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McLEAN, VA 22101
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OF COUNSEL
MARK P. FRIEDLANDER, JR.

**NOTICE OF VIOLATION OF
CONSUMERS LEGAL REMEDIES ACT**
November 17, 2005

TO: Apple Computer
c/o CT Corporation Systems
818 West 7th Street
Los Angeles, CA 90017

PLEASE TAKE NOTICE that you are in violation of the Consumers Legal Remedies Act (California Civil Code sections 1750 et seq.) for the reasons set forth below.

This notice is served upon you on behalf of Clark Sioson, and the public, through their attorneys, Cotchett, Pitre, Simon & McCarthy and The Foundation for Taxpayer and Consumer Rights.

All communications or responses regarding this Notice shall be directed to Plaintiff's counsel as follows:

Bruce L. Simon
Cotchett, Pitre, Simon & McCarthy
840 Malcolm Rd.
Burlingame, CA 94010

Harvey Rosenfield
Foundation for Taxpayer and Consumer Rights
1750 Ocean Park Blvd. Suite 200
Santa Monica, CA 90405

STATEMENT OF VIOLATIONS

NOTICE OF VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT

1. Apple's recently-introduced portable electronic music player, known as "the Nano," is defective. Normal and reasonable use of the product, including the use advertised by Apple, results in cracks, streaks and severe scratching on the device's screen. These defects render it potentially unreadable and unsightly. Obviously, the product is useless if the purchaser is unable to read the screen because it is cracked or scratched. Scratching alone is an equally fundamental flaw since the device is marketed for its appearance and style. Indeed the Nano's product description on the Apple website (attached as Exhibit A) refers to it as "beautiful" and offered in "signature white or sleek black." Photographs of two defective iPod Nanos are attached as Exhibits B and C. During the September 7, 2005 event where Steve Jobs introduced the Nano, he pulled the device out of the change pocket of his jeans, emphasizing that the product is small, convenient and durable enough to be carried in pockets. A photograph from this press conference is attached as Exhibit D.

3. The cracks, scratches and scuffs obscuring the screen on the Nano became apparent within several days of its introduction. Myriad reports of the defects have appeared in the media and on the Internet including:
 - "Scratches Mar New iPod's Beauty" Wall Street Journal; October 6, 2005
 - "iPod Nano Scratches and Breaks" Mp3.com; September 30, 2005
 - "Apple Confirms iPod Nano Screen Problems" Designtecnica; September 28, 2005
 - "Apple Admits to iPod Nano Faults" BBC News; September 28, 2005
 - "Apple Confirms iPod Nano Screen Problems" Designtecnica; September 28, 2005
 - "Vendor Issue Blamed for Apple Nano Screen Problems" Ars Technica, LLC; September 27, 2005
 - "Mystifying Nano Screen Issue" OreillyNet.com; September 26, 2005
 - "Concerns Mount Over iPod Nano LCD Durability" AppleInsider September 26, 2005
 - "Apple Admits Problems With iPod Nano" Guardian Unlimited; September 26, 2005
 - "Apple's Position on the iPod Nano Displays" Softpedia News

