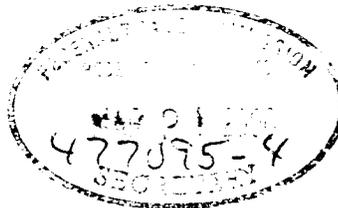


601 Pennsylvania Avenue, NW, Suite 700  
Washington, DC 20004-2676  
telephone: 202 737 1673, facsimile: 202 737 9099  
<http://www.adr.org>

March 21, 2000

Secretary  
Federal Trade Commission  
Room H-159  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580



RE: Alternative Dispute Resolution for Consumer Transactions in the  
Borderless Online Marketplace.

Dear Sir:

The American Arbitration Association (AAA) would like to participate in  
the public workshop on the above topic to be held in spring 2000.

The Association is a not-for-profit, public service organization dedicated to  
the resolution of disputes through the use of mediation, arbitration,  
negotiation and other dispute settlement techniques. For seventy years, the  
AAA has set the standard for the responsible development of ADR  
programs.

On June 23, 1997, the Association convened a blue-ribbon committee,  
composed of 17 of the nation's leading consumer, business, government and  
alternative dispute resolution (ADR) representatives. The committee  
developed a protocol to ensure due process for both consumers and  
businesses. In response to the Protocol, the AAA developed "Arbitration  
Rules for the Resolution of Consumer-Related Disputes". Copies of the  
Consumer Due Process Protocol and the rules are enclosed. Copies may  
also be obtained by accessing the AAA website at [www.adr.org](http://www.adr.org).

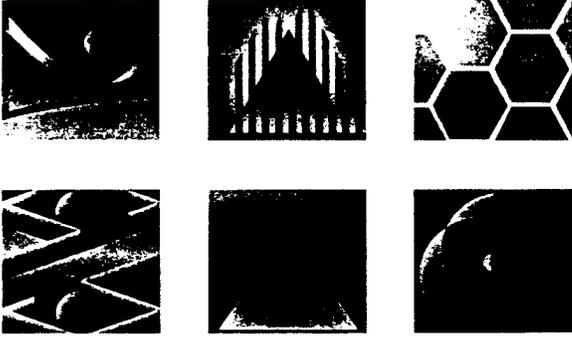
The Protocol and the rules address many of the issues raised in the questions posed in the initial notice concerning the use of ADR to resolve consumer disputes and the attributes of fair and effective dispute resolution programs.

Neither the Protocol nor the rules, however, specifically address important issues unique to the resolution of online consumer disputes, such as choice of law and confidentiality. The Association would like to participate in a discussion of these and related issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Jean Baker', written in a cursive style.

P. Jean Baker  
Vice President



*Arbitration Rules  
For the Resolution of  
Consumer-Related  
Disputes*

---

*Effective July 1, 1999*



American Arbitration Association

*Dispute Resolution Services Worldwide*

## INTRODUCTION

Millions of consumer transactions take place each year. Occasionally there are disagreements between consumers and businesses. These disagreements can be resolved by arbitration promptly and economically.

### About the AAA

The American Arbitration Association (AAA), a not-for-profit, public service organization, offers a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, and government. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on all forms of out-of-court dispute settlement.

### The AAA's Consumer ADR Rules

The AAA developed *Arbitration Rules for the Resolution of Consumer-Related Disputes* for consumers and businesses who want to have their disagreements resolved by arbitrators, and avoid the costs and delays of litigation. Services are available through the Association's Dallas Case Management Center.

To use the Rules, a request for arbitration must be (1) filed by the consumer and (2) involve a claim under \$10,000.

### Mediation

Mediation is also available to assist parties to resolve their disputes. If the parties want to use mediation, they may do so under the Association's Commercial Mediation Rules.

### Administrative Fees

The Association charges a fee for the administration of a consumer arbitration under these rules. To begin the process, consumers must accompany their request for arbitration with \$125 as their portion of the arbitrator's fee. The AAA will send notice to the business that the AAA has received a consumer case under these rules. An administrative fee of \$500 is then due from the business, together with \$125 as their portion of the arbitrator's fee.

Rules, forms, procedures and guides are subject to periodic change and updating. To ensure that you have the most current information, see our World Wide Web home page at <http://www.adr.org>

# **GLOSSARY OF TERMS**

## **Consumer**

Consumer refers to an individual who purchases or leases goods or services, or contracts to purchase or lease goods or services, intended primarily for personal, family or household use.

## **Business**

Business refers to a seller or lessor of goods or services to consumers for personal, family or household use.

## **ADR Process**

An ADR (Alternative Dispute Resolution) Process is a method for out-of-court resolution of conflict through the intervention of third parties. Mediation and arbitration are the most widely used ADR processes.

## **Mediation**

Mediation refers to a process in which an impartial person helps parties to a dispute to communicate and to make voluntary, informed choices in an effort to resolve their dispute. A mediator, unlike an arbitrator, does not issue a decision regarding the merits of the dispute, but instead facilitates communication between the parties to help them arrive at a mutually agreeable settlement.

