

19 July 2021

Popular action filed for the compensation of consumers who purchased iPhones from Apple

The consumer protection association Ius Omnibus filed today a popular action in the Lisbon District Court, which aims to restore the legality and defend Portuguese consumers who were harmed by Apple's illicit practices regarding the transmission of information and misleading advertising about the resistance to liquids of iPhones. In case of success, the action will lead to Apple being ordered, inter alia, to refrain from misleading advertising in this regard in the future and to pay compensation to all owners of iPhones 7 to 12. It is estimated that each represented consumer will have the right to an average compensation of 101 EUR, with a global compensation of 137 million EUR.

1. What is the object of this action?

It is a popular action for the defense of the diffuse and homogeneous individual interests, filed by Ius Omnibus.

It is a claim to defend consumers rights, brought under the Popular Action Act (Law no 83/95). The practices adopted by Apple violated the following rules:

- a) articles 10 (1), 11 (1) and 12 of the Publicity Code;
- b) articles 4, 6 (b), 7 (1) (b) and/or (g) and/or 9(1)(a) and (b) and/or 5(1) of the Unfair Commercial Practices Act;
- c) articles 4, 7(4) and 8(1)(a) and (2) of the Consumers Protection Act;
- d) article 2(1) of the Sale of Consumer Goods and Warranties Act; and
- e) article 102 of the TFEU and article 11 of the Competition Act.

2. What were the unlawful behaviors of Apple?

The present action is based, in part, on Apple's unlawful behavior, which was initially identified by the Italian authorities, via the decision rendered on 27 October 2020 by the

Autorità Garante della Concorrenza e del Mercato (case no 28433), concerning the characteristics of the iPhones, the information about those products and Apple advertising messages which were and are homogenous in Italy and Portugal.

Since 16 September 2016 until today, Apple has sold several iPhone models (iPhone 7, iPhone 7 Plus, iPhone 8, iPhone 8 Plus, iPhone X, iPhone XS, iPhone XS Max, iPhone XR, iPhone 11, iPhone 11 Pro, iPhone 11 Pro Max, iPhone SE (second version), iPhone 12, iPhone 12 Mini, iPhone 12 Pro, iPhone 12 Pro Max), telling its consumers through product information and advertising that these iPhones have certain characteristics of resistance to liquids.

This information and advertisement from Apple about these iPhones was intended to have and had as an effect persuading consumers that the aforementioned cell phones: (i) can be exposed to or even occasionally submerged in water or other liquids, for long periods and varying depths, (ii) can (and should) be rinsed under running water when dirty, and (iii) can be used to take photographs or film in the rain, at sea, etc., without such occurrences or uses causing damage to the iPhone in question.

These iPhones do not have the characteristics of resistance to water and other liquids which were advertised by Apple. Even by short submersions in small quantities of water, or other kind of liquid exposures within the parameters of resistance to liquids advertised by Apple, the iPhones in question may be damaged and have problems, requiring their repair or replacement.

The warranty offered by Apple for the iPhones excludes any and all damage caused by liquids, regardless of the type of exposure to liquids which occurred. As a general rule, Apple refuses to repair or replace at its own expense iPhones which, within the warranty period, show damage from exposure to water or other liquids, regardless of the circumstances in which such damage occurs (i.e., even if they occurred within the parameters of resistance to liquids advertised by Apple).

3. Who is represented in this action?

All consumers residing in Portugal or in the European Union who have purchased an iPhone in Portugal, of a model between (including) the iPhone 7 and iPhone 12, between September 2016 and the filing of this popular action. For this purpose, acquisition in Portugal is understood to be the acquisition, in cash or using credit, in a physical store or at a distance, when the purchaser resides in Portugal, even if the store is based in another State.

Consumers do not have to do anything to be represented and to be entitled to compensation if the action is successful.

Any consumer who does not wish to be represented in this action may exercise the right to opt-out, communicating this intention to the Court. Consumers may also decide to intervene in the process in support of *Ius Omnibus*.

4. How were Portuguese consumers harmed by Apple's unlawful practices?

Apple's behavior harmed all Portuguese consumers who purchased an iPhone between September 2016 and the present (from iPhone 7 to iPhone 12), causing an artificial increase in the price of iPhones (surcharge). If consumers knew the truth about the true characteristics of resistance to liquids of iPhones, the risks of their exposure to liquids, and Apple's refusal to repair or replace iPhones damaged by exposure to liquids, the iPhones would be worth less and their prices would have been lower.

