

Case #7106 (08/02/2022)

Verizon Communications, Inc.

5G Ultra Wideband

Challenger: *AT&T Services, Inc.*

Product Type: *Telecommunication Products/Services*

Issues: *Disclosure; Implied Claims/Consumer Perception; Superiority Claims*

Disposition: *Modified/Discontinued*

BBB NATIONAL PROGRAMS

NATIONAL ADVERTISING DIVISION

AT&T SERVICES, INC.,
Challenger,

VERIZON COMMUNICATIONS, INC.,
Advertiser.

Case No. 7106
Closed 08/02/2022

FINAL DECISION

- Generally, material limitations need only be disclosed if there is some connection to the claim being made, such that the claim would be misleading without the disclosure.
- While there are situations where older data can be used to substantiate a claim, especially in the fast-paced 5G industry where reports often lag behind innovations, this is not the case when there are major changes to a product or service that would directly render the older data stale.

I. Basis of Inquiry

The advertising industry established the National Advertising Division (“NAD”) and the National Advertising Review Board (“NARB”) in 1971 as an independent system of self-regulation designed to build consumer trust in advertising. NAD reviews national advertising in all media in response to third-party challenges or through inquiries opened on its own initiative. Its decisions set consistent standards for advertising truth and accuracy, delivering meaningful protection to consumers and leveling the playing field for business. Challenger AT&T Services, Inc. (“AT&T” or “Challenger”) challenged express and implied claims made by Advertiser Verizon Communications, Inc. (“Verizon” or “Advertiser”) for its 5G Ultra Wideband. The following are representative of the claims that served as the basis for this inquiry:

A. Express Claims

- America’s most reliable network is going Ultra with Verizon 5G Ultra Wideband, now in many more cities so you can do more.
- 5G Ultra-Wideband is now in more and more places. Verizon is going Ultra so you can too.

B. Implied Claims

- Verizon’s 5G Ultra Wideband connectivity and associated performance benefits are available nationwide.
- Verizon’s 5G Ultra Wideband connectivity and associated performance benefits are more available than unavailable.
- The current configuration of Verizon’s 5G network has been declared the most reliable as compared to other wireless networks.

II. Evidence Presented

As support for the challenged claims the Advertiser submitted:

- Data about Verizon 5G Ultra Wideband coverage across cities in the United States;
- Data about 5G Ultra Wideband coverage within cities;
- Census data about populations in cities;
- Data about 5G Ultra Wideband availability by population;
- The RootMetrics 5G Report for the first half of 2021.

The Challenger submitted the following evidence to support its arguments:

- The RootMetrics 5G Reports for the first and second half of 2021;
- 5G coverage data from Mosaic.

III. Decision

A. Background

Verizon’s 5G Ultra Wideband has historically been associated with its high-band mmWave network, which offered fast speeds but had somewhat limited coverage, especially when reaching indoor locations. In January 2022, however, Verizon expanded the 5G Ultra Wideband brand to include its mid-band or “c-band” network. Unlike high band, mid-band 5G tends to be slower, but has broader coverage and can pass through some walls. Verizon launched an advertising campaign promoting the increased coverage of its 5G Ultra Wideband service (due to the inclusion of c-band). AT&T brought this challenge and argued that Verizon is making performance claims substantiated by data that does not include the new c-band network.

B. Standard of Review

Advertisers must possess a “reasonable basis” for claims disseminated in advertising.¹ 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,

¹ *Guardian Technologies, LLC (GermGuardian and PureGuardian Air Purifiers and Replacement Filters)*, Report #6319, NAD/CARU Case Reports (November 2019).

the consequences of a false claim, and the amount of substantiation experts in the field believe is reasonable.²

C. *The Coverage Claims*

1. Messages Conveyed

In a 60-second commercial titled “Verizon is Going Ultra,” a voiceover claims that “America’s most reliable is going Ultra with Verizon 5G Ultra Wideband, now in many more cities so you can do more.” At the same time, a small disclosure in white text appears at the bottom of the screen stating, “5G Ultra Wideband available in 1700+ cities.” The commercial then proceeds to depict 5G Ultra Wideband being used in different locations, including a subway station, an office building lobby, a coffee shop, a park and a hockey arena. The commercial closes with a shot of a cityscape and the voiceover stating, “5G Ultra Wideband is now in more and more places.” A small disclosure in text appears at the bottom of the screen, stating, “5G Ultra Wideband available in select areas.” Variations of this commercial making the same claims also aired.

The Challenger argued that the voiceovers, combined with the imagery of multiple city locations, possibly in different cities, reasonably convey the message that Verizon’s 5G Ultra Wideband connectivity and associated performance benefits are available nationwide and are more available than unavailable. The Challenger argued that the disclosures are not clear and conspicuous because they are made only in small text and not orally with the voiceovers. In addition, the Challenger argued that the “1700+ cities” disclosure further exacerbates the misleading message instead of clarifying it. The Challenger argued that due to the relative unavailability of Verizon’s 5G Ultra Wideband, any claims about its availability must be accompanied by a clear and conspicuous disclosure, in the body of main claim, that Verizon 5G Ultra Wideband is more unavailable than available. The Challenger also argued that even if Verizon’s advertising does not convey a nationwide message or a message of availability, the very fact that it references availability means a disclosure must be made.

