Appendices for
FTC High Tech Warranty Project

Gripe Line Columns by Ed Foster
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APPENDIX A

InfoWorld, June 7, 1999 page 97
THE GRIPE LINE
Shrink-wrap ruling gives UCITA-like protection to some software vendors
By Ed Foster

I have a little story to tell you. Once upon a time, there was a construction company that hoped to win a job building a hospital. To prepare its bid, the company used the new version of a software program it had used in the past. The construction company triumphed in its bid and was prepared to live happily ever after.

There was one little fly -- more specifically, a bug -- in the ointment that caused the program to crash in certain circumstances. The software had crashed repeatedly while the company's staff was using it, but the data they had entered appeared unharmed once they rebooted, so they continued. (Software crashes all the time, after all, especially new software.) Eventually, however, they discovered that in the process, the program had somehow wound up miscalculating, causing them to underbid the hospital job by $2 million. On learning this, company officials were rather upset, and decided to sue the software publisher to recover their losses.

As the construction company was gathering evidence for its case, an interesting fact came to light. At the time they were ordering the new version of the program, the software publisher was already aware of the bug, and a fix was available by the time the miscalculation occurred. But believing that the bug was not likely to cause serious problems (software crashes all the time, after all), the publisher chose not to notify customers of the bug or the fix unless they asked. Yet in spite of this, the construction company's lawsuit was eventually thrown out of court. The software came with a shrink-wrap-type license agreement that proclaimed the publisher could not be sued for consequential damages, and that was that as far as the court was concerned.

Sad to say, this little fable is not a fiction. It follows the undisputed facts as described in a Washington state appeals court decision in the case of M.A. Mortenson vs. Timberline Software. Now, I have to say we don't know what evidence and arguments Timberline might have presented in its defense had the three-judge appeals court not enforced its shrink-wrap terms. It's possible

Timberline would have demonstrated mitigating circumstances that it would be unfair to make it pay for Mortenson's loss. And it's possible it wouldn't have.

But that's just the point. Timberline didn't have to defend itself because of that term prohibiting a suit for consequential damages -- a term you'll find in every shrink-wrap license. Realize that Mortenson had some very good precedents in its favor for believing that Timberline's disclaimers of warranties and consequential damages would not be enforced. The basic facts of the case parallel closely those in a very well-known federal court decision (Step-Saver vs. The Software Link) in which such post-sale terms in a shrink-wrap-type license were ruled unenforceable. In addition, there have been innumerable cases in which software was treated as regular goods, and any merchant selling goods with a known defect without warning customers is invariably going to be held responsible.

In this case, the appeals court instead modeled its decision after several recent, and still controversial, federal court decisions (ProCD vs. Zeidenberg, Hill vs. Gateway 2000) in which shrink-wrap terms were upheld. Interestingly, in its opinion, the appeals panel noted the existence of the UCC Article 2B draft effort; and the judge who wrote the opinion also told me that an "amicus" brief filed by the Business Software Alliance (BSA) defending shrink-wrap licenses had been very helpful to the court in reaching its decision. The BSA brief, quite naturally, presented much the identical arguments they've used in lobbying for 2B, now the Uniform Computer Information Transactions Act (UCITA).

Think about this: UCITA has been passed by no state legislature, but here we see it is already being treated as virtual law in at least one court decision. And this gives us a real-world demonstration that, in a state where UCITA is the law, software publishers need have no fear of legal consequences from releasing buggy products, even when a "known bug" causes significant damage to a customer whom the publisher chose not to warn.

One more thing to consider: The Mortenson case has been appealed, but it's not yet known if the Washington State Supreme Court will agree to review it. But until such time as the decision is reversed, UCITA is basically the law in the state of Washington. And though you may or may not do business with Timberline, I bet there's another software company you have had dealings with whose shrink- wrap licenses are also governed by the laws of Washington state.

