

CHALLENGING THE LAW ONLINE
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ON NANCY KIM'S WRAP CONTRACTS

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Nancy Kim's provocative and insightful book raises the important issue of how websites impose their terms on the public. These sites institute a type of territorial jurisdiction, creating their own law to govern interaction with their sites – interaction that would otherwise be governed by common law as well as state and federal legislation. This is of course what contract is – it enables people to enter into “private” law that will govern their relations with each other. But while contract in its individualist foundations is intended to allow people to agree upon the terms of their interaction, contract as imposed by websites is a different creature. The idea that there is any kind of agreement between the websites and their visitors is a fiction at best.¹ Instead, the websites use the guise of contract to impose upon visitors their chosen law of the land (or law of the site). Because of the way websites have used this power to impose their own territorial laws, ordinary contract doctrine is ill-equipped to handle any type of review of those laws' legality. Instead, as Professor Kim notes, other solutions are necessary that focus on true agreement to terms, the existence of choice, and substantive limits on websites' ability to dictate the law. In this essay, I suggest that the role of public opinion could also be better harnessed to galvanize opposition to oppressive online terms.

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1. NANCY S. KIM, WRAP CONTRACTS: FOUNDATIONS AND RAMIFICATIONS 63 (2013) (discussing how wrap contracts are upheld based on constructive notice as opposed to consent or agreement).

Looking at the top websites in the United States,² which receive the majority of Internet traffic, we can generalize about the current state of “the law online,” formed by terms of use and displacing the democratic system that exists in the offline world. The law online excludes any and all warranties to the extent permitted by law.³ It limits liability and prevents recovery of any other than actual damages, sometimes even limiting damages to no more than \$100.⁴ The law online often provides for

2. According to the website analytics company Alexa, the top sites in the U.S. are Google.com, Facebook.com, Youtube.com, Yahoo.com, Amazon.com, LinkedIn.com, Wikipedia.org, eBay.com, Twitter.com, and Craigslist.org. *Top Sites in United States*, ALEXA, <http://www.alexa.com/topsites/countries/US> (last visited Nov. 11, 2014).

3. One example is Amazon:

THE AMAZON SERVICES AND ALL INFORMATION, CONTENT, MATERIALS, PRODUCTS (INCLUDING SOFTWARE) AND OTHER SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE AMAZON SERVICES ARE PROVIDED BY AMAZON ON AN “AS IS” AND “AS AVAILABLE” BASIS, UNLESS OTHERWISE SPECIFIED IN WRITING. AMAZON MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE AMAZON SERVICES, OR THE INFORMATION, CONTENT, MATERIALS, PRODUCTS (INCLUDING SOFTWARE) OR OTHER SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE AMAZON SERVICES, UNLESS OTHERWISE SPECIFIED IN WRITING. YOU EXPRESSLY AGREE THAT YOUR USE OF THE AMAZON SERVICES IS AT YOUR SOLE RISK.

TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, AMAZON DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AMAZON DOES NOT WARRANT THAT THE AMAZON SERVICES, INFORMATION, CONTENT, MATERIALS, PRODUCTS (INCLUDING SOFTWARE) OR OTHER SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE AMAZON SERVICES, AMAZON’S SERVERS OR ELECTRONIC COMMUNICATIONS SENT FROM AMAZON ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

Conditions of Use, AMAZON (Dec. 5, 2012), http://www.amazon.com/gp/help/customer/display.html/ref=footer_cou?ie=UTF8&nodeId=508088. See also *Google Terms of Service*, GOOGLE (Apr. 14, 2014), <https://www.google.com/intl/en/policies/terms/>; *Statement of Rights and Responsibilities*, FACEBOOK (Nov. 15, 2013), <https://www.facebook.com/legal/terms>; *Terms of Service*, YOUTUBE (June 9, 2010), <https://www.youtube.com/t/terms>; *Yahoo! Terms of Service*, YAHOO (Mar. 16, 2012), <https://info.yahoo.com/legal/us/yahoo/utos/terms/>; *Terms of Service*, TWITTER (Sep. 8, 2014), <https://twitter.com/tos>; *User Agreement*, LINKEDIN (Oct. 23, 2014), <https://www.linkedin.com/legal/user-agreement>; *Terms of Use*, WIKIPEDIA (June 16, 2014), http://wikimediafoundation.org/wiki/Terms_of_Use; *eBay User Agreement*, EBAY (Aug. 12, 2014), <http://pages.ebay.com/help/policies/user-agreement.html>; *terms of use*, CRAIGSLIST (Dec. 5, 2013), <http://www.craigslist.org/about/terms.of.use>; *Microsoft Services Agreement*, WINDOWS (June 11, 2014), <http://windows.microsoft.com/en-us/windows/microsoft-services-agreement>.