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4. Merely carrying the device in a pocket causes cracks, scratches and scuffs that makes text displayed on the screen illegible. Apple's refusal to cure this problem breaches its one year warranty (attached as Exhibit E) which "warrants the iPod and iSight product against defects in materials and workmanship for a period of one (1) year from the date of original purchase ('Warranty Period')."
5. Apple is aware of the defects in the Nano. According to an AppleInsider.com article published on September 26, 2005 (attached as Exhibit F), Apple "appears to be deleting comments concerning broken iPod Nano LCD screens as they appear. Still, one thread dedicated to the iPod Nano includes nearly 500 posts chronicling the ease in which the LCD can become severely scratched or damaged."
6. On September 28, 2005, Apple offered to replace all cracked iPod Nanos for a \$25 shipping fee. However, Apple failed to address, much less resolve, the equally important issue of severe scratching on Nano screens.
7. Charging customers a \$25 fee to replace the defective product is improper. Customers who have been sold a defective product should not be charged for its repair or replacement.
8. Moreover, Apple has not agreed to refund the purchase price of the Nano to dissatisfied customers.
9. Apple has not issued a recall of the product because of the defects. Nor has it contacted all purchasers to inform them of the defects and/or offer an exchange or refund. Instead, Apple has placed the burden on customers who purchase the defective product to contact Apple.
10. When customers complain, Apple has told them to purchase, at their own expense, additional equipment that will allegedly prevent Nano from failing as described above, such as a case to protect the Nano from scratches or using plastic polish to lessen the appearance of scratches to the Nano. No warning of the problem, or the necessity for the consumer to purchase such remedial products, was given prior to the sale of millions of Nanos.
11. Through its product registration and iTunes services, Apple has the name and address of many, if not most, of the purchasers of the product. However, Apple has not contacted purchasers or communicated through its iTunes service to offer an exchange or refund for the defective products at no cost to the purchaser.

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12. With respect to scratched, scuffed Nanos, Apple has not offered to repair or replace them. However, according to AppleInsider, Apple has begun shipping the Nanos with a “new protective sleeve.” According to the article, attached as Exhibit G, “Rumor also has it that Apple has instructed its iPod Nano manufacturing partner Hon Hai to include an additional layer of protective coating on the latest batch of Nanos.” Unfortunately, Apple has offered no relief for the consumers who purchased the Nano before these protective measures were taken.
13. Clark Sioson alleges that Defendant violated the Consumer Legal Remedies Act by: failing to honor its advertising representations with respect to the Nano; by manufacturing and marketing a defective product; by failing to issue an immediate recall of the defective units; by failing to contact purchasers to offer a refund or exchange at no cost to the purchaser; and by manufacturing and marketing a product that requires a purchaser of the Nano to buy another product –a case–without disclosing this requirement to purchasers of the Nano.
14. These acts violate and continue to violate the Consumer Legal Remedies Act as follows:
 - a. In violation of Civil Code §1770(a)(5), Defendant knowingly misrepresented the character, uses and benefits of its products and services;
 - b. In violation of Civil Code §1770(a)(7), Defendant knowingly misrepresented the standard and quality of its products and services;
 - c. In violation of Civil Code §1770(a)(9), Defendant knowingly advertised its services with the intent not to sell them as advertised; and
 - d. In violation of Civil Code §1770(a)(14), Defendant knowingly misrepresented the legal rights, obligations, or remedies involved in a transaction.

STATEMENT OF REMEDIES

YOU HAVE THIRTY (30) DAYS from the date on which this Notice is served upon you to remedy your violations as follows:

- a. Issuing a recall of the product.
- b. Contacting all known purchasers of the product through all available means, including print and electronic advertising, and offering them, at their option, (1) a full refund or (2) an exchange for a new and non-defective product
- c. In either case offering to provide, at no cost to the purchaser, shipping and

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- handling for the refund or exchange.
- d. Reimbursing any purchaser for the full cost of any case purchased in an attempt to prevent the Nano from failing or its defects from manifesting.
- e. Attorneys' fees and expenses.

Failure to take the above action within 30 days of the receipt of this notice shall result in Clark Sioson commencing a lawsuit in California state court for damages, pursuant to Cal. Civil Code §1780 and for restitution and injunctive relief on behalf of others similarly situated, pursuant to Cal. Business & Professions Code §17200, et seq. and Cal. Civil Code §1780.

