

Case #3556 (06/01/99)

SPRINT PCS

Sprint PCS Wireless Service

Advertising Agency Unknown

- When an advertiser engages in comparative price advertising, the products compared must be substantially comparable, and if not, the material differences between them must be disclosed.

BASIS OF INQUIRY

Print advertising for Sprint PCS wireless services was brought to the attention of NAD by AT&T Corp. The advertisement, which was designed as a response to a popular AT&T “if” campaign, asks:

“If you can pay \$29.99 for 120 clear wireless minutes with free long distance, why would you pay \$29.99 for no minutes, with no long distance?”

The advertisement includes a picture of a cellular telephone encased in a free-standing, clear model of the United States. The following language appears beneath the picture:

“The Sprint PCS Free & Clear Plan

120 minutes • free long distance • clear calling

Here’s your reality check: The Sprint PCS Free & Clear Plan gives you free domestic long distance and clear calling anytime, anywhere on our all-digital nationwide network. For as little as \$29.99 a month, you get 120 minutes. Other plans may come with a lot of fanfare. But do they offer as much value? And remember, Sprint PCS built the only 100% digital, 100% PCS nationwide network from the ground up for a new level of clarity.”

CHALLENGER’S POSITION

AT&T maintained that the advertisement made unfair and misleading comparisons between Sprint PCS wireless service and AT&T’s new Personal Network service in direct response to a recent AT&T advertising campaign for that service.

The advertiser raised three specific objections to Sprint PCS’s advertising:

- 1) By characterizing AT&T’s Personal Network as having “no [free] long distance” minutes, while claiming that Sprint PCS offers “free long distance”, the advertisement falsely implies that AT&T Personal Network customers are required to pay long distance charges in addition to a fixed per-minute rate for their long distance wireless calls.
- 2) The advertisement sets up a misleading “apples to oranges” comparison between Sprint PCS’s wireless plan and AT&T’s Personal Network. AT&T’s plan, in addition to wireless service, also offers the same flat rate of 10 cents per minute rate for traditional long distance calls, calling card calls, and selected international calls, as well as a single bill for wired and wireless calling and Internet access.
- 3) Sprint PCS’s claims that its network is nationwide are false. Sprint PCS’s wireless network serves major cities and their surrounding areas. However, Sprint PCS’s advertised rates apply only if the customer originates the call from one of the limited areas covered by the Sprint PCS wireless network.

AT&T describes its Personal Network service as a core residential long distance offer with other services and pricing options that can be added, and summarized on one bill. For example, for \$9.95 per month, a customer may make the following types of calls for a flat rate of 10 cents per minute:

- a) domestic direct-dialed long distance and local toll calls from home;
- b) calls to a personal 800 number within the United States;
- c) customer-dialed domestic calling cards calls placed by using a 1-800-CALL-AT&T (no service charge or payphone charge on these or personal 800 number calls); and
- d) calling card and direct-dialed calls from home to the U.K., Canada, and the border cities of Mexico.

AT&T explained that, if a customer qualifies for a combined monthly bill, wireless service can be added to Personal Network either through AT&T Digital One Rate, or through a specific Personal Network wireless calling plan.¹ Under this plan, for \$29.99 a customer gets all of the services described above and pays 10 cents per minute for all domestic wireless calls made from the home calling area² regardless of the number of calls made or their duration.

In contrast, AT&T contended, the Sprint PCS “Free and Clear Plan” includes only wireless calling. For \$29.99 per month, the subscriber obtains 120 minutes of wireless calling time to anywhere in the continental United States, so long as the customer is physically present in one of the limited areas covered by the Sprint PCS wireless network when originating the call. Additional time, beyond the 120 included minutes, costs 35 cents per minute. Because a “Free and Clear Plan” subscriber’s long distance calls are free only if the caller is physically present in a Sprint PCS wireless network area, AT&T questioned whether the claim “free” long distance is accurate.³

A. *Unfair Disparagement*: AT&T maintained that Sprint PCS’s advertisement was a direct response to an earlier AT&T advertisement announcing AT&T’s \$29.99 Personal Network Plan. AT&T contended that the comparison in the advertisement, i.e., “The contrast of ‘free’ long distance (Sprint PCS) with ‘no minutes with no long distance’ (AT&T’s Personal Network)” falsely implies that with AT&T a customer will pay long distance charges in addition to a fixed per-minute rate for their wireless calls. “In fact”, AT&T explained, “with AT&T Personal Network, all wireless calls cost only 10 cents per minute when made from the home calling area and there are no additional charges to wireless customers for long distance calls.

