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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FEDERAL TRADE COMMISSION, Plaintiff, v. **DIRECTV,** a corporation, and **DIRECTV, LLC,** a limited liability company, Defendants.	Case No. **COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and Section 5 of the Restore Online Shoppers' Confidence Act ("ROSCA"), 15 U.S.C. § 8404, to obtain permanent injunctive relief,

rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of Section 4 of ROSCA, 15 U.S.C. § 8403, in connection with the advertising, marketing, and sale of Defendants' multi-channel video programming subscription service.

JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, and 8404.

3. Venue is proper in this district under 28 U.S.C. § 1391(b), (c)(2), and (d), and 15 U.S.C. § 53(b).

4. Assignment to the San Francisco Division is proper because Defendants have advertised and sold direct-to-home digital television service in San Francisco County to thousands of consumers who reside in the county.

PLAINTIFF

5. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces ROSCA, 15 U.S.C. §§ 8401 *et seq.*, which prohibits certain methods of negative option marketing on the Internet.

6. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and ROSCA, and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, and 8404.

DEFENDANTS

7. DIRECTV, LLC is a California limited liability company with its principal place of business at 2260 East Imperial Highway, El Segundo, California 90245. At all times material to this Complaint, acting alone or in concert with others, DIRECTV, LLC has advertised,

marketed, distributed, or sold direct-to-home digital television service to consumers throughout the United States. DIRECTV, LLC is owned directly or indirectly by DIRECTV. DIRECTV, LLC transacts or has transacted business in this district and throughout the United States.

8. DIRECTV is a Delaware corporation with its principal place of business at 2260 East Imperial Highway, El Segundo, California 90245. At all times material to this Complaint, acting alone, in concert with others, or through its subsidiaries, DIRECTV has advertised, marketed, distributed, or sold direct-to-home digital television services to consumers throughout the United States. Acting alone, in concert with others, or through its subsidiaries, DIRECTV transacts or has transacted business in this district and throughout the United States.

COMMERCE

9. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

Introduction

10. Defendants are the largest provider of direct-to-home digital television service and the second largest provider in the multi-channel video programming distribution industry in the United States. As of December 31, 2013, Defendants had approximately 20.3 million subscribers in the United States.

Defendants' Subscription Service

11. Defendants offer their direct-to-home digital television service to consumers by subscription. Defendants' subscription service consists of a programming package, a satellite dish and other necessary equipment, and installation and support services.

12. Defendants typically require consumers to agree to a mandatory 24-month contract to receive programming. Defendants typically assess an "early cancellation fee" against customers who cancel their subscription before the end of 24 months. Defendants' early cancellation fee is typically $20 per month for each month remaining on a subscriber's agreement. After 24 months, Defendants' customers may become month-to-month subscribers.

Defendants' Marketing Practices

13. Defendants typically market their subscription service by disseminating advertisements with reduced rates for their programming packages. The advertisements appear in a variety of media, including television, print, mail, and the Internet. The rates are typically a set monthly charge for the first year of a two-year customer agreement ("initial period"). In the second year of the agreement, Defendants substantially increase the monthly charges of their programming packages. This increase in the monthly charge is typically as much as 50 to 70 percent. Also, Defendants typically impose an additional $3 to $5 per month increase in the cost of the programming packages in the second year of the agreement.

14. In addition to the rates referenced in Paragraph 13, Defendants advertise that subscribers will receive additional premium channels, such as HBO, Cinemax and Showtime, free of charge for a limited period of time, *e.g.*, three months. Consumers must affirmatively cancel these premium channels before the end of the initial period to avoid monthly charges. Defendants charge substantial monthly fees, typically around $48 per month, to consumers who take no action or otherwise remain silent. Defendants charge consumers for the premium channels without obtaining express informed consent.

15. Defendants' marketing practices have been the focus of tens of thousands of consumer complaints and of actions by the attorneys general of all 50 states and the District of Columbia.

