

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

STATE OF FLORIDA,
OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

v.

Case No. _____

ARBITRON, INC.,

Defendant.

_____ /

COMPLAINT

Plaintiff, State of Florida, Office of the Attorney General, Department of Legal Affairs (the “Attorney General”), sues Defendant, Arbitron, Inc. (“Arbitron”), and alleges as follows:

I. JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction pursuant to § 26.012, Fla. Stat., because the action seeks declaratory, injunctive, and other relief to prevent Arbitron from releasing flawed radio station ratings that significantly undercount minority listeners. The flawed ratings would threaten the viability of radio stations in the Miami area and elsewhere in Florida that air programming targeted to minorities because those stations will be unable to fairly compete for advertising sales.

2. The Court has personal jurisdiction over Defendant pursuant to § 48.193(2), Fla. Stat., because Arbitron is engaged in substantial and not isolated activity within Florida.

3. Venue is proper pursuant to § 47.051, Fla. Stat., because the cause of action accrued in Miami-Dade County.

II. THE PARTIES

4. The Attorney General is the chief legal officer of the State of Florida and the enforcing authority for Chapter 501, Part II, Florida Statutes (2008).

5. Arbitron is a Delaware corporation with its principal place of business in Columbia, Maryland. Arbitron is in the business of conducting audience measurement services for radio stations, including radio stations located throughout Florida. Arbitron sells data collected through its proprietary audience measurement services for radio stations to broadcasters and advertisers throughout Florida.

III. BACKGROUND

6. Arbitron intends to release ratings of radio stations in Florida markets, beginning with the Miami area market on or before July 16, 2009, based on a flawed methodology for data collection and sampling. This flawed methodology systematically undercounts African American, Hispanic, and other minority listeners and would dramatically reduce the ratings of numerous radio stations with large minority audiences in the Miami area and elsewhere in Florida, jeopardizing their existence. For example, ratings for minority broadcasters¹ in the New York radio market have fallen 40-60% since October 2008, with a precipitous drop in revenue since broadcasting revenue is directly related to ratings.

7. Arbitron is the monopoly provider of an essential service. As a result, Arbitron's customers have little control over its practices. Advertisers in Florida and elsewhere rely heavily on Arbitron ratings to decide which stations to buy "airtime" from and at what price. In turn, radio stations in Florida and elsewhere depend on those advertising sales as their primary revenue source, making the reliability of Arbitron's ratings crucial to each station's existence.

¹ Minority broadcasters are broadcast companies that target minority audiences. Some minority broadcasters are not minority-owned.

Advertisers will not pay the same rates to reach what appears to be a smaller audience; alternatively, advertisers may choose not to advertise at all on lower-rated radio stations.

8. In conducting its ratings services, Arbitron recruits a sample “panel” of individuals intended to be representative of the demographics, such as age, race, and ethnicity, of the market being measured. Arbitron collects data regarding the radio stations that panelists listen to and converts this data into "ratings" and market share for radio stations in the market. As a general matter, ratings are meant to reflect the number of listeners for a given radio station.

9. Arbitron distributes many radio audience measurement products, but it has indicated that only "currency" ratings may be relied upon to set the rates that broadcasters are paid for the advertising on their radio stations. Generally speaking, the higher a station's Arbitron currency rating, the higher the rate it may charge for advertising on the station's programs.

10. Arbitron has produced “pre-currency” ratings in the Miami area market based on the new methodology that show significant decreases for several minority broadcasters, especially given the fact that certain minority broadcasters are not subscribing to this methodology and are thus excluded from the ratings. Advertising agencies have already begun contacting numerous minority broadcasters in the Miami market seeking to negotiate a 30-50 % discount in their rates in anticipation of the currency ratings under Arbitron's new methodology.

11. Arbitron is the sole source of currency ratings for each of the top fifty (50) radio markets nationwide, with the Miami area market being the twelfth (12th) largest market and the Tampa area market being the eighteenth (18th) largest market. The Orlando and Jacksonville area markets are also in the top fifty (50) markets nationwide.

12. The Media Rating Council (“MRC”) is a non-profit entity formed at the behest of Congress in the early 1960's with the mission of securing valid, reliable, and effective audience

measurement services. MRC is made up of the broadcasters and advertisers who use the audience measurement ratings. Providers of audience measurement services, such as Arbitron, are not permitted to be members of MRC.

13. MRC has established, and updates, its Minimum Standards for Media Rating Research ("Minimum Standards"), which set forth the requirements that audience measurement services must meet to obtain and maintain "accreditation" in a given market. MRC relies on audits by an independent Certified Public Accountant firm and other information to determine whether rating services are conducted in conformance with the Minimum Standards.

