

COPY

FILED

2008 FEB 12 PM 3:32

CLERK OF DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

1 Yasha Bronshteyn, Esq.  
2 Ginzburg & Bronshteyn, LLP  
3 11111 Santa Monica Boulevard, Suite 1840  
4 Los Angeles, CA 90025  
5 Tel. (310)914-3222  
6 Fax (310)914-4242  
7 SBN: 210248

9 Julie Cohen Lonstein, Esq.  
10 Lonstein Law Office, P.C.  
11 1 Terrace Hill, P.O. Box 351  
12 Ellenville, NY 12428  
13 Tel. (845) 647-8500  
14 Fax (845) 647-6277

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

-----  
DIRECTV, Inc., a California corporation,

Plaintiff,

v.

Civil Action No.

CV08-00960 ABC

(RM)

TIPPAWAN T. DWYER and KENNETH J.  
SCHWARTZ, Individually, and as officers,  
directors, shareholders and/or principals of  
KJTT LLC d/b/a WHISPERZ a/k/a  
WHISPERZ AFTER DARK a/k/a  
WHISPERZ BAR & GRILL a/k/a  
WHISPERZ COCTAILS, and KJTT LLC  
d/b/a WHISPERZ a/k/a WHISPERZ AFTER  
DARK a/k/a WHISPERZ BAR & GRILL  
a/k/a WHISPERZ COCTAILS,

Defendant.

-----  
PLAINTIFF'S ORIGINAL COMPLAINT

1. Plaintiff, DIRECTV, sues, TIPPAWAN T. DWYER and KENNETH J.

1 SCHWARTZ, Individually, and as officers, directors, shareholders and/or principals of KJTT LLC.  
2 d/b/a WHISPERZ a/k/a WHISPERZ AFTER DARK a/k/a WHISPERZ BAR & GRILL a/k/a  
3 WHISPERZ COCTAILS, and KJTT LLC. d/b/a WHISPERZ a/k/a WHISPERZ AFTER DARK  
4 a/k/a WHISPERZ BAR & GRILL a/k/a WHISPERZ COCTAILS, (referred to hereinafter as  
5 “DEFENDANT” or “DEFENDANTS”), and states:

## 6 **I. JURISDICTION**

7 2. This lawsuit is brought pursuant to the Cable Communications Policy Act of 1984,  
8 47 U.S.C. §§521. et seq. (The “Act”) as an action for declaratory and injunctive relief and damages  
9 for the improper receipt, transmission, and exhibition of satellite programming signals in violation  
10 of the Act. This Court has jurisdiction of the subject matter to this action under 28 U.S.C. §1331.  
11 Pursuant to which the United States District Courts have original jurisdiction of all civil actions  
12 arising under the Constitution, laws or treaties of the United States.

13 3. This Court has personal jurisdiction over the parties in this action. The Defendants  
14 to this action had or have an agent or agents who has or have independently transacted business in  
15 the State of California, and certain activities of the Defendants giving rise to this action took place  
16 in the State of California; more particularly, Defendants’ acts of violating federal laws and  
17 DIRECTV, Inc.’s proprietary rights as distributor of the satellite programming transmission signals  
18 took place within the Central District of California. Moreover, upon information and belief,  
19 Defendants have its principal place of business within the State of California; thus, this Court has  
20 personal jurisdiction over the Defendants.

## 21 **II. VENUE**

22 4. Venue is proper in this judicial district under 28 U.S.C. §§1391(b) as a substantial

1 part of the events or omissions giving rise to the claim occurred within Los Angeles County, which  
2 is within the Central District of California [28 U.S.C. §84(c)(2)].  
3

### 4 **III. PARTIES**

5 5. Plaintiff, DIRECTV, Inc. (“DIRECTV”) is at all times relevant hereto a corporation  
6 incorporated under the laws of the State of California. DIRECTV is a major distributor of satellite  
7 programming doing business throughout the United States. Through its operations DIRECTV  
8 provides interstate direct broadcast satellite programming to satellite dish owners who pay for the  
9 programming via a subscription fee and obtain a programming license from DIRECTV in return for  
10 a subscription. The obvious result of a user subscription is that users can then watch programs on  
11 their televisions and/or listen to certain high quality audio programs communicated electronically  
12 by DIRECTV via satellite (the “Satellite Programming”). DIRECTV holds proprietary rights to the  
13 Satellite Programming it transmits and DIRECTV is the owner of and/or a lawfully designated  
14 distribution agent for such Satellite Programming.