## **Desk Arbitration**

Arbitration is a process in which parties submit disputes to a neutral third person for a decision on the merits. Each party has an opportunity to present evidence to the arbitrator in writing. Arbitrators are not required to follow the Rules of Evidence used in court. Arbitrators decide cases by written decisions or "awards." An award is usually binding on the parties, depending on the agreement to arbitrate. If necessary, a "binding" arbitration award may be enforced as a court judgment, but judicial review of arbitration awards is limited.

## **Neutral**

A Neutral is a mediator, arbitrator, or other independent, impartial third person selected to serve in a dispute.

## **ADR Agreement**

An ADR Agreement is an agreement between a business and a consumer to submit disputes to mediation, arbitration, or other ADR Processes. As used in this statement, the term includes provisions in standard contracts furnished by providers which signify the assent of the consumer and provider to such processes (although the assent may only be the "generalized assent" typically given by consumers to standard terms).

## **ADR Program**

An ADR Program is any program or service established by or used by a provider of goods and services for out-of-court resolution of disputes.

## **Independent ADR Institution**

An Independent ADR Institution is an organization that provides independent and impartial administration of ADR programs for consumers and businesses.

# **ARBITRATION RULES FOR THE RESOLUTION OF CONSUMER-RELATED DISPUTES**

## **1. Agreement of Parties and Applicability**

Parties have agreed to arbitration by the American Arbitration Association (AAA) under these rules whenever the AAA or its rules are referred to in an agreement between a consumer and a business. The AAA will apply the rules that are in effect at the time the request is filed. The authority and duties of the AAA are defined by the parties in their agreement and in these rules.

These procedures will only apply in cases where the claim is under \$10,000, exclusive of interest, arbitration fees, and costs. These rules may not be used where there is no stated claim.

## **2. Initiation Under an Arbitration Agreement**

Where an agreement to arbitrate exists, arbitration may be initiated as follows:

- (a) The consumer must notify the business, in writing, that it wants to arbitrate a dispute. This notification is referred to as the “request” for arbitration. The request should:
- briefly explain the dispute,
  - list the names and addresses of the consumer and the business,
  - specify the amount of money involved and,
  - indicate the solution sought.

The consumer must also send two copies of the request to the AAA, at the time it sends the request to the business. When sending the request to the AAA, the consumer must attach a copy of the arbitration agreement together with \$125 for its share of the arbitrator's compensation.

- (b) The business may answer the consumer's request. The answer must be sent to the AAA within 10 calendar days after the AAA acknowledges receipt of claimant's request. The answer must also:
- be in writing,
  - be sent, in duplicate, to the AAA,
  - be simultaneously sent to the consumer.

If an answer is not sent on time, it will be assumed that the business disagrees with the consumer's claim. The arbitration will go forward, even if the business does not file an answer.

## **3. Initiation Under a Submission**

Where no agreement to arbitrate exists, the consumer and the business may agree to arbitrate an existing dispute. To begin an arbitration under these rules, the parties must jointly send the AAA a submission agreement. The submission agreement must:

- be in writing,
- briefly explain the dispute,
- list the names and addresses of the consumer and the business,
- specify the amount of money involved (if any), and,
- indicate the solution sought.

The parties should send two copies of the submission to the AAA. When sending the submissions to the AAA, the consumer must include \$125 for its share of the arbitrator's compensation and the business must include \$500 for the administrative fee, in addition to \$125 for its share of the arbitrator's compensation.

#### **4. The Arbitrator**

##### *(a) Appointment*

When the AAA receives the request or submission, the AAA will appoint an arbitrator to serve. The parties will have seven calendar days from the time the AAA notifies them of the arbitrator to submit any factual objections to that person.

##### *(b) Disclosure and Challenge Procedure*

- (i) The arbitrator must disclose to the AAA any circumstance that is likely to affect his or her impartiality. This includes any bias, any financial or personal interest in the result of the arbitration, or any past or present relationship with the parties or their representatives. If the AAA receives disclosed information, it will share the information with the parties and ask for their comments.
- (ii) If either party objects to the arbitrator continuing to serve on the case, the AAA will decide whether to remove the arbitrator. The AAA will inform the parties of its decision.

#### **5. Proceedings on Documents**

Disputes under these rules are resolved by reviewing documents submitted by the parties. Documents must be sent to the AAA for forwarding to the arbitrator.

#### **6. Optional Hearing by Telephone**

A party may request in writing that the arbitrator hold one hearing by telephone. The telephonic hearing may occur even if the other party refuses to participate. An additional \$100 must accompany a request for a telephonic hearing. If a party wants to have an in-person hearing, instead of a telephonic hearing, the dispute must be administered under the AAA's Commercial Arbitration Rules. The party who requests an in-person hearing must pay all the administrative fees, expenses, and compensation costs in the Commercial Arbitration Rules.