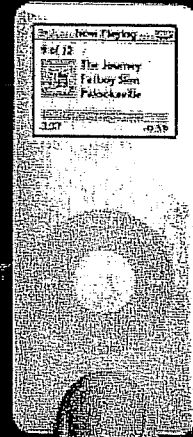
Very Truly Yours,



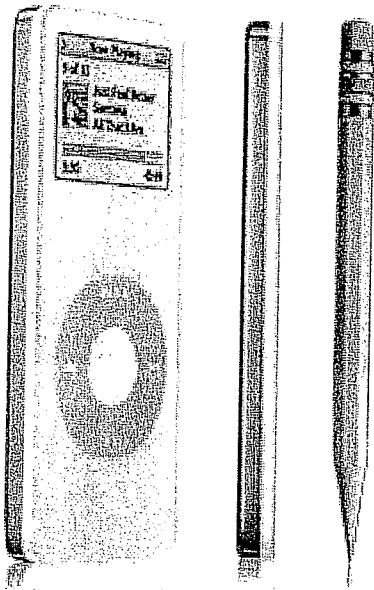
BRUCE L. SIMON

cc: Harvey Rosenfield

1,000 songs. Impossibly small. iPod nano



Take everything you love about iPod and shrink it. Now shrink it again. With 2GB (500 songs) and 4GB (1,000 songs) models starting at \$199, the pencil-thin iPod nano packs the entire iPod experience into an impossibly small design. So small, it will take your music places you never dreamed of.



Believe Your Ears

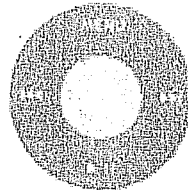
Call it astonishing. Unbelievable. Impossible, even. Then pick it up and hold it in your hand. Take in the brilliant color display. Run your thumb around the [Click Wheel](#). Put on the earbuds and turn up your music. That's when everything becomes clear: It's an iPod.

It holds up to three days' worth of music. It plays for up to 14 hours between battery charges.⁽¹⁾ It displays the color album art for the song you're listening to right now. It carries your photos, podcasts and audiobooks. It [syncs](#) seamlessly with iTunes. It connects to a host of iPod

[accessories](#). Simply put, iPod nano is 100-percent iPod. And then some.

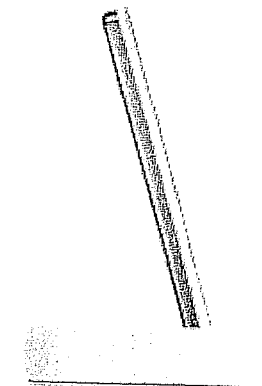
Touch and Go

iPod nano's Click Wheel puts music under your thumb. Click to fast-forward, rewind, play, pause or access menus. Use the touch-sensitive surface to control volume or browse music. You can do it all without looking. But with an iPod this beautiful, who'd want to?

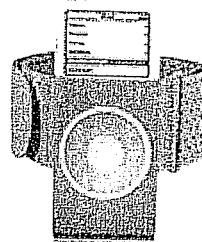


Song Stylings

Add [accessories](#) to your iPod nano via the Dock connector and headphone jack and your music will always keep up with you — at home, on the go, even [in your car](#). Of course, in either signature white or sleek black, iPod nano itself makes the ultimate accessory.



Up to 4GB⁽²⁾ of skip-free storage on a [featherweight](#) iPod means you can wear almost three days' worth of music around your neck. Or jog with 1,000 songs on your arm. Now that you can take your music everywhere⁽³⁾, there's no limit to where it will take you.



Buy online now direct from Apple, 24 hours a day.

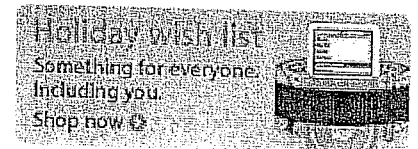
Call 1-800-MY-APPLE.

Visit an [Apple Store](#).



Find Your [Local Resellers](#):

City and State or Zip



iPod nano Features

- Holds up to 1,000 songs and full-color album art
- Only 3.5 x 1.6 x 0.27 inches and 1.5 ounces
- Bright 1.5-inch color LCD display
- Up to 14 hours of battery life⁽¹⁾
- Apple Click Wheel
- Charges and syncs via USB
- Accessory-compatible Dock connector
- Completely skip-free playback
- Works with Mac OS X or Windows 2000/XP
- Plays music, podcasts and audiobooks
- Holds up to 25,000 photos⁽²⁾
- Syncs contacts, calendars and to-do lists

[More Features...](#)

