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THE NEW HANDSHAKE: ONLINE DISPUTE RESOLUTION AND
THE FUTURE OF CONSUMER PROTECTION

By
Michael Ferrence*

I. INTRODUCTION

The New Handshake: Online Dispute Resolution and the Future of Consumer Protection tackles a major issue plaguing companies in a world of ever-growing technology: online dispute resolution (ODR).¹ As authors Amy J. Schmitz and Colin Rule observe, since the Internet's conception, businesses have been in a transition period.² This transition has created an environment where consumers and merchants are no longer meeting face-to-face in most, if not all, points of a sale.³

Now, most consumers are making their purchases online from vendors all around the world.⁴

There was a time when merchants and consumers would meet in person to do business. They would discuss the terms, assess the trustworthiness and character of their contracting partners, and conclude the deal with the handshake. This handshake was more than a kind gesture. It helps to reassure both parties that the other side was committed to the deal and what ensure correction of any problems that might arise. Reputations and respect mattered most because individuals worked in the same community and new each other's friends and business partners. That handshake sealed the deal. It was a personal Trustmark.⁵

Yet, ODR has stayed somewhat stagnant throughout this transition.⁶ When consumers have

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¹ AMY J. SCHMITZ & COLIN RULE, *THE NEW HANDSHAKE: ONLINE DISPUTE RESOLUTION* (2017).

² *See id.* at 3. Amy J. Schmitz has been a law professor at the University of Missouri School of Law since 2016. Previously, she was a professor at the University of Colorado School of Law. She currently focuses her research on online dispute resolution in varied exchange contexts, with special focus on consumer claims and means for consumers to obtain remedies. Schmitz is also considered an expert in consumer protection, consumer arbitration, and contracting behavior.

Colin Rule is the Vice President of Online Dispute Resolution at Tyler Technologies. He was the co-founder of modria.com, another ODR service provider and was the Director of Online Dispute Resolution at eBay and PayPal. Rule also authored *Online Dispute Resolution for Business*.

³ *See id.* at ix.

⁴ *See id.*

⁵ *Id.*

⁶ *See* SCHMITZ & RULE, *supra* note 1, at 3.

issues with their products or services, they are required to call a customer service center or navigate a website that has made reporting problems to the seller too difficult.⁷ Merchants know that customer service is important, but many merchants believe that customer service call centers are the best solution, with no better alternatives.⁸

This book lays out the framework for a program that could eliminate many of the problems associated with ODR.⁹ For the purposes of this book, the system is called “the new handshake;” and the system advocates for relying almost completely on technology.¹⁰ Although repetitive in some aspects, the book demonstrates a well-thought-out plan for a system that could be the future of ODR. However, there was one aspect of the system that was not accounted for. Public policy concerns surrounding the implementation of ODR that relies almost completely on technology. Employees are not considered in their analysis, only merchants and consumers.¹¹ While the book seems to provide a viable ODR system, the system does not account the millions of customer service employees that could find themselves out of work under this system.

II. OVERVIEW

The book begins by laying out the current system most companies use for ODR and pinpoints the many issues associated with that system.¹² As the book proceeds into Chapter Two, consumer desires and how businesses currently handle customer care, are explained to provide the goal the book will fulfill.¹³ The authors then provide a real-life example of an ODR program which websites should model themselves after: eBay.¹⁴ Next, the book dives into why merchants need to make improving their ODR systems a priority.¹⁵ The authors also lay out the challenges associated with putting the “the new handshake” into place.¹⁶ Finally, the book concludes with a complete layout of the system the authors are encouraging businesses to put in place: a model program that can act as a starting point for a new and improved ODR.¹⁷

⁷ See SCHMITZ & RULE, *supra* note 1, at 4.

⁸ See *id.* at 24.

⁹ See *id.* at xiii.

¹⁰ See *id.* at 95.

¹¹ See SCHMITZ & RULE, *supra* note 1, at xii-xiii.

¹² See *id.* at 3.

¹³ See *id.* at 21.

¹⁴ See *id.* at 33.

¹⁵ See *id.* at 49.

¹⁶ See SCHMITZ & RULE, *supra* note 1, at 61.

¹⁷ See *id.* at 95.

The New Handshake gives a complete demonstration of the ODR environment in today's changing world.¹⁸ While the book seemed to be a marketing pitch for the system the authors have created, the authors provided a detailed and convincing analysis to display why changes in ODR are desperately needed.¹⁹ The points often became repetitive, given many of the same issues need to be addressed from many different perspectives including consumers, managers, IT personnel, etc.²⁰ Nonetheless, the amount of detail provided during the beginning two-thirds of the book allow the reader to build up interest in the issue of ODR.

