

Judgment released today: Apple WILL face “batterygate” court battle, as tech giant’s attempt to stymie multimillion-pound consumer claim is rejected by UK competition court

- **Judgment provisionally certifies consumer champion Justin Gutmann’s £853 million legal claim on behalf of UK iPhone users, with nearly 24 million consumers set to benefit**
- **Claim says Apple “throttled” iPhone performance to mask battery issues in seven different models to avoid consumer backlash**
- **Tech firm alleged to have abused market dominance and misled consumers, with consumers suffering slower performance and some forced to pay for new phones and replacement batteries**
- **Setback comes just months after Apple agreed to settle a similar class action lawsuit in the US for up to \$500 million (£412 million)**

London, 31 October 2023: In a ruling that marks a significant victory for millions of UK consumers, the Competition Appeal Tribunal has granted the go-ahead to Justin Gutmann’s ground-breaking £853 million claim against technology giant Apple.

Consumer champion Justin Gutmann’s claim argues that Apple, exploiting its market dominance, deceived 23.8 million UK iPhone users by not informing users that software updates would significantly diminish the performance of their phone.

In his claim, first filed at the Competition Appeal Tribunal in June 2022, Gutmann asserted that Apple sidestepped battery issues which arose in its iPhones, with the devices abruptly shutting down as they struggled to cope with processing demands. Instead of being open and honest with consumers, Apple pushed its users to install iOS updates which added a hidden power management function and secretly slowed the phones down. If the claim is successful, 23.8 million UK iPhone users will be eligible for compensation.

The claim can now proceed to a full trial, having now been certified by the Competition Appeal Tribunal. Certification is provisional to updates being made to Mr Gutmann’s funding arrangements in light of the recent PACCAR ruling. These have been updated, with Mr Gutmann confident that they are now compliant and will shortly be confirmed as such by the Tribunal.

UK consumers who owned iPhone 6, 6 Plus, 6S, 6S Plus, SE, 7, and 7 Plus models would be entitled to compensation for each model owned. As an opt-out claim, consumers do not need to join the case to be eligible for damages, and will be included unless they decide otherwise.

The claim alleges that Apple has abused its market dominance to engage in exploitative and unfair commercial practices, with iPhone users suffering from reduced performance. Many consumers have also had to pay for replacement batteries and model upgrades as a result of Apple’s abusive conduct and pervasive lack of transparency.

Justin Gutmann, the class representative in the action, said:

This is fantastic news for iPhone users in the UK, and a major step towards consumer justice. Apple misled millions of iPhone users by issuing software updates that avoided addressing their underlying battery issues, choosing instead to curb phone performance.

I’m heartened that the Competition Appeal Tribunal has given the nod for our groundbreaking claim to proceed to a full trial. This paves the way for millions of consumers, who were left paying for battery replacements or new phone models, to receive the compensation they deserve.

Facing a \$2.3 trillion company like Apple is no small challenge. The company has immense resources to defend its anti-competitive practices. Today, however, brings us one step closer to levelling the playing field and holding one of the world's biggest and most powerful corporations accountable for its actions.

Dorothea Antzoulatos, Director of Charles Lyndon, said:

Charles Lyndon is delighted that this compensation claim on behalf of millions of iPhone users can go ahead. By slowing down the iPhones of millions of people, Apple failed to be transparent with their customers and abused their market position and customers' loyalty. We are proud to support Mr Gutmann in his goal to hold Apple to account for this behaviour.

Claim Background

Beginning in late 2016, many users found their iPhones increasingly suffering from unexpected shutdowns, as processing demands led to their battery being unable to cope with the amount of power being drawn by the device.

Expert analysis conducted on behalf of Gutmann's legal team revealed that Apple introduced a throttling function designed to alleviate the strain on the batteries. This tool, however, had the effect of significantly reducing the processor's speed at peak performance – by up to 58% in certain models like the iPhone 6s and 7. The mechanism also induced other performance issues, such as extended application launch times, diminished frame rates, and reduced speaker volume.

Apple first incorporated this power management function in the iOS 10.2.1 update, released in January 2017. Notably absent from the update's download description was any mention of the throttling function and its impact on device performance, leaving consumers uninformed. Although Apple later acknowledged the existence of this function, the information was neither clear nor explicit about the consequential slowing down of devices, and nor was it easily accessible. Nearly a year after the problematic update and following significant public scrutiny, Apple finally issued an apology. The company also initiated a battery replacement scheme, albeit one with associated costs to the consumer, and failed to sufficiently publicise this service to its customer base.

The ruling is the latest in a series of setbacks suffered by Apple in the “batterygate” scandal. In August 2023, Apple agreed to settle a class action in the US over the software updates for up to \$500 million. In 2020, it agreed to settle allegations from regulators that it slowed down older iPhones for \$113 million. And in France, the company has been fined €25 million by the consumer watchdog for failing to tell consumers that updating its iPhone's operating system would slow down the performance of older devices.

The Litigation Team

Justin Gutmann has instructed Charles Lyndon, a claimant-focused law firm dedicated to achieving consumer redress, to contest the claim. Gutmann is also represented by counsel Philip Moser KC, Anneli Howard KC, Stefan Kuppen, Will Perry, and Natalie Nguyen from Monckton Chambers, and economists Berkeley Research Group. The case is being funded by litigation funder Balance Legal Capital.

Robert Rothkopf, Managing Partner at Balance Legal Capital said:

Tech giants wield considerable power over consumers and we are pleased to assist in holding them to account when it appears that relationship has been abused. We are delighted by the CAT's decision.

ENDS

Notes for Editors

More information about the claim can be found on www.theiphoneclaim.com

About Justin Gutmann

Justin Gutmann has over 40 years of experience working in market research and campaigning as a consumer champion. For eight years, he worked as the Marketing Planning Manager for London Underground where he used mystery shopping and quantitative data to guide effective customer-focused investment and improvements. He spent much of the last decade of his career working at Consumer Focus and Citizen's Advice, protecting the rights of consumers.

The Competition Appeal Tribunal has previously recognised Gutmann as a class representative in the Boundary Fares case, which seeks to hold rail operators to account on behalf of millions of Travelcard-owning rail passengers. The case alleges that passengers have been overcharged for tickets when travelling beyond the Transport for London zone by rail operators that have denied them access to or knowledge of cheaper 'boundary fares', effectively charging them twice for the same journey.

About Charles Lyndon

Charles Lyndon is a boutique litigation firm based in London with expertise in competition law and group litigation. Charles Lyndon brought the first stand-alone class actions in the UK and has extensive experience of the UK collective action regime gained by building this claim and other similar actions. Charles Lyndon also has a number of group actions in the High Court relating to the emissions scandal.

About Balance Legal Capital

Balance Legal Capital LLP manages over £250M dedicated to funding commercial litigation and group actions in the UK, Australia, and other common law jurisdictions (ex. USA). Balance was founded in 2015 and has offices in London and Sydney.

Balance Legal Capital LLP is a member of the Association of Litigation Funders of England and Wales (ALF).

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