See More of iPod nano



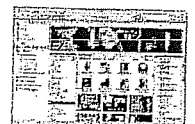
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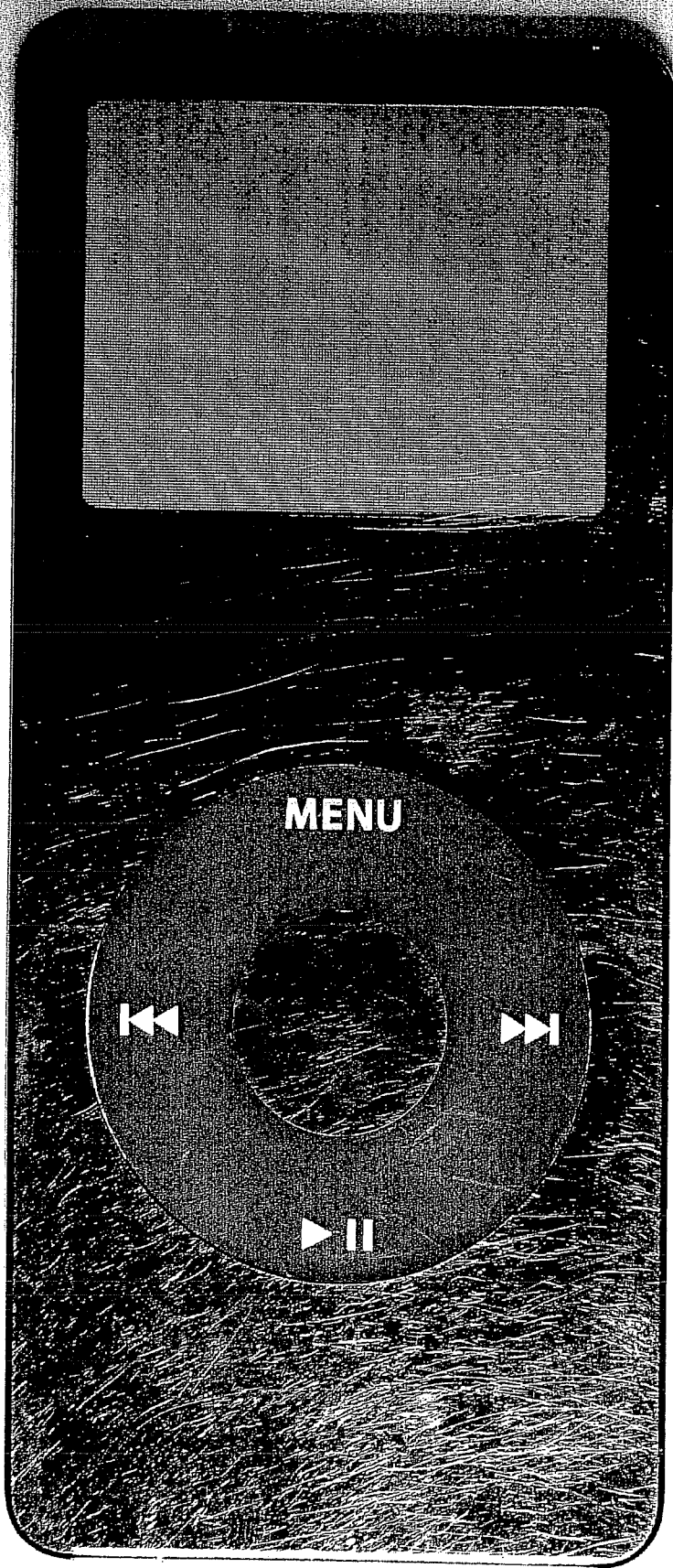


Support and Downloads[iPod Support Site](#)[iPod Software Updater](#)[Share your feedback](#)

Rechargeable batteries have a limited number of charge cycles and may eventually need to be replaced. Battery life and the number of charge cycles vary by use and settings. See www.apple.com/batteries for more information.

1GB = 1 billion bytes; actual formatted capacity less. Song capacity is based on 4 minutes per song and 128-Kbps AAC encoding; photo capacity is based on iPod nano-viewable photos transferred from iTunes.

To protect your iPod nano and prevent scratches from keys, coins and other objects, use a protective case.



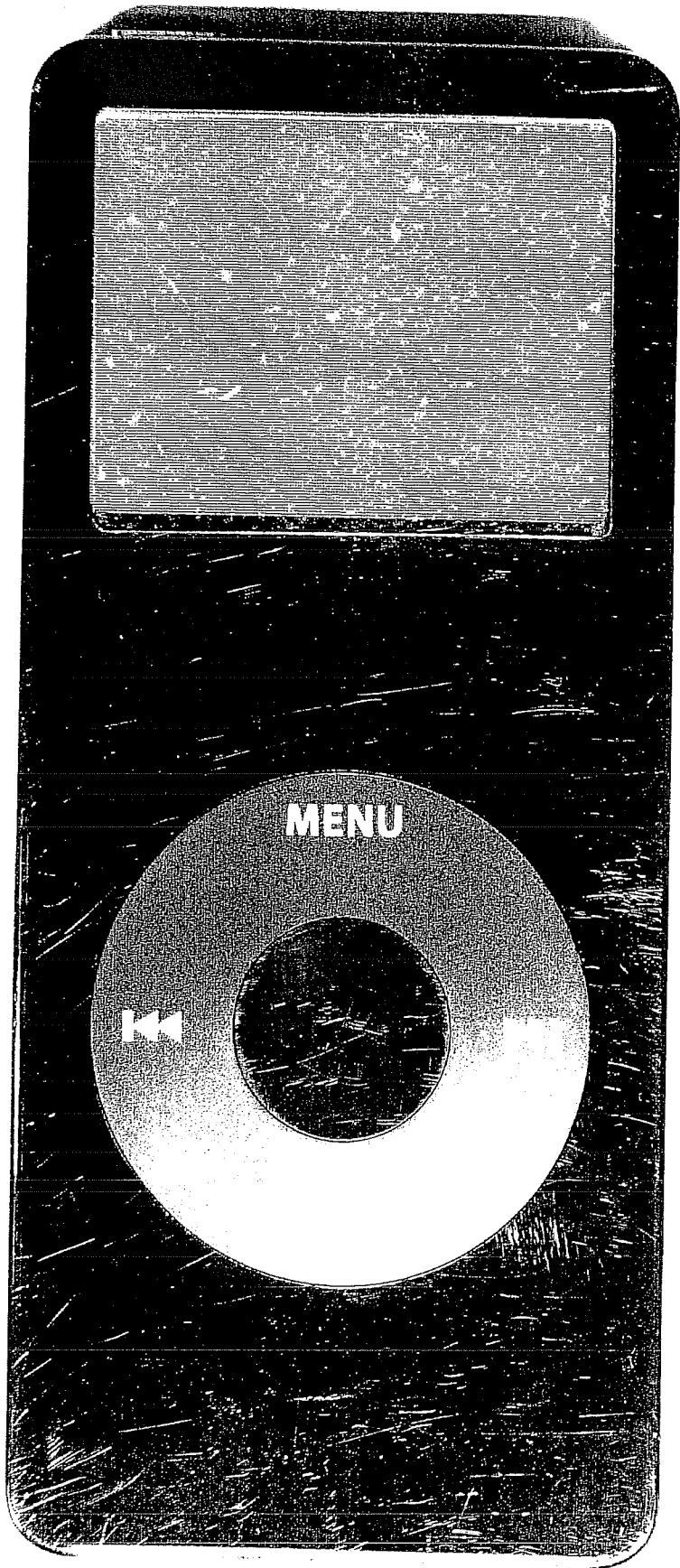


iPod

4GB

Serial No.: YM541DE3TK2
Designed by Apple in California. Assembled in China
Model No.: A1197 EMC No: 2056 Rated 5.30V 557A Max
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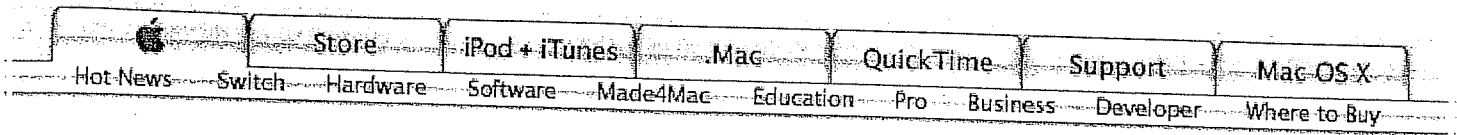


iPod

4GB

FCC CE 1329





Apple

One-Year Limited Warranty

WARRANTY COVERAGE

Apple's warranty obligations for the iPod and iSight are limited to the terms set forth below:

Apple Computer, Inc. ("Apple") warrants the iPod and iSight product against defects in materials and workmanship for a period of one (1) year from the date of original purchase ("Warranty Period").

If a defect arises and a valid claim is received by Apple within the Warranty Period, at its option, Apple will (1) repair the product at no charge, using new or refurbished replacement parts, (2) exchange the product with a product that is new or which has been manufactured from new or serviceable used parts and is at least functionally equivalent to the original product, or (3) refund the purchase price of the product.

If a defect arises and a valid claim is received by Apple after the first one hundred and eighty (180) days of the Warranty Period, a shipping and handling charge will apply to any repair or exchange of the product undertaken by Apple.

Apple warrants replacement products or parts provided under this warranty against defects in materials and workmanship from the date of the replacement or repair for ninety (90) days or for the remaining portion of the original product's warranty, whichever provides longer coverage for you. When a product or part is exchanged, any replacement item becomes your property and the replaced item becomes Apple's property. When a refund is given, your product becomes Apple's property.

EXCLUSIONS AND LIMITATIONS

This Limited Warranty applies only to the iPod and iSight products manufactured by or for Apple that can be identified by the "iPod" or "iSight" trademark, trade name, or logo affixed to it. This Limited Warranty does not apply to any non-Apple hardware product or any software, even if packaged or sold with the iPod or iSight product. Non-Apple manufacturers, suppliers, or publishers may provide a separate warranty for their own products packaged with the iPod or iSight product.

Software distributed by Apple under the Apple brand name is not covered under this Limited Warranty. Refer to Apple's Software License Agreement for more information.

Apple is not liable for any damage to or loss of any programs, data, or other information stored on any media contained within the iPod or iSight product, or any non-Apple product or part not covered by this warranty. Recovery or reinstallation of programs, data or other information is not covered under this Limited Warranty.

This warranty does not apply: (a) to damage caused by accident, abuse, misuse, misapplication, or non-Apple products; (b) to damage caused by service performed by anyone other than Apple; (c) to a product or a part that has been modified without the written permission of Apple; or (d) if any Apple serial number has been removed or defaced.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY AND THE REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND

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FOR CONSUMERS WHO HAVE THE BENEFIT OF CONSUMER PROTECTION LAWS OR REGULATIONS IN THEIR COUNTRY OF PURCHASE OR, IF DIFFERENT, THEIR COUNTRY OF RESIDENCE, THE BENEFITS CONFERRED BY THIS WARRANTY ARE IN ADDITION TO ALL RIGHTS AND REMEDIES CONVEYED BY SUCH CONSUMER PROTECTION LAWS AND REGULATIONS. TO THE EXTENT THAT LIABILITY UNDER SUCH CONSUMER PROTECTION LAWS AND REGULATIONS MAY BE LIMITED, APPLE'S LIABILITY IS LIMITED, AT ITS SOLE OPTION TO REPLACEMENT OR REPAIR OF THE PRODUCT OR SUPPLY OF THE REPAIR SERVICE AGAIN.

OBTAINING WARRANTY SERVICE

Please review the online help resources referred to in the accompanying documentation before seeking warranty service. If the product is still not functioning properly after making use of these resources, access the online website: www.apple.com/support for instructions on how to obtain warranty service.