4. LinkedIn’s user agreement provides:

Neither LinkedIn nor any of our subsidiaries, affiliated companies, suppliers, employees, shareholders, or directors (“LinkedIn Affiliates”) shall be cumulatively liable for (a) any damages in excess of five times the most recent monthly fee that you paid for a Premium Service, if any, or US \$100, whichever amount is greater, or (b) any special, incidental, indirect, punitive or consequential damages or loss of use, profit, revenue or data to you or any third person arising from your use of the Services, any Platform Applications or any of the content or other materials on, accessed through or downloaded from LinkedIn.

indemnification of the website in case it is sued because of the user's actions.⁵ And the substantive law that applies to any issues not covered under the user agreement is primarily that of California.⁶

The law online also overwhelmingly requires that any suit brought must be in the courts of California,⁷ although this does not mean visitors themselves are immune from suit where they live.⁸ Otherwise, many visitors will not be able to sue at all, much less bring a class action, and must arbitrate any claims they have.⁹ Importantly, that lawsuit must be brought quickly, since in many areas of the Internet any claims are barred if not brought within a year.¹⁰

Personal information that is provided online may be shared with others for a myriad of reasons.¹¹ Email and search requests are subject to

LINKEDIN, *supra* note 3.

5. See FACEBOOK, *supra* note 3 (“If anyone brings a claim against us related to your actions, content or information on Facebook, you will indemnify and hold us harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) related to such claim.”).

6. See GOOGLE, *supra* note 3; FACEBOOK, *supra* note 3; YOUTUBE, *supra* note 3; YAHOO, *supra* note 3; TWITTER, *supra* note 3; LINKEDIN, *supra* note 3; WIKIPEDIA, *supra* note 3; CRAIGSLIST, *supra* note 3. *But see* AMAZON, *supra* note 3 (Washington law applies); EBAY, *supra* note 3 (Utah).

7. See GOOGLE, *supra* note 3; YOUTUBE, *supra* note 3; YAHOO, *supra* note 3 (Northern District of California or Santa Clara County); FACEBOOK, *supra* note 3 (Northern District of California or San Mateo County); TWITTER, *supra* note 3; WIKIPEDIA, *supra* note 3; CRAIGSLIST, *supra* note 3 (San Francisco County).

8. Sites like Craigslist.com allow themselves the right to seek injunctive relief against website users anywhere. CRAIGSLIST, *supra* note 3.

9. See AMAZON, *supra* note 3; EBAY, *supra* note 3 (which does have a 30-day written opt-out option); WINDOWS, *supra* note 3.

10. See YOUTUBE, *supra* note 3 (“YOU AND YOUTUBE AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.”); *see also* YAHOO, *supra* note 3; WIKIPEDIA, *supra* note 3; MICROSOFT, *supra* note 3.

11. Facebook uses information about its users:

[I]n connection with the services and features we provide to you and other users like your friends, our partners, the advertisers that purchase ads on the site, and the developers that build the games, applications, and websites you use. For example, in addition to helping people see and find things that you do and share, we may use the information we receive about you: as part of our efforts to keep Facebook products, services and integrations safe and secure; to protect Facebook's or others' rights or property; to provide you with location features and services, like telling you and your friends when something is going on nearby; to measure or understand the effectiveness of ads you and others see, including to deliver relevant ads to you; to make suggestions to you and other users on Facebook, such as: suggesting that your friend use our contact importer because you found friends using it, suggesting that another user add you as a friend because the user imported the same email address as you did, or suggesting that your friend tag you in a picture they have uploaded with you in it; and for internal operations, including troubleshooting, data analysis, testing, research and service improvement.