#### **7. Representation**

Parties may be represented by counsel, if they choose.

#### **8. Evidence**

- (a) The parties may offer evidence about the dispute. The arbitrator has the authority to determine which evidence is relevant and material. Parties are expected to produce whatever evidence is requested by the arbitrator. The parties do not have to follow legal rules of evidence.
- (b) An arbitrator, or other person authorized by law to subpoena documents, may do so upon the request of any party or independently.

## **9. Closing of Hearing**

- (a) The hearing will be closed on the date the AAA sends the final documents to the arbitrator.
- (b) The arbitrator may reopen the hearing to accept additional evidence at any time before the award is written and signed.

## **10. Waiver of Rules**

A party's right to object will be considered waived if the party proceeds with the arbitration knowing that the other party has not followed a provision or requirement of these rules, and fails to timely object in writing.

## **11. Extensions of Time**

The AAA or the arbitrator may give each party one seven-day extension of any deadline in these rules.

## **12. Serving of Documents**

- (a) The AAA may notify the parties by telephone. The AAA, the arbitrator, and the parties may also use overnight delivery or electronic facsimile transmission (fax), to give the notices required by these rules. Notices may be transmitted by electronic mail (E-mail), where all parties and the arbitrator agree.
- (b) All documents pertaining to the arbitration, or related court action, or the entry of judgment on any award, may be served on a party by mail addressed to the party, or its representative, at its last known address. Notices may also be made by personal service, in or outside the state where the arbitration is to be administered, provided that reasonable opportunity to be heard with regard to the dispute has been given to the party.
- (c) When sending documents to the AAA, a party must also send copies to the other party at the same time.

## **13. The Award**

- (a) Unless the parties agree otherwise, the arbitrator must make his or her award within 14 calendar days after the AAA transmits the final statements and proofs to the arbitrator.
- (b) Awards shall be in writing and shall be executed as required by law.
- (c) In the award, the arbitrator should apply any identified, pertinent contract terms, statutes, and legal precedents. The arbitrator may grant any remedy or relief that the parties could have received in court. The award shall be final and binding, but subject to review in accordance with applicable statutes governing arbitration awards.

## **14. Release of Documents for Judicial Proceedings**

Upon the written request of a party, the AAA will send the party certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration. The requesting party will be charged the cost of this service.

## **15. Applications to Court and Exclusion of Liability**

- (a) Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.
- (b) Parties to an arbitration under these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.
- (c) Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

## **16. Arbitrator's Compensation**

Arbitrators serving under these rules receive a fee of \$250, paid equally by the parties, for considering the parties' evidence and writing an award.

## **17. Interpretation and Application of Rules**

The arbitrator shall interpret and apply these rules as they relate to the arbitrator's powers and duties. All other procedures shall be interpreted and applied by the AAA.

## **ADMINISTRATIVE FEES**

When filing a request for arbitration, the consumer must include \$125 for its share of the arbitrator's compensation. When the AAA acknowledges notice of the request for arbitration, it will bill the business for the \$500 administrative fee, and \$125 for its share of the arbitrator's compensation.

If the business fails to pay its fees and share of arbitrator compensation, the consumer may advance such funds, which shall subsequently be allocated to the business in the arbitrator's award.

Any party requesting a telephonic hearing must remit an additional \$100.

All fees are non-refundable.



## Arbitration Rules For the Resolution of Consumer-Related Disputes

### How to file a claim:

- Fill out this form and retain one copy for your records.
- Mail two copies of this form and your check or money order made payable to the AAA, in the amount of \$125, to the American Arbitration Association, 13455 Noel Road, Suite 1750, Dallas, TX 75240-6636.
- Send a copy of this form to the business.

**1** How is this claim being filed? Check only one.  
 By request of the consumer (A copy of the arbitration agreement **must** be attached. A copy of this form **must** also be sent to the business)

-or-

By mutual agreement ("submission") of the parties (both parties **must** sign this form)

Briefly explain the dispute.

**2**

**3** Do you believe there is any money owed to you? If yes, how much?

**3**

**4** Is there any other remedy you want?  Yes  No.

**4**

If yes, what is it?

**5** Fill in the following information:

**5**

\_\_\_\_\_  
Name of Consumer

\_\_\_\_\_  
Name of Business

\_\_\_\_\_  
Consumer Street Address

\_\_\_\_\_  
Business Street Address

\_\_\_\_\_  
Consumer City, State and Zip Code

\_\_\_\_\_  
Business City, State and Zip Code

\_\_\_\_\_  
Consumer Telephone Number

\_\_\_\_\_  
Business Telephone Number

\_\_\_\_\_  
Consumer Fax Number (if available)

\_\_\_\_\_  
Business Fax Number (if available)

\_\_\_\_\_  
Signature of Consumer  
(Consumer **must** sign form)

\_\_\_\_\_  
Signature of Business  
(Required **only** if claim is filed by Submission)