

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: APPLE IPHONE 3G AND 3GS MMS
MARKETING AND SALES PRACTICES
LITIGATION

THIS DOCUMENT RELATES TO ALL
ACTIONS

MDL NO. 2116

2:09-md-2116

SECTION: J

JUDGE BARBIER

MAGISTRATE JUDGE WILKINSON

**DECLARATION OF RICHARD PIANKA
IN SUPPORT OF DEFENDANT AT&T
MOBILITY LLC'S MOTIONS TO
COMPEL ARBITRATION**

I, Richard Pianka, hereby declare as follows:

1. The following facts are of my own personal knowledge, and if called as a witness I could and would testify competently as to their truth.

2. I am employed as an attorney by the law firm of Mayer Brown LLP

3. On August 2, 2010, I visited the American Arbitration Association ("AAA") website at <http://www.adr.org/sp.asp?id=22014>, which contains a web page entitled "Supplementary Procedures for Consumer-Related Disputes." Attached hereto as Exhibit 1 is a true and correct printout of the print version of that web page.

4. On August 2, 2010, I visited the AAA website at <http://www.adr.org/sp.asp?id=22440>, which contains a web page entitled “Commercial Arbitration Rules.” Attached hereto as Exhibit 2 is a true and correct printout of the print version of that web page.

5. On August 2, 2010, I visited the AAA website at <http://www.adr.org/sp.asp?id=29041>, which contains a web page with the subtitle “AAA Filing Forms,” and the further subtitle “CONSUMER ARBITRATION.” Attached hereto as Exhibit 3 is a true and correct copy of the document appearing at the “Consumer-Related Disputes” link of that web page.

6. On August 2, 2010, I visited the Virgin Mobile web site (at <http://www.virginmobileusa.com>) and followed the link at the bottom of the page marked “Terms of Service.” That web page (at <http://www.virginmobileusa.com/legal/terms-of-service>), under the “Terms of Service” heading, contains links to “Terms of Service – General Terms” and “Terms of Service – Virgin Mobile Service Plans.” True and correct printouts of the web pages at those links (<http://www.virginmobileusa.com/legal/terms-of-service-no-annual-contract> and <http://www.virginmobileusa.com/legal/terms-of-service-virgin-mobile>) are attached as Exhibits 4 and 5, respectively.

7. On August 2, 2010, I visited the Internet Archive website (<http://www.archive.org>) and searched for an archived version of Virgin Mobile’s Terms of Service web page (<http://web.virginmobileusa.com/about/terms-and-conditions>). I selected the most recent result, which was for August 22, 2008. A true and correct printout of that web page (<http://web.archive.org/web/20080822040303/http://web.virginmobileusa.com/about/terms-and-conditions>) is attached as Exhibit 6.

8. On August 2, 2010, I visited the T-Mobile web site (at <http://www.t-mobile.com>) and followed the link at the bottom of the web page marked "Terms & Conditions." A true and correct printout of that web page (http://www.t-mobile.com/Templates/Popup.aspx?WT.z_unav=fr__TC&PAsset=Ftr_Ftr_TermsAndConditions&print=true), which states that the terms it displays are "[e]ffective July 18, 2010," is attached as Exhibit 7. I also followed the link on that page marked "click here for the June 28, 2008 Terms & Conditions." A true and correct printout of that web page (http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions2008&print=true) is attached as Exhibit 8.

9. On August 2, 2010, I visited the Cricket Wireless web site (at <http://www.mycricket.com>) and followed the link at the bottom of the web page marked "Terms & Conditions." A true and correct printout of that web page (<http://www.mycricket.com/support/terms-and-conditions>), which states that it was "[u]pdated November 17, 2008," is attached as Exhibit 9.

10. On August 10, 2010, I visited the Virgin Mobile "News Releases" web page (at <http://virginmobileusa.marketwire.com/easyir/prss.do?easyirid=13135DE328B72AB2>), selected the year 2009, and followed the link for February 2, 2009, entitled "Virgin Mobile USA Debuts Second Generation Ocean." (at http://virginmobileusa.marketwire.com/easyir/customrel.do?easyirid=13135DE328B72AB2&version=live&prid=471316&releasejsp=custom_124). The news release states that "the Ocean 2 by Virgin Mobile will be on sale for \$149 at www.virginmobileusa.com beginning February 12, 2009" and that the "New Ocean 2 Incorporates [a] Broad Range of Mobile Content, Social Media and GPS Features on [a] 3G Network." Attached hereto as Exhibit 10 is a true and correct printout of the text of that news release.

