use. The helmet complied with the U.S. Department of Transportation standards and was also certified by the Snell Foundation, a leading worldwide helmet research and testing laboratory. The owner's manual for the helmet included the following:

> **Five Year Limited Warranty:** Any Bell helmet found by the factory to be defective in materials or workmanship within five years from the date of purchase will be repaired or replaced at the option of the manufacturer. . . . This warranty is expressly in lieu of all other warranties, and any implied warranties of merchantability or fitness for a particular purpose created hereby, are limited in duration to the same duration of the express warranty herein. Bell shall not be liable for any incidental or consequential damages. . . .
>
> **Introduction:** Your new Moto-5 helmet is another in the long line of innovative off-road helmets from Bell. . . . [T]he primary function of a helmet is to reduce the harmful effects of a blow to the head. However, it is important to recognize that the wearing of a helmet is not an assurance of absolute protection. NO HELMET CAN PROTECT THE WEARER AGAINST ALL FORESEEABLE IMPACTS.

Yarusso filed suit against Bell. He testified at trial that he had purchased the helmet based on Bell's assertion that the helmet's primary function was to reduce the harmful effects of a blow to the head.

On what grounds could Yarusso sue Bell? What will Bell argue in its defense? Who will prevail? Could Bell have done anything that would have enabled it to avoid this lawsuit? [*Bell Sports, Inc. v. Yarusso*, 759 A.2d 582 (Del. 2000).]

8.6 Purchasers of iPod audio players brought a class action lawsuit against Apple, Inc. for breach of the implied warranty of merchantability. They alleged that the iPods were defective because they posed a risk of noise-induced hearing loss to users. The iPod is capable of producing sounds as loud as 115 decibels, and it contains batteries that last for twelve to fourteen hours. Do plaintiffs have a valid claim for breach of the implied warranty of merchantability? [*Birdsong v. Apple, Inc.*, 590 F.3d 955 (9th Cir. 2009).]

8.7 In November 2013, retailing giant Wal-Mart Stores, Inc. stated that "technical errors caused internally" resulted in the publication of deeply discounted sales prices for approximately six hours on its online sales site on November 6, 2013. Incorrectly priced items included $11 kayaks, $9 computer monitors, and $21 treadmills, as well as $100 cans of Lysol and $70 packets of Kool-Aid.

The "Terms of Use" section of Wal-Mart's website provides that the price of an item cannot be confirmed until after the customer's order is placed. The section includes the following language as well:

> Walmart reserves the right to cancel any orders containing pricing errors, with no further obligations to you, even after your receipt of an order confirmation or shipping notice from Walmart.

Ravi Jariwala, a Wal-Mart spokesperson, indicated that because of the "wide discrepancy" in the pricing, Wal-Mart would notify the customers who ordered the erroneously priced items that their orders were canceled, refund the purchase price, and issue a $10 gift certificate.

Do you think Wal-Mart took the best approach to handling the error, or were there other steps it should have taken? Is this merely a "public relations" problem, or are any legal issues involved?

Certain customers, who were probably thinking, "It's too good to be true," used Wal-Mart "Site to Store" option and were able to pick up their online orders at a store before the company canceled the orders. Should these customers be treated any differently from the ones who had not yet received their ordered goods? Did these customers act ethically? [Renee Dudley, *Wal-Mart Cancels Low-Priced Orders Made in Online Pricing Snafu*, BLOOMBERG (Nov. 7, 2013), http://www.bloomberg.com/news/2013-11-07/wal-mart-cancels-online-orders-made-during-errant-pricing-snafu.html.]

8.8 United Concrete purchased concrete from Red-D-Mix and later claimed that the concrete was defective because of issues with bleed water. Bleed water is excess water that seeps out of concrete after it has been poured; it rests on the surface and can weaken the concrete, leading to premature degeneration. United Concrete then sued Red-D-Mix for fraudulent representation under Wisconsin law. United Concrete claimed that a Red-D-Mix salesperson had assured United Concrete that the bleed water issue had been resolved. Red-D-Mix asserted in its defense that its salesperson's statement was mere puffery and therefore not actionable.

Were the statements by the Red-D-Mix salesperson puffery? Why or why not? Does it matter whether the Red-D-Mix salesperson had any reasonable basis for making the statements? How could United Concrete have avoided this lawsuit? [*United Concrete & Construction, Inc. v. Red-D-Mix Concrete*, 836 N.W.2d 807 (Wis. 2013).]