



ASIAN
LAW CAUCUS



MEMBER OF
ASIAN AMERICAN CENTER
FOR ADVANCING JUSTICE



June 25, 2012

Mr. Tim Cook, CEO
Apple, Inc.
1 Infinite Loop
Cupertino, CA 95014

Dear Mr. Cook:

On behalf of the Iranian-American community and the civil liberties, civic, and community based organizations named below, we write to you regarding the alleged incidents that reportedly occurred at Apple, Inc. (“Apple”) retail branches on at least two recent occasions in suburban Atlanta, Georgia.

As you are no doubt aware, Apple sales associates in the abovementioned retail locations allegedly refused to sell Apple products to customers, at least in part because they were speaking in the Farsi/Persian language. In at least one of the alleged Atlanta based incidents, the Apple retail clerk cited to an Apple policy regarding current U.S. embargoes. If the Apple clerk’s decision to prohibit sales to the individual was based solely on that individual speaking in the Farsi/Persian language, Apple may have violated federal civil rights laws. Through this letter, we would like to bring to your attention the practical nationwide application of Apple’s policies reflecting U.S. embargo laws with the expectation of minimizing any future incidents involving misinterpretation of U.S. law and/or potential discriminatory practices by Apple employees.

We understand that Apple’s official company policy at issue in the abovementioned incidents is almost verbatim taken from the Iranian Transaction Regulations (“ITR”), specifically 31 C.F.R. § 560.204, and is in line with U.S. economic sanctions targeting Iran. However, at issue here is the correct application of that policy by Apple’s employees. In practice, the ITR prohibits the transactions that are cited to in § 560.204, as your policy reflects. A misapplication of the ITR, and in turn, Apple’s official company policy regarding U.S. sanctions law, may have the potential

to lead to discrimination against U.S. persons for the simple reason that they are descendants of a sanctioned country.

It is in fact true that when a U.S. entity exports, sells, or supplies U.S. goods knowing or having reason to know that the goods will eventually be exported to Iran a violation of the ITR occurs and liability is incurred by the U.S. entity engaged in such activity. However, prohibiting the sale of U.S. goods to “U.S. persons” at a U.S. retail store is hardly what the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) intended when the ITR was promulgated.

If the Apple employees’ conduct was based upon the mere fact that the individuals mentioned above were speaking the Farsi/Persian language and Apple’s policy is to deny sales to customers merely based on a foreign language being spoken, this would be at best a gross misinterpretation of the sanctions targeting Iran and a violation of federal law at worst. Assuming *arguendo* that the Atlanta-based sales clerks’ misapplication of the law is in fact Apple’s policy, this would lead to the ludicrous outcome that anyone speaking Spanish or Korean would also be prohibited from purchasing Apple products based on the fact that the Apple policy also mentions Cuba and North Korea among the embargoed nations.

It is a bedrock principle of U.S. civil rights law applicable to businesses that operate in the United States that no person should be discriminated against on the basis of ethnicity, national origin, or religion. 42 U.S.C. § 1981-82 protects people “from discrimination on account of race, color, religion or national origin, including, in general, discrimination by private entities or persons.” *Harris v. Norfolk & W. Ry. Co.*, 616 F.2d 377, 378 (8th Cir. 1980) (citing US Supreme Court cases). Section 1981 of the Civil Rights Act prohibits discrimination in the making and enforcing of contracts with both public and private actors. 42 U.S.C. § 1981. The statute’s protection extends to “making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.” 42 U.S.C. § 1981(b). Section 1981 expressly equalizes the right of all citizens to make and enforce contracts. *Faraca v. Clements*, 506 F.2d 956, 958 (5th Cir. 1975), certiorari denied by 422 U.S. 1006 (1975). In retail contexts, 42 U.S.C. § 1981 prohibits discrimination when it leads to the loss of an individual’s “actual ... contract interest.” *Kinnon v. Arcoub, Gopman & Associates, Inc.*, 490 F.3d 886, 892 (11th Cir. 2007).

Section 1982 of the Civil Rights Act further upholds equal property rights for every citizen: “All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.” 42 U.S.C. § 1982. Section 1982 has also traditionally be construed in a fashion similar to 42 U.S.C. § 1981. *Clark v. Universal Builders, Inc.*, 409 F. Supp. 1274, 1278 (N.D. Ill. 1976) (citing US Supreme Court and appellate court cases). In order to “effectuate the remedial purposes of the statute,” the United States Supreme Court “has broadly construed this language to protect not merely the enforceability of property interests acquired by black citizens but also their right to acquire and use property on an equal basis with white citizens.” *City of Memphis v. Greene*, 451 U.S. 100, 120 (1981). The Court has held that “a narrow construction of the language of 42 U.S.C. § 1982 would be quite inconsistent with the broad and sweeping nature of the protection meant to be afforded” by the Civil Rights Act of 1866. *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 237 (1969).

The fact that the customers may have been prohibited from purchasing Apple products merely because of the language they were speaking, without any further inquiry about where the

products were destined, is prima facie evidence of discrimination based on ethnicity or national origin. Such discrimination against U.S. persons of Iranian descent, albeit a misunderstanding of the law, is an unacceptable practice and exceeds the prohibitions contemplated by the ITR. Training your employees on the proper meaning and application of the ITR and other U.S. embargoes is vital in order to prevent the type of behavior that allegedly occurred in Georgia.

Of additional concern is the inconsistent manner in which Apple is attempting to enforce the embargo law. Is Apple asking all customers about the ultimate destination of its products? Is Apple relying on customers volunteering that information? Is Apple's policy that customers may purchase whatever items they like as long as they do not mention or imply the destination of the items? That is, is Apple training its retail employees to enforce a policy that inherently requires its employees to determine the nationality of a client in a manner that violates federal civil rights laws? To ensure consistency in enforcement, we ask that Apple adopt standardized practices that would apply to every customer at the time of purchase. This uniformity would ensure Apple's compliance with the law and protect both Apple and its consumers from being involved in claims of discrimination.

As you may have seen reported by various news outlets, social media sites, and elsewhere, this matter is of grave concern to many of Apple's enthusiastic consumers. We expect that Apple, a worldwide brand with global reach, would not purposefully condone a culture of prejudice, discrimination, and bias against any consumer, particularly based solely on that consumer speaking in a foreign language. We therefore ask that you take the necessary steps to properly investigate the incidents reported and train your entire sales staff about the proper application of Apple's export compliance policy. We also ask that you issue a formal apology to any customers who may have been harmed by the application of your current policy referenced above for the harm caused to them by any Apple employees. Lastly, we ask that you provide a copy to us and further publicize your non-discrimination in sales policy.

Thank you in advance for your consideration of these concerns. We expect that you will provide a response within seven (7) days of the receipt of this letter and inform us of the actions you intend to take to rectify the situation. If you wish to discuss this matter further, you may contact us at info@iaba.us.

Sincerely,

Iranian American Bar Association
American Civil Liberties Union Foundation of Georgia
Asian Law Caucus
Council on American-Islamic Relations
National Iranian American Council
PARS Equality Center
Public Affairs Alliance of Iranian Americans

cc: Bruce Sewell, Esq. General Counsel, Apple, Inc.
Department of Justice Civil Rights Division