

STATE OF INDIANA)
)
COUNTY OF MARION)

MARION COUNTY CIRCUIT/SUPERIOR COURT
SS:
CAUSE NO. 49D01 10 12 PL 0539 1 4

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
DIRECTV, INC., a California)
Corporation)
)
Defendant.)

FILED

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DEC 15 2010

Elizabeth S. White
CLERK OF THE MARION CIRCUIT COURT

COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND CIVIL PENALTIES

1. This civil law enforcement proceeding is brought in the name of the State of Indiana ("State"), by Attorney General, Gregory F. Zoeller, and Deputy Attorney General, Jeremy R. Comeau, pursuant to the Indiana Deceptive Consumer Sales Act ("Act"), Indiana Code §24-5-0.5-1 *et seq.*

2. The State has reason to believe that the above-named Defendant has violated the Act by, among other things, failing to clearly and conspicuously disclose the terms of the contract regarding DIRECTV goods and services.

3. This Complaint is being filed concurrently with an Agreed Final Judgment.

JURISDICTION AND VENUE

4. The State of Indiana invokes the jurisdiction of this Court, pursuant to Ind. Code § 24-5-0.5-4(c). Venue is proper in Marion County because it is a county in which Defendant has conducted business.

PARTIES

5. Pursuant to Ind. Code § 24-5-0.5-4(c), this action is commenced in the name of the State of Indiana by the Indiana Attorney General.

6. Defendant DIRECTV, INC. (DIRECTV), is a corporation organized under the laws of the State of California with its principal place of business in El Segundo, California.

FACTUAL ALLEGATIONS

Upon information and belief, the State of Indiana alleges as follows:

7. DIRECTV engages in the business of providing television viewing services to consumers. Defendant was engaged in this business at all times relevant to this complaint. During the period from 2006 through 2009, DIRECTV, INC. was engaged in the business of selling and leasing equipment and services to Indiana consumers, engaging in the sale, lease, or other distribution of DIRECTV services and products by and through its authorized distributors, retailers, or installers, and engaging in contractual relationships with Indiana consumers directly and through its authorized distributors, retailers, or installers.

8. All the allegations contained in this Complaint took place between January 2006 to the present.

9. During times relevant to this Complaint, DIRECTV included terms in advertisements without clearly disclosing the terms and conditions that applied to the advertised offer. By way of example, the attached **Exhibit A** is a 4 page flyer ad used by DIRECTV to promote its services.

10. In DIRECTV's advertisements, such as Exhibit A, DIRECTV fails to clearly and conspicuously disclose the actual terms of its offers. When it does disclose such terms, they are often misleading, incomplete, or difficult to locate. In many instances they are displayed in small

print, typeface, or font, in low-contrast with the body of the advertisement, on a separate page from the main advertising statement, or on the screen in a television advertisement for as little time as two to three seconds.

11. For example, many of the material disclosures related to the offer advertised in Exhibit A are difficult to find. The inside of the advertisement includes a flap that opens to reveal several lines of very small print, where many of the material disclosures are made. The disclosures in Exhibit A are not clear and conspicuous and are not in direct proximity to the term that the disclosure is intended to limit.

12. Many DIRECTV advertisements, including Exhibit A, offer packages advertised at "\$29.99/MONTH FOR 12 MONTHS," or using similar words. In such advertisements, DIRECTV often fails to clearly disclose the material limitations on a consumer's ability to obtain the advertised price, for example, by failing to clearly disclose the fact that a 24 month commitment to DIRECTV service is required to obtain the 12 month promotional price. In Exhibit A, inside the flyer, under the flap, on the 16th line of the smallest print, the consumer is informed: "**SYSTEM LEASE:** Purchase of 24 consecutive months of any DIRECTV base programming package (\$29.99/mo. or above) or qualifying international services bundle required."

13. DIRECTV has, at times relevant to this Complaint, made misrepresentations regarding the availability of programming, including local channels and sports programming.

