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## Advance Auto Parts Sued Over 'Illegal' Terms And Conditions

By **Dani Meyer**

Law360, New York (May 12, 2016, 7:06 PM ET) -- Advance Auto Parts was hit with a proposed class action Thursday in California federal court accusing the auto parts retailer of using terms and conditions on its website that contain illegal provisions seeking to force consumers to give up their tort and negligence claims in violation of New Jersey law.

Ryan Russell raised a number of concerns regarding Advance Auto Parts Inc.'s terms and conditions, including the limitation of liability and indemnification provisions, which he alleged violate the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act.

"Despite clear law to the contrary, plaintiff and class members, upon purchase of goods and/or services from defendant's website, were purportedly forced to forego virtually any claim under tort or negligence arising from their use of the website and from their purchase of goods or services from the website," Russell said.

According to the complaint, Russell purchased a Tanner's Select Chamois used to help polish cars in January, but said that the terms and conditions are trying to impose illegal exculpatory conditions on consumers and nullify certain duties the company owes them.

New Jersey law specifically prohibits these types of clauses because they undermine tort law's purpose of seeking to deter careless behavior and prevent injuries, Russell said.

In one clause, Advance Auto Parts allegedly tries to disclaim liability for any damages resulting from the use, performance or inability to use its site, the products or information on the site despite the requirement under New Jersey law that the company owes its customers a duty of care to avoid unreasonably creating a risk of harm.

"Plaintiffs harmed by defendant's unreasonable conduct are entitled to collect damages. This provision purports to remove defendant's responsibility to act reasonably and purports to bar plaintiff from redress for a breach of defendant's standard of care," Russell said. "This provision is contrary to New Jersey law."

The terms and conditions also allegedly try to prevent consumers from using their right to seek redress under the New Jersey Products Liability Act and absolve Advance Auto Parts from its duty to distribute safe products that aren't defective.

Russell warned that there would be a "chilling effect" if consumers came to believe that such clauses were enforceable, as companies would be able to avoid their obligation not to produce dangerous products.

"This would result in a reduction in costs for unscrupulous manufacturers and sellers while companies creating safe products would be burdened with a higher cost of doing business.

The ultimate effect would be a proliferation of unsafe products and injured customers believing they have no grounds for redress," Russell said.

He argued that companies like Advance Auto Parts have clear responsibilities under the NJPLA to sell safe products, and that terms and conditions seeking to remove that legal responsibility violate the TCCWNA.

The terms and conditions also allegedly seek to avoid Advance Auto Parts' responsibilities under the Uniform Commercial Code in violation of the TCCWNA, to require class members to indemnify the company, and to remove responsibility for certain acts committed by third parties, Russell said, among other flaws.

Russell is asserting one claim against Advance Auto Parts for violation of the TCCWNA and seeks the certification of a class of all New Jersey consumers who were exposed to the company's terms and conditions, as well as an order terminating certain language in the terms and conditions and awarding class members at least \$100 for each TCCWNA violation.

A representative for Advance Auto Parts declined to comment Thursday, while a representative for Russell didn't immediately respond to a request for comment.

Russell is represented by William S. Peck, Gerald H. Clark and Mark W. Morris of Clark Law Firm PC, and Scott J. Ferrell and Victoria Knowles of Newport Trial Group.

Counsel information for Advance Auto Parts wasn't available Thursday.

The case is Russell v. Advance Auto Parts Inc., case number 3:16-cv-02685, in the U.S. District Court for the District of New Jersey.

--Editing by Mark Lebetkin.

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