

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Antoinette Smith, individually and on behalf of
all others similarly situated,

Plaintiff,

- against -

Apple Inc.,

Defendant

1:21-cv-03657

Class Action Complaint

Jury Trial Demanded

Plaintiff alleges upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Apple Inc. (“defendant”) manufactures, markets and sells smartphones under the iPhone brand, purporting to be capable of sustaining limited contact and/or immersion in water for finite period of time (“Products”).

I. Importance of Water Resistance Feature

2. According to reports, the number of smartphones offering resistance against damage from water and other liquids has grown 45% since 2016, while non-water-resistant smartphones have declined 16%.

3. Approximately 100,000 smartphones are damaged by water or other liquids every day in the United States.

4. The costs are significant to users, who must repair or replace expensive devices, and to the environment, when a device is discarded.

5. This “hidden tax” due to the inability to withstand even minimal contact and immersion in water costs American consumers over \$10 billion each year.

6. With increasing adoption and usage of smartphones, there is a greater risk of

accidents.

7. In fact, accidental damage is responsible for 95% of smartphone failures.

8. 35% of all smartphone failures are due to liquid damage, such as accidental and temporary contact and/or immersion in water.

9. Recognizing the importance of water-protective features, the International Electrotechnical Commission (“IEC”) developed ingress protection (“IP”) standards.

10. This allows manufacturers of electronics to certify to purchasers that their devices are capable of varying levels of resistance to dust and water, i.e., IP68.

11. The first digit (“6”) corresponds to dust protection and the second (“8”) to water protection.

12. While Apple has been at the forefront of many smartphone innovations, its adoption of water-protection features came after the success of Samsung and Huawei devices introduced these features.

II. Defendant’s Promotion of Water-Resistant Attributes of the iPhone

13. Since the introduction of the iPhone 7 in 2016, defendant has marketed its devices as offering no less than “IP67” protection.

14. The iPhone 8 is rated IP67, promising water resistance to a depth of 1 meter for up to 30 minutes.

15. The iPhone 11 Pro and iPhone 11 Pro Max are rated IP68 under IEC standard 60529, promising water resistance to a depth of 4 meters for up to 30 minutes.

16. At its release, the iPhone 11 was described by defendant as the most water-resistant iPhone, that was not afraid of splashes or even dips, resistant to double the depth of the prior iPhone.

17. The iPhone 12 models are rated IP68 under IEC standard 60529, promising water resistance to a depth of 6 meters for up to 30 minutes.

18. Defendant's marketing and advertising emphasize the water-resistance and impermeability of the devices to water by showing them being splashed, immersed in water and/or hit with powerful jets of water.

19. The promotion of the Products' water-resistant qualities is insufficiently qualified by fine print disclaimers.

20. First, the IP certification levels are based on highly controlled laboratory conditions, with static and pure water.

21. In everyday usage, the water devices encounter is not static and purified, but contains various minerals, chemicals and other elements.

22. This means that consumers who stand at the edge of a pool or ocean and whose devices are splashed or temporarily immersed, will be denied coverage, because the water contained chlorine or salt.

23. Second, defendant's disclaimers – in print, television and online – purport to limit the Products' one-year warranty to exclude damage caused by liquids.

Splash, drop, and dust resistance are not a permanent feature and may decrease with normal wear. Don't try to charge your iPhone when it's wet; consult the manual to clean and dry it. The warranty does not cover damage proven by liquids.

24. When a user seeks coverage under the warranty based on the "water-resistant" attributes of the device, the first step will verify if the liquid contact indicator ("LCI") has turned red, a sign that liquid has entered the device.

25. There is no inquiry into whether the triggering of the LCI was due to “unauthorized or improper use.”

26. Defendant’s water-resistant representations include resistance to accidental spills from common liquids, such as soda, beer, coffee, tea and fruit juices.

27. In the event of such a spill, defendant instructs users to rinse the affected area of their device.

28. However, defendant will often use the rinsing of the device as a pretext to deny coverage, even though it explicitly instructs users to take this step.

29. Defendant’s attempts to disclaim coverage through the fine print of its terms and conditions which exclude repair when damage is due to contact and/or immersion with water, according to the specific IP level of the device, is unconscionable and deceptive, considering its marketing of the devices as “water-resistant.”

30. Defendant’s marketing and advertising make general claims that are applicable to a range of devices, even though the specific models vary with respect to their IP level.

31. The vast majority of iPhones sent for service related to potential liquid damage were not repaired under the warranty and costs were charged to consumers.

32. No mechanisms exist for users to contest defendant’s conclusions that their devices were subject to improper usage in sustaining apparent water damage.

III. Conclusion

33. Reasonable consumers viewing defendant’s marketing and advertising of the Products’ water-resistant qualities will expect they can sustain contact with water through splashes and/or immersions, in accordance with the IP certification level of their device.

34. Defendant fails to clarify the differences between water-proof and water-resistant, and its marketing and promotions conflate the two in the perceptions of consumers.

35. This is due in part to the emphasis on maximum depth and the time limit the devices are capable of “resisting” – avoiding harm from – water.

36. Reasonable consumers are unable to perceive the artificial distinction that defendant has established between water resistant and impermeable to water (“waterproof”).

37. Technology exists and is feasible to waterproof defendant’s smartphones, but they know that when a consumer has a damaged phone, they will have no choice but to buy a new one or pay for costly repair services.

38. Reasonable consumers must and do rely on defendant to honestly describe the components and features of the Products.

39. Defendant misrepresented the Product through affirmative statements, half-truths, and omissions.

40. Defendant sold more of the Products and at a higher prices than it would have in absence of this misconduct, resulting in additional profits at the expense of consumers.

41. Had Plaintiff and proposed class members known the truth, they would not have bought the Product or would have paid less for it.

42. Plaintiff paid more for the Product based on the representations than she would have otherwise paid.

43. As a result of the false and misleading representations, the Products are sold at premium prices.

44. At the time the iPhone 8 was released, it cost upwards of \$1000.

45. The iPhone 12 Pro Max costs over \$1500.

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