

Client Alert

November 2015

AAA Requires Advance Registration for Arbitration Clauses Contained in Terms and Conditions

Many businesses involved in online commerce seek to reduce the risk of lawsuits by including arbitration clauses and class action waivers in their website terms and conditions. The purpose of this Client Alert is to remind such businesses that if their terms and conditions call for arbitration before the American Arbitration Association (AAA), the arbitration clause must be registered and approved in advance by the AAA. Failure to do so will result in the AAA's refusal to administer any arbitration filed prior to registration and approval. The stated goal of the AAA is to ensure that the arbitration clauses are fair to consumers by complying with the AAA's minimum due process standards. The AAA wants to make sure arbitration clauses do not impose an inconvenient location, require an unreasonable cost, establish unreasonable time limits, unduly limit consumers' remedies or require consumers to waive their right to go to small claims court.

This advance registration requirement is not strictly limited to online terms and conditions. According to the AAA, the requirement applies whenever an arbitration clause selects the AAA Consumer Arbitration Rules (as opposed to other AAA sets of rules) or if the arbitration clause is part of "an agreement between an individual consumer and a business where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use."

If your terms and conditions currently require AAA arbitration and you have not received AAA approval, or if you would like to change your terms and conditions to require arbitration of consumer disputes, please contact the Olshan attorney with whom you regularly work or either of the attorneys listed below.

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