

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
INTERNET BUREAU**

IN THE MATTER OF

PAYPAL, INC.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of Article 22-A of the New York General Business Law (GBL), and Section 63(12) of the Executive Law, Eliot Spitzer, Attorney General of the State of New York, has made an inquiry into the advertising and business practices of PayPal, Inc. (“PayPal”). Based upon that inquiry, the Attorney General concludes as follows:

FINDINGS OF ATTORNEY GENERAL

A. PayPal’s Activities: Background

1. PayPal is a Delaware corporation, with its principal place of business at 2211 North First Street, San Jose, California. It is a wholly-owned subsidiary of eBay, Inc., the online marketplace.
2. PayPal operates an Internet payment system that provides a means by which businesses and individuals can send and receive online payments. Its payment system employs the existing financial infrastructure of bank accounts and credit cards, but permits individuals and businesses (particularly small businesses) to send and receive online payments using only PayPal as the intermediary.
3. In order for such a PayPal fund transfer or purchase to occur, both the transferor (usually a buyer) and transferee (usually a seller) must be PayPal account holders. However,

PayPal does not itself extend funding or credit to its account holders. Rather, PayPal account holders must fund their PayPal accounts by a separate payment source – in many cases, by a credit card account. PayPal account holders may use their PayPal accounts to make purchases from sellers who also have PayPal accounts. When a consumer makes a purchase using a PayPal account, the sum is made available by the funding source and transferred by PayPal to the intended PayPal “end-seller.”

4. PayPal’s account holders’ rights are set forth in a User Agreement (“User Agreement”), to which they agree upon signing up. The User Agreement appears through a link appearing on each page of the PayPal web site, www.paypal.com. In addition, upon signing up, PayPal’s account holders are presented with the User Agreement in a “scroll box,” as well as a link to print out the User Agreement, and must either accept or decline the User Agreement in order to complete the registration process.

5. Approximately 2,500,000 PayPal account holders are residents of New York.

6. In response to consumer complaints, the Attorney General commenced an investigation regarding the practices discussed herein. As a result of this investigation, and as further described below, the Attorney General finds that certain terms of the PayPal User Agreement were unclear and misrepresented certain rights that PayPal actually affords its account holders. The terms at issue, which are discussed below, went into effect in or around August 2000, and remained in effect until February 13, 2004.

 **B. PayPal’s Representations Regarding
Account Holders’ Chargeback Rights**

7. Since August 2000, PayPal has offered to its account holders, and agreed to comply with, its “Buyer Complaint Policy.” This Policy permits buyers who have not received

goods as promised to complain to PayPal, so that PayPal may investigate the complaint and attempt to recoup the amount paid from the seller, and/or limit the seller's access to his or her PayPal account. This policy is limited to circumstances in which tangible goods are not received at all. To avail themselves of the Buyer Complaint Policy, buyers must submit their complaints within 30 days from the date of payment. PayPal does not guarantee buyers who complain recovery of any amount.

8. Within a section describing the "Buyer Complaint Policy," the PayPal User Agreement stated, during the relevant period, that "The Buyer Protection Policy does not replace or reduce any other consumer rights Users may have, including reversal rights that may be granted by a User's credit card issuer."

9. In practice, however, when PayPal account holders have complained to their credit card issuers that goods paid for through PayPal were not delivered as promised, PayPal generally has terminated the account holder's claim under PayPal's Buyer Complaint Policy, as described in ¶ 7, above. Thus, in order to exercise their Buyer Complaint rights, PayPal account holders actually have been required to choose between either exercising their credit card reversal or "chargeback" rights, or pursuing their rights under the Buyer Complaint Policy.

"Chargeback" rights, as they are commonly known, are the rights granted to credit card holders under the federal Fair Credit Billing Act (FCBA), to dispute "billing errors" that appear on their monthly credit card statements. See 15 U.S.C. § 1666(a)(3)(B)(ii). This applies, for instance, when consumers making credit card purchases do not receive the goods as promised. The Act gives consumers the ability to reverse these charges in a manner that would not be available had they paid, for instance, by check or money order. New York's General Business Law § 703,

passed in 1973, sets forth a similar billing resolutions process.

10. During the relevant period, PayPal's User Agreement also stated, within the same paragraph referenced in ¶ 8, above, "PayPal is the merchant of record with respect to all credit card transactions through the PayPal service to purchase goods or services. As such we afford customers the rights and privileges expected of a credit card transaction." (Emphasis added.)

11. In practice, however, the Buyer Complaint Policy has generally not "afford[ed] customers the rights and privileges expected of a credit card transaction." In particular, unlike entities covered by the laws and rules governing credit card transactions (see, e.g., 15 U.S.C. § 1666; GBL § 703), PayPal's Buyer Complaint Policy does not afford its customers broad rights to obtain chargebacks when goods are not delivered as agreed. Rather, while PayPal attempts to investigate disputes regarding non-delivery, and attempts to cause sellers to provide refunds in cases of non-delivery, this has not in all cases resulted in PayPal awarding full (or even any) credit to consumers who initiate and maintain Buyer Complaints for non-delivery.

12. The Attorney General therefore finds that the sections of the User Agreement referenced above, in ¶¶ 8 and 10, did not properly represent consumers' rights and PayPal's policies, in the case of consumers who funded PayPal transactions through a credit card and therefore may have reasonably expected broader chargeback or billing dispute rights from PayPal than they were afforded.

