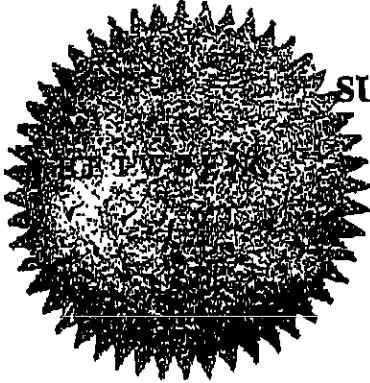


Court File No. **03-CV-249144C**

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**YU-HONG WANG,
DENNIS WONG and
BRAD HAY**

Plaintiffs

- and -

**SONY CORPORATION,
SONY OF CANADA LTD. and
LONDON DRUGS LIMITED**

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 18E 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.

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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.

ISSUE
DATE: May 2nd, 2003

Issued by


Local registrar

Address of court office:
393 University Avenue
Toronto, Ontario
M5G 1E6

- 10th floor

TO: Sony of Canada Ltd.
115 Gordon Baker Road
Toronto, Ontario
M2H 3R6

AND TO: Sony Corporation
7-35 Kitashinawaga 6-chome
Shinagawa-ku, Tokyo
141-0001, Japan

AND TO: London Drugs Limited
3000-1055 West Georgia Street
P.O. Box 11130 Royal Centre
Vancouver, British Columbia
V6E 3R3

CLAIM

1. The plaintiffs claim on their 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 plaintiffs as representative plaintiffs for the members of the Class (as defined below) and any appropriate subclass thereof;

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- (b) general damages in the amount of \$250,000,000.00;
- (c) special damages in the amount of \$250,000,000.00;
- (d) exemplary, punitive and aggravated damages in the amount of \$50,000,000.00;
- (e) damages equivalent to the sums the plaintiffs and the members of the Class (as defined below) have paid in attempts to identify and repair the DVD Defect (as defined below);
- (f) damages equivalent to the costs of rectifying the DVD Defect (as defined below);
- (g) damages equivalent to the diminution of the value of the DVD Players (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

Plaintiffs

2. The plaintiff, Yu-Hong Wang, resides in the City of Kitchener, in the Province of Ontario. He purchased a Sony DVD Model S550D from the defendant, Sony of Canada Ltd., in the City of Toronto in December 2000.
3. The plaintiff, Dennis Wong, resides in the City of Edmonton, in the Province of Alberta.

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He purchased a Sony DVD Model S360 from the defendant, Sony of Canada Ltd., in the City of Edmonton in December 2000.

4. The plaintiff, Brad Hay, resides in the City of Surrey, in the Province of British Columbia. He purchased a Sony DVD Model S360 from the defendant, London Drugs Limited in Richmond, B.C. in July 2000.

Defendants

5. The defendant, Sony Corporation, is a corporation duly incorporated pursuant to the laws of Japan.
6. The defendant, Sony of Canada Ltd. is a company incorporated pursuant to the laws of Canada and carries on business throughout Canada including the Provinces of Ontario, British Columbia and Alberta. The defendant, Sony of Canada Ltd. is wholly owned and controlled by the defendant, Sony Corporation and acts as the defendant, Sony Corporation's agent in Canada for the sale and marketing of its products. The defendant, Sony of Canada Ltd., markets and sells its products throughout Canada directly and through its retail division which it operates under the style name "The Sony Store" (the defendants, Sony Corporation and Sony of Canada Ltd. are hereinafter collectively referred to as "Sony" and the retail division of the defendant, Sony of Canada Ltd., is sometimes referred to as "The Sony Store").

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7. The defendant, London Drugs Limited ("London Drugs") is a company incorporated under the laws of the Province of British Columbia having its head office in the City of Vancouver. It purchases Sony products from Sony and sells those products to consumers including the plaintiff, Brad Hay and members of the Class (as defined below). The plaintiffs plead that the Sony/London Drugs purchases are made pursuant to contracts entered into between them in Ontario. In addition, the Sony products purchased by London Drugs from Sony are distributed by Sony to London Drugs from Sony's facilities in Toronto.