What is the moral of this tale? Perhaps it's that you'd best come to www.infoworld.com/UCITA and learn what you can do.

APPENDIX B

InfoWorld, June 14, 1999 page 93
Going beyond software: UCITA might ensnare consumer buyers as well
The Gripe Line
By Ed Foster

There's one more story I need to tell you to help put the Uniform Computer Information Transactions Act (UCITA) in perspective.

In the fall of 1995, Gateway 2000 celebrated its first decade in business by shipping the Gateway Tenth Anniversary System. Advertisements for the PC touted its state-of-the-art features including a Matrox MGA Millennium graphics card, a 6X CD-ROM drive and Altec Lansing "Surround Sound" speakers. For those who wanted the latest and greatest in PC technology, the $4,000 price tag seemed like a bargain, so Gateway had plenty of eager customers.

Over the next few months, however, some of those customers began to wonder about the system's performance and to question Gateway about the components. Slowly, the truth began to come out. On March 4, 1996, Robert X. Cringely reported user complaints about the CD-ROM performing no better than 4X drives. (See "Where has loyalty gone? Users grow weary of vendors' cheating ways," www.infoworld.com/printlinks.) By spring, further trade press reports revealed that the video card was not the high-end Millennium board but a cheaper Matrox product with fewer capabilities and that, while the Altec Lansing speakers had come in packages marked "Surround Sound," they weren't in fact surround-sound speakers.

After the Tenth Anniversary System's shortcomings became known, a class-action lawsuit was filed against Gateway by a couple named Hill. Gateway countered with a motion that the court enforce a mandatory arbitration clause in Gateway's 4-page "Standard Terms & Conditions" included inside the box with the PC. If enforced, the clause would prohibit the Hills from suing Gateway, and they would instead have to submit to an arbitration hearing under a set of rules that would require them to pay a $2,000 fee, regardless of the outcome. Because the most the Hills could hope to win in such a proceeding would likely be about $1,000 -- the amount it would have taken to upgrade the system to match what Gateway had advertised -- they would have lost in arbitration even if they had won.

Initially, Gateway's motion to force arbitration was denied by a federal district court, which said in part that the Hills were not given adequate notice of the existence of the arbitration clause. A U.S. Court of Appeals reversed that decision, however, ruling that per Gateway's terms, the Hills had 30 days to return the computer if they objected to the arbitration clause or any of the other terms. At that point, all the terms became binding. It did not matter that the Hills had not actually read the terms closely enough to see the arbitration clause or that, if they had, the clause did not mention the $2,000 fee.

Thirty days would be more than enough time with any product to discover that you have not received what you bargained for and to return it. With Gateway's Tenth Anniversary System, however, it took a number of technically astute customers working together online for many months to discover that the

components of the system were not as advertised. Even if the Hills had seen the arbitration clause and been concerned about it, it would almost certainly have taken them more than 30 days to find out about the $2,000 fee, etc., because the details of the arbitration rules Gateway had chosen were only available from an obscure organization located in France.

This case is disturbing on several levels. As with the Timberline case we looked at last week, we don't know what arguments Gateway might have used to defend its actions because the company was allowed to hide behind its fine print. And although it's easy for a court to say you're responsible for reading all that stuff, it's unrealistic to expect that one would return a product prior to discovering its defects on the basis of one vague term among all the other disclaimers.

Perhaps most disturbing of all is that, although this case epitomizes the legal system UCITA would implement for software, this isn't a software case. The Hills weren't accusing Gateway of selling a buggy product; they were accusing the company of outright fraud in delivering something other than what it promised. (On Gateway's Web site I found that its standard terms still contain a mandatory arbitration clause, although it appears that you no longer have to write to France. Why does Gateway still feel it needs to protect itself from lawsuits this way?)

If a computer manufacturer can avoid lawsuits by sticking a few lines of fine print inside the box, why couldn't a stereo manufacturer or an apparel catalogue do so as well?