15 6. Upon information and belief, Defendant, TIPPAWAN T. DWYER, is an officer and  
16 liquor license holder of the defendant, KJTT LLC, for the premises located at 3645 Foothill  
17 Boulevard, La Crescenta, CA 91214, and resides at 9230 La Tuna Canyon Road, Sun Valley, CA  
18 91352-2224.

19 7. Upon information and belief, Defendant, KENNETH J. SCHWARTZ, is an officer and  
20 liquor license holder of the defendant, KJTT LLC, for the premises located at 3645 Foothill  
21 Boulevard, La Crescenta, CA 91214, and resides at 9230 La Tuna Canyon Road, Sun Valley, CA  
22 91352-2224.



1 displayed Satellite Programming to the public and for commercial benefit or financial gain;  
2 specifically, DEFENDANTS received and displayed, among other programs, National Football  
3 League games only available through DIRECTV's premium "NFL Ticket" service. Such Satellite  
4 Programming was displayed without authorization from DIRECTV.

5 14. DEFENDANTS, without entitlement, without prior permission or authorization from  
6 DIRECTV, and without having paid DIRECTV for the right to receive, broadcast, use or display  
7 DIRECTV's Satellite Programming in the commercial establishment known as WHISPERZ  
8 COCTAILS, has received, assisted in receiving, transmitted, assisted in transmitting, divulged,  
9 published and displayed the content and substance of DIRECTV's Satellite Programming at such  
10 DEFENDANTS place of business, WHISPERZ COCTAILS. Without authorization,  
11 DEFENDANTS displayed and/or published such Satellite Programming to their customers and  
12 others. DEFENDANTS' conduct violates several federal statutes, (including 18 U.S.C. §§2511 and  
13 2512 and 47 U.S.C. §605) and laws of the State of California. Moreover, DEFENDANTS' acts were  
14 unauthorized, willful, and for purposes of direct or indirect commercial advantage or private  
15 financial gain.

16 15. DIRECTV has been damaged by DEFENDANTS in that (a) DIRECTV has been  
17 denied subscription fees for commercial use of its Satellite Programming; (b) DIRECTV's sales have  
18 been reduced through DEFENDANTS unfair competition with DIRECTV's authorized customers;  
19 and (c) DIRECTV's proprietary rights in the Satellite Programming have been impaired. In addition,  
20 DEFENDANTS profited and gained commercial advantage from the unauthorized and willful use  
21 of DIRECTV's Satellite Programming.

22 16. DIRECTV has been required to retain attorneys to prevent DEFENDANTS' wrongful

1 acts and to prosecute this action. Due to DEFENDANTS' statutory violations, DIRECTV is entitled  
2 to recover the reasonable attorneys' fees and expenses incurred in prosecution of this action under  
3 federal law.

#### 4 **V. CAUSES OF ACTION**

##### 5 **Count 1 - Damages for Violations of Cable Communications Policy Act** 6 **[47 U.S.C. §605(e)(3)(C)]** 7

8 17. DIRECTV incorporates and realleges by reference allegations within paragraphs 1  
9 through 16 of this complaint as if fully set forth herein.

10 18. DIRECTV alleges on information and belief, that DEFENDANTS effected  
11 unauthorized interception and receipt of Satellite Programming by ordering programming for  
12 residential use and subsequently displaying the programming in a commercial establishment for  
13 commercial gain without authorization, or by such other means which are unknown to DIRECTV  
14 and known only to DEFENDANTS.

15 19. Each of the DEFENDANTS' acts violates federal law. DEFENDANTS, illegally and  
16 without authorization, intercepted, received and exhibited, or otherwise assisted in the unauthorized  
17 interception, reception or exhibition of Satellite Programming transmitted by DIRECTV. Moreover,  
18 DEFENDANTS divulged or published the existence contents, substance, purport, effect or meaning  
19 of such satellite communications. Further, DEFENDANTS used such communications for their own  
20 benefit or for the benefit of others who were not entitled to such communications. Each of these acts  
21 is a practice prohibited by 47 U.S.C. §605(a).

22 20. DIRECTV is a person aggrieved by the DEFENDANTS violation of 47 U.S.C. §605  
23 and is authorized to institute this action against the DEFENDANTS pursuant to 47 U.S.C.  
24 §605(e)(3)(A).

