

COUNT V

Violation of California Business and Professions Code § 17200

(Brought by DIRECTV, Inc.)

100. DIRECTV incorporates the allegations of Counterclaim paragraphs 1 through 78 as if fully set forth in this Count V.

101. DIRECTV, Inc. is a direct competitor of EchoStar and DISH Network in California and elsewhere.

102. EchoStar has committed and/or conspired to commit unfair, unlawful and fraudulent business acts and business practices and unfair, deceptive, untrue or misleading advertising in California and throughout the United States that offend established policy and are unethical, oppressive, unscrupulous, and/or substantially injurious to customers.

103. DIRECTV has suffered injuries from such acts and practices in violation of Sections 17200 et seq. of the California Business and Professions Code.

104. DIRECTV, Inc. is entitled to restitution, disgorgement and injunctive relief.

COUNT VI

Violation of California Business and Profession Code § 17500

(Brought by DIRECTV, Inc.)

105. DIRECTV incorporates the allegations of Counterclaim paragraphs 1 through 78 as if fully set forth in this Count VI.

106. As described above, EchoStar intentionally made deceptive, false and misleading statements in advertising its services. These statements were likely to and actually did deceive members of the public. EchoStar knew, or with the exercise of reasonable care should have known, that its statements were deceptive, false and misleading.

107. The deceptive, false and misleading advertising alleged above constitutes a violation of Cal. Bus. & Prof. Code § 17500.

108. DIRECTV, Inc. is entitled to restitution, disgorgement and injunctive relief.

COUNT VII

Federal Trademark Infringement under Section 32 of the Lanham Act

(Brought by Hughes)

109. Hughes incorporates the allegations of Counterclaim paragraphs 1 through 78 as if fully set forth in this Count VII.

110. Hughes is the owner of a federally registered service mark for PRIMESTAR, U.S. Registration No. 1,663,679, registered in 1991. That registration is incontestable under the provisions of the Lanham Act. Primestar, Inc. is licensed under the PRIMESTAR registered mark. EchoStar's unauthorized uses of the PRIMESTAR® mark were likely to cause confusion, or to cause mistake, or to deceive customers into believing that the services and goods offered by EchoStar and its DISH Network originated with, were endorsed or sponsored by, or were otherwise affiliated with DIRECTV, Inc. and Hughes, when that was not and is not true. EchoStar's infringing acts in conjunction with its "Primestar Promotion" have caused actual confusion and have misled and/or deceived Primestar customers into switching from Primestar to DISH Network programming and hardware in the mistaken belief that they were simply upgrading their Primestar service. EchoStar's unauthorized uses of the PRIMESTAR® mark constitute intentional and willful infringement of Hughes's rights in and to the federally registered PRIMESTAR® mark in violation of 15 U.S.C. § 1114 (Section 32(1) of the Lanham Act).

111. As a result of EchoStar's infringing acts, Hughes has suffered substantial injury,

including irreparable injury. Hughes is entitled to damages for EchoStar's infringement, in amounts to be demanded and proven at trial, treble damages and an accounting of EchoStar's profits.

112. This case is exceptional, and, therefore, Hughes is entitled to an award of its attorneys' fees pursuant to 15 U.S.C. § 1117.

DEMAND FOR JURY TRIAL

113. DIRECTV and Hughes request their counterclaims be tried before a jury to the extent permitted by law.

PRAYER FOR RELIEF

WHEREFORE, DIRECTV, Inc. and Hughes pray that this Court:

1. Enter judgment in favor of DIRECTV, Inc. and/or Hughes on each counterclaim;
2. Award DIRECTV and Hughes the damages they have suffered, subject to the enhancement provisions of the foregoing statutes;
3. Award costs and attorneys' fees and an accounting of EchoStar's profits to the full extent provided for by the Lanham Act;
4. Award prejudgment interest, as allowed by law;
5. Award such other and further relief as this Court deems just and appropriate;
6. Issue a permanent injunction under Fed. R. Civ. P. 65 prohibiting EchoStar from committing the foregoing acts of unfair competition and false advertising; and
7. Require EchoStar to send a copy of any decision in this case in favor of DIRECTV and/or Hughes to each retail dealer to whom EchoStar distributed infringing advertising materials informing such retail dealers of the judgment and that the use of the infringing advertising and/or false and misleading materials in connection with the distribution,

sale, offering for sale, advertisement or promotion of any product or service by EchoStar is prohibited.

Respectfully submitted this 13th day of March, 2000.

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CERTIFICATE OF SERVICE

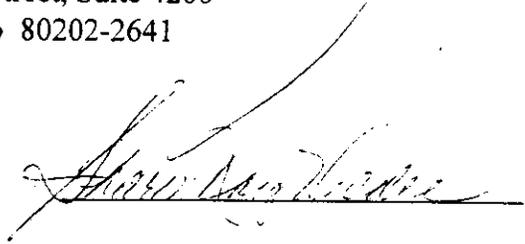
The undersigned certifies that on March 13, 2000, copies of the foregoing **ANSWER TO COMPLAINT, AFFIRMATIVE AND OTHER DEFENSES, AND COUNTERCLAIM** were served on the following by facsimile and by Federal Express:

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A handwritten signature in cursive script, appearing to read "Mark A. Nadeau", is written over a horizontal line.