. A proof was later mailed.

The usual question in a case of this nature is: Did the complainant get what she ordered and paid for? If not, reparations are due for the diminished value of the advertising service. We conclude that complainant ordered, but did not get, bold type in the anchor listing. This listing would require an additional charge of $3.25 monthly. Were this <u>not</u> an anchor listing we could easily conclude that complainant is entitled to no relief. Such a conclusion could be premised on the grounds that while complainant did not get the bold type listing she ordered, since she was not charged for the bold type listing, she, therefore, has not paid for something she did not receive. Where the listing is an anchor listing, however, failure to supply the bold type ordered not only diminishes the advertising value of the listing itself but also the display ad anchored to the listing. We conclude that complainant is entitled to reparations in the amount of 20 percent of the monthly charges for display advertising.

The display ad in question is the initial one for complainant in the North Hollywood book. In the future, complainant should be on notice that defendant will, upon timely request, correct or modify ads after proofs are supplied.

IT IS ORDERED that defendant should pay complainant reparations of 20 percent of the gross billing for display advertising placed ($32.10 monthly) in the March 1978 North Hollywood Yellow Pages Directory which totals $77.04 for the twelve-month period of March 1978 to March 1979.

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

Dated at San Francisco, California, this 31st day of October, 1978.

ROBERT BATINOVICH
President

WILLIAM SYMONS, JR.

VERNON L. STURGEON

RICHARD D. GRAVELLE

CLAIRE T. DEDRICK
Commissioners