

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No.: \_\_\_\_\_-Civ\_\_\_\_\_

MUNDOFOX BROADCASTING, LLC  
a Delaware Limited Liability Company,

Plaintiff,

vs.

AMERICA-CV NETWORK, LLC  
a Florida Limited Liability Company,

Defendant.

\_\_\_\_\_ /

**COMPLAINT**

Plaintiff, MundoFox Broadcasting, LLC ("MundoFox"), sues Defendant, America-CV Network, LLC ("ACVN"), and alleges as follows:

**NATURE OF THE ACTION**

1. MundoFox is a new American broadcast television network specializing in Spanish-language programming.
2. ACVN is a company that owns and operates, among other things, television stations WJAN-CA and WFUN-LD in the Miami-Ft. Lauderdale designated market area.
3. This is an action for rescission of two agreements between MundoFox and ACVN based on ACVN's material and continuing breaches of these agreements. The first is a May 7, 2012 Station Affiliation Agreement, as supplemented and amended, requiring ACVN to carry MundoFox programming on ACVN's station, WJAN-CA. The second is a May 10, 2012 Production Services Agreement, which requires ACVN to develop, produce, and deliver to MundoFox Spanish-language programming of the highest artistic and technical quality standards.

4. When the parties entered into the Station Affiliation Agreement, WJAN-CA was being carried on cable provider, Comcast Corporation's ("Comcast"), channel position 12 for the Miami-Ft. Lauderdale designated market area, which is the channel position for which MundoFox bargained. At the same time, América Teve programming in that market was being carried on Comcast channel 82 under another station that ACVN owned and operated, WFUN-LD.

5. Thereafter, in breach of its obligations under the Station Affiliation Agreement, ACVN swapped WJAN-CA's and WFUN-LD's channel positions. Consequently, ACVN placed MundoFox programming on significantly inferior Comcast channel position 82 instead of the superior channel position 12. ACVN has subsequently failed and refused to place MundoFox programming on channel 12, thus depriving MundoFox of the benefit of its bargain.

6. Exacerbating matters, ACVN has failed and refused to cause MundoFox programming to be carried on (a) DirecTV, or (b) Dish Network—which was clearly part of the benefit of MundoFox's bargain—even though WJAN-CA's programming was on both of these multichannel video programming distributors ("MVPD") when the parties entered into the Station Affiliation Agreement.

7. Additionally, ACVN swapped WJAN-CA's programming feed with that of WFUN-LD on the AT&T network in the Miami-Ft. Lauderdale market. ACVN thereby again swapped WJAN-CA's channel position with that of another station it controlled for ACVN's own benefit and to the detriment of MundoFox.

8. While ACVN subsequently reversed its previous swap of WJAN-CA's and WFUN-LD's channel positions on AT&T, as of the date of this Complaint, ACVN has failed and refused to: (a) reverse its swap of these channels on Comcast (*i.e.*, place MundoFox programming under WJAN-CA on channel 12 and América Teve's programming under WFUN-

LD on channel 82), (b) cause MundoFox programming to be retransmitted on DirecTV, or (c) cause MundoFox programming to be retransmitted on Dish Network.

9. As a result of MundoFox programming (a) being swapped to inferior channel positions, (b) not being carried on DirecTV, (c) not being carried on Dish Network, and (d) not being properly listed in program guides, which listed MundoFox programming in the bargained-for channel positions, MundoFox's initial launch had less exposure, viewership was lower, soliciting advertisers became more difficult, and advertising revenue decreased.

10. ACVN's material and continuing breaches of the Production Services Agreement, include among other things, failing to timely produce and deliver approved materials required by the terms of the Production Services Agreement. Importantly, but for ACVN's representations and agreements to provide favorable channel placements as described, in part, above, MundoFox would not have entered into the Production Services Agreement.

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**THE PARTIES**

11. Plaintiff, MundoFox, is a Delaware limited liability company organized and existing under the laws of Delaware with its principal place of business at 1440 South Sepulveda Boulevard, Los Angeles, California 90025.

12. Defendant, ACVN, is a Florida limited liability company organized and existing under the laws of Florida with its principal place of business at 13001 N.W. 107<sup>th</sup> Avenue, Hialeah Gardens, Florida 33018.

