

Litigation Alert: Recent New Jersey Appellate Division Opinion Provides Guidance for the Enforceability of Online Contracts

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The COVID-19 pandemic has fast-forwarded the movement towards business transactions being conducted entirely in an online format. As a result, businesses must ensure that they properly prepare their online contracts and documents to clearly and unambiguously notify the contracting party or consumer of all important terms and conditions affecting the transaction.

Recently, the New Jersey Appellate Division analyzed the notice given to a consumer during an online transaction of the terms and conditions of the transaction. In *Wollen v. Gulf Stream Restoration & Cleaning, LLC*, 468 N.J. Super. 483 (N.J. App. Div. 2021), the Court analyzed a home improvement website. The following provision was received when submitting requests for contractor quotes: “By submitting this request, you are agreeing to our Terms & Conditions.” A method commonly used to conduct online transactions.

The phrase “Terms & Conditions” in the *Wollen* matter, was also offset in blue and hyperlinked to the Terms and Conditions. In analyzing the online terms of the transaction, the *Wollen* Court held that the company did not provide “reasonable notice” of its terms and conditions and failed to establish that the plaintiff agreed to all the terms and conditions. The Court reached its ruling because: (1) the hyperlink of the terms and conditions in a blue font was not “clear and unmistakable;” (2) there was no indication that the user was required to read the terms and conditions before using the website’s services; and (3) the user was not required to click, acknowledge, read, or view the terms and conditions before using the website’s services. Additionally, the Court stated the following, “At the very least, however, the internet user should be directed in words – and not just by a font of a different hue – to click on that hyperlink.”

Wollen provides important insight to businesses about providing acceptable notice to a user of the terms and conditions of an online transaction. It is important that the Online Vendor/Company clearly and unmistakably provide notice that by finalizing the transaction, the consumer/online purchaser is accepting all of the terms affecting the online transaction, including an arbitration agreement, class action waiver, limitation of liability, and other significant terms.

In order to avoid challenges to the transaction or the terms and conditions of the sale, the most prudent practice is to require a user to affirmatively acknowledge the terms and conditions, by requesting that the user click a box, that notes that the terms and conditions have been read and accepted. Without an affirmative acknowledgment from the user, any passive notice that a user accepts the terms and conditions just by using the website or buying the product could lead to challenges. To avoid unnecessary disputes and litigation, seek legal advice to ensure that the manner in which your Company seeks the acceptance of terms and conditions of an online agreement or transaction will pass muster in today’s online world.

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