

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

DISH NETWORK L.L.C.,
a Colorado limited liability company,

Plaintiff,

JURY TRIAL DEMANDED

v.

TRIBUNE BROADCASTING COMPANY, LLC,
a Delaware limited liability company,

Defendant.

**COMPLAINT FOR INTERFERENCE WITH CONTRACT
AND PROSPECTIVE ECONOMIC ADVANTAGE**

Plaintiff DISH Network L.L.C. (“DISH”), by its undersigned counsel, files this Complaint for Interference with Contract and Prospective Economic Advantage and alleges against Tribune Broadcasting Company, LLC (“Tribune”) as follows:

NATURE OF ACTION

1. DISH provides satellite television programming services to subscribers throughout the United States through contracts called subscriber agreements. DISH generally does not own the television programming that it distributes to its subscribers but instead licenses the rights to distribute programming. As of March 31, 2016, DISH had approximately 13.874 million pay-TV subscribers.¹

¹ This figure includes subscribers to DISH’s Sling TV and Sling International services, which provide television programming via the Internet.

2. Tribune owns or operates 42 local television stations, reaching more than 50 million households, making it one of the largest independent station groups in the United States, with affiliates representing all of the major over-the-air networks (CBS, ABC, FOX, NBC and the CW), including stations such as KDVR Fox 31 Denver and KWGN CW2 Colorado, as well as Chicago “superstation” WGN (the “Tribune Programming”). Tribune, as a content producer, is not a competitor with DISH. DISH instead competes with other television service providers like DirectTV and Comcast.

3. DISH, through now-expired contractual agreements with Tribune, had the right to distribute Tribune Programming to its subscribers throughout the country. Once DISH’s contracts with Tribune expired on June 12, 2016, DISH lost the right to distribute – and no longer distributes – Tribune Programming.

4. As the expiration date of the DISH-Tribune contracts approached, DISH and Tribune engaged in a lengthy negotiation over a possible new agreement. The negotiation was unsuccessful. In a last-ditch bid to force DISH to accept its terms, Tribune created and broadcast, via its channels and various websites, false, deceptive and defamatory content regarding DISH, its services and its performance. Indeed, the entire campaign launched by Tribune on these websites and commercials is deceptive – Tribune cannot actually believe the truth of any of the extremely negative statements it makes about DISH’s performance because it repeatedly states that its true intent is to force DISH into a long-term renewal of the DISH-Tribune distribution agreements. In other words, because Tribune clearly intends for its campaign – including through intentionally inflicting economic harm – to force DISH to once again become its partner and renew its agreement to distribute Tribune Programming, Tribune’s

disparaging and defamatory comments about DISH cannot reflect an honestly-held belief or be made in good faith.

5. The websites created and controlled by Tribune, for example www.dumpdish.com/kdvr and www.dumpdish.com/kwgn, have domain names that include the phrase “dump dish,” inviting DISH’s customers to terminate their customer agreements with DISH. Tribune’s publication of the misleading and deceptive statements on its channels and these websites causes actual harm to DISH. Among other things, DISH’s subscribers flood DISH’s customer service lines with questions about the Tribune messages, some subscribers cancel their DISH subscriptions, and DISH’s goodwill as a reliable service provider is eroded. Tribune is therefore deliberately and purposefully interfering with DISH’s contracts with its subscribers as well as with DISH’s prospective economic advantage, both through current subscribers who terminate their agreement with DISH and through prospective subscribers who elect not to sign up for DISH services. Tribune’s interference with DISH’s contracts with its customers is not capable of being cured because, among other reasons, once a customer changes service providers, DISH cannot get them back. DISH has incurred and will continue to incur substantial damages as a result of these deceptive messages.

PARTIES

6. DISH is a Colorado limited liability company with its principal place of business in Englewood, Colorado. DISH’s sole member is DISH DBS Corporation, a Colorado corporation with its principal place of business in Englewood, Colorado.

7. DISH is informed and believes, and thereon alleges, that Tribune is a Delaware limited liability company with its principal place of business in Chicago. The sole member of Tribune is Tribune Company, which is a Delaware corporation and has its principal place of business in Chicago.

JURISDICTION AND VENUE

8. The Court has jurisdiction under 28 U.S.C. § 1332(a), because the parties are citizens of different states and because the amount in controversy exceeds \$75,000.

