

SUMMARY OF MEASURE IP151

(...) Ruling no. 23155 of 21st December 2011¹ considers the commercial practices employed by the companies Apple Sales International (hereinafter, also “ASI”), Apple Italia S.r.l. (hereinafter, also “AI”) and Apple Retail Italia S.r.l. (hereinafter, also “ARI”) of the Apple group (hereinafter also referred to collectively as “Apple”) to be unfair in the form of the disclosures that are provided and the application of the “*Legal guarantee of conformity and commercial guarantees for consumer goods*” on the basis of arts. 128 - 135 of the Consumer Code.

In specific, the Authority has resolved that: *a)* the disclosures provided and the conducts upheld by the professionals in relation to the provision of the legal guarantee constitute an unfair practice in that they are contrary to professional diligence and liable to mislead consumers in regard to the nature, content and effective performance of the legal guarantee, in violation of arts. 20, 21, 22 and 23, paragraph 1, letter *l)*. They are also aggressive in that they entail the raising of obstacles to the consumers' exercise of their rights that are non-contractual in nature, cost-bearing and disproportional, in violation of arts. 24 and 25, letter *d)*, of the Consumer Code; *b)* the disclosures supplied by the traders regarding the nature, content and duration of the various support services offered to consumers by the Apple Protection Plan (hereinafter, also “APP”) at the time of purchase of a consumer good do not adequately clarify the consumers' right to a two-year guarantee by the seller (in violation of arts. 20, 21, 22 and 23, paragraph 1, letter *l)*, of the Consumer Code), thereby leading them to enter into a new, payment-based contractual relationship, the contents of which partially overlap with the rights due to them from the legal guarantee, which entails no costs or limitations.

In light of the above, the Authority prohibited the continuation of these two commercial practices and specified a time limit of sixty days within which the Parties were required to communicate the initiatives undertaken to cease these actions, imposed sanctions on the ASI, AI and ARI companies, ordered an extract of the resolution to be published and assigned ASI a time limit of ninety days from the date of notification to make the necessary adjustments to the sales packaging for APP. (...)

In the note received on 26th March 2012, Apple communicated that it had undertaken a series of measures in order to comply with the ruling, with the exception of the APP services packaging, since this element had been suspended by the TAR. In the notes received on 02nd and 06th April, it then gave an accounting of these measures, indicating that they constituted a voluntary implementation of the latest version of the commitments that had been presented during the course of the proceedings.

Measures pertaining to cessation of the first practice

In regard to the first practice, the traders added a brief text to multiple sections of the www.apple.com/it website, which addressed the guarantees and contained a link to an information document entitled “*additional_warranty_italy*”. This document represented the fulcrum of the disclosure on the legal guarantee and consisted of four parts: a) an introduction; b) the text of articles 128 - 135 of the Consumer Code; c) an “*Explanatory note on the conditions for requesting/obtaining remedies pursuant to the legal guarantee*” containing a series of questions and answers; d) the following table of comparison:

¹ Modified by the subsequent ruling no. 23193 of 11th January 2012.

Image no. 1

Tabella comparativa: garanzia legale del venditore, garanzia annuale limitata Apple e AppleCare Protection Plan

	Garanzia del venditore prevista dal Codice del Consumo D. lgs. n. 206/2005	Garanzia annuale limitata Apple	AppleCare Protection Plan
Riparazione o sostituzione del prodotto per	Difetti presenti al momento della consegna (1)	Difetti intervenuti dopo la consegna	Difetti intervenuti dopo la consegna
Periodo di copertura	2 anni dalla consegna (2)	1 anno dalla data di acquisto	3 anni dalla data di acquisto per Mac o Apple display 2 anni dalla data di acquisto per Apple TV, iPad, iPhone, o iPod
Costo di copertura	Fornita senza costi aggiuntivi	Inclusa senza costi aggiuntivi	Disponibile ad un costo aggiuntivo
Chi contattare per assistenza	il venditore (3)	il supporto tecnico telefonico Apple, un Apple Retail Store, o un centro assistenza autorizzato Apple	il supporto tecnico telefonico Apple, un Apple Retail Store, o un centro assistenza autorizzato Apple
Opzioni di assistenza incluse	Contatta il venditore per dettagli	Assistenza carry-in o mail-in (4)	Assistenza carry-in o mail-in; sostituzione express per iPad e iPhone; o assistenza on-site per i computer desktop (4)
Copertura all'estero	Contatta il venditore per dettagli	Sì (5)	Sì (5)
Supporto tecnico telefonico	No	90 giorni dalla data di acquisto	3 anni dalla data di acquisto per Mac o Apple display 2 anni dalla data di acquisto per Apple TV, iPad, iPhone, o iPod