III. WHERE ARE WE NOW

Chapter One presents a picture of the current ODR environment, especially faults in the current systems.²¹

Doc Searls predicted that technology would usher in a golden age of consumer choice, where buyers would use the wide range of options provided to them by frictionless e-commerce to play merchants off each other, ensuring that consumers got the best deals and the widest selection in every online exchange.²²

By placing this reference to the book *The Cluetrain Manifesto*, the reader already has a sense of where we were expected to be by this time when the book was written in 1999.²³ Society still is not at that point of ease in e-commerce.²⁴ This is the perspective the authors are trying to present, a little disappointment with a spark of interest in how it can get better. The chapter then proceeds to explore the details of today's ODR environment.²⁵

Schmitz and Rule go on to explain the concept of the “*squeaky wheel system*” (SWS):

This SWS concept encompasses the notion that the “*squeaky wheels*” (consumers who are proactive in pursuing their needs and complaints) are most likely to get

¹⁸ See SCHMITZ & RULE, *supra* note 1.

¹⁹ *Id.*

²⁰ See, e.g. Parts III, IV, V, & VI.

²¹ See SCHMITZ & RULE, *supra* note 1, at 3.

²² See SCHMITZ & RULE, *supra* note 1, at 3. (citing DAVID WEINBERGER, RICK LEVINE, CHRISTOPHER LOCKE, & DOC SEARLS, *THE CLUETRAIN MANIFESTO* (2000).) Doc Searls is referred to here for his co-authorship of *The Cluetrain Manifesto: The End of Business as Usual*, a well-known book in the business world that came out in March of 1999. The book produced ninety-five theses that discussed how the internet was going to change the world of business forever and businesses would need to listen to and engage in online conversation in order to keep up with the rapidly changing environment.

²³ See *id.*

²⁴ See *id.*

²⁵ See *id.*

the assistance, remedies, and other benefits they seek. Meanwhile, those who remain silent because they lack the knowledge, experience, or resources to artfully and actively pursue their interests usually do not receive the same benefits.²⁶

This is an easy analogy for the reader to understand, and many most likely feel a connection to the idea.

Simply put, dispute resolution has put consumers at an increasing disadvantage.²⁷ The only real option for consumers to pursue are class action suits. However, this process usually takes years and costs money, all while not resulting in perfect or complete redress.²⁸ Because class actions are the only true remedy for consumers, many companies include binding arbitration agreements and class action waivers in their contracts.²⁹ These have become extremely prevalent, yet also go under the radar because consumers are not typically trained in reading contracts.³⁰

As a result of these overbearing contracts, many consumers have had to utilize credit card chargebacks.³¹ Credit card chargebacks are when consumers contact their credit card issuer to reverse charges in transactions where the consumer was dissatisfied.³² For consumers, this only solves the problem to a certain extent. While they may get their money back, the consumers must pay an additional fee.³³ The only additional measure that consumers can take to resolve the dispute is to sue the seller.³⁴ There is no incentive for businesses to pursue these disputes – the cost normally does not outweigh the benefits of suing the consumer – so those disputes are practically ignored.³⁵

While the business may be able to absorb the costs, the aggregate amount of all of these disputes can be problematic. By absorbing the costs, the problem is temporarily out of sight, but the long-term cost will eventually pile up. The consumer might receive a portion of their money back, but the overall problem is never solved. Businesses have a disproportionate power advantage because they can afford ignoring these low-cost issues.³⁶ Yet, if more attention was

²⁶ See SCHMITZ & RULE, *supra* note 1, at 5. (*emphasis added*)

²⁷ *See id.*

²⁸ *See id.* at 9.

²⁹ *See id.* at 11.

³⁰ See SCHMITZ & RULE, *supra* note 1, at 11.

³¹ *See id.* at 15.

³² *See id.*

³³ *See id.*

³⁴ *See id.*

³⁵ See SCHMITZ & RULE, *supra* note 1, at 15.

³⁶ *See id.*

paid to improving ODR, the overall costs to the business would significantly drop, and consumers would enjoy much more satisfaction after going through the dispute process.