FACEBOOK, *supra* note 3.

monitoring, and even your location information may be gathered and stored if you use certain devices.¹² And to the extent a visitor posts any content online, the website automatically has a worldwide license to use that content, in many cases without limitation on use.¹³

This law is not passed by elected officials or voters. It is imposed unilaterally¹⁴ by the websites under the guise of contract, which website visitors are often deemed to have accepted simply by visiting the site, and which can be changed at any time with or without notice.¹⁵ Professor Margaret Jane Radin calls this phenomenon “democratic degradation.”¹⁶ “[f]irms that deploy boilerplate in order to erase the legal rights that form the infrastructure that makes contractual private ordering possible are using contract to destroy the underlying basis of contract.”¹⁷ These website companies “supersede the law of the state with the ‘law’ of the firm.”¹⁸

Of course, some efforts to limit warranties and damages would be held invalid were the issue before a court. In many cases, the Magnuson Moss Act will prohibit a supplier of a consumer product from disclaiming or

Google may:

[C]ollect information about the services that you use and how you use them, like when you visit a website that uses our advertising services or you view and interact with our ads and content,” and may collect and store information “of how you used our service, such as your search queries.” It may also track users’ location: “When you use a location-enabled Google service, we may collect and process information about your actual location, like GPS signals sent by a mobile device. We may also use various technologies to determine location, such as sensor data from your device that may, for example, provide information on nearby Wi-Fi access points and cell towers.

GOOGLE, *supra* note 3.

13. *See* AMAZON, *supra* note 3 (“If you do post content or submit material, and unless we indicate otherwise, you grant Amazon a nonexclusive, royalty-free, perpetual, irrevocable, and fully sublicensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display such content throughout the world in any media.”); TWITTER, *supra* note 3 (“By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed).”); FACEBOOK, *supra* note 3 (“For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your privacy and application settings: you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License).”).

14. *See* KIM, *supra* note 1, at 122.

15. *Id.* at 66. *See also* Charles L. Knapp, *Opting Out or Copping Out – An Argument for Strict Scrutiny of Individual Contracts*, 40 LOY. L.A. L. REV. 95, 112-13 (2006).

16. MARGARET JANE RADIN, *BOILERPLATE: THE FINE PRINT, VANISHING RIGHTS, AND THE RULE OF LAW* 16 (2013).

17. *Id.* at 36.

18. Margaret Jane Radin, *Reconsidering Boilerplate: Confronting Normative and Democratic Degradation*, 40 CAP. U. L. REV. 617, 633 (2012).

modifying any implied warranty.¹⁹ States such as Massachusetts and Washington abolish warranty disclaimers in consumer transactions.²⁰ But even if the provisions are not enforceable, they may have a deterrent effect upon a consumer considering a lawsuit. Professor Kim notes:

While most consumers do not read contracts prior to entering into standard transactions, many do so afterward. A contract may be used to deter litigation as much as it is used to win litigation. A consumer might read the contract after a problem with the transaction arises and believe that the egregious term is enforceable – and thus decline to have the grievance redressed. A consumer who does complain to the company may have a company representative direct the consumer’s attention to the oppressive terms in the relevant section of the contract. Many consumers will likely resign themselves at this point, believing that what the contract says is “the law.”²¹

Because of the ever-increasing time spent online and the way the Internet has displaced brick and mortar shops and offline services, online terms are beginning to encroach on offline actions. One recent story highlights the consumer backlash that can result when on- and offline worlds collide. General Mills, a food manufacturer known for cereals like Wheaties and Cheerios as well as Pillsbury and Bisquick baking products, Nature Valley snacks, and Progresso soups, made a change to language on its website that resulted in a furor. The company posted a notice on its website in April 2014 alerting consumers that its arbitration clause would apply to any claims brought by consumers who interacted with the company in a variety of ways, including by downloading coupons, joining its online communities like Facebook, or entering a company-sponsored contest or sweepstakes. After being contacted by the *New York Times* about the changes, General Mills added language across the top of its home page stating, “[w]e’ve updated our privacy policy. Please note we also have new legal terms which require all disputes related to the purchase or use of any General Mills product or service to be resolved through binding arbitration.”

