

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Josep J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

Apple Inc.,
a corporation.

Docket No. 2020

PUBLIC VERSION

COMPLAINT

Pursuant to the provision of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by the FTC Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Apple Inc. (“Apple”) have brought into practice a deceptive practice consisting of a representation, omission, or practice that misleads or is likely to mislead the consumer in violation of Section (a)(1) of the FTC Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interests, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), stating its charges as follows:

I. NATURE OF THE CASE

1. On 19 September 2014, Apple put into interstate commerce its new iPhone 6 embedded with an operating system iOS 8.0 (for its 16/64/128GB versions) and iOS 10.2.1 (for its 32GB versions).

2. According to the evidence produced by this Commission, it has been proved that Apple automatically updated the operating system of its iPhone 6 to solving the issues related to the efficiency of the batteries embedded into these devices. As a result of such automatic update, the devices owned by many U.S. citizens slow down its performance, rendering it less useful for its owners.

3. As of the interviews conducted by this Commission, there are no evidence that Apple provided any information to consumers, nor any written document, about the fact that subsequent updates of the operating system could cause the system to slow down.

4. For this Commission, the deceptive practice presumably incurred by Apple is called programmed obsolescence, described as a phenomenon directed to *force*

*consumers to purchase newer products by shortening the natural end of life of the current product they own*¹.

5. For this Commission, the fact that Apple, in a year-by-year basis, is marketing new versions of its iPhone device, and the fact that the sale of units is steadily increasing exponentially, in some cases,² is a clear evidence that there is an intention of Apple to reduce the lifetime of the product in purpose as to ensure that, in the next year, consumers will acquire the new version of the iPhone, regardless of any environmental, economic, cultural or social consideration.

6. For this Commission, it is also clear that the Respondent knowingly limits the lifetime of the iPhone devices, by making the older versions to be incompatible with new updates of the operating system and, at the same time, causing these old devices to slow down at a pace that makes them useless for their purpose. This information has been acknowledged by the Respondent in an agreement with the *Parquet de Paris* (the Public Prosecutor of Paris).³

7. This Commission considers that there has been the intention to put into interstate commerce a defective product, as defined by the caselaw of our country, and therefore, the Respondent shall face the administrative liability as set out in the FTC Act, 15 U.S.C.

8. In addition to the latter, the Commission considers that Apple's conduct is not solely prejudicial for the market and consumers, but also for the environment, as the investigations conducted by this Commission have shown: the production of an iPhone requires the use of natural elements like aluminum, arsenic, gold, bismuth, coal, calcium, chlorine, cobalt, chromium, copper, europium, yttrium, steel, gallium, hydrogen, potassium, lithium, magnesium, manganese, molybdenum, nickel, oxygen, phosphorus, lead, sulfur, silicone, tin, tantalum, titanium, tungsten, vanadium and zinc. Some of these elements are considered as rare by the experts.

NOTICE

Notice is hereby given to the Respondent that the twenty-second day of June, 2021, at 10:00 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

¹ T. K. ALADEOJEBI, 'Planned Obsolescence'. International Journal of Scientific & Engineering Research 2013, 4(6).

² See Statista statistic 'Apple iPhone sales worldwide 2007-2018'.

³ See the press release of 7 February 2020 of the *Direction Generale de la Concurrence, de la Consommation et de la Repression des Fraudes*: <http://www.abc.es/gestordocumental/uploads/internacional/multaapple.pdf>

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted. If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the Respondents file their answers). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the practice challenged in this proceeding violates Section (a)(1) of the Federal Trade Commission Act, as amended, the Commission may order such relief against Respondent as is supported by the record and is necessary and appropriate, including, but not limited to:

1. A cease-and-desist order.
2. A specific rulemaking process of the FTC, specially taking the necessary actions to impede any conduct of programming the obsolescence of devices sold to consumers, as they deserve the highest standard of protection, under the FTC Act, 15 U.S.C. § 13(b).

3. To refer the final decision of this Commission to the U.S. Department of Justice, as to investigate whether there has been any criminal penalty worth of investigating, under the FTC Act, 15 U.S.C. § 16(b).

IN WITNESS THEREOF, the Federal Trade Commission has cause this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington D.C., this twentieth day of December, 2020.


