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Blind man can sue Uber for being refused ride because of guide dog

STATE COURT

By **Daniel Fisher** | Jan 14, 2021



BOSTON (Legal Newsline) - An Uber Technologies clause requiring customers to submit disputes to binding arbitration was unenforceable, the Massachusetts Supreme Judicial Court ruled in a case where a driver refused service to a blind man with a guide dog.

In its first decision defining the enforceability of online “clickwrap” contracts, Massachusetts’ highest court said they may be enforceable but only if the terms are clear and users signal agreement, typically by clicking a button indicating they have read the terms and conditions.

The Uber interface when plaintiff Christopher Kauders registered in June 2014 didn’t meet those conditions, the Massachusetts court ruled Jan. 4, because the terms and conditions were only accessible by clicking a hyperlink on a page mostly devoted to inputting a user’s credit card information, and there was no separate button to indicate the user had read the terms and agreed to them.

The process for drivers to sign up with Uber included a more obvious “I agree” step, the court noted, showing the company knew how to design a compliant contract page if it wanted.

“As Uber is undoubtedly aware, most of those registering via mobile applications do not read the terms of use or terms of service included with the applications,” Chief Justice Scott Kafker wrote. “Yet the design of the interface for the app here enables, if not encourages, users to ignore the terms and conditions.”

The decision delves into the intricate details of the mobile interface at the time Kauders signed up, including the size of type and where the terms and conditions were located on the page. It doesn't discuss how Kauders, who is blind, interacted with the pages. It also notes the interface has changed multiple times since he signed up in 2014.

The decision lays down the ground rules for clickwrap contracts in an area that is of great interest to plaintiff lawyers, if not consumers. Arbitration has always been unpopular with lawyers and many judges who feel it removes legal disputes from the court system and makes it difficult or impossible to form class action lawsuits. But the U.S. Supreme Court has repeatedly ruled that Federal Arbitration Act allows companies to require consumers to agree to arbitration if they buy their products, as long as the contracts are enforceable under longstanding rules of contract formation.

Uber and Lyft rely upon arbitration to protect themselves against class actions by drivers and users, although plaintiff lawyers have **succeeded** in penetrating the wall several times by arguing the contracts are unenforceable or suing under other laws.

The Kauders case followed a twisting path as courts gradually changed their view of the enforceability of Uber's terms and conditions. He and his wife sued in 2016, claiming an Uber driver violated federal law by refusing to transport them with their service dog. Uber moved for arbitration in 2017, citing a decision by a federal court in Massachusetts, ***Cullinane v. Uber***, that found the arbitration clause was enforceable.

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The judge ordered the Kauders into arbitration and Uber won in 2018, with the arbitrators finding Uber couldn't be liable for the actions of independent contractor drivers. Meanwhile, the U.S. Court of Appeals for the First Circuit in June 2018 reversed

the *Cullinane* decision, ruling the contract at the time Kauders signed up was unenforceable because it didn't give users adequate notice of the terms including the arbitration clause.

The Kauders didn't immediately cite the *Cullinane* decision and Uber moved to enforce the arbitration agreement in September 2018. The plaintiffs opposed the motion, raising the *Cullinane* decision for the first time in October, and in January 2019 the judge reversed his earlier order and rejected the arbitration award for Uber.

On appeal, Uber argued the judge had no authority to reject its arbitration victory because the plaintiffs didn't object to it within a 30-day deadline. The court ruled that Massachusetts arbitration law allows courts to vacate arbitration awards for various reasons but only an appeals court can reverse the initial decision of arbitrability. So even though the judge erred by reconsidering his earlier decision, the basic question of whether the case belonged in arbitration at all was ultimately left with the appeals court.

The Massachusetts high court displayed its distaste for some of Uber's terms and conditions, saying some of them "may literally require an individual user to sign his or her life away, as Uber may not be liable if something happened to the user during one of the rides." There was no mention of insurance the individual drivers, who Uber considers independent contractors, may carry.

The court also criticized the interface Kauder used for allowing him to complete registration by without ever affirmatively agreeing to the terms and conditions, other than clicking "DONE" at the end.

"DONE," the court said, is "different from, and less clear than, other affirmative language such as 'I agree.'"

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