IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

AT&T TELEHOLDINGS, INC. and AT&T WIRELINE HOLDINGS, LLC,	§	
Plaintiffs,	§	Civil Action No. 3:26-cv-2919-L
v.	§	
CHARTER COMMUNICATIONS, INC. and SPECTRUM MANAGEMENT HOLDING COMPANY, LLC,	§	
Defendants.	§	

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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Charter sells internet service that travels over fiber to a customer's neighborhood, but from there, reaches most customers' homes through old-fashioned copper coaxial cables. AT&T, Charter's direct competitor, transmits internet to most customers' homes using 100% fiber optic cables. Charter wants to profit from consumer demand for fiber internet like AT&T's, so it resorts to marketing tricks, such as calling its internet "fiber-*powered*," while burying the truth.

Charter employs these tactics because it knows the difference matters to consumers. For example, when Charter advertises 100% fiber, it highlights the superior reliability, symmetrical upload and download speeds, and low latency. Compl. ¶ 38. Cox, which Charter acquired a few months ago, expressly admits that "[t]raditional cable transmits data over metal cables and cannot currently support symmetrical upload/download speeds." Compl. ¶ 62.

Charter's video advertising tells a different story. AT&T's Complaint catalogues several ads in which Charter promises "the fastest and most reliable internet" or "fiber-powered gig internet with equal upload and download speeds." Compl. ¶¶ 40–54. The admission that Charter actually uses old-fashioned copper cables for the critical last mile flashes briefly across the bottom of the screen in tiny print amid loud music and distracting visual stimuli. Compl. ¶ 56. The voiceover never reads it. Compl. ¶ 56. And even that fleeting disclosure omits the plain word "copper." Instead, Charter opts for the more technical term "coaxial," making it less likely that the few consumers who notice the disclosure will understand what it means.

Charter's motion to dismiss (the "Motion") raises a slew of arguments that lack merit and effectively seek summary judgment at the pre-discovery dismissal stage. Charter asks the Court to accept its theory about what "fiber-powered" means to consumers and to find that its fleeting disclaimer is enough to cure the false impression that its ads create. Those are questions of fact on which AT&T expects to prevail at trial. But at this stage, the Court must accept AT&T's well-pleaded allegations as true and draw all reasonable inferences in AT&T's favor. Charter's Motion should be denied in full.

BACKGROUND

AT&T provides 100% fiber internet to consumers across the country. Compl. ¶¶ 24, 66. Charter does not. *See* Compl. ¶¶ 2, 5. Unlike AT&T, Charter cannot provide 100% fiber internet service in most markets, with its ability to offer 100% fiber internet limited to "select residential customers." Compl. ¶ 5. The vast majority of Charter's Spectrum Internet network uses a *combination* of fiber optic cables and copper coaxial cables. Compl. ¶ 2. Whereas 100% fiber internet, like AT&T's, uses fiber optic cables to transmit internet service all the way from the network hub to a consumer's home, Charter's hybrid fiber-copper service uses fiber from the network hub to the neighborhood node but copper coaxial cables for the *critical last mile* between the node and the customer's home. Compl. ¶¶ 33, 34.

The difference matters. Copper coaxial cables introduce active elements, such as amplifiers, nodes, and splitters, that reduce reliability. Compl. ¶ 35. Additionally, signal-to-noise ratio, spectrum availability, distance from the node, and the presence of legacy

services affect hybrid fiber-copper performance, making it more complex and less consistent than fiber-to-the-home. Compl. ¶ 35.

Charter itself acknowledges the "Peak performance" of 100% fiber service and identifies reliability, symmetrical upload and download speeds, and low latency as three of its defining characteristics (although it omits or distorts these distinctions in the ads AT&T challenges here). Compl. ¶ 38. Cox, Charter's newly acquired affiliate, states on its website that "Fiber-optic cables . . . enabl[e] the fastest symmetrical upload/download speeds, meaning your upload speeds are equal to your download speeds," while "[t]raditional cable transmits data over metal cables and cannot currently support symmetrical upload/download speeds." Compl. ¶ 62. Cox also praises fiber as "less likely to be impacted by a power outage than traditional internet transport networks" and "less susceptible to signal interference," which results in "less downtime." Compl. ¶ 62.

That puts Charter in a difficult position. It must directly compete against AT&T's 100% fiber internet service with a service that transmits internet from the neighborhood node to the home—the critical last mile—using old-fashioned copper cables. Compl. ¶¶ 2, 33, 35.

Charter's solution is to blur the difference by describing its product as "fiber-powered" internet, a description that is both literally false and misleading. Compl. ¶¶ 9, 32, 73–75. Internet service is not "powered" by fiber at all; fiber is a conduit, and in Charter's network it is only one of two conduits. Compl. ¶ 34.