#### **JURISDICTION AND VENUE**

13. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. Section 1332 (a)(1), because (a) the amount in controversy exceeds \$75,000, exclusive of interest and costs, and (b) there is diversity of citizenship.

14. Venue is proper in the United States District Court for the Southern District of Florida, Miami Division, pursuant to 28 U.S.C. Section 1391, because, among other things, (a) Defendant, ACVN's, principal place of business is located in Miami-Dade County, and (b) a substantial part of the events giving rise to this action, including the breach of the Station Affiliation Agreement by ACVN, occurred in the Miami Division of this District.

### **OPERATIVE FACTS**

#### **The Station Affiliation Agreement**

15. On May 7, 2012, MundoFox and ACVN entered into a Station Affiliation Agreement, which provides for the carriage of MundoFox programming on station WJAN-CA in the Miami-Ft. Lauderdale designated market area. The Station Affiliation Agreement was subsequently amended and supplemented by Letter Agreements dated May 7 and June 1, 2012. Complete, accurate, and authentic copies of the Station Affiliation Agreement and the attendant Letter Agreements, as redacted to protect confidential information, are attached as Composite Exhibit A.

16. As of the date of the Station Affiliation Agreement, ACVN had agreements with certain MVPDs, including an agreement with Comcast, to retransmit WJAN-CA's signal on Comcast channel position 12 for the Miami-Ft. Lauderdale designated market area.

17. At all material times, ACVN also owned, operated, and in any event controlled station WFUN-LD. As of the date of the Station Affiliation Agreement, WFUN-LD carried América Teve programming on Comcast channel position 82 for the Miami-Ft. Lauderdale designated market area.

18. A primary reason MundoFox sought to affiliate with ACVN was to secure its favorable channel positions under station WJAN-CA, including Comcast channel position 12 for the Miami-Ft. Lauderdale designated market area.

19. These favorable channel positions were extremely important for facilitating a successful initial launch of the MundoFox network in the country's third largest Hispanic market, and establishing early credibility with viewers, advertisers, and the press.

20. ACVN understood and acknowledged that securing Comcast channel position 12 and comparably favorable channel positions on DirecTV, Dish Network, and AT&T was material for MundoFox and, but for these channel positions and the attendant capability of reaching all of the households in the Miami-Ft. Lauderdale market, MundoFox would not have entered into the Station Affiliation Agreement for station WJAN-CA or the Production Services Agreement.

21. Accordingly, ACVN expressly agreed to carry MundoFox programming under station WJAN-CA on its assigned positions for the various MVPDs as of the date of the Station Affiliation Agreement, which included, among others, Comcast channel position 12.

22. The carriage provision of the Station Affiliation Agreement, which describes, in part, ACVN's obligations to carry MundoFox programming under station WJAN-CA states in relevant part, as follows:

[ACVN] agrees to broadcast the MundoFox Programming and Program-Related Material . . . over [WJAN-CA's] facilities, on the dates and at the times scheduled by MundoFox, in their entirety and in the form transmitted by MundoFox, during the Programmed Time Periods . . . as scheduled by MundoFox in accordance with this Agreement (including without limitation, all commercial announcements, MundoFox identifications, MundoFox promos and credits).

Ex. A at Section 2(a)(1).

23. To protect the favorable channel positions for which it had bargained, MundoFox ensured that the Station Affiliation Agreement contained a “Change in Operations” provision, which provides in relevant part, as follows:

[I]n the event that [ACVN] re-assigns or swaps [WJAN-CA’s] MVPD channel position and/or MVPD carriage with that of another station controlled by [ACVN], [ACVN] agrees that **MundoFox shall have the right in its sole discretion to . . . terminate this Agreement immediately** upon notice to [ACVN].

Ex. A at Section 10 (emphasis added).

#### **ACVN’s Breach of the Station Affiliation Agreement**

24. Subsequent to entering into the Station Affiliation Agreement, however, ACVN moved WJAN-CA’s programming for the Miami-Ft. Lauderdale designated market area from its original and very favorable position on Comcast channel position 12 to Comcast channel position 82, which is a significantly inferior position. At the same time, ACVN moved América Teve programming on WFUN-LD—which is owned, operated, and controlled by ACVN—from Comcast channel position 82 to channel position 12.