Not surprisingly, Hill vs. Gateway remains a controversial decision in legal circles. If UCITA becomes the law of the land though, the only question will be just how far we'll find the software industry's rules extending into our everyday lives.

APPENDIX C

InfoWorld, July 12, 1999 page 85
THE GRIPE LINE.
@Home's disinformation campaign: What you buy is not always what you get
By Ed Foster

If I offer to sell you an apple and you pay me for it, you might be a little upset if I then try to slip you a grape instead. More and more, though, that looks like the way electronic commerce is going to work.

We've already discussed several examples of electronic businesses arbitrarily changing the terms of the deal after customers have forked out their money, but one situation that both Robert X. Cringely and I have been hearing about sinks to new depths. As my page mate reported two weeks ago,

@Home cable modem users have discovered that a cap of 128Kbps on uploads is being quietly instituted on the service by Excite@Home and its cable providers, such as TCI, Cox, and Comcast. And it now appears that @Home had every intention of keeping this limitation a secret from its customers -- customers who are promised "unlimited use" of "the fastest Internet service" when they sign up.

It seems that @Home's plans became clear when a company memo explaining the upload cap to cable providers leaked out on the Web. "ONadvantage Upstream Enhancement," as the upload cap is euphemistically called, could be portrayed as a solution to performance problems, the memo said, but it repeatedly warned cable operators to avoid talking about it with customers. Statements like, "The best ONadvantage explanation is to avoid talking about it to begin with," and, "[Upstream rate limiting] will NOT be mentioned," littered the document.

Although @Home officials now own up to the memo, they say that a certain amount of "cut-and-paste" work occurred somewhere along the line that puts its purpose out of context. They say the great majority of customers should experience better overall performance because the cap will prevent them from hogging bandwidth, and the memo's point was that employees should not confuse customers with technical details.

"The thing to understand about that document is we weren't trying to hide anything," says Jonathan Rosenberg, vice president of marketing at Excite@Home. "The great majority of people who call in regarding performance issues aren't going to want to hear a lot of technical detail they won't understand -- they just want to know what we're doing to make it perform better. More than 99 percent of the users are either not affected or are better off under ONadvantage."

Rosenberg says the upload cap, which has now been implemented by most of the cable providers in at least some of their markets and will eventually be implemented on all @Home networks, is improving network performance overall. And most of the less than 1 percent of customers who are negatively impacted by the cap, he believes, are probably violating the terms of @Home's Acceptable Use Policy (AUP) by running a Web server or other "nonresidential" use of the service.

Many of Rosenberg's customers disagree. Performance problems they've seen on their cable operators' @Home service have not gone away with the implementation of the cap, they say, and in some cases have gotten worse. Rosenberg acknowledges that a number of activities permitted by @Home's AUP can also trigger the cap, although he says such instances are very rare for the average customer. Our gripers, however, believe that @Home is putting the cap in place for reasons that have less to do with controlling a few abusers and more to do with forcing home-office types to purchase a more expensive service such as @Work.

There is some support for this theory in the leaked memo and from other sources I've seen. On the other hand, the intrinsic nature of @Home's technology is such that I can accept the likelihood that, at some point, the

company was going to be forced to implement an upload cap for the greater good of most users. So let's cut Excite@Home a break on the issue of what its motives were and focus instead on how it went about it.

On that score, there is no reason to show @Home any mercy. I hope to discuss @Home's disinformation campaign in more detail at a later date, but I've seen more than enough evidence now from readers that shows @Home followed its own advice in its leaked memo to avoid informing customers of the real nature of ONadvantage. To this day, @Home's Web site promises potential new customers "unlimited use" of the service, leaving it up to them to discover that there are in fact many limitations on use and that @Home can change them arbitrarily.

Maybe Excite@Home has the right to institute a rate cap, but it doesn't have the right not to notify customers that they are no longer getting service for which they signed up. If a company that figures on being a core utility in the e-commerce world does business this way, who is going to want to do e-business?