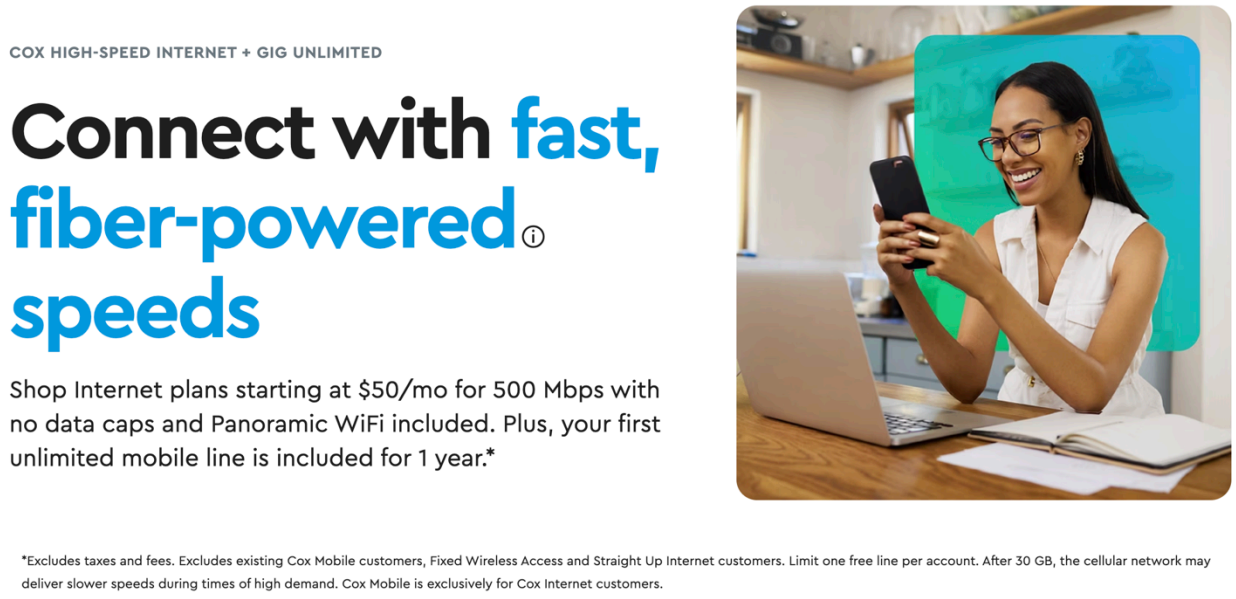
Charter compounds the deception by grouping its 100% fiber service, which is available only to a small segment of consumers, with its predominant hybrid fiber-copper

service. It uses the single umbrella term "Spectrum Fiber Broadband Network" to describe both. Compl. ¶¶ 3, 6, 29. Its webpage titled "The Spectrum Fiber Broadband Network" places "100% Fiber" and "Fiber-Powered" claims side by side without disclosing that 100% fiber service is available only to a small slice of residential customers. Compl. ¶ 30.

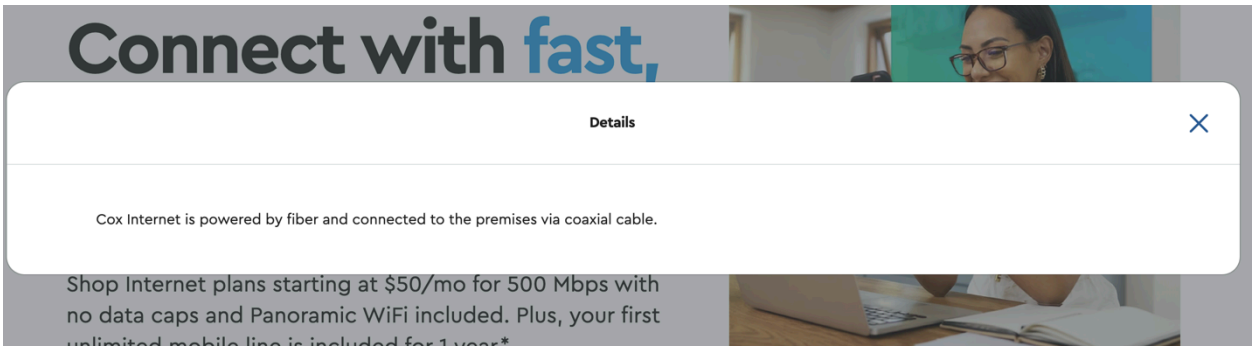
Charter has flooded the media waves with video advertisements touting its "fiber-powered" internet. Compl. ¶¶ 39–40. AT&T's Complaint details fifteen of them. Compl. ¶¶ 40–54. They promise "the fastest and most reliable internet." Compl. ¶ 48. At least two of them even advertise "fiber-powered gig internet with equal upload and download speeds." Compl. ¶¶ 41, 44.

None of them clearly and conspicuously disclose the difference between 100% fiber and hybrid fiber-copper internet. Compl. ¶ 55. For example, in a typical ad, "Spectrum Fiber-Powered Internet" appears onscreen with "a miniature, momentary disclosure at the bottom of the screen amid loud music and rapidly moving visual stimuli." Compl. ¶ 56. The voiceover never reads it aloud. Compl. ¶ 56. When "Fiber-Powered Internet" appears a second time, there is no disclosure. Compl. ¶ 57. That is no accident; it is consistent with Charter's strategy of misleading consumers.

In August 2026, Charter acquired Cox Communications, which had also been advertising its hybrid fiber-copper internet service as "fiber-powered" internet. Compl. ¶¶ 8, 58–59. For example, Cox's website describes "fast, fiber-powered speeds," and hides the disclosure of its copper last-mile connection from consumers who do not click on a tiny info icon next to the false representation. Compl. ¶¶ 60–61.



Compl. ¶ 60.



Compl. ¶ 61. Having joined forces with Cox, Charter is now poised to amplify its deception and the harm it causes. Compl. ¶ 63.

Charter crafted its false and deceptive messaging to induce consumers to choose Charter's internet service over AT&T's. Compl. ¶ 67. Every time a consumer does so based on the false premise that "fiber-powered" internet is of the same kind and quality as AT&T's 100% fiber service, AT&T loses revenue, customer lifetime value, and cross-selling opportunities. Compl. ¶¶ 64, 68–70. AT&T spent considerable time and resources developing its 100% fiber internet network. Compl. ¶ 66. Because Charter's deployment of

a 100% fiber network has lagged behind, it is attempting to draft off the halo effect that AT&T's 100% fiber internet service confers. Compl. ¶¶ 6, 29, 66.

