

Michael F. Altschul
Senior Vice President
and General Counsel

June 24, 2013

Federal Trade Commission
Office of the Secretary
Room H-113
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: "Mobile Cramming" Roundtable, Project No. P134803

Dear Commissioners:

CTIA - The Wireless Association® ("CTIA")¹ respectfully submits this comment to address the validity of certain survey results cited during the May 8, 2013 Federal Trade Commission "Mobile Cramming" Roundtable. At the Roundtable, the Office of the Vermont Attorney General announced the publication of a survey titled "Mobile Phone Third-Party Charge Authorization Study" ("Vermont Study") (FTC 5/7/13 transcript, at 12). At the Roundtable discussion, the Vermont Study was cited to support the propositions that a high percentage of third-party premium messaging charges are unauthorized, and that a large majority of customers are unaware that third-party services can be paid for on a wireless bill.

Following the Roundtable, certain CTIA members engaged a nationally recognized expert in the study of consumer behavior and opinion, Dr. Sara Parikh, to conduct a thorough analysis of the Vermont Study. CTIA hereby submits the result of that work as part of this Comment. (*A Review and Critique of the "Mobile Phone Third-Party Charge Authorization Study" June 2013*, attached hereto as Exhibit "A".) As detailed in this report, Dr. Parikh found that the survey methodology underlying the Vermont Study did not comply with core principals of objective research and further concluded that "the Vermont Study is neither a valid nor reliable measure of the extent to which, if any, Vermont mobile phone users have problems with unauthorized third-party charges on their bills." (*Id.* at ¶5)

Further, the survey results cited at the Roundtable from the Vermont Study are not consistent with other reliable sources of information, such as the 2013 Consumer Sentinel Network (CSN) Data Book. This publication reported that the number of complaints made to the FTC and to various state and federal agencies and other organizations that make up the CSN, including the Better Business Bureau, that are related to unauthorized mobile billing was fewer than 800 each year from 2010-2012. *See CSN 2012 Data Book*, Appendix B3, pg. 84 of 102. This amounted to just 0.03% of all complaints from consumers in 2012 and 2011, and .05% in 2010. *Id.* The number of complaints has remained steady over the past three years, even as reported instances of complaints addressing other issues has grown.

¹ CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers.



CTIA and its carrier members are strongly committed to the protection of wireless consumers. Consumers benefit from the ability and convenience of paying for services on their wireless bills, and the wireless industry has taken numerous steps and committed significant resources to protect their customers from fraud and minimize the risk of unauthorized third-party charges. We look forward to continued collaboration with the FTC in our common goal of finding additional ways to limit this risk of unauthorized third-party charges even further.

Respectfully submitted:

Michael Altschul

Attachment

Exhibit A

SHAPIRO

**A REVIEW AND CRITIQUE OF THE
“MOBILE PHONE THIRD-PARTY CHARGE AUTHORIZATION STUDY”**

June 2013

REPORT OF SARA PARIKH, PH.D.

I, Sara Parikh, state as follows:

I. BACKGROUND

1. I am a Managing Director of Leo J. Shapiro & Associates, LLC (Shapiro). Leo J. Shapiro & Associates is a nationally recognized behavior and opinion research firm that has been in business for over fifty years. I have been with the firm since 1985 and am responsible for designing, supervising and analyzing studies of consumer behavior and opinion. I have a Master's and Ph.D. in Sociology from the University of Illinois at Chicago and a Bachelor's Degree in Political Science from the University of Wisconsin-Madison. I am a member of the International Trademark Association and the Law and Society Association. A description of my background and a list of cases in which I have offered testimony in the last five years are attached to the Appendix of this Report.

II. INTRODUCTION

2. In May 2013, the Federal Trade Commission (FTC) convened a workshop on “mobile cramming,” which refers to unauthorized third-party charges on a mobile telephone bill. During the workshop, there was discussion about a report entitled “Mobile Phone Third-Party Charge Authorization Study” (“Vermont Study”) which was conducted on behalf of the Vermont Attorney General’s office (“Vermont AG”).