9. Pursuant to 28 U.S.C. § 1391(b)(2), venue is proper in this Court because a substantial portion of the operative events giving rise to the complaint occurred in Colorado. Tribune's actions were intentional; they targeted DISH, a company resident in Colorado, and thus the brunt of DISH's injury will be felt in Colorado; and Tribune used at least one of its television stations operating in Colorado to broadcast some of its deceptive and illegal commercials.

10. This Court therefore has personal jurisdiction over Tribune because Tribune has purposefully availed itself of the privilege of conducting business activities and transactions in Colorado, and this Complaint arises out of and relates to those activities and transactions.

FACTUAL BACKGROUND

11. DISH and Tribune were parties to a Retransmission Consent Agreement, effective as of June 13, 2013, which expired on June 12, 2016. The Retransmission Consent Agreement ("Retransmission Agreement") governed DISH's distribution of certain Tribune owned and operated broadcast network stations. DISH was also a party to a separate distribution agreement with Tower Distribution Company LLC, a Tribune company, entitled the Superstation WGN Distribution Agreement and a related Term Sheet (the "WGN Agreement"). Pursuant to the WGN Agreement, DISH distributed via satellite the Tribune Superstation now known as the WGN Cable Network. The WGN Agreement, like the Retransmission Agreement, also expired on June 12, 2016.

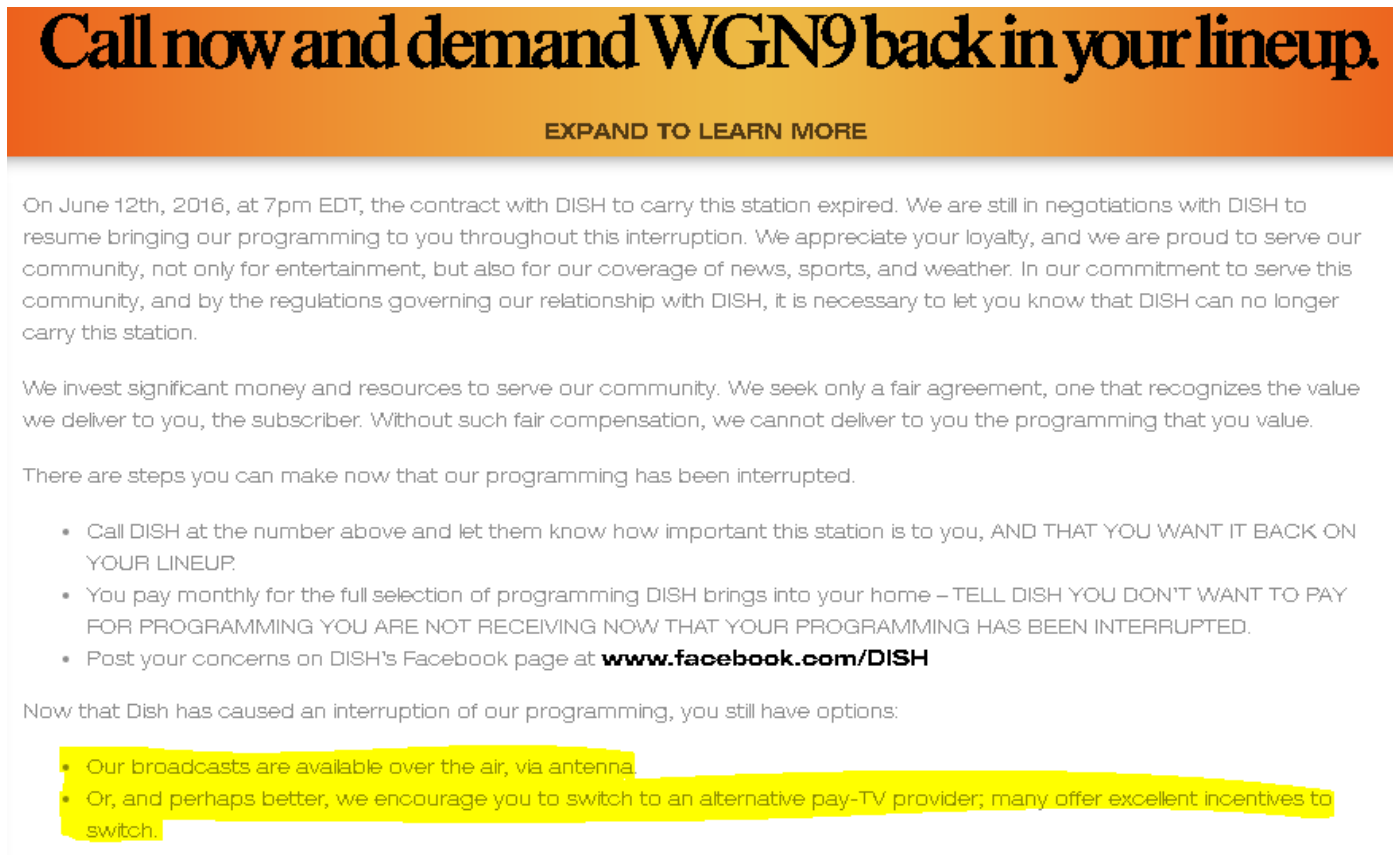
12. DISH and Tribune began negotiating a possible renewal of the Retransmission Agreement in May 2016. Simultaneously, DISH and Tribune began negotiating a renewal of the

