

Parties: T-Mobile US, Inc. / Comcast Cable Communications Management, LLC
Product: T-Mobile Home Internet
Product Type: Telecommunication Products/Services
Disposition: Modified / Discontinued
Claim: Performance Claims

BBB NATIONAL PROGRAMS

NATIONAL ADVERTISING DIVISION

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, <i>Challenger,</i>		Case No.	7201
T-MOBILE US, INC., <i>Advertiser.</i>		Closed 04/17/2023	

FAST-TRACK SWIFT CASE

- Don't worry" claims, especially in regard to internet service, are held to a high standard demonstrating performance.

Basis of Inquiry: As part of NAD's Fast-Track SWIFT program designed to quickly and efficiently review advertising claims that involve a single well-defined advertising issue, Comcast Cable Communications Management, LLC ("Comcast" or "Challenger") challenged T-Mobile US, Inc. ("T-Mobile" or "Advertiser") claim to T-Mobile Home Internet consumers, "Don't you worry 'bout speed."

I. Fast-Track SWIFT Eligibility Determination

In a commercial advertising its T-Mobile Home Internet ("T-HINT") service T-Mobile makes the express claim, "Don't you worry 'bout speed." Comcast alleged that T-Mobile cannot support this broad unqualified claim because multiple factors can affect speed on T-Mobile's fixed wireless network T-HINT. T-Mobile objected to SWIFT jurisdiction arguing that the challenge presented more than one issue and the evidence in the case is too complex. NAD determined that the challenge was appropriate for Fast-Track SWIFT as NAD's review did not require the review of complex evidence or substantiation and the challenge presents a single issue as to whether the Advertiser's claim "Don't you worry 'bout speed" is supported. The evidence presented to NAD by the parties consisted of screen shots of T-Mobile's website, T-Mobile's Home Internet Policy, Federal Communication Commission ("FCC") and industry reports, and a declaration by T-Mobile's Senior Vice President of National Planning, Performance & Intelligence.

II. Decision

A. *The Challenged Advertising*

The challenged commercial advertising T-HINT begins with John Travolta shaking his head at a cable employee drilling wires into a house. To the tune of “Summer Nights,” Travolta sings “Home Internet, what a pain in the a—”. Zach Braff and Donald Faison interject, encouraging their neighbor to “Try T-Mobile,” home internet characterizing it as “like Wi-Fi that runs on 5G.” The chorus continues with Travolta singing and Braff and Faison responding in verse with the benefits of T-HINT. The last selling point touted by Faison states, “Don’t you worry ‘bout speed!” While singing this line Faison holds a laptop displaying a speedometer. The speedometer’s needle moves from the low end on the left to the highest speed on the right that is labeled with a magenta “5G”. A ding sound is heard as the needle approaches the high end of the speedometer and then wavers in the middle of the speedometer.

T-HINT operates on the same wireless network that T-Mobile smartphones run on, and thus does not use a wired infrastructure to deliver internet. Customers are provided a gateway device that acts as a router and modem which converts T-Mobile’s signal to Wi-Fi and provides a Wi-Fi signal to devices in the home. It is undisputed that due to the nature of wireless technology consumers receive a range of speeds with T-HINT and consumers cannot be guaranteed that they will experience a certain speed. It is well known that wireless speeds may be affected by overall network congestion, distance between the in-home receiver and cell tower, obstructions between the in-home receiver and cell tower (including weather), and other non-location factors including placement of a gateway in a basement office or closed cabinet (contrary to the product user guide). In addition, it is undisputed that T-HINT users are deprioritized behind mobile customers in times of network congestion.

The FCC has advised fixed wireless providers to disclose speeds as a 25th-75th percentile range. In its last public disclosure to the FCC T-Mobile reported T-HINT’s speeds at 33-182 Mbps download speed and 8-25 Mbps upload speed. The declaration provided by T-Mobile states, without underlying evidence and methodology, that T-Mobile has since upgraded its network and T-HINT can now provide speeds at 72 Mbps-245 Mbps download speed.

