

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**DISH NETWORK L.L.C.
and NAGRASTAR LLC,**

Plaintiffs,

v.

**BIMOTV, LLC, MAGNUM SUPPORT,
LLC, WILMY JIMENEZ
INDIVIDUALLY AND d/b/a BIMOTV,
TVSTREAMSNOW, ONESTEPTV,
IBEX TV, AND MAGNUMSTREAMS,
AND FERNANDEZ MANUEL
DaROCHA INDIVIDUALLY AND d/b/a
SOLTV.**

Defendants.

Case No. _____

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs DISH Network L.L.C. (“DISH”) and NagraStar LLC (“NagraStar” and, collectively with DISH, “Plaintiffs”) bring this action against Defendants BimoTV, LLC, Magnum Support, LLC and Wilmy Jimenez, individually and collectively d/b/a BimoTV, TVStreamsNow, OneStepTV, IbexTV, and MagnumStreams (collectively, “Jimenez Defendants”), and against Fernandez Manuel DaRocha, individually and d/b/a SolTV, and state as follows:

PARTIES

1. Plaintiff DISH Network L.L.C. is a Colorado limited liability company with its principal place of business located at 9601 South Meridian Blvd., Englewood, Colorado 80112.
2. Plaintiff NagraStar LLC is a Colorado limited liability company with its principal place of business located at 90 Inverness Circle East, Englewood, Colorado 80112.

3. Defendant Wilmy Jimenez (“Jimenez”) is an individual who resides in the district and may be served at 53 Summit Avenue, Apt. 1, Garfield, New Jersey 07026 or 188 Jasper St., Paterson, New Jersey 07522, or wherever he may be found.

4. Defendant Wilmy Jimenez d/b/a BimoTV (“Jimenez”) is an individual who resides in the district and may be served at 53 Summit Avenue, Apt. 1, Garfield, New Jersey 07026 or 188 Jasper St., Paterson, New Jersey 07522, or wherever he may be found.

5. Defendant Wilmy Jimenez d/b/a TVStreamsNow (“TVStreamsNow”) is an individual who resides in the district and may be served at 53 Summit Avenue, Apt. 1, Garfield, New Jersey 07026 or 188 Jasper St., Paterson, New Jersey 07522, or wherever he may be found.

6. Defendant Wilmy Jimenez d/b/a OneStepTV (“OneStepTV”) is an individual who resides in the district and may be served at 53 Summit Avenue, Apt. 1, Garfield, New Jersey 07026 or 188 Jasper St., Paterson, New Jersey 07522, or wherever he may be found.

7. Defendant Wilmy Jimenez d/b/a IbexTV (“Ibex TV”) is an individual who resides in the district and may be served at 53 Summit Avenue, Apt. 1, Garfield, New Jersey 07026 or 188 Jasper St., Paterson, New Jersey 07522, or wherever he may be found.

8. Defendant Wilmy Jimenez d/b/a MagnumStreams (“MagnumStreams”) is an individual who resides in the district and may be served at 53 Summit Avenue, Apt. 1, Garfield, New Jersey 07026 or 188 Jasper St., Paterson, New Jersey 07522, or wherever he may be found.

9. Defendant BimoTV, LLC is a New Jersey limited liability company with its principal place of business located at 188 Jasper St., Apt. 2, Paterson, New Jersey 07522. BimoTV, LLC (“BimoTV”) may be served by and through its registered agent, Wilmy Jimenez, at 53 Summit Avenue, Apt. 1, Garfield, New Jersey 07026 or 188 Jasper St., Apt. 2, Paterson, New Jersey 07522, or wherever he may be found.

10. Defendant Magnum Support, LLC is a New Jersey limited liability company with its principal place of business located at 188 Jasper St., Paterson, New Jersey 07522. Magnum Support, LLC (“Magnum”) may be served by and through its registered agent, Wilmy Jimenez, at 53 Summit Avenue, Apt. 1, Garfield, New Jersey 07026 or 188 Jasper St., Paterson, New Jersey 07522, or wherever he may be found.

