

Before the
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

In re:

Alternative Dispute Resolution :
for Consumer Transactions in the :
Borderless Online Marketplace : FTC File No. P984238

Comments from Richard Blumenthal,
Attorney General of the State of Connecticut

Introduction

The Attorney General of the State of Connecticut, Richard Blumenthal, is pleased to submit these comments in response to the request of the Federal Trade Commission ("FTC") for comments regarding alternative dispute resolution for consumer transactions in the borderless online marketplace. I strongly support the FTC's desire to address this area of growing concern in the online environment and look forward to exploring these issues in depth at the public workshop. Even at this preliminary stage, however, certain key concerns are worth addressing.

The Problem

First and foremost, it must be understood that there is a genuine need for alternative dispute resolution for online consumer transactions. Due to the growing online marketplace, consumers can, with increasing ease, make low-cost purchases of consumer goods from businesses located in foreign states and countries. These long distance consumer relationships

have brought to the fore new issues with respect to private consumer redress and state law enforcement. Most specifically, in relation to the FTC's call for comment, it is now plainly clear that for small-dollar consumer transactions that take place across borders, there exists no practical mechanism pursuant to which consumers can individually seek to have their complaints resolved. Any in-state adjudicatory proceeding pursued by a consumer, even if the result were favorable to the consumer, still leaves him with the cost-prohibitive task of attempting to enforce his judgment in a foreign jurisdiction. In a practical sense, therefore, the individual consumer has no remedy. The need for an alternative dispute resolution mechanism that is accessible to the consumer is apparent.

General Framework of an ADR Program for Online Consumer Transactions

Although I look forward to hearing the various viewpoints that inevitably will be presented at the FTC workshop, there are several general requirements of any alternative dispute resolution mechanism that must be met if the mechanism is to have any tangible impact on consumers' current lack of remedy. In addition to requirements that any online retailer should clearly and conspicuously disclose any alternative dispute resolution provision in its contracts, any ADR mechanism should be cost free for consumers and also should not unduly hamper consumers' rights to seek redress through administrative or civil actions.

One fundamental requirement of any alternative dispute resolution mechanism for online consumer transactions must be its availability at no cost to the consumer. As noted above, the growing presence of consumer retailers on the internet has made it economical for consumers to purchase relatively inexpensive items from retailers located far from themselves. If there is any noticeable cost to consumers to participate in an alternative dispute resolution mechanism, the

cost to participate in the mechanism will outstrip the loss a consumer has suffered, making the mechanism ineffective. Issues related to cost include prohibitive alternative dispute resolution fees and unreasonable travel expenses. If an alternative dispute resolution mechanism for online consumer transactions is to be effective for the low-cost consumer transaction, it must be at no cost.

The other element essential to any alternative dispute resolution mechanism created for online consumer transactions is that it not restrict consumers' access to the courts for redress of their complaints if they choose to pursue such a course of action. First, the alternative dispute mechanism should be optional so as to provide consumers a choice of forum after the dispute has arisen. In this way, consumers will have the ability to assess the specific circumstances of the dispute and to choose the most appropriate option under those circumstances. Second, the alternative dispute mechanism should be non-binding, so that consumers can seek redress in the courts if they believe the mechanism has produced an unfair result. A dispute resolution framework that incorporates, at a minimum, these two requirements will promote the efficient resolution of many online consumer disputes.

Conclusion

Although consumer transactions at present represent only about 20% of the total dollar value of online transactions, the importance of creating an alternative dispute resolution system for consumer online transactions should not be underestimated. First and foremost, simply because the internet has made it possible for businesses to transact commerce profitably across great distances, consumers should not be caught without an appropriate means through which to have their complaints heard. In addition, the creation of an effective and accessible dispute

resolution system for online consumer transactions would engender confidence in consumers to transact business online and would further support the growing industry of electronic commerce.

Very truly yours,

RICHARD BLUMENTHAL
ATTORNEY GENERAL
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