B. *Failure to Disclose Material Facts*: The challenger also argued that because AT&T’s and Sprint PCS’s plans are not comparable, the material differences between them must be disclosed. AT&T contended that Sprint PCS was attempting to put AT&T at a competitive disadvantage by contrasting Sprint PCS’s \$29.99 wireless plan to *only* the wireless component of AT&T’s Personal Network. However, the challenger asserted, the AT&T Personal Network includes far more than just wireless calling.

Along similar lines, AT&T claimed that Sprint PCS’s claim that “[O]ther *plans* may come with a lot of fanfare, But do they offer as much value?” (Emphasis added) is a clear reference to the AT&T Personal Network. However, the challenger disputed Sprint PCS’s claim that its plan offers a better “value” or is “clearly better”. AT&T argued that for \$29.99 per month, with AT&T’s Personal Network, a consumer obtains a favorable residential calling rate of 10 cents per minute for a wide variety of calls, a single bill for several services, and wireless calling from the home rate area at the rate of 10 cents per minute. The challenger maintained that by making the two plans seem similar, Sprint PCS mischaracterized AT&T’s Personal Network as a stand alone wireless plan.

In response to Sprint PCS’s argument that an advertiser is not obligated to compare every aspect of each service that may potentially figure into the consumer’s ultimate purchasing decision, the challenger contended that “the standard is not disclosure of ‘every aspect of each service’, but that substantial differences must be disclosed”. As support, the challenger cited the National Advertising Review Board (“NARB”) decision in the *United States Postal Service, Priority Mail* in which the NARB held that “When an advertiser engages in comparative price advertising, the products compared must be substantially comparable, and if there are differences between the products that render them not substantially comparable, the differences must be disclosed.”

AT&T contended that the calling plans compared in the challenged advertisement are clearly not “substantially comparable”, yet they are treated by Sprint PCS as “exactly the same”. Thus, the failure to disclose the material differences, AT&T asserted, may mislead consumers into thinking that Sprint PCS does provide a “better value”.

C. *Nationwide Network*: AT&T argued that Sprint PCS’s advertisement falsely implies that Sprint PCS’s wireless network is available everywhere in the continental United States, when that is not the case. According to the challenger, Sprint PCS’s advertisement is materially misleading because the 120 free minutes offered only apply to calls originating from the limited areas covered by the Sprint PCS wireless network. The challenger asserted that the Sprint PCS network did not meet the standard definition of “nationwide” (i.e., “throughout the nation”) because it serves only metropolitan and surrounding areas. The challenger contended that Sprint PCS only serves about 55% of the United States population, and, consequently, the “120 minutes” referred to are not free for 45% of the population, because additional long distance charges apply when calls are made outside of Sprint PCS’s network.

Finally, AT&T disputed Sprint PCS’s assertion that no reasonable consumer would believe that a company could actually offer wireless service throughout the United States, and argued, to the contrary, that when a reputable company such as Sprint PCS advertises unequivocally that it offers a service nationwide, consumers are likely to interpret the claim literally.

ADVERTISER’S POSITION

Sprint PCS responded to the challenge by explaining that the critical point it was trying to make by using the comparative claim was that, unlike the AT&T Personal Network, for \$29.99, the Sprint PCS Free & Clear Plan includes 120 minutes of wireless phone service in local or long distance minutes. Sprint PCS claimed that the advertisement is targeted to consumers who want digital wireless phone service, but do not expect to be heavy users. These consumers, Sprint PCS asserted, understand that a wide variety of pricing plans and services are offered by many different wireless providers.

While indicating that the advertisement is “obviously a response to AT&T’s massive ‘if’ campaign”, Sprint PCS noted that since the advertisement does not specifically mention AT&T or the AT&T Personal Network plan by name, anyone who was not familiar with AT&T’s advertising for that plan would not associate the advertisement with AT&T specifically.