- (1) I difetti che si manifestano nei primi 6 mesi dalla consegna si presumono esistenti al momento della consegna.
- (2) Nei primi 24 mesi dalla data di consegna del prodotto il consumatore ha diritto alla garanzia del venditore che prevede tra l'altro la riparazione o sostituzione gratuita del prodotto non conforme al contratto (Articolo 130 del Codice del Consumo).
- (3) I consumatori possono richiedere l'applicazione della garanzia legale solo nei confronti del venditore dal quale hanno acquistato il prodotto. I consumatori che hanno acquistato il loro prodotto in un Apple Retail Store o sull'Apple Online Store possono richiedere l'applicazione della garanzia legale ad Apple. I contatti Apple sono disponibili su <http://www.apple.com/it/contact/>.
- (4) La disponibilità di ciascuna opzione dipende dal paese in cui viene richiesta assistenza e dalla ubicazione del centro assistenza autorizzato Apple. Apple potrebbe anche richiedere che il cliente sostituisca componenti con parti di ricambio pronte per l'installazione.
- (5) Apple potrebbe limitare l'assistenza per iPad e iPhone all'area dello Spazio Economico Europeo e della Svizzera.

Apple also modified article 10 of the terms and conditions of sale for the Apple Online Store (hereinafter, "AOS") entitled the "*Standard Guarantee Limited to one (1) year and the Rights of Consumers*", with the addition of a few lines about the guarantees for products by non-Apple brands (to which Apple's annual guarantee does not apply) and in conclusion mentioned the "*rights pursuant to the laws on consumer protection*" with a link to the cited information document "*additional_warranty_italy*";

In another page of the Apple website, an Italian-language page concerning the guarantees, a textual note about the guarantee was added along with a concise *link* under the generic title of "*Legal Rights for Consumers*", which referred to the same information document. This link was also found i) on the *homepage*, ii) on every page of the AOS, iii) in the general terms and conditions of sale for Apple Stores, located at the bottom edge of the page using a small font size.

The AOS page on "*Third party products*" was also modified through the addition of the indication that "*Products by non-Apple brands do not benefit from Apple's one-year limited guarantee, without prejudice to consumer rights to the vendor's 24-month guarantee pursuant to the Consumer Code.*"

Apple also reported that the operators of AOS and AppleCare support for Italy, retailers and authorized support centers had been sent a notice inviting them to read the new version of Apple's *internet* web page on the guarantees that referred to the cited

“Explanatory note on the conditions for requesting/obtaining remedies pursuant to the legal guarantee.”

Measures pertaining to cessation of the second commercial practice

In regard to the second practice concerning the offer of additional APP support services, the traders first made certain changes to their consumer-oriented communications, most of them also centering on a link to the same information document, “*additional_warranty_italy*”. In specific, the pages of the "Support" section that describes the payment-based APP services include a colored graph consisting of two colored horizontal bars (one for the technical assistance service, the other for the telephone support service) that serve to compare Apple's standard free assistance to the APP coverage, along with a simple note to the effect that “*The advantages of Apple's limited annual Guarantee and the AppleCare Protection Plan are supplemental to the rights of consumers pursuant to the vendor's legal guarantee. Click here for details*”, with the usual link to the information document “*additional_warranty_italy*”.

An analogous change was made to the graph in the interactive files used by Apple Stores to present the payment-based APP services, as well as in the "Support" page of the website.

Image no. 2 from the page “<http://www.apple.com/it/support/products/ipod.html>”



In other cases as well, such as the *internet* pages used for purchasing each individual APP service, the same graph was presented along with the note and the usual link to the information document and the addition of a text with analogous content, while the following question was added to the FAQs in the “*AppleCare Support*” section - “*What is the difference between the retailer's legal Warranty, Apple's limited annual Guarantee and the AppleCare Protection Plan?*”, which simply referred to the cited information document “*additional_warranty_italy*”.

This comparison was also employed in the pages used to present all of the APP services for sale, <http://store.apple.com/it/browse/home/applecare>. These were presented through a comparison with Apple's one-year assistance coverage, whereas the legal guarantee was only mentioned in the *link* positioned at the extreme bottom edge (just as in the other pages of the AOS).

Lastly, the usual reference to the “*additional_warranty_italy*” document was added to the emails that Apple continued sending to its own customers upon the expiration of the one-year Apple standard guarantee in order to promote the purchase of APP services.

Additional elements acquired

From March 2012 onward, the above measures continued to trigger additional requests for intervention that reported the repetition of the unfair commercial practices. In specific, consumers complained that they were meeting with difficulties when seeking to apply the legal guarantee and were encountering incorrect procedures in the promotion of the App. (...)

Having detected, therefore, the possible unsuitability of the measures undertaken for purposes of compliance, and having encountered the *prima facie* possibility that the described behaviors constitute a form of non-compliance, with ruling no. 23634 of 26th June 2012, the Authority challenged *Apple Sales International*, *Apple Italia S.r.l* and *Apple Retail Italia S.r.l.* the violation of art. 27, paragraph 12 of the Consumer Code for having failed to comply with ruling no. 23155 of 21st December 2011.

This ruling was notified to ARI and ASI on the date of 25th June 2012 and to ASI on 10th July 2012.

