

Court Enforces Arbitration Clause in In-Home Services App Agreement

The Bottom Line

- The First Circuit's *Emmanuel* decision reaffirms yet again the importance of well-crafted terms and conditions for companies interacting with consumers over the Internet and via mobile apps.
- Terms must be presented in a clear and conspicuous manner to give users reasonable notice of them, an understanding that they can review them, and an ability to somehow actively manifest their assent to be bound by them.

A federal Court of Appeals has once again affirmed the enforceability of an arbitration clause in a mobile application's contractual terms. The Boston, Massachusetts appellate court held that an app user who clicked "Accept" on a screen referencing and displaying at least the first few lines of an agreement was bound by the agreement's arbitration clause, even if the user never scrolled down to see the arbitration clause itself. This satisfied both elements of contract formation under Massachusetts law, namely, reasonable notice of the terms of the contract and reasonable manifestation of assent to those terms. The court therefore affirmed the dismissal of the user's putative class action alleging federal and state wage and employment claims.

A Handy Guide to the Case

The case involved Handy Technologies Inc., a service that matches cleaners, nannies and other "at home" workers with potential customers. Maisha Emmanuel, a house cleaner, registered to use Handy's services on the company's website. She later downloaded the Handy smartphone app.

Handy's initial online registration included hyperlinked terms and conditions that contained an arbitration clause and class action waiver. The app she later downloaded, when first opened, displayed a screen that required the user to accept a "Service Professional Agreement" (SPA) containing a similar arbitration and class action waiver provision. The

bottom of that screen included a prominent “Accept” button. Above that, the agreement’s first lines were visible. By scrolling down, the user could see the complete agreement, but no scrolling was necessary to click the “Accept” button.

Emmanuel performed several jobs secured through the Handy app, but stopped using Handy after Handy allegedly did not pay her for some of those jobs. She later filed a lawsuit on behalf of herself and a putative nationwide class of all cleaners who had worked through Handy, alleging that Handy had violated the federal Fair Labor Standard Act and Massachusetts labor laws by misclassifying them as contractors instead of employees, depriving them of wages and other benefits Handy purportedly owed them.

Handy moved to compel Emmanuel to arbitrate her claim, based on both the terms and conditions hyperlinked to the screens she saw during her registration and the SPA presented to her in the app. Emmanuel opposed, arguing that she had never actually seen or agreed to any arbitration provision. The federal district court dismissed the case, finding that Emmanuel had reasonable notice of both the hyperlinked terms and conditions and the in-app agreement, and that she had agreed to those contracts, binding her to arbitrate her claims on an individual basis.

The Court of Appeals Affirms: Notice and Assent Make a Binding Agreement

Like the trial judge, the Court of Appeals for the First Circuit agreed with Handy, and it affirmed dismissal of the action. The court first cited a very recent decision of the Massachusetts Supreme Judicial Court (MSJC), involving another claim brought against Uber. There, the MSJC held that for an online contract to be binding, the user must have been given “reasonable notice of the terms” and must have made a “reasonable manifestation of assent to those terms.” Notably, the MSJC found that Uber’s app had *failed* to put passengers on reasonable notice of its Terms of Service, in part because at the relevant time (unlike certain previous cases against Uber, such as the one we discussed [here](#)), rather than including a hyperlink directly to the terms, Uber’s registration screens included an inconspicuous button that started a multiple-step process leading to the terms.

Applying that MSJC Uber decision while also distinguishing it, the First Circuit focused on Handy’s SPA. The court found that even though Handy’s users could see only a few lines of the SPA and could click “Accept” without scrolling or seeing the arbitration clause, those users were nonetheless on reasonable notice of the SPA’s terms and their opportunity to review them if they so chose. Clicking “Accept” constituted a manifestation of assent to the

SPA's terms, binding Emmanuel to the arbitration agreement and class action waiver the SPA contained. Notably, the court declined to address the adequacy of notice for the registration's hyperlinked terms and conditions, having determined that the SPA alone required dismissal. Other courts have upheld arbitration agreements in hyperlinked terms and conditions, however, provided the link presented to the user was sufficiently conspicuous.

How to Comply with Requirements

Advisable practices to make online terms clear, conspicuous, and therefore enforceable include:

- The "Accept" button or other means of assent should appear on a screen showing at least part of the agreement itself;
- Link to the terms on the same screen on which users enter payment or registration information;
- Place the link in close proximity to the "continue" or "accept" button, visible without the need to scroll;
- Include an explicit statement that the user is agreeing to the terms by registering or paying; and
- Format the link and associated statement in a prominent, high-contrast font, distant from any other text on the screen.

For More Information

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