1           21.     DEFENDANTS' violations of 47 U.S.C. §605 have injured DIRECTV's ability to  
2 maximize the revenues which it seeks to derive from the Satellite Programming, as DIRECTV has  
3 been deprived of the benefit of subscribers to the Satellite Programming. As a further result of such  
4 violations, DIRECTV's goodwill and reputation have been usurped by DEFENDANTS while  
5 DEFENDANTS gained and will continue to gain unjust profits and undeserved goodwill. DIRECTV  
6 is entitled to costs, reasonable attorney's fees, actual damages, suffered, and profits obtained by  
7 DEFENDANTS attributable to its illegal conduct.

8           22.     Alternatively, DIRECTV is entitled to statutory damages in an amount not less than  
9 \$1,000 nor more than \$10,000 for each violation of 47 U.S.C. §605(a).

10          23.     DIRECTV will further show that DEFENDANTS conduct in violation of 47 U.S.C.  
11 §605(a) was committed willfully and for purposes of direct or indirect commercial advantage or  
12 private financial gain.

13          24.     Due to DEFENDANTS willful conduct, DIRECTV is entitled to statutory damages  
14 in an amount not less than \$10,000 and up to \$100,000 for each willful violation of 47 U.S.C.  
15 §605(a).

16                   **Count 2 - Damages for Violations of 18 U.S.C. §2511**

17          25.     DIRECTV incorporates and realleges by reference allegations within paragraphs 1  
18 through 24 of this complaint as if fully set forth herein.

19          26.     For further cause of action, DIRECTV alleges that DEFENDANTS intentionally  
20 intercepted, endeavored to intercept, or procured other persons to intercept electronic  
21 communications from DIRECTV. DEFENDANTS further disclosed or endeavored to disclose to  
22 others the contents of electronic communications, knowing or having a reason to know that the

1 information was obtained through the interception of electronic communications in violation of 18  
2 U.S.C. §2511. DEFENDANTS further intentionally used or endeavored to use the contents of  
3 electronic communications, knowing or having reason to know that the information was obtained  
4 through the interception of electronic communications in violation of 18 U.S.C. §2511.

5 27. DIRECTV is a person whose electronic communications are being intercepted,  
6 disclosed and/or intentionally used in violation of 18 U.S.C. §2520.

7 28. Due to DEFENDANTS wrongful conduct, DIRECTV is entitled, under 18 U.S.C.  
8 §2520, to the greater of the sum of (1) actual damages suffered by DIRECTV and the profits made  
9 by the DEFENDANTS as a result of their conduct, or (2) statutory damages in an amount the greater  
10 of \$10,000 or \$100 per day for each day DEFENDANTS acted in violation of 18 U.S.C. §2511.

11 **Count 3 - Civil Conversion**

12 29. DIRECTV incorporates and realleges by reference allegations within paragraphs 1  
13 through 28 of this complaint as if fully set forth herein.

14 30. By virtue of the conduct set forth above, DEFENDANTS have unlawfully converted  
15 DIRECTV's property for its own commercial use and benefit.

16 31. Such conversion was done intentionally and wrongfully by DEFENDANTS to deprive  
17 DIRECTV of its proprietary interests and for DEFENDANTS direct commercial benefit and  
18 advantage.

19 32. Due to DEFENDANT's wrongful conversion of DIRECTV Satellite Programming,  
20 DIRECTV suffered damages.

21 **VI. REQUEST FOR INJUNCTIVE RELIEF**

22 33. DIRECTV incorporates and realleges by reference allegations within paragraphs 1

1 through 32 of this complaint as if fully set forth herein.

2 34. DIRECTV further alleges that unless restrained by this Court, the DEFENDANTS  
3 will continue to receive, intercept, transmit, and exhibit the Satellite Programming, illegally and  
4 without authorization, in violation of 47 U.S.C. §605. The DEFENDANTS intercepted and publicly  
5 exhibited the Satellite Programming without authorization on at least one occasion and DIRECTV  
6 cannot practicably detect or determine each occasion on which DEFENDANTS have intercepted and  
7 publicly exhibited the Satellite Programming.

8 35. The violations of 47 U.S.C. §605 set forth above have caused and will continue to  
9 cause DIRECTV irreparable harm.

