

## **eBay User Agreement Provisions Merely Descriptions, Not Contract**

Two provisions in eBay's User Agreement are not enforceable contract provisions but simply general descriptions of how eBay operates.

The Ninth Circuit affirmed a trial court's dismissal of a case involving eBay's automatic bidding system. The Plaintiff had argued that eBay breached its User Agreement and violated California's Unfair Competition Law and False Advertising Law.

Under eBay's automatic bidding system, a bidder submits the maximum amount he is willing to pay for an item, and this amount is kept confidential from other bidders and the seller. eBay's software then enters bids on behalf of the bidder, at predetermined increments about the current bid, until the user wins the auction or would need to exceed his maximum.

The plaintiff argued the system violated eBay's "Limitation of Liability" section of the User Agreement, which states, "We are not involved in the actual transaction between the buyers and sellers." The appellate court found the section "contains no promissory language." It further stated that the provision "is a broad description of the eBay marketplace designed to explain why its liability is more limited than that of a 'traditional auctioneer.'"

The court observed that some of eBay's User Agreement provisions "are written in an informal, conversational style, indicating that the agreement is not simply a set of legally enforceable promises, but also an introduction to the eBay marketplace for new users." The informal language of the provision is in contrast to "other clauses in the agreement [that] contain explicit promissory language," indicating that the provision is not a contractual promise by eBay.

The Plaintiff also argued the User Agreement's provision that "[n]o agency, partnership, joint venture, employee-employer or franchiser-franchisee relation is intended or created by this Agreement" is an enforceable promise. The appellate court disagreed. "It contains no promise by eBay not to enter into agency relationship with its users," the opinion states.

The appellate court found the plaintiff failed to state a claim under either California statute.

The opinion is available at <http://www.balough.com/ebay-user-agreement-provisions-merely-descriptions-not-contract/>

*Block v. eBay, Inc.*, Ninth Circuit No. 12-16527, issued April 1, 2014.