IV. WHAT CONSUMERS WANT

As time passed, consumers' expectations of ODR have advanced as well.³⁷ Yet, while technology has enabled businesses to move at a faster pace than ever before, consumers are not realizing the benefits, especially in dispute resolution.³⁸ To fix problems, consumers are expected to be persistent and tenacious to get the results they desire.³⁹ Currently, businesses rely too heavily on customer support representatives.⁴⁰ From the authors' point of view, customer support representatives are not the best course of action for solving disputes.⁴¹ There are many disadvantages, such as the human element of trying to remain civil and friendly on the phone with a disgruntled customer.⁴² Given the patience required to deal with unhappy customers, this disadvantage is easy to conceptualize. With automated service, there is no human element involved. The business knows exactly how the customer will be treated if the ODR system is automated.

Additionally, customers hate having to call into customer service because it is frustrating and, often, a waste of time. By utilizing an automated system the business can take each frustrating experience, learn from it, and improve the system so these frustrating experiences no longer happen.⁴³ With human representatives, there are too many variables to make sure every customer will not experience a frustration that has been addressed before. With the emergence of artificial intelligence, one could imagine how much wider the gap is becoming between the efficiency of human customer service and automated ODR. Many businesses utilize customer service representatives from other countries, further complicating the process for the consumer due to language barriers, miscommunication, etc.⁴⁴ Automated systems would never have this problem. Finally, considerable money is wasted on disputes that can't be resolved through customer service.⁴⁵ Utilizing ODR reduces this cost because the business is not paying customer service representatives.⁴⁶

³⁷ See SCHMITZ & RULE, *supra* note 1, at 21.

³⁸ See *id.* at 22.

³⁹ See *id.* at 23.

⁴⁰ See *id.* at 24.

⁴¹ See SCHMITZ & RULE, *supra* note 1, at 24.

⁴² See *id.*

⁴³ See *id.* at 94.

⁴⁴ See *id.* at 24.

⁴⁵ See SCHMITZ & RULE, *supra* note 1, at 24.

⁴⁶ See *id.*

There are some potential issues with getting rid of customer service representatives. Only one of the two is resolved by an explanation in this book. One of which is how replacing customer service representatives with ODR would affect the workforce. The book acknowledges that almost every large business employs “an army of thousands of customer service representatives.”⁴⁷ However, there is no solution presented by the authors on how these employees will be affected.

The authors do answer another criticism of ODR, though. The authors argue that having consumers interact with live customer support agents helps personalize the relationship between the consumer and the business.⁴⁸ This argument has been used before when automated teller machines (ATMs) were introduced in the 1980s.⁴⁹ Obviously, this concern never materialized, as ATMs are very prevalent in today’s environment.⁵⁰ Consumers do not seem to care if they have a live person to talk to when they are experiencing an issue with a service or product.⁵¹ The main thing consumers want is for the whole process to be quick and easy.⁵²

Finally, the chapter closes with a summary of a *Harvard Business Review* study that found the six main consumer needs that businesses need to prioritize.⁵³ First, not surprisingly, consumers want fast and easy resolutions.⁵⁴ Second, consumers do not want to pick up the telephone.⁵⁵ These two had already been addressed earlier in the chapter at length. Third, consumers do not expect perks and giveaways.⁵⁶ Many businesses believe providing perks to their customers is the best way to gain business and customer loyalty.⁵⁷ Instead, the reality is that customers are more interested in companies simply not providing *bad* experiences.⁵⁸ “It is far more common for customers to punish companies with bad basic service than for customers to become loyal to companies as a result of some unexpected act of generosity.”⁵⁹ Fourth, consumers do not want to negotiate.⁶⁰ Fifth, consumers want to be treated “*fairly*,” fairly in this

⁴⁷ See SCHMITZ & RULE, *supra* note 1, at 24.

⁴⁸ See *id.* at 25.

⁴⁹ See *id.*

⁵⁰ See *id.*

⁵¹ See SCHMITZ & RULE, *supra* note 1, at 26.

⁵² See *id.*

⁵³ See *id.* at 27.

⁵⁴ See *id.* at 28.

⁵⁵ See *id.*

⁵⁶ See SCHMITZ & RULE, *supra* note 1, at 28.

⁵⁷ See *id.* at 28.

⁵⁸ See *id.*

⁵⁹ See *id.* at 29.

