

IN THE SOUP

General Information

Background

Three years ago Mass Production Cars (UK) plc (MPC) decided to 'soup up' their range of cars to provide a sports edition of their three main ranges (Popular, Business and Luxury). Having downsized considerably in recent years, MPC did not have the resources or expertise to develop prototype cars and so entered into an agreement with Sports Prototype Engineering Ltd (SPEL) to:

- Carry out a feasibility Study (Phase 1 two months).
- Develop a prototype vehicle that would be the base for all three ranges (Phase 2 six months).
- Develop the prototypes to readiness for production (Phase 3 ten months).

Manufacture would be by MPC. This meant that the three models would be launched at the Motor Show two years from inception.

One of the problems with sports car development is that the time from inception to production is lengthy and new car products and systems are being launched all the time. Rather like computers, the danger is that an innovatory product now is obsolete two years down the line. Because the target market for these cars was the upper-20's/early 30's, the production of a car that was a 'cutting edge' status product was essential. To do that, both MPC and SPEL needed to be aware of, and incorporate where possible, new developments that come to the market. The down side of this was two-fold:

- MPC made frequent changes in their requirements to reflect new trends.
- The new products had not been fully proven and so were subject to faults and, in some cases, outright failure.

The contract price for Phases 1 – 3 was £9.75 million, with non-performance charges for late 'signing off' of each Phase of £500,000 per month.

SPEL used a system of status reporting (called SPELcheck) giving MPC regular updates on progress, 'pinch-points' and costs. Phase 1 was signed off on time. Phase 2 was a month late but it was agreed that this was due to several changes in MPC's requirements. But the Development Phase was a disaster, overrunning by eight months, missing the Motor Show and resulting in the industry looking at MPC with derision. The joke was that 'souping up' to MPC meant using soup instead of petrol. It became known as the Heinz range. Worse, Jason Toggle, a young Formula One driver who had been booked for the Motor Show launch, was reported to have said that he didn't like soup anyway.

MPC were hugely embarrassed and were determined that SPEL should pay for their humiliation. They cancelled SPEL's contract and took the Development Phase back in-house withholding payment of SPEL's final invoice and expressing the intent of applying the non-performance charges. SPEL tried to meet with MPC but met a complete rebuff. After six months of trying they issued proceedings for their outstanding invoice plus interest and costs. Some time later, MPC hit them with a massive counterclaim. After each side spending over £70,000 in legal fees (with at least the same amount predicted to go to trial), both parties agreed to mediation.

The dispute

SPEL are claiming the following:

Outstanding invoice	1,750,000
Extras still to be invoiced	1,244,576
Ramp Down costs	<u>324,740</u>
Total excluding interest and costs	<u>£3,319,316</u>

MPC counterclaim:

Non-performance charges	4,500,000
Rectification works	2,784,000
Lost sales	<u>5,000,000</u>
Total excluding costs	<u>£12,284,000</u>

Attending the mediation

Alex Brodie SPEL Chief Executive
Steve Davies Development Manager
Mickie Blackstone Partner, external law firm

Jay Phillips MPC Head of Operations
Chris Donaldson Commercial Manager
Ajay Dholakia, in-house lawyer

Mediator(s)

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