

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COMCAST CABLE COMMUNICATIONS,)	
LLC,)	
)	Case No. _____
Plaintiff,)	
)	Judge _____
v.)	
)	JURY TRIAL DEMANDED
DIRECTV INC.,)	
)	
Defendant.)	
)	
_____)	

COMPLAINT

Plaintiff Comcast Cable Communications, LLC (“Comcast”) brings this claim for false advertising and related claims against defendant DIRECTV, Inc. (“DIRECTV”), and alleges as follows:

NATURE OF THE ACTION

1. This is a false advertising case against a serial false advertiser. In the wake of the recent resolution of the NFL’s labor dispute, defendant DIRECTV has launched a multi-million-dollar multimedia advertising campaign, baiting consumers with the claim that DIRECTV’s popular NFL Sunday Ticket service—which ordinarily costs hundreds of dollars per year—is currently available for “free” or at “no extra charge.” Unfortunately for consumers, the claim of “free” is an outright lie. As **none** of the ads disclose, the offer is not for free NFL Sunday Ticket service—the offer requires a **two-year contract with hefty termination fees for early cancellation**, with the NFL Sunday Ticket service **automatically renewing** in the second year at **full price**. DIRECTV has gone to great lengths to conceal this fact from consumers. Many of its

ads, especially those aired on the radio, simply omit this critical fact altogether while DIRECTV's television and Internet ads employ a carefully crafted scheme of purported disclaimers that were intentionally designed to deceive as many consumers as possible. DIRECTV's strategy could hardly be more clear—capitalize on enthusiasm for an assured NFL season, claim to offer a costly premium service for “free,” and get as many cable subscribers to switch to DIRECTV before they realize they are trapped in a two-year—and decidedly non-free—deal.

2. In addition to making false claims about its own services, in the same national advertising campaign, DIRECTV also is falsely disparaging cable television service generally—and, by clear implication, Comcast's cable services specifically. For example, one DIRECTV advertisement contains the literally false claim that cable subscribers only can view a single NFL game each Sunday during the NFL season. Another implies this same point with the rhetorical question, “Only one game on Sunday?” Finally, a third national advertisement that has run throughout the Philadelphia market makes the claim that Philadelphia Eagles fans that are cable customers are unable to watch Philadelphia Eagles' games on Sunday. In the Philadelphia market, Comcast not only distributes every Philadelphia Eagles game through its cable system “live,” but it is also the exclusive sponsor of the Philadelphia Eagles in the telecommunications category. On information and belief, DIRECTV deliberately selected the Philadelphia Eagles as the target of this advertisement in order to disparage Comcast, its competitor, and undermine Comcast's sponsorship of the Eagles franchise.

3. Regrettably, it is by no means an overstatement to characterize DIRECTV as a serial offender in the false advertising realm. DIRECTV repeatedly has been taken to task by consumers, its competitors and law enforcement agencies. Most recently, in December 2010,

DIRECTV entered into consent decrees with the Attorneys General of the District of Columbia and all 50 states—including Illinois—which were designed to address, among other things, (i) DIRECTV's failure to clearly disclose to consumers automatic renewal of a seasonal sports package, such as NFL Sunday Ticket, (ii) limitations with regard to the pricing of services, and (iii) DIRECTV's efforts to enroll consumers in additional contracts or contract terms without fair disclosures—that is, the very conduct raised in this action. Despite the consent decrees with clear direction to address its past practices, DIRECTV is at it again. Given its history of relentless false advertising, DIRECTV likely will attempt to stall until the NFL season is well underway, and consumers have been duly misled, before withdrawing its current campaign. Unless the Court takes immediate action, DIRECTV will be emboldened with the belief that it has the right to lie with impunity and avoid liability for its deceptions.

JURISDICTION

4. This Court has original jurisdiction over Comcast's claims pursuant to 28 U.S.C. §§ 1331 and 1338, and 28 U.S.C. § 1367, as Comcast is asserting claims under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, and its state-law claims arise from the same operative facts. The Court also has jurisdiction over this action under 28 U.S.C. § 1332 since the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.

PARTIES

5. Comcast Cable Communications, LLC, is a Delaware limited liability company with its principal place of business located at 1700 JFK Boulevard, Philadelphia, Pennsylvania 19103, with a Registered Office located at 208 South LaSalle Street, Chicago, Illinois 60604, and with branch offices throughout Illinois, including in this District.

6. DIRECTV is a California corporation with a principal place of business located at 2230 East Imperial Highway, El Segundo, California 90245.

