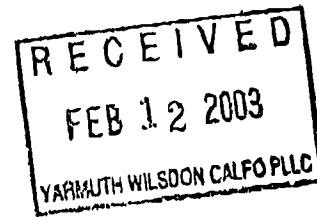


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**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**



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UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: CV 02-05194 PA (RCx)

Filed & Dated: February 10, 2003

Title: DirecTV, Inc. v. Derek E. Trone, et al.

**PRESENT: HONORABLE PERCY ANDERSON, UNITED STATES DISTRICT JUDGE**

C. Kevin Reddick  
 Deputy Clerk

None Present  
 Court Reporter

Attorneys Present for Plaintiff:  
 None Present

Attorneys Present for Defendant:  
 None Present

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PROCEEDINGS: IN CHAMBERS

The Court has before it Plaintiff DirecTV, Inc.'s ("DirecTV") motion for partial summary judgment against Defendant Art Deerey ("Deerey") for the manufacture and sale of signal theft devices in violation of section 605(e)(4) of the Federal Communications Act. 47 U.S.C. § 605(e)(4). After carefully considering the moving papers and the evidence submitted by the parties, the Court rules as follows:

DirecTV "is the nation's leading direct broadcast satellite system, delivering for a monthly fee approximately 225 channels of digital entertainment and informational programming to approximately 10.3 million homes and businesses equipped with specialized DIRECTV receiving equipment." (Third Amended Complaint ("TAC") ¶ 2.) This equipment includes "a small satellite dish (typically 18 inches in size), an integrated receiver/decoder ("IRD") and an Access Card which is necessary to operate the IRD." (TAC ¶ 59.) The Access Card used by DirecTV to decrypt incoming signals uses "smart card" technology to both authorize the decryption of DirecTV programming purchased by the subscriber and to capture and transmit to DirecTV information from the subscriber. (Klauss Decl. ¶ 6.)

On April 2, 2001, DirecTV commenced this action. DirecTV's claims are based on the theory that Defendants engaged in illegal attempts to assist in the unauthorized reception and decryption of its satellite transmissions.

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issues, Celotex Corp. v. Catrett, 477 U.S. 317, 327, 106 S.Ct. 2548, 2555, 91 L.Ed.2d 265 (1986). Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The central inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52, 106 S.Ct. 2505, 2512, 91 L.Ed.2d 202 (1986). The movant bears the initial burden of showing the "absence of a genuine issue of material fact." Celotex, 477 U.S. at 323, 106 S.Ct. at 2552. Once the movant meets this burden, the non-movant must come forward with specific facts showing that there is a genuine issue for trial. Matsushita Electric Industrial Co., Inc. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986). To demonstrate a genuine issue, the non-movant must present sufficient evidence upon which a jury could reasonably find for the non-movant - a mere scintilla of evidence is insufficient. Anderson v. Liberty Lobby, 477 U.S. at 252, 106 S.Ct. at 2512.

Its undisputed that Deerey manufactures, distributes and sells devices that can be used to intercept and decrypt DirecTV satellite transmissions. These devices include T5 Loaders, Bootloaders, Unloopers, and Emulators.<sup>1</sup> Each device can modify an Access Card to view DirecTV channels without authorization or payment. Deerey sells these devices in bulk to dealer clients, including Steven Hutt ("Hutt"), Derek Trone ("Trone"), Jeff Gettle ("Gettle"), and Jeffrey Stevens ("Stevens"). (SUF ¶¶ 18, 19, 21, 24, & 28.) He also provides information and software for pirating the DirecTV satellite system on his own retail websites, including [www.dss-stuff.com](http://www.dss-stuff.com), [www.dsshangout.com](http://www.dsshangout.com), and [www.dss-islands.com](http://www.dss-islands.com). (Statement of Uncontroverted Fact ("SUF") ¶¶ 7-12.) Hutt, Trone, Philip Koopman ("Koopman"), and Kevin Izadshenas ("Izadshenas")<sup>2</sup> agree that the primary purpose of the T5 Loader, Bootloader and Unloader is to modify DirecTV Access Cards to receive free television. (SUF ¶¶ 37, 39.)