14. DIRECTV has engaged in the practice of contracting with consumers in a manner that is unfair or deceptive, by locking consumers into long-term contracts without clearly and conspicuously disclosing the existence and consequences of the long term contract.

15. DIRECTV has at times obligated consumers to a long term contract, without their

knowledge, when consumers have any DIRECTV equipment installed, serviced, or repaired.

16. At installation, consumers historically have been presented with a form entitled "EQUIPMENT LEASE ADDENDUM" which states that the consumer is bound to maintain a minimum level of programming for a period of eighteen (18) to twenty-four (24) months as a result of having any DIRECTV equipment installed, repaired, or replaced. This "EQUIPMENT LEASE ADDENDUM" is sometimes placed on the back of an "Installation Checklist" which the consumer is presented after a third-party installer has completed installation of DIRECTV services. The consumer is not provided with clear and conspicuous notification that the consumer is entering into a long-term contract with DIRECTV.

17. DIRECTV provides consumers with an additional document entitled the "CUSTOMER AGREEMENT" when the consumer's first bill for DIRECTV arrives.

18. The "Customer Agreement" does not contain all of the most essential terms of the contract between DIRECTV and the consumer.

19. DIRECTV has not provided clear and conspicuous disclosures about promotional offers, including the price and length of such offers.

20. DIRECTV consumers are charged cancellation or equipment fees when the consumer does not realize that the fee will be charged.

21. Third Party Retailers of DIRECTV have failed to clearly and conspicuously disclose all the material terms of the contract with DIRECTV.

VIOLATIONS OF LAW

22. The State incorporates by reference and realleges each allegation contained in the paragraphs 1-21 of this Complaint.

23. All of the acts and practices engaged in and employed by the Defendant as alleged herein are unfair or deceptive acts or practices affecting the conduct of any trade or commerce in Indiana, which are declared unlawful by Ind. Code § 24-5-0.5-1 *et seq.*

24. Defendant has violated Ind. Code § 24-5-0.5-3 by engaging in unfair, misleading and/or deceptive acts or practices.

25. Defendant has violated Ind. Code § 24-5-0.5-3 by representing that consumers will receive a certain amount of “free” programming without clearly and conspicuously disclosing that the receipt of “free” services is contingent upon the purchase of a separate programming package.

26. Defendant has violated the Act by advertising DIRECTV services without clearly and conspicuously disclosing: required contractual / commitment terms for DIRECTV service; the length of contractual relationships; and all relevant fees and costs for cancelling that agreement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, State of Indiana, requests the Court enter judgment against Defendant, prays:

(1) That this Court adjudge and decree that Defendant has engaged in acts or practices in violation of the Indiana Deceptive Consumer Sales Act.

(2) That pursuant to Ind. Code § 24-5-0.5-4(c)(1), this Court permanently enjoin and restrain the Defendant from engaging in deceptive and unfair practices set forth herein and from violating the Indiana Deceptive Consumer Sales Act.

(4) That pursuant to Ind. Code § 24-5-0.5-4(c)(2), this Court make such orders or render such judgment as may be necessary to restore to any consumer or other person any ascertainable losses, including statutory interest, suffered by reasons of alleged violations of the Indiana Deceptive

Consumer Sales Act.

(5) That the Court adjudge and decree that the Defendant is liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendant's actions, including attorney's fees, as provided by Ind. Code § 24-5-0.5-4(c)(3).

(6) That the Court adjudge and decree that the Defendant pay civil penalties of not more than five thousand dollars (\$5000.00) per violation to the State as provided by Ind. Code § 24-5-0.5-4(g).

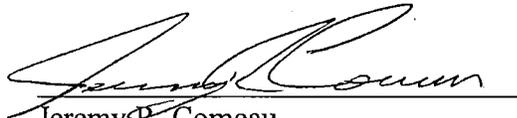
(7) That all costs in this cause be taxed against Defendant.

(8) That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

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By:


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