

Corporate & Financial Weekly Digest

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District Court Dismisses Antitrust Claim Against Direct Broadcast Satellite Television Provider

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Plaintiff, a major direct broadcast satellite (DBS) television provider and holder of seven registered trademarks and service marks incorporating the word “DISH,” brought an action against defendants alleging that defendant Dish 1 Up, a retailer of another major DBS provider, operates call centers using a “confusingly similar phone number” to plaintiff’s 1-800 number to mislead and confuse consumers. Defendants pled several counterclaims against plaintiff, alleging that plaintiff improperly secured a trademark on the generic word “DISH,” and that due to this improper and invalid trademark, plaintiff has engaged in predatory and anticompetitive acts, including claiming exclusive common law trademark rights in “vanity” telephone numbers and asserting exclusive trademark rights to marketing phrases containing the generic word “DISH.”

In finding that defendants failed to adequately allege antitrust injury, the district court cited to Sixth Circuit Court of Appeals precedent, holding that in an antitrust action a plaintiff must show that (1) the alleged violation tends to reduce competition in some market and (2) the plaintiff’s injury would result from a decrease in that competition rather than from some other consequence of the defendant’s actions. While plaintiff adequately alleged anti-competitive behavior on the part of defendants, it alleged injury resulting from this anti-competitive behavior in a conclusory fashion, insufficient to survive a motion to dismiss. (*Dish Network, LLC v. Fun Dish, Inc.*, No. 1:08 CV 1540, 2010 WL 5230860 (N.D.Ohio Dec. 16, 2010))

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