

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE TRUJILLO, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

APPLE COMPUTER, INC., a California
corporation and AT&T MOBILITY LLC, a Georgia
corporation,

Defendants.

CASE NO.: 07-CV-04946

Judge Kennelly

**DEFENDANT APPLE INC.'S RESPONSE
TO PLAINTIFF'S FIRST REQUESTS FOR ADMISSION**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Defendant Apple Inc. (hereinafter "Apple") hereby submits the following responses and objections to Plaintiff Jose Trujillo's First Requests for Admission.

In responding to any request, Apple does not concede the relevance or materiality of the request or of the subject to which the request refers. Apple's response to each request is made subject to and without waiver of any objections as to the competency, relevancy, materiality, privilege or admissibility as evidence for any other purpose, of any of the information provided or referred to, or of any of the responses given herein, or of the subject matter thereof, in any proceedings.

Apple's responses to these requests are based upon the facts and information presently known and available to it. Apple has not completed its investigation of the facts relating to this case, has not completed discovery in this action, and has not completed preparation for any trial that might be held. Any responses to the following requests are based on information presently known to Apple and are given without prejudice to Apple's right to provide or introduce at trial evidence of any subsequently discovered information. As a consequence, all answers provided are subject to amendment and/or supplementation by Apple as discovery continues.

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Subject to and without waiver of the foregoing objections and conditions, Apple objects and responds as follows:

OBJECTIONS AND RESPONSES

REQUEST FOR ADMISSION NO. 1:

Admit that Apple first offered its iPhone for sale to the public in the United States on June 29, 2007.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Admitted.

REQUEST FOR ADMISSION NO. 2:

Admit that the iPhone is a sealed unit with its battery soldered on the inside of the device.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Apple objects that the phrases "sealed unit" and "soldered on the inside" are vague and ambiguous in this context. Apple states that the iPhone is not intended to be serviced by users and does not contain a user-replaceable battery. Apple denies the remainder.

REQUEST FOR ADMISSION NO. 3:

Admit that the iPhone battery cannot be changed and/or replaced by the consumer himself, but instead must be sent to Apple for service.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Apple states that the iPhone does not contain a user-replaceable battery and that Apple offers battery replacement service. Apple denies the remainder.

REQUEST FOR ADMISSION NO. 4:

Admit that Apple maintains a battery replacement program, for which Apple charges \$79.00 plus \$6.95 for shipping and handling.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Apple states that it has established a program for out-of-warranty battery service and that the advertised charge for that service is \$79.00 plus \$6.95 for shipping and handling.

REQUEST FOR ADMISSION NO. 5:

Admit that the terms of Apple's battery replacement program were not disclosed in advance of the iPhone's launch.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Denied.

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REQUEST FOR ADMISSION NO. 6:

Admit that nowhere in the packaging, enclosed manuals and/or papers included with the iPhone at the time of purchase does Apple specifically disclose that its battery replacement program will cost \$79.00 plus \$6.95 for shipping and handling.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Apple states that the cost of the out-of-warranty battery replacement program is not specifically disclosed in the packaging or materials included in-box with the iPhone; however, the packaging and the in-box materials state that the battery may need to be replaced by an Apple service provider and refer consumers to www.apple.com/batteries for further information. The specific cost information for the battery replacement program — \$79, plus \$6.95 shipping and handling — is directly accessible from this webpage.

REQUEST FOR ADMISSION NO. 7:

Admit that in no marketing and/or promotional materials used by Apple prior to the iPhone's launch, excluding its website, did Apple disclose the terms of its battery replacement program, specifically the cost of \$79.00 plus \$6.95 for shipping and handling.

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Apple admits that its website disclosed the terms and specific costs of the iPhone battery replacement program on several different webpages, and Apple states that, at the present time, it is not aware of other marketing or promotional materials that specifically disclosed the cost of the iPhone out-of-warranty battery replacement program prior to the iPhone's launch.

REQUEST FOR ADMISSION NO. 8:

Admit that when the iPhone was first released to the public for sale on June 29, 2007, that the cost of the battery replacement under Apple's battery replacement program did not appear on Apple's website.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Denied.

