

Uber Victory Provides Relief Regarding Enforceability of App Terms & Conditions

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Last week, a federal court ruled that mandatory arbitration provisions in lengthy mobile application Terms of Service can be binding, regardless of whether a customer takes the time to read them. This ruling in favor of Uber Technologies Inc. comes as welcome news to mobile application providers hoping to settle disputes outside of the public eye and avoid class-action lawsuits in the future. The New York federal court ruling may also provide insight into the enforceability of other provisions within Terms and Conditions.

In 2015, an Uber mobile app user brought suit against Uber, arguing that the pricing algorithm violated antitrust laws. Relying on the Terms of Service of the mobile app, Uber requested the court throw out the suit and have the matter proceed in arbitration, as the user agreed to a mandatory arbitration provision in the Terms when he registered his Uber account.

Before registering an Uber account, the plaintiff was notified that “By creating an Uber account, you agree to the TERMS OF SERVICE & PRIVACY POLICY.” The capitalized phrase was a hyperlink in bright blue and underlined, which linked to another screen containing a button that allowed users to view Uber’s Terms of Service and Privacy Policy. The plaintiff claimed he did not recall seeing or following the hyperlink to the Terms and Conditions.

The U.S. District Court in New York initially denied Uber’s motion to compel arbitration, concluding that the user did not have reasonably conspicuous notice of the Terms of Service and did not unambiguously manifest assent to the Terms. In other words, the Court found that the registration process for Uber mobile app users did not adequately notify the user that he was waiving his right to have claims heard in court. Therefore, the district court held that the user was not bound by the mandatory arbitration provision contained in the Terms of Service. Uber appealed.

In a 3-0 decision, the United States Court of Appeals for the Second Circuit reversed the decision. The Court of Appeals determined that Uber properly notified its mobile app user, in Uber’s online user agreements, that disputes would only be resolved via arbitration.

Despite this victory, the lawsuit may still be allowed to proceed outside of arbitration. Uber had begun to exchange discovery materials with the plaintiff before filing motions to compel arbitration. The case has now been remanded to the district court to determine whether the plaintiff can demonstrate that Uber waived its right to arbitration by actively fighting the matter in court. Regardless of the final outcome of the Uber case, the Second Circuit has, for now, made Terms & Conditions more likely to be enforceable.

Overall, this decision comes as a relief to many mobile application providers, providing precedent that the online user agreements entered into by app users may be deemed to be binding. It is not yet clear how other circuits will apply the Uber decision with regard to the enforceability of online user agreements, even when users claim ignorance.

Although this ruling makes provisions in Terms and Conditions more likely to be enforced, it should be noted that mobile application providers will still want to ensure that users are given clear notice of the Terms & Conditions, with an opportunity to review the Terms, and actively agree to the applicable Terms & Conditions.



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