BACKGROUND

8. Sony designs, manufactures, markets and distributes a variety of electronic products, including DVD Players (also known as DVP players, DVP stands for "digital video player") under certain Sony brand DVD models S330, S360, S530D, S550D, S560D and S570D (collectively the "DVD Players"). DVD stands for "digital video disc" or "digital versatile disc" and is a technology widely regarded as the next generation of optical disc storage, able to hold video, as well as audio and computer data.

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9. The DVD Players are sold primarily through retail outlets (including through The Sony Store and London Drugs), which act as Sony's agents. Sony exercises control over these outlets with regard to, among other things, pricing and advertising, as well as controlling the repair and servicing of the DVD Players. When sold, the DVD Players come in factory sealed boxes that reflect Sony's name as the manufacturer.

10. The DVD Players come with a standard limited warranty (the "Warranty"). The Warranty provides a one-year limited warranty from the date of original purchase on parts and a ninety (90) day limited warranty from the date of original purchase on labour. After the ninety (90) day labour period, the customer pays for all labour charges.

11. Sony has made various representations about the DVD Players the common theme of which is that the DVD Players are quality products, with longevity, reliability, innovation and exceedingly high engineering standards. In Sony press releases, Sony states regarding its DVD Players: "Sony [has] legendary DVD performance"; "[Sony's] new [DVD] products represent a continuation of Sony's efforts to give consumers a wide choice of DVD solutions"; "Sony continues to lead the industry in innovative [DVD] solutions"; "Sony is the market leader in DVD home entertainment". The above are only some of the numerous representations made by Sony about their DVD's. These representations did not disclose the DVD Defect (as defined below) and therefore, were materially misleading.

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12. Sony has also disseminated advertisements in newspapers and magazines that promote the performance, qualities and features of the DVD Players. These advertisements did not disclose the DVD Defect (as defined below).

THE DVD DEFECT

13. Since 1997, the DVD Players have experienced performance problems related to a common and uniform defect (the "DVD Defect"). The malfunctions resulting from the DVD Defect are virtually identical: (i) "audio/video is out of sync" or "lip sync" problems; (ii) freezing of the viewing screen; (iii) "C13" or "No Disk" errors which impair the audio and video performance; or (iv) the DVD Players cease functioning or become inoperable.
14. Since 1997 and thereafter, Sony has had evidence that the DVD Players were subject to the DVD Defect. Customer service centres and repair shops have reported a large number of complaints and repair requests resulting from the DVD Defect. As well, Sony customers have also frequently complained about their DVD Players and the DVD Defect on a host of internet websites. However, Sony did not recall the DVD Players and/or failed to warn the public of any potential problems with the DVD Players. On the contrary, Sony continued to design, manufacture, market and distribute the DVD Players notwithstanding the DVD Defect.

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15. The plaintiffs plead that London Drugs was also aware (or in the alternative, ought to have been aware) that the DVD Players were subject to the DVD Defect. London Drugs also failed to warn its customers of the potential problems with the DVD Players and continued to sell the DVD Players notwithstanding the DVD Defect.

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

16. The plaintiffs and the members of the Class (as defined below) plead and rely upon the *Sale of Goods Act* (Ontario and equivalent legislation in force in their respective jurisdictions are 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) Section 34 of the *Consumer Protection Act* (Ontario and equivalent) provides that in the event of a "consumer sale", the implied conditions and warranties applying to the sale of goods by virtue of the *Sale of Goods Act* (Ontario and equivalent) apply to goods sold by a consumer sale and those implied conditions and warranties cannot be varied or eliminated by contract.

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- (c) it is an unfair practice contrary to the *Business Practices Act* (Ontario and equivalent) to make false, misleading and deceptive representations, including representations that goods are of a particular standard, quality and grade, if they are not; and,
- (d) it is a contravention of the *Competition Act* (Canada) when a person, for the purpose of promoting, directly or indirectly, the supply or use of a product, knowingly or recklessly makes representations to the public that are false or misleading in material respects.