REQUEST FOR ADMISSION NO. 9:

Admit that the terms of Apple's battery replacement program, and specifically the cost of same, did not appear on Apple's website until after the iPhone was offered for sale to the United States public.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Denied.

REQUEST FOR ADMISSION NO. 10:

Admit that on January 9, 2007 Steve Jobs, CEO of Apple, unveiled the iPhone at Apple's MacWorld Expo in San Francisco, CA.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Apple admits that on January 9, 2007, Steve Jobs, CEO of Apple, unveiled the iPhone at the MacWorld Conference and Expo in San Francisco, CA. Except as specifically admitted, Apple denies the remainder of the Request.

REQUEST FOR ADMISSION NO. 11:

Admit that in his speech at the January 9, 2007 Macworld Expo in San Francisco, CA, Steve Jobs, CEO of Apple, made no mention of the following facts:

- a. That the iPhone battery was not user-replaceable.
- b. That the iPhone battery could only be serviced by Apple.
- c. That the iPhone battery replacement program would cost consumers \$79.00 plus \$6.95 for shipping and handling.

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Apple admits that during his keynote address on January 9, 2007, at the Macworld Conference and Expo in San Francisco, Mr. Jobs did not state:

- a. that the iPhone battery was not user-replaceable.
- b. that the iPhone battery could only be serviced by Apple.
- c. that the iPhone battery replacement program would cost consumers \$79.00 plus \$6.95 for shipping and handling.

REQUEST FOR ADMISSION NO. 12:

Admit that between January 9, 2007 and June 29, 2007, Apple issued no press release that stated the cost of its battery replacement program.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Apple objects on the ground that the phrase "press release" is vague and ambiguous in this context. Subject to and without waiving the foregoing objections, Apple admits that it did not issue a statement legended as a "press release" between January 9, 2007, and June 29, 2007, specifically stating the cost of Apple's out-of-warranty battery replacement program.

REQUEST FOR ADMISSION NO. 13:

Admit that between January 9, 2007 and June 29, 2007, Apple issued no press release that disclosed the fact that the iPhone battery is not user replaceable.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Apple objects on the ground that the phrase "press release" is vague and ambiguous in this context. Subject to and without waiving the foregoing objections, Apple admits that it did not issue a statement legended as a "press release" between January 9, 2007, and June 29, 2007, specifically disclosing that the iPhone battery is not user-replaceable; however, Apple provided iPhones to members of the press in advance of the product's introduction and their independent reviews of the iPhone appeared in major newspapers on June 27, 2007, two days before the iPhone went on sale. Each of these published reviews noted that the iPhone battery was not user-replaceable. Walter Mossberg stated in his June 27, 2007, review in the *Wall Street Journal*, "Like the iPod, but unlike most cellphones, the iPhone lacks a removable battery." Edward Baig stated in his June 27, 2007, review in *USA Today*, iPhone "doesn't have a removable battery. . . . You'd have to send the device to Apple or presumably a third party to swap a spent battery." David Pogue stated in his June 27, 2007, review in the *New York Times*, "Eventually, you'll have to send the phone to Apple for battery replacement, much as you do now with an iPod, for a fee."

REQUEST FOR ADMISSION NO. 14:

Admit that on or about June 29, 2007, Apple's web page located at www.apple.com/batteries did not disclose the cost of the battery replacement program.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Apple admits that the webpage, www.apple.com/batteries, did not disclose the cost of the iPhone out-of-warranty battery replacement program on June 29, 2007; however, Apple states that the cost of the battery replacement program was disclosed on three other Apple webpages, each of which was uploaded and accessible on June 29, 2007. The cost of the battery replacement program was disclosed on the webpage, www.apple.com/batteries/replacements.html, which is directly linked to the webpage, www.apple.com/batteries. In addition, the cost of the battery replacement program was disclosed on two Apple iPhone support webpages: www.apple.com/support/iphone/service/battery and www.apple.com/support/iphone/service/faq.