With the help of attention from the press, consumer reaction was fierce. General Mills faced a firestorm of criticism from consumers on Facebook and Twitter. Just three days later, General Mills took the surprising step of

19. 15 U.S.C. § 2308 (2012) (“A disclaimer, modification, or limitation made in violation of this section shall be ineffective for purposes of this chapter and State law.”).

20. 1 HOWARD ALPERIN & ROLAND CHASE, CONSUMER LAW: SALES PRACTICES AND CREDIT REGULATION § 245 (1986).

21. KIM, *supra* note 1, at 29.

taking the new language down. On April 19, 2014, General Mills issued the following statement on its company blog:

As has been widely reported, General Mills recently posted a revised set of Legal Terms on our websites. Those terms – and our intentions – were widely misread, causing concern among consumers. So we’ve listened – and we’re changing them back to what they were before. We rarely have disputes with consumers – and arbitration would have simply streamlined how complaints are handled. Many companies do the same, and we felt it would be helpful. But consumers didn’t like it. So we’ve reverted back to our prior terms. There’s no mention of arbitration, and the arbitration provisions we had posted were never enforced. Nor will they be. We stipulate for all purposes that our recent Legal Terms have been terminated, that the arbitration provisions are void, and that they are not, and never have been, of any legal effect. That last bit is from our lawyers. We’ll just add that we never imagined this reaction. Similar terms are common in all sorts of consumer contracts, and arbitration clauses don’t cause anyone to waive a valid legal claim. They only specify a cost-effective means of resolving such matters. At no time was anyone ever precluded from suing us by purchasing one of our products at a store or liking one of our Facebook pages. That was either a mischaracterization – or just very misunderstood. Not that any of that matters now. On behalf of our company and our brands, we would also like to apologize. We’re sorry we even started down this path. And we do hope you’ll accept our apology. We also hope that you’ll continue to download product coupons, talk to us on social media, or look for recipes on our websites. Our legal terms? You’ll find them right on our website. You’ll also find they’re back to what they always were.²²

It is possible that General Mills hit a nerve with consumers by stretching its terms of use to seemingly reach offline actions like using a website coupon to purchase a product in a store. Or perhaps consumers, who otherwise stay placid in the face of ubiquitous online forced arbitration clauses,²³ bucked at the idea of a food producer using such a term. In any event, General Mills was not unprecedented in attempting to extend the reach of its online arbitration clause.²⁴ Barnes and Noble, along with its

22. Kristic Foster, *We’ve listened – and we’re changing our legal terms back*, GENERAL MILLS BLOG (Apr. 19, 2014), <http://www.blog.generalmills.com/2014/04/weve-listened-and-were-changing-our-legal-terms-back-to-what-they-were/#sthash.dbFqRwXj.dpuf>.

23. See *Forced Arbitration Rogues Gallery*, PUBLIC CITIZEN, <http://www.citizen.org/forced-arbitration-rogues-gallery> (last visited Nov. 11, 2014).

24. General Mills’ own website terms (which still disclaim warranties, limit liability and cap damages at \$100) still purport to apply to users of its Facebook page. *Legal Terms*, GENERAL MILLS, http://www.generalmills.com/en/Legal_Terms.aspx (last visited Nov. 11, 2014) (“‘Website’ as used in these Terms of Use includes our pages and applications on third-party social-networking services such as Facebook or Twitter and our applications on mobile devices.”).

companion Nook site, phrases its website agreement, which includes an arbitration clause, broadly enough to cover the type of actions for which General Mills was criticized:

By visiting any area on the Barnes & Noble.com Site, creating an account, making a purchase via the Barnes & Noble.com Site, downloading a Barnes & Noble retail software application (“Barnes & Noble Software”) from the Barnes & Noble.com Site, joining any Barnes & Noble online interactive community, such as Book Clubs, posting a review or creating a profile, or otherwise joining, viewing, visiting or contributing to Barnes & Noble user forums or interactive features (all of the foregoing are sometimes referred to in this document as the “Barnes & Noble.com Services”), a User is deemed to have accepted the Terms of Use.²⁵