17. The plaintiffs and the members of the Class (as defined below) plead that Sony is in breach of the requisite provisions of the *Sale of Goods Act* (Ontario and equivalent), *Consumer Protection Act* (Ontario and equivalent), *Business Practices Act* (Ontario and equivalent) and *Competition Act* (Canada) in that:

- (a) the DVD Players were not of merchantable quality, nor were reasonably fit for the intended purpose;
- (b) Sony engaged in an unfair practice in making false, misleading and deceptive representations, including representations that the DVD Players were of a particular standard, quality and grade, in that Sony failed to disclose the DVD Defect. The representations were made intending that the members of the Class (as defined below) rely upon them and the members of the Class (as defined below) did rely upon them when they purchased the DVD Players; and

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- (c) Sony for the purpose of promoting, directly or indirectly, the supply or use of the DVD Players, recklessly or negligently made representations to the public that were false or misleading in material respects, in that Sony did not disclose the DVD Defect. The representations were made for the purpose of inducing the members of the Class (as defined below) to purchase the DVD Players and the members of the Class (as defined below) relied upon the representations when purchasing the DVD Players.

18. The plaintiffs and the members of the Class (as defined below) plead that London Drugs is in breach of the requisite provisions of the *Sale of Goods Act* (R.S.B.C., 1996 c.410) in that the DVD Players it sold were not of merchantable quality, nor were reasonably fit for the intended purpose.

DUTY OF CARE AND OTHER DUTIES OWED BY SONY TO THE PLAINTIFFS AND THE MEMBERS OF THE CLASS

19. The plaintiffs and the members of the Class (as defined below) plead that Sony owed to the plaintiff and the members of the Class (as defined below) the following duties of care and other duties:

- (a) to ensure that the DVD Players were designed and/or manufactured properly and in a good and workmanlike manner;

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- (b) to properly research and test the DVD Players and to engage in adequate pre-market testing of the DVD Players;
- (c) to advise and inform of the true facts regarding the DVD Players and not conceal or suppress the nature and scope of the DVD Defect;
- (d) to remedy the DVD Defect upon discovering it through the recall and repair of the DVD Players;
- (e) to ensure that representations made by Sony, its agents and distributors in regard to the DVD Players were made in good faith, honestly and truthfully;
- (f) not to make misrepresentations concerning the DVD Players and omissions concerning the DVD Defect;
- (g) to act in good faith towards the plaintiffs and the members of the Class (as defined below);
- (h) not to make negligent misrepresentations concerning the attributes of the DVD Players and omissions concerning the DVD Defect; and
- (i) not to suppress any information concerning the DVD Defect.

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20. The plaintiffs and the members of the Class (as defined below) plead that the Sony is in breach of its duties of care and other duties in that:

- (a) the DVD Players were negligently designed in a manner which, under normal conditions, usage and applications would cause the DVD Players to malfunction as a result of the DVD Defect;
- (b) the DVD Players were negligently manufactured in a manner which, under normal conditions, usage and applications would cause the DVD Players to malfunction as a result of the DVD Defect;
- (c) Sony failed to properly research and test the DVD Players and to engage in adequate pre-market testing of the DVD Players to detect malfunctions and remedy the DVD Defect;
- (d) Sony continues to fail to fulfil its ongoing obligation to fully disclose the results of its testing and research in connection with the malfunctions resulting from the DVD Defect;
- (e) Sony knew or ought to have known the existence of the DVD Defect and either knew or recklessly disregarded the potential ramifications of disclosing the DVD Defect to the public but failed and/or refused to do so;

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- (f) Sony failed to disclose the true facts concerning the DVD Defect and concealed the nature and scope of the DVD Defect and where any information was provided to the public generally, such information was incomplete or misleading in that it sought to attribute any problems to factors other than the DVD Defect;
- (g) Sony failed to institute an effective product recall upon discovering the DVD Defect or the potential for the DVD Defect to occur;
- (h) Sony failed to remedy and/or repair the DVD Defect upon discovering it;
- (i) Sony knew or ought to have known that the DVD Players would malfunction as a result of the DVD Defect;
- (j) Sony acted recklessly in that they were aware that the DVD Players would malfunction as a result of the DVD Defect when they marketed and sold the DVD Players to the plaintiffs and the members of the Class (as defined below);
- (k) representations made by Sony, its agents and distributors in regard to the DVD Players were false, misleading and deceptive and were not made in good faith, honestly and truthfully in that Sony failed to disclose in any of the representations, the existence of the DVD Defect; and,

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- (1) Sony negligently misrepresented various facts regarding the quality, reliability and character of the DVD Players, under circumstances where Sony either knew or ought to have known that the representations were not true or known to be true in that Sony failed to disclose in any of the representations, the existence of the DVD Defect. Such non-disclosure constitutes reckless, or in the alternative, negligent misrepresentation and such misrepresentations were made with the intention of the plaintiffs and members of the Class (as defined below) relying upon them and the plaintiffs and members of the Class did in fact rely upon them. The aforesaid representations were contained in various advertising, press releases, packaging and correspondence from Sony and such failure to disclose the DVD Defect was further reiterated and disseminated by Sony's agents and representatives within the actual or ostensible scope of their authority.

