

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AVI KOSCHITZKI, On Behalf of Himself and)
all Others Similarly Situated,)

Civil Action No. 1:08-CV-04451-JBW-VVP

Plaintiff,)

AFFIDAVIT IN OPPOSITION

vs.)

APPLE INC. and AT&T MOBILITY LLC,)

Defendants.)
_____)

STATE OF NEW YORK)

) ss:

COUNTY OF NASSAU)

Avi Koschitzki, hereby swears or affirms, under penalty of perjury, as follows:

1. I am the named plaintiff in this action and submit this Affidavit in opposition to the motions to dismiss filed by defendants Apple Inc. ("Apple") and AT&T Mobility LLC ("AT&T") (collectively, "Defendants"). I make the statements in this Affidavit to the best of my recollection.

2. In the summer of 2008, I ordered an iPhone 3G model at an Apple retail store located in Manhattan, New York. I was told that I would have to wait between a week and ten days to receive the phone after placing the order.

3. Instead of waiting to receive my order, I purchased an iPhone 3G model at an Apple retail store located in Garden City, New York, in or about late August 2008, and cancelled the order that I had previously placed at the Manhattan store. At the time of my purchase at the Garden City store, an Apple employee took steps to activate the iPhone on my behalf. I do not recall being offered or being provided the terms and conditions of any AT&T service agreement while at the Apple store on the day I purchased and activated the iPhone.

4. On several occasions, I separately complained to Apple and AT&T about 3G network reception and other quality issues associated with the iPhone.


5. Specifically, I made several complaints in-person to various employees at an Apple retail store located in Las Vegas, Nevada. In fact, I made one such complaint even after installing a software patch that Apple had released for the iPhone because reception problems, including dropped calls, continued to occur. I also made several complaints via telephone to various employees of AT&T Inc., an AT&T affiliate, with respect to these issues, including the dropped call problem that I continuously experienced.

6. Neither Apple nor AT&T took any steps to correct or otherwise address my concerns, nor did either of the Defendants direct me to raise my complaints in any other manner or through any other channels.

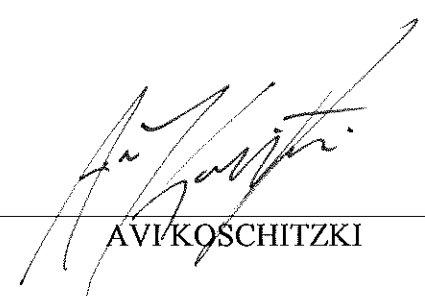
7. In addition, I have reviewed the terms of the written "warranty" that Apple has submitted to the Court in connection with the pending motions to dismiss and do not agree, at this stage of the proceedings, that they accurately reflect the terms of any warranty that governs my iPhone.

8. I have also reviewed the agreements that AT&T has submitted to the Court and do not agree, at this stage of the proceedings, that they accurately reflect the terms that govern the network access plan at issue.

Sworn to and subscribed before me
this 4th day of January 2009.



Notary Public



AVI KOSCHITZKI
MARK S. REICH
NOTARY PUBLIC - STATE OF NEW YORK
NO. 02RE6060618
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES NOV. 20, 2012