“Free Long Distance”: Sprint PCS argued that its headline, which in essence stated that for \$29.99, the AT&T Plan provides consumers with zero included minutes to use for either local or long distance calls is accurate, but represented that it “does not intend to use this specific headline in the future and will take into account the NAD’s concern regarding this headline if it contemplates using similar copy in future advertising”.

Unfair Comparison with AT&T: Sprint PCS asserted that its comparison to AT&T was not unfair or misleading because Sprint PCS’s Free & Clear Plan offers 120 included local or long distance minutes for \$29.99 per month, while the AT&T Plan offers none. The advertiser also contended that in making the comparison, it was not required to list all of the attributes of the AT&T Personal Network Plan.

It was Sprint PCS’s contention that, in comparative advertising, an advertiser has a right to point out differences between the services advertised where those differences are significant and meaningful to consumers⁴. As support, Sprint PCS cited several prior NAD decisions where NAD had determined that an advertiser has no duty to conduct a side-by-side comparison of each service that may potentially figure into the consumer’s ultimate purchasing decision.⁵

Moreover, Sprint PCS argued, it is permissible to compare one’s product to a different product produced by a competitor, even where the competitor offers another product that is more similar to the one advertised. As support, Sprint PCS also cited NARB’s determination in *United States Postal Service, Priority Mail*⁶ but contended that AT&T’s reliance on the case as support for its position was misplaced. According to the advertiser, although recognizing (as a general rule) that material differences should be disclosed in comparative advertisements, the NARB held that the failure to disclose material differences was not misleading when the claims in the advertising itself, and the heavy advertising campaign by the competitor which focused on the features of its product (information that was omitted from the challenged advertising), signaled to consumers that there were significant undisclosed product differences.

Sprint PCS argued that the facts in *Priority Mail* case are analogous to those in the challenge now before NAD, because AT&T, one of the world’s largest advertisers, heavily promoted its features of its Personal Network Plan. Therefore, the advertiser contended, consumers know that AT&T’s plan offers a variety of services, not all of which are described in Sprint PCS’s advertisement. “Taken together” Sprint PCS maintained “these facts establish that consumers will realize that there are significant differences in features to be considered when making a purchasing decision.” Consequently, Sprint PCS contended, disclosure of the material differences between the plans is not necessary.

The advertiser maintained that AT&T’s allegation, that its failure to include a full description of AT&T’s services is a material omission, is without merit because the advertisement is obviously directed to people in the market for the least costly plan. Moreover, Sprint PCS contended, the message is simply that, for consumers who want the least expensive plan and are not interested in “myriad features and fanfare”, the Free & Clear Plan, at \$29.99, provides superior digital reception at an extraordinary value in terms of included minutes.

Sprint PCS also noted that, in the past, NAD has considered “value” claims to be puffery and exempt from the substantiation requirement.⁷ The same reasoning should apply here, Sprint PCS argued, because “value” in terms of clarity and the included minutes that are part of the Free & Clear Plan is something that is not capable of objective proof and will mean something different to each consumer based upon the consumer’s particular needs and concerns. Sprint PCS noted that although AT&T dismissed its puffery defense as “remarkable”, it failed to offer any objective way to compare the plans.

The advertiser emphasized that it is highly unlikely that anyone will be misled by its claims because there are only two kinds of consumers interpreting the advertisement; 1) consumers familiar with the AT&T commercial, who know that AT&T provides a variety of wireless and non-wireless services in its Personal Network Plan, and; 2) consumers not familiar with AT&T’s ‘if’ advertising campaign, who are not likely to view the advertisement as a comparison to any particular competitor. These consumers, Sprint PCS asserted, are simply being invited to compare Sprint PCS’s plan to other plans offered by other providers, on the basis of the number of minutes included in each plan.

Nationwide Network Claim: The advertiser explained that by characterizing its wireless network as “nationwide”, it was attempting to communicate that, unlike other wireless providers, Sprint PCS does not limit included minutes to a particular home area. According to Sprint PCS, this is an important distinction because the AT&T Plan, for example, limits the 10 cents per minute rate to calls made within the caller’s geographically constricted calling area, while the Free & Clear Plan allows subscribers to use the included minutes anywhere in the United States that Sprint PCS has a network.

