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FTC Drops \$4B False Ad Suit Against DirectTV Midtrial

By **Dorothy Atkins**

Law360 (October 22, 2018, 7:56 PM EDT) -- The Federal Trade Commission on Friday abandoned its \$4 billion false advertising suit against DirectTV Inc., after a California federal judge paused a bench trial and found the agency didn't have evidence strong enough to meet the "extraordinary ambition" of showing that more than 40,000 ads deceived consumers.

U.S. District Judge Haywood S. Gilliam Jr. signed a two-page order and stipulation between the parties under which the FTC agreed to voluntarily drop its lawsuit alleging DirectTV misled millions of consumers about the actual costs of their subscriptions. The parties agreed to bear their own costs of litigation, according to the order.

A representative for the FTC declined to comment Monday, and a representative for DirectTV's parent company, AT&T Inc., didn't immediately respond to a request for comment.

The ruling marks an end to what was once a hotly contested legal battle between federal regulators and the satellite TV provider that began when **the FTC sued DirectTV** in March 2015.

The FTC claimed DirectTV's marketing campaign for its two-year contract violated the Federal Trade Commission Act by not clearly disclosing its terms. It also alleged that the company's practices violated the Restore Online Shoppers' Confidence Act by requiring consumers to cancel premium channels proactively before a free-trial period expired.

After the suit was filed, DirectTV attempted to settle the case, but FTC commissioners **shot down a proposed deal**, with then-Commissioner Terrell McSweeney, saying in April 2017 that DirectTV hadn't offered sufficient cash to cover its deceptive practices.

In August 2017, the dispute went to a 20-day bench trial before Judge Gilliam in Oakland. During opening statements, FTC attorney Jacob Snow said that between 2007 and 2015, DirectTV sent out 78 billion print ads that didn't clearly disclose that the provider would raise the monthly subscription price after three months and then again after a year and would charge an early cancellation fee.

Snow said 33 million consumers signed up for DirectTV's services during that time, and that by burying those contractual disclosures in the fine print on its website, the company garnered \$3.95 billion in unjust gains.

After 10 days, the FTC rested its case-in-chief. But before DirectTV could argue its case, Judge Gilliam **paused the trial** so DirectTV could seek partial judgment. At the time, the judge appeared

skeptical of the FTC's case, saying there was a "substantial issue" over whether the agency had offered evidence to support its claims, particularly in light of the 40,000 ads that were at issue.

After **both sides submitted briefs**, Judge Gilliam **significantly reduced the scope** of the FTC's case in August, finding that the agency didn't present enough evidence to support claims that customers were deceived by the company's print, television and online banner ads. However, the judge held off on deciding whether DirecTV's website deceived customers until after the bench trial.

The parties were set to resume trial on Oct. 29. But on Oct. 19, they filed a proposed order and stipulation of voluntary dismissal, which Judge Gilliam signed three days later.

The FTC is represented in-house by Eric D. Edmondson, Erika Wodinsky, Evan Rose, Stacy Procter, Kenneth H. Abbe and Faye Chen Barnouw.

DirecTV is represented by Jeffrey M. Tillotson of Tillotson Law, Pete Marketos of Reese Gordon Marketos LLP, and Chad S. Hummel, Mark D. Campbell, Bridget S. Johnsen and Ryan M. Sandrock of Sidley Austin LLP.

The case is FTC v. DirecTV Inc. et al., case number 4:15-cv-01129, in the U.S. District Court for the Northern District of California.

--Editing by Stephen Berg.

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