

Author: Michael Boucher at orchid
Date: 1/9/97 5:48 PM
Priority: Normal
TO: Ricardo Correa at SERVER1
CC: Mary Tai at SERVER1
CC: Ted Lai
CC: John Kuo
CC: Robert Olistad at SERVER1
Subject: MS Works

----- Message Contents -----

Ricardo,

I interoffice mailed copies of the MS Applications shipping reports for 1Q-3Q 1996 (4Q is due by the end of January). These reports differ slightly from what MS has in that these split Works royalty PNs onto a second page (so it is easier to see quantities of Spring Value Pack at \$9.00 and of Ultimate Multimedia Value Pack at \$8.00 - for Office \$2.50 refund calculation) where the ones sent to MS put all PNs on one page.

Also, the reports that went to MS for the first two quarters indicated royalty rate of \$9.00 for Ult. MM Value Pack which is wrong (should have been \$8.00).

You can forward any of these to Scott (?) at MS. Scott seemed to indicate that MS doesn't intend to pay us anything, and that the \$2.50 would just be a credit against our \$9.00/unit royalty.

Since our total minimum commitment amount is now \$5.56 million, if the min. commit is depleted at \$6.50 (as it seems MS believes) we have a min. commit of 855,384 units from 2/96 to 8/97. Incredible.

From AAC's point of view, the min. commit should be depleted at \$9.00/unit and our min. commit. in units would then be 617,777 units between 2/96 and 8/97. If so, the \$2.50/unit refund should be treated independently, and MS should pay us \$2.50/unit for all units of Spring Value Pack shipped (132,730 units as of 11/30/96 = refund of \$331,825).

Whether the min. commit in units is 855K or 617K, we are not going to ever deplete it completely, so if the min. commit is depleted at \$6.50 (ie as Scott indicated MS interprets the contract) MS LOSES ABSOLUTELY NOTHING, WHICH WOULD MEAN THE WHOLE IDEA OF THE \$2.50 REFUND PER UNIT WAS AND IS MEANINGLESS.

In saying that they don't owe us any money, and that the \$2.50 should be taken as a credit against the \$9.00, MS is saying that our min. commit was for 855,000 units over 19 months, or 45,000 units per month.

Please gather all of the people you need and have a long detailed talk about this, the disputed amount is now \$331K and will go higher. The undisputed payments we will make under the Works contract (not to mention the \$2,249,450 which we paid for office and never used) total \$5,560,000., of which we have used \$3,406,529 as of 11/30.

Best Regards Mike Boucher 1/9

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BY Court, J.C.P. No. 466, CA
Superior Court, San Francisco

Plaintiff's Exhibit

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