The advertiser argued that no reasonable consumer will believe that any wireless company can provide service everywhere in the United States. Conversely, Sprint PCS asserted, consumers understand that each wireless provider offers different coverage throughout the United States, depending on the size of the provider’s network and the number and scope of its roaming agreements. Moreover, Sprint PCS contended, consumers fully appreciate that, in the context of advertising for wireless telephone services, “nationwide” means coverage across the entire United States, but not coverage of every square mile within its borders. Citing as analogous examples of “nationwide” cable channels that are only available if carried by a local cable channel and, “nationwide” hotel chains or car rental

companies, that do not have locations at every airport or in every city or state, the advertiser argued that its wireless service can similarly be advertised as nationwide although it is not universally available from everywhere in this country.

Sprint PCS advised NAD that its digital network provides service “from Maine to Washington, from Florida to California, and from Minnesota to Texas”, to more than 1,100 “principal business centers”⁸ and other places with populations of over 25,000 people, and, in total, to more than 150 million people in the United States—a majority of the United States population. Further, Sprint PCS noted, the challenged advertisement specifically states “anywhere *on our all-digital network*” (emphasis added). This, Sprint PCS asserted, puts consumers on notice that the included minutes are limited to calls originating from areas within its network, and that roaming rates apply to calls made from outside the Sprint PCS digital network. The advertiser explained that the only Sprint PCS customers who can be charged roaming rates are those who purchase dual-band phones, which allow them to roam off the digital network, which necessarily puts them on notice of the additional charge. Lastly, the advertiser stated that it provides extensive and detailed information regarding the scope and coverage of its network when customers⁹ enroll for service and, therefore, consumers who incur roaming charges are on notice about the limitations of Sprint PCS’s network coverage.

Sprint PCS argued that the consumers to whom this advertisement was directed understand that a nationwide network is one that provides the same service in various major residential and commercial areas of the country and that, unlike many wireless plans that only permit included minutes (or minutes available at the provider’s best rate) to be used in a limited home area, the Free & Clear Plan permits its customers to use included minutes everywhere in the country where its network is established. The advertiser noted that this critical difference is extremely important to consumers, particularly those who travel, because they can use the minutes nationwide, anywhere Sprint PCS has established its network, without incurring roaming charges.

DECISION

NAD appreciates Sprint PCS’s commitment to voluntarily discontinue its use of the comparative headline “If you can pay \$29.99 for 120 clear wireless minutes with free long distance, why would you pay \$29.99 for no minutes, with no long distance?.” However, because the claim was still in use at the time the challenge was commenced, NAD retains jurisdiction and evaluated the claim on the merits.

Although both parties took strong (and contradictory) positions on how consumers will interpret the challenged advertisement, NAD notes for the record that neither party submitted communication data to support their conclusions as to any implied or expressed messages that may have been conveyed. Consequently, NAD relied on its own expertise to determine how consumers would interpret the advertisement. While this is not unusual, NAD found it to be particularly challenging here because of the complexity of the product and the level of confusion in the marketplace.

In analyzing how consumers might interpret the challenged claims, NAD took into consideration the number of competitors in the field and the wide variety of communication services now available to consumers. Companies with the stature and brand recognition of AT&T compete against newer but well established competitors like Sprint PCS as well as numerous lesser known, relatively small companies. These companies provide everything from Internet access to traditional local, regional, and long distance calling services with a variety of wireless and calling card options mixed in. The telecommunications industry has generated a blizzard of advertisements in every media, offering consumers a seemingly endless variety of pricing options and combinations of services. Both the Federal Trade Commission and the industry have recognized that, as a result, consumer confusion abounds.¹⁰

NAD determined that the only thing certain with respect to consumers and telecommunications advertising, is their uncertainty. Given the complexity of the products and pricing structures, NAD found that it was unreasonable to presume (absent extrinsic evidence) that consumers fully understand what is included in any company’s particular plan, or fully appreciate subtle differences in services. Consequently, it is very important for advertisers in this arena to provide clear, accurate and detailed information particularly in comparative advertisements. It is against this background that NAD evaluated the challenged claims.