(...)

II. THE ARGUMENTS OF THE PARTIES

(...)

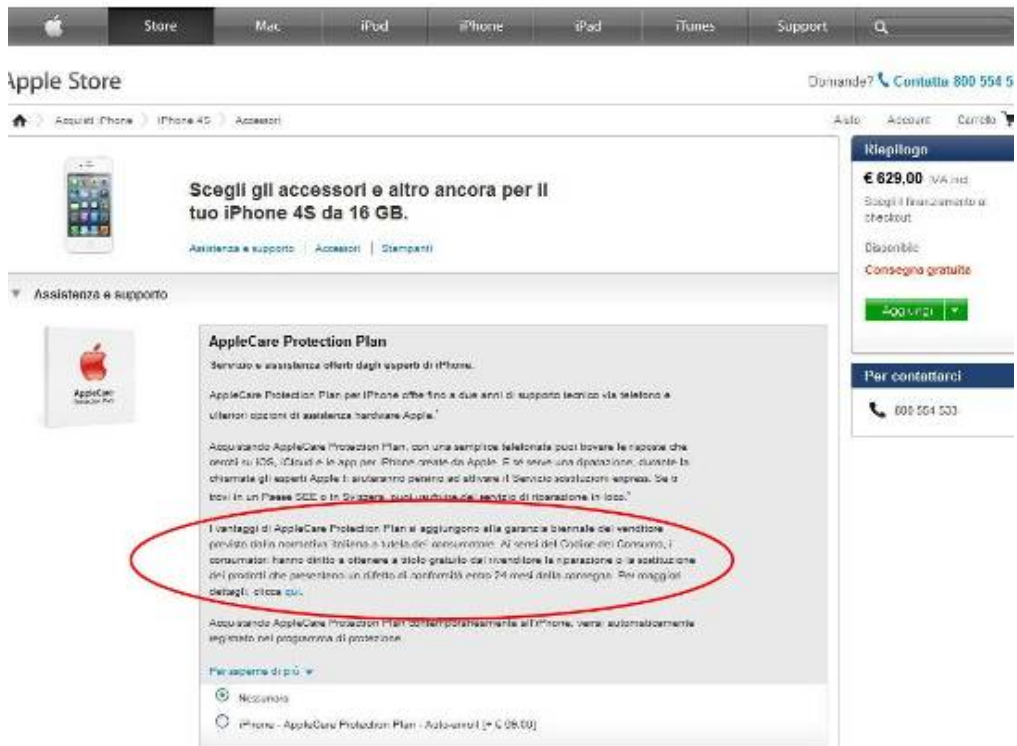
The new measures proposed by Apple

(...) With the communications of 12th October 2012 and 09th November 2012, the traders, citing the various indications provided during the course of the hearing, communicated that they had undertaken the following additional specific measures, which were already in implementation as of 10th November and 30th November 2012.

1) Modification of the Apple Online Store ("AOS") pages that ask customers to purchase the AppleCare Protection Plan ("APP")

Apple furnished basic information about the vendor's legal guarantee by adding the following text to the AOS pages that are used to ask customers whether they intend to purchase the APP product: “*The benefits of the AppleCare Protection Plan are supplemental to the rights of consumers pursuant the vendor's two-year legal guarantee as prescribed by Italian law. Pursuant to the Consumer Code, consumers enjoy the right to resort to the vendor for free repairs or product replacement when a patent defect is identified within 24 months of delivery*”, with a link to the information page for the guarantee. This reference was also added to the APP pages that are used to ask customers whether they intend to proceed to purchase the APP service as an accessory to an Apple product.

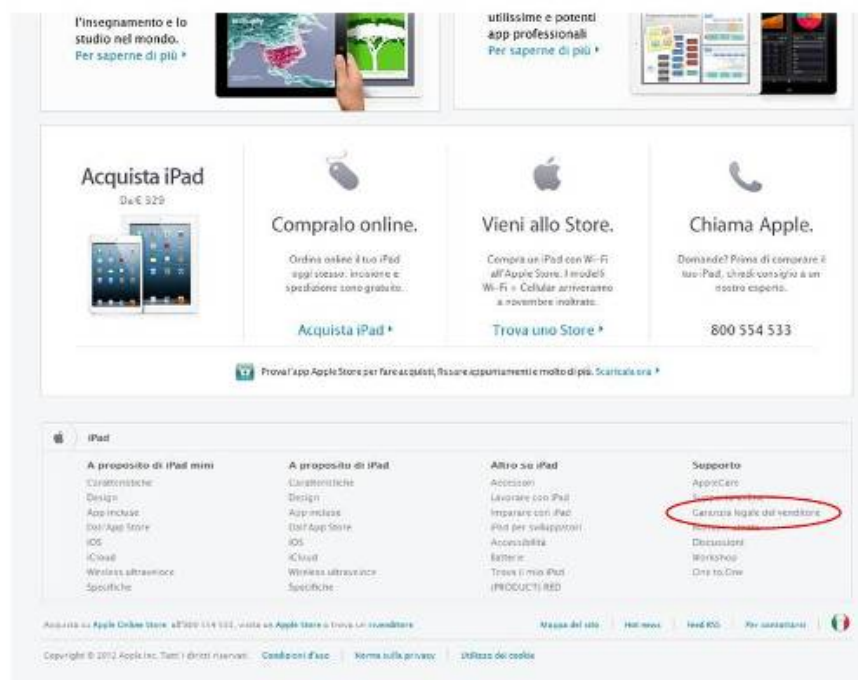
Page 1: sample of the internet page including the reported text.