A user accepts the terms of use by interacting with any of the company’s online features, including by joining a book club. If she and her other book club members wanted to sue Barnes and Noble for its high online prices, she would be required to arbitrate:

Any claim or controversy at law or equity that arises out of the Terms of Use, the Barnes & Noble.com Site or any Barnes & Noble.com Service (each a “Claim”), shall be resolved through binding arbitration conducted by telephone, online or based solely upon written submissions where no in-person appearance is required.²⁶

Like General Mills, the cloud storage company Dropbox also changed its policy recently to require mandatory arbitration.²⁷ As reported by the *New Yorker*, the backlash so far has not been enough to warrant reversal by the company.²⁸ Do consumers simply care less about their ability to bring suit against sellers of books or computer services?

A perusal of websites linked to prominent grocery stores or food manufacturers shows that General Mills is not the only food producer to push the limits of its terms of use. In fact, the terms on these sites are not

25. *Terms and Conditions of Use*, BARNES & NOBLE (Apr. 10, 2014), http://www.barnesandnoble.com/include/terms_of_use.asp.

26. *Id.*

27. Ramsey Homsany, *Updating our Terms of Service, Privacy Policy and Dropbox for Business Agreement*, THE DROPBOX BLOG (Feb. 20, 2014), <https://blog.dropbox.com/2014/02/updating-our-terms-of-service/> (allowing opt out via online form); *see also* Stephanie Strom, *When ‘Liking’ a Brand Online Voids the Right to Sue*, N.Y. TIMES (Apr. 16, 2014), http://www.nytimes.com/2014/04/17/business/when-liking-a-brand-online-voids-the-right-to-sue.html?_r=0.

28. Kiel Brennan-Marquez, *Is the General Mills Decision Cause for Celebration?*, NEW YORKER (Apr. 22, 2014), *available at* <http://www.newyorker.com/business/currency/is-the-general-mills-decision-cause-for-celebration> (“Dropbox, for example, recently announced very similar modifications to its terms of service. The change inspired outrage similar to the reaction to the General Mills incident, but apparently not enough to get the changes reversed.”).

very different from those on the top U.S. websites discussed above. Publix, Whole Foods, Kroger, Food Lion, Safeway, Costco, Kellogg's, Proctor & Gamble, Campbell Soup, Coca-Cola, Hormel Foods Corporation, and Tyson Foods all disclaim warranties, limit liability to actual damages and often to no more than \$100, and provide for indemnification against claims brought against them. Publix, Proctor & Gamble, and Tyson Foods have mandatory arbitration clauses. Many others have forum selection clauses limiting claims to their home jurisdictions.²⁹ And some limit the statute of limitations for claims covered by their terms of use to one year, shorter than that of the average products liability or negligence claim and much shorter than a claim for breach of contract.³⁰

While the language of many of these websites suggests that the terms of use (and forum limitations) apply only to claims arising out of the site itself and its operation, many of these websites have already taken steps – similar to Barnes and Noble – to broaden that language to include more than just website functioning. Whole Foods includes “products” in its description of its terms’ breadth:

THE [WHOLE FOODS] WEBSITE AND ALL INFORMATION, CONTENT, MATERIALS, PRODUCTS, SERVICES, AND USER CONTENT INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE WFM WEBSITE (COLLECTIVELY, THE “WFM WEBSITE CONTENTS”) ARE PROVIDED BY WFM ON AN “AS IS,” “AS AVAILABLE” BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND.