FACTS RELEVANT TO ALL CLAIMS

7. Comcast is the nation's largest cable operator and a leading provider of entertainment and communications products and services. Through its affiliates and subsidiaries, Comcast provides television and related services to consumers in locations throughout the country, including Chicago, Illinois.

8. As any multi-channel television service provider knows, quality of coverage of sporting events is a crucial component of any consumer-directed television programming service. Comcast has invested substantial resources into developing one of the best sports packages in the nation, with extensive coverage and analysis of the NFL, NBA, MLB, NHL, and a host of other leagues and special events. In the United States, coverage of NFL football is particularly important and valuable to consumers, and Comcast's coverage of the NFL is second-to-none.

9. DIRECTV provides consumers a multiple-channel television service through a network that transmits television programming from orbiting satellites to a satellite dish receiver affixed to the customer's home. DIRECTV competes with Comcast and other cable and satellite providers for customers in this District and elsewhere.

10. DIRECTV's fee-based "NFL Sunday Ticket" is the product of an exclusive licensing arrangement with the National Football League which, upon information and belief, grants DIRECTV expanded rights to simultaneously broadcast multiple NFL regular season games. DIRECTV typically offers the NFL Sunday Ticket service for subscription fees—currently \$66.99 per month for five months, or \$334.95 per month for a single season. *See* <http://www.directv.com/DTVAPP/content/sports/nfl>.

11. In the days following the recent resolution of the labor dispute in the NFL—as a result of which the 2011 NFL season will go forward as scheduled—DIRECTV launched an aggressive, national, multi-million-dollar campaign claiming that the NFL Sunday Ticket service would now be included “at no extra charge” and/or “free.” As detailed below, this claim is literally false and misleading to consumers.

DIRECTV'S FALSE TELEVISION COMMERCIALS

12. Beginning on or about July 8, 2011, and with increasing scope and intensity in late July 2011, DIRECTV launched an aggressive television advertising campaign, consisting of at least three 30-second commercials, each of which falsely claims that NFL Sunday Ticket can be obtained for “no extra charge.” Storyboards of each commercial and reports showing the specific broadcasts of the commercials are attached hereto as Exhibits A, B and C. Video files of each commercial are additionally provided, all on the disk attached hereto, as Exhibits D, E and F.

13. **“Helicopter” Commercial.** In this television commercial, an actor in a business suit says: *“When trading stock, information is key. Let’s just say I have my sources. ... So when I heard that if I switch to DIRECTV right now, I’d also get every NFL game every Sunday at no*

extra charge. Well, I'm all about the deal." The end of the ad displays has a prominent graphic, again stating that the NFL Sunday ticket is included at no extra charge while a voiceover actor simultaneously repeats and reinforces the claim. See Exhibits A and D.

14. **"Only Game" Commercial.** This commercial features a well-known retired football player, Deion Sanders, stating "*Don't you know only DIRECTV gets you every game every Sunday,*" and also concludes with the identical graphic and voiceover actor repeating the same false claim: "*Now NFL Sunday Ticket is included at no extra charge.*" Additionally, during the commercial, an actor makes the remarkable claim that "*[t]his is the only [football] game we get with cable.*" And further, this advertisement also is embedded in DIRECTV's website, directv.com, directly above the following text: "Only one game on Sunday?" See Exhibits B and E.

15. **"Eagles" Advertisement.** In this commercial, which also features Deion Sanders, an actor wearing a Philadelphia Eagles jersey complains "*I can't watch my Eagles here. I've got cable.*" Mr. Sanders replies that "*[o]nly DIRECTV gives you your Eagles and every other game every Sunday. Right at home.*" In the "Home Marketing Area" of the Philadelphia Eagles—which, as defined in the NFL Constitution, generally includes the City of Philadelphia and the surrounding territory to the extent of seventy-five miles in every direction from the exterior corporate limits of Philadelphia and certain other areas of the Commonwealth of Pennsylvania—this claim is literally, clearly and unambiguously false, as Philadelphia Eagles games are of course broadcasted in that area. And, once again, the ad ends with a prominent graphic and voiceover claiming that "*[n]ow NFL Sunday Ticket is included at no extra charge.*" See Exhibits C and F.

16. Each of these television commercials contains purported disclaimers that appear fleetingly at the bottom of the screen, in faint grey font, which arguably purport to contradict and/or qualify the “no extra charge” claim. On information and belief, these purported disclaimers are—and were specifically and intentionally crafted by DIRECTV to be—inconspicuous, illegible to consumers, and easily missed or ignored by consumers entirely.

