

**AV CONCEPT HOLDINGS LTD:  
JAPANESE CUSTOMER IS NOT HAPPY WITH THE SOUND QUALITY**

AV Concept Holdings Ltd (Code: 295, Main Board, The Stock Exchange of Hongkong Ltd) rarely gets its dirty washing, hung on the line for people to view, but, when something does go wrong in this rather large manufacturer and distributor of electronic products, it can be a doozie.

And, if the claims of D and M Holdings Incorporated, a company, which is domiciled in Japan, are anywhere near the mark, AV Concept has screwed up most royally.

D and M recently sued AVC Technology Ltd (先思科技有限公司), a wholly owned subsidiary of AV Concept Holdings Ltd, for about \$HK31 million in the High Court of the Hongkong Special Administrative Region (HKSAR) of the People's Republic of China (PRC).

The gist of the Statement of Claim, attached to Writ of Summons Number 2141, is that the Defendant screwed up badly in the manufacture of certain goods, ordered by D and M as far back as April 2004, and that the Japanese company wants satisfaction in the form of cash.

Paragraph 3 of the Statement of Claim alleges that, back in April 2004, D and M '*intended to purchase the SU35 Products from the Defendant for the purpose of resale to sub-distributors and/or customers of audio products.*'

(AVC Technology is the manufacturer of the SU35, which is an MP3 audio player, but D and M is the proprietor of the Rio Japan brand, under which the SU35 is sold.)

About 2 months later, that is June 2, 2004, working samples of the SU35 were supplied to D and M by AVC Technology, it is alleged at Paragraph 4 of the Statement of Claim.

The samples, it is alleged, were faulty in that they contained multiple defects.

AVC Technology was informed of the defects by email and so it produced other working samples for its Japanese customer.

The second batch of samples was not much better than the first, it is alleged at Paragraph 7 of the Statement of Claim.

Once again, D and M informed AVC Technology of the problems with the MP3 players.

AVC Technology assured D and M that it would rectify the problems of the MP3 players so that they '*would be free from any other defects*'. (Paragraph 10 of the Statement of Claim)

Satisfied with the assurances of AVC Technology, it is alleged that D and M, then, purchased 71,100 units of the MP3 player for \$US5,731,500.

The contracts for the goods were said to have been dated June 17, 2004, (actually, the Statement of Claim is in error by stating that the date was June 17, 2005 and not July 17, 2004) June 28, 2004, August 12, 2004, and September 24, 2004.

The MP3 players were said to have been delivered between July and August 2004, according to Paragraph 17.

Upon receipt of the goods, they were delivered to D and M's customers.

Then, at Paragraphs 19 and 20, it is alleged:

*'19. In breach of the express and/or implied terms in paragraph 13 above, the SU35 Products were found to have battery, AC adapter, and battery charger defects, in that of the quantities of SU35 Products that the Plaintiff sold to its sub-distributors and/or customers, the return rate for Defective SU35 Products between July 2004 to September 2005 was around 7.1%.*

*'20. Further or in the alternative, by reason of the matters pleaded in paragraph 19 above, the Defendant is in breach of the implied term as pleaded in paragraph 14 above in that the SU35 Products were not fit for use as MP3 audio players.'*

In January this year, it is alleged that the defective MP3 players were returned to AVC Technology in order for the Defendant to rectify the defects *'within a reasonable time.'* (Paragraph 22 of the Statement of Claim)

Paragraphs 23 to 28, then, allege:

*'23. However, in breach of the implied term under paragraph 15 that the time for redelivery had to be within a reasonable period of time, and despite repeated requests made by the Plaintiff, the Defendant failed and/or refused to repair the First Batch of SU35 Products and to redeliver them to the Plaintiff by May 2005.*

*'24. The Plaintiff further avers that the remaining SU35 Products which were defective (consisting of approximately 5028 units of defective SU35 Products returned to the Plaintiff by its sub-distributors and/or customers from December 2004 to September 2005) ("Remaining Batch of SU35 Products") could not be sold by the Plaintiff.*

*'25. The Remaining Batch of SU35 Products were so defective that they had to be abandoned and written off.*

*'26. In breach of the implied terms in as pleaded in paragraph 15 above that time for redelivery had to be within a reasonable period of time, the allegedly rectified SU35 Products were redelivered to the Plaintiff on 9 August 2005 (more than 7 months after their return to the Defendant in January 2005 by the Plaintiff).*

*'27. Further, in breach of the express and/or implied terms as pleaded in paragraphs 13 and 14 above, the First Batch of SU35 Products redelivered by the Defendant were still found to have display, battery charger, USB connector and other defects.*

*'28. The defective rate from a random sampling of approximately 200 units of the First Batch of SU35 Products redelivered by the Defendant on or around 19 August 2005 was 15%.'*

The alleged loss and damage in respect of the MP3 players are itemised to be 411,582,863 yen (equivalent to about \$HK27.73 million).

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