InfoWorld, July 26, 1999
THE GRIPE LINE
"Sneak wrap" may be a good way of defining the maze of online policies.
By Ed Foster

Since it's obvious that electronic commerce has invented a new form of business practice, I think it's time we invented a name for it. I propose we call this approach "sneak wrap."

Sneak wrap is where the vendor reserves the right to change the terms of a deal at any time, and sneak notice of the change right past you if they possibly can. We've seen a number of variations of this theme online over the past few months, but the epitome has to be @Home's quiet implementation of its "ONadvantage Upstream Enhancement" 128 Kbps upload-rate cap that we talked about two weeks ago. As input from many @Home cable modem service customers has revealed even more about the intricate labyrinth where @Home buried the truth about its new rate cap, it's worth our while to plumb these depths a little further.

If you were innocently signing up with @Home today, what would you be likely to learn about the service and its limitations? That somewhat varies, depending on the cable operator in your local service area, but the descriptions I've heard from most readers are rather similar. You'd still see the claims of speed "up to 100 times faster than a 28.8 Kbps modem," but on @Home's Web site there's no hint that this level of performance is possible in only one direction. If you are really diligent, however, you might discover the service's "Acceptable Use Policy" (AUP) by going to @Home's customer support page.

The AUP is easy to miss, at least until the installer comes to the door, but it is the one document available before you sign up that suggests @Home's usage restrictions might go beyond the normal prohibitions against spamming, pornography, etc. Users, the AUP tells you, "must comply with the then current bandwidth, data storage and other limitations on the Services." It does not say, however, what bandwidth limitations, if any, exist at that moment. More importantly, it reserves the right for @Home to change the AUP "without notice," adding that users should therefore "consult this document regularly to ensure that their activities conform to the most recent version."

In other words, unlike regular old shrink wrap, sneak wrap demands that you read through the legalese not just once, but on a regular basis. And if you were actually crazy enough to do that, you still wouldn't learn the truth about the rate cap. Although the AUP was modified the day after my first @Home column appeared, it still made no mention of the cap or other limitations that were spelled out more clearly in places prospective customers cannot see.

So new customers have no chance to discover the truth about the service, at least not from @Home. But what about those who already had @Home accounts when the rate cap was introduced? There was, in fact, a way for them to learn about the rate limit, but only if they knew where to look. Eagle-eyed customers were even given a hint. A few of them report having seen white papers about ONadvantage posted on their cable operator's service page, but they disappeared after a few days.

Naturally, these quick-disappearing notices followed @Home's company line of keeping customers in the dark about the rate cap, as outlined in the leaked memo we discussed in my July 12 column. Instead, the notices portrayed the program as a performance enhancement. For example, an "ONadvantage and @Home Network Platform" document posted briefly on several services describes the program's benefits without mentioning the limitation on upload speeds. The document did, however, tell those few readers who saw it that "specifics on upstream rates" were to be found on what at @Home calls its "Rules of the Road" document, located on a part of @Home that only those with established accounts can access.

Dated Feb. 25, the "Rules of the Road" is strangely more forthcoming than the AUP document itself. It even acknowledges that "feedback from our members indicates @Home's acceptable use policy was not clearly defined and easily misinterpreted," and provides clarification on a number of points that the AUP lacks. And while it makes no mention of ONadvantage, it does contain a statement that only "upstream rates up to 128 Kbps" are supported.

There it is, the truth at last. If you blink, you miss it, but it's there. All you have to do to find the truth is pay your money without knowing what you're really getting, check and re-check a variety of policy statements that might be updated without notice, and not let any seemingly innocuous announcement go by without devoting serious research time to finding out what it might really mean. That's the way sneak-wrap licensing works. And, as we'll discuss further next week, @Home is not the only company employing the practice.