⁶⁰ See *id.*

context, usually means a full refund.⁶¹ Sixth, consumers want their privacy protected.⁶² As society has moved into this new age of technology, this could not be emphasized enough. With all of the data breaches that have occurred in the past few years, fear of breaches of privacy has naturally become a major concern for consumers.⁶³

V. LESSONS LEARNED ON EBAY.

The main company the authors look to in order to validate their system is *eBay*.⁶⁴ The entirety of chapter three is dedicated to the analysis of *eBay* and its successes, failures, and lessons learned, as well as how these lessons can be used to create an improved system of ODR.⁶⁵ Since the company was formed, excellent ODR quickly became a top priority for *eBay*.⁶⁶ To fulfill this priority, the company created three divisions as part of its “Trust and Safety” team.⁶⁷ These three divisions were: Fraud Investigations, Feedback and Reputation, and Protections/Resolutions.⁶⁸ Through these three branches, trends were discovered in the company’s ODR and *eBay* became a key ODR case study.⁶⁹

There are a number of lessons *eBay* learned in those twenty-plus years that are examined here: (1) resolutions must be fast and easy; (2) the ODR system must be discoverable and easy to access; (3) consumers are not motivated by giveaways; (4) satisfaction is not a good way to measure ODR effectiveness; (5) sellers have the advantage; (6) the tone of the exchange must be positive; (7) do not presume everything is fraud; (8) outcomes must be consistently fair; (9) the decisions do not need to be binding; and (10) the system must be continuously learning. The first lesson was that resolutions should be fast and easy.⁷⁰ This aspect has already been mentioned in previous chapters, but here, the authors discuss how *eBay*’s initial ODR systems were simply too complex and the company learned that simplicity was a top priority.⁷¹ The

⁶¹ See SCHMITZ & RULE, *supra* note 1, at 30. (*emphasis added*)

⁶² See *id.* at 30.

⁶³ Dennis Green & Mary Hanbury, *If you shopped at these 16 stores in the last year, your data might have been stolen*, BUSINESS INSIDER (Aug. 22, 2018, 5:49 PM), <https://www.businessinsider.com/data-breaches-2018-4>. According to this business insider article in August of 2018, there had already been sixteen major companies that had data breaches from January 2017 to August 22, 2018.

⁶⁴ See SCHMITZ & RULE, *supra* note 1, at 33.

⁶⁵ See *id.*

⁶⁶ See *id.*

⁶⁷ See *id.* at 33.

⁶⁸ See *id.*

⁶⁹ See SCHMITZ & RULE, *supra* note 1, at 33.

⁷⁰ See *id.* at 40.

⁷¹ *Id.*

complex process required to resolve their issues increasingly irritated customers. *Ebay* set the example which the authors follow in this book by creating an easy-to-use system that tracked every conflict from start to finish.

The next concept, which was discoverability and easy access to the ODR system, is important.⁷² One could argue this could be included in the fast and easy category, but this particular lesson focused more on the accessibility to its ODR system.⁷³ Many companies' websites, intentionally, or unintentionally, hide away the ODR system somewhere that is difficult for the consumer to find on the webpage.⁷⁴ *eBay* learned that links to its ODR service needed to be placed prominently, so that customers can easily access them to have their issues solved.⁷⁵

The next lesson has also been mentioned before: consumers are not motivated by giveaways.⁷⁶ While customers might appreciate instant refunds, gift card incentives, and other giveaways, the data showed *eBay* that customer loyalty did not increase and business did not improve as a result of them. The subsequent lesson articulated that satisfaction is not an effective way to measure the effectiveness of resolutions programs.⁷⁷ There are other ways of measuring the success of the ODR system, such as loyalty and reactivation rates.⁷⁸ Reactivation rates are the rate at which the customer continues to use their account after experiencing a dispute.⁷⁹

Next, sellers have the advantage.⁸⁰ This lesson indirectly looks to the previous lesson, in that it is much easier for sellers to voice their opinions on ODR.⁸¹ Consumers have less of an incentive to voice their displeasures with ODR systems and are not in the business of improving ODR systems. Most consumers simply do not have the experience or understanding of the nuances involved with ODR systems. Therefore, it is important to remember that buyers' opinions are just as important, if not more important, and to keep them in mind as much as possible.⁸²

The next lesson was that the tone of the exchange is extremely important.⁸³ Even if it

⁷² See SCHMITZ & RULE, *supra* note 1, at 41.

⁷³ See *id.*

⁷⁴ See *id.*

⁷⁵ See *id.*

⁷⁶ See *id.*

⁷⁷ See SCHMITZ & RULE, *supra* note 1, at 42.

