

Apple shaken by iPod Nano lawsuit

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Demand for iPods seems insatiable, but Apple is beginning to feel the heat of its success these days, not least in the form of lawsuits from some disgruntled customers.

Thousands of iPod users have banded together in a class-action lawsuit to accuse Apple of knowingly selling defective iPods.

Specifically, the company has been charged with shipping out its iPod

Nanos, one of the company's smallest and thinnest models to date, even though it knew that the product was prone to being scratched up easily. Moreover, the plaintiffs argue that the scratches make the product unusable as the screen becomes unreadable.

"This consumer class action arises from Apple's deceptive and unlawful conduct in designing, manufacturing, distributing, and selling defectively designed portable, digital music players," said law firm Hagens Berman Sobol Shapiro of Seattle in filing its suit with the U.S. District Court in San Jose, Calif.

For its part, Apple has made no public comment about the lawsuit except to state that it cannot discuss impending legal disputes. The company has, however, advised its customers to buy cover cases for the MP3 player to prevent scratches.

Since it was launched on Sept. 7, the iPod Nano has been popular among those who want a digital music player but placed more value on a smaller size than download capabilities. The 2 gigabyte Nano only carries 500 songs, compared to some of the bigger players which can download as many as 15,000 tunes.

Apple has insisted, however, that the materials it used for the Nano -- which is about the size of a credit card -- is the same as they used for all other iPods, which have not suffered from the complaints that the Nano has. Yet the plaintiffs' lawyers argued that "in an attempt to drastically reduce the size of the Nano, redesigned the housing of previous iPod models, of which the screen and controls were separate from the casing, into a seamless front where the screen and controls reside under the resin covering the entire device," with the resin in the Nano being too thin to protect it from extreme scratching.

"Although it was clear that the Nano was defective, with fierce

competition in the digital music industry, Apple decided not to delay the release of the defectively designed Nano, but to pass the cost of replacing the defective product along," the legal team at Hagens Berman added.

The lead plaintiff in the case that the firm represents is Jason Tomczak, who reported that having bought the Nano Monday morning, "by Monday night, despite the fact that I had treated it delicately and barely handled it, I noticed tons of fine scratches in the finish. ... I used my Nano maybe three times, kept it in a soft-lined case when it wasn't in use, and by Friday, I noticed more scratches.

"Steve Jobs pulled a Nano out of his pocket when they announced it, implying it is an acceptable way to carry it, but I wouldn't," Tomczak added.

In the end, Tomczak returned the product to Apple and paid a \$25 fee for sending it back.

The plaintiffs are demanding not only being repaid the shipping fee, but also the original cost of the product, which ranges from \$200 to \$250, depending on the size of the memory as well as damages, which remain unspecified.

Of course, this is not the first time Apple has been sued by customers over the iPod, which accounts for at least 75 percent of its total sales. In 2003 the company was hit by plaintiffs who filed a class-action lawsuit regarding its rechargeable batteries that do not charge as well as they claim to. The company settled this year by offering \$50 vouchers that can be used to buy Apple products, and it also extended the iPod's warranty to two years from one.

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