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R. SCHREIBER*

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

CIVIL ACTION – EQUITY

Case ID: 201101645

are served, by entering an appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you, and a judgment may be entered against you without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICES SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defenses o sus objections a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede

continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

**USTED LE DEBE TOMAR ESTA NOTA A SU ABOGADO
INMEDIATAMENTE. SI USTED NO TIENE A UN ABOGADO NI NO PUEDE
PROPORCIONAR UNO, IR A NI TELEFONEAR EL CONJUNTO DE LA OFICINA
(OFICINAS) ADELANTE ABAJO. ESTA OFICINA LO PUEDE PROPORCIONAR
CON INFORMACION ACERCA DE EMPLEAR A UN ABOGADO.**

**SI USTED NO PUEDE PROPORCIONA PARA EMPLEAR UN ABOGADO,
ESTE MAYO DE LA OFICINA ES CAPAZ DE PROPORCIONARLO CON
INFORMACION ACERCA DE AGENCIAS ESA OFERTA DE MAYO LOS SERVICIOS
LEGALES A PERSONAS ELEGIBLES EN UN HONORARIO REDUCIDO.**

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**THIS IS NOT A COMPULSORY ARBITRATION
CASE** - This case has been brought by the Commonwealth
of Pennsylvania under the Pennsylvania *Unfair Trade
Practices and Consumer Protection Law*, 73 P.S. § 201-1,
et seq.,

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**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

**COMMONWEALTH OF PENNSYLVANIA
BY ATTORNEY GENERAL, JOSH SHAPIRO**

Plaintiff

v.

APPLE INC.

Defendant

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: _____ Term, 2020
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: No. _____
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COMPLAINT

AND NOW, comes the Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Josh Shapiro (hereinafter “Commonwealth” and/or “Attorney General” and/or “Plaintiff”), which brings this action on behalf of the Commonwealth pursuant to the provisions of the *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1, *et seq.*

(hereinafter “Consumer Protection Law”) against Apple Inc. (“Apple” or “Defendant”) for Apple’s unfair and deceptive acts and practices, which violated the provisions of the Consumer Protection Law . The Consumer Protection Law authorizes the Attorney General to bring an action in the name of the Commonwealth of Pennsylvania to restrain by temporary or permanent injunction unfair methods of competition or unfair or deceptive acts or practices in the conduct of trade or commerce. In support thereof, the Commonwealth respectfully represents the following:

1. The Commonwealth alleges Apple violated the Consumer Protection Law by, among other things, misrepresenting and concealing information about “unexpected shutdowns” or “unexpected power-offs” (“UPOs”) affecting its iPhone devices; misrepresenting and concealing information about iPhone battery health and performance; and misrepresenting and concealing information about its iOS¹ software updates that slowed or “throttled” the performance of iPhone devices.

2. Accordingly, the Commonwealth seeks to enjoin Apple from engaging in the unlawful acts and practices alleged herein and prevent future violations of the Consumer Protection Law.

PARTIES

3. Plaintiff is the Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Josh Shapiro, with offices located at 1600 Arch Street, Third Floor, Philadelphia, Pennsylvania 19103 and Strawberry Square, 15th Floor, Harrisburg, Pennsylvania 17120.

4. Apple is a California corporation with its principal place of business located in Cupertino, California 95014.

JURISDICTION AND VENUE

5. This Court has original jurisdiction pursuant to Section 931 of the Judicial Code, 42 Pa. C.S.A. § 931(a) and the Consumer Protection Law.

6. Defendant engaged in trade and commerce within Pennsylvania at all times relevant to this Complaint by advertising, marketing, offering for sale, selling and servicing iPhones and other goods and/or services.

7. Venue is appropriate in this Court pursuant to Pa. R.C.P. 1006(a) and (c)(1).

FACTUAL ALLEGATIONS

Apple

8. Apple has consistently advertised its iPhones as premium products, with an emphasis on speed, performance, and battery life.

9. Apple, for example, marketed its iPhone 5 as having “blazing fast performance,” a “blazing fast A6 chip,” “the world’s most advanced mobile operating system,” “even longer battery life,” an “LTE solution that provides blazing fast speeds,” and support for “ultrafast wireless standards,” enabling consumers to “browse, download and stream content even faster.”

10. Apple also claimed:

The all-new A6 chip was designed by Apple to maximize performance and power efficiency to support all the incredible new features in iPhone 5, including the stunning new 4-inch Retina display-all while delivering **even better battery life**. With up to twice the CPU and graphics performance, almost everything you do on iPhone 5 is blazing fast for launching apps, loading web pages and downloading email attachments.

(emphasis added)

11. Apple released the iPhone 6 and 6s Plus devices in September 2014.
12. Apple advertised its iPhone 6 as having “The Biggest Advancements in iPhone History,” “packed with innovative technologies,” including “Advanced Cameras” and a “Powerful A8 Chip,” and designed for “**blazing fast performance and power efficiency**.” (emphasis added)
13. An Apple press release also claimed:

“iPhone 6 and iPhone 6 Plus are the biggest advancements in iPhone history,” said Tim Cook, Apple’s CEO. ... “Only Apple can combine the best hardware, software and services at this unprecedented level and we think customers are going to love it.”
14. Apple released the iPhone 7 and 7s Plus devices in September 2016.
15. Apple later advertised its iPhone 7 as “the best, most advanced iPhone ever,” with “the Best Battery Life Ever in an iPhone,” and “packed with unique innovations,” including “advanced camera systems,” “more power and performance with the best battery life ever in an iPhone,” “the most powerful chip ever in a smartphone,” and more powerful graphics performance, “[e]nabling a new level of gaming and professional apps.”

Unexpected Power-Offs iPhone 5 Series Devices

16. Notwithstanding Apple’s advertising, consumers had begun complaining about unexpected shutdowns that consumers experienced on iPhone 5 devices.

iPhone 6 Series Devices

17. Consumers in 2016 began reporting even greater numbers of UPOs affecting newer iPhones, including the iPhone 6 and 6s.

18. These shutdowns were tied to issues with the iPhone batteries, which would sometimes show available power dropping dramatically.

19. Apple limited the amount of battery information available to its consumers, which prevented consumers from being able to ascertain the true reason that they were experiencing UPOs.

20. Apple's statements regarding the extent of the UPO issues in late 2016 were false, misleading, and even contradictory, and they were targeted solely to the Chinese market, despite the fact that UPOs occurred in iPhones in Pennsylvania and across the globe.

21. Indeed, Apple's statement of December 1, 2016, *which was published only on the company's Chinese support page*, claimed:

After hearing reports from iPhone customers whose devices unexpectedly shut down, we thoroughly looked into these reports, and collected and analyzed devices. We found that a **small number of iPhone 6s devices** made in September and October 2015 contained a battery component that was exposed to controlled ambient air longer than it should have been before being assembled into battery packs. As a result, these batteries degrade faster than a normal battery and cause unexpected shutdowns to occur. It's important to note, this is not a safety issue.

...

We also want our customers to know that an iPhone is actually designed to shut down automatically under certain conditions, such as extremely cold temperature. To an iPhone user, some of those shutdowns might seem unexpected, but they are designed to protect the device's electronics from low voltage.

We looked for any other factors that could cause an iPhone to shut down unexpectedly. After intensive investigations, no new factors have been identified. We will continue to monitor and analyze customer reports.

(emphasis added)

22. Apple's statement just five days later, published on the very same webpage, claimed:

We take every customer concern very seriously, including the **limited number of reports of unexpected shutdown** with iPhones. We also want to thank the agencies for forwarding concerns to us and their engagement with us. Every time we encounter an issue, we investigate using a thorough process including analyzing these devices. We also look at diagnostic information from the broader set of customers who have opted in to our standard diagnostic data reporting. When we find something, we work to quickly provide our customers with a solution.

As a result of our investigation on this, we found that a **small number of iPhone 6s devices** made in September and October 2015 contained a battery component that was exposed to controlled ambient air longer than it should have been before being assembled into battery packs. Two weeks ago, we launched a worldwide program to replace affected batteries, free of charge. We again apologize for any customer inconvenience. It's important to note, this is not a safety issue.

A small number of customers outside of the affected range have also reported an unexpected shutdown. Some of these shutdowns can occur under normal conditions in order for the iPhone to protect its electronics. In an effort to gather more information, we are including additional diagnostic capability in an iOS software update which will be available next week. This will allow us to gather information over the coming weeks which may potentially help us improve the algorithms used to manage battery performance and shutdown. If such improvements can be made, they will be delivered in future software updates.

(emphasis added)

23. Apple never publicly disclosed what constituted the "small number of iPhone 6s devices"; the "limited number of reports of unexpected shutdown"; or the "small number of customers" repeatedly referenced in these statements.

24. Rather than affecting a “small number,” the UPO issue was affecting many users daily.

Battery Replacements

25. Despite Apple’s attempt to minimize the public perception of the breadth and depth of its UPO problems, various consumers and journalists continued to report that the UPO issues occurred far more frequently than Apple was admitting.

26. In the end, the UPO issues came down to a battery problem. Some consumers were able to fix the problem by replacing their iPhone batteries.

27. Apple, however, never confirmed during the relevant period that a simple battery replacement would have resolved the UPO issue for many consumers.

28. To the contrary, Apple actively worked to prevent consumers from replacing their iPhone batteries (even at full, out-of-warranty cost) unless the batteries failed Apple’s own diagnostic test.

29. Apple was providing misleading information to consumers about the state of their batteries and, based on that misleading information, discouraging and preventing battery replacements.

Throttling

30. Instead of simply disclosing the UPO issues or allowing battery replacements to resolve the UPO issues, Apple developed a scheme that could cover up the UPO issues quietly through an iOS software update.

31. Apple chose to implement an update to the iOS software to limit the phones' hardware performance (i.e. throttle) so that the phones could not demand the power levels that were exceeding the abilities of problem batteries, which were, in turn, causing the UPOs. The company moved forward with iOS 10.2.1, which was first released to the public on January 23, 2017, and implemented the throttling with regard to iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices. Apple later implemented throttling for iPhone 7 and 7 Plus in December 2017 with the release of iOS 11.2.

32. Despite Apple's statements that the UPO issues did not affect iPhone 8 and later devices, the company eventually conceded that it would need to throttle those devices, as well.

33. In short, the UPO issue was endemic to all iPhones as set forth herein.

Concealment of Throttling

34. Again, though, Apple chose to conceal its throttling (along with the underlying UPO issues described above) from consumers.

35. Despite the significance of the throttling "fix," the original release or "Read Me" notes for iOS 10.2.1 and 11.2 gave no indication of any anticipated throttling or reduced performance whatsoever.

36. To the contrary, the notes for 10.2.1 referred only to unspecified "bug fixes," security updates, new features, and other "improvements."

37. Further, although Apple later quietly amended the iOS 10.2.1 release notes on February 23, 2017 (one month after the original release date), the amended notes merely reflected that the update "also improves power management during peak workloads to avoid unexpected shutdowns on iPhone."

38. In addition, the release notes were amended after some users had already downloaded the update, such that those users never were prompted to review the release notes.

39. Likewise, consumers who purchased an iPhone with iOS 10.2.1 (or a subsequent iOS version) pre-installed never would have been prompted to review the notes either.

40. Therefore, many affected iPhone users never had any indication that Apple had “improve[d] power management,” let alone throttled the performance of their iPhone.

Admission of Throttling

41. Due to Apple’s lack of disclosures, it was not until mid-December 2017 when several sophisticated Apple consumers reported, based on their own research, that iOS 10.2.1 and 11.2 appeared to have throttled iPhones.

42. By December 20, 2017, the public reaction to this news had forced Apple to confirm the consumers’ suspicions.

43. In doing so, however, Apple again provided only vague explanations for its conduct, claiming that the iOS updates were intended to “smooth out instantaneous peaks” in performance demands for devices with older batteries.

44. After further outcry, though, Apple finally released a more detailed statement and apology on December 28, 2017, ultimately confirming the reports of throttling.

45. Apple also noted in its December 28, 2017, statement that the throttling updates applied to the iPhone 6, 6 Plus, 6s, 6s Plus, SE, 7, and 7 Plus, and it attempted to address customer concerns by (i) reducing the price for out-of-warranty replacement batteries for these phones from \$79 to \$29; (ii) promising to issue a new iOS update “with new features that give users more visibility into the health of their iPhone’s battery, so they can see for themselves if its condition is

affecting performance”; and (iii) vaguely ensuring that it was “working on ways to make the user experience even better”

46. Thereafter, Apple released iOS 11.3 on March 29, 2018, which, for the first time, allowed consumers to turn off the throttling mechanism in their iPhones.

Effects of Apple’s Conduct on Sales

47. Although consumers eventually learned the truth about Apple’s secret throttling, Apple reaped the benefits of that throttling for about a year.

48. During that time, consumers with iPhones experienced reduced performance, and Apple told many of those consumers that their batteries did not need to be replaced. As a result, many consumers decided that the only way to get improved performance was to purchase a newer-model iPhone from Apple.

49. In sum, Apple’s unfair and deceptive acts and practices described above artificially increased Apple’s iPhone sales.

50. Apple recently settled a private class action lawsuit regarding this conduct. Under that proposed settlement, Apple must pay affected consumers up to \$500 million.

CLAIM FOR VIOLATIONS OF THE CONSUMER PROTECTION LAW

51. The averments and allegations of the preceding paragraphs are incorporated as though the same were fully set forth herein.

52. In connection with its advertisement and sale of iPhones, iPhone batteries, and iOS software releases within Pennsylvania and to Pennsylvania consumers and residents, Apple engaged in unfair and deceptive acts and practices.

53. Such conduct includes, but is not limited to:

- a. Making deceptive representations and misrepresentations about the number of iPhone devices affected by UPOs and the causes of those UPOs;
- b. Concealing, suppressing, and omitting material facts about the number of iPhone devices affected by UPOs and the causes of those UPOs and therefore allowing consumers to rely on such concealments, suppressions, or omissions;
- c. Making deceptive representations and misrepresentations about the health of consumers' iPhone batteries;
- d. Concealing, suppressing, and omitting material facts about the health of consumers' iPhone batteries and therefore allowing consumers to rely on such concealments, suppressions, or omissions;
- e. Unfairly discouraging and preventing iPhone users from replacing their batteries, when Apple knew that replacing the batteries likely would fix the UPO issue;
- f. Making deceptive representations and misrepresentations about the nature, effects, and consequences of iOS software updates;
- g. Concealing, suppressing, and omitting material facts about the nature, effects, and consequences of iOS software updates and therefore allowing consumers to rely on such concealments, suppressions, or omissions; and
- h. Unfairly precluding iPhone users from declining or turning off the throttling of their device

54. Accordingly, Apple violated the Consumer Protection Law.

55. In doing so, Apple acted in a manner prohibited as “unfair methods of competition” and “unfair or deceptive acts or practices” in the conduct of trade or commerce under Section 201-3 of the Consumer Protection Law, as defined by Section 201-2 of said Law. 73 P.S. §§ 201-3 and 201-2(4) (ii), (v) and (xxi).

56. Apple’s unlawful acts and practices in violation of the Consumer Protection Law were targeted to and affected Pennsylvania residents.

WHEREFORE, the Commonwealth respectfully requests that this Court enter judgment against Apple and in favor of the Commonwealth and award the Commonwealth any and all relief as appropriate under the Consumer Protection Law, including without limitation permanent injunctive relief, enjoining and restraining Apple from engaging in unlawful acts and practices alleged herein, pursuant to Section 201-4 of the Consumer Protection Law.

Respectfully Submitted,

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
Attorney General

Date: 11/18/2020

By: 
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COMMONWEALTH OF PENNSYLVANIA
BY ATTORNEY GENERAL, JOSH SHAPIRO

Plaintiff

v.

APPLE INC.

Defendant


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VERIFICATION

I, Jason C. Culler, hereby state that I am a Consumer Protection Agent with the Office of Attorney General and am authorized to make this verification on behalf of the Plaintiff in the within action. I hereby verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, or information and belief.

I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: 11/18/2020



JASON C. CULLER
Consumer Protection Agent

THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA
BY ATTORNEY GENERAL, JOSH SHAPIRO

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 11/18/2020

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