

Multiple Bites at the Apple over AI Claims

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When Apple announced the iPhone 16 last year, it advertised that it would be “the first iPhone built for Apple Intelligence.” Apple touted several AI features and advertised that Apple Intelligence is “Available Now.” In reality, some features – including Priority Notifications, Image Generation, and the ChatGPT integration into Siri and Writing Tools – were not available at the time of launch. A disclosure at the bottom of the Apple Intelligence page explained: “Some features will become available in software updates in the coming months.”

As part of its ongoing monitoring program, NAD challenged Apple’s availability claims. NAD determined that consumers would reasonably believe that all Apple Intelligence features would be available at the time of launch, notwithstanding the disclosure. Citing a previous case, NAD stated that “when an advertised service is ‘less available than available,’ this limited availability must be part of the main claim itself.” In other words, disclosing that in a footnote is not enough.

The NAD decision may be the least of Apple’s worries. Apple is facing a number of lawsuits on this same issue. For example, plaintiffs in the latest complaint (filed just days after NAD announced its decision) allege that despite touting AI features, Apple Intelligence wasn’t available when the iPhone 16 launched. Even today, “the iPhone 16 still lack[s] many of the much-touted Apple Intelligence capabilities—most notably the enhanced, Conversational Siri capabilities that Apple spent months advertising.”

We’ll see whether the courts adopt NAD’s view or whether they conclude that Apple’s disclosures were effective at communicating which features were available. Either way, companies need to be careful when they advertise features that are not currently available. Ads should clearly distinguish what is available at the time of purchase from what may be available at a later date. As the NAD decision suggests, making that distinction in a footnote may not be enough to escape scrutiny.