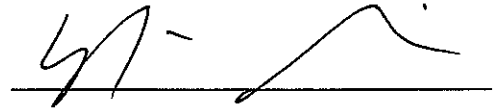
11. On August 10, 2010, I visited the Virgin Mobile "News Releases" web page, selected the year 2008, and followed the link for September 10, 2008, entitled "Ready for Lift-off! Virgin Mobile USA to Launch the Shuttle." The news release on that web page (at http://virginmobileusa.marketwire.com/easyir/customrel.do?easyirid=13135DE328B72AB2&version=live&prid=467768&releasejsp=custom_124) states that "[v]ideo and web entertainment on a cell phone without the hassle of a contract just got a whole lot faster. Virgin Mobile USA and Personal Communications Devices, LLC [PCD] are launching the Shuttle, Virgin Mobile USA's first EV-DO handset, designed with high performance for data and content in mind. Available exclusively at Best Buy Mobile and BestBuy.com as of September 28 * * *." Attached hereto as Exhibit 11 is a true and correct printout of the text of that news releases.

12. On August 10, 2010, I visited the T-Mobile web page entitled "share life's moments with the launch of the new t-mobile shadow" (at http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20090128&title=SHARE%20LIFE'S%20MOMENTS%20WITH%20THE%20LAUNCH%20OF%20THE%20NEW%20T-MOBILE%20SHADOW). The web page is dated January 28, 2009 and states that "[t]oday, T-Mobile USA, Inc., announced the availability of the new T-Mobile® Shadow™." The web page also states, "With a navigation wheel, a slide-out 20-key QWERTY keypad with predictive text, and a large, vibrant screen, the Shadow was built to make popular calling, messaging and picture-sharing features quick and easy to use. The radiant display lets you view and share photos taken with the 2.0 megapixel camera, surf the Web and watch movies on the crisp QVGA display. The Wi-Fi Web browser allows you to feed your discussions in real time, while the enhanced multimedia capabilities provide an entertaining, top-screen way to share your favorite music." Attached hereto as Exhibit 12 is a true and correct printout of that web page.

13. On August 10, 2010, I visited the T-Mobile web page entitled "T-Mobile Launches the Highly Anticipated T-Mobile G1" (at http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Pr_20081022&title=T-Mobile%20Launches%20the%20Highly%20Anticipated%20T-Mobile%20G1). The web page is dated October 22, 2008 and states that "T-Mobile USA, Inc. today announced the national availability of the highly anticipated T-Mobile G1 with Google, the first Android™-powered mobile phone. The T-Mobile G1 combines full touch-screen functionality and a QWERTY keyboard with a rich mobile Web experience, dozens of Android Market applications, and popular Google products that millions have enjoyed on the desktop, including Google Maps Street View™, Gmail™, YouTube™ and others." Attached hereto as Exhibit 13 is a true and correct printout of that web page.

14. On August 10, 2010, I visited the T-Mobile web page entitled "T-Mobile and RIM Announce the BlackBerry Pearl 8120" (at http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Pr_20080407a&title=T-Mobile%20and%20RIM%20Announce%20the%20BlackBerry%20Pearl%208120). The web page is dated April 1, 2008 and states that "T-Mobile USA, Inc., and Research In Motion (RIM) * * * today announced the April 14 availability of the Wi-Fi®-enabled BlackBerry® Pearl™ 8120 smartphone, which provides Wi-Fi connectivity for both voice and data, as well as support for T-Mobile's HotSpot @HomeSM service offering unlimited, nationwide calling over any accessible Wi-Fi connection and great in-home coverage." Attached hereto as Exhibit 14 is a true and correct printout of that web page.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 10, 2010, at Washington, DC.

A handwritten signature in black ink, consisting of stylized initials and a surname, written over a horizontal line.

Richard Pianka