11. Defendant Fernandez Manuel DaRocha Individually and d/b/a SolTV (“DaRocha”) is an individual doing business in the district and may be served at 455 Rogers Road, Toronto, Ontario Canada M6M 1A6, or at 90 Pieta Place, Woodbridge, ON Canada L4H3G3, or at 150 Rosemount Ave., Apt #305, Toronto, ON Canada m9n3b9, or wherever he may be found.

12. Upon information and belief, Jimenez is the manager and controlling member of BimoTV, LLC and Magnum Support, LLC, and also the controlling operator of the d/b/a Defendants BimoTV, TVStreamsNow, OneStepTV, IbexTV, and MagnumStreams. OneStepTV is, upon information and belief, also known as OneStepIPTV and also known as StreamsForLess. Upon information and belief, Jimenez oversees the day-to-day operations and makes the final decisions concerning the business of BimoTV, LLC, Magnum Support, LLC, and the d/b/a Defendants BimoTV, TVStreamsNow, OneStepTV, IbexTV, and MagnumStreams. Jimenez is believed to authorize, control, participate in, and receive direct financial benefits from the infringing activities of BimoTV, LLC, Magnum Support, LLC, and the d/b/a Defendants BimoTV, TVStreamsNow, OneStepTV, IbexTV, and MagnumStreams as alleged herein. Upon information and belief, the infringing acts that Jimenez engaged in as an agent of BimoTV, LLC, Magnum Support, LLC, and the d/b/a Defendants BimoTV, TVStreamsNow, OneStepTV, IbexTV, and MagnumStreams were within the scope of that agency.

13. Upon information and belief, DaRocha is the controlling operator of SolTV. Upon information and belief, DaRocha oversees the day-to-day operations and makes the final decisions concerning the business of SolTV. DaRocha is believed to authorize, control, participate in, and receive direct financial benefits from the infringing activities of SolTV, as alleged herein. Upon information and belief, the infringing acts that DaRocha engaged in as an agent of SolTV were within the scope of that agency.

JURISDICTION AND VENUE

14. Plaintiffs assert claims under 47 U.S.C. §§ 605(a) and 605(e)(4). The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

15. Defendants reside in and/or conduct business in the State of New Jersey, and therefore are subject to this Court's personal jurisdiction. Defendant DaRocha is subject to the jurisdiction of this Court because he has conducted business with Wilmy Jimenez and his associated entities, which reside and transact business within the State of Jersey. In addition, Defendant DaRocha is also subject to personal jurisdiction in this Court under Fed. R. Civ. P. 4(k)(1)(A) or, alternatively 4(k)(2), because Defendant DaRocha purposefully directed his conduct towards, and purposefully availed himself of the privilege of conducting business activities within, the United States including the State of New Jersey by, among other things, by using DISH accounts to acquire DISH's satellite broadcasts of television programming and then retransmitting such programming to re-sellers and subscribers in the United States including the State of New Jersey and including Defendant Jimenez in the State of New Jersey, causing injury to DISH and NagraStar in the United States and the State of New Jersey. On information and belief, Defendant is not subject to personal jurisdiction in any state's courts of general

jurisdiction other than in the State of New Jersey. Exercising personal jurisdiction over Defendant DaRocha is consistent with the Constitution and laws of the United States.

16. Venue is appropriate in this Court under 28 U.S.C. § 1391(b)(1) because Defendants reside in this judicial district, § 1391(b)(2) because a substantial part of the events giving rise to Plaintiffs' claims occurred in this district, and/or § 1391(b)(3) because Defendants are subject to personal jurisdiction in this judicial district.