AT&T sued to stop Charter's false and deceptive tactics. Charter now asks this Court to dismiss the case before any discovery. The Court should deny Charter's Motion.

LEGAL STANDARD

"Motions to dismiss under Rule 12(b)(6) are viewed with disfavor and are rarely granted." *Lormand v. US Unwired, Inc.*, 565 F.3d 228, 232 (5th Cir. 2009) (quotation omitted). A complaint need only contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In reviewing a motion to dismiss, courts "accept all well-pleaded facts as true and draw all reasonable inferences in favor of the nonmoving party." *Jim S. Adler, P.C. v. McNeil Consultants, L.L.C.*, 10 F.4th 422, 426 (5th Cir. 2021) (quotation omitted). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Bell Atl. Corp.*, 550 U.S. at 555). The question "is not whether the plaintiff will ultimately prevail, but whether he is entitled to offer evidence to support his claim." *Great Plains Tr. Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 313 (5th Cir. 2002) (quotation omitted).

ARGUMENT

"There are two types of actionable statements under the Lanham Act: those that are literally false and those that, although not literally false, are likely to mislead and confuse consumers." *Greater Hous. Transp. Co. v. Uber Techs., Inc.*, 155 F. Supp. 3d 670, 699

(S.D. Tex. 2015) (citing *Pizza Hut, Inc. v. Papa John's Int'l, Inc.*, 227 F.3d 489, 495 (5th Cir. 2000)). "Literal falsity under the Lanham Act means that the statement is untruthful, deceitful, or untrue." *Id.* at 700 (citing *Pizza Hut, Inc.*, 227 F.3d at 494–95). "[T]o be literally false, as opposed to misleading, a claim must be false on its face." *Id.* at 699 (quotation omitted). "[W]hen the statements of fact at issue are shown to be literally false . . . the court will assume that the statements actually misled consumers." *Pizza Hut, Inc.*, 227 F.3d at 497. The same rule applies at the pleading stage. *See Dupart v. Roussell*, 497 F. Supp. 3d 102, 120 (E.D. La. 2020) ("[I]f [the plaintiff] plausibly alleges that [the defendant's] statements are literally false, the Court must assume that the complaint likewise plausibly alleges that his statements are both deceptive and material.").

I. AT&T plausibly alleges that Charter's ads are literally false.

A. Read in context, Charter's ads tell viewers that fiber reaches their home and delivers the same performance as 100% fiber.

Charter's Motion ignores the context in which its "fiber-powered" ads run. But, as Charter acknowledges, the law requires courts to consider context in determining whether an ad is literally false. *See* Mot. at 11 (quoting *Pizza Hut, Inc.*, 227 F.3d at 495 n.5 ("When construing [an] allegedly false or misleading statement to determine if it is actionable under section 43(a), the statement must be viewed in light of the overall context in which it appears.")).

That context includes the highly competitive internet service market in which consumers view Charter's ads. Within that market, AT&T provides 100% fiber internet service. Compl. ¶ 66. That service is materially superior to internet service that runs over fiber to the neighborhood node and then over copper coaxial cables from the node to the

home—the critical last mile. Compl. ¶¶ 33, 35. AT&T offers factual support for that allegation, and the Court must accept it as true at this stage. Compl. ¶¶ 35, 37–38, 62; *Jim S. Adler, P.C.*, 10 F.4th at 426.

Marketing "fiber-powered" internet in the current market landscape conveys the unambiguous message to consumers that Charter's internet service delivers internet to their home via fiber in the same way that AT&T's 100% fiber service does. Compl. ¶¶ 9, 32, 75. That message is reinforced by using "Spectrum Fiber Broadband Network" to describe both 100% fiber and hybrid fiber-copper services. Compl. ¶¶ 6, 29–30.

B. At minimum, Charter's ads are false by necessary implication.

"A claim may also be deemed literally false, and material, for Lanham Act purposes if it is 'false by necessary implication.'" *Blue Spike, LLC v. Tex. Instruments, Inc.*, No. 6:12-cv-499, 2014 WL 11848751, at *6 (E.D. Tex. July 25, 2014) (quoting *Eastman Chem. Co. v. Plastipure, Inc.*, 969 F. Supp. 2d 756, 762 n.7 (W.D. Tex. 2013)).[1]

An advertising claim is false by necessary implication "when 'considering the advertisement in its entirety, the audience would recognize the claim as readily as if it had

[1] Although the Fifth Circuit has not had occasion to adopt this theory of literal falsity, nearly every other federal court of appeals has, and Charter's Motion applies it without disputing its legitimacy. *See* Mot. at 11 n.2 ("A claim cannot be false by necessary implication unless the allegedly false message is as readily recognizable as if it were explicitly stated."); *see also In re C2R Global Mfg., Inc.*, No. 18-30182-beh, 2021 WL 13427160, at *22 (Bankr. E.D. Wis. Mar. 30, 2021) (collecting cases, noting that the First, Second, Third, Fourth, Sixth, Eighth, Ninth, Tenth, and Federal Circuits have all either expressly adopted or recognized with approval the false-by-necessary-implication doctrine in evaluating literal falsity claims, and adding that "no Circuit Court of Appeals has rejected the doctrine"). *But see Eastman Chem. Co. v. Plastipure, Inc.*, 775 F.3d 230, 241 (5th Cir. 2014) ("We need not decide whether to adopt the 'false by necessary implication' doctrine because, as already discussed, the jury found all of Appellant's statements to be both literally false and misleading.").

been explicitly stated.'" *Eastman Chem. Co. v. Plastipure, Inc.*, 775 F.3d 230, 240–41 (5th Cir. 2014) (quotation omitted).

That is the case here. By calling its internet service "fiber-powered," without meaningfully explaining[2] that it differs in kind and quality from 100% fiber internet service, Charter's ads necessarily imply that the two are the same. Compl. ¶¶ 9, 32, 55, 75. At a minimum, whether consumers recognize that message is a fact question that cannot be resolved against AT&T on the pleadings.

C. Charter's internet service is not "powered" by fiber.

Charter's description of its internet service is also literally false because fiber does not "power" Charter's internet service. Charter knows that it cannot call its internet service 100% fiber internet because it is not. So Charter chose "fiber-powered internet" instead. That description does not accurately convey the role that fiber plays in Charter's network—i.e., the role of conduit (and only one of two distinct types of conduit). It is a clever marketing gimmick by which Charter seeks to imply that it provides all consumers with 100% fiber internet without conceding that it does not. The problem is that the description Charter chose to thread that needle is, itself, literally false.

As AT&T alleges, "[i]nternet service is not 'powered' by fiber in the first place. Fiber is merely a conduit—and in Charter's case, it is only one of two conduits with markedly different characteristics." Compl. ¶ 34. That is a fact the Court must accept as true at this stage (and one that Charter cannot credibly dispute). *Jim S. Adler, P.C.*, 10 F.4th at 426.

[2] The inadequacy of Charter's disclosures is discussed below. *See infra* § II.A.

Charter's Motion quotes a dictionary definition of "powered" that proves AT&T's point. Mot. at 10 ("'Powered' means 'to supply with power and especially motive power,' or 'to give impetus to,' https://www.merriam-webster.com/dictionary/powered#dictionary-entry-2."). Fiber is a mere conduit of internet services. Compl. ¶ 34. It does not supply power to Charter's internet service, and it does not give that service impetus any more than the copper coaxial cable that carries the signal over the last mile. Charter's use of the phrase "fiber-powered internet" is therefore "false on its face." *Greater Hous. Transp. Co.*, 155 F. Supp. 3d at 699. At a minimum, whether "fiber-powered" conveys a false message about how Charter's service reaches the home is a factual question that cannot be resolved against AT&T on the pleadings.

D. Symmetrical upload and download speeds are generally not available with Charter's hybrid fiber-copper internet service.

Additionally, Charter runs ads in which consumers are told that Charter's "fiber-powered gig internet" delivers "equal upload and download speeds." *See, e.g.*, Compl. ¶¶ 41, 44. Statements by Charter's newly acquired affiliate, Cox, directly contradict those claims. Cox's website tells consumers that "Fiber-optic cables . . . enabl[e] the fastest symmetrical upload/download speeds, meaning your upload speeds are equal to your download speeds," while "[t]raditional cable transmits data over metal cables and cannot currently support symmetrical upload/download speeds." Compl. ¶ 62. Charter's own website also touts symmetrical upload/download speed as one of three defining characteristics of 100% fiber internet service. Compl. ¶¶ 7, 38. Charter's ads claiming that its hybrid fiber-copper internet delivers symmetrical upload and download speeds are therefore literally false, and under *Pizza Hut*, presumptively misleading. 227 F.3d at 497.

II. AT&T also plausibly alleges that Charter's ads materially mislead consumers.

Even if Charter's ads were not literally false, AT&T has plausibly pleaded that they materially mislead consumers.

A. AT&T plausibly alleges that Charter's ads are misleading.

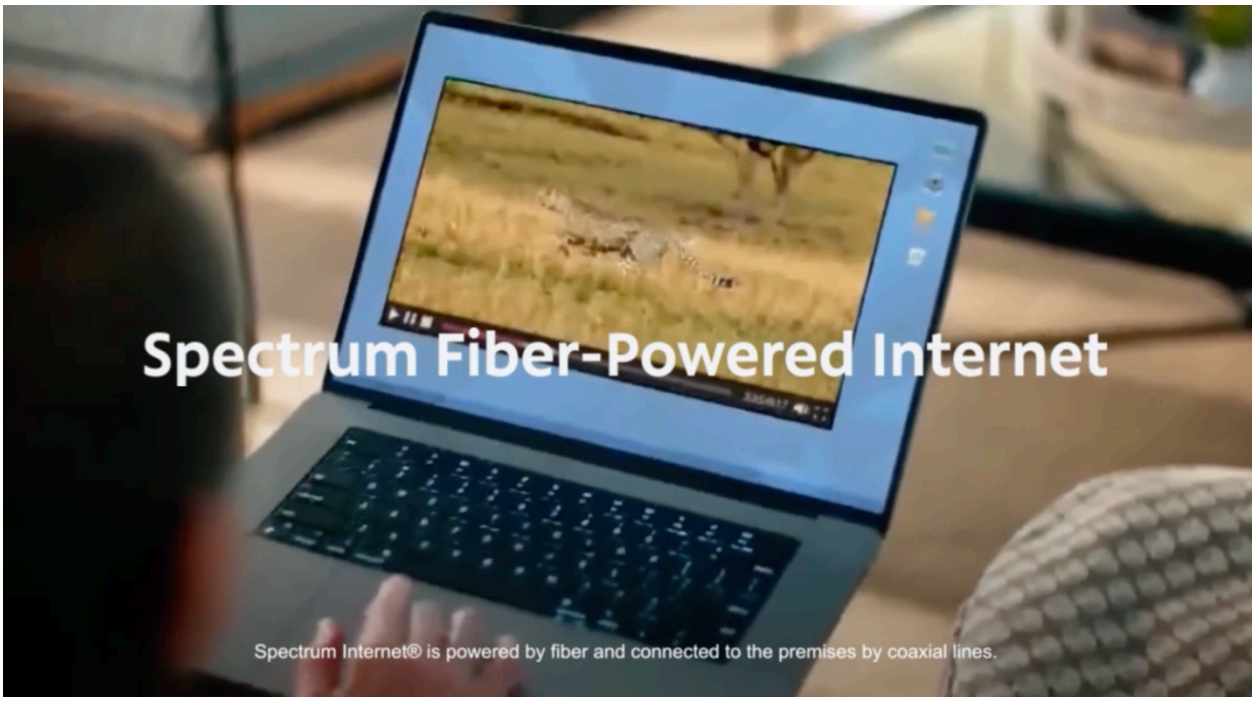
According to Charter, it is *implausible* that consumers would read "fiber-powered" internet to mean that fiber, rather than copper, delivers internet services directly to their home. *See, e.g.*, Mot. at 13 ("It is difficult to understand how a reasonable consumer would be misled by that term."). Charter's argument defies common sense and does not support a dismissal under Rule 12(b)(6), which is "viewed with disfavor" and "rarely granted." *Lormand*, 565 F.3d at 232.

As the Complaint alleges, and as Charter's own marketing acknowledges, there is a difference between 100% fiber internet and hybrid fiber-copper internet. *See, e.g.*, Compl. ¶¶ 37–38, 62. One directly connects the customer's home to the internet via fiber optic cables and the other directly connects the customer's home to the internet via copper coaxial cables. Compl. ¶ 37. There is also a difference in performance and quality between the two products, a fact the Court must accept as true at this stage. Compl. ¶¶ 38, 62.

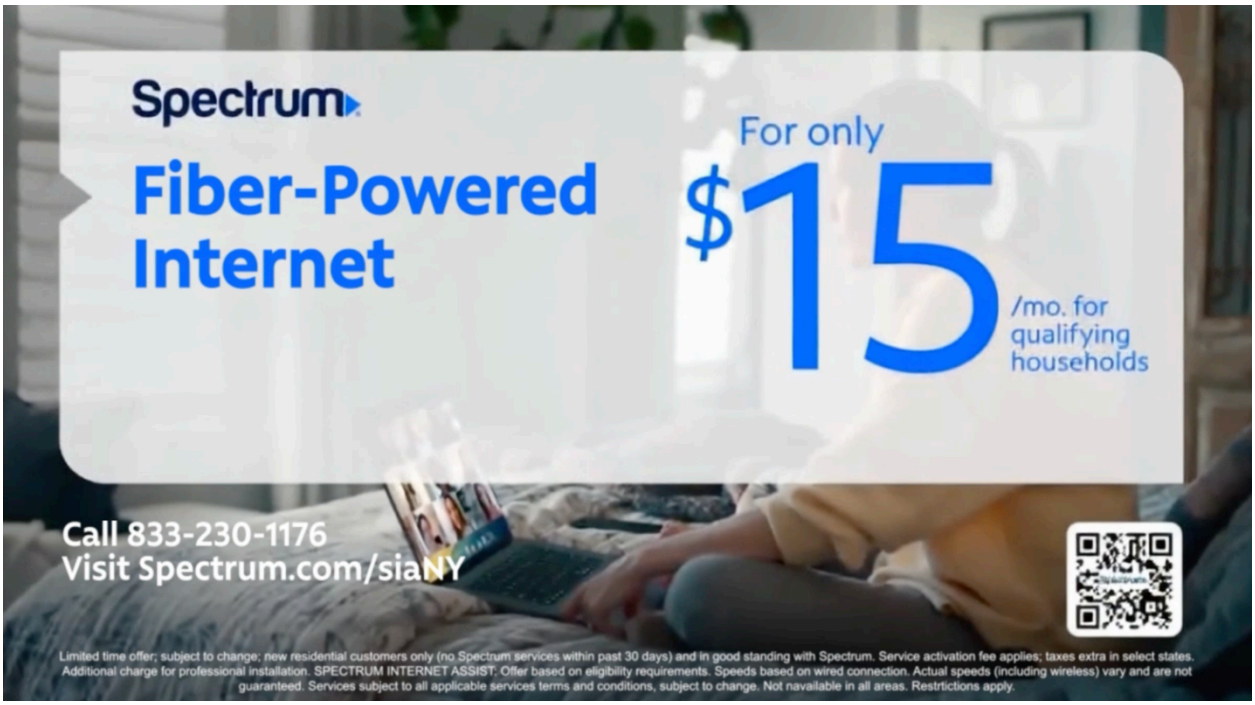
Charter's ads do not inform consumers of this difference or that what it calls "fiber-powered" internet is the inferior, hybrid fiber-copper service. Because a higher-quality, 100% fiber internet service is on the market, Charter's "fiber-powered" message is deceptive and misleading. AT&T has plausibly alleged that Charter's ads mislead consumers into assuming its "fiber-powered" internet is the same, in both kind and quality, as AT&T's 100% fiber internet service. *See, e.g.*, Compl. ¶¶ 2, 9, 32, 55, 75.

Charter also contends that its ads cannot be deceptive as a matter of law because part of its website describes the difference between the two types of internet service and some of its ads flash a tiny disclaimer across the bottom of the screen. Mot. at 11–12, 14–15. That is not the law. "[T]he sufficiency of [a] disclaimer depends upon its effect on consumers, which raises factual questions that are not well suited for resolution on a motion to dismiss." *Int'l Code Council, Inc. v. UpCodes Inc.*, 43 F.4th 46, 62 (2d Cir. 2022).

Here, AT&T plausibly alleges that Charter's disclaimers are insufficient to cure the deceptive nature of its ads. The Complaint specifically discusses why Charter's disclaimer is inadequate. "When 'Spectrum Fiber-Powered Internet' first appears onscreen, it is accompanied by a miniature, momentary disclosure at the bottom of the screen amid loud music and rapidly moving visual stimuli" and "the voiceover does not read it aloud."



Compl. ¶ 56. "When 'Fiber-Powered Internet' appears onscreen a second time, the disclosure is absent from the additional disclaimers at the bottom of the screen."



Compl. ¶ 57. Charter's disclaimer is easy to miss on the static pages of this brief. So it is more than plausible that the disclaimer does not cure Charter's deceptive messaging when flashing momentarily across the screen in a dynamic ad.

Nor do the disclosures on Charter's website cure, as a matter of law, its deceptive ads that run elsewhere. *See* Mot. at 14 (citing Compl. ¶¶ 36–37). If that were the law, a company would be free to run deceptive video ads so long as any page on the company's website disclosed the truth. Charter cites no relevant case supporting this proposition because, of course, that is not the law. Indeed, it is reasonable to infer that most consumers exposed to Charter's video ads never separately navigate to the specific part of its website with a more detailed disclosure. At most, Charter's website disclosures create a fact issue, not a basis to dismiss under Rule 12(b)(6). *Int'l Code Council, Inc.*, 43 F.4th at 62.

Charter's sole citation to support its position is an unpublished opinion from a district court in California that does not involve a Lanham Act claim and does not say what

Charter needs it to, as acknowledged by Charter's use of "*Cf.*" as an introductory signal. *See* Mot. at 15 (citing *Faris v. Petit Pot, Inc.*, No. CV 23-1955-JFW(PDx), 2023 WL 12143972, at *7 (C.D. Cal. Sept. 26, 2023)). In *Faris*, the plaintiff "failed to state a claim for fraud, intentional misrepresentation, or negligent misrepresentation" because the plaintiff failed to explain "how the term 'French Dessert' on the label led him to reasonably believe that Defendant's products were produced in France when the label expressly disclosed that Defendant is located in Emeryville, California, never mentioned any location in France, and state[d] that the desserts are a 'Product of California.'" 2023 WL 12143972, at *7. In sum, *Faris* is not precedential, involves different claims and distinct facts, and does not support the legal proposition for which Charter cites it.

B. AT&T plausibly alleges that Charter's deceptive claims are material to consumers.

Charter's materiality argument rests on the wrong standard. Because its arguments are ill-suited for a motion to dismiss, Charter leans on cases concerning the sufficiency of *evidence*, rather than the plausibility of *pleadings*. *See, e.g.*, Mot. at 16–17 (citing *Pizza Hut, Inc.*, 227 F.3d at 502–03; *Ill. Tool Works, Inc. v. Rust-Oleum Corp.*, 955 F.3d 512, 518 (5th Cir. 2020)).

For example, Charter cites *Pizza Hut* for the proposition that allegations of Charter's views on the importance and superiority of 100% fiber internet, as compared to hybrid fiber-copper internet, do not create a plausible inference that those attributes are also material to consumers. Mot. at 16 (citing *Pizza Hut, Inc.*, 227 F.3d at 503). But *Pizza Hut* did not address the sufficiency of pleadings in the context of a motion to dismiss. Instead,

the Fifth Circuit reversed a jury verdict after a full trial because the plaintiff failed to prove actual deception with consumer-reaction *evidence*. *Pizza Hut, Inc.*, 227 F.3d at 497–98.

Similarly, in *Illinois Tool Works, Inc.*, the Fifth Circuit addressed a defendant's motion for judgment as a matter of law, which the district court denied after a full jury trial. 955 F.3d at 514, 517–18. The defendant argued that "the evidence was insufficient" to hold it liable, and the Fifth Circuit agreed for the same reasons articulated in *Pizza Hut*. *Id.* at 517–18.

Neither *Pizza Hut* nor *Illinois Tool Works* supplies a basis to dismiss AT&T's Complaint. AT&T's allegations that Charter emphasizes the importance and superiority of 100% fiber internet, as compared to hybrid fiber-copper internet, create a plausible inference that the benefits of 100% fiber internet are also material to consumers. A motion to dismiss under Rule 12(b)(6) does not call for an evidentiary analysis, and whether AT&T's allegations would constitute sufficient *evidence* of its claims is not the question before the Court. Charter itself acknowledges that AT&T "need not attach a survey" to plausibly allege consumer deception. Mot. at 14. The question before the Court is not what evidence AT&T has to support its claims but "whether [it] is entitled to *offer* evidence to support [its] claim[s]." *Great Plains Tr. Co.*, 313 F.3d at 313 (emphasis added). AT&T need only plead "enough facts to state a claim to relief that is *plausible* on its face." *Bell Atl. Corp.*, 550 U.S. at 570 (emphasis added). That Charter itself acknowledges the difference in quality between 100% fiber internet and hybrid fiber-copper internet elevates AT&T's allegations "above the speculative level." *In re Katrina Canal Breaches Litig.*, 495 F.3d at 205.

In any event, the Complaint pleads far more than Charter's internal views. It alleges that "[p]erceived speed, reliability, and latency of the services substantially affect consumer choice in internet service providers," Compl. ¶ 28, and that these are "among the most important factors consumers weigh," Compl. ¶ 65. It also alleges that 100% fiber internet service outperforms hybrid fiber-copper service when it comes to those factors. Compl. ¶¶ 35, 38, 62. And it alleges that Charter markets "fiber-powered" internet by highlighting those same factors—i.e., "the fastest and most reliable internet" and "equal upload and download speeds." Compl. ¶¶ 41, 44, 48. An advertiser does not build a campaign around attributes that consumers ignore. Those allegations, among others, elevate materiality beyond the level of speculation, which is all AT&T must do at this stage. *In re Katrina Canal Breaches Litig.*, 495 F.3d at 205.

Charter also concedes that allegations of an intent to deceive can satisfy the pleading standard for materiality. Mot. at 15 ("Absent well-pleaded facts of actual or intended deception, AT&T cannot maintain its claim that 'fiber-powered' is misleading[.]") (citing *Am. Bd. of Internal Med. v. Salas Rushford*, 114 F.4th 42, 66 (1st Cir. 2024) ("[P]laintiffs must make some allegations of actual consumer deception *or intentional deception* to state a legally sufficient claim for relief." (emphasis altered)). Other courts likewise recognize that evidence of a defendant's intent to deceive supports an inference that consumers were in fact deceived. *See Azurity Pharms., Inc. v. Edge Pharma, LLC*, 45 F.4th 479, 487 n.3 (1st Cir. 2022); *Clorox Co. P.R. v. Procter & Gamble Com. Co.*, 228 F.3d 24, 36 n.9 (1st Cir. 2000); *Johnson & Johnson-Merck Consumer Pharms. Co. v. Rhone-Poulenc Rorer*

Pharms., Inc., 19 F.3d 125, 131–32 (3d Cir. 1994); *Johnson & Johnson * Merck Consumer Pharms. Co. v. Smithkline Beecham Corp.*, 960 F.2d 294, 298–99 (2d Cir. 1992).

AT&T's Complaint directly and plausibly alleges that Charter intentionally chose the term "fiber-powered" because it enables Charter to benefit from the halo effect conferred by 100% fiber services (like AT&T's), without revealing to consumers that its own internet service uses copper for the critical last mile. *See, e.g.*, Compl. ¶ 3 ("Charter deceives consumers by manipulating the word 'fiber' in its advertising so it can tout 'Spectrum Fiber Broadband Network' and hide the fact that its network mainly connects to customers' homes using copper wire."); Compl. ¶ 34 ("Charter chose 'Fiber-Powered Internet' deliberately. Internet service is not 'powered' by fiber in the first place. Fiber is merely a conduit—and in Charter's case, it is only one of two conduits with markedly different characteristics. But the phrase allows Charter to convey to consumers that its service uses fiber alone without reference to its copper-wire connectivity to the home."); *see also* Compl. ¶¶ 6, 29–30.

AT&T bolsters this allegation by referencing portions of Charter's website that acknowledge the superior quality of 100% fiber internet. *See, e.g.*, Compl. ¶ 38 ("On a separate page, Charter tacitly acknowledges the performance gap. It touts the 'Peak performance' of its 100% fiber services and identifies reliability, symmetrical upload speed, and low latency as the three defining characteristics of all-fiber internet services."). Cox's website also acknowledges the quality gap. Compl. ¶ 62 ("Cox, like Spectrum, understands the material benefits of 100% fiber. . . . It adds that 'Fiber-optic cables . . . enabl[e] the fastest symmetrical upload/download speeds, meaning your upload speeds are equal to your

download speeds,' while '[t]raditional cable transmits data over metal cables and cannot currently support symmetrical upload/download speeds.' Cox also praises fiber networks as 'less likely to be impacted by a power outage than traditional internet transport networks' and 'less susceptible to signal interference,' which results in 'less downtime.' *See* https://www.cox.com/residential/internet/fiber.html.").

The natural inference is that Charter knows 100% fiber internet is better and wants consumers to believe that its "fiber-powered" internet is either 100% fiber, or the functional equivalent in all respects. That inference is even stronger considering that Charter runs ads that explicitly and falsely attribute symmetrical upload and download speeds—a defining feature of 100% fiber internet—to its hybrid fiber-copper internet. *See, e.g.*, Compl. ¶ 41 ("The thirty-second spot advertises 'fiber-powered gig internet with equal upload and download speeds' for $50 per month."); Compl. ¶ 44 ("Like its predecessor, it advertises 'Spectrum fiber-powered gig internet with equal upload and download speeds for $50 a month.'").

Materiality in false advertising cases rises and falls on the evidence. While AT&T expects the evidence at trial to demonstrate that Charter's ads are material to consumers, AT&T has no evidentiary burden at this stage. As Charter acknowledges, AT&T "need not attach a survey to its complaint" to plausibly plead its claim. Mot. at 14. It need only plead enough facts "to raise a right to relief above the speculative level." *In re Katrina Canal Breaches Litig.*, 495 F.3d at 205. As explained above, AT&T has met that requirement. It is therefore "entitled to offer evidence to support [its] claim." *Great Plains Tr. Co.*, 313 F.3d at 313. The Court should reject Charter's materiality arguments.

III. AT&T plausibly alleges that Charter's "Spectrum Fiber Broadband Network" label is false and misleading.

Charter places both its limited 100% fiber service and its predominant hybrid fiber-copper service under the banner of the "Spectrum Fiber Broadband Network." Compl. ¶¶ 6, 29. Charter's arguments about that label fail for many of the same reasons its "fiber-powered" arguments fail.

A. Charter's "Spectrum Fiber Broadband Network" is literally false, or at minimum false by necessary implication.

According to Charter, "[i]nsofar as 'Fiber Broadband Network' can have any objective meaning, it means exactly what it states: that it is a broadband network largely consisting of fiber-optic cable and relying on fiber technology." Mot. at 19. But "***largely consisting of***" is exactly what "Fiber Broadband Network" ***does not*** state. That is the problem. The phrase "Fiber Broadband Network" lacks the qualifier that Charter conjures up to rationalize the label. A consumer told by Charter that her internet is "delivered over our Spectrum Fiber Broadband Network" is told, without qualification, that the material delivering those services to her home is fiber. Compl. ¶ 31. For the vast majority of Charter's customers, that is false, because copper coaxial cables deliver internet services to those customers' homes over the critical last mile. Compl. ¶¶ 2–3, 33.

Additionally, Charter's "Spectrum Fiber Broadband Network" page fails to adequately inform consumers that Charter's 100% fiber service is available only to a select few. Compl. ¶ 30. And to the extent Charter argues that a drop-down FAQ answer buried at the bottom of the webpage cures the deficiency, that is a fact question that should not be resolved on a motion to dismiss. *Int'l Code Council, Inc.*, 43 F.4th at 62.

AT&T's claims relating to Charter's email to former Cox customers likewise should not be dismissed. The email tells consumers that Charter delivers "100% Fiber Internet to more than one million underserved homes and businesses each year." Compl. ¶ 31. Paired with the "Fiber Broadband Network" label, that message reinforces the false and misleading impression that AT&T is challenging.[3]

Charter argues that no one could plausibly read the email to describe 100% fiber service because it also mentions "Mobile, TV and Home Phone products." Mot. at 20. But the email expressly touts "100% Fiber Internet" alongside the "Fiber Broadband Network" label. Compl. ¶ 31. A passing reference to other products does not dispel the false and misleading impression already conveyed. At most, Charter puts forth a different reading of the email, which the Court cannot adopt on a motion to dismiss. *See Jim S. Adler, P.C.*, 10 F.4th at 426.

B. The "Spectrum Fiber Broadband Network" label is misleading for the same reasons as the "fiber-powered" label.

Charter's use of "Spectrum Fiber Broadband Network" is misleading and material for the same reasons that its use of "fiber-powered" is. *See supra* § II. AT&T plausibly alleges that Charter deliberately placed its predominant hybrid fiber-copper service under the "Spectrum Fiber Broadband Network" umbrella to benefit from the "fiber halo."[4]

[3] Charter also argues that the email caused AT&T no injury because it went only to former Cox customers. Mot. at 22 n.4. But AT&T does not ask the Court to consider the email as an isolated, standalone violation. It is one more example of Charter's false and misleading campaign and demonstrates that Charter is now extending its messaging to millions of former Cox customers who remain free to choose a different internet provider. Compl. ¶¶ 8, 31, 63–64.

[4] Charter asserts that AT&T "has not alleged what this 'halo effect' is." Mot. at 21 n.3. That is not true. The halo effect is the benefit Charter receives because consumers associate certain qualities with fiber. Compl. ¶¶ 7, 28, 35, 65.

Compl. ¶¶ 3, 6, 29. That allegation of intentional deception satisfies the standard that Charter itself set forth. *See* Mot. at 15 (citing *Salas Rushford*, 114 F.4th at 65–66). In addition, AT&T's allegations that differences in speed, reliability, and latency matter to consumers—as supported by Charter's own emphasis on those characteristics when advertising 100% fiber—meet the standard of plausibility pleading. Compl. ¶¶ 7, 28, 35, 38, 62, 65; *see Great Plains Tr. Co.*, 313 F.3d at 313.

IV. Charter's argument concerning AT&T's common law unfair competition claim is wrong.

Because AT&T's Lanham Act claim is sufficiently pleaded, so too is its common law unfair competition claim. *See Unicorn Glob., Inc. v. GoLabs, Inc.*, 447 F. Supp. 3d 535, 545 (N.D. Tex. 2020) ("Because the Court holds that Defendants have stated an independent claim under section 43(a) of the Lanham Act, the Court also finds that they have stated a common law unfair competition claim."). In one sentence at the end of its brief, Charter cites *Taylor Publishing Co. v. Jostens, Inc.*, 216 F.3d 465, 486 (5th Cir. 2000), for the proposition that an unfair competition claim requires an independent tort or illegal act *other than* a Lanham Act violation. Mot. at 23. But *Taylor Publishing* does not say that, and Charter cites no case applying its purported rule. AT&T's common law unfair competition claim should not be dismissed.

CONCLUSION

Charter's Motion asks the Court to decide what its ads mean to consumers before discovery has even begun. For the reasons explained above, the Court should deny Charter's Motion in its entirety.

Alternatively, if the Court finds any merit in Charter's Motion, AT&T respectfully requests that the Court deny the Motion without prejudice and grant AT&T leave to amend to cure any deficiencies. *See* Fed. R. Civ. P. 15(a)(2) ("The court should freely give leave when justice so requires."); *Shepherd v. Capital One Bank (USA) N.A.*, No. 3:18-CV-3141-L, 2019 WL 13252475, at *2–3 (N.D. Tex. Aug. 27, 2019) (Lindsay, J.).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 20, 2026, a true and correct copy of this document was served on all counsel of record through the Court's ECF system.

/s/ Pete Marketos