WARRANTY

21. The plaintiffs and the members of the Class (as defined below) plead that the Warranty provided by Sony which purports to limit the obligations of Sony is invalid in that:
- (a) the provisions of Section 34 of the *Consumer Protection Act* (Ontario and equivalent) prohibit the negating or varying of the implied conditions and warranties under the *Sale of Goods Act* (Ontario and equivalent);

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- (b) Sony has refused and/or failed to honour the Warranty;
- (c) the terms of the Warranty are unreasonable, unconscionable and were not agreed to by the plaintiffs and the members of the Class (as defined below) at the time that the DVD Players were purchased;
- (d) Sony knew that the DVD Players would fail before the expiry of their expected lives as a result of the DVD Defect, or in the alternative, acted recklessly in failing to ascertain this fact or, in the further alternative, acted negligently in failing to ascertain this fact, thereby rendering the time limitations contained in the Warranty insufficient and inadequate.

DAMAGES

22. As a result of the breaches as pleaded above, the plaintiff and the members of the Class (as defined below) have suffered loss and damages, the particulars of which include:
- (a) damages equivalent to the diagnostic and repair costs related to the DVD Defect;
 - (b) damages equivalent to the diminution in the value of the DVD Players;
 - (c) damages for overpayment for the DVD Players, which contained a latent defect;
 - (d) future costs of repair of the DVD Players; and,
 - (e) damages including the full cost of any investigation in connection with this action;

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- (f) damages as calculated pursuant to paragraphs 51 and 52 of the *Sale of Goods Act* (Ontario and equivalent).

23. The plaintiffs and members of the Class (as defined below) have suffered and continue to suffer damages as a result of Sony's wrongful acts and omissions as alleged above.

REPRESENTATIVE PLAINTIFFS

24. The particulars of the purchases made by the representative plaintiffs are pleaded above. The DVD Players purchased by the representative plaintiffs were defective and the representative plaintiffs have suffered the damages as pleaded above. In addition, the following are the particulars of the complaints of the representative plaintiffs:
- (a) the plaintiff, Yu-Hong Wang purchased a DVD Player, Model S550D in December 2000. He experienced a "no disc" error in or about September 2002 and his DVD Player is completely non-functional at the present time;
- (b) the plaintiff, Dennis Wong purchased a DVD Player, Model S360 in December 2000. It began malfunctioning in January 2003 with the freezing of the screen and the experiencing of the "C13 error" and the "no disc" error and his DVD Player has continued to malfunction;

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- (c) the plaintiff, Brad Hay purchased a DVD Player, Model S360 in July 2000. In early 2001, he encountered intermittent "C13 errors" and his DVD Player has continued to malfunction.

THE CLASS

25. The plaintiffs bring this action on their own behalf and on behalf of all persons resident in Canada other than in the Province of Quebec (the "Class") who have purchased or acquired from January 1, 1997 to the present, Sony brand DVD Models S330, S360, S530D, S550D, S560D and S570D manufactured, distributed and sold by Sony or by London Drugs to the plaintiffs and members of the Class.
26. The plaintiffs and the members of the Class plead that this action involves:
- (a) a tort committed in Ontario;
 - (b) damage sustained in Ontario arising from a tort;
 - (c) defendants outside of Ontario who are necessary and proper parties to a proceeding brought against the defendants residing and carrying on business in Ontario;
 - (d) breach of contract in Ontario.

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Rules 17.02(f), (g), (h) and (o) of the *Rules of Civil Procedure* are relied upon.

27. The plaintiffs propose that this action be tried at the City of Toronto, in the Province of Ontario.

DATED: May 21, 2003

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and LONDON DRUGS LIMITED

03-CL-24914 CP
Court File No. # *22*

ONTARIO
SUPERIOR COURT OF JUSTICE
~~(GENERAL DIVISION)~~

Action Commenced at Toronto

STATEMENT OF CLAIM

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