WGN Agreement. DISH is informed and believes, and thereon alleges, that Tribune is the sole member of Tower Distribution Company LLC and that Tribune has controlled and continues to control all aspects of the negotiation related to a renewal of the WGN Agreement, as well as the Retransmission Agreement. The parties exchanged several proposals to renew both agreements over the next few weeks, with little success. The primary sticking point in the negotiation was Tribune's insistence that DISH agree to pay 2.4 times what DISH currently paid to Tribune for the right to retransmit the various broadcast network affiliates.

13. DISH delivered multiple proposals to Tribune for a renewal of the Retransmission Agreement and also offered Tribune several short-term extensions so the parties could continue negotiating. Instead of agreeing to a short-term extension, Tribune created and distributed content disparaging DISH through Tribune's owned and operated broadcast channels and a series of websites that, on information and belief, Tribune created specifically as a negotiation tactic in an attempt to force DISH to accept Tribune's terms.

14. The websites created by Tribune inform DISH subscribers that they are about to lose access to Tribune Programming and – now that DISH can no longer retransmit Tribune Programming – that “DISH forced” the local Tribune channel off of the subscribers' channel lineup. They embed 30-second long video advertisements as well as links to send DISH messages demanding that DISH keep or restore Tribune Programming, a list of shows DISH subscribers will miss, and frequently asked questions designed to pressure DISH by calling on its subscribers to flood DISH with complaints and/or drop DISH's service altogether. The websites explicitly state that DISH subscribers have two options for continuing to receive Tribune Programming: “Our broadcasts are available over the air, via antenna. *Or, and perhaps better, we encourage you to switch to an alternative pay-TV provider; many offer excellent incentives to*

switch.” Below is a screenshot from the website, which is available at www.dumpdish.com/wgn9.php:



15. The content featured on these websites and the Tribune’s broadcast commercials about its negotiation with DISH is not just a heavy-handed negotiation tactic – the websites and commercials contain false, misleading, deceptive and unfair statements. To take one example, each website features the statement that “Customers give Dish the **lowest rating** for value,” allegedly based on an unidentified “Leading Consumer Survey in 2015.” The clear impression left on any reader by this statement is that a “leading consumer survey” had found that DISH had “the lowest rating for value” of any television service provider – in other words, relative to other providers, DISH was the worst in terms of value. Below is a screenshot from the website featuring this statement:

It's dishgusting.

Dish forced WGN 9 off your lineup...
so you can't watch the channel you're **paying** for.

Here's what Dish is denying you:

Cubs & White Sox
in an historic season

WGN 9 News
Chicago's #1 news

1/2 WGN9 DISHgusting Dark

dish **urbing**

Customers give Dish the lowest rating for value.

Leading Consumer Survey, 2015

Tell Dish you're dishgusted.

Call 855 • YES • WGN9

Call now and demand WGN9 back in your lineup.

16. The embedded video commercial running on each website doubles-down on this deceptive and misleading statement. The commercial repeats this same statement audibly (“No wonder Dish gets the worst rating for value”), but also displays text stating only “Worst rating by customers.” Tribune again attributes these statements to the same “Leading Consumer Survey” from 2015. The clear implication of these statements is to suggest to DISH subscribers that, relative to other television providers, DISH is ranked dead last. Below is a screenshot from the commercial featuring this statement, which is available on the same website:

It's dishgusting.

Dish forced WGN 9 off your lineup...
so you can't watch the channel you're **paying** for.

Here's what Dish is denying you:

- Cubs & White Sox in an historic season
- WGN 9 News Chicago's #1 news

worst rating by customers

low value

Leading Consumer Survey 2015

0:20 / 0:30

Tell Dish you're dishgusted.