⁷⁸ See *id.*

⁷⁹ See *id.*

⁸⁰ See *id.*

⁸¹ See *id.*

⁸² See SCHMITZ & RULE, *supra* note 1, at 42.

⁸³ See *id.* at 43.

means being as unreasonably appeasing to the complaint, the reality is that buyers have little, to no, incentive to be reasonable.⁸⁴ Therefore, the ODR needs to have a positive tone towards the consumer.⁸⁵ Additionally, not everything can be presumed to be fraud.⁸⁶ The core belief in creating an effective ODR system is that people mean well. Then, as was mentioned earlier, outcomes need to be consistent and fair.⁸⁷ Buyers will be unhappy if they are lead to believe the system was biased toward sellers. Policies must be created by businesses to assure results to similar disputes will be the same or substantially similar, regardless of customer and results must be reviewed to make sure they were the fair outcome.

Resolution processes also do not need to be binding.⁸⁸ Most purchases on *eBay* simply do not have a value high enough to be brought to court, so the private resolution process is more than sufficient for ODR.⁸⁹ Finally, resolution systems need to be continuously learning.⁹⁰ The purpose of this book is to show how companies have not been continuously learning and need to change from their traditional processes of dispute resolution. Therefore, it should come as no surprise that the book would also advocate for the continued learning and changing to accommodate future ODR needs. Overall, this chapter provided a framework for how their system would work and why it would be successful.⁹¹

The authors in this chapter were able to look to *eBay* and pinpoint the main factors in what makes their ODR successful.⁹² By providing these observations to the reader, the authors do not simply rely on the company name, *eBay*, to support what they have found to be most important in successful ODR. Instead, the authors are able to show the reader how and why the company has been so successful in the area of ODR.⁹³ This immediately gives credibility to the idea that businesses should follow in *eBay's* footsteps when creating ODR systems for themselves.

VI. THE BUSINESS CASE FOR RESOLUTIONS

Schmitz and Rule proceed to discuss why businesses should consider investing in their

⁸⁴ See SCHMITZ & RULE, *supra* note 1, at 43.

⁸⁵ See *id.*

⁸⁶ See *id.* at 43.

⁸⁷ See *id.* at 44.

⁸⁸ See *id.* at 45.

⁸⁹ See SCHMITZ & RULE, *supra* note 1, at 45.

⁹⁰ See *id.*

⁹¹ See *id.* at 33—46.

⁹² See *id.*

⁹³ See *id.* at 33—46.

ODR systems.⁹⁴ Although businesses in the past have not considered dispute resolution one of their top priorities, this chapter takes time to prove why companies need to consider the benefits of successful dispute resolution processes. The data shows that effective dispute resolution has a very positive effect on return.⁹⁵ The authors referred to this analysis as a return on resolutions.⁹⁶ Return on resolutions is defined as a calculation of the true cost on a per case basis of providing a resolution to consumer.⁹⁷ The authors point out that there are many costs associated with providing a resolution to consumers, especially in the system that most businesses currently use.⁹⁸ These costs include the cost of the actual reimbursement to the consumer, cost associated with the customer support representatives, cost associated with shipping, software, restocking, shrinkage, chargebacks, and repair.⁹⁹ In most cases, businesses might be paying up to \$20-\$30 per consumer to resolve their disputes.¹⁰⁰

Looking to *eBay*, the authors found that by providing all dispute resolution processes through automated software, ninety-percent of their disputes are resolved without having to use customer service representatives or any other methods other than the automated software.¹⁰¹ In addition to the cost savings, the authors found that customer loyalty was also increased by the use of online dispute resolution.¹⁰² Research results at *eBay* demonstrated that:

[O]nce a buyer goes through an easy-to-navigate ODR process, the buyer establishes a durable connection and affinity for the site in question. The buyer also invests time in learning how to resolve issues on that particular site, and he or she may want to benefit from that understanding in future transactions. Experiencing fast and fair resolutions drives buyers to increase their use of the overall website by a statistically significant amount.¹⁰³

eBay also provided an experiment within its own company that found a way to calculate return on resolutions.¹⁰⁴ In this case, the company used activity ratios of buyer accounts to

⁹⁴ See SCHMITZ & RULE, *supra* note 1, at 49.

⁹⁵ See *id.* at 52.

⁹⁶ See *id.*

⁹⁷ See *id.*

⁹⁸ See *id.*

⁹⁹ See SCHMITZ & RULE, *supra* note 1, at 52.

¹⁰⁰ See *id.*

¹⁰¹ See *id.* at 53.

