

02-CV-240289CM1
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

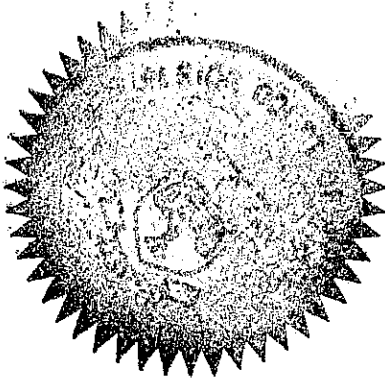
BARRY SKOPIT SALES INC.

Plaintiff

- and -

HEWLETT-PACKARD COMPANY
HEWLETT-PACKARD (CANADA) LTD.

Defendants



Proceedings commenced pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

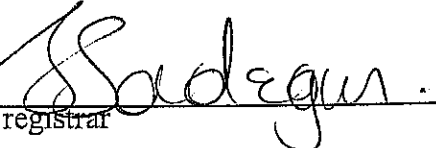
Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local legal aid office.

Dec 4
~~November 13~~, 2002

Issued by

Local registrar


Address of court office:
393 University Avenue, 10th FL.
Toronto, Ontario
M5G 1E6

TO: Hewlett-Packard Company

AND TO: Hewlett-Packard (Canada) Ltd.

CLAIM

1. The plaintiff claims on its own behalf and on behalf of all of the members of the Class (as defined below):

- (a) an order certifying this proceeding as a class proceeding and appointing the plaintiff as representative plaintiff for the members of the Class (as defined below) and any appropriate subclass thereof;
- (b) general damages in the amount of \$50,000,000.00;
- (c) special damages in the amount of \$50,000,000.00;
- (d) exemplary punitive and aggravated damages in the amount of \$10,000,000;
- (e) damages equivalent to the sums the plaintiff and the members of the Class (as defined below) have paid in attempts to identify and repair the Multi-Feed Defect (as defined below);
- (f) damages equivalent to the costs of rectifying the Multi-Feed Defect (as defined below);
- (g) damages equivalent to the diminution of the value of the LaserJet Printers (as defined below);
- (h) prejudgment and post judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. 43, as amended where applicable;
- (i) costs of this action on a substantial indemnity basis together with any applicable Goods and Services Tax payable pursuant to the *Excise Tax Act*, R.S.C. 1990. C. E-15; and

- (j) such further relief as this Honourable Court may deem just.

THE PARTIES

2. The plaintiff is a corporation incorporated pursuant to the laws of the Province of Ontario.

3. The defendant, Hewlett-Packard Company, is a corporation duly incorporated in the state of Delaware pursuant to the laws of the United States of America.

4. The defendant, Hewlett-Packard (Canada) Ltd. is a company incorporated pursuant to the laws of Canada and carries on business throughout Canada. Hewlett-Packard (Canada) Ltd. is wholly owned and controlled by Hewlett-Packard Company (Hewlett-Packard Company and Hewlett-Packard (Canada) Ltd. are collectively referred to as "Hewlett-Packard").

THE PRINTER DEFECT

5. Hewlett-Packard designs, manufactures, markets and distributes computer equipment, including laser jet printers under the names Hewlett-Packard Series 1100, 1100SE, 1100E, 1100A, 5L, 6L, 3100, and 3150 (collectively the "LaserJet Printers").

6. Since 1995, the LaserJet Printers have experienced performance problems related to a defect in the paper feed mechanism causing the LaserJet Printers to experience a continuing paper multi-feed malfunction (the "Multi-Feed Defect"). This

Multi-Feed Defect may have resulted from the oxidation, degradation and hardening of the separation pad contained within the LaserJet Printers which grab and feed the paper during the printing process.

7. Since 1995 and thereafter, Hewlett-Packard has had evidence that the LaserJet Printers were subject to the Multi-Feed Defect. However, Hewlett-Packard did not recall the LaserJet Printers and failed to warn the public of any potential problems with the LaserJet Printers. On the contrary, Hewlett-Packard continued to design, manufacture, market and distribute the LaserJet Printers notwithstanding the Multi-Feed Defect.

8. In or about January 2001, Hewlett-Packard made available on its website a user replaceable separation pad kit to purportedly fix the Multi-Feed Defect. These kits could be ordered for some of the LaserJet Printers (i.e. 1100, 6L, 3100, and 3150). The information contained on the website stated that the cause of the Multi-Feed Defect was the hardening of the old separation pads within these LaserJet Printers. Hewlett-Packard claimed that the suggested cure was to place the user installed separation pad over the worn out or hardened separation pad that was within these LaserJet Printers and that such procedure would limit the separation pad problem in the future.

**DUTIES OF CARE OWED BY THE DEFENDANTS TO THE PLAINTIFF
AND THE CLASS (AS DEFINED BELOW)**

9. The plaintiff pleads that the defendants owed to the plaintiff and the members of the Class (as defined below) the following duties of care:

- (a) to ensure that the LaserJet Printers were designed and/or manufactured

properly and in a good and workmanlike manner;

- (b) to warn the plaintiff and the members of the Class (as defined below) of the Multi-Feed Defect once it became aware (or through reasonable due diligence could have become aware) of its existence; and,
- (c) to remedy the Multi-Feed Defect upon discovering it through the recall and repair of the LaserJet Printers.
- (d) to advise customers who experienced the problems that the problem was the fault of Hewlett-Packard and the cost to repair same would be borne by Hewlett-Packard.