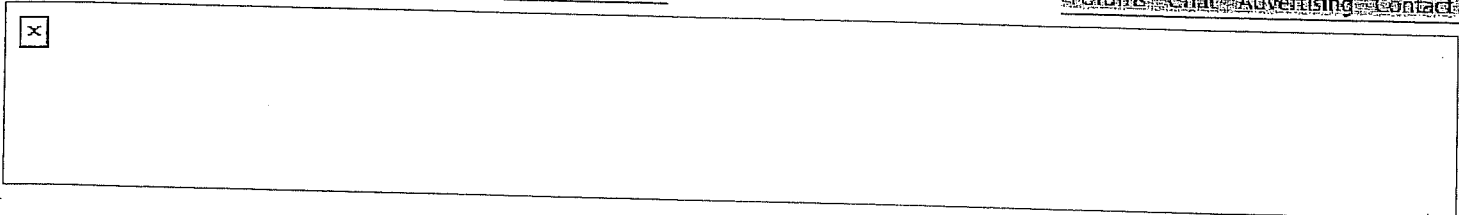
Note: Before you deliver your product for warranty service it is your responsibility to backup all data, including all software programs. You will be responsible for reinstalling all data. Data recovery is not included in the warranty service and Apple is not responsible for data that may be lost or damaged during transit or a repair.

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Monday, September 26, 2005

Advertisements

Concerns mount over iPod nano LCD durability

By [Kasper Jade](#)

Published: 04:00 PM EST

A significant number of early iPod nano adopters are waging concerns and complaints about the durability of new players, claiming the LCD screens are easily scratched or broken with minimal abuse.

The issue has spurred a flurry of first-hand reports from disgruntled customers on Apple's support forums and also fueled the creation of websites like www.flawedmusicplayer.com, which urge Apple recall the product.

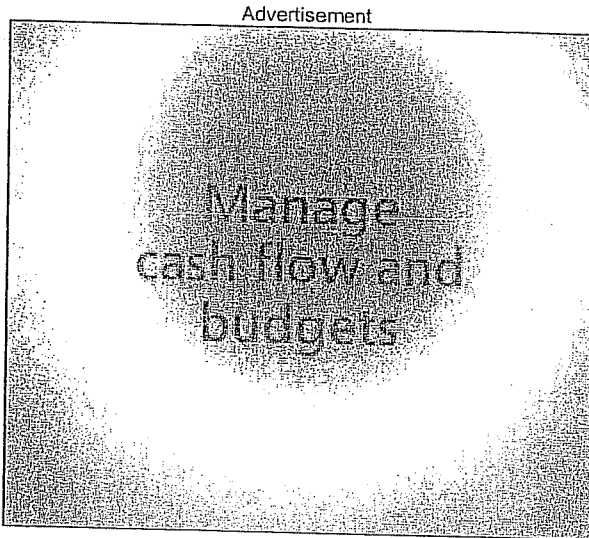
In an email to the website, one iPod nano owner wrote: "On Monday morning, I dropped it in my pocket on the way to work, and when I took it out to show it to all my friends, the LCD was cracked."

Another customer said: "Last night I broke my 2GB black iPod while it was simply sitting in my pocket. I was destroyed over it considering I sacrificed my whole paycheck for it."

Over on Apple's [support forums](#), the company appears to be deleting comments concerning broken iPod nano LCD screens as they appear. Still, one thread dedicated to the iPod nano includes nearly 500 posts chronicling the ease in which the LCD can become severely scratched or damaged.

"I received my black 4GB nano on the 23rd (of Sept.) and already it looks like it's been through a sandpaper factory," said one customer. "Like many other users I have been very careful with it and it has not been in any pockets with anything else."

Like another customer, "I bought the black 2GB at Best Buy four days ago and have used it since. I held it in my hand and the thing looks awful. It was my first iPod and I am



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bummed."

The iPod nano's screen is arguably its most critical component, as it provides a means to navigate playlists and display full-color photos.

