

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

DIRECTV, INC.,)	
)	
Plaintiff,)	Case No. 1:03CV00064
)	
v.)	OPINION AND ORDER
)	
TOLBERT P. ADKINS, ET AL.,)	By: James P. Jones
)	United States District Judge
Defendants.)	

John H. Jamnback, Yarmuth Wilsdon Calfo PLLC, Seattle, Washington, and Benjamin J. Lambiotte, Garvey Schubert Barer, Washington, D.C., for Plaintiff; Carl E. McAfee, McAfee Law Firm, P.C., for Defendants Tolbert P. Adkins, Darrell Coleman, Elwood Dykes, and Rex Rife.

Certain of the defendants in this civil case have moved to dismiss or in the alternative to sever on the ground that they have been improperly joined in one action. For the reasons that follow, I will deny the motions.

The plaintiff DIRECTV, Inc. (“DIRECTV”) operates a television satellite broadcast system. This lawsuit is one of many it has recently filed against individuals across the country in an attempt to deter the unauthorized reception and decryption of its subscription and pay-per-view programming. Six individual defendants are

currently named in the present action,¹ and it is alleged that each of them purchased numerous “signal theft devices” with the intent to distribute them to others. (Compl. ¶ 34.) The causes of action are alleged to arise under the Federal Communications Act, 47 U.S.C.A. §§ 605(a), 605(e)(4) (West 2001) (Claims One and Two); the Digital Millennium Copyright Act, 17 U.S.C.A. §§ 1201(a)(2), 1201(b)(1) (West 1996 & Supp. 2003) (Claims Three and Four); the Electronic Communication Privacy Act, 18 U.S.C.A. §§ 2511(1)(a), 2512(1)(b) (West 2000) (Claims Five and Six); unjust enrichment (Claim Seven); tortious interference (Claims Eight and Nine); and unfair competition (Claim Ten).

Four of the defendants, Tolbert P. Adkins, Darrell Coleman, Elwood Dykes, and Rex Rife, have filed similar motions seeking to dismiss the action as to them, or, in the alternative, to sever them as defendants. They contend that combining the several defendants in one action does not meet the permissive joinder requirements of Federal Rule of Civil Procedure 20(a). The motions have been briefed and are ripe for decision.²

¹ Eight defendants were originally named. Two defendants were thereafter voluntarily dismissed by the plaintiff because they could not be located for service of process.

² No party has requested oral argument. I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process.

Rule 20(a) provides as follows:

All persons . . . may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

Fed. R. Civ. P. 20(a). Normally, the determinative question is whether the claims arise out of the same transaction or occurrence or series thereof, since, if so, it usually follows that there will be a common question of law or fact. Misjoinder of parties is not a ground for dismissal of the action; instead, the remedy is severance. *See* Fed. R. Civ. P. 21.

DIRECTV does not claim that the defendants here acted in concert or that they even knew of each others' conduct. However, it is asserted that each of the defendants purchased multiple signal theft devices for the same purpose and from the same supplier within an eight-month period of time. DIRECTV represents that its evidence at trial as to each defendant will be substantially the same.

There is no easy test for determining whether claims arise out of common transactions or occurrences within the meaning of Rule 20. Decisions interpreting Rule 20 have generally adopted a case-by-case approach, emphasizing a balance between efficiency and fairness to the parties. *See* 7 Charles Alan Wright et al., *Federal Practice and Procedure* § 1653 (3d ed. 2001). DIRECTV has filed hundreds

of suits similar to the present one in federal courts, and has faced similar objections under Rule 20 before, with mixed results. *Compare, e.g., DIRECTV v. Loussaert*, 218 F.R.D. 639, 642-43 (S.D. Iowa 2003) (requiring severance of defendants), *with DIRECTV, Inc. v. Hosey*, No. CIV.A.03-2278-GTV, 2003 WL 22463055, at *2 (D. Kan. Sept. 11, 2003) (denying severance).

Under the circumstances of this case, I find that joinder is proper under Rule 20. As alleged, the facts show that the claims against the different defendants are “logically related,” *see Wright et al., supra*, § 1653, at 409, and thus arise out of the same series of transactions. There are clearly common questions of law and fact involved, and accordingly the requirements of Rule 20 have been met.

For these reasons, it is **ORDERED** that each Motion to Dismiss or in the Alternative to Sever Claims [Doc. Nos. 41, 43, 45, and 47] is **DENIED**.

ENTER: December 29, 2003

United States District Judge