NATURE OF THE ACTION

17. Defendant Jimenez created and operates and/or operated unauthorized pirate television streaming services under various brand names including BimoTV, TVStreamsNow, OneStepTV, IbexTV, and MagnumStreams (collectively the "Jimenez pirate streaming services"). Defendant DaRocha created and operates and/or operated unauthorized pirate television streaming services under the brand name SolTV, and Defendant DaRocha also uses SolTV to provide unauthorized and pirated programming content to Defendant Jimenez, which Defendant Jimenez then retransmits (collectively the "DaRocha pirate streaming services"). The Jimenez pirate streaming services and the DaRocha pirate streaming services are collectively referred to herein as "Defendants' pirate streaming services."

18. Defendants sell subscriptions to Defendants' pirate streaming services, which includes numerous television channels that were received without authorization from DISH's satellite service and that were subsequently retransmitted without authorization on Defendants' pirate streaming services. Defendants are believed to engage in or work in concert or participation with others that are receiving DISH's channels and for retransmission on Defendants' pirate streaming services without authorization.

19. Defendants have a history of trafficking in similar piracy streaming services that rebroadcast DISH content without authorization. Prior to selling device codes for Defendants' pirate streaming services, Defendants trafficked in device codes for a similar pirate service known as SetTV. Like Defendants' pirate streaming services, SetTV provided unauthorized access to DISH channels along with other unlicensed content. The SetTV service was shut down last year by a Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction issued in a separate action in the Middle District of Florida. *See DISH Network L.L.C., et al. v. Nelson Johnson, et al.*, Case No. 8:18-cv-1332-VMC-AAS (the "SetTV Litigation"), SetTV Litigation Dkts. 15, 63, and 84 (M.D. Fla.)

20. Defendants' conduct of operating Defendants' pirate streaming services and trafficking in device access codes for those services along with the SetTV services violate the Federal Communications Act ("FCA"), 47 U.S.C. §§ 605(a) and 605(e)(4).

DISH'S SATELLITE TELEVISION PROGRAMMING

21. DISH is the fourth largest pay-television provider in the United States and delivers programming to millions of subscribers nationwide via a direct broadcast satellite system.

22. DISH uses high-powered satellites to broadcast, among other things, movies, sports, and general entertainment services to consumers who have been authorized to receive such services after paying a subscription fee, or in the case of a pay-per-view movie or event, the purchase price.

23. DISH contracts for and purchases rights for the programming that is distributed on its platform from network affiliates, motion picture distributors, pay and specialty broadcasters, cable networks, sports leagues, and other holders of programming rights. The

DISH programming includes, among hundreds of others, channels for Cooking, TruTV, Showtime, Starz, WeTV, Starz Comedy, Cinemax, ESPN Desportes, HBO and MLB Network (collectively, the “DISH programming”).

24. NagraStar provides smart cards and other proprietary security technologies that form a conditional access system used to authorize receipt of DISH’s satellite programming.

25. DISH programming is scrambled prior to being transmitted to a number of satellites located in geo-synchronous orbit above Earth. The satellites relay the encrypted DISH signal back to Earth where it can be received by DISH subscribers that have the necessary equipment, including a DISH receiver and NagraStar smart card. The receiver and smart card convert DISH’s encrypted satellite signal into viewable programming that can be displayed on the attached television of an authorized DISH subscriber.

DEFENDANTS’ WRONGFUL CONDUCT

26. Defendants have engaged in improper acts and practices for the purpose of obtaining DISH programming and distributing it to subscribers of Defendants’ pirate streaming services, in violation of the FCA, 47 U.S.C. §§ 605(a) and 605(e)(4).

27. Defendants advertise and sell subscriptions to Defendants’ pirate streaming services through various online forums, domains, and social media websites. Defendants advertise that Defendants’ pirate streaming services provide access to 600 plus channels of live television, HD channels, videos on demand—all for \$25/month which includes 4 devices per household. (*See, e.g.,* www.ibextv.com last visited on July 23, 2019.)