NEGLIGENCE OF THE DEFENDANTS

10. The defendants negligently designed and manufactured the LaserJet Printers and the particulars of the negligent design and manufacture are the following:

- (a) the LaserJet Printers were designed in a manner which, under normal conditions, usage and applications would cause the LaserJet Printers to experience a paper multi-feed malfunction; and,
- (b) the LaserJet Printers were manufactured in a manner which, under normal conditions, usage and applications would cause the LaserJet Printers to experience a paper multi-feed malfunction.
- (c) the LaserJet Printers were assembled with substandard parts which would cause them to experience multi-feed problems.

FAILURE TO WARN AND RECTIFY

11. Following the manufacture of the LaserJet Printers, the defendants were aware that the LaserJet Printers were experiencing malfunctions during operation due to the Multi-Feed Defect and that such malfunctions were occurring with unreasonable frequency.

12. From 1995 through to the present, the defendants concealed the nature and scope of the Multi-Feed Defect and related problems created by the Multi-Feed Defect from the members of the Class (as defined below). Particulars of this concealment include:

- (a) failing to disclose the Multi-Feed Defect and information in connection with the malfunctions created by the Multi-Feed Defect; and,
- (b) where any information was provided to the public generally, such information was incomplete or misleading in that it sought to attribute any problems to issues other than the Multi-Feed Defect.

13. Since the distribution of the LaserJet Printers to the present, the defendants have published false advertisements the common theme of which is that the LaserJet Printers are of high quality and offer excellent print speeds, brilliant print quality, professional results and industry leading printing technology despite the defendants' knowledge of the Multi-Feed Defect and the malfunctions it creates.

14. The defendants failed to warn or alternatively to warn adequately or sufficiently of the existence of the Multi-Feed Defect.

15. The defendants also had a duty to recall the LaserJet Printers and rectify

the Multi-Feed Defect. As pleaded above, the defendants became aware following the manufacture of the LaserJet Printers of the existence of the Multi-Feed Defect and its related problems and failed to recall the LaserJet Printers to rectify and correct the Multi-Feed Defect. The reason for this was the cost of same.

DAMAGES

16. As a result of the breach of the failure to warn, negligence and failure to rectify as pleaded above, the plaintiff and the members of the Class (as defined below) have suffered loss and damage, the particulars of which include:

- (a) repair expenses in attempts to identify and/or rectify the Multi-Feed Defect;
- (b) overpayment for LaserJet Printers, which contained a latent defect;
- (c) diminution in the value of the LaserJet Printers; and,
- (d) future costs of repair of the LaserJet Printers.

SALE OF GOODS ACT, CONSUMER PROTECTION ACT, BUSINESS PRACTICES ACT AND COMPETITION ACT

17. The plaintiff and the members of the Class (as defined below) further plead and rely upon the *Sale of Goods Act* (Ontario and its equivalent in other provinces, referred to below as Ontario and equivalent), *Consumer Protection Act* (Ontario and equivalent), *Business Practices Act* (Ontario and equivalent), and the *Competition*

Act (Canada) and plead:

- (a) it is an implied condition pursuant to the *Sale of Goods Act* (Ontario and equivalent) and the provisions of the *Consumer Protection Act* (Ontario and equivalent) that goods shall be of merchantable quality and reasonably fit for the purpose for which the goods are required;
- (b) it is an unfair practice contrary to the *Business Practices Act* (Ontario and its equivalent) to make representations that goods are of a particular standard, quality and grade, if they are not; and,
- (c) it is reviewable conduct contrary to the *Competition Act* (Canada) when, for the purposes of promoting, directly or indirectly, the supply or use of a product, representations are made to the public that are false or misleading, or representations are made to the public as to the performance or efficacy of a product that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation.

18. The plaintiff pleads that the defendants are in breach of the *Sale of Goods Act* (Ontario and equivalent), *Consumer Protection Act* (Ontario and equivalent), *Business Practices Act* (Ontario and equivalent), and the *Competition Act* (Canada) in that:

- (a) the LaserJet Printers were not of merchantable quality, nor were reasonably fit for the intended purpose;
- (b) the defendants engaged in an unfair practice in making representations that the LaserJet Printers were of a particular standard, quality and grade, when they were not and in failing to recall the LaserJet Printers; and,

(c) the defendants engaged in reviewable conduct when, for the purposes of promoting, directly or indirectly, the supply of the LaserJet Printers, the defendant made representations that were false or misleading as to the performance and high quality of the LaserJet Printers when they knew the Multi-Feed Defect seriously diminished the quality of the LaserJet Printers.

19. The damages suffered by the plaintiff and the members of the Class (as defined below) as a result of the breach of the *Sales of Good Act*, *Consumer Protection Act*, *Business Practices Act* and *Competition Act* are those damages pleaded in paragraph 16 above.

REPRESENTATIVE PLAINTIFF

20. The plaintiff has owned a number of LaserJet Printers subject to the Multi-Feed Defect, specifically Hewlett-Packard Series 1100, 5L and 6L.

THE CLASS

21. The plaintiff brings this action on her own behalf and on behalf of all persons resident in Canada, other than in the Provinces of Quebec and British Columbia (the "Class") who have purchased or acquired from January 1, 1995 to the present Hewlett-Packard Series 1100, 1100SE, 1100E, 1100A, 5L, 6L, 3100, and 3150 laser jet printers.

22. The plaintiff proposes that this action be tried at the City of Toronto, in the Province of Ontario.

November 13, 2002

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Solicitors for the plaintiff

BARRY SKOPT SALES INC.
Plaintiff

and

HEWLETT-PACKARD COMPANY & HEWLETT-PACKARD
(CANADA) LTD.
Defendants

Court File No. 02-CV-240289em1

ONTARIO SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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Solicitors for the Plaintiff