Defendants' Deceptive Advertising Campaigns

16. In numerous instances since 2007, Defendants have disseminated or have caused to be disseminated advertisements for Defendants' subscription service, including but not limited to the attached Exhibits 1 through 3. These advertisements direct potential customers to Defendants' telephone numbers and Internet website, *www.directv.com*. These advertisements contain the following statements regarding pricing for their subscription service:

A. "All New! Limited Time Offer! . . . Now only $19.99*/mo." (Exhibit 1) (October 2014).

B. "Package offers starting at $24.99/mo. Limited Time." (Exhibit 2) (August 2013).

C. "Limited Time! $24.99/mo for 12 months." (Exhibit 3) (July 2013).

17. To the extent that Defendants' advertisements described in Paragraph 16, above, contain any qualifying disclosures concerning the price consumers will pay after the initial period, any such disclosures are inadequate in terms of their content, presentation, proximity, prominence or placement such that consumers are unlikely to see or understand such disclosures. Similarly, to the extent that these advertisements contain any qualifying disclosures concerning the mandatory two-year contract length, any such disclosures are inadequate in terms of their content, presentation, proximity, prominence or placement such that consumers are unlikely to see or understand such disclosures.

18. Some of Defendants' advertisements described in Paragraph 16, above, also contain statements that subscribers will receive premium channels free of charge for three months. For example, Exhibit 1 states "over 30 premium channels free for 3 months."

19. To the extent that Defendants' advertisements described in Paragraph 16, above, contain any qualifying disclosures concerning the offer of free premium channels, any such disclosures are inadequate in terms of their content, presentation, proximity, prominence or placement such that consumers are unlikely to see or understand such disclosures. In particular, these advertisements do not convey to consumers:

A. That Defendants automatically enroll consumers in a negative option continuity plan with additional charges;

B. That consumers must affirmatively cancel the negative option continuity plan before the end of a trial period to avoid additional charges;

C. That Defendants use consumers' credit or debit card information to charge consumers monthly for the negative option continuity plan; and

D. The costs associated with the negative option continuity plan.

Defendants' Deceptive Internet Sales Website

20. Consumers who visit Defendants' website, *www.directv.com*, are required to navigate sequentially through at least eight webpages in order to select a programming package and purchase Defendants' subscription service. These webpages include: (a) the Landing page, (b) the Programming Package Selection page, (c) the Receiver page, (d) the Shopping Cart pages, and (e) the Confirmation page.

21. In numerous instances since 2007, Defendants have disseminated or have caused to be disseminated webpages, including but not necessarily limited to those attached as Exhibit 4 (August 2013). These webpages typically contain statements that are identical or similar to the following:

A. "Limited Time. 140+ channels. $24.99 month for 12 months" (Exhibit 4 at page 1); and

B. "CHOICE: 150+ channels. Only $29.99 month for 12 months" (Exhibit 4 at page 2).

22. To the extent that Defendants' webpages contain any qualifying disclosures concerning the price consumers will pay after the "discount" period, any such disclosures are inadequate in terms of their content, presentation, proximity, prominence, or placement such that consumers are unlikely to see or understand such disclosures. In particular, Defendants' webpages do not convey that:

A. Defendants require consumers to remain a subscriber for two years, a mandatory term which carries an early cancellation fee for the failure to do so; and

B. Defendants charge significantly higher monthly prices for their programming packages during the second year of service.

23. Defendants' webpages typically contain statements concerning an offer of free premium channels that are identical or similar to the following: "Free for 3 months. HBO + Starz + Showtime + Cinemax." (Exhibit 4 at page 1).

24. To the extent that Defendants' webpages contain any qualifying disclosures concerning the offer of free premium channels, any such disclosures are inadequate in terms of their content, presentation, proximity, prominence, or placement such that consumers are unlikely to see or understand such disclosures. In particular, Defendants' webpages do not convey to consumers:

A. That Defendants automatically enroll consumers in a negative option continuity plan under which Defendants charge consumers for access to premium channels after an initial free period, typically three months, unless consumers contact Defendants and cancel their access to the premium channels;

B. That consumers must affirmatively cancel the negative option continuity plan before the end of the initial free period to avoid charges;

C. That Defendants use consumers' credit or debit card information to charge consumers for the negative option continuity plan; and

D. The costs associated with the negative option continuity plan.

Defendants' Deceptive Telemarketing Presentation

25. Consumers who call the telephone number listed in Defendants' advertisements described in Paragraph 16, above, speak with a telemarketer. Defendants' telephonic sales presentations typically include statements concerning the initial monthly prices that consumers will pay for programming packages. Defendants' telephonic presentations do not adequately disclose the monthly cost to consumers of the programming packages during in the second year of their subscription agreements.