The Advertiser argued that these commercials do not convey a nationwide message or a message of widespread availability. Instead, they merely convey the truthful message that Verizon 5G Ultra Wideband has expanded its coverage. According to the Advertiser, such a message is unlikely to deceive consumers and does not require any additional disclosure.

In the absence of consumer perception evidence, NAD stepped into the shoes of the reasonable consumer and determined that the voiceover and imagery in Verizon’s commercial did not reasonably convey a message that 5G Ultra Wideband is more available than unavailable or is available nationwide. Throughout the commercial, the overarching theme is that Verizon is expanding its network to more places and more cities. The voiceover, in fact, explains that 5G Ultra Wideband is “now in many more cities” and reasonably conveys a message that it is not available everywhere but that its availability is expanding. Nowhere does the voiceover state that the service is widely available or available nationwide. The images all depict different city locations, possibly even from different cities, but this alone does not convey a message of widespread availability—only that 5G Ultra Wideband is available in different parts of the same, or even different, cities. In this context, the

² *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-advertising-substantiation>.

message reasonably conveyed is one of expansion and not widespread availability. Moreover, because the claim focuses exclusively on “cities” and displays images from cities, NAD concluded that the message of expansion was limited to city environments and not other geographic locations (such as rural areas, towns and villages).

NAD disagreed with the Challenger’s argument that even if the message is not one of widespread availability, an oral disclosure is still necessary. Generally, material limitations need only be disclosed if there is some connection to the claim being made, such that the claim would be misleading without the disclosure. It cannot be the case that every reference to availability, no matter how remote, triggers the requirement for a disclosure about the limited availability of Verizon 5G Ultra Wideband. Rather, a disclosure is required only if the claim is likely to mislead consumers into taking away a message of broader availability than is supported by the evidence—in such cases, the limited availability of 5G Ultra Wideband is material information that must be disclosed.

NAD was, however, troubled by the disclosure of “1700+ cities.” Although this disclosure, according to the Advertiser, was intended to provide further clarity on the limits of Verizon’s 5G Ultra Wideband service, a reasonable consumer could understand it to convey the exact opposite.³ Consumers may reasonably believe 1700 to be an extraordinarily high number of cities and take away the message that 5G Ultra Wideband has widespread availability throughout the nation. Moreover, as discussed above, the fact that the disclosure specifically identifies only “cities,” along with the overall message of the commercial focusing on cities, means that consumers may reasonably understand this number to include only large cities, and not villages and towns.

NAD therefore concluded that the language “1700+ cities”, when combined with the overall message of the commercial, reasonably conveyed a message of widespread availability.

2. Analysis

In support of its claim that 5G Ultra Wideband was in more and more cities, the Advertiser submitted confidential data about 5G Ultra Wideband availability in cities of different populations—8000, 75,000, 150,000, 500,000 and 1,000,000. In each tier, Verizon 5G Ultra Wideband was available in over 50% of U.S. cities of that tier. In support of the claim that 5G Ultra Wideband was available in more and more places (within cities), the Advertiser referred to its publicly available coverage maps on its website, where block-by-block coverage was available for each city.

The Advertiser argued that even if messages of nationwide availability and being more available than unavailable were conveyed, those messages would be substantiated by this same evidence.

The Challenger submitted data from Mosaic about the geographic coverage, in square miles, of Verizon’s 5G network. According to this data, Verizon’s entire 5G network covers only 384,500 square miles, in contrast to AT&T’s and T-Mobile’s networks, which each covers over 1 million square miles.

NAD concluded that the Advertiser provided a reasonable basis for its claims that 5G Ultra Wideband is available in over 50% of all cities in the United States regardless of how city is defined. Based on a

³ NAD noted that this disclosure is in tiny print, in white font on light backgrounds and may be difficult for consumers to see and read. Nevertheless, an advertiser cannot take advantage of the inconspicuousness of its own disclosure to argue that its claim is not misleading.

review of a sampling of Verizon’s coverage maps, NAD also concluded that 5G Ultra Wideband is also widely available within cities. NAD was not persuaded by the Challenger’s evidence, which showed coverage of Verizon’s 5G network across the entire United States because this evidence was not limited to cities. Although this evidence may support the argument that Verizon’s 5G Ultra Wideband is not widely available across the nation, the claim here is limited to only cities.

The same is not true of the “1700+ cities” claim. Here, Verizon explained that this number includes all geographic areas with populations greater than 10,000. But as this disclosure is expressly limited to “cities,” some reasonable consumers may not consider all such municipalities to be “cities.” NAD found that consumers may believe 5G Ultra Wideband to be more widely available than it actually is based on the reference to “1700+ cities.”

