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Second Circuit Holds Arbitration Clause Found in Hyperlink in a Confirmation Email Unenforceable

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2nd Circuit (incl. bankruptcy)

SquareTrade, Inc. ("SquareTrade") sells protection plans for consumer products. Adam Starke ("Starke") purchased a SquareTrade plan from Amazon to cover a CD player ordered from Staples. When Starke's CD player broke he made a claim for coverage under the protection plan. SquareTrade informed Starke that the CD player was not covered under the protection plan because the plan only applied to products purchased at Amazon. Starke filed this putative class action, seeking to hold SquareTrade accountable for alleged violations of consumer protection laws. SquareTrade moved to compel arbitration, contending that its contract with Starke included an arbitration clause. The arbitration provision first appeared in a "terms and conditions" document provided via hyperlink in a confirmation email sent to Starke after the purchase of the SquareTrade protection plan on Amazon.

The United States Court of Appeals for the Second Circuit affirmed the decision of the district court, holding that the arbitration provision did not become part of the contract because Starke did not have reasonable notice of and manifest his assent to it. The court reached this decision by applying traditional concepts of contract law. The court explained that where an offeree does not have actual notice of certain contract terms, he is nevertheless bound by such terms if he is on inquiry notice of them and assents to them through conduct that a reasonable person would understand to constitute assent. New York courts look to whether the term was obvious and whether it was called to the offeree's attention. Specifically in the context of web-based contracts, courts look to the design and content of the webpage to determine if the offeree would be put on inquiry notice of such terms.

The court determined that Starke did not have reasonable notice of the arbitration provision which was only in the Post Sale Terms & Conditions ("Post Sale T&C") provided in the confirmation email. Starke received a chain of confirmation emails from Amazon and then SquareTrade, none of which put him on notice that his "Service Contract" would come in a hyperlink. The email from SquareTrade that contained the hyperlink containing the Post Sale T&C was cluttered and mostly devoted to other information about the details of the protection plan. The email contained diverse text, displayed in multiple colors, sizes and fonts, and features various buttons and promotional advertisement that divert the reader's attention from the hyperlink. And the hyperlink itself was in small font. The SquareTrade email did not direct Starke to click on the link in any way and did not make him aware that the link contains contract terms to which he would be deemed to agree. The court notes that SquareTrade could have easily included the hyperlink on the Amazon purchase page. Starke had no way to review the Post Sale T&C until after he received the SquareTrade confirmation email.

The court notes that even though SquareTrade provided Starke with 30 days to return the protection plan for a refund, which is in compliance with New York law, there is no justification here for providing contract terms after a transaction. Additionally, the court notes that although Starke had transacted with SquareTrade before, the prior transaction similarly did not give Starke clear and conspicuous notice of the arbitration clause. Therefore, the court held that there was no enforceable agreement to arbitrate.

Starke v. SquareTrade, Inc., No. 17-2474-cv (2d. Cir. Jan. 10, 2017).

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