Call 855 • YES • WGN9

Call now and demand WGN9 back in your lineup.

17. These statements are misleading and deceptive. On information and belief, Tribune based the statement on a survey published in 2015 by Consumer Reports. DISH actually ranks *near the top* of that survey relative to other television service providers – DISH is graded in the top five of twenty-four television providers included in the survey. DISH is, in fact, graded higher than virtually all of the other well-known distributors, including AT&T, Cox, Cablevision, Charter, Comcast/Xfinity and Time Warner. Survey participants apparently did give DISH's "value" the lowest or "worse" grade available, but they gave the *same* grade to twenty of the twenty-four providers included in the survey.² Of course, the value that customers

² The 2015 survey is no anomaly. Consumer Reports just released its latest survey on June 15, 2016, and DISH is tied for the fifth-highest rated television provider out of the thirty providers ranked in the survey, outpacing virtually every other well-known provider in the industry. DISH (footnote continued)

receive is directly correlated with the prices that content providers, such as Tribune, charge distributors for their programming. The statement that “Customers gave DISH the **lowest rating** for value” is misleading, and specifically designed by Tribune to encourage DISH subscribers to terminate their contract with DISH and choose any of the other, purportedly higher-ranked providers. Similarly, the statements in the commercial that DISH gets the “worst rating by customers” is clearly false in the sense in which it is intended to be understood by current and prospective DISH subscribers – the Tribune’s targeted recipients – as it suggests DISH was the lowest-ranked provider when it actually was among the highest-ranked. These statements, along with the rest of the defamatory content, are available on numerous Tribune-created websites, including but not limited to those identified above and <http://www.dumpdish.com/wgn9>; <http://www.dumpdish.com/kcpq>; <http://www.dumpdish.com/wnep>; <http://www.dumpdish.com/ktla>.

18. Not only are certain, specific statements on the websites and commercials misleading, but Tribune’s entire campaign is deceptive. It is not the expression of thoughtful criticism or bona fide opinions concerning DISH. Tribune’s purpose in launching these websites and airing these commercials is to disparage DISH and inflame DISH’s current and prospective customers in order to apply pressure on DISH to accept Tribune’s terms for a renewal of the Retransmission Agreement. Tribune asks DISH subscribers to bombard DISH with requests that DISH accede to Tribune’s demands and renew its agreement to distribute Tribune Programming. Given its obvious interest in renewing a contractual relationship with DISH to distribute its programming, Tribune cannot believe the extraordinarily negative commentary about DISH that

again received a "worse" rating by customers for value, the lowest possible grade, but so did twenty-eight of the thirty providers in the survey.

it is broadcasting over the Internet and its television channels. Tribune in fact *knows* that DISH actually ranks among the best providers in overall customer satisfaction. The very survey it (misleadingly) cites ranked DISH the fifth best television provider out of the twenty-four considered in the survey. And in researching its deceptive claim, it must have uncovered comparable consumer surveys reflecting, for example, that DISH is best in the industry in having the lowest customer complaint rate since 2010. Tribune's campaign is nothing more than a false and deceptive ploy to force DISH to accept Tribune's terms by disparaging DISH – in ways Tribune cannot actually believe – to its current and prospective customers.

19. The website – particularly the video commercial featured on Tribune's website and, on information and belief, broadcast on Tribune's channels to DISH subscribers – also engaged in the unauthorized use of DISH's trademarked name and logo in a manner that tarnishes and dilutes the value of that trademark. Among other things, Tribune's use of the trademarked DISH name and logo in words like “dishgusting” and “dishturbing” obviously has a negative impact on the value of DISH's brand and trademark. After written demand from DISH, apparently recognizing that its use of DISH's mark constitutes illegal tarnishment, Tribune has revamped the commercial presented on the websites to remove the “dish” featuring DISH's trademarked logo. See www.dumpdish.com/wgn9.php. The original commercial, which was broadcast on Tribune's channels and initially featured on the websites, is – at the time of this writing – still available on YouTube at <https://www.youtube.com/watch?v=2b3W0E3YNtM>. Below is a screenshot of the commercial disparaging and tarnishing DISH's trademark:



20. As a result of these deceptive and defamatory statements, many subscribers have called DISH, and will continue to call DISH, to ask questions. The websites and commercials greatly increase the volume of phone calls that DISH's customer service agents manage in a given day and require DISH to increase its staffing levels in order to manage the call volume. DISH is informed and believes, and thereon alleges, that Tribune's reason for urging subscribers to call DISH to voice concerns is to ensure that DISH subscribers will overload DISH's customer service representatives with telephone calls.