Comcast argued that in the context of the commercial the claim “Don’t you worry ‘bout speed” is an assertion that T-HINT will always be sufficient for users to do anything they want on the internet without limitation. The Challenger asserted that T-Mobile cannot support such a broad performance claim because T-HINT only offers a range of speeds between the stated 25th and 75th percentile and for 25% of its customers speeds are below that range and are uncontrollable due to the nature of wireless technology which means that consumers do have to worry about speed when considering T-HINT.

T-Mobile argued that the commercial communicates only that T-HINT’s speeds are delivered with 5G technology and that the speed range delivered is sufficient for typical consumer use. T-Mobile asserted that this takeaway is supported by the fact that T-Mobile delivers a range of speeds that surpasses the FCC’s definition of high-speed broadband internet or 25 Mbps download and 3 Mbps upload speed. T-

Mobile further argued that its analysis shows that only a very small percentage of T-HINT users experience typical download speeds below 25 Mbps.¹

B. Analysis

NAD evaluates all advertising claims in context with the recognition that consumers do not parse components of an advertisement to determine the message conveyed but view advertisements in a more fleeting fashion and take away a net impression.² Given the context of the advertisement, which offers T-HINT as an alternative to fixed wired internet and includes a speedometer that dings when it reaches the highest 5G level of speed, NAD determined that the “Don’t you worry ‘bout speed” claim conveys a message that consumers can get the speed they need to do whatever they want on the internet without limitation. NAD did not agree that the wavering needle on the speedometer conveys that T-HINT offers a range of speeds. Rather, the “don’t worry” message communicates a broad unqualified performance claim that reassures consumers that they will not experience any issues with T-HINT’s speeds. There is nothing in the visual or audio of the commercial that communicates a typicality message or otherwise limits the message that consumers do not need to worry about speed.

It is well settled that advertisers must possess a “reasonable basis” for claims disseminated in advertising.³ What constitutes a “reasonable basis” depends on several factors, including the type of product, the type of claim, the consumer benefit from a truthful claim, the ease of developing substantiation for the claim, the consequences of a false claim, and the amount of substantiation experts in the field believe is reasonable.⁴ “Don’t worry” claims, especially in regard to internet service, are held to a high standard demonstrating performance.⁵ Here, T-Mobile’s unqualified “don’t you worry ‘bout speed” claim conveys the message that internet speeds are sufficient to provide worry-free internet service that will allow users to perform nearly all typical activities on the internet including intensive uses like gaming or streaming on multiple devices at any time of day.

¹ T-Mobile asserted that their analysis showed that many of T-HINT users slowest speeds are attributable to the non-compliant and unauthorized use of a T-Mobile Gateway beyond its terms of service. If T-Mobile’s analysis is limited to compliant use then the percentage that experience typical download speeds below 25 Mbps is even smaller. T-Mobile claims that this percentage changes depending on whether you are in a rural or urban area as well. NAD noted that T-Mobile did not provide any underlying details or methodology regarding their analysis.

² *Frontier Communications Parent, Inc. (Frontier Fiber Internet)*, Report #7143, NAD/CARU Case Reports (March 2023).

³ *Guardian Technologies, LLC (GermGuardian and PureGuardian Air Purifiers and Replacement Filters)*, Report #6319, NAD/CARU Case Reports (November 2019).

⁴ *Pfizer Inc.*, 81 F.T.C. 23 (1972). See also FTC, Policy Statement Regarding Advertising Substantiation (Nov. 23, 1984), <https://www.ftc.gov/public-statements/1984/11/ftc-policy-statement-regarding-advertisingsubstantiation>).

⁵ See *Verizon Communications, Inc. (Verizon’s 4G & 5G Networks (Jenny Slate))*, Report #6414 (Sept. 2020) (finding the claim “In the gaming world, if you lag, you’re done. With Verizon 5G Ultra Wideband, I don’t worry about lag” to be a measurable performance claim requiring substantiation and rejecting Verizon’s support as not sufficiently robust to support the broad claim); *Frontier Communications, Inc. (Internet Service)*, Report #6036, NAD/CARU Case Reports (December 2016) (recommending “...never worry about your Internet connection” claim be discontinued because some speeds did not provide sufficient connection speed to allow streaming videos or streaming multiple movies at one time, so they might not provide the worry-free, family friendly Internet service advertised).