2) Modification of the pages containing descriptions of each product (in specific, the iPad, iPod and Mac Book products)

Apple added a text in the Support section of the description pages of the iPad, iPod and Mac Book, entitled “*Vendor's Legal Guarantee*”, along with a link to the page with a document explaining the vendor's legal guarantee (see *infra* measure no. 4).

Page 2: internet page <http://www.apple.com/it/ipad/>



3) Modification of the AOS "Support" page

Apple added a reference to the vendor's legal guarantee, along with a *link* to the information page, to the AOS page entitled "*Contact Apple Support*".

Page 3: AOS internet support page: <http://www.apple.com/it/support/contact/>



4) Modification of the name, formulation and content of the information page for the vendor's legal guarantee

Apple communicated its intent to improve the content of the information page for the vendor's legal guarantee. The specific modifications consisted of:

- changing the name of the document and the *link* used to access the information page from "*additional warranty italy*" to "*vendor's legal guarantee*";
- removing any and all references to "*defects existing at the time of delivery*" and any "*burdens of proof*" from the description of the vendor's legal guarantee and the procedures for exercising the rights pursuant to the legal guarantee;
- removing the table of comparison (see image no. 1);
- adding an "*Explanatory Note*" – readily perceptible by consumers - regarding the procedures for requesting remedies pursuant to the vendor's legal guarantee before the section containing the text of relevant articles of the Consumer Code (128 - 135);
- adding and providing a toll-free number for consumers who are looking for information on how to request and obtain the remedies pursuant to the vendor's legal guarantee.

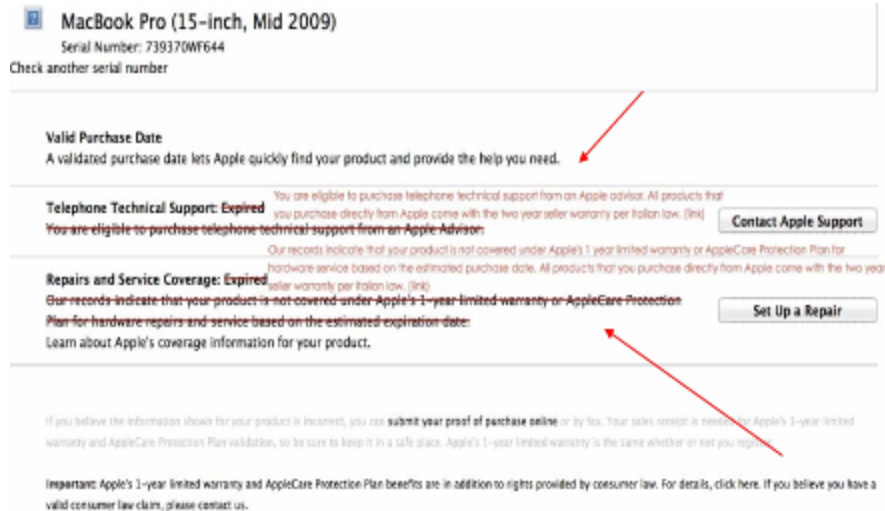
5) Modification of the "Terms and Conditions of Sale"

Apple changed the title of articles 10 and 10.1 of the AOS "*Terms and Conditions of Sale*" and the text to make the legal guarantee more prominent.

6) Modification of the "Verify support and assistance coverage" section inside the AOS

Apple modified the "Verify support and assistance coverage" section by adding a special section on the legal guarantee and a hypertext *link* connecting to the information note on the vendor's legal guarantee, as revealed in the following *screenshot*:

Page 4:



7) Adoption of new handling procedures

Apple implemented a new procedural measure that was intended to strengthen the performance of the two-year vendor's legal guarantee and entitled the "*Standard Operational Procedure: Handling Calls about Consumer law Claims in Italy*". (...)

8) Modification of all of the AOS pages that describe the APP product offer

To clarify, from a consumer point of view, the additional content of the services offered by the APP product as compared to the benefits of the legal guarantee, Apple modified the following pages of the AOS:

- the current descriptive pages for the APP in order to clarify which of the additional benefits are attributable exclusively to the APP service as opposed to inherent consumer rights pursuant to the vendor's two-year legal guarantee, such as "*telephone assistance by experts and additional hardware assistance*";
- the pages describing the APP's benefits now contain a direct reference to the two-year legal guarantee within the text of the page itself instead of inside a note;
- the bar graphs on the descriptive page for the APP have been removed.