A. Implied claim that AT&T Offers no “free minutes”: NAD was not persuaded by AT&T’s argument that Sprint PCS’s comparison of its plan, which it described as “...\$29.99 for 120 clear wireless minutes with free long distance” to AT&T’s plan, which is described as “\$29.99 for no minutes, with no long distance” would be misunderstood by consumers to mean that AT&T Personal Network customers are required to pay long distance charges in addition to a fixed per-minute rate for their wireless calls. For the reasons articulated below, NAD determined that this is not a likely take-away.

NAD agreed with AT&T that Sprint PCS and AT&T’s plans offer very different services and benefits. However, insofar as Sprint PCS’s comparison is limited to the charges for and services included in the wireless component of each plan, the advertisement is essentially accurate. For \$29.95, Sprint PCS customers get 120 minutes of wireless service (including long distance calls) while AT&T customers must pay an additional ten cents a minute for each minute of wireless service they use. Those are the facts, and there is nothing in the record to indicate that consumers would understand this message to mean, as AT&T asserts, that some other kind of additional charges, beyond the per minute charge would apply to AT&T long distance wireless calls.

Although NAD agrees with AT&T that Sprint PCS could have done a better job of making it clear that the “120 free minutes” includes any calls from a wireless phone (local, local toll or long distance) made from within the network this still does not render its price comparison to AT&T inaccurate particularly since AT&T’s per minute charges also apply to any type of call made from a wireless phone so long as the call is made from their home area. NAD understands that for some consumers, particularly heavy wireless users, AT&T’s \$29.99 plan may offer a better dollar value than Sprint PCS’ because a customer can make an unlimited number of long distance calls for a flat 10 cents per minute, while Sprint PCS customers will have to pay 35 cents for each minute of wireless service after the first 120 minutes. Although this is a significant difference between the two plans that AT&T is free to promote, NAD concluded that it is not a difference that Sprint PCS is required to disclose in the context of its price comparison claim in this advertisement.

B. The “apples to oranges” comparison between the Sprint PCS’s wireless plan and the AT&T Personal Network: NAD, however, came to a different conclusion when it examined the broader message conveyed by the overall comparison of the two plans. NAD agreed with AT&T that consumers could reasonably understand the advertisement to mean that both plans offer solely wireless service. This interpretation is reasonable because the two plans are priced identically (\$29.99), the difference in wireless services is highlighted, and following the comparison of wireless services the advertisement concludes with the suggestion that the Sprint PCS plan offers a better “value” than the AT&T plan.

In actuality, AT&T’s Personal Network is substantially different from Sprint PCS’s Free and Clear Plan. Sprint PCS’s plan is strictly a wireless plan while AT&T’s combines wireless service with traditional long distance, calling cards, 800 number and single billing options. NAD concluded that, in the context of this comparative advertisement, the additional services (beyond wireless) available with AT&T’s plan was information that could be very material to a consumer’s purchasing decision, and therefore should have been disclosed.

In arriving at this conclusion, NAD notes that Sprint PCS was correct in its assertion that, as a general rule, a comparison of two competitive products or services does not require a complete disclosure of each and every aspect of the product or service. However, where the products are “not substantially comparable”, and consumers do not have a sufficient information to understand the differences between them, the public cannot assess which product offers them better value or best meets their needs. As NARB noted in its decision in the *Priority Mail* matter, “when an advertiser engages in comparative price advertising, the products compared must be substantially comparable, and if there are differences between products that render them not substantially comparable, those differences must be disclosed.”

Although in *Priority Mail* NARB concluded that disclosure of the material differences between the products was not necessary because consumers were placed “on guard” that the products were not comparable because of the huge price differential between them and because the competitor’s intensive advertising campaign which included a clear description of its services, those factors are not present here. In the instant case, there is *no* price differential at all, nor was there any evidence that AT&T’s advertising for its Personal Network was pervasive or detailed enough to put consumers on “constructive notice” as to the specific services included in that plan.