28. The DISH programming is transmitted on Defendants’ pirate streaming services without authorization from DISH. The DISH programming was received from DISH’s satellite television service without authorization from DISH. The DISH programming was distributed to

subscribers of Defendants' pirate streaming services for Defendants' benefit and the benefit of those subscribers who were not entitled to receive the DISH programming. During testing of Defendants' pirate streaming services, encoded messages transmitted as part of DISH's satellite feeds were observed on the DISH programming retransmitted on Defendants' pirate streaming services, confirming that the DISH programming originated from a DISH satellite signal.

29. Defendants advertise and sell subscriptions to the Defendants' pirate streaming services through various domains. After receiving the initial payment for the Defendants' pirate streaming services, Defendants provide the end user with instructions and device codes that can be used to add the service to various streaming devices. At this point, the end user can receive unauthorized programming using Defendants' pirate streaming services, including the DISH programming. Upon information and belief, Defendants have sold thousands or more device codes and subscriptions to Defendants' pirate streaming services.

30. Defendants advertise applications across multiple devices that can be downloaded to allow end-users to enter the device codes purchased for Defendants' pirate streaming services and in turn have access to electronic programming guides containing unauthorized channels and

content:



By way of further example, for Amazon Firestick, Defendants provide detailed instructions on how to turn on an application from “Unknown Sources” and have “side-loaded apps” on Fire TV. (See www.ibextv.com last visited July 23, 2019).

- 3 Once opened type this URL and install the IBexTV apk. <http://sgtv.us/norago.apk>



- 4 Install the Ibextv App and once you run the program for the first time you will need to enter your code provided to you in the email we sent you or log into IbexTV.com and click My Account. See, that wasn't hard at all.

31. Upon information and belief, Defendants directly engage in, aid and abet, or are acting within the scope of a principal-agent relationship with other persons that are receiving and retransmitting the DISH programming on Defendants' pirate streaming services.

32. Upon information and belief, Defendants also trafficked in subscriptions and device access codes to the SetTV service in violation of the FCA, 47 U.S.C. §§ 605(a) and 605(e)(4). The District Court in the SetTV Litigation found that trafficking in device codes for that service constituted violations of the FCA. (SetTV Litigation, Dkts. 15, 63, 83-84.)

33. Defendants' wrongful conduct has caused irreparable harm to Plaintiffs for which there is no adequate remedy at law. Defendants' acts have resulted in providing an unknown number of Defendants' subscribers with unauthorized access to DISH programming, resulting in an unknown amount of revenues being diverted from Plaintiffs and an unknown amount of profits being received by Defendants. In addition to lost revenue and Defendants' profits, Defendants' actions cause harm to Plaintiffs in the form of reputational damage and loss of goodwill.

CLAIMS FOR RELIEF

COUNT I

Violation of the Federal Communications Act, 47 U.S.C. § 605(a) – By DISH

34. DISH repeats and incorporate the allegations in paragraphs 1-33 above.

35. Defendants or persons acting in concert or participation with them received DISH's transmissions of the DISH programming and retransmitted those communications or the content therein without authorization from DISH and for the benefit of Defendants and their subscribers, in violation of 47 U.S.C. § 605(a).

36. Defendants' sale and distribution of subscriptions and device codes to Defendants' pirate streaming services and the SetTV service assist end users in receiving DISH's transmissions of the DISH Programming and the content therein, without having authorization from DISH and for the benefit of Defendants and end users of Defendants' pirate streaming services, in violation of 47 U.S.C. § 605(a).

37. Defendants have been violating 47 U.S.C. § 605(a) willfully and for purposes of commercial advantage and private financial gain.

38. Defendants knew or should have known their actions were illegal and prohibited. Such violations have caused damage to DISH in an amount to be proven at trial. Unless restrained and enjoined by the Court, Defendants will continue to violate 47 U.S.C. § 605(a).