14. The Minimum Standards ensure the quality and integrity of the entire process by which ratings are produced in a given market by setting benchmarks of audience measurement methodology and survey performance. The Minimum Standards in part relate to: sample source; selection method; respondents by demographic group versus population; response rates; and the existence of special survey treatment for minority groups that are difficult to recruit, such as young or ethnic persons. Providers of measurement services, such as Arbitron, disclose detailed information about their measurement service's methodology in order to attain and maintain MRC accreditation in a given market.

15. Arbitron has traditionally conducted its radio data collection in the Miami market and elsewhere in Florida through the use of paper diaries, a system accredited by MRC. Under this system, paper diaries are distributed to a sample panel; each panelist completes a weekly diary of radio stations listened to and then mails the diary to Arbitron for tabulation.

16. For more than a decade, Arbitron has conducted research to replace the paper diary system with a more passive, electronic measurement system. It has been testing an electronic Portable People Meter ("PPM") in the Miami and Tampa area markets and

elsewhere. The PPM is an electronic tracking device (slightly larger than an old-style pager) that panelists are supposed to carry with them throughout the day – generally clipped to a belt - which records signals from the radio stations that they encounter. At the end of each listening day, the panelists are required to place their PPM devices into a docking station that transmits the recorded data to Arbitron for tabulation. Arbitron compiles PPM data on a weekly basis and then releases ratings reports based on a four (4) week average approximately two (2) weeks after the close of each month.

17. Arbitron first used the PPM service in the Houston area market. In Houston, Arbitron utilized an in-person, address-based system where potential panelists were selected based on their address, with Arbitron representatives knocking on their doors in order to recruit them as panelists.² MRC has accredited the Houston PPM system for currency ratings.

18. Arbitron next introduced the PPM service in the Philadelphia area market, but did not use the in-person, address-based system of panel recruitment. In order to cut costs, Arbitron changed its methodology to instead utilize a telephone-based system of recruitment, which primarily relies on reaching out to potential panelists with landline telephones. However, a landline telephone book-based sampling ignores one-third of a market's listening audience. MRC has denied accreditation for the Philadelphia area market.

19. In its rush to deploy a lucrative new product, Arbitron has apparently determined that accurately measuring minority radio audiences is too expensive. The flaws in Arbitron's PPM service, however, are not technological. No matter how sophisticated the technology, the audience estimates it produces will be misleading if Arbitron does not recruit, train, and retain a sample panel that is reflective of the diversity in a particular radio market and if those in the

² In-person recruitment and coaching has proven especially effective at convincing certain reluctant minority group households to participate as panelists.

sample panel do not faithfully and properly use their PPM devices. If Arbitron wishes to use PPM, it must invest the money and resources necessary to ensure reliable data and gain MRC accreditation.

20. MRC has reviewed and denied accreditation for Arbitron's PPM service in several other markets, especially those markets with diverse populations. Arbitron's PPM service is accredited in only two (2) of the fifteen (15) markets in which PPM is used to determine currency ratings, despite repeated attempts by Arbitron to modify the service to obtain accreditation.³ One of those markets is Houston, with its in-person, address-based system of panel recruitment; the other market is Riverside-San Bernardino, a market that is far smaller and less diverse than Miami's.⁴ Arbitron has not received MRC accreditation for the PPM service in any radio market in the last six (6) months.

21. PPM has repeatedly flunked MRC's accreditation process largely due to the manner in which Arbitron recruits and retains individuals on its panels, particularly individuals who fit into younger age demographics and racial and ethnic minority groups ("Minority Groups"). PPM's sample panels are generally 66 % smaller than the diary panels.

22. Failing the accreditation process, again and again, would give a responsible company pause but Arbitron has exploited its monopoly position to ignore MRC's concerns and deploy its unaccredited service in many of the nation's top radio markets, heedless of the devastating consequences on minority radio stations whose audiences are grossly undercounted.

³ As of June 2009, Arbitron has failed three (3) times in its efforts to obtain accreditation for the New York and Philadelphia area markets.

⁴ Riverside-Bernardino comprises a portion of the greater Los Angeles designated market area.

23. Arbitron's PPM service is deficient in the following ways: panels do not reflect a statistically representative sample of cell-phone-only households,⁵ which a significant and growing number of Minority Group households are, and whose radio listening habits differ from those of landline households; PPMs do not capture listener loyalty, which is high among Minority Groups; even after a panel is selected, a significantly lower number of panelists from Minority Groups are ultimately used to calculate the ratings data or are "in-tab";⁶ many panelists choose not to carry the PPM on the average day or at certain times during the day; high-density Minority Group areas are undersolicited for and underrepresented on panels; and reports do not reflect data concerning panelists' language use (such as whether a household is primarily an English-speaking or Spanish-speaking household) or panelists' country of origin.

24. The flawed methodology of Arbitron's PPM service is reflected by its detrimental effect on the ratings of stations with programming targeted to Minority Groups.