3. After the workshop, I was contacted by a group of four major mobile telephone carriers, T-Mobile, Verizon, Sprint and AT&T (“Carriers”). The Carriers provided me with a copy of the Vermont Study and asked me to review and comment upon the study and to provide an opinion as to its validity as a measurement of consumer experiences with and perceptions of mobile cramming. I agreed to do so, and proceeded to review the Vermont Study report, including the study’s methodology, execution and findings, as well as the invitation to participate, the questionnaire, and the verbatim comments that were provided in the appendix of the Vermont Study report. This Report summarizes some of my observations and opinions concerning the Vermont Study.

III. OVERVIEW

4. The Vermont Study violates many generally accepted practices and principles of objective survey research. Most significantly, the Vermont Study was not double-blind; suffers from self-selection bias; used a stimulus that did not provide sufficient information for respondents to give an informed answer; and did not ensure that the answers were provided by the actual mobile phone user, who would be in the best position to answer questions about their purchases.

5. Given all of the major flaws in the Vermont Study, it is my opinion that the Vermont Study is neither a valid nor reliable measure of the extent to which, if any, Vermont mobile phone users have problems with unauthorized third-party charges on their bills.

IV. ANALYSIS

What Participants Were Told About the Study

6. An important principle of objective survey research is to prevent any potential bias in the response or survey results. For this reason, it is important that neither the interviewers nor the respondents are aware of the purpose of the study or the party who commissioned the research.¹ This is known in the industry as a “double-blind” study. The Vermont Study was not double-blind. To the contrary, the invitation to participate in the Vermont Study was printed on Vermont Attorney General letterhead and the survey participants were told the purpose of the study:

“Some companies other than your mobile carrier are able to bill for their products and services on your mobile phone bill. The Vermont Attorney General’s Office is gathering information from people in Vermont who have received a charge on their mobile phone bill for such a product or service to determine whether or not the charge was authorized. You have been identified as a person who has received one or more of these charges.” (Vermont Study, Appendix A)

7. By divulging BOTH the sponsor AND purpose of the research, the Vermont Study introduced a bias both in terms of who responded to the study, as well as how they responded to the study. In any survey, there is a potential for “self-selection bias” in which the responders differ in important ways from the non-responders.² In this case, because the invitation to participate suggested to potential respondents that there may be

¹ Diamond, Shari Seidman. “Reference Guide on Survey Research,” Reference Manual on Scientific Evidence, Third Edition, Federal Judicial Center, pp. 410-411. 2011.

² Diamond, Shari Seidman. “Reference Guide on Survey Research,” Reference Manual on Scientific Evidence, Third Edition, Federal Judicial Center, pg. 406. 2011.

a problem with their mobile phone charges, those who responded to the survey may have been more likely to have problems or concerns with their phone bill than non-responders, who might have concluded that the survey did not apply to them because they had no issues. This would result in a survey that substantially overestimates the degree to which mobile customers have problems with third party charges on their phone bills. Further, by telling respondents that the Attorney General is investigating potentially unauthorized charges, respondents may have assumed there was a problem with their bill, even if there was no problem, again overstating the extent to which mobile customers have problems with these charges.

8. In effect, the invitation to participate in the Vermont Study was akin to a credit card company alerting a customer of potential fraudulent charges on their account. The questionnaire also repeatedly reminded respondents that the survey was being conducted by the Attorney General's office, reinforcing the message that these charges are probably unauthorized and that the Attorney General is investigating.

Q5: "Would you be willing to answer follow-up questions from the Attorney General's Office?"

Q6: "If you have any additional comments or questions to share with the Attorney General's Office, please use this space. If you do not have any comments or questions, leave it blank."

9. The fact that the sponsor and purpose of the study were clear to respondents is evidenced in the verbatim comments. In fact, the most frequent response to the one open-ended question in the survey (Q6) was respondents thanking the Attorney General.