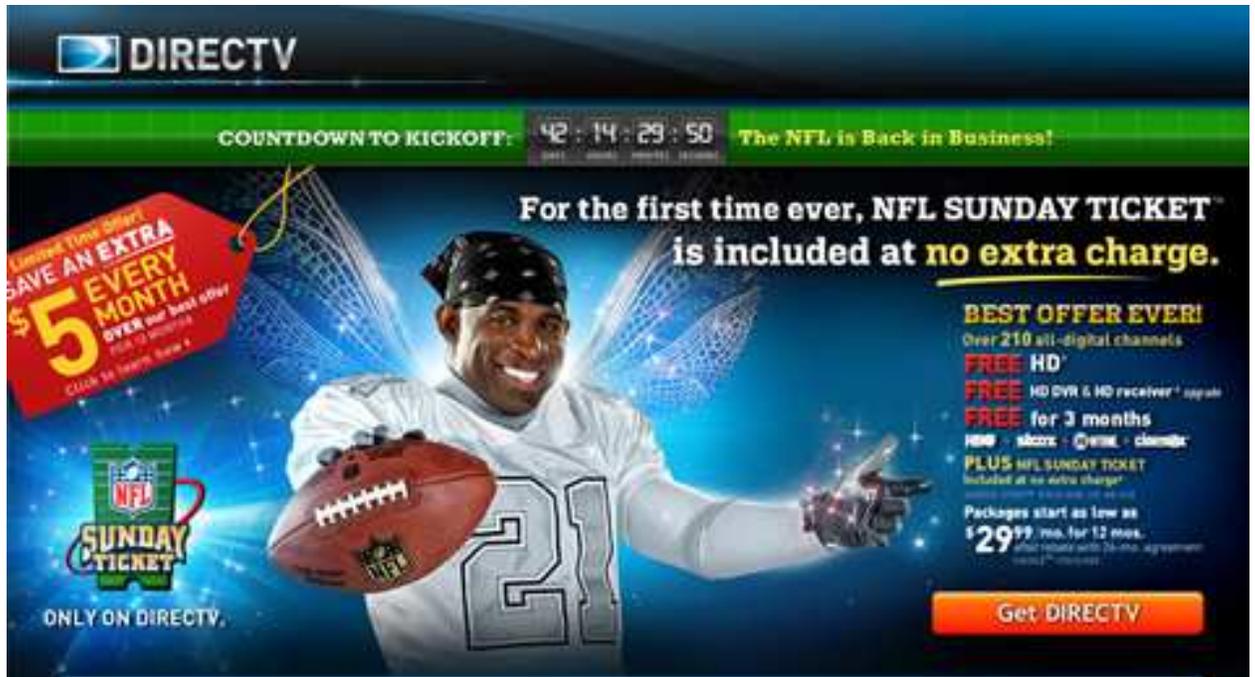
DIRECTV’S FALSE INTERNET ADVERTISING CAMPAIGN

17. DIRECTV engages in extensive advertising on the Internet, the centerpiece of which is its own website, directv.com. On its homepage, DIRECTV claims in bold-face large type that for the first time ever, “NFL SUNDAY TICKET is included at no extra charge.”

18. Only in a maze of dense disclaimers and sub-disclaimers, DIRECTV discloses that the offer (i) applies only to new customers, (ii) requires a two-year commitment, (iii) requires enrollment in a premium level of service, (iv) applies only to 2011, and (v) entails automatic renewal in 2012 at “special” renewal rates.

19. The levels of DIRECTV’s obfuscation are illustrated by the following series of screenshots from directv.com, all captured on July 28, 2011.

First, the following image shows the principal offer on directv.com’s main page:



A close-up of the relevant language is as follows:

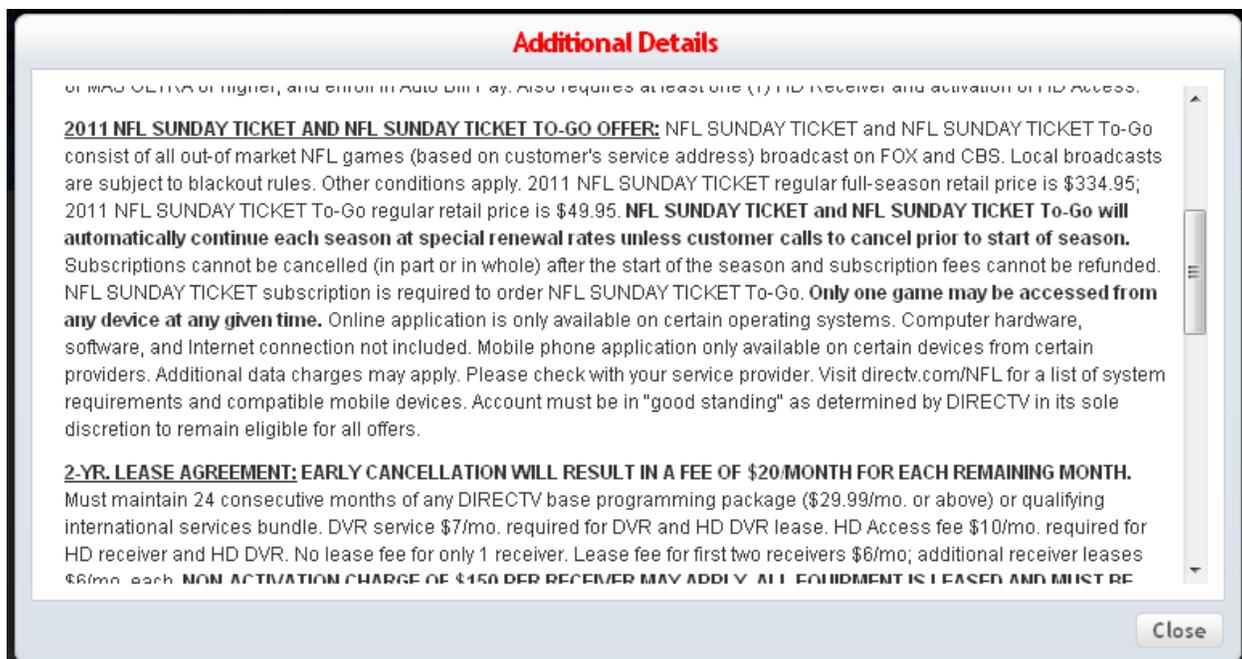


Various footnotes in the webpage refer to the following disclaimers, found at the very bottom of the webpage:

Offer ends 10/5/11. Credit card required (except in MA & PA). New approved customers only (lease required). Applicable use tax adjustment may apply on the retail value of the installation. *Free HD requires the CHOICE XTRA package or above, at least one (1) HD receiver, HD Access and enrollment in Auto Bill pay. **Additional fees required. **New customers taking CHOICE XTRA and above will be automatically enrolled in 2011 NFL SUNDAY TICKET and NFL SUNDAY TICKET To-Go at no additional cost. 1"Every game every Sunday" applies to out-of-market games. Blackout restrictions apply to your local games. 2Access to DIRECTV CINEMA™ programming available at no additional charge based on package selection. Actual number of TV shows and movies will vary. 3HBO GO® is included with your HBO® subscription at no additional cost. HBO® and related channels and service marks are the property of Home Box Office, Inc. HBO GO® is only accessible in the US where a high-speed broadband connection is available. 4To view programs in 1080p, the following are required: a DIRECTV Plus HD DVR Receiver (model HR20 or later), an HDMI cable connecting the receiver and the television, and a high-definition 1080p24 television. Not all models are compatible. 5Based on national offering of exclusive sports packages and other major sports programming in HD.

[Additional Details](#)

Notably, even reading every word of the small print disclaimers above would still not reveal the critical fact concealed by DIRECTV. At the very bottom of the webpage is found the inconspicuous and inconspicuously named hyperlink titled “Additional Details.” If the consumer thinks to scroll to the bottom of the page, determine that “Additional Details” is in fact a hyperlink (which is not immediately obvious), and clicks on the hyperlink, the consumer then will be presented with an additional scrolling window-within-a-window containing eight separate paragraphs of fine-print terms, conditions, and limitations. If the consumer scrolls down to the second of these paragraphs, he will find the following window:



Only now—after navigating his way from television, radio, or third-party websites, and after finding his way to the bottom of directv.com, finding the “Additional Details” link, clicking on it, and scrolling down again, will the consumer finally learn that the “at no extra charge” claim is literally false. To the contrary, as stated above, the offer (i) applies only to new customers, (ii) requires a two-year commitment, (iii) requires enrollment in a premium level of service, (iv) applies only to the 2011 NFL season, and (v) entails automatic renewal of the NFL Sunday Ticket service in 2012 at “special” renewal rates.