10 36. DIRECTV cannot practicably determine the loss of subscribers and lost revenues  
11 resulting from the DEFENDANTS unlawful conduct. In addition to diminishing DIRECTV's  
12 revenues, the DEFENDANTS' unlawful conduct injures DIRECTV's reputation and goodwill as  
13 well as its ability to attract and finance the future acquisition, production, and distribution of quality  
14 programming, thereby impairing DIRECTV's ability to enhance its future growth and profitability.

15 37. DIRECTV has no adequate remedy at law to redress the violations set forth above.

## 16 VII. PRAYER

17 WHEREFORE, Plaintiff, DIRECTV, INC., prays that this Court enter judgment in its favor  
18 and against DEFENDANTS and:

- 19  
20  
21  
22  
23  
24  
25
- a. Declare that DEFENDANTS unauthorized interception, reception, and public commercial exhibition of DIRECTV's electronic communications, or its assistance in the performance of such unauthorized actions, was in violation of 18 U.S.C. §2511 and 47 U.S.C. §605, and that such violations were committed willfully and for purposes of direct or indirect commercial advantage and private financial gain;
  - b. In accordance with 18 U.S.C. §2520(b)(1) and 47 U.S.C. §605(e)(3)(B)(I) enjoin DEFENDANTS, its owners, officers, agents, servants, employees and attorneys, and

1 all persons in active concert or participation with any of them from (I) interfering  
2 with DIRECTV's proprietary rights, (ii) intercepting, receiving, divulging, or  
3 displaying DIRECTV's Satellite Programming without prior written consent of  
4 DIRECTV; and (iii) further violations;

- 5
- 6 c. Award DIRECTV statutory damages in the amount of the greater of \$10,000 or \$100  
7 per day for each day DEFENDANTS violated 18 U.S.C. §2511, or alternatively,  
8 DIRECTV requests judgment for actual damages, plus damages equal to any profits  
9 attributable to the DEFENDANTS' violations of 18 U.S.C. §2511;
- 10
- 11 d. Award DIRECTV statutory damages in the amount of \$10,000 for each violation of  
12 47 U.S.C. §605, plus an additional \$100,000 for each violation pursuant to 47 U.S.C.  
13 §605(e)(3)(C)(ii); alternatively, DIRECTV requests judgment for actual damages,  
14 plus damages equal to any profits attributable to the DEFENDANTS' violations of  
15 47 U.S.C. §605;
- 16
- 17 e. That the Court award punitive damages;
- 18
- 19 f. That this Court award DIRECTV its costs, including reasonable attorney's fees,  
20 prejudgment interest and post-judgment interest, and such other relief to which  
21 DIRECTV may be entitled.
- 22

23 Dated: January 29, 2008  
24 Ellenville, New York

25  
26 Respectfully submitted,

27  
28 DIRECTV, Inc.

29  
30 By: 

31 JULIE COHEN LONSTEIN, ESQ.

32 Attorney for Plaintiff

33 LONSTEIN LAW OFFICE, P.C.

34 Office and P.O. Address

35 1 Terrace Hill : P.O. Box 351

36 Ellenville, NY 12428

37 Telephone: (845) 647-8500

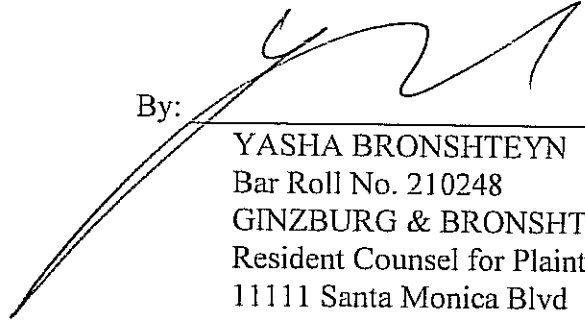
38 Facsimile: (845) 647-6277

39 Email: [Info@signallaw.com](mailto:Info@signallaw.com)

40 Our File No. NFL7-6CA-C02V  
41  
42

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

By:



2/11/07

YASHA BRONSHTEYN  
Bar Roll No. 210248  
GINZBURG & BRONSHTEYN, LLP  
Resident Counsel for Plaintiff  
11111 Santa Monica Blvd  
Ste 1840  
Los Angeles, CA 90025  
Tel. (310)914-3222  
Fax (310)914-4242  
Email: yashagblp@yahoo.com