"Thanks for going after these guys." (ID #1009)

“Thank you for bringing it to my attention. Yet one more reason you got my vote.” (ID #1389)

“We support the Attorney General’s efforts to minimize or better yet, eliminating the possibility of such illegal practices continuing in the future.” (ID #3353)

“Thank you for looking into this issue and for taking care of VT consumers.” (ID #3282)

“Thank you! I’m glad someone is watching.” (ID #3463)

“Please let me know any further actions being taken by your office or any other office/committee assigned to researching investigating solving this issue. Thank you for your concern and work on this matter.” (ID #3936)

10. Compounding the self-selection problem is the bias which is introduced into the survey due to announcing the purpose of this study. Some respondents may have expected to receive a financial reward if they said the charges were not authorized, thereby potentially influencing how they responded to the Vermont Study questions.

“If I got charged for fees that I do not need to pay or that do not apply to me but I have paid, will I get reimbursed?” (ID #2111)

“Do I get reimbursed?” (ID #1743)

“Will I get refunded for these charges?” (ID# 3150)

“Can I get the \$ back?” (ID #3504)

“Will reimbursement be forthcoming?” (ID #4153)

“What remuneration is involved and how will it be sent, in what form credit or check? We would prefer a check.” (ID #1974)

What Participants Were Shown

11. The stated objective of the Vermont Study was to determine whether or not the charges were authorized. However, the study failed to provide participants with the information needed to determine whether the charges were authorized. When conducting survey research such as this, it is important to replicate how a consumer would encounter the relevant stimulus under normal conditions.³ The Vermont Study, however, did not provide participants with their actual phone bill, which is how they would normally see third party charges. Instead, the Vermont Study simply provided the respondent with a list of the charge and the date, without indicating what the charge was for (see Vermont Study, Appendix B, Questionnaire).

Question 2. For the phone number **REDACTED** did you or anyone in your household/business agree to pay the following charge(s)? If you did not agree to the charge, then please ask anyone else in your household/business who may have agreed to the charge, including children, if they agreed to the charge.

Number	Date	Dollar Value	Response
1	9/30/2012	\$9.99	1 <input type="checkbox"/> Yes 2 <input type="checkbox"/> No 3 <input type="checkbox"/> Do not recall 4 <input type="checkbox"/> Do not know

Question 3. Prior to receiving this letter, were you aware of at least one of the charges listed above?

1 Yes
 2 No
 3 Do not recall

12. Absent sufficient information about the charge, the respondent either had to guess what the charge was for and whether or not the charge was authorized, or look it up on their actual phone bill (which they may or may not have retained or be able to locate online). There is no way of knowing from the survey results the extent to which respondents

³ McCarthy, J. Thomas. McCarthy on Trademarks and Unfair Competition, Volume 5, 32:163, pg. 32-259. 2001.

guessed or gave an informed answer. Indeed, as the verbatim comments below indicate, some of the respondents did not know enough about the charges to provide an informed answer and, in fact, simply assumed they were “falsely billed” without any idea of what the charge was for or who it was from.

“I would like to know, what are the charges and who billed them? It is difficult for me to correctly answer or help if I don’t have all the information needed to help you.” (ID #4060)

“Can you explain what the \$9.99 charge claimed to be for?” (ID #1737)

“What was the name of the Company that falsely billed us?” (ID #1974)

“What are these charges from?” (ID #4158)

“The originating company of the charge is not listed nor is the phone number so I can’t quickly inquire about the charge.” (ID #2065)

“What are these fees paying for? Who were they paid to?” (ID #3167)

“Who are these companies? And, what are they billing me for? What services?” (ID #3936)

13. The verbatim comments also show that some respondents were incorrectly referring to items on their bill that were not third party charges, so the survey did not even measure what it set out to measure.

