

Class Action Lawsuit Over Apple DRM Stumbles Because Plaintiffs Aren't Actually In The Class

Here is another article "Why Attorneys are Scum Bags".

I have written a few times about the long-running class action lawsuit against Apple alleging that its use of DRM on music (the "FairPlay" system) violated antitrust laws by locking users into Apple's platform. The case is interesting on a few different levels – including the question of whether or not DRM could lead to antitrust violations (very interesting...) and showing how quickly the technology world changes (music DRM is basically long gone). However, with the trial being held this week, a new stumbling block arose late in the game. Apple lawyers have pointed out to the judge in the case, Yvonne Gonzalez Rogers, that neither of the two women named as plaintiffs actually qualify to be in the class.

As you might imagine, that makes for a difficult class action lawsuit, when you don't have any actual plaintiffs.

Specifically, after testimony this week, Apple realized that the iPod that one of the plaintiffs owned was purchased outside of the period of time covered by the class action lawsuit. Apple stopped using Fairplay in March 2009, so the class action lawsuit only applies to iPods bought between September 2006 and March 2009. That's a problem when the main plaintiff actually bought hers in... July 2009.

After plaintiff Marianna Rosen testified on Wednesday, Apple attorneys said they checked the serial number on her iPod Touch and found it was purchased in July 2009. In a letter

sent to the court late Wednesday night, Apple lawyer William Isaacson said it appears the other plaintiff, Melanie Wilson, bought iPods outside the relevant time frame or, in one instance, purchased a model that didn't have the specific version of software at issue in the case.

Isaacson, who suggested the lawsuit can't proceed without a plaintiff, said he's asked for proof that either woman had purchased an iPod covered by the case. Plaintiffs' attorney Bonny Sweeney said her side is checking for other receipts. She conceded that Wilson's iPods may not be covered, but she also noted that an estimated 8 million consumers are believed to have been purchased the affected iPods.

In other words, the class action lawyers are admitting that they may not have a plaintiff, but say it doesn't matter because they can find another one without too much trouble.

And of course, this just reinforces what a total scam so many class action lawsuits are. I have written about this for years. While the basic idea may seem sound, the reality is that most class action lawsuits are just about ways for class action lawyers to get super wealthy. They seek out anything they can sue over, find a stand-in plaintiff whose only job is basically to be the name on the lawsuit, and then when the final payout comes, the lawyers take a huge chunk, the stand-in plaintiff gets a small amount, and the rest of the class splits a further tiny amount. It's not about righting wrongs. It's about enriching class action lawyers. The very fact that the lawyers in this case admit that they can toss out their plaintiffs and bring in others seems to highlight what a total joke this whole thing is.

Still, someone really, really, screwed up on the lawyers' side. How the hell do you set up a class action lawsuit without first confirming that your plaintiff is in the class? That seems like a total and complete fuck up.

Thankfully, Judge Rogers seems to recognize that this is not a good situation:

“I am concerned that I don’t have a plaintiff. That’s a problem,” the judge said in court Thursday afternoon at the end of the trial’s third day of testimony in Oakland.

As interested as I am in the idea that DRM might be anticompetitive, I’m still troubled by the abuse of class action lawsuits (and related antitrust efforts in general as well). This particular case just seems like a total mess.