NAD next looked at whether the unqualified message conveyed by “Don’t you worry ‘bout speed” is supported. It is undisputed that T-HINT offers a range of speeds and cannot promise a specific provisioned speed like a wired internet provider. T-Mobile provided evidence that T-HINT’s range of speeds surpasses the FCC’s definition for high-speed broadband internet (i.e., 25 Mbps/3 Mbps) for 25-75 percent of its users. T-Mobile’s declaration also states that a small percentage of T-HINT users receive speeds less than the 25 Mbps/3 Mbps threshold.

While NAD does not require perfection of an advertiser when substantiating their claims, it does require that the support provided match the claim being made.⁶ Evidence that 75% or more of T-HINT customers receive speeds that meet the FCC’s definition of high-speed broadband internet is not a good fit for T-Mobile’s unqualified “don’t you worry ‘bout speed” claim. Such evidence demonstrates the typical range of speeds consumers can expect with T-HINT, but that is not what a “don’t worry” claim conveys. A “don’t you worry ‘bout speed” claim assures consumers that T-HINT provides speeds for all types of users without limitations. For example, evidence that 75% or more of T-HINT users get speeds of 25 Mbps does not substantiate whether a household with multiple users using multiple devices for different tasks during peak times can get sufficient speeds without limitations as T-Mobile’s claim promises. Furthermore, Comcast pointed to the FCC Chairwoman’s recent proposal to raise the threshold for high-speed internet service. While the FCC’s definition of high-speed internet has not yet changed, the Chairwoman’s proposal highlights that the FCC’s standard for high-speed internet might not meet the needs of all users for all types of activity. As a result, evidence that T-Mobile meets the standard is not a good fit for T-Mobile’s unqualified “don’t you worry ‘bout speed” claim.

Further, T-Mobile’s declaration indicates there are some T-HINT customers who do not get the minimum speed necessary to constitute high-speed internet (the exact percentage of T-HINT users that experience typical download speeds below 25 Mbps was submitted confidentially) and demonstrates that T-HINT does not provide the unqualified worry-free speeds it is advertising for at least a small percentage of its customers.⁷

For the foregoing reasons, NAD found that T-Mobile evidence was not a good fit for its broad unqualified performance claim “Don’t you worry ‘bout speed” with respect to its T-HINT service. NAD recommended that T-Mobile discontinue the “Don’t you worry ‘bout speed” claim in reference to T-Mobile’s T-HINT service. This decision does not prevent T-Mobile from making other qualified speed claims about its T-HINT service as long as they can be supported.

⁶ NAD reviews the support provided by an advertiser to determine its reliability and assess the fit between the claims made by an advertiser and its supporting evidence. See *SharkNinja Operating, LLC (Vertex and Navigator Pet Pro Vacuums)*, Report #7094, NAD/CARU Case Reports (July 2022).

⁷ T-Mobile offered one page from an Q4 2022 Ookla report that listed Comcast Xfinity as having a consistency of 91.8%, meaning that 91.8% of speed test results done on Xfinity showed at least a 25 Mbps download speed and a 3 Mbps upload speed. NAD was not persuaded by this evidence as NAD was not reviewing Xfinity’s advertising and whether it could support a similar “worry-free” speed claim.

III. Conclusion

NAD recommended that T-Mobile discontinue the “Don’t you worry ‘bout speed” claim in reference to T-Mobile’s T-HINT service. This decision does not prevent T-Mobile from making other qualified speed claims about its T-HINT service as long as they can be supported.

IV. Advertiser’s Statement

T-Mobile will comply with NAD’s recommendations, but strongly disagrees with NAD’s determination that the challenged commercial communicates an unsubstantiated message. While we respectfully disagree with NAD’s conclusion that the phrase “don’t you worry ‘bout speed” reasonably communicates anything other than a fully supported message that T-Mobile 5G Home Internet provides broadband internet at a range of speed that is sufficient for typical consumers’ home internet needs, including streaming, videoconferencing, and gaming, T-Mobile is a supporter of the self-regulatory process and will take NAD’s recommendations into account in future advertising. **(#7201 JS, closed 04/17/2023)**