Sprint PCS’s “nationwide” claim: NAD shared AT&T’s concern about Sprint PCS’s characterization of its all-digital network as “nationwide”. The advertisement features a picture of a wireless telephone embedded in a free standing, clear model of the continental United States. Coupled with this depiction are several express references to Sprint PCS’s “nationwide network”. Currently, however, Sprint PCS’s “nationwide network” encompasses only about 55% of the United States population. Moreover, the cost of making a wireless call outside of Sprint PCS’s network is not only greater than the “free minutes” promised in Sprint PCS’s advertisement, it could be significantly greater (up to 69 cents per minute) than the rates offered by Sprint PCS’s competitors.

NAD was not persuaded that Sprint PCS’s assertion that consumers fully appreciate that with respect to wireless service “nationwide” means coverage *across* the entire United States but not coverage of every square mile, was correct.

Further, NAD determined that even if consumers did (prior to seeing this advertisement) have this general understanding, Sprint PCS’s totally unqualified claim announcing its “nationwide network” could be reasonably understood, even by sophisticated consumers, to be a technological advancement, through which Sprint PCS has extended its wireless communication services seamlessly to all parts of the nation through one network. Moreover, the depiction of a wireless phone in a clear glass model of the United States reinforces the message that Sprint PCS’s wireless network extends seamlessly to every part of America.

Finally, NAD found that Sprint PCS’s comparisons to “nationwide” claims for hotel chains and car rental companies are not analogous. Telephone services, unlike hotel and car rental offices, are routinely available in every nook and cranny of the United States. Consequently, the expectations of consumers in response to a claim that a particular type of telephone service is available nationwide are much different than those raised by a claim that a restaurant or car rental company does business nationwide. Moreover, because the technology in the telecommunications industry is rapidly advancing, consumers expectations as to wireless services’ capabilities and reach are also rising. For all of these reasons, NAD determined that consumers could reasonably understand Sprint PCS’s unqualified claim to have a “nationwide” wireless network to mean that Sprint PCS’s wireless network is as available as traditional calling services are throughout the United States.

CONCLUSION

Although NAD noted that Sprint PCS could have been clearer that its “120 free minute” offer included local and long distance calls originating from within its network, NAD concluded that Sprint PCS’s comparison of its wireless services, “\$29.99 for 120 clear wireless minutes with free long distance” to AT&T’s, “\$29.99 for no minutes, with no long distance” was truthful and accurate. However, NAD found the overall comparison between Sprint PCS’s Free and Clear Plan and AT&T’s Personal Network in the challenged advertisement to be potentially misleading because Sprint PCS failed to disclose the material difference between these two substantially different calling plans. NAD recommended better disclosure of the material differences in the product in future comparative advertising. Lastly, NAD recommended that the advertiser modify its claim that its wireless network is “nationwide” to more accurately reflect the actual reach of its network.

ADVERTISER’S STATEMENT

“Sprint PCS appreciates NAD’s having upheld the specific advertising headline challenged by complainant AT&T. Sprint PCS also takes note of NAD’s stated recognition that marketing presentations of many plans and offerings in the wireless telecommunications industry lack clarity. As a fundamental company policy, Sprint PCS endeavors constantly to devise straightforward plans and provide clear and simple presentations of its own offerings; and it will continue to labor to do so. Sprint PCS will be guided by NAD’s decision in any future comparisons it undertakes.

Sprint PCS disagrees with NAD’s assumption that consumers might think that any wireless phone service extends to “every nook and cranny of the United States.” Consequently, Sprint PCS disagrees that consumers may misunderstand “nationwide” in the context of advertising that Sprint PCS’ 100% digital, 100% PCS service and distinctive “nationwide” benefit of uniform rates and included minutes are available anywhere in the unparalleled array of locations across the nation in which Sprint PCS has built its network. Nonetheless, Sprint PCS will take NAD’s expressed concern into account in its future advertising program.” (#3556 PCM, closed 6/10/99)

NOTES

¹ If the former, the \$9.95 monthly fee is simply waived and the normal AT&T Digital One Rate charges apply. If the latter, the customer subscribes to the \$29.99 Personal Network wireless calling plan, and the \$9.95 residential long distance fee is once again waived.

² Outside the customer’s home calling area, 60 cents additional per-minute roaming charges apply.

