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Samsung's Bid To Arbitrate Galaxy False Ad Suit Denied

By **Caroline Simson**

Law360, New York (September 19, 2014, 2:37 PM ET) -- A California federal judge on Thursday denied Samsung Telecommunications America LLC's attempt to arbitrate a proposed class action about alleged performance issues with its Galaxy S4 phone, finding that the company's arbitration provision didn't contain language that would make it legally binding.

U.S. District Judge James Donato determined that Samsung's arbitration provision was unenforceable because the provision, included as an answer to a question on how to resolve disputes in its warranty booklet, didn't contain words alerting consumers that the arbitration term was a "contract" or "agreement," and didn't require consumers to sign their assent, according to the order. Previous case law precludes the formation of a contract by "such stealth tactics," he wrote.

"An agreement to arbitrate ... cannot be created as Samsung has tried to do here — by stuffing an inconspicuous 'Q&A' about the 'procedure for resolving disputes' into a statement about the scope of the warranty," Judge Donato stated. "Indeed, the way that Samsung has structured its arbitration provision within its warranty, no proposal was in fact made to the purchaser. Instead, the arbitration provision was disguised as merely a 'term' of the warranty, which automatically attaches from the moment of purchase without any additional acceptance or reliance on the part of the purchaser."

Filed in February, plaintiff Daniel Norcia's suit accused Samsung of intentionally misleading consumers into believing that the Galaxy S4 phone was faster and contained more storage than it actually did. The complaint alleged that Samsung programmed the phones to run at faster speeds when it detected certain so-called benchmarking applications, which are used by consumers and reviewers to compare the speed and performance of smartphones and tablets.

Norcia's complaint also accused Samsung of overstating the storage capacity of the phone by preloading it with software that took up approximately half of the advertised 16 gigabyte storage capacity.

Norcia bought the phone in May 2013 from a Verizon store in San Francisco, but declined to take the box because he said he already knew how to use this type of phone, according to the order. Judge Donato noted that no Verizon employee told Norcia about the product warranty or the fact that it contained an arbitration agreement.

The court nevertheless treated Norcia as though he received the warranty booklet, according to the order, which found that competent adults are bound by certain documents regardless of

whether or not they actually read them.

The arbitration provision at issue in the suit was included in question and answer format on page 70 of the booklet, under warranty information, according to the order. There, Samsung answered the question "What is the procedure for resolving disputes?" with several sentences explaining that disputes would be resolved through "final and binding arbitration, and not by a court or jury."

Norcia's attorney John R. Hurley praised the decision on Friday.

"Samsung didn't make any effort to communicate to the consumer that it was offering any kind of a bilateral contract. It didn't indicate to the consumer that it would be bound in any shape or form," he said. "That's exactly the issue. It wasn't just the placement of the arbitration provision in the warranty and how it was buried so deeply, it was also the fact that the court indicated Samsung did nothing to call out that it was trying to bind the consumer."

Judge Donato noted in the order that Norcia had signed a receipt when he purchased the phone that identified an arbitration provision proposed by Verizon, but the receipt made no reference to Samsung's arbitration provision.

A product website that Samsung maintained about the "Samsung Galaxy S4 (Verizon)" also didn't include the words "arbitration" or "dispute resolution," according to the order.

Attorneys for Samsung didn't immediately respond to a request for comment on Friday.

Norcia is represented by John R. Hurley, Daniel Chris Quintero and Eduardo Gregory Roy of Prometheus Partners LLP.

Samsung is represented by John Paul Phillips and Sean David Unger of Paul Hastings LLP.

The case is Norcia v. Samsung Telecommunications America LLC et al., case number 3:14-cv-00582, in the Northern District of California.

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