

# Funky Android decide not to pursue legal action against Archos SA.

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## **Overview**

Funky Android Ltd. have announced that they are not going to pursue the available legal options over the alleged redistribution of confidential information. This decision is based on their concerns over the future of Archos SA.

Funky Android have been presented with a number of legal options for pursuing the allegations, but, after examining publicly available information, are of the opinion that Archos may cease trading before any chosen option would come to its' conclusion which would leave Funky Android with little chance of recovering the legal costs incurred.

Despite an original threat from Archos of pursuing remedies before English and French courts and a subsequent press release on the 6<sup>th</sup> of November 2009 stating Archos was considering all forms of recourse before the French courts, Funky Android has not, to date, received details of any legal action being brought by Archos. Funky Android has, however, provided Archos with evidence to support the alleged breach of confidentiality, and has provided evidence to support its' view when questions were raised by Archos or its' legal advisers.

Archos have also, to date, not responded to the offer made on the 6<sup>th</sup> of November 2009 of an exchange of permissions allowing both sides to publish evidence to support their claims.

## **Specifics of Funky Androids Opinion**

Funky Androids decision is based their opinions in the following three areas;

### **Opinion of Funky Android Ltd. of the financial stability of Archos SA.**

Archos carried out a rights issue in the last months of 2009 which, in a translation seen by Funky Android, indicates that it was performed to enable Archos to ensure the continuity of its operations and implement its turnaround strategy. Funky Android took this as an indication of a potential existing financial problem which left the company needing further funds.

Despite the rights issue being described as a great success Funky Android have seen reports that Archos have also been working to secure an extension to its 1.85 million Euro overdraft facility which expired at the end of 2009. Funky Android took this as an indication that even with the money raised from the rights issue Archos may be expecting further losses.

These pieces of information led Funky Android to the conclusion that Archos may not have money available to offer a settlement and may be the reason Archos did not pay the invoice presented to it. It also led to the opinion that Archos would probably engage in further delaying tactics to extend the timespan of any legal action for as long as possible in order to avoid paying a settlement and Funky Androids' legal fees.

### **Opinion of Funky Android of products currently available from Archos SA.**

Funky Android have seen reports of several problems in relation to some of the most recent products launched by Archos SA, including;

- Reports of long delays in shipments of the Archos 9 to some customers despite its "launch" on the 22<sup>nd</sup> of October 2009 (one example was of a customer who had waited 2 months for delivery and still had not received a unit)
- Unfavourable reviews of the Archos 9 (e.g. <http://i.engadget.com/2009/12/24/archos-9-reviewed-too-big-too-slow-too-starter/>)
- Quality Control issues with the Archos 5 IT (Android) firmware (including a release made prior Christmas which was pulled the same day due to a "last minute major issue with the web browser", for which, as of the time of this release, no resolution has been made publicly available)

These issues led Funky Android to the opinion that Archos's current product range may be reported as selling well but may have a higher than average return rate and/or cancellation of orders due to non-delivery which would incur extra costs and thus could reduce or eliminate any potential profits that may be made from the current products.

Funky Android have also seen claims that some products are selling faster than they can be made available, but this is an easy situation to achieve for any company if, for example, its' suppliers are restricting deliveries due to payment concerns.

### **Opinion of Funky Android Ltd. on announced future Archos SA products.**

Funky Android are only aware of one officially announced future product, an Archos tablet 'phone. Details of this device are a little sketchy, but it would appear to be similar to the currently available Motorola Droid/Milestone and Acer A1 Liquid, and thus Archos will be competing against two well established, far larger companies for a share of the market. There are also rumours that Google may enter this space with the Nexus One, adding to the number of companies Archos will be competing against to sell a WVGA Android 'phone.

It is therefore Funky Android's opinion that the currently announced future products may not provide the increase in profitability Archos SA are looking for.

### ***Conclusion***

Due to the opinions stated above the directors of Funky Android Ltd. did not want to commit the company to a potentially long and expensive legal battle with a company which, in its' opinion, may not be able to pay out a settlement and cover Funky Android's legal costs, which would result in a further increase in losses related to the work it performed for Archos.

### ***Disclaimer***

The views expressed in this document are the opinions of Funky Android Ltd. based solely on the information seen by its' directors. Funky Android Ltd. does not accept liability for any action taken as a result of reading this document.