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APPENDIX D

InfoWorld, August 16, 1999 page 113
THE GRIPE LINE
How a UCITA provision could let software vendors secretly help themselves
By Ed Foster

Is the virtual repo man on his way to repossess your software?

Electronic self-help -- the right of a publisher to remotely disable your software if, in their opinion, you are in default of your contract with them -- is the single most controversial provision in the Uniform Computer Information Transaction Act (UCITA). Its stated purpose, according to the law's proponents, is to give some recourse to small software developers when big, mean customers refuse to pay their bills. But a closer look at the impact the law will have in the real world makes it clear that the true purpose of UCITA is something quite different.

UCITA's drafters have argued that they bent over backwards building safeguards into "Section 816," the main electronic self-help provision. And it's true that, while previous versions of UCITA (then known as Article 2B) gave software publishers blanket permission to disable customers' software without notice and at their discretion, the rules have now been tightened considerably. A publisher must now give 15 days notice to allow the customer to appeal for an expedited hearing on the dispute.

A software company can be held responsible for consequential damages if it were to perform self-help inappropriately or without regard to the harm that innocent third parties might suffer. Significantly, the customer must separately agree to the electronic self-help provision as part of the contract, and (a very rare thing for UCITA) the licensor's responsibilities and liabilities under 816 cannot be waived or disclaimed.

OK, that sounds pretty reasonable. So with all these safeguards, why am I and a host of other critics so upset about UCITA?

If you think about it just a little, it becomes obvious the safeguards are sufficient to pretty much guarantee that 816 will never be used for its stated purpose of protecting little software developers from big, bad customers. Now while no InfoWorld reader would ever abuse the leverage he or she has over a smaller vendor, I think we can probably agree that big guys beating up little guys, be they licensors or licensees, is something that unfortunately happens. But software industry propaganda aside, UCITA is not designed to benefit small software companies.

The safeguards in 816 require that the customer separately "manifest assent" to granting the publisher the right to electronic self-help. Who in their right mind is going to agree to that? Nobody, especially in a situation where they

have a lot of bargaining power. Conversely, any small software developer who tries to propose a contract that includes electronic self-help will soon learn that even mentioning it is probably a good way to permanently lose that potential customer.

After all, if a licensor wants the right to electronically disable your software, that must mean they have the mechanism in place that will allow them to do so. And while the National Conference of Commissioners on Uniform State Laws may not understand this, you and I know that a back door or time bomb isn't something that can just be added on to the code in those theoretical cases where the customer agrees to it. If the disabling mechanism itself isn't easily disabled, or perhaps used by an extortionist third party, it has to be buried deep, and it's going to be there, whether or not you've granted manifest assent.

So that leads us to the basic question. Why does the software industry -- the big guys that is -- want this watered-down, totally impractical electronic self-help provision that I doubt even they would have the gall to try to openly use any time soon? With all the other goodies they've won for themselves in UCITA, why bother with this when they know full well it will make the law less likely to be enacted in many states?

There is only one answer I can see, and it's a very disturbing one. The industry wants it because it will provide a legal excuse if they're caught red-handed with a secret, not contractually validated, back-door mechanism in their software. "Oh, we have to have it there just in case we want to exercise our rights under UCITA with certain customers," they'll say after a bug accidentally triggers it and wipes out somebody's company. "Sorry about that, accidents happen."

The safeguards in 816 say nothing about the publisher being responsible for a bug, or one of their disgruntled ex-employees, or an unknown hacker disabling or threatening to disable your software. In fact, UCITA provides a world of safeguards for the publishers that will make it virtually impossible for you to hold them responsible if something like that happens. And I'm afraid it's now just a matter of time before it does.

InfoWorld August 21, 2000 page 83
THE GRIPE LINE
UCITA lets vendors reach in and disable your software, forcing you to upgrade it.
By Ed Foster

IN CASE YOU HAVEN'T already noticed, let me point out an interesting connection between spyware and the Uniform Computer Information Transactions Act (UCITA). Intrusive software might not be there just to snoop: Under UCITA it can be there to legally disable your software when the

vendor wants to force you to buy the next version.