¹⁰² See *id.*

¹⁰³ *Id.* at 53—58.

¹⁰⁴ See SCHMITZ & RULE, *supra* note 1, at 54.

determine customer loyalty relating to online dispute resolution.¹⁰⁵ They found the result of disputes and the dispute resolution processes have a high impact on customer loyalty and return on resolution.¹⁰⁶ These aspects allowed eBay to understand just how important high-quality online dispute resolution is. Between decreasing costs and increasing customer loyalty, the authors are able to show how improving online dispute resolution is a win-win and companies need to understand the benefits that can be reached if more was invested in their ODR systems.

VII. BRINGING CONSUMER ADVOCACY ONLINE & ETHICAL CONSIDERATIONS

Chapters Five and Six address some of the programming challenges and ethical issues involved in creating a system of online dispute resolution that is safe and effective.¹⁰⁷ The first issue the authors address is bringing consumer advocacy online.¹⁰⁸ Online dispute resolution systems must be able to allow consumer protection authorities to stay relevant in the e-commerce era.¹⁰⁹ These online systems should be able to convey dispute information in an efficient way to help both consumer protection authorities as well as the businesses working towards improving dispute resolution.¹¹⁰ International cooperation within the system is also important so both businesses and consumer advocates can work towards effective relationships, regardless of where they are in the world.¹¹¹

Additionally, by making the system more effective, companies can resolve mass claims more efficiently and consumer advocates can gather more information, allowing the advocates to help a larger range of consumers in class actions.¹¹² Some other important challenges are confidentiality and privacy, ease of access, lack of resources, and providing alternative resolution processes when online dispute resolution is not enough.¹¹³

In addition to the programming challenges, ethical considerations will need to be addressed.¹¹⁴ First, impartiality and competence will be key factors in the success of ODR.¹¹⁵ Cost and accessibility are also important ethical concerns to address in order to have effective

¹⁰⁵ See SCHMITZ & RULE, *supra* note 1, at 56.

¹⁰⁶ *See id.*

¹⁰⁷ *See id.* at 61—80..

¹⁰⁸ *See id.* at 61.

¹⁰⁹ *See id.*

¹¹⁰ See SCHMITZ & RULE, *supra* note 1, at 64.

¹¹¹ *See id.*

¹¹² *See id.* at 65.

¹¹³ *See id.* at 66-70.

¹¹⁴ *See id.* at 71.

¹¹⁵ See SCHMITZ & RULE, *supra* note 1, at 72.

and fair ODR.¹¹⁶ Online arbitrators and mediators have an obligation to fully educate negotiating parties on their obligations as participants upfront, including all possible costs they may need to bear, how the arbitrators or mediators will be compensated, and who will be providing the compensation.¹¹⁷ Of course, as mentioned before, confidentiality and privacy are important concerns as well.¹¹⁸

Systems designers will face many ethical challenges. The authors here looked to the book *Online Dispute Resolution: Theory and Practice* by Jeff Aresty and Ruha Devanesan to highlight eight specific factors that are crucial in creating ethical ODR systems.¹¹⁹ For the system to be ethically sound, it must be transparent, independent, impartial, effective, fair, accessible, affordable, and flexible.¹²⁰ The authors give some suggestions to fulfill some of these factors, such as creating a transparent system, and making every case filing and decision publicly accessible.¹²¹ Moreover, to keep the system impartial, safeguards must be put in place so system programmers cannot create influences that could make the system biased.¹²²

VIII. NEWHANDSHAKE.ORG

The remainder of the book focuses completely on the system that the authors are advocating and marketing to the reader.¹²³ Chapter Seven addresses some of the important design features that were considered in the creation of their concept phase ODR, which is discussed in more detail in Chapter Eight.¹²⁴ The first of which was the combating of asymmetries, in particular, volume, information, and resource asymmetries.¹²⁵ Volume asymmetry is when sellers are more accustomed to commercial disputes than buyers.¹²⁶ Therefore, the system must be easy for the consumer to use so sellers won't have a large advantage in each respective dispute.¹²⁷

¹¹⁶ See SCHMITZ & RULE, *supra* note 1, at 73.

¹¹⁷ See *id.* at 74.

¹¹⁸ See *id.*

¹¹⁹ See SCHMITZ & RULE, *supra* note 1, at 74. (citing Ruha Devanesan & Jeffrey Aresty, *ODR and Justice—An Evaluation of Online Dispute Resolution's Interplay with Traditional Theories of Justice*, ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE (