

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

AT&T MOBILITY LLC,

Plaintiff,

vs.

CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS,

Defendant.

Civil Action File
No. _____

1 : 09 - CV - 305 7

NOV 03/2008
JAMES N. MARTEN, Clerk
By: _____
Deputy Clerk

DECLARATION OF ANDY WILSON

Pursuant to 28 U.S.C. § 1746, and in support of Plaintiff's Motion for a Temporary Restraining Order, I, Andy Wilson, hereby declare as follows:

1. I am over 18 years of age, suffer from no legal disabilities, and am otherwise competent to make this declaration. The matters set forth herein are true of my own personal knowledge. If called to testify, I could and would competently testify as to the facts set forth herein.

2. I am the Vice President of Consumer Marketing at AT&T Mobility LLC ("AT&T").

3. I submit this declaration in support of AT&T's Motion for a Temporary Restraining Order against Cellco Partnership d/b/a Verizon Wireless ("Verizon").

4. Over the last several years, the competition in the market for wireless communication services and products has increased dramatically. As the market matures, and consumers become more knowledgeable about the variety of functions available through wireless networks, wireless companies actively compete for consumers and encourage them to switch to their respective wireless companies with promises of better quality, price and/or some other value deemed by consumers to be material to the decision to purchase wireless services.

AT&T's Networks

5. Verizon and AT&T have national "3G" networks. One of the critical differences between a "3G" network and other wireless networks is the speed by which a customer can perform certain data functions. A "3G" network provides increased bandwidth for uploading and downloading data and video faster for wireless devices.

6. In addition to a "3G" network, AT&T covers the United States with another, ubiquitous wireless network called "2.5G" GSM/EDGE.¹ The

¹ In addition to the "2.5G" GSM/EDGE network, AT&T also operates a "2.0G" GSM/GPRS network. The "2.0G" GSM/GPRS network is not as fast as the "2.5G" GSM/EDGE network, but allows AT&T customers to make and receive telephone calls and perform basic data activities (electronic mails and text messages).

coverage area of AT&T's "2.5G" GSM/EDGE network exceeds that of AT&T's "3G" network. (A coverage map is attached as Exhibit A).

7. The "2.5G" GSM/EDGE network (with roaming partners) covers 1.75 million square miles of the country and is available to approximately 296 million people where they live and work.

8. When customers are not on AT&T's "3G" network or not in a "3G" area, they are typically communicating on AT&T's "2.5G" GSM/EDGE network.

9. The "2.5G" GSM/EDGE network does not offer wireless data speeds that are as fast as a "3G" network, but it provides consumers the full ability to make calls, browse the Internet, including social networking sites, stream audio/video, or send electronic mails and text messages.

10. Prior to the advent of "3G" networks, the pre-"3G" networks supported the hugely popular Apple iPhone for more than a year, and still support millions of iPhones and other wireless devices currently in use.

The Misleading Advertisements

11. In October, 2009, Verizon began a new advertising campaign promoting its "3G" network coverage area. This campaign consists of radio, print, and television advertisements.

12. In one of the television advertisements and at least one radio advertisement, Verizon falsely claimed that AT&T customers were “out of touch” where AT&T “3G” coverage is not available. (The “out of touch” “Bench” television advertisement is attached on a CD as Exhibit B).

13. Moreover, in both television advertisements and in print advertisements, Verizon displayed a network coverage map attributed to AT&T with large swaths of white or blank areas (or no coverage) to bolster its misleading message that customers with AT&T service are “out of touch” in large parts of the United States.

14. On October 7, 2009 AT&T contacted Verizon and requested that the advertisements be withdrawn from circulation or modified to be accurate because they were literally false.

15. In response to AT&T’s request that Verizon stop running the advertisements, Verizon removed the words “out of touch” from them and superimposed the phrase “Voice & data services available outside 3G coverage areas” in small font at the end of the television advertisements.

16. As confirmed by a consumer survey, Verizon’s purported solution has done nothing to change the misleading message in its advertisements.

17. By continuing to include the coverage maps attributed to AT&T in its advertisements, Verizon continues to convey the misleading message that AT&T has no coverage in the white or blank space included in the maps, and thus AT&T customers cannot use their wireless devices in large portions of the United States.

18. In the current advertisements, Verizon displays what purports to be an AT&T a "3G" network coverage map that includes large swaths of white or blank space.

19. White or blank space on coverage maps traditionally convey an inability to access information or communicate.

20. According to the coverage map legend on Verizon's, T-Mobile's, and Sprint's websites, the areas colored white, or left blank on their maps represent areas in which there is no coverage whatsoever. AT&T's coverage maps designate "no service available" with a noticeably lighter shade of color than that used on its map to indicate the areas in which coverage is available. (Copies of the maps and legends found on AT&T's, Verizon's, T-Mobile's and Sprint's websites are attached hereto at Exhibit C).

21. Verizon's advertisements also use the misleading maps to depict AT&T customers as frustrated or sad and unable to meet their friends.

22. For example, Verizon's "Bench" television advertisement begins with an announcer stating "if you want to know why your "3G" coverage works so great on Verizon Wireless, there's a map for that." The Verizon "3G" coverage map then appears on the screen. (The current "Bench" television advertisement is attached on a CD as Exhibit D).

23. Next, the announcer states that with Verizon's "3G" coverage, you can make "plans on the go". Verizon's "3G" coverage map then appears on the screen again.

24. After these two statements, the announcer's tone of voice changes and he says: "If you want to know why your friend's "3G" coverage is spotty, there's a map for that too."

25. Verizon then displays a network coverage map attributed to AT&T with large swaths of white or blank space.

26. At the same time that this map is being displayed, the advertisement depicts a character sitting alone on a bench, looking sad or frustrated, unable to meet her friends or do anything.

27. The AT&T "3G" coverage map displayed next to this disappointed AT&T customer and again near the end of the advertisement misleads consumers into believing that AT&T customers have no coverage

whatsoever when they are outside of the depicted coverage area and thus cannot use their wireless devices in many parts of the United States.

28. AT&T has spent tens of billions of dollars to make sure its wireless network covers almost the entire populated country.

29. Accordingly, when AT&T customers are not in a "3G" network area, they are typically communicating on AT&T's "2.5G" GSM/EDGE network. Even in non-"3G" areas, AT&T customers can make telephone calls, browse the Internet, including social networking sites, stream audio/video, or send electronic mails and text messages.

30. AT&T customers using the "2.5G" GSM/EDGE network can do all of the tasks identified in the "Bench" commercial.

31. Thus, contrary to the message conveyed by Verizon's maps, there are very few places in the United States where no wireless coverage is available for AT&T's customers.

AT&T Is Being Harmed By These Advertisements

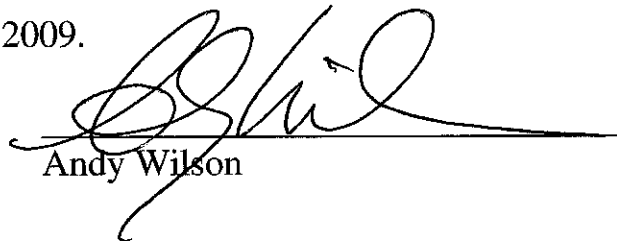
32. If Verizon is allowed to run advertisements using maps with large swaths of white or blank spaces in places where AT&T, in fact, does have coverage and its customers are able to communicate, the public's confidence in the coverage of AT&T's network and in AT&T's truthful representations to its customers about its network will be undermined.

33. The fourth quarter of the year is the most vigorous and important marketing season for the wireless industry, and damage to competition during the fourth quarter is particularly harmful to the public's interest in fair competition.

34. The full damage that AT&T will suffer from repeated publication of Verizon's advertisements is difficult if not impossible to calculate. No amount of corrective advertising would undo the damage.

I declare under penalty of perjury that the foregoing is true and correct.

This 2 day of November, 2009.


Andy Wilson