“I spoke with my daughter, a college student, and she indicated that she would not have knowingly downloaded the [carrier] Navigator app.” (ID #3988)

“I see that I have a 9.99 charge for Each Line Access Charge. And 1 – 9.99 Premium Messaging charge on each of the above billing months.” (ID #1765)

“The call was for one time [carrier] Navigator use I do not know that it was jobbed out to another company – when I authorized the call – I’m not sure that’s a problem – is it?” (ID #3712)

“I just noticed these charges to my children’s phones! For navigation they don’t even have their licenses.” (ID #3385)

“Also charged \$9.99 Line Access 9/19-10/18, 10/19-11/18, 6/19-7/18, 5/19-6/16, 4/19-5/18, 3/19-4/18, 1/19-2/18, 2/19-3/18, 12/19-1/18. I thought these were legitimate charges by [carrier]. Are they? Would like an explanation.” (ID #1203)

14. In surveys such as this, it is the customary practice to include a “control” to account for any potential “noise,” guessing, or “yea-saying” in the survey results.⁴ For example, a control group or control question might have asked respondents about a known authorized charge to measure the level of noise in the survey. The absence of meaningful information about the third party charges exacerbates the potential for noise, guessing and yea-saying in the Vermont Study. However, the Vermont Study did not incorporate any control, although I also believe that including a control would not “fix” the Vermont Study because the problems with the survey are so fundamental and far-reaching.

Who the Respondents Were And What They Were Asked

15. The Vermont Study sample design included both single and multi-user plan households, but did not ensure that the answers were provided by the actual person who uses the cellular number in question. This is a major flaw in the survey because it is the mobile phone user (and not the billing recipient) who would actually make a purchase using their mobile phone. At the beginning of the survey, after verifying their mobile phone number, the respondent was asked:

“For the phone number (REDACTED) did you or anyone in your household/business agree to pay the following charge(s). If you did not agree to the charge, then please ask anyone else in your household/business who may have agreed to the charge, including children, if they agreed to the charge.”

⁴ Diamond, Shari Seidman. “Reference Guide on Survey Research,” Reference Manual on Scientific Evidence, Third Edition, Federal Judicial Center, pg. 401. 2011.

16. As the Vermont Study recognizes, the person receiving the bill for mobile phone charges is often not the person who uses the phone. While the Vermont Study instructed them to ask the mobile phone user, there is no way to verify whether the respondent actually asked the person using the phone whether they authorized the charges. This failure is compounded by the fact the stimulus did not include a description of the charge at issue. In effect, to provide an informed answer, the respondent would have had to locate their old telephone bill and then present it to other mobile phone users in the household to determine whether or not the charge was authorized. This places an undue burden on the respondent and, in many cases, I would expect the respondent just to guess the answer, rather than go through the steps to secure accurate information. This is confirmed by some of the verbatim comments.

“The phone number referenced is my son’s mobile number...We have four numbers on the same plan. I would have to ask him – he’s at school – if this is a charge he was aware of or authorized. But, he probably did not.” (ID #2146)

“This number is my granddaughter and she is on my account.” (ID #2162)

“I have a 20 year old son and a 22 year old daughter both in school, so they sometimes use phones for orders. Maybe. I will ask them.” (ID #4043)

“I’m still not aware of what company charged the phone. This is my son’s phone but he is pretty careful about things like this.” (ID #1980)

“I have 2 adult sons on the plan who do not always let me know about any charges they incur – one is in college. So I pay the bill.” (ID #1833)

“This is my son’s phone. He does use it to look up things on the internet and for texting. I’m not sure if these charges are actually from [carrier].” (ID #1170)

Data Inconsistencies

17. In addition, there appear to be internal inconsistencies in some of the results of the Vermont Study. For example, in response to Question 4, just 16% of respondents said that they were aware that third party charges can appear on their mobile phone bill. However, in response to the earlier Question 2 about their actual behavior, over one-third (37%) said that they had authorized a third party charge. While some respondents may have been unaware that charges were for third party services, the difference between these two numbers is significant, and, along with the issues identified earlier (in paragraph 13), suggests confusion among respondents about what they were being asked. Tables 3 and 4 of the report also appear to be inconsistent. In Table 3, the number of respondents who said that they had agreed to at least one of the charges was 299. However, in Table 4, only 256 of 1,674 total charges are reported as authorized. These tables are either insufficiently explained or there is an error in one or both tables, since each respondent had to authorize at least one charge, so the number of authorized charges should be at least 299.