FALSE RADIO ADVERTISING CAMPAIGN

20. DIRECTV is running a series of radio advertisements for NFL Sunday Ticket that claim the service is included “at no extra charge,” and is “free,” without containing *any* disclosures, conditions, or limitations of any kind.

21. For example, a radio advertisement broadcast in Washington, D.C. on July 26, 2011, contains the following statements:

... To celebrate the return of the NFL, DirecTV is including NFL Sunday Ticket at no extra charge to anyone who calls 1-800-DIRECTV to switch. That's every game, every Sunday, every team, and every play at no extra charge.

... That's right, if you call 1-800-DIRECTV to switch today, you'll get NFL Sunday Ticket at no extra charge. Think about it; every game, every Sunday included free when you sign up for DirecTV.

... Switch to DirecTV and get NFL Sunday Ticket free.

This advertisement contains no conditions or limitations, and does not even direct the consumer to directv.com. This advertisement further contains the additional false statements that “DirecTV is the only place where you can watch entire games live,” and that “DirecTV is the only place you can watch entire games live in high definition.” A transcript of this

advertisement is attached hereto as Exhibit G, and an audio recording of this advertisement is additionally provided, in the disk attached hereto, as Exhibit H.

22. Similarly, a separate radio advertisement broadcast in San Francisco and Oakland on July 27, 2011, states that “[t]o celebrate the end of the lockout, DirecTV is having a limited time offer, which includes NFL Sunday Ticket at no extra charge for anyone who calls 800-DIRECTV. With NFL Sunday Ticket you get every game every Sunday at no additional charge.” Again, this advertisement contains no conditions or limitations, and does not even direct the consumer to directv.com. A transcript of this advertisement is attached hereto as Exhibit I, and an audio recording of this advertisement is additionally provided, in the disk attached hereto, as Exhibit J.

COUNT I

FEDERAL FALSE ADVERTISING

23. Comcast repeats and re-alleges the allegations in paragraphs 1 through 22 as though fully set forth herein.

24. DIRECTV has made false, deceptive, and misleading descriptions and representations of fact in its commercial advertising concerning the nature, characteristics, and qualities of the its goods, services, and commercial activities in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

25. DIRECTV’s false, deceptive, and misleading descriptions and representations of fact have deceived and are likely to deceive purchasers and consumers into, among other things,

purchasing such services from DIRECTV instead of Comcast, unfairly and unlawfully shifting income and profit from Comcast to DIRECTV, and falsely disparaging Comcast's cable service.

26. DIRECTV's false, deceptive, and misleading statements about its own goods, services, and commercial activities have damaged Comcast's goodwill and reputation and are likely to impact Comcast's sales.

27. DIRECTV's conduct is willful, deliberate, intentional, and in bad faith.

28. By reason of the foregoing acts, DIRECTV has caused, and unless enjoined will continue to cause, irreparable harm to Comcast. Comcast has no adequate remedy at law.

COUNT II

VIOLATION OF ILLINOIS

CONSUMER FRAUD AND DECEPTIVE PRACTICES ACT

29. Comcast repeats and re-alleges the allegations in paragraphs 1 through 28 as though fully set forth herein.

30. DIRECTV has engaged in the foregoing unfair and deceptive acts and practices, in commerce, with the intent to cause the public to rely on, and with the effect that the consuming public has relied on, DIRECTV's false and misleading misrepresentations.

31. DIRECTV's false, deceptive, and misleading descriptions and representations have deceived and are likely to deceive purchasers and consumers into purchasing such services from DIRECTV instead of Comcast, unfairly and unlawfully shifting income and profit from Comcast to DIRECTV, and falsely disparaging Comcast's cable service.

32. DIRECTV's foregoing acts constitute deceptive trade practices in violation of the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/2 *et. seq.*

33. Comcast has been and will likely continue to be damaged by DIRECTV's false and misleading representations in an amount to be determined at trial.

34. DIRECTV's conduct is willful, deliberate, intentional, and in bad faith.

35. By reason of the foregoing acts, DIRECTV has caused, and unless enjoined will continue to cause, irreparable harm to Comcast. Comcast has no adequate remedy at law.

COUNT III

VIOLATION OF ILLINOIS' UNIFORM DECEPTIVE TRADE PRACTICES ACT

36. Comcast repeats and re-alleges the allegations in paragraphs 1 through 35 as though fully set forth herein.

37. DIRECTV's false, deceptive, and misleading representations of fact have disparaged Comcast's goods, services, and business.