Walmart,³¹ Target,³² Proctor & Gamble,³³ and Hormel³⁴ also state that their online terms cover products, and all purport to disclaim warranties of

29. See *Terms & Conditions*, WHOLE FOODS MARKET (Nov. 4, 2013), <http://www.wholefoodsmarket.com/terms-use> (Texas); *Terms and Conditions*, KROGER (Sept. 8, 2008), <https://www.kroger.com/termsandconditions> (Ohio); *Legal Terms & Conditions*, FOOD LION, <http://www.foodlion.com/legalterms> (last visited Nov. 11, 2014) (Mecklenburg County, North Carolina); *Terms of Use*, SAFEWAY (Oct. 29, 2014), <http://www.safeway.com/ShopStores/Terms-of-Use.page> (San Francisco, California); *Terms and Conditions of Use*, COSTCO (Apr. 2010), <http://www.costco.com/terms-and-conditions-of-use.html> (Seattle, Washington); *Terms of Use*, CAMPBELL SOUP CO., <http://www.campbellsoupcompany.com/terms-of-use> (last visited Nov. 11, 2014) (New Jersey); *The Coca-Cola Company Terms of Use*, COCA-COLA CO. (Nov. 15, 2013), <http://www.coca-colacompany.com/our-company/the-coca-cola-company-terms-of-use> (Fulton County, Georgia); *Terms & Conditions*, HORMEL FOODS (Aug. 15, 2013), <http://www.hormelfoods.com/About/Legal/Terms> (Minnesota).

30. See *The Hershey Company Web Site Terms and Conditions*, HERSHEY CO., <http://www.thehersheycompany.com/legal.aspx> (last visited Nov. 14, 2014).

31. *Walmart.com Terms of Use*, WALMART (Aug. 28, 2014), http://help.walmart.com/app/answers/detail/a_id/8/%7E/walmart.com-terms-of-use (“WALMART MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE WALMART SITES OR THE INFORMATION, CONTENT,

products purchased online. In contrast, many smaller food providers go out of their way to warrant the satisfaction of their products on their websites.³⁵ Are the larger, well-established companies taking advantage of the ease with which consumers are deemed to agree to online terms? Where is the consumer firestorm about these limitations?

In another example, Coca-Cola provides that its online forum selection clause applies to “disputes arising out of, relating or concerning the site and/or the site or terms of use are a material fact.” So a person suing because of a drink purchased at a corner store in California could be required to bring suit in Georgia if his claim materially included statements he read on the company’s website.

Thus the encroachment of online terms towards offline actions is not limited to General Mills, and is likely to continue without the kind of press that resulted in General Mills’ about-face. Consumers should be concerned about limitations on their right to sue for more than just purchases of cereal, and they should be very concerned about companies’ attempts to limit liability when products are purchased online. Professor Kim’s book is an excellent step toward educating those consumers, who might be able to influence website companies when courts and legislators fail to act.

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32. *Terms & Conditions*, TARGET (Oct. 30, 2014), <http://www.target.com/spot/terms-conditions> (“THE SITE AND ALL INFORMATION, CONTENT, MATERIALS , PRODUCTS, SERVICES, AND USER CONTENT INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SITE (COLLECTIVELY, THE “SITE CONTENTS”) ARE PROVIDED BY TARGET ON AN “AS IS,” “AS AVAILABLE” BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND.”).

33. *Terms and Conditions*, PROCTOR & GAMBLE (Apr. 6, 2001), http://www.pg.com/en_US/terms_conditions/index.shtml (“THIS SITE AND THE MATERIALS, INFORMATION, SERVICES, AND PRODUCTS IN THIS SITE, INCLUDING, WITHOUT LIMITATION, TEXT, GRAPHICS, AND LINKS, ARE PROVIDED “AS IS” AND WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED.”).

34. HORMEL FOODS, *supra* note 29 (“OUR SITES AND ALL OF THE INFORMATION, PRODUCTS AND SERVICES MADE AVAILABLE THROUGH OUR SITES ARE PROVIDED ON AN ‘AS IS,’ ‘AS AVAILABLE’ BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND.”).

35. *Guarantee*, ZINGERMAN’S, <http://www.zingermans.com/CustService.aspx#guarantee> (last visited Nov. 11, 2014) (express guarantee of absolute satisfaction); *Terms and Conditions*, MARKET HALL FOODS, <http://markethallfoods.com/terms-conditions/> (last visited Nov. 11, 2014) (express product guarantee); *Cancellations>Returns*, IGOURMET, <http://www.igourmet.com/ST/cancellations.asp> (last visited Nov. 11, 2014) (unconditional satisfaction 100% guaranteed).