25. Thus, ACVN swapped WJAN-CA’s channel positions with that of another station it controlled, WFUN-LD, for ACVN’s benefit, ultimately causing significant damage to MundoFox.

26. Further, ACVN failed and refused to cause MundoFox programming to be carried on DirecTV or Dish Network, even though WJAN-CA’s programming was being carried on both of these MVPDs when the parties entered into the Station Affiliation Agreement.

27. Additionally, ACVN swapped WJAN-CA’s programming feed with that of WFUN-LD on the AT&T network in the Miami-Ft. Lauderdale market, which it subsequently swapped back.

28. As a result of MundoFox programming (a) being swapped to inferior channel positions, (b) not being carried on DirecTV, (c) not being carried on Dish Network, and (d) not being properly listed in program guides, which listed MundoFox programming in the bargained-for channel positions, MundoFox's initial launch had less exposure, viewership was lower, soliciting advertisers became more difficult, and advertising revenue decreased.

29. MundoFox made good faith efforts to resolve this channel position dispute, but as of the date of this Complaint, ACVN has failed to (a) cause MundoFox programming to be carried on Comcast channel position 12, or (b) cause MundoFox programming to be carried on DirecTV or Dish Network.

30. In December of 2012—as a result of ACVN's material and continuing breaches—MundoFox properly exercised its “right in its sole discretion to . . . terminate [the Station Affiliation Agreement] immediately upon notice to [ACVN].” A complete, accurate, and authentic copy of the Station Affiliation Agreement Termination Letter is attached as Exhibit B.

#### **The Production Services Agreement**

31. On May 10, 2012, MundoFox and ACVN entered into a Production Services Agreement, which provides for the development, production, and delivery of certain original programs for exhibition on MundoFox's programming platform. A complete, accurate, and authentic copy of the Production Services Agreement, as redacted to protect confidential information, is attached as Exhibit C.

32. Under the Production Services Agreement, ACVN was obligated to, among other things, develop, produce, and deliver to MundoFox, subject to its approval, Spanish-language programming of the highest artistic and technical quality standards. Ex. C at Section 1(a).

**ACVN's Breach of the Production Services Agreement**

33. Contrary to its obligations under the Production Services Agreement, however, ACVN failed, among other things, to timely:

- a. deliver approved materials as required by the Production Services Agreement for programs that were capable of being produced and available for initial exhibition on MundoFox on August 13, 2012;
- b. deliver approved materials as required by the Production Services Agreement for programs that were capable of being produced and available for initial exhibition after the launch of MundoFox; and
- c. propose and submit talent approved by MundoFox for the proposed programs.

34. Section 16 of the Production Services Agreement provides in pertinent part, as follows:

- a. Each party shall be entitled to terminate this Agreement on thirty (30) calendar days written notice in the event the other Party:

\* \* \*

- ii. is in material breach of its obligations or warranties in this Agreement and that breach is not capable of remedy;
- iii. is in material breach of its obligations or warranties in the Station Affiliation Agreement and that breach is not remedied within the timeframe set forth therein. . . .

35. In December of 2012—as a result of ACVN's material and continuing breaches—MundoFox properly exercised its right to terminate the Production Services Agreement. A complete, accurate, and authentic copy of the Production Services Agreement Termination Letter is attached as Exhibit D.



36. All conditions precedent to the commencement and maintenance of this action, and to the granting of the relief requested, have occurred, have been performed, or have been waived.

37. MundoFox has retained the law firm of Greenberg Traurig, P.A., to represent it in this action and is obligated to pay the firm reasonable fees for its services.

**COUNT I**  
**(Rescission of the Station Affiliation Agreement)**

38. MundoFox realleges the allegations set forth in paragraphs 1 through 37, above.

39. MundoFox and ACVN are parties to a binding agreement, the Station Affiliation Agreement, which is governed by California law.

40. California Civil Code Section 1689 provides, in pertinent part, as follows:

A party to a contract may rescind the contract in the following cases:

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\* \* \*

(2) If the consideration for the obligation of the rescinding party fails, in whole or in part, through the fault of the party as to whom he rescinds.