REQUEST FOR ADMISSION NO. 15:

Admit that on or about June 29, 2007, Apple's webpage located at www.apple.com/support/iphone/service did not disclose the cost of the battery replacement program.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Apple admits that the webpage, www.apple.com/support/iphone/service, did not disclose the cost of the out-of-warranty battery replacement program on June 29, 2007; however, Apple states that the cost of the battery replacement program was disclosed on two immediately subordinate iPhone support webpages on June 29, 2007: www.apple.com/support/iphone/service/battery and www.apple.com/support/iphone/service/faq. In addition, the cost of the battery replacement program was also disclosed on Apple's webpage, www.apple.com/batteries/replacements.html, from June 29, 2007 to the present.

REQUEST FOR ADMISSION NO. 16:

Admit that on or about June 29, 2007, Apple's web page located at www.apple.com/batteries/iphone.html did not disclose the cost of the battery replacement program.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Apple admits that the webpage, www.apple.com/batteries/iphone.html, did not disclose the cost of the out-of-warranty battery replacement program on June 29, 2007; however, Apple states that the cost of the battery replacement program was disclosed on three other Apple webpages, each of which was uploaded and accessible on June 29, 2007. The cost of the battery replacement program was disclosed on the webpage, www.apple.com/batteries/replacements.html, as well as on two Apple iPhone support WebPages: www.apple.com/support/iphone/service/battery and www.apple.com/support/iphone/service/faq.

REQUEST FOR ADMISSION NO. 17:

Admit that after June 29, 2007 and up to December 31, 2007, Apple's web page located at www.apple.com/batteries/iphone.html did not disclose the cost of the battery replacement program.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Apple admits that the webpage, www.apple.com/batteries/iphone.html, did not disclose the cost of the out-of-warranty battery replacement program after June 29, 2007, and up to

December 31, 2007; however, Apple states that the cost of the battery replacement program was disclosed on three other Apple webpages, each of which was uploaded and accessible from June 29, 2007, to the present. The cost of the battery replacement program was disclosed on the webpage, www.apple.com/batteries/replacements.html, as well as on two Apple iPhone support webpages: www.apple.com/support/iphone/service/battery and www.apple.com/support/iphone/service/faq.

REQUEST FOR ADMISSION NO. 18:

Admit that after June 29, 2007 and up to December 31, 2007, Apple's web page located at www.apple.com/batteries did not disclose the cost of the battery replacement program.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Apple admits that the webpage, www.apple.com/batteries, did not disclose the cost of the iPhone out-of-warranty battery replacement program after June 29, 2007 and up to December 31, 2007; however, Apple states that the cost of the battery replacement program was disclosed on three other Apple webpages, each of which was uploaded on June 29, 2007, and accessible from June 29, 2007 to the present. The cost of the battery replacement program was disclosed on the webpage, www.apple.com/batteries/replacements.html, which can be directly accessed from the webpage, www.apple.com/batteries. In addition, the cost of the battery replacement program was disclosed on two Apple iPhone support webpages: www.apple.com/support/iphone/service/battery and www.apple.com/support/iphone/service/faq.

REQUEST FOR ADMISSION NO. 19:

Admit that after June 29, 2007 and up to December 31, 2007, Apple's web page located at www.apple.com/support/iphone/service did not disclose the cost of the battery replacement program.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Apple admits that the webpage, www.apple.com/support/iphone/service, did not disclose the cost of the out-of-warranty battery replacement program after June 29, 2007 and up to December 31, 2007; however, Apple states that the cost of the battery replacement program was disclosed on two other immediately subordinate iPhone support webpages: www.apple.com/support/iphone/service/battery and www.apple.com/support/iphone/service/faq. These webpages were uploaded on June 29, 2007, and have been accessible from that date to the

present. In addition, the cost of the battery replacement program was also disclosed on Apple's webpage, www.apple.com/batteries/replacements.html, from June 29, 2007 to the present.

REQUEST FOR ADMISSION NO. 20:

Admit that Apple charges its consumers a 10% restocking fee upon return of an opened iPhone even if the iPhone is returned in accordance with Apple's 14-day return policy.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Apple admits that it has a policy concerning restocking fees for open-box iPhone returns to its retail stores and that, if charged, the fee is 10% of the purchase price. However, a restocking fee is not charged in every instance of an open-box iPhone return; therefore, Apple denies the Request except as specifically admitted.

