

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

COMCAST CABLE COMMUNICATIONS, )  
LLC, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
DIRECTV INC., )  
 )  
Defendant. )  
 )  
\_\_\_\_\_ )

Case No. 11 CV 05284  
Honorable Ruben Castillo

**DECLARATION OF PETER  
INTERMAGGIO IN SUPPORT OF  
COMCAST’S APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION**

PETER INTERMAGGIO declares as follows:

1. I am Senior Vice President, Marketing Communications, at Comcast Cable Communications, LLC (“Comcast”). I have personal knowledge of the matters set forth herein and submit this Declaration in support of Comcast’s motion for temporary restraining order and preliminary injunction enjoining DIRECTV from making certain false and misleading statements in its advertising and marketing activities.

2. As set forth herein and in the accompanying motion papers, in the days following the recent resolution of the labor dispute in the National Football League (“NFL”), as a result of which the 2011 NFL season will go forward as scheduled, DIRECTV has launched a false and misleading advertising campaign claiming that (i) DIRECTV’s NFL Sunday Ticket service now is being offered “Free” or at “At No Extra Charge”; (ii) cable customers, including Comcast customers, can view only a single NFL football game each Sunday during the NFL season; and

(iii) cable customers in Pennsylvania, New Jersey, Delaware and parts of Maryland will not be able to watch all of the Philadelphia Eagles games.

### **Relevant Background**

3. 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 the greater Philadelphia metropolitan area.

4. DIRECTV provides consumers a satellite-based television service and competes with Comcast for customers in many markets throughout the United States.

5. NFL football programming is particularly popular and valuable to consumers in the United States. For example, in two reports, The Nielsen Company reports that in 2010, NFL football accounted for three of the ten highest-rated regularly scheduled television programs. Of the 45 top-rated network primetime telecasts, a full 21 were NFL football broadcasts (specifically, the Super Bowl), with many having in excess of 40 million viewers. True and correct copies of the two Nielsen reports, with the NFL programming highlighted, are attached hereto as Exhibits K and L.

6. Comcast invests millions of dollars each year acquiring the rights to telecast sports-related content to its subscribers including, among other things, extensive coverage of NFL football.

7. DIRECTV's fee-based "NFL Sunday Ticket" is a popular service, exclusive to DIRECTV, whereby subscribers are able to view multiple out-of-market regular season NFL

games each Sunday during the NFL's regular season. Based on a news article available at [www.broadcastingcable.com](http://www.broadcastingcable.com)—a true and correct copy of which is attached hereto as Exhibit M—DIRECTV's agreement with the NFL is valued at approximately \$1 billion annually from 2011-2014.

### **DIRECTV's Deceptive Advertising Campaign**

8. Beginning in late July 2011, DIRECTV launched a multimedia campaign seeking to attract new customers by capitalizing on heightened enthusiasm for the upcoming the 2011 NFL season. On television, radio and the Internet, DIRECTV aggressively has promoted that as part of its "Best Offer Ever," the "NFL Sunday Ticket is included at no extra charge." As can be discovered, however, through a somewhat twisted journey through DIRECTV's website, this is not the case.