On January 21, 2001, DirecTV initiated an electronic countermeasure ("ECM") to disable illegally modified "H Cards," the second generation of DirecTV Access Cards. The ECM identifies modified H Cards and writes new values to the card's memory. If those new values are detected when the write-once memory is scanned during the card's boot cycle, the IRI is shut down. (Koopman Report ¶ 8.) Bootloaders are designed to thwart the ECM. It employs a counting circuitry to count a predetermined number of clock cycles and then

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<sup>1</sup> American Precision Electronics ("American Precision"), a defendant in this case, manufactured at least 11,250 T5 Loaders, 79,704 Bootloaders, and 5,895 Unloopers for Deerey. (SUF ¶¶ 30-32.)

<sup>2</sup> Koopman is one of DirecTV's experts and Izadshenas is an engineer employed by DirecTV.

interrupt the power supply of a ECM-disabled access card.<sup>3</sup> Id. The glitch causes the access card to skip its check for a particular memory value. Id. As a result, disabled cards can still be used to provide free DirecTV. Id.

Section 605(e)(4) of the Federal Communications Act makes it illegal to manufacture, distribute or sell "any electronic, mechanical or other device," knowing or having reason to know, that the device is "primarily of assistance" in the unauthorized decryption of a direct-to-home satellite service. 47 U.S.C. § 605(e)(4). It is undisputed that Deerey arranged with American Precision and Micro-Contract Assembly to manufacture T5 Loaders, Bootloaders, Unloopers and Emulators and that these are electronic or mechanical devices. (SUP 30-33, 35). Deerey's only argument in opposition to DirecTV's motion is that a factual dispute exists as to the primary purpose of these devices.

Deerey relies on the declaration of Michael Hall, a principal of defendant American Precision, in support of his argument that the primary purpose of the devices is not to decrypt DirecTV satellite transmissions. Hall states that there are many lawful uses for the devices, including programing "smart cards." In addition, Hall's partner, James Kopp, testified that he thought Deerey's devices were perfectly legal.

However, the test is not whether the devices could have been used for a lawful purpose, but whether Deerey knew, or had reason to know, that the devices were "primarily of assistance" in the unauthorized decryption of direct-to-home satellite system. There is substantial evidence, including expert testimony as well as the testimony of Deerey's former business associates and clients, that he knew or had reason to know that the T5 Loaders, Bootloaders, Unloopers, and Emulators were used to intercept and decrypt DirecTV satellite signals.

DirecTV met its burden by introducing admissible evidence that it is entitled to a judgment on its second cause of action as a matter of law. Celotex, 477 U.S. at 325, 106 S.Ct. at 2554. Once the moving party has met its burden, "an adverse party may not rest upon the mere allegations or denials of the [moving] party's pleadings, but . . . must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); see also

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<sup>3</sup> Bootloaders are "plug and play" devices that do not require software. (Hutt Depo. at 100: 15.) According to Hutt, a Bootloader is designed to bypass DirecTV's ECM. (Hutt Depo. at 152:19-24.) Trone testified that Deerey marketed Bootloaders as having the ability to "hack" the DirecTV satellite system. (Trone Depo. at 103: 14-21.) According to Marc Jacquinet, an expert hired by the principals of American Precision, the only cards he knows of that react at 521 clock cycles, the time when Deerey's Bootloaders were hard-wired to glitch the power supply, were cards disabled by DirecTV's ECM. There is no evidence before the court that Bootloaders perform any lawful function.

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Matsushita, 475 U.S. at 586, 106 S.Ct. at 1356. Deerey has failed introduce evidence sufficient to raise a question of material fact. Accordingly, DirecTV's motion for partial summary judgment is granted.

IT IS SO ORDERED.