

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.

BAER'S FURNITURE CO., INC.,

Plaintiff,

v.

COMCAST CABLE COMMUNICATIONS, LLC,

Defendant

COMPLAINT

Plaintiff Baer's Furniture Co., Inc. ("Baer's") sues defendant Comcast Cable Communications, LLC ("Comcast") and alleges as follows:

NATURE OF THE CASE

1. This action arises from Comcast's fraud and breach of contract with respect to the advertising program it agreed to run for Baer's. Comcast fraudulently induced Baer's to pay for television advertising throughout Florida by misrepresenting the expected viewership of the television programs during which the advertisements would be shown. In addition, Comcast breached its agreement with Baer's to run additional commercials at no cost to make up for its failure to run the advertising program for which it contracted with Baer's. As a result, Baer's paid millions of dollars to Comcast, but received only a fraction of its bargain.

JURISDICTION AND VENUE

2. This is an action for damages, exclusive of interest and attorney's fees, in excess of \$30,000 and for equitable relief.

3. Venue is proper in this Court pursuant to section 47.011, Florida Statutes, *et seq.*, because the claims and causes of action accrued in Broward County, Florida, where Baer's was injured and faces irreparable injury if Comcast is not enjoined.

PARTIES

4. Baer's is a Florida corporation, organized pursuant to the laws of Florida, with its principal place of business at 1589 Northwest 12th Avenue, Pompano Beach, FL 33069.

5. Comcast is a Delaware company, organized pursuant to the laws of Delaware, with its principal place of business at 1701 John F. Kennedy Blvd., Philadelphia, PA 19103. Comcast does business in Florida. It is subject to this Court's jurisdiction pursuant to section 48.193(1)(a)(1), Florida Statutes, because it operates, conducts, engages in, or carries on a business or business venture in this state or has an office or agency in this state; pursuant to section 48.193(1)(a)(2), Florida Statutes, because it committed a tortious act within this state; pursuant to section 48.193(1)(a)(6), Florida Statutes, because it caused injury to persons or property within this state arising out of an act or omission outside this state when, at or about the time of the injury, it was engaged in solicitation or service activities within this state; and pursuant to section 48.193(1)(a)(7), Florida Statutes, because it breached a contract in this state by failing to perform acts required by the contract to be performed in this state.

FACTUAL BACKGROUND

6. Founded in 1945, Baer's is a family-owned company that is one of Florida's largest furniture retailers. It has 16 showrooms, stretching from Pinecrest in South Florida to Casselberry in Central Florida.

7. Baer's offers a vast selection of name brand furniture at competitive prices. Its business model is highly dependent on advertising. In particular, it is dependent on television advertising in the geographical areas where it does business.

8. In the last calendar year, Baer's spent \$9.5 million in advertising, with a substantial portion of that amount spent on television advertising.

9. Comcast is one of the largest communications companies in the United States. Among its services, it offers cable television programming and advertising.

10. Effectv, formerly known as Comcast Spotlight, is the advertising sales division of Comcast. It promotes itself as "help[ing] local, regional and national advertisers grow their business."

11. Comcast, through Effectv, touts to advertisers such as Baer's that it "appl[ies] data to television advertising in new ways to help each business reach its target customers" and "use[s] advanced analytics to prove the impact of a campaign on business results." Comcast did not keep to those representations in its dealings with Baer's.

12. Baer's has been an advertiser on Comcast since at least 2002. During that time, Baer's has paid Comcast approximately \$14.8 million.

13. Baer's has looked to Comcast to advertise in four of its most important markets: Miami/Ft. Lauderdale, West Palm Beach, Sarasota, and Naples/Ft. Myers. Each of those areas comprises a "Designated Market Area" ("DMA") for purposes of television advertising. Comcast has been a critical channel for Baer's advertising in those DMAs.

14. For example, Comcast claims that in the Miami DMA it has a 64% audience share. The audience share claimed by Comcast for the West Palm Beach DMA is even greater, at 71%. And the market share for the Naples/Ft. Myers market is higher than that, at 72%. Comcast's

audience reach is even greater when its programming and advertising on Dish Network is taken into account.

15. Baer's contracted with Comcast on a "ratings points" basis. "Ratings points" is a metric for the number of viewers for a particular television show as a portion of the market. That means that the amount Comcast would charge Baer's for running its commercials was based on the number of "ratings points" (or viewers) for the particular show during which the Baer's commercial would be shown.

16. Toward the end of each year during the time period relevant to this action, Baer's and Comcast would negotiate a contract for the following year. For example, the contract for the year 2017 was negotiated and agreed to in late 2016. Baer's would typically approve a particular schedule, which would then be in effect for the remainder of the year.

17. As part of each contract, Baer's and Comcast would reach agreement on the channels on which the Baer's commercials would be shown during the contract period, along with the days of the week and time of day that the commercials would be run.

18. In order to induce Baer's to enter into each contract, Comcast represented to Baer's the number of "ratings points" for each day and time period when a Baer's commercial was to be shown. Because the contract covered future showing of commercials, Comcast represented to Baer's that the "ratings points" attributed to a particular time slot or show were based on reliable, good faith estimates prepared by research companies.

19. Once the parties reached agreement on the terms for the upcoming year, Comcast would present Baer's with a schedule for the first week of the contract, showing the agreed upon time and date slots for the commercials and the represented estimates of viewership, or "ratings

points,” during those dates and times. Baer’s would approve the schedule and, for the remainder of the year, Comcast would provide Baer’s with weekly iterations of the agreed upon schedule.

20. In the Fall of 2018, during the midterm national elections period, Baer’s questioned whether Comcast was running Baer’s commercials in accordance with its agreement with Comcast. The reason Baer’s questioned this was because, during the 2018 election season, many of the spots for its commercials were being used to run political advertisements. Yet, Comcast was billing Baer’s as if all its advertisements were being run in accordance with the agreement for 2018.

21. The fact that not all of its advertisements were running at the agreed upon date and time slots during that period was not a surprise to Baer’s. It is often a practice during national election periods for political advertisements to bump non-political advertising. But that does not mean that an advertiser, such as Baer’s, would lose the money it had paid to have its advertisements run.

22. The industry practice, which Comcast purports to follow, is that if advertisements are bumped, they would be run on other times and dates. The key to this practice is that the advertisements would be shown at other comparable time and date slots. The advertiser would thus still receive the benefit of the agreement by way of having its advertisements run during other programming with the same “ratings points.” In this way, an advertiser such as Baer’s would still have its advertisements shown to the same size audience for which it had contracted. Conversely, if the broadcaster does not so compensate with replacement advertising, it would not charge the advertiser as if it the bumped commercial had been run in accordance with the agreement.

23. Upon investigation, Baer’s realized that Comcast was not running its bumped advertisements on times and dates and on channels that would net the number of “ratings points”

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