³ The fine print in the advertisement goes on to state in part that:

“Calls made while roaming off the Sprint PCS nationwide network are charged at 69 cents per minute or 39 cents per minute, depending on local market-specific offers. Long- distance rates charged on calls made while roaming off the Sprint PCS nationwide network vary by provider.”

⁴ *American Home Products Corporation v. Barr Labs. Inc.*, 656 F.Supp. 1058.

⁵ *Campbell Soup Co., Prego Traditional Style Spaghetti Sauce*, NAD Case Reports May/June 1996; *H.J. Heinz Company, 9 Lives Cat Food*, NAD Case Reports, November 1996; *Old El Paso Thick n’ Chunky Picante Sauce* NARB Panel Report #73, January 1994;

⁶ NARB Panel Report 92

⁷ *Global Travel International*, NAD Case Reports, October 1998, where, in order to distinguish puffery from objective, measurable claims, NAD stated: “...whether the representations concern general matters that cannot be proven or disproven (such as those that are vague or highly subjective); whether the statements are distinguishable from representations of specific characteristics that are measurable by research or test; or whether the wording uses expressions of opinion or generalized statements that are so exaggerated they will be discounted by the buyer.”

⁸ As defined by Rand-McNally.

⁹ A coverage map is posted in every Sprint PCS store, supplied to every Sprint PCS customer and provided on the company website.

¹⁰ The FTC together with consumer groups and representatives of the telecommunications industry created an educational brochure, entitled “It’s Your Call” to help consumers understand what products and services are available to them and what factors to consider to determine which product or plan will best meet their services needs and price concerns.

Case #3556 (01/01/00) Compliance

SPRINT PCS

Sprint PCS Wireless Service

Compliance Proceeding from NAD Case Report #3556PCM

The AT&T Corp. challenged the truthfulness of print advertising claims made for Sprint PCS Wireless Service. The advertising campaign in question, which was designed as a response to a popular AT&T “if” campaign, included a picture of a cellular telephone encased in a free-standing, clear model of the United States along with the claim that the “Sprint PCS Free & Clear Plan gives you free domestic long distance and clear calling anytime, anywhere on our all-digital nationwide network.”

NAD’s findings on this matter were published in the June 1999 issue of *NAD Case Reports*. In its decision, because Sprint PCS’s “nationwide network” encompassed only about 55% of the United States population, NAD determined that “Sprint PCS’s totally unqualified claim announcing its “nationwide network” could be reasonably understood, even by sophisticated consumers, to be a technological advancement...” and that “... the depiction of a wireless phone in a clear glass model of the United States reinforces the message that Sprint PCS’s wireless network extends seamlessly to every part of America.” Accordingly, NAD recommended that the advertiser modify the claim that its wireless network is “nationwide” to more accurately reflect the actual reach of its network.

Approximately one month after the decision was issued, the challenger contacted NAD and objected to the modifications made by Sprint to its “nationwide network” claims. More specifically, AT&T stated that “The additional language indicating that Sprint PCS serves ‘280 major metropolitan areas’ does nothing to alleviate the concerns cited by the NAD in its decision. It does not dispel the impression that Sprint’s network is ubiquitous, because the ordinary reader has no concept of how many ‘major metropolitan areas’ exist within the U.S.” Spint also maintained that the “nationwide network” claim “appears without qualification in the footnote in the print ads, and on the home page of the Sprint PCS web site...”.

After reviewing Sprint’s modified advertising, NAD determined that the advertiser, within a relatively short period of time, has made a bona fide attempt to bring its advertising into compliance with NAD’s recommendations. In response to NAD’s concerns that consumers may be taking away the message that Sprint’s network extends seamlessly to every part of America, the advertiser modified the advertisement to read: “Sprint PCS built the only all-digital, all PCS nationwide network from the ground up, *servicing more than 280 metropolitan areas.*” (emphasis added). NAD concluded that this qualification adequately addressed the issues articulated in the decision. Moreover, NAD has been advised that since the date of the compliance inquiry, the Sprint web site has been modified to include a similar qualification to the “nationwide network” claim.

As such, pursuant to section 4.1 (C) (i) of the NAD/NARB Procedures, NAD determined that Sprint complied with the June 1999 decision, and deemed the matter as closed. (#3556C PCM, closed 12/22/99)