Page 5: sample of internet page containing the APP information changes



Page 6: <http://store.apple.com/it/product/MD013T/A/applecare-protection-plan-per-macbook-pro#overview>



9) Revision of the FAQ section of the AOS

Apple made certain changes to the FAQ section in order to minimize any confusion concerning the performance of the legal guarantee and the effective content of the supplemental APP service.

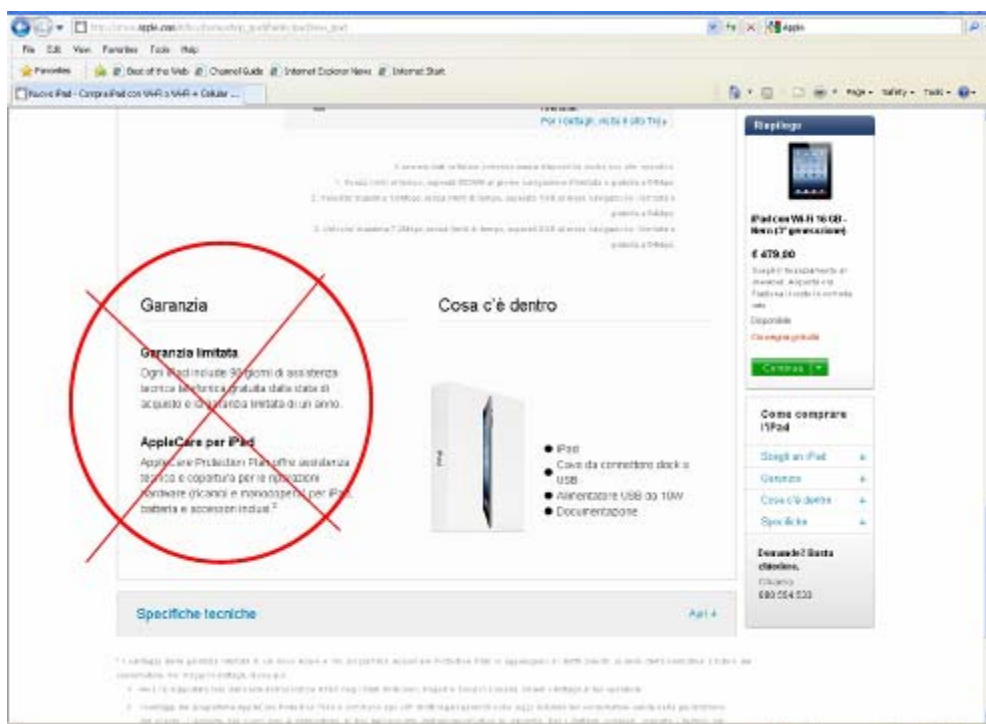
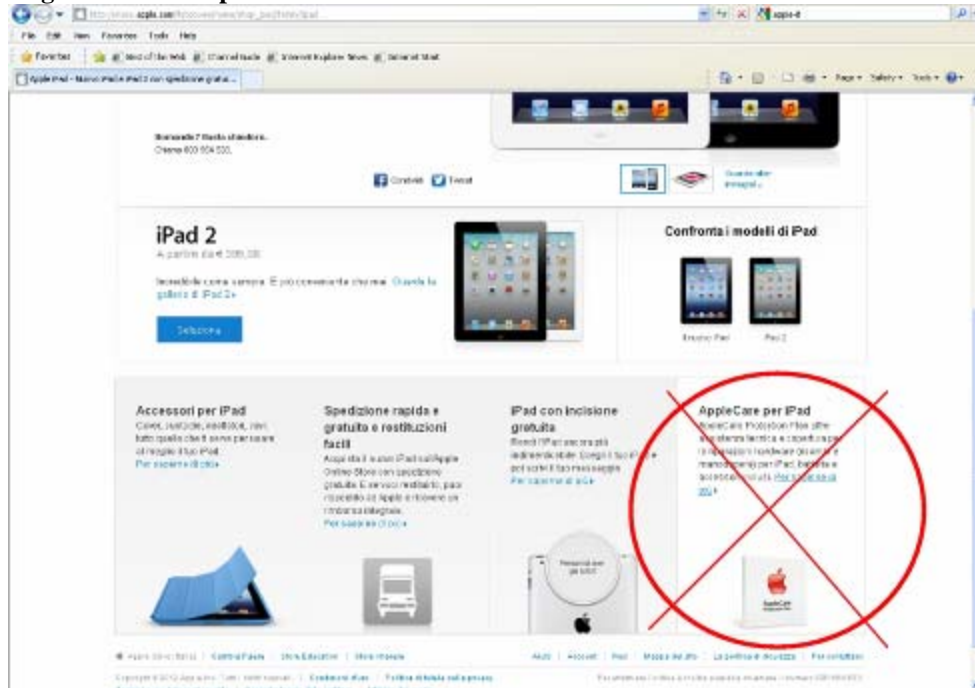
10) Modifications to all of the graphic spaces that are used to describe the standard one-year guarantee

Apple added a reference to the vendor's two-year legal guarantee and a *link* to the information page about the legal guarantee to all of the AOS pages that contain a description of the standard one-year guarantee.