You didn't know vendors could leverage UCITA to force customers to upgrade? I have to apologize for that, because only recently have I come to realize that UCITA's "automatic restraints" provision makes this a likelihood for shrink-wrapped software products. I have a good excuse, though: The tangled mess that is UCITA still has surprises for even the most careful of students.

And as long as I'm apologizing, let me take this opportunity to announce that we have finally brought our UCITA section on InfoWorld.com (www.infoworld.com/UCITA) up-to-date. We'll be adding more material to it in the next few months and will endeavor to do a better job of keeping it current. I could try to point fingers elsewhere, but it's my fault it has been so long. The only quasilegitimate excuse I have here is that I do get tired of writing about this thing, as much as many of you get tired of reading about it. Unfortunately, it's necessary.

By the way, there is an excellent site that anyone interested in tracking UCITA should check out: IEEE-USA's UCITA Grassroots Network page at www.ieeeusa.org/grassroots/ucita/index.html. The Institute for Electrical and Electronics Engineers has taken a strong stand against UCITA, and the site contains valuable resources, position papers, and state-by-state tracking of the legislation. In my humble opinion, the opposition to UCITA by IEEE, the Association for Computing Machinery, and other groups representing technical professionals is the most telling evidence that the law is bad not just for customers but for the software industry itself.

In fact, I have to suspect the automatic restraints concept is one of main reasons the big software companies are pushing so hard for UCITA. On the surface, the provision (Section 605 in UCITA parlance) looks fairly innocuous, at least compared to the blatantly controversial Section 816 about electronic self-help that's been the focus of so much attention. A quick reading would give you the impression that the restraints 605 talks about are only such things as metering software that limits access to the number of licensed users or time bombs in demo software to restrict how long the program can be used. A closer look reveals more.

"Licensees generally have no problem with the type of compliance tools that the term 'automatic restraints' leads one to imagine," says Elaine McDonald, assistant director for corporate purchasing at The Principal Financial Group. "But the definition in UCITA does not really require the restraint to be automatic; in fact, it clearly doesn't exclude a restraint that is intentionally triggered by the vendor at a time of their choosing. In other words, it is possible for a vendor acting under Section 605 to exercise what amounts to electronic self-help without even the minimal protections provided under Section 816."

There is an "or" in Section 605 that's easy to miss. In describing situations where vendors can enforce a usage limitation with an automatic restraint, UCITA says it can be done if a term of the agreement authorizes its use, if the restraint prevents use that is inconsistent with the agreement, if the

restraint prevents use after a state duration or state number of uses, or if the restraint prevents use after one party notifies the other the agreement is being terminated. In other words, the user has done nothing wrong, nothing in the agreement allows for use of the restraint or says that time is up, and the licensor can still turn off the software by giving "reasonable notice." (As you know from our sneak-wrap discussions, that means no real notice at all.)

UCITA is full of "terminate-at-will" language that says either party can end a license agreement when they wish unless there is a stated duration for the contract. I've urged IT managers to make sure that their negotiated contracts specify they have perpetual rights to software. But it's a rare shrink-wrap or click-wrap license that grants perpetual rights. There is a very weak presumption of a perpetual license in some cases under UCITA, but it's easily overcome by vendors that design their licenses with the intent of using automatic restraints.

UCITA says the license on a shrink-wrapped product runs out when the vendor chooses, and the first you might know of it is when you find the program's no longer there. And if a bug or hacker triggers the restraint, UCITA protects the vendor there, too. Be it intentional or accidental, if an automatic restraint wipes out your software -- even wipes out your company -- under UCITA you'll have no recourse against the vendor who slipped the software onto your system. I bet the spyware makers can hardly wait.

