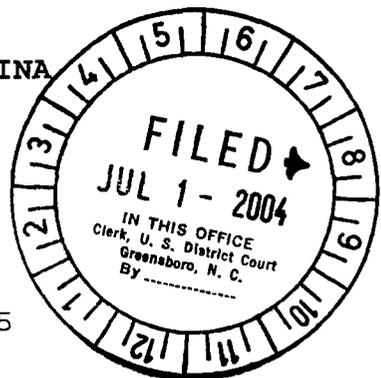


14.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



DIRECTV, INC.,)
)
) Plaintiff,)
)
) v.)
)
) MICHAEL SAPP,)
)
) Defendant.)

1:03CV01025

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a provider of satellite television, brought this action alleging that defendant bought and used devices which allowed him to illegally pirate its satellite signal. This case is one of many such cases filed in this District by plaintiff. In its complaint, plaintiff brought claims alleging violations of federal and state law. Defendant has filed a motion to dismiss plaintiff's claims brought under 18 U.S.C. §§ 2511 and 2512, as well as plaintiff's state law conversion claim.

Before addressing that motion, the Court notes that plaintiff has filed a motion to amend its complaint to delete its claim under § 2512 and add several state law claims. The Court is granting the motion to amend in a separate, contemporaneous Order.

Turning now to the motion to dismiss, defendant first contends that plaintiff's claim brought under 18 U.S.C. § 2511 (Count 2 of the amended complaint) should be dismissed because plaintiff has failed to sufficiently allege that defendant actually intercepted, disclosed, or intentionally used its signal. Although a broader range of conduct will create a criminal violation of § 2511, actual

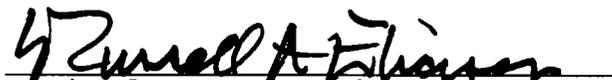
interception, disclosure, or use is necessary to recover civil damages under 18 U.S.C. § 2520. This Court has previously considered and rejected similar arguments in prior cases and the same result should occur here. See, e.g., DIRECTV, Inc. v. Ingram, 1:03CV00455, at p. 6 (M.D.N.C. Feb. 2, 2004), adopted, April 27, 2004(unpublished). Plaintiff clearly alleges in paragraph 26 of its amended complaint that defendant engaged in the unauthorized interception and receipt of its satellite signal. This paragraph precedes, and is incorporated into, plaintiff's § 2511 claim. A reading of the complaint in general also supports a finding that plaintiff has alleged actual interception by defendant. Therefore, the § 2511 claim is sufficient to survive a motion to dismiss.

Defendant's next argument is aimed at plaintiff's claim brought under 18 U.S.C. § 2512. Although the Court would have dismissed this claim for reasons set out in Ingram, supra, plaintiff has actually deleted this claim from its amended complaint. Therefore, defendant's motion to dismiss it should be denied for being moot.

The final claim addressed in defendant's motion to dismiss is plaintiff's claim for conversion under North Carolina law (Count 4 of the amended complaint). He asserts that plaintiff's signal is not tangible property under North Carolina law and that conversion claims can only be brought based on an alleged conversion of tangible, as opposed to intangible, property. This argument has already been addressed and agreed with by this Court. See Ingram

at p. 13. Based on Ingram, defendant's motion to dismiss should be granted as to the conversion claim. Id.

IT IS THEREFORE RECOMMENDED that defendant's motion to dismiss (docket no. 7) be denied as to plaintiff's claim under 18 U.S.C. § 2511 (Count 2 of the amended complaint), denied for being moot as to the claim raised in the original complaint under 18 U.S.C. § 2512, and granted as to plaintiff's claim for conversion (Count 4 of the amended complaint).


United States Magistrate Judge

July | , 2004