"The nano screen is just as vulnerable as any other iPod LCD, however I feel that the public impression is that you can carry these in your back pocket or just toss them inside of a book bag and not worry – this is far from the truth," said Ryan Arter, president of [iPodResQ](#), a company which offers LCD replacement services for the nano.

Already iPodResQ is receiving more nano LCD repair requests than it had initially expected. As of last Thursday the company said it was dealing with hundreds of LCD damages, with demand steadily increasing from day to day.

"We replaced the first [iPod nano LCD] the day after they were released, and frankly I never anticipated that," Arter said. Demand for nano LCD repairs through iPodResQ has since escalated, causing a shortage of the replacement LCDs and forcing the company to raise the cost of its repair service from \$99 to \$145.

So far Apple has made no official comment on the issue and its retail store and phone support employees have told iPod nano owners that their LCD damage is not covered under warranty. Some customers are having a tough time digesting this response because they feel Apple had implied that the player was durable enough for everyday use and storage "in your pocket".

During the Sept. 7th unveiling of the iPod nano in San Francisco, Apple chief executive Steve Jobs pulled the player from his front pocket and declared: "1,000 songs in your pocket and impossibly small."

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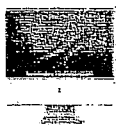
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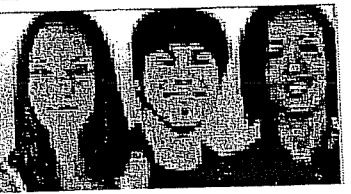
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Friday, November 11, 2005

Latest iPod nanos ship with protective sleeve

By [Katie Marsal](#)

Published: 11:30 AM EST

Although it has denied that the iPod nano is more susceptible to scratches than any other iPod model, Apple's latest shipments of the ultra-thin digital music player include a new protective sleeve.

The soft fabric sleeve is nearly identical to the one included with Apple's new fifth-generation video iPod, only scaled down to fit the nano snugly. Apple previously did not ship any protective casing with nano, which was introduced in September.

Last month, consumers upset about easily scratched or marred iPod nanos filed a class-action lawsuit against Apple, demanding their money back plus a share of the company's profits.

The suit was later extended when consumers from the United Kingdom and Mexico filed a similar class-action lawsuit against the company in the United States District Court for the Northern District of California.

Word that Apple -- under pressure from the suit -- would begin including protective sleeves with the nano was first revealed in a previous AppleInsider report.

Rumor also has it that Apple has instructed its iPod nano manufacturing partner Hon Hai to include an additional layer of protective coating on the latest batch of nanos.

Sources who continue to file accurate reports have said that iPod maker is prepared to ship between 3 and 4 million nanos each month for the three-month period ending December 31st.

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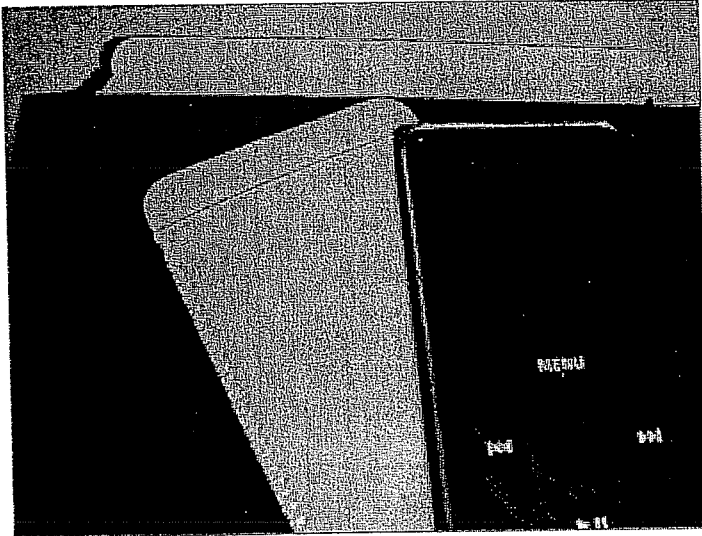
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