9. The bold image below shows the principal offer on DIRECTV's website:



10. The advertised details of the “Best Offer Ever” are as follows:

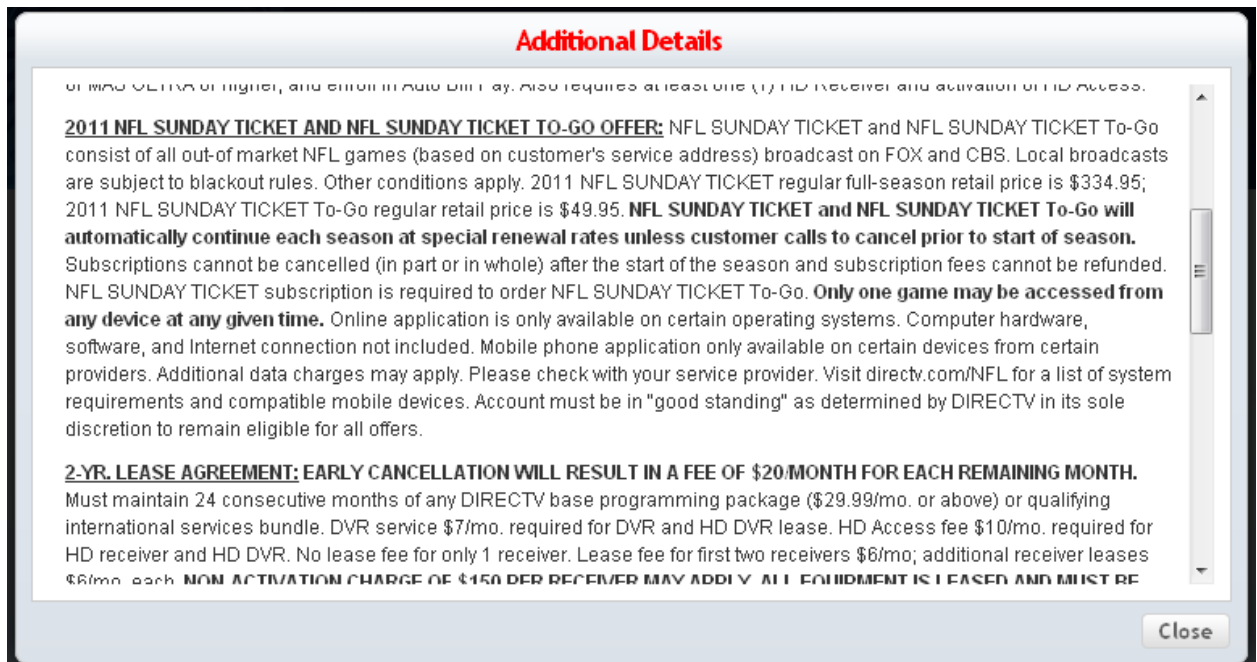


11. At the extreme bottom of the webpage, however, appears the following disclaimer:

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. †"Every game every Sunday" applies to out-of-market games. Blackout restrictions apply to your local games. ‡Access to DIRECTV CINEMATM programming available at no additional charge based on package selection. Actual number of TV shows and movies will vary. †HBO 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. ‡To 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. †Based on national offering of exclusive sports packages and other major sports programming in HD.

[Additional Details](#)

12. Thus far, reading every word of the small print disclaimers above still would not reveal the critical fact concealed by DIRECTV. At the very bottom of the disclaimers, however, is a hyperlink titled “Additional Details.” If the consumer clicks on the hyperlink, the consumer then will be presented with an additional – “sub-basement” of disclosures – in the following window:



13. While DIRECTV boldly and widely claims that the NFL Sunday Ticket is included “at no extra charge” it has totally obscured the fact 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 the 2011 season, and (v) entails an automatic renewal in 2012 at “special” renewal rates.

14. DIRECTV also is disseminating on a nationwide basis at least three television commercials containing this centrally false claim – that “NFL Sunday Ticket is now included at 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 additionally are provided, in the disk attached hereto, as Exhibits D, E, and F.

15. In addition to the false claims about the charges for the NFL Sunday Ticket, two of these commercials make false and disparaging claims about the services provided by cable operators, such as Comcast.

16. In the commercial that DIRECTV has titled “Only one game on Sunday?” four actors complain that their cable service broadcasts a single game on Sunday; “*The game’s over....That’s the only game we get with cable.*” The premise of this ad—that some cable customers only receive one game a week—is demonstrably false. All of Comcast’s customers, have access to multiple NFL games each Sunday during the NFL regular season. In fact, it is Comcast’s policy and practice to broadcast at least four separate NFL football games every Sunday of the regular season—at 1pm, 4pm, and 8pm, respectively, including one “double-header.” In the unusual situation where an NFL regular season game would be subject to a “blackout” in a given market—pursuant to NFL rules that also apply to DIRECTV—Comcast subscribers still receive multiple games on Sunday. A summary of the NFL’s “blackout” rules can be found in the news article attached hereto as Exhibit N.

17. Equally egregious with respect to Comcast customers in Philadelphia and the surrounding areas is the core message of the “Eagles Fan” commercial where an actor wearing a Philadelphia Eagles jersey complains “*I can’t watch my Eagles here. I’ve got cable,*” and is told “*Only DIRECTV gives you your Eagles and every other game every Sunday. Right at home.*” There may well be cities and places where cable customers do not have access to each and every football game played by the Philadelphia Eagles, but in the Philadelphia Eagles Home Territory (as defined by the NFL Constitution) this statements is literally false.

18. In addition to its Internet and television advertising, DIRECTV is running a series of radio advertisements offering the NFL Sunday Ticket “at no extra charge,” or for “free.” Notably, while the Internet and television commercials contain cryptic and fleeting disclosures, the radio spots make no pretense about their falsity claiming, among other things:

... 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.

... DirecTV is the only place you can watch entire games live.

Audio recordings of the radio advertisements are provided, in the disk attached hereto, as Exhibits H and J, and transcripts of these advertisements are attached as Exhibits G and I.

### **Likely Irreparable Harm To Comcast and the Public**

19. Comcast is seeking immediate relief because, if DIRECTV continues to make false and misleading statements about its own products and services while simultaneously unfairly and falsely describing and disparaging the products and services provided by its competitors, including Comcast, there is a substantial likelihood that countless members of the consuming public—a substantial number of whom are current Comcast customers—will be convinced by DIRECTV’s false and misleading ads to enter into a two-year contract with DIRECTV.

20. DIRECTV’s statements—and in particular its falsely disparaging claims regarding cable coverage of the NFL, including its statements “Only one game on Sunday?” and “That’s the only game we get with cable”—already have caused Comcast a substantial loss of

goodwill and loss of control of reputation, and will continue to inflict such harm unless enjoined and corrected. Comcast's resulting loss of control of -reputation and loss of goodwill cannot be measured in money damages with reasonable specificity, and cannot be adequately compensated by money damages.

21. DIRECTV's false claims of "at no extra charge" and "free" have also caused, and will continue to cause, consumers to cancel their cable subscriptions and switch to DIRECTV, under false pretenses. Comcast has no way to determine with any degree of certainty however, how many customers have switched or will switch to DIRECTV as a result of the false and misleading claims of "at no extra charge" and/or "free." Without this ability, Comcast has no meaningful way of identifying such consumers, restoring its goodwill with such consumers, or returning such consumers to Comcast service. Accordingly, this loss of trade, and accompanying loss of goodwill, cannot be adequately measured or compensated by money damages.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 4<sup>th</sup> day of August, 2011 in Philadelphia, Pennsylvania.

  
PETER INTERMAGGIO