25. Arbitron intends to release currency ratings of stations in the Miami-Ft. Lauderdale-Hollywood market on or before July 16, 2009 based on data obtained from its PPM service. Arbitron intends to release currency ratings of stations in the Tampa-St. Petersburg-Clearwater market based on its PPM service this October. Arbitron classifies both markets as "High-Density Black Area" and "High-Density Hispanic Area." Arbitron intends to release currency ratings of stations in the Orlando and Jacksonville area markets based on its PPM service next year. To date, MRC has not accredited use of the PPM service in any Florida market.

⁵ Cell-phone-only use across the United States was estimated to be 20.2% in December 2008 (and trending upward), but the percentages are significantly higher for Minority Group households. Two (2) studies commissioned by Arbitron raise concerns about the extent of the PPM service's inclusion of cell-phone-only households.

⁶ Presently, Arbitron's PPM service under-samples Minority Groups and then weighs the minority panelists in an attempt to compensate.

26. Arbitron has previously released currency ratings in other markets based on the PPM data and flawed methodology without waiting for MRC accreditation.

27. Releasing currency ratings based on the non-accredited PPM service in the Miami market and elsewhere in Florida will harm the ability of minority broadcasters to fairly compete for advertising revenue and to continue serving their audiences.

28. Arbitron has entered into consent decrees with the Attorneys General of the States of New York, New Jersey, and Maryland concerning its implementation of the PPM system in those states. The consent decrees, however, only apply to radio markets in those states and the PPM service remains conspicuously unaccredited in almost every radio market.

29. Even if all of the provisions of the consent decrees were extended to Florida, such relief would still be inadequate because the provisions are largely aspirational and not dependent upon Arbitron obtaining MRC accreditation prior to implementing the PPM system for currency ratings in a given market.

30. The Federal Communications Commission (“FCC”) has also issued a Notice of Inquiry seeking comments regarding Arbitron’s actions and the PPM service as a result of an investigation by the FCC Advisory Committee on Diversity for Communications in the Digital Age. The U.S. House of Representatives Committee on Oversight and Government Reform has likewise initiated an investigation into Arbitron’s PPM service.

31. In sum, the short cuts and cost-saving measures undertaken by Arbitron have compromised the potential of its PPM service and the currency ratings it plans to release into the marketplace in the Miami area market and elsewhere in Florida— all at the expense and harm to minority broadcasters.

32. Since MRC is the only non-interested third-party with all of the underlying data regarding Arbitron's PPM service, the fact that it has repeatedly withheld accreditation for this service in nearly every radio market is telling.

COUNT I

33. The Attorney General repeats and realleges each and every allegation contained in paragraphs 1-32.

34. This is an action pursuant to Chapter 501, Part II, the Florida Deceptive and Unfair Trade Practices Act. Section 501.204(1) of the Act provides that "unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

35. The Attorney General is an enforcing authority of the Act pursuant to § 501.203(2), Fla. Stat.

36. Pursuant to § 501.207(1)(b), Fla. Stat., the Attorney General is authorized to bring an action to enjoin any person or corporation who has violated, is violating, or is otherwise likely to violate the Act.

37. Pursuant to § 501.2075, Fla. Stat., the Attorney General is authorized to seek a civil penalty against any person or corporation who has willfully used a method, act or practice declared unlawful under § 501.204, Fla. Stat., along with an award of reasonable attorneys' fees and costs.

38. The statutory violations alleged herein affected more than one judicial circuit in the State of Florida.

39. The sale of radio station ratings involves the conduct of trade or commerce as defined in § 501.203(8), Fla. Stat.

40. As set forth in paragraphs 1-32, *supra*, Arbitron has willfully engaged in unconscionable acts or practices and/or willfully committed acts or practices that offend established public policy and are immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers, in violation of § 501.204(1), Fla. Stat.

41. The aforesaid acts and practices of Arbitron were to the injury and prejudice of the public.

Prayer for Relief

WHEREFORE, the Attorney General prays for judgment:

A. Declaring, pursuant to § 501.207(1)(a), Fla. Stat., that Arbitron's use of its PPM service for currency ratings in any radio market in Florida without having received MRC accreditation violates § 501.204(1), Fla. Stat.;

B. Enjoining, pursuant to § 501.207(1)(b), Fla. Stat., Arbitron from using its PPM service for currency ratings in any radio market in Florida without having received MRC accreditation, on a temporary and permanent basis;

C. Imposing a civil penalty on Arbitron of \$10,000.00 for each violation of § 501.204(1), Fla. Stat., and awarding the Attorney General his reasonable attorneys' fees and costs; and,

D. Awarding such other and further relief as the Court deems just and proper, including relief pursuant to § 501.207(3), Fla. Stat.

Respectfully submitted,

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