IV. CONCLUSIONS

18. Based on my review and analysis, it is my opinion that the Vermont Study violates many well-established and core principles of objective survey research.
- The survey was not double-blind and, in fact, revealed both the sponsor of the study (Vermont Attorney General) as well as the purpose of the study (investigating unauthorized third party charges).
 - The survey has a high potential for self-selection bias, in that those who responded are likely to be different from those who did not respond.
 - The study provided stimuli out of context, so that respondents would have to locate their old phone bills to give an informed answer, significantly increasing the likelihood of noise, guessing, and yea-saying in the survey results.
 - The sample included households with both single-user and multi-user plans, and the survey did not ensure that the actual mobile user – who would make the third-party purchase – answered the questions about their purchase.
 - There are internal inconsistencies in the survey results.
19. Given all of the above problems with the Vermont Study, and the many ways in which it violates core practices and principles of survey research, it is my opinion that the Vermont Study is neither a valid nor reliable measure of the extent to which, if any, Vermont mobile phone users have problems with unauthorized third-party charges on their bills.

APPENDIX

- Sara Parikh Curriculum Vitae
- Recent Cases In Which Sara Parikh Has Testified or Offered Survey Evidence

SARA PARIKH

BIOGRAPHY

Sara Parikh is a Managing Director of Leo J. Shapiro & Associates, a Chicago-based opinion and behavior research firm. Ms. Parikh joined the firm in 1985. Ms. Parikh is responsible for overseeing all phases of research, including project design, questionnaire development, field instruction and supervision, coding and data specification, data analysis, and reporting. She specializes in managing complex research projects and is versed in the full complement of quantitative and qualitative methodologies.

Over the years, Ms. Parikh has designed studies on behalf of a wide range of commercial and noncommercial clients.

Ms. Parikh has an M.A. and Ph.D. in Sociology from the University of Illinois at Chicago and a Bachelor's Degree in Political Science from the University of Wisconsin-Madison. She is also a past postdoctoral fellow at The American Bar Foundation.

Ms. Parikh is a member of the Law and Society Association and the International Trademark Association.

Cases in which Sara Parikh has testified, been deposed or offered survey evidence in the past five years:

OUTRAGE, LLC V. NEW ARCHERY PRODUCTS CORP.
Western District of Wisconsin, 2013
(False Advertising)

JACKSON HEWITT INC. versus H&R BLOCK, INC., HRB TAX GROUP, INC., and H&R
BLOCK TAX SERVICES LLC
Southern District of New York. 2011.
(False Advertising)

RUG DOCTOR, INC. versus BISSELL HOMECARE, INC.
National Advertising Division, Better Business Bureau. 2011.
(False Advertising)

BISSELL HOMECARE, INC. versus RUG DOCTOR, INC.
Western District of Michigan. 2011.
(False Advertising)

HANSEN BEVERAGE COMPANY (d/b/a MONSTER BEVERAGE COMPANY) versus
CYTOSPORT, INC.
Central District of California. 2010.
(Trademark Infringement)

MILLERCOORS, L.L.C. versus ANHEUSER-BUSCH INBEV
National Advertising Division, Better Business Bureau. 2010.
(False Advertising)

HANSEN BEVERAGE COMPANY (d/b/a MONSTER BEVERAGE COMPANY) versus
CYTOSPORT, INC.
Central District of California. 2009.
(Trademark Infringement)

ANHEUSER BUSCH versus MILLER COORS LLC
National Advertising Division, Better Business Bureau. 2009.
(False Advertising)

CHIVERS, et al versus STATE FARM FIRE AND CASUALTY COMPANY, et al.
Miller County, Arkansas. 2009.
(Class Action)