11) Modification of the AOS pages that present a combined promotion of the AppleCare Protection Plan and the standard one-year guarantee

To minimize possible confusion, the graphic space that presents a combined promotion of the APP product and Apple's standard one-year guarantee was removed from AOS pages.

Pages 7 and 8 samples of the modified screenshots



12) Measures related to stores

Actions were also undertaken by Apple to implement four measures that bear on the disclosure of information to consumers in regard to the legal guarantee and its application. The traders applied the following specific measures:

- the text displayed on *SmartSigns* in the Apples Stores and used to convey information on the products for sale will be adjusted in accordance with the measures described above with respect to the changes in the AOS pages. The legal note about the vendor's legal guarantee that is displayed on the iPads used to provide consumers with information on the products exhibited at the Stores will also be modified in a similar way to the AOS pages;
- revision of the acrylic folder displayed at the *Genius Bar* area (the area open to the public where operators provide customer assistance) to present a new explanatory note in line with the description found in the new Explanatory Note on the information page of the AOS about the legal guarantee. In addition, the computers on display in the Apple Stores will continue to be set up so that the internet *browsers* include an easily accessible “bookmark” that links to a web page containing a disclosure (known as the “*Consumer guide to the legal guarantee*”), which can be printed out by the staff and made available at the request of the consumers;
- the text presented on the back of receipts issued at Apple Retail Stores in Italy shall be harmonized with the standard determined for the AOS measures, in other words, by eliminating any and all references to the fact that the defect needs to exist at the time of delivery.

13) Additional measures related to the Apple Protection Plan service offer

As of 10th November 2012, Apple halted all sales of the APP products at Apple Retail stores and traditional retail channels, i.e., distributors, retailers and AASPs. At present, therefore, the APP products are only being sold to consumers through the AOS.

Every authorized distributor and retailer who purchased APP products directly from Apple will be offered the possibility, within 30 days of being notified of the cessation of sales through such channels, to return any APP products they have in stock. The purchase costs sustained by distributors/retailers for each unit of APP product that is returned in good condition will therefore be reimbursed.

The professionals also modified the APP service packaging, which now presents only the name of the product, i.e., *AppleCare Protection Plan*, without any additional indications or comparisons.

14) Third-party retailers and distributors and the legal guarantee

Apple will issue a communication to its own authorized retailers in order to (i) reemphasize that in order to preserve the *status* of “*Authorized Apple Retailer*”, they must refrain from engaging in unlawful practices or unfair commercial practices, and that respecting the contractual conditions that regulate the relationship between the parties entails, *inter alia*, that the retailers respect consumer rights in regard to the vendor's legal guarantee pursuant to the Consumer Code; (ii) recommend that authorized retailers advise consumers of these rights by posting an illustrative poster inside the sales point in an easily visible and readable form. (...)

III. ASSESSMENTS

In light of the findings of the investigatory proceedings, it has been determined that the conduct engaged in by ASI, AI and ARI up until 10th November (the implementation date for the new measures described above) constitutes non-compliance with resolution no. 23155 of 21st December 2011, as modified by resolution no. 23193 of 11th January 2012 in regard to the conduct concerning the methods used to present information as well the performance of the legal guarantee and in regard to the second practice that was sanctioned, i.e. the misleading presentation mode of the commercial offers for the additional services known as the *AppleCare Protection Plan*. (...)

The assessment of the non-compliance of these two conducts is in reference to Apple's behavior during the period of 28th March (the final deadline for complying with the warning) - 10th November 2012 (the implementation date for the new measures described above).

a.1) Disclosure to consumers and performance of the legal guarantee

(...) The examination of the measures undertaken for purposes of compliance and the analysis of the web pages in use at the time when proceeding IP 151 was initiated revealed that the information presented to consumers (up until 10th November 2012) on the www.apple.it internet website was strongly biased towards the manufacturer's guarantee and the offer of payment-based APP services, while relegating to a secondary level of significance (through a link to an information note and the understated inclusion of short notes characterized by graphic minimalism or located in peripheral positions in relation to the remainder of the document) the possibility of resorting to the remedies prescribed by arts. 128 et seq. of the Consumer Code. (...)

In this regard, it was found that the table of comparison itself (see image no. 1) did not appear to reflect the purpose and the scope of the document, i.e. to make the existence and content of the legal guarantee apparent to consumers, given how the comparison between the legal guarantee, Apple's one-year guarantee and the payment-based APP services presented an unintelligible and imprecise depiction of the remedies available to consumers. The text refers to a situation, for instance, in which a consumer who sought to apply the guarantee pursuant to the Consumer Code was directed to the Authorized Apple Assistance Center in order ***“to ascertain the existence of the defect at the time of delivery”*** and not to ascertain whether the defect in question might qualify as a lack of conformity, thus confirming Apple's incorrect and limited interpretation of the legal rules, which in fact protect the enjoyment of the consumer good for two years after the purchase, with the obvious and sole exclusion being damage caused by improper use of the good itself. In the context of the same schema, the distinction between defects that are apparent ***“upon delivery”*** and those ***“after delivery”***, together with the notion of applying different sets of remedies (legal guarantee, standard guarantee, APP), translated into an overall set of information that fails to conform to the substance of the injunction contained in the main proceeding.

In addition, the table propagated the erroneous implication that the legal guarantee applies to a specific, limited type of defect, i.e., ***“defects present at the time of delivery”***, as opposed to the defects covered by Apple's one-year guarantee and by the payment-based APP services, defined as ***“defects occurring after delivery”***. This distinction, together with the absence of any clarification regarding the supposed difference between the two situations, was still likely to mislead the average consumer by implying that the validity of the legal guarantee was of limited impact and relevance, when in reality the defects it

protected were almost exactly the same as the ones covered by Apple's one-year guarantee and the payment-based APP services. In specific, the table that compared the differences between the legal guarantee and Apple's one-year guarantee and the offer of payment-based APP services, by failing to clarify how the vendor's guarantee covers defects that arise “*within two years of the delivery of the good*”, was substantively misleading because it magnified the element of confusion, thereby fostering the belief that any defects that arise subsequent to delivery were only covered by Apple's one-year guarantee and the payment-based APP services. The main document that discloses information to the consumers regarding the content of the legal guarantee and the procedures for requesting its application was, therefore, once again used to emphasize the supposedly greater benefits of Apple's standard one-year guarantee and the payment-based APP services by means of an improper comparison between these services and the due performance of the legal guarantee, which is instead a consumer right *ex lege* and is performed for free, with no limitation for any defect.

Also in regard to the comparative table, it was detected that the limitation of the defects covered by the legal guarantee to those “**present at the time of delivery**” was further promoted through the repeated mention (in other documents as well) of the presumption of defects that arise within the first six months after delivery. Lastly, the document exhibits the same significant omissions that were ascertained in the proceedings with respect to the concrete methods used to apply the guarantee (who to contact, included options for assistance, coverage abroad). The effect of these omissions was also to go against the rights of consumers, from their perspective, deriving from the comparison of the legal guarantee with the other types of services.

a.2) The procedures

The compliance report did not provide any clear indications about instructions, operating procedures and communications to consumers of the *call center*, the retailers and the entire assistance network that were liable to ensure (with no room for ambiguity) that every product sold by Apple is effectively guaranteed to receive free assistance for a full two years after the date of purchase. (...)

b) Disclosures to consumers about payment-based APP services

The measures undertaken by Apple with respect to the presentation of APP services were insufficient to furnish adequate, non-confusing information that would avoid misleading consumers concerning the additional content of the payment-based APP services that are promoted at the time of purchase of the Apple product and upon the expiration of the first year of the standard guarantee.

In specific, the repeated diffusion of information about the APP services through the presentation of the product with the manufacturer's guarantee only, so as to highlight the offer's appetibility, in no way clarified the nature of the content being added by the payment-based services as compared to the rights derived from the legal guarantee, thereby in essence re-proposing the profiles of incorrectness that had already been censured in the previous proceedings.

In the entire communication, in fact, the disclosures maintained the original configuration, which combined the payment-based assistance service with the manufacturer's guarantee by representing it as a logical *continuum*. In the pages describing the APP services, the professionals maintained the graph depicting two horizontal bars - one for the technical assistance service and the other for the telephone

support service - comparing Apple's free assistance to the payment-based APP services (see image no. 2) only. The right to the legal guarantee, alternatively, was indicated in a supplementary, indirect manner in the form of a brief note that was added in at the edge of the graph, containing the usual reference to the cited document that describes the legal guarantee and within which, as noted above, implied a distinction between the defects covered by the legal guarantee and the ones covered by Apple. (...)

Consumers, therefore, at the moment when they are deciding whether or not to purchase the additional payment-based assistance services, were not provided with sufficient information to make them aware of the actual significance and supplementary nature of the payment-based APP services as compared to the performances ensured by the legal guarantee. (...)

c) Conclusions

In light of the above considerations, it was determined that Apple's behavior during the period of 28th March 2012 - 10th November 2012 constitutes non-compliance with resolution no. 23155 of 21st December 2011, as modified by resolution no. 23193 of 11th January 2012.

d) New measures

Other considerations instead need to focus on the traders' behavior as reflected in their adoption of the new measures described (...). A precise assessment of the measures that were presented shall then be made, therefore, in order to determine the likelihood of compliance with the warnings of the inhibitory ruling resulting from proceeding PS7256.

i) Disclosure and performance of the legal guarantee and new procedures

Thanks to the measures adopted on 10th November 2012, the disclosures now being supplied to customers regarding the legal guarantee are clear and unambiguous and, in large part, more prevalent in comparison to the information provided for the standard guarantee and supplemental APP services. In the individual pages for each product, most importantly the *iPhone*, *Ipad*, *Mac* and *Ipad*, the reference to the vendor's legal guarantee through a *link* to an information page presenting consumer rights appears, in fact, to close the previous information gap.

