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October 4, 2012

John Donahue
President and Chief Executive Officer, eBay, Inc.
2065 Hamilton Avenue
San Jose, California 95125

Michael Jacobson
Senior Vice President, Legal Affairs, General Counsel and Secretary, eBay, Inc.
2065 Hamilton Avenue
San Jose, California 95125

Dear Messrs. Donahue and Jacobson,

On September 15, eBay sent an email message to eBay users notifying them about unilateral changes eBay made to its terms of use on August 21. These changes include an Agreement to Arbitrate, which forces users to accept binding arbitration as their exclusive means to resolve disputes with eBay, and permits them to pursue claims against eBay on an individualized basis only, unless they opt out by November 9. The Agreement to Arbitrate requires that users exercise their opt-out rights by means of a signed letter sent by traditional snail-mail.

Although forced arbitration provisions and class action prohibitions are increasingly commonplace in consumer contracts, they are fundamentally unfair to users/consumers, who are denied the protections of the civil justice system, effectively denied redress for small- and medium-dollar disputes, and forced to bring cases before arbitrators too often biased in favor of repeat-player defendants.

We therefore urge you to modify your user terms of service to remove the Agreement to Arbitrate. Even an easily exercised opt-out option -- which you are not providing -- is an inadequate cure to a forced arbitration contractual requirement. The vast majority of users accept standard-form contract language without reviewing or analyzing it; and, most users have no way to appreciate the consequences of agreeing to forced arbitration provisions. It is appropriate for eBay and a user to agree to arbitrate disputes, but that decision should be made after a dispute has arisen, when a consumer is in position to make a reasonable assessment of the benefits and disadvantages of arbitration.

If you decline to remove the Agreement to Arbitrate, then we urge that you:

1. Eliminate the "Prohibition of Class and Representative Actions and Non-Individualized Relief" provision which prevents individuals from joining together regarding common disputes. Especially for low- and moderate-dollar disputes, the prohibition on class actions effectively bars users from taking any formal action at all.
2. Amend the opt-out procedure so that it can be exercised online. It is more than a little incongruous for an e-commerce company, which bases its business on click-through contracts and whose business model requires users to conduct their transactions online, to force consumers to protect themselves from unfair arbitration provisions by a postmarked letter. To put it charitably, eBay's requirement that opt-outs be submitted through traditional mail raises questions about the sincerity of its commitment to permitting users to protect themselves.
3. Forward a message from Public Citizen explaining to users why they should exercise their opt-out rights. Average users have no way to appreciate what they may be sacrificing in permitting eBay to impose arbitration provisions on them.

We look forward to your prompt reply.

Sincerely,

Robert Weissman,
President