

Investigation into Apple over iPod and iPad Warranties?

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November 11, 2011

On September 9 2011 an Italian consumer association, the *Centro di Ricerca e Tutela dei Consumatori e degli Utenti*, published a press release announcing that the Italian Competition Authority had initiated an investigation into four companies, on the basis of the association's claim of alleged unfair commercial practices relating to warranties for Apple iPods and iPads. The four companies in question are Comet SpA (an Italian chain of consumer electronics stores), Apple Retail Italia Srl, Apple Italia Srl and Apple Sales International.

The association claims that some vendors of iPods and iPads in Italy have refused to enforce the two-year warranty which the Consumer Code (Legislative Decree 206/2005) provides. Under Sections 130 and 132 of the code, the vendor is liable to the consumer for any lack of conformity for two years after delivery of the goods. In its claim, the association notes that Apple Sales International provides a conventional one-year warranty for defects in materials and workmanship for the iPod and the iPad. In other words, the complaint alleges that vendors of the devices in Italy have interpreted Apple's conventional warranty as a limitation of the mandatory warranty set by law, infringing Italian consumers' rights.

The key points of Italian law on this issue are as follows:

- Pursuant to Section 130 of the code, the vendor (not the producer) is "liable to the consumer for any lack of conformity which exists at the time that the goods are delivered". The consumer may "request the vendor to repair or replace the goods, free of charge in either case, unless the remedy requested is impossible or disproportionate". Section 132 provides that for two years after delivery of the

goods, the consumer may request the abovementioned remedy as soon as a fault becomes apparent.

- Italian law does not allow exclusions of, or limitations on, this warranty. However, in addition to the warranty under the code, the producer may offer a conventional warranty which grants the consumer additional rights. (This appears to be the case for the warranty offered by Apple Sales International, as discussed below.)
- The conventional iPad warranty, as published on Apple.com, states: “This warranty does not exclude, limit or suspend any rights of consumers arising out of non-conformity with a sales contract. Some countries, states and provinces do not allow the exclusion or limitation of incidental or consequential damages or allow limitations on how long an implied warranty or condition may last, so the limitations or exclusions described below may not apply to you.” Similar wording is included in the iPod/iSight warranty. In any case, notwithstanding the above wording, no conventional warranty may limit the legal warranty provided by Italian law.
- Under Italian law, a legal warranty for lack of conformity of purchased goods may be granted only by the final vendor. If a product is faulty as a result of an act or omission of the producer, a previous vendor in the same chain of contracts or any other intermediary, the final vendor is entitled to redress against the person or persons liable in the chain of contracts, “unless agreed otherwise or unless such right is waived” (Section 131.1).

It is clear that the warranty provided under Section 130 of the code applies to sales of iPods and iPads in Italy. Apple’s conventional warranty cannot limit this right in any way. The Italian Competition Authority’s Resolution 22190 (PS6102), issued on March 9 2011, clarifies that a final vendor is liable to the consumer for any lack of conformity during the two-year period mentioned in Section 130 of the code, notwithstanding any other conventional warranty provided by the producer of the goods.

In light of the above, the warranty that Apple provides for iPods and iPads could be deemed a conventional warranty under Section 133 of the code. On the basis of such conventional warranty, Apple Sales International is liable to consumers for faults in materials and workmanship under normal use for one year from the date of retail purchase, along with the final vendor. Consequently, for one year following purchase, the consumer may choose whether to ask the vendor or Apple Sales International to repair or replace the device free of charge. If the consumer has recourse to the vendor, the latter cannot refuse to comply with Section 130 of the code.

Once this one-year period expires, only one party is liable for any lack of conformity of the product: the final vendor. In turn, the final vendor is entitled to redress against the person or persons that are liable in the chain of contracts pursuant to Section 131.1 of the code.

Assuming that there are different Apple entities in charge of the production and the sale of iPads, the Apple entity in charge of sales and any other parties that are entitled to sell such devices are liable for two years pursuant to Section 130 of the code, whereas the Apple entity in charge of production is liable under the terms and conditions of Apple Sales International's conventional warranty.

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