April J. Tabor
Acting Secretary

SEAL:



Fwd: FTC Complaint – Docket No. 2020

Ross, Laura <lross@rosshutchins.com>

Good morning team,

We have a new case! Mr. McIntyre has reached us, as apparently, they have received an FTC Complaint for deceptive practices against consumers. They want us to carefully read the complaint and to draft one of our legal reports to decide what to do with the complaint. They want us to apply an SDG perspective, too, as they are waiting for a complaint from the EPA.

We have ten days to prepare the report.

Please, let us meet at 10 am in the meeting room to decide our strategy.

Best,

Laura

Email from McIntyre, Robert J. <robmcintyre@apple.com>

McIntyre, Robert J. <robmcintyre@apple.com>

To: Ross, Laura <lross@rosshutchins.com>

Good morning Laura,

We are writing to you regarding the FTC Complaint, with docket number 2020, that we have received from the Federal Trade Commission. According to the analysis that we have done from our Legal Department, it seems that the Commission is considering taking legal action since, under their investigation, we would have committed deceptive practices against consumers, as we would have not informed them that older devices -particularly our iPhone 6, could malfunction or slow down its performance because of the newer updates of the operating system.

We have fourteen days to file our answer to the complaint, but we are not in a position of discussing everything that the Commission is decided to make us guilty for. For this reason, we would like you and your team to draft a legal report as to what can we do regarding the complaint of the FTC.

As we have done in other occasions, we would like a full analysis of all the aspects, including issues related to sustainability and the fulfillment of the SDGs. Our internal analysis has reached the conclusion that behind the Commission's legal complaint there is an intention of pursuing conducts that breach the SDGs.

Please, let us know if you can accept our case.

Kind regards,

Rob



Robert J. McIntyre

Legal Affairs Director

robmcintyre@apple.com

GUIDE OF QUESTIONS TO BE DEALT WITH IN THE REPORT

First group of questions: Contextualizing the report

- Which are the raw materials that compose Apple's iPhones? Which is their origin?
- What are the "rare materials"?
- Which is the sales volume of iPhone? Which has been its evolution?
- What environmental impact does have the manufacturing of Apple's iPhone?

Second group of questions: Contextualizing the phenomenon

- What is planned obsolescence?
- Which environmental consequences does have the planned obsolescence?

Third group of questions: About planned obsolescence from a legal perspective

- Which is the private law framework on which you will set your study? Tort Law or Contract Law?
- Please identify if Product Liability Law is applicable to planned obsolescence.
- If so, it is possible to impose liability on any member of the distributive chain for planned obsolescence?

This is a report, which means that you do not have to prepare an answer to each question as if it was an exam. You should intercalate your legal analysis including these questions.

Also, bear in mind that this guide is a minimum, which means that is open to an innovative analysis (not inventive analysis).

Agradecimientos

Este proyecto no habría sido posible sin la ayuda de:

1. L'Agència de Gestió d'Ajuts Universitaris i de Recerca (AGAUR). El autor es beneficiario de una ayuda para la contratación de personal investigador novel (FI), con número de expediente 2021 FI_B2_00116.
2. Al Centro para la Innovación en Aprendizaje y Conocimiento (CLIK) de la Universitat Pompeu Fabra, por el otorgamiento, en el marco de las ayudas PlaCLIK 2020-2021, del proyecto de innovación docente M_72379_2021_1_13 (responsable: Tomás Gabriel García-Micó), dotado con 2.250 € de presupuesto y con el título "*Project-based learning for the 2021 worldwide issues: COVID-19, sustainability (in particular circular economy) and the quest for Product Liability-based solutions*".
3. A la Red de Innovación Docente de la Universitat Pompeu Fabra, por el otorgamiento, en el marco de las ayudas *Aprenentatge Basat en Problemes i Projectes (ABP) per treballar els Objectius de Desenvolupament Sostenible (ODS) a la Universitat Pompeu Fabra (UPF)*, del proyecto de innovación docente, dotado con 200 € de presupuesto y con el título "*Planned obsolescence: sustainability issues and the quest for a Product-Liability solution*".
4. A la profesora Vanessa Soria Ortega, técnica del ámbito de Innovación del CLIK de la Universitat Pompeu Fabra por su ayuda y guía.