Ius Omnibus estimates that Apple's unlawful practices caused a surcharge of 15%, which translates into an average compensation for each represented consumer of 101 EUR per iPhone, and into a global compensation owed by Apple of 137 million EUR. Many of the Portuguese consumers who purchased these iPhones were also harmed because, within the legal warranty period, they had to bear the loss of value and functionality of their mobile phones, or the costs of repairing or replacing them, as they were damaged by exposure to liquids which, according to Apple, should not have caused any damage to the iPhones, and Apple refused to incur such costs under the warranty. These consumers are also entitled to compensation but their situation must be considered individually.

Consumers who are in this situation – i.e., the ones who were encumbered with the repair or replacement costs of iPhones within their warranty period of two years – are invited to contact

Ius Omnibus to clarify the options that are available to them in order to defend their rights and obtain the additional compensation that is due.

5. What is being asked in this action?

Ius is asking the Court to:

- i) declare that there was a harmful infringement of diffuse interests and of consumers rights and order Apple to publicly recognize this (including a publication in the national media);
- ii) order Apple put an end to all of the aforementioned harmful practices;
- iii) order Apple to pay a compensation to all Portuguese consumers who suffered the damage resulting of the previously mentioned surcharge;
- iv) declare that Apple has the duty to compensate all Portuguese consumers who suffered damage with the repair or replacement of their iPhones, thus allowing them to subsequently ask for the said compensation;

6. How does the popular action and consumers compensation work?

The mass consumer compensation mechanism used here, provided for in the Portuguese rules of class action, has never been tested in practice until the very last step. However, according to the law, the following will happen if the court finds in favour of Ius Omnibus:

- i) the Court will set the overall amount of damages to be paid by Apple to consumers, to be deposited in a compensation fund;
- ii) the Court will designate an entity responsible for managing the compensation fund, including the receipt, management and payment of compensation to injured consumers;
- iii) the Court will set a deadline for consumers to claim their share of the compensation and this information will be publicized in various ways;
- iv) consumers will have to contact the entity that manages the compensation fund, as well as submit the court-decided evidence and the respective payment instructions, in order to receive their share of the compensation;

- v) at the end of the legally established period, if a part remains of the global compensation that was not requested by consumers:
 - (i) that amount will be used to pay the expenses incurred by Ius Omnibus as a result of the action; and
 - (ii) what is left will be handed over to the Ministry of Justice, to be used to support access to law and justice, including the promotion of popular actions.

7. Do consumers need to contact the Court or Ius Omnibus?

Consumers do not need to contact the Court or Ius Omnibus, nonetheless it may in their interest to do so.

All consumers who purchased iPhones in Portugal between September 2016 and July 2021 are automatically represented in this popular action. If they do not wish to be represented, they will have to exercise the right to opt-out. If they want to be represented, they do not need to do anything else for now to be entitled to compensation if Ius Omnibus wins this claim. At the end of the process, if successful, they will have to contact the entity appointed by the Court to request compensation. However, if they wish to intervene in the action in support of Ius Omnibus they may do so, within the time limit established by the Court.

All consumers who own these iPhones can contact Ius Omnibus now and register as consumers represented in this action, thus ensuring that they will be informed of all decisive developments in this case and that they will not miss the deadline to claim compensation, when the moment arrives.

Consumers who have had their iPhones damaged by exposure to liquids are especially invited to contact Ius Omnibus and tell us their stories. Collecting more examples of occurrences of this kind will help this action to be successful. If by chance you have seen your iPhone damaged by liquid and Apple has refused to repair or replace the iPhone (within the warranty period), you can contact Ius Omnibus to ask for clarification on how to obtain additional compensation for this fact. Ius Omnibus recommends that you do not

wait for the outcome of this popular action before acting in these cases, so as not to run the risk of your right being time-barred.

8. About Ius Omnibus

Ius Omnibus is a non-profit association, created in March 2020, with the objective of defending consumers in European Union. It is headquartered in Portugal and has members from several European countries.

The Board of Ius Omnibus is composed by:



Sandra Passinhas

Presidente

Professora da Universidade de Coimbra



Julia Suderow

Vice-Presidente

Professora da Universidade de Deusto



Maria José Azar-Baud

Vice-Presidente

Professora da Universidade Paris-Sarclay

In this action Ius Omnibus is represented by law firm Sousa Ferro & Associados.