38. The foregoing acts of DIRECTV constitute unfair trade practices in violation of the Illinois Deceptive Trade Practices Act, 815 ILCS 510/2 *et. seq.*

39. Comcast has been and will likely continue to be damaged by DIRECTV's false, deceptive, and misleading representations in an amount to be determined at trial.

40. DIRECTV's conduct is willful, deliberate, intentional and in bad faith.

41. By reason of the foregoing acts, DIRECTV has caused, and unless enjoined will continue to cause, irreparable harm to Comcast. Comcast has no adequate remedy at law.

COUNT IV

COMMON LAW UNFAIR COMPETITION

42. Comcast repeats and re-alleges the allegations in paragraphs 1 through 41 as though fully set forth herein.

43. DIRECTV's acts alleged in this claim constitute unfair competition under the common law of the State of Illinois and other states. DIRECTV's false, deceptive, and misleading representations are likely to mislead and deceive the public and already have misled and deceived the public. Unless enjoined, DIRECTV is likely to continue to mislead and deceive the public.

44. Comcast has been and will likely continue to be damaged by DIRECTV's false, deceptive, and misleading representations in an amount to be determined at trial.

45. DIRECTV's conduct is willful, deliberate, intentional, and in bad faith.

46. By reason of the foregoing acts, DIRECTV has caused, and unless enjoined will continue to cause, irreparable harm to Comcast. Comcast has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Comcast respectfully requests that the Court:

1. Preliminarily and permanently enjoin DIRECTV, and its officers, agents, employees, attorneys, and all others in active concert or participation with them, from directly or indirectly using in commerce, causing to be published, or otherwise disseminating and promoting (a) any advertisements, materials or activities for the NFL Sunday Ticket service—including, but not limited to, the specific advertisements identified in this Complaint—containing, reflecting or referring to the statements:

(i) “no extra charge”

(ii) “free”

in the context of DIRECTV’s current campaign or any similar offering in which the service is not in fact available at “no extra charge” or “free”; (b) all other false, misleading, and deceptive statements described in this Complaint; and (c) all other false, misleading, and deceptive statements contained in DIRECTV’s advertisements or promotions for the NFL Sunday Ticket service as later determined at trial or other proceeding in this matter.

2. Preliminarily and permanently enjoin DIRECTV, and its officers, agents, employees, attorneys, and all others in active concert or participation with them, from directly or indirectly using in commerce, causing to be published, or otherwise disseminating and promoting the “*‘Only Game’ Advertisement*” for the NFL Sunday Ticket service, as described above.

3. Preliminarily and permanently enjoin DIRECTV, and its officers, agents, employees, attorneys, and all others in active concert or participation with them, from directly or indirectly using in commerce, causing to be published, or otherwise disseminating and promoting the “*‘Eagles’ Advertisement*” for the NFL Sunday Ticket service, as described above, in the “Home Marketing Area” of the Philadelphia Eagles, as defined in the NFL Constitution.

4. Order DIRECTV to retract and correct its false and misleading advertising claims, including by means of a corrective advertising campaign with resources equal to or greater than the resources DIRECTV directed to its false and misleading advertising claims.

5. Require DIRECTV to:

- a) account for and pay over to Comcast all profits wrongfully derived by DIRECTV by its false and misleading representations and that such damages be trebled in accordance with 15 U.S.C. § 1117;
- b) pay to Comcast such damages as have been suffered by Comcast and that such damages be trebled in accordance with 15 U.S.C. § 1117;
- c) pay to Comcast the costs of this action, together with Comcast’s reasonable attorneys’ fees and disbursements in accordance with 15 U.S.C. § 1117 and 815 ILCS 505/10a(c);
- d) pay exemplary and punitive damages, payable to an appropriate consumer protection agency or consumer advocacy group and/or to the Court, to punish DIRECTV for its wrongful actions and to deter it from further false advertising; and

e) file with this Court and serve on Comcast a report in writing under oath setting forth in detail the manner and form in which DIRECTV has complied with the terms of any injunction entered by the Court, in accordance with 15 U.S.C. § 1116.

6. Grant Comcast such other and further relief as this Court deems just and equitable.

Date: August 3, 2011

Respectfully submitted,

LOEB & LOEB LLP

By: /s/ Douglas N. Masters

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DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Comcast respectfully demands a trial by jury of all issues triable by a jury.

Date: August 3, 2011

Respectfully submitted,

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