VIOLATIONS OF THE FTC ACT

26. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

27. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT I

Failure to Disclose or Disclose Adequately Pricing of Defendants' Satellite Television Subscription Service

28. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, and sale of Defendants' subscription service, Defendants have represented, directly or indirectly, expressly or by implication, that their programming packages can be purchased by paying the advertised monthly prices, typically for a twelve-month period.

29. In numerous instances in which Defendants have made the representation set forth in Paragraph 28 of this Complaint, Defendants have failed to disclose, or to disclose adequately, to consumers certain material terms and conditions of the offer, including but not limited to:

A. The mandatory two-year agreement period, which carries an early cancellation fee, for the subscription service; and

B. The significantly higher price for programming packages, typically $25 to $45 per month higher, during the mandatory second year of the consumer's agreement.

This additional information would be material to consumers in deciding to purchase Defendants' subscription services.

30. Defendants' failure to disclose or disclose adequately the material information described in Paragraph 29, above, in light of the representation described in Paragraph 28 above, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

Failure to Disclose or Disclose Adequately Premium Channel Offer Terms

31. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, and sale of Defendants' subscription service, Defendant have represented, directly or indirectly, expressly or by implication, that consumers could obtain certain premium channels for free for a certain period of time, typically three months.

32. In numerous instances in which Defendants have made the representation set forth in Paragraph 31 of this Complaint, Defendants have failed to disclose, or disclose adequately, to consumers the material terms and conditions related to the costs of the offer, including:

A. That Defendants automatically enroll consumers in a negative option continuity plan with significant charges;

B. That consumers must affirmatively cancel the negative option continuity plan before the end of the trial period to avoid charges;

C. That Defendants use consumers' credit or debit card information to charge consumers for the negative option continuity plan; and

D. The costs associated with the negative option continuity plan.

33. Defendants' failure to disclose or to disclose adequately the material information described in Paragraph 32 above, in light of the representation described in Paragraph 31 above, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE RESTORE ONLINE SHOPPERS' CONFIDENCE ACT

34. In 2010, Congress passed ROSCA, 15 U.S.C. §§ 8401 *et seq*., which became effective on December 29, 2010. Congress passed ROSCA because "[c]onsumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business." Section 2 of ROSCA, 15 U.S.C. § 8401.

35. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging consumers for goods or services sold in transactions effected on the Internet through a negative option feature, as that term is defined in the Commission's Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310.2(u), unless the seller (1) clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information, (2) obtains the consumer's

express informed consent before making the charge, and (3) provides a simple mechanism to stop recurring charges. 15 U.S.C. § 8403(1)–(3).

36. The TSR defines a negative option feature as: "an offer or agreement to sell or provide any goods or services, a provision under which the consumer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer." 16 C.F.R. § 310.2(u).

37. As described in Paragraphs 23-24, above, Defendants have advertised and sold access to premium channels, as part of their subscription service, to consumers through a negative option feature as defined by the TSR. *See* 16 C.F.R. § 310.2(u).

38. Pursuant to Section 5 of ROSCA, 15 U.S.C. § 8404, a violation of ROSCA is treated as a violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a.

COUNT III

Failure to Disclose All Material Terms

39. In numerous instances, Defendants have charged or attempted to charge consumers for access to premium channels, as part of its subscription service, through a negative option feature while failing to clearly and conspicuously disclose all material terms of the transaction before obtaining consumers' billing information.

40. Defendants' acts or practices, as described in Paragraph 39 above, constitute a violation of Section 4(1) of ROSCA, 15 U.S.C. § 8403(1), and are therefore treated as a violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a.

COUNT IV

Failure to Obtain Consumers' Express Informed Consent

41. In numerous instances, Defendants have charged or attempted to charge consumers for access to premium channels, as part of their subscription service, through a negative option feature while failing to obtain consumers' express informed consent before charging their credit card, debit card, bank account, or other financial account for those premium channels.

42. Defendants' acts or practices, as described in Paragraph 41 above, constitute a violation of Section 4(2) of ROSCA, 15 U.S.C. § 8403(2), and are therefore treated as a violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b), 57b, Section 5 of ROSCA, 15 U.S.C. § 8404, and the Court's own equitable powers, requests that the Court:

A. Enter a permanent injunction to prevent further violations of the FTC Act and ROSCA by Defendants;

B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and ROSCA, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

C. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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