21. Even more damaging is the misleading and deceptive messages broadcast by Tribune via its channels and the websites, which also cause subscribers to cancel DISH services. DISH is one of several television providers that a subscriber can choose from. As a result, DISH's reputation and goodwill are crucial to its efforts to obtain new subscribers and retain current subscribers. The websites and commercials damage DISH's reputation and goodwill, and lead potential and current subscribers to select a different service provider. After a customer

changes service providers, moreover, it is often very unlikely that DISH will get them back. Tribune's websites and commercials therefore unlawfully and intentionally interfere with DISH's business relationships in at least two ways: (1) they cause current customers to terminate their contracts with DISH, which leads to both current damages as well as the loss of prospective economic advantage from those subscribers going forward; and (2) they cause prospective DISH subscribers to choose a different television provider.

22. The websites and commercials described above are intended to confuse and anger DISH subscribers. Tribune's sole purpose in orchestrating the effort to distribute these websites and commercials is to gain an unfair advantage in its contract negotiations with DISH by causing it economic injury and by threatening to continue to cause it economic injury unless DISH succumbs to Tribune's unreasonable negotiation demands.

FIRST CLAIM

Interference with Contractual Relations and Prospective Economic Advantage

23. DISH incorporates the allegations in Paragraphs 1-22 as though fully set forth herein.

24. DISH and each of its subscribers enter into a contract by which DISH provides television service via satellite or Internet to the subscriber. These subscriber contracts are valid and enforceable. Tribune is aware that DISH has a contractual relationship with each of its subscribers.

25. Through its false and deceptive campaign against DISH – broadcast to DISH subscribers through its channels or websites it created and controls – Tribune has intentionally induced DISH subscribers to terminate their subscriber contracts with DISH and change to a different television service provider. Indeed, Tribune explicitly encourages DISH subscribers to change providers. As a result, DISH subscribers are terminating their agreements with DISH

based upon Tribune's wrongful conduct; namely, the misleading and deceptive content featured on Tribune's commercials and websites, as well as its unauthorized and tarnishing use of DISH's trademark.

26. As a result of Tribune's wrongful conduct in inducing DISH subscribers to cancel their subscriber agreements with DISH, DISH has suffered actual damages, including, but not limited to, increased costs associated with staffing additional customer service representatives, lost revenue from subscribers who have decided to cancel their subscriber agreements with DISH out of concerns raised by Tribune's wrongful conduct, and damage to DISH's goodwill and reputation. When a current subscriber cancels his or her contract, DISH also loses prospective economic advantage since DISH's contract with the subscriber gives rise to the reasonable expectation of such advantage going forward.

27. In addition to the damages sustained when current subscribers terminate their agreements with DISH, DISH has a reasonable expectancy that it will enter into a valid business relationship with prospective subscribers to its television services. Tribune is aware that DISH expects to enter into future subscriber agreements with new subscribers.

28. Through its negative campaign against DISH – broadcast to DISH subscribers through its channels or websites it created and controls – Tribune has intentionally induced prospective DISH subscribers to reconsider entering into a subscriber agreement with DISH, thus terminating DISH's reasonable expectancy of establishing a valuable business relationship with prospective customers. DISH is informed and believes that prospective subscribers are refusing to enter into agreements with DISH based upon Tribune's wrongful conduct; namely, the misleading and deceptive content featured on Tribune's commercials and websites, as well as its unauthorized and tarnishing use of DISH's trademark.

29. As a result of Tribune's wrongful conduct in inducing prospective DISH subscribers to refuse to enter into subscriber agreements with DISH, DISH has suffered actual damages, including, but not limited to, lost revenue from prospective subscribers who have decided not to enter into subscriber agreements with DISH out of concerns raised by Tribune's wrongful conduct, and damage to DISH's goodwill and reputation.

PRAYER FOR RELIEF

WHEREFORE, DISH prays for relief on its First Claim as follows:

1. Monetary damages, including damage arising from DISH's increased expenditures, lost revenue, and damages to DISH's goodwill and reputation, in an amount in excess of \$75,000;
2. Costs of suit; and
3. Any other such relief as the Court deems just and proper.

DATED: June 20, 2016

By: /s/Richard R. Patch

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