

Internet Terms and Conditions: Browsewrap Hyperlink

“The Second Circuit recently addressed this issue in declining to enforce browsewrap terms and conditions containing an arbitration agreement. The decisions in this area show that a hyperlink must be reasonably conspicuous to put a consumer on the requisite inquiry notice to render terms and conditions enforceable,” warns James F. Bogan III in *Kilpatrick Townsend’s Insights*.

“In *Arnaud v. Doctor’s Associates Inc.*, Luis Arnaud entered his phone number on a promotional page of Subway’s website and clicked a box labeled ‘I’M IN’ to receive a free Subway sandwich the next time he purchased a 32-ounce drink. The promotional page included a hyperlink to terms and conditions that included an arbitration agreement.”

“After Subway allegedly sent Mr. Arnaud an unsolicited text message, he filed a putative class action against Subway alleging violations of the Telephone Consumer Protection Act. Subway moved to compel arbitration, but the district court denied the motion. Subway appealed, but the Second Circuit affirmed.”

Read the article.