COUNT II

Violation of the Federal Communications Act, 47 U.S.C. § 605(e)(4) – By All Plaintiffs

39. Plaintiffs repeat and incorporate the allegations in paragraphs 1-33 above.

40. Defendants sell and distribute device codes and related software and support used for accessing Defendants' pirate streaming services, and Defendants sold and distributed device codes used for accessing the SetTV Service in violation of 47 U.S.C. § 605(e)(4). Defendants intend for these device codes and related software and support to be used in receiving the DISH programming and its content, without having authorization from DISH and for the benefit of Defendants and end users of Defendants' pirate streaming services and the SetTV service, which is activity that violates 47 U.S.C. § 605(a). Upon information and belief Defendants, have sold thousands of device codes to Defendants' pirate streaming services and to the SetTV Service.

41. Defendants violated 47 U.S.C. § 605(e)(4) willfully and for purposes of commercial advantage and private financial gain.

42. Defendants knew or should have known their actions were illegal and prohibited. Such violations have caused damage to Plaintiffs in an amount to be proven at trial. Unless restrained and enjoined by the Court, Defendants will continue to violate 47 U.S.C. § 605(e)(4).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

A. For a grant of permanent injunctive relief under 47 U.S.C. § 605(e)(3)(B)(i) against Defendants, and any agent, servant, employee, attorney, or other person acting in active concert or participation with any of the foregoing that receives actual notice of the order, from:

1. receiving or assisting others in receiving DISH's satellite transmissions or the television programming contained therein without authorization, including transmitting DISH programming or its content over the Internet or by other means, or distributing DISH programming or its content to persons not authorized by DISH to receive or view that programming or channel; and

2. manufacturing, assembling, modifying, importing, exporting, selling, or distributing subscriptions or passcodes to Defendants' pirate streaming services, streaming devices, or any other device or equipment that is intended for receiving or assisting in receiving DISH's satellite transmissions, DISH Programming, or its content without authorization;

B. For an order authorizing Plaintiffs to take possession of and destroy all subscriptions and passcodes to Defendants' pirate streaming services and to the SetTV service, as well as all streaming devices, technologies, tools, software, products, components, or parts thereof in the custody or control of Defendants that the Court has reasonable cause to believe were involved in Defendants' violations of the FCA, pursuant to 47 U.S.C. § 605(e)(3)(B)(i);

C. For an order requiring removal of Defendants' advertisements and social media

pages concerning Defendants' pirate streaming services, and an order requiring transfer of Defendants' websites concerning the Defendants' pirate streaming services and any similarly unauthorized services to Plaintiffs;

D. For an order directing Defendants to preserve and turn over to Plaintiffs all hard copy and electronic records concerning subscriptions or passcodes to Defendants' pirate streaming services and the SetTV service, or any similar product, including manufacturers, exporters, importers, dealers, or purchasers of such products, or any persons involved in receiving DISH's satellite transmissions or the programming contained therein without authorization;

E. Award DISH the greater of its actual damages together with any profits made by Defendants that are attributable to the violations alleged herein, or statutory damages in the amount of up to \$10,000 for each violation of 47 U.S.C. § 605(a), under 47 U.S.C. § 605(e)(3)(C)(i), and to increase that amount by up to \$100,000 for each violation, in accordance with 47 U.S.C. § 605(e)(3)(C)(ii);

F. Award Plaintiffs the greater of their actual damages together with any profits made by Defendants that are attributable to the violations alleged herein, or statutory damages in the amount of up to \$100,000 for each violation of 47 U.S.C. § 605(e)(4), under 47 U.S.C. § 605(e)(3)(C)(i);

G. Award Plaintiffs their costs, attorney's fees, and investigative expenses under 47 U.S.C. § 605(e)(3)(B)(iii);

H. For a full and accurate accounting of all profits and other benefits received by Defendants as a result of the wrongful conduct described herein;

I. For pre and post-judgment interest on all monetary relief, from the earliest date

permitted by law at the maximum rate permitted by law; and

J. For such additional relief as the Court deems just and equitable.

Dated: July 27, 2019

EHRlich, PETRIELLO, GUDIN, & PLAZA

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