


Bet Big, Read Small: DraftKings Secures Dismissal in Case Based on Clearly Defined Terms

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By Tamara Savin Malvin



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A federal judge in the Southern District of New York has dismissed a putative class action against DraftKings, Inc. and Crown NY Gaming Inc. (together, DraftKings) that alleged the plaintiffs engaged in online sports gambling on the DraftKings platform and were damaged by its misrepresentations and deceptive practices. The court held that users of the platform had ample opportunity to review the platform’s terms and promotional conditions before participating. The decision underscores a principle that extends beyond the gaming industry: clearly presented, available terms matter—and consumers are expected to read them.

DraftKings is a licensed online sports betting operator in New York. To place bets through DraftKings' online sportsbook, users download the DraftKings mobile app and verify their New York presence by granting access to their geolocation data; they then place their bets. The plaintiffs alleged that three promotional activities violated their rights: (1) advertisements of "No Sweat" bets, (2) a \$1,000 deposit bonus, and (3) use of VIP Hosts to urge users to continue gambling even when they have lost sizable sums of money.

The plaintiffs argued that DraftKings engaged in deceptive practices by misleading users about these promotional offers and wagering terms. They claimed the disclosures were confusing or buried in fine print. The court disagreed, finding that the relevant terms were readily accessible and presented to users before and during the purchasing process, and noting they are accessed through the very same pages that the consumer uses to place the promoted bet.

Applying New York's consumer protection standards, the court emphasized that liability turns on whether conduct would mislead a reasonable consumer acting reasonably under the circumstances. The court concluded that a reasonable consumer of an online platform would be expected to look at the terms of a promotion, which are readily accessible, before accessing the promotion.

The court disposed of the remaining causes of action, including intentional misrepresentation, unjust enrichment, products liability, gross negligence, and breach of fiduciary duty, declining to expand traditional tort or fiduciary theories to an arm's-length commercial relationship governed by disclosed terms.

While the defendant happened to be a gaming operator, the ruling's significance is far broader. The decision reinforces a common-sense but

increasingly litigated concept: companies must present terms clearly and conspicuously, but they are not required to protect consumers from ignoring them. When terms are accessible and not misleading, courts remain unwilling to impose liability simply because a user failed—or chose not—to read what they agreed to.

In short, this case serves as a reminder across industries that well-drafted, properly presented terms of service remain one of the strongest defenses to consumer class action claims.

“Courts applying New York law have been hesitant to create a duty of care premised on a failure to control the conduct of others,” Judge Cote wrote. “Plaintiffs have failed to show that there is a reasonable expectation by society that a commercial relationship with a gaming platform creates a duty by the platform’s employees to control the consumer’s choice to engage in betting.”