C. PayPal's Representations Regarding Chargeback Determinations

13. In addition to seeking to exercise their rights under the PayPal Buyer Complaint Policy, PayPal account holders whose purchases were not delivered as promised often have sought chargebacks from their credit card issuers. Depending on their respective issuer's

policies governing PayPal transactions, PayPal account holders were either granted or denied a chargeback. For instance, in 2002 through mid-2003, and prior to recent agreements with the Attorney General, account holders who funded PayPal transactions through American Express or Discover often were denied a chargeback, upon complaining that goods they had ordered were not delivered as promised.¹ These denials generally occurred because, after PayPal account holders sought chargebacks, PayPal disputed the chargeback requests with American Express and Discover, who in turn reinstated the original charges.

14. In certain follow-up letters responding to inquiries from account holders who had been denied chargebacks from their credit card issuers in this manner, PayPal inaccurately described the reasons for these denials by informing account holders that, “On [date in question], PayPal received notification that a dispute had been filed with your credit card company for non-receipt of merchandise. The decision to dispute this charge was made by your credit card issuing bank and not by PayPal.” (Emphasis added.)

15. The Attorney General finds that the above language inaccurately described to account holders the true reason that their chargeback was denied, in that it minimized the role that PayPal played in the process, given that it was PayPal – not the account holder’s credit card company acting unilaterally – that had disputed the account holders’ chargeback requests.

¹ In recent Assurances of Discontinuance with the New York Attorney General, respectively dated September 18, 2003 and December 19, 2003, American Express and Discover agreed to provide such consumers billing credits, both retroactively and prospectively. These settlements afford these consumers the right to reinitiate credit card disputes regarding PayPal transactions, and to receive compensation from American Express and Discover, as to approximately \$3.4 million in disputed transactions. In these Assurances, the New York Attorney General alleged that American Express’s and Discover’s denials of chargebacks to card holders who had not received goods as promised in PayPal transactions, violated U.S. and New York state Truth in Lending laws. See 15 U.S.C. § 1666; GBL § 703).

D. Statutory Violations

16. The Attorney General finds that by engaging in the practices described in Paragraphs 7 through 15 above, PayPal has violated New York General Business Law §349, as well as Executive Law §63(12).

17. **IT NOW APPEARS** that PayPal is willing to enter into this Assurance of Discontinuance, without admitting or denying the Attorney General's findings, and that the Attorney General is willing to accept the terms of this Assurance of Discontinuance pursuant to Executive Law § 63(15) in lieu of commencing a statutory special proceeding.

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by and between PayPal and the Attorney General that:

18. This Assurance of Discontinuance (hereinafter "Assurance") shall apply to PayPal, whether acting through its principals, directors, officers, shareholders, employees, representatives, agents, assigns, successors, or other business entities, whose acts, practices or policies are directed, formulated or controlled by PayPal (hereinafter collectively referred to as "PayPal").

19. In any User Agreement or other document setting forth its account holders' rights and obligations (whether distributed online or through other means), PayPal shall accurately describe what rights and obligations its account holders have, including, without limitation (a) an accurate description of what specific rights account holders have in the event that goods or services are not delivered as promised, (b) an accurate description of any limitations or conditions to these rights, and (c) an accurate representation as to whether and how consumers'

exercise of chargeback or reversal rights through their credit card issuers affects any right under the Buyer Complaint Policy, or otherwise granted by the User Agreement. For instance (and without limitation), unless it operates as a credit card issuer, PayPal shall not describe its services as affording consumers “the rights and privileges expected of a credit card transaction.” PayPal likewise shall fully and accurately describe all conditions to an account holder’s exercise of Buyer Complaint Policy rights. Further, at any place on its web site advising consumers how to handle disputes with sellers, PayPal shall prominently indicate the 30-day (or other applicable) deadline under the Buyer Complaint Policy. PayPal shall institute the above steps within twenty (20) days of execution of this Assurance, which shall apply to any subsequent revision of the User Agreement.

20. In order to assure compliance with this Assurance, PayPal shall keep, for a period of twenty-four (24) months from the execution of this Assurance, copies of all versions of its User Agreement (or any document stating the terms and conditions of its service), including the dates and nature of any revisions to the User Agreement. PayPal shall make such records available for review by the Attorney General, upon request by the Attorney General, and shall provide to the Attorney General copies of these and such other documents as the Attorney General shall from time to time determine are necessary to assure compliance with this Assurance.

21. PayPal shall, within ten days of the execution date, pay to the State of New York the sum of \$150,000, as penalties and costs of this investigation.

22. Within ninety (90) days of the execution date, PayPal shall provide to the Attorney General an Affidavit, subscribed to by a PayPal officer, confirming that PayPal is in full

compliance with each and every term of this Assurance.

23. Nothing contained in this Assurance shall be construed to alter or enhance any existing legal rights of any consumer or to deprive any person or entity of any existing private right under the law. Nothing in this Assurance shall in any way affect, restrict, or otherwise govern any rights of recourse PayPal may have or seek to assert against any third-party.

24. Any violation of the terms of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any civil action or proceeding thereafter commenced against PayPal by the Attorney General.

25. Nothing contained herein shall be construed as relieving PayPal of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Assurance be deemed permission to engage in any act or practice prohibited by such law, regulation or rule.

26. The acceptance of this Assurance by the Attorney General shall not be deemed approval by the Attorney General of any of PayPal's business practices, and PayPal shall make no representation to the contrary.

27. The "execution date" of this Assurance shall be February ___, 2004.

WHEREFORE, the following signatures are affixed hereto this ____ day of February, 2004.

PAYPAL, INC.

By: _____
John Muller

Title: General Counsel, PayPal
An officer authorized to execute on behalf
of PayPal

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