REQUEST FOR ADMISSION NO. 21:

Admit that Apple's 10% restocking fee would have cost Plaintiff, upon return of his opened 4GB iPhone within the 14 day return period, approximately \$49.90.

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Apple lacks sufficient information about the specific circumstances under which Plaintiff might have returned his iPhone to permit it to admit or deny and on that basis denies the Request.

REQUEST FOR ADMISSION NO. 22:

Admit that the cost of Apple's battery replacement program is not disclosed on the exterior of the box and/or packaging in which the iPhone is sold.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Apple states that the cost of the out-of-warranty battery replacement program is not specifically disclosed on the exterior of the box and/or packaging in which the iPhone is sold; however, the feature label on the outside of each iPhone box states:

Battery has limited recharge cycles and may eventually need to be replaced by Apple service provider. Battery life and charge cycles vary by use and settings. See www.apple.com/batteries.

The webpage, www.apple.com/batteries, provides information regarding rechargeable lithium-ion batteries, and specific cost information for the battery replacement program is accessible through a direct link to another Apple webpage, www.apple.com/batteries/replacements.html. In addition, specific cost information for the iPhone battery replacement program is also available on the following Apple webpages: www.apple.com/support/iphone/service/battery and www.apple.com/support/iphone/service/faq.

REQUEST FOR ADMISSION NO. 23:

Admit that the iPhone Product Guide, included in the box and/or packaging in which the iPhone is sold, does not disclose the cost of Apple's battery replacement program.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Apple states that the cost of the out-of-warranty battery replacement program is not specifically disclosed in the iPhone Important Product Information Guide included in-box with the iPhone; however, the iPhone Important Product Information Guide states:

Never attempt to repair or modify iPhone yourself. iPhone does not contain any user-serviceable parts, except for the SIM card and SIM tray . . . The rechargeable battery in iPhone should be replaced only by an Apple Authorized Service Provider. For more information about batteries, go to www.apple.com/batteries.

The webpage, www.apple.com/batteries, provides information regarding rechargeable lithium-ion batteries, and specific cost information for the battery replacement program is accessible through a direct link to another Apple webpage, www.apple.com/batteries/replacements.html. In addition, specific cost information for the iPhone battery replacement program is also available on the following Apple webpages: www.apple.com/support/iphone/service/battery and www.apple.com/support/iphone/service/faq.

REQUEST FOR ADMISSION NO. 24:

Admit that nowhere in or on the box/packaging, enclosed manuals, and/or papers included with the iPhone at the time of purchase does Apple direct the consumer to its web page: www.apple.com/support/iPhone/service/battery.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Apple admits that the iPhone box and enclosed materials do not contain a specific reference to the webpage, www.apple.com/support/iPhone/service/battery; however, the box and enclosed materials do refer consumers to Apple's general battery information page at www.apple.com/batteries, which contains a direct link to a webpage disclosing the specific costs of the iPhone battery replacement program, www.apple.com/batteries/replacements.html. There is a direct link from www.apple.com/batteries/replacements.html to www.apple.com/support/iPhone/service/battery.

REQUEST FOR ADMISSION NO. 25:

Admit that on or about July 5, 2007, Jennifer Hakes was employed as a spokesperson for Apple.

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Admitted.

REQUEST FOR ADMISSION NO. 26:

Admit that on or about July 5, 2007 Jennifer Hakes said Apple posted the battery replacement details on its website after the iPhone went on sale.

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Denied.

REQUEST FOR ADMISSION NO. 27:

Admit that Apple had knowledge of the terms of its battery replacement program, including the cost to its consumers, prior to June 29, 2007.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Admitted.

REQUEST FOR ADMISSION NO. 28:

Admit that the terms of Apple's battery replacement program only appeared on www.apple.com, and/or any of its website's sub-pages, after Apple received a complaint from the Foundation for Consumer and Taxpayer Rights.

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Denied.

Dated: February 11, 2008

Respectfully submitted,
APPLE INC.

By: 

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