Accordingly, NAD recommended that, when using a disclosure that states the number of “cities” where 5G Ultra Wideband is available, the Advertiser modify its advertising to more clearly define “cities” for consumers (e.g., “5G Ultra Wideband available in 1700+ cities (pop. > 10,000)”).

D. The Reliability Claim

In the same commercial, a voiceover claims, “America’s most reliable network is going ultra.” A written disclosure appears, stating, “Most reliable based on RootMetrics® US National RootScore® Report 1H 2021. Tested on 3 nat’l mobile networks across all available types combined, excl. c-Band. Not specific to 5G networks. Results may vary. Not an endorsement.” The same claim is also made on the Advertiser’s website, without the disclosure. The RootMetrics analysis applied to the entire Verizon network (including 4G LTE and 5G Nationwide), not just 5G Ultra Wideband.

The Challenger argued that because the entire commercial focuses on 5G Ultra Wideband, the reasonable takeaway is that Verizon 5G Ultra Wideband has been named the most reliable network, and specifically, its 5G Ultra Wideband network that includes c-band. The Challenger argued that the RootMetrics report does not support the challenged claim because the report did not include c-band—the very focus of Verizon’s commercial—and instead only included the prior iteration of Verizon’s 5G Ultra Wideband network that consisted entirely of mmWave. According to the Challenger, because the main claim is about the reliability of Verizon’s 5G Ultra Wideband network with the newly-released c-band, the fact that the underlying support omits c-band means that the disclosure not only is stale because it fails to account for a major change in the service, but also directly contradicts the main claim.

The Advertiser argued that the “most reliable” claim refers to Verizon as a whole, and not 5G Ultra Wideband, because it appears just once at the beginning at the commercial. The Advertiser also argued that advertising based on real-time data in the 5G world is impractical and NAD has allowed non-current data as substantiation in the past.

NAD concluded that consumers could reasonably understand the “most reliable” messaging to apply to 5G Ultra Wideband alone. Although the claim does appear at the very beginning of the commercial, the entire commercial focuses on a single service—5G Ultra Wideband. Further, the voiceover states that “America’s most reliable network is *going ultra*,” (emphasis added) followed by an explanation that “going ultra” means 5G Ultra Wideband is expanding to more cities and locations. The “going ultra” language ties the “most reliable” claim to the expansion of 5G Ultra Wideband coverage,

suggesting that this is merely an expansion of the “most reliable” 5G Ultra Wideband network that is still the “most reliable.”

NAD further concluded that the claim was not substantiated by the RootMetrics report. While there are situations where older data can be used to substantiate a claim, especially in the fast-paced 5G industry where reports often lag behind innovations, this is not the case when there are major changes to a product or service that would render the older data stale. The addition of c-band to the 5G Ultra Wideband brand is a major change to Verizon’s service, such that older data does not apply to the current network.

Further, NAD determined that the disclosure stating that c-band is not included in the RootMetrics results is insufficient to clarify this claim. The commercial focuses on the effect of c-band on Verizon’s network, and a disclosure that omits data from the network improvement being advertised contradicts that claim. Moreover, many consumers do not know what c-band means and the implications of the omission of c-band from the data supporting the “most reliable” claim.

Accordingly, NAD recommended that the Advertiser discontinue the “most reliable” in reference to the 5G Ultra Wideband network. Nothing in this decision would prevent Verizon from making such a claim in the future provided it has new substantiation supporting such a claim.

IV. Conclusion

NAD found that the images in the commercial depict different city locations, possibly even from different cities, but this alone does not convey a message of widespread availability—only that 5G Ultra Wideband is available in different parts of the same, or even different, cities. In this context, the message reasonably conveyed is one of expansion and not widespread availability. Moreover, because the claim focuses exclusively on “cities” and displays images from cities, NAD concluded that the message of expansion was limited to city environments and not other geographic locations (such as rural areas, towns and villages). NAD recommended that, when using a disclosure that states the number of “cities” where 5G Ultra Wideband is available, the Advertiser modify its advertising to more clearly define “cities” for consumers (e.g., “5G Ultra Wideband available in 1700+ cities (pop. > 10,000)”).

NAD also concluded that consumers could reasonably understand the “most reliable” messaging to refer to 5G Ultra Wideband, a claim that is not supported by the RootMetrics results in the record. NAD recommended that the Advertiser discontinue the “most reliable” claim when referring to the 5G Ultra Wideband network.

V. Advertiser’s Statement

Verizon is pleased with the decision and will comply. NAD correctly concluded that the images in the commercial convey the truthful message that Verizon is expanding the 5G Ultra Wideband network to more places and more cities.

By stating “America’s most reliable network is going Ultra,” Verizon intended to convey that Verizon - which had been awarded the “Most Reliable” network across all network types by RootMetrics -- was introducing 5G Ultra Wideband. While Verizon does not agree that reasonable consumers might think that the 5G Ultra Wideband network was tested in isolation and determined to be “Most Reliable”,

Verizon appreciates NAD's acknowledgement that the decision does not prevent it from making such a claim when new testing becomes available. (**#7106 ZW, closed 08/02/2022**)

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