\* \* \*

(4) If the consideration for the obligation of the rescinding party, before it is rendered to him, fails in a material respect from any cause.

41. MundoFox has performed its obligations under the Station Affiliation Agreement.

42. The consideration for MundoFox's obligations under the Station Affiliation Agreement has failed because, among other things, of the following:

- a. at that time the Station Affiliation Agreement was executed, ACVN's station, WJAN-CA, was on Comcast channel position 12 in the Miami-Ft. Lauderdale designated market area;

- b. a material part of the bargain for MundoFox's entry into the Station Affiliation Agreement was that ACVN would carry MundoFox programming under WJAN-CA, which included the retransmission of that programming on Comcast channel position 12;
- c. ACVN understood that station WJAN-CA's Comcast channel 12 was a material part of the bargain and would not have entered into the Station Affiliation Agreement but for that position;
- d. nevertheless, ACVN caused WJAN-CA to be moved to Comcast channel position 82, for which MundoFox had not bargained;
- e. ACVN failed to cause MundoFox programming to be carried on Comcast channel position 12, notwithstanding ACVN's obligations under the Station Affiliation Agreement and its subsequent promises to do so;
- f. at that time the Station Affiliation Agreement was executed, WJAN-CA was being carried on DirecTV, Dish Network, and AT&T for the Miami-Ft. Lauderdale designated market area;
- g. a material part of the bargain for MundoFox's entry into the Station Affiliation Agreement was that ACVN would cause MundoFox programming on WJAN-CA to be retransmitted on DirecTV, Dish Network, and AT&T;
- h. ACVN understood that WJAN-CA's retransmission of MundoFox programming on DirecTV, Dish Network, and AT&T was a material part of the bargain relative to the Station Affiliation Agreement;

- i. ACVN failed to cause MundoFox programming under WJAN-CA to be retransmitted on DirecTV;
- j. ACVN failed to cause MundoFox programming under WJAN-CA to be retransmitted on Dish Network; and
- k. ACVN swapped WJAN-CA's programming feed with that of WFUN-LD on the AT&T network in the Miami-Ft. Lauderdale market, which it later reversed.

43. Accordingly, MundoFox is entitled to rescission of the Station Affiliation Agreement pursuant to California Civil Code section 1689.

44. MundoFox offers to restore the parties to their respective positions as of May 7, 2012.

WHEREFORE, MundoFox demands (a) judgment to rescind the Station Affiliation Agreement and Letter Agreements, (b) all damages to which it is entitled, and (c) such further relief as is appropriate to protect MundoFox's rights and interests.

**COUNT II**  
**(Rescission of the Production Services Agreement)**

45. MundoFox realleges the allegations set forth in paragraphs 1 through 37, above.

46. MundoFox and ACVN are parties to a binding agreement, the Production Services Agreement, which is governed by Florida law.

47. MundoFox has performed its obligations under the Production Services Agreement.

48. ACVN, however, has failed, in whole or in part, to timely perform the following obligations owed to MundoFox under the Production Services Agreement:

- a. deliver approved materials as required by the Production Services Agreement for programs that were capable of being produced and available for initial exhibition on MundoFox on August 13, 2012;
- b. deliver approved materials as required by the Production Services Agreement for programs that were capable of being produced and available for initial exhibition after the launch of MundoFox; and
- c. propose and submit talent approved by MundoFox for the proposed programs.

49. Moreover, because, among other reasons, MundoFox contemporaneously terminated the Station Affiliation Agreement, ACVN's breach of the Production Services Agreement is incapable of being cured. *See* Ex. C at § 16(a)(iii).

50. While MundoFox has given notice of termination, none is required where, as here, it serves no purpose because the breaches at issue are incurable.

51. MundoFox has no adequate remedy at law.

52. MundoFox offers to restore the parties to their respective positions as of May 10, 2012.

WHEREFORE, MundoFox demands (a) judgment to rescind the Production Services Agreement, (b) all damages to which it is entitled, and (c) such further relief as is appropriate to protect MundoFox's rights and interests.

Dated: December 28, 2012

Respectfully submitted,

/s/ David B. Weinstein

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