APPENDIX E

InfoWorld, July 17, 2000
THE GRIPE LINE
Good price on notebook computer turns into fishy case of bait and switch.
By Ed Foster

YOU DON'T HAVE TO VENTURE into e-commerce to get bitten by sneakwrap. Just buying something the old-fashioned way puts you at risk of being victimized by an unseen disclaimer buried deep on some Web site.

In early May a reader we'll call Mr. Post (in honor of the posting he never saw) noticed what appeared to be a very good deal on a notebook computer in a magazine ad.

"While going through the May 2000 issue of the Computer Shopper, I found an ad for a Compaq Presario XL106 from PCMall," Mr. Post wrote. "The ad says the price is $799 after $400 'mfr. rebate.' The specs were agreeable, so I told my purchasing agent to order one."

When the machine arrived, it came with an invoice from eCost (a sister company of PCMall) for a total charge of $1,399 plus tax. The $400 manufacturer's rebate turned out to be an MSN deal that would require a three-year commitment at $21.95 a month.

As Mr. Post had no need for MSN, the "rebate" was essentially a $400 loan he'd have to pay back with interest. (Even if he had wanted MSN, the value of the deal was not $400, of course, especially considering that at the time Microsoft was offering the first six months free on a one-year commitment to MSN.) And even with the rebate, there was still a $200 discrepancy between the advertised price and what had been charged to Mr. Post's credit card.

Mr. Post called PCMall. "I was told I cannot return the item; those items are nonreturnable," he wrote. "I asked them where did it say that? Was told on their Web site. Told them I did not see anything like that in the ad. They told me it was on the back of the invoice. So I asked them, let me get this correct: I order a part. It comes in with the wrong price, the wrong rebate, and the place it tells me I cannot return it is on the invoice I receive with the part? I do not know about you, but this does not smell that good to me."

On the back of the eCost invoice was a brief notice saying that equipment from several manufacturers including Compaq could not be returned for any reason. The notice added that customers should check eCost.com -- which Mr. Post had never heard of before he got the invoice -- for more information, including other manufacturers that can be added to the no-returns list at any time.

With great difficulty I found the corresponding notice on eCost.com, buried deep in a document that was itself hard to find. A slightly more accessible notice on PCMall.com contained a longer list of manufacturers whose products could not be returned. In fact, all but one of the computer manufacturers in the three-page ad were companies with a no-return policy; several of them were listed as such only on the PCMall Web site.

His purchasing agent told Mr. Post he was almost certain that he had not been informed of the true price of the system, the nature of the rebate, or the no-return policy over the phone.

To test that assertion, I made several calls myself about the ad, which was still running in June. One sales rep did make it clear without my asking that the "rebate" involved the three-year commitment to an online service, but others described it just as a "Compaq-MSN rebate" without explaining the strings that were attached to those three letters. No one informed me of the no-return policy on Compaq equipment, even when I asked for warranty information.

I did, however, come up with a possible explanation for the $200 price discrepancy other than a deliberate bait and switch.

When I asked one salesperson about the Compaq XL106 without mentioning the ad, he wound up finding two seemingly identical configurations at two different prices.

In June, the difference between the two configurations was $100, but in May it may have been $200. Possible confirmation came from the fact that the part number for the notebook on the invoice Mr. Post received was different than

the part number in the PCMall ad.

Without knowing Mr. Post's identity, PCMall officials have not been able to confirm that's what happened, but they acknowledge it's a possibility. It was just one of those mix-ups that can happen -- an honest mistake -- and PCMall would refund his $200 happily.

Mistakes can happen, all right, particularly when a $400 manufacturer's rebate is actually something quite different. When there is a mix-up, particularly one that does not appear to be the customer's fault, it's only fair that customers should be able to get their money back. Mr. Post doesn't want to pay $1,199 for the notebook and what for him is a worthless MSN rebate; he wants to return it and forget the whole deal. But there's a notice on a Web site he didn't know existed that says he can't.

Welcome, Mr. Post, to the brave new world of sneakwrap.