The notice regarding the existence of the legal guarantee in the “*Support*” page of the “AOS” also appears to be well suited to supply the correct disclosure. This particular section of the site in fact represents the main page used by consumers when they need to contact the trader for problems related to Apple products. This allows consumers to learn contextually of the procedures to be used for contacting Apple and the legal coverage of its products from lack of conformity.

Likewise, the changes made to the “*Information Note on the legal guarantee*”, which is the fulcrum for Apple's disclosure of the legal coverage for lack of conformity, at the center of a series of links, are designed to provide a full and substantively clear picture of the rights of consumers with a much different impact than before. In specific, the table of comparison between the legal guarantee, the one-year manufacturer's guarantee and the payment-based APP services was eliminated from the cited document, and any and all indications referring to the possibility of using the legal guarantee only for “*defects present at the time of delivery*” were removed in order to eradicate the element of confusion regarding the coverage ensured by the legal guarantee and the supposedly greater benefits of Apple's standard one-year guarantee and the payment-based APP

services.

The new formulation of art. 10 (measure no. 6) now also appears to be clear and correct. A reading of the clause instantly reveals the rights attributed to consumers and the supplemental nature of the APP and of the standard guarantee.

To ensure even greater transparency and a comprehensive transformation of the methods used to inform consumers of the legal guarantee, the assessment is hereby favorable for the stated intention to incorporate, within the personal “*Verify assistance and support coverage*” section, which is accessed by entering the IMEI code telephone and/or device, a specific alert regarding the options for resorting to the remedies of the legal guarantee within two years of purchase in the case of lack of conformity. This particular section, even though it is a simple verification page, provides users with a full overview of the guarantees that are still in effect as of the time when it is consulted.

Lastly, clear indications were provided for the instructions, operating procedures and contacts with the *call center*, the retailers and the entire assistance network in a way that ensures that the applicability of free assistance for the entire duration of the first two years after the time of purchase is now effectively assured for all the products sold by Apple. [omissis]

ii) Disclosures to consumers about the payment-based APP services

The indication on the APP page of the existence of the legal guarantee, with suitable graphic prominence, allows consumers to clearly perceive that the service being offered for purchase is supplemental to the provisions of the Consumer Code. Furthermore, through the addition of an alert to the page and a hypertext link to the information note, prospective buyers now have a set of information at their disposal that enables them to understand that the product may be repaired and/or replaced at no cost in case of lack of conformity.

The changes that were made have adequately clarified the content added by the APP services as distinguished from the rights derived from the legal guarantee and, most importantly, they split up the original combination of the standard manufacturer's warranty and the APP services. In specific, the elimination of the site's continuous references to the APP services, the removal of the bar graph, the reformulation of the FAQs and the reference to the legal guarantee in the product-oriented section, via a *link* to the cited information note, avoid the confusing profiles that were present before.

Lastly, the decision to cease the sale of APP products at Apple Retail, distributors, retailers and AASPs and the revision of the product packaging by eliminating the previously-contested references should be understood as measures that eliminate, *in nuce*, the repetition of the contested conduct.

In conclusion, it has been determined that the changes made by Apple to its internet website, to the packaging and even the various distribution modes, provide consumers with a set of information that is sufficient to enable them to understand the actual import and supplemental nature of the payment-based APP services in comparison to the performances ensured by the legal guarantee.

QUANTIFICATION OF THE SANCTIONS

(...)

Now therefore and having considered;

HEREBY RESOLVES

a) that the behavior of Apple Sales International, Apple Italia S.r.l. and Apple Retail Italia S.r.l., consisting in the violation of resolution no. 23155 of 21st December 2011², constitutes non-compliance with said resolution, in reference to the profiles of incorrectness for the practices described in points 2 sub a) and 2 sub b), above;

c) in reference to the practice described in 2 sub a), above, to impose upon:

- » Apple Sales International a pecuniary administrative fine of 60,000 €euro;
- » Apple Italia S.r.l. a pecuniary administrative fine of 20,000 €euro;
- » Apple Retail Italia S.r.l. a pecuniary administrative fine of 20,000 €euro.

c) in reference to the practice described in 2 sub b), above, to impose upon:

- » Apple Sales International a pecuniary administrative fine of 60,000 €euro;
- » Apple Italia S.r.l. a pecuniary administrative fine of 20,000 €euro;
- » Apple Retail Italia S.r.l. a pecuniary administrative fine of 20,000 €euro.

(...)

² Modified by the subsequent ruling no. 23193 of 11th January 2012.