

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202 <hr/> THE STATE OF COLORADO, <i>ex rel.</i> , JOHN W. SUTHERS, ATTORNEY GENERAL, Plaintiff, v. DIRECTV, a California corporation, Defendant.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
JOHN W. SUTHERS, Attorney General ANDREW P. McCALLIN, First Assistant Attorney General* 1525 Sherman Street, 7 th Floor Denver, CO 80203 Telephone: (303) 866-5134 FAX: (303) 866-4916 E-Mail: Andrew.McCallin@state.co.us Registration Number: 20909 *Counsel of Record	Case No.
COMPLAINT	

Plaintiff, the State of Colorado, upon relation of John W. Suthers (the “State”), Attorney General for the State of Colorado, by and through the undersigned counsel, states and alleges as follow complaint against Defendant DIRECTV. This complaint is being filed concurrently with an Agreed Final Judgment, which resolves this action.

INTRODUCTION

1. This is an action brought by the State of Colorado pursuant to the Colorado Consumer Protection Act, § 6-1-101, *et seq.*, C.R.S. (2010) (the “CCPA”), to enjoin and restrain Defendant from engaging in deceptive trade practices and impose statutorily-mandated civil penalties, and for other relief as provided in the CCPA.

PARTIES

2. Plaintiff John W. Suthers is the duly elected Attorney General of the State of Colorado and has express jurisdiction to investigate and prosecute violations of the CCPA.

3. 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.

JURISDICTION AND VENUE

4. This court has jurisdiction over this matter pursuant to the CCPA, §§ 6-1-103 and -110(1), C.R.S.

5. DIRECTV transacted business in the City and County of Denver by disseminating advertising and providing direct broadcast satellite television service to Colorado consumers, including consumers in Denver County. Venue in the Denver District Court is therefore proper under § 6-1-103, C.R.S. and C.R.C.P. 98(c)(1).

PUBLIC INTEREST

6. The State believes that this action is in the public interest.

FACTUAL ALLEGATIONS

7. DIRECTV engages in the business of providing direct broadcast satellite television 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 Colorado 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 Colorado consumers directly and through its authorized distributors, retailers, or installers.

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

9. During all 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 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.

FIRST CLAIM FOR RELIEF

(False representations as to the characteristics, uses, or benefits of services and false representations as to the sponsorship, approval, status, affiliation, or connection of a person therewith)

22. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 – 21 of this complaint.

23. Through the above-described conduct, Defendant knowingly made false representations as to the characteristics, uses, or benefits of services in violation of § 6-1-105(1)(e), C.R.S.

24. Through the above-described unlawful deceptive trade practices, Defendant has deceived and misled consumers in Colorado and other states.

SECOND CLAIM FOR RELIEF

(Advertising services with intent not to sell them as advertised)

25. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 24 of this Complaint.

26. Through the above-described conduct, Defendant knowingly advertised services with intent not to sell them as advertised in violation of § 6-1-105(1)(i), C.R.S.

27. Through the above-described unlawful deceptive trade practices, Defendant has deceived and misled consumers in Colorado and other states.

THIRD CLAIM FOR RELIEF

(Failure to disclose material information concerning services which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction)

28. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 27 of this Complaint.

29. Through the above-described conduct, Defendant knowingly failed to disclose material information concerning their services which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction in violation of § 6-1-105(1)(u), C.R.S.

30. Through the above-described unlawful deceptive trade practices, Defendant has deceived and misled consumers in Colorado and other states.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendant and for the following relief:

A. An order declaring Defendant's above-described conduct to be in violation of the CCPA, §§ 6-1-105(1) (e), (i) and (u), C.R.S.

B. An order permanently enjoining Defendant, its officers, directors, successors, assigns, agents, employees, contractors, attorneys, and anyone in active concert or participation with it who have notice of such order from engaging in any deceptive trade practices set defined in and proscribed by the CCPA and as set forth in this Complaint.

C. Appropriate orders necessary to prevent Defendant's continued or future deceptive or misleading trade practices, advertisements, solicitations, or statements.

D. An order requiring Defendant to forfeit and pay to the general fund of the State of Colorado, civil penalties in an amount not to exceed \$2,000 per violation pursuant to § 6-1-112(1), C.R.S. and not to exceed \$10,000 per violation committed against an elderly person pursuant to § 6-1-112(3), C.R.S.

E. An order requiring Defendant to forfeit and pay to the general fund of the State of Colorado, all unjust enrichment earned through the use or employment of the above-described deceptive trade practices.

F. An order requiring Defendant to pay the costs and expenses of this action incurred by the Attorney General, including but not limited to, Plaintiff's attorney fees under § 6-1-113(4), C.R.S.

G. Any such further relief as this Court may deem just and proper to effectuate the purposes of the CCPA.

Respectfully submitted this 15th day of December, 2010.

JOHN W. SUTHERS
Attorney General

/s/ Andrew P. McCallin

ANDREW P. McCALLIN, 20909*

First Assistant Attorney General

Antitrust, Tobacco and Consumer Protection Unit

Consumer Protection Section

Attorneys for Plaintiff

*Counsel of Record

Pursuant to C.R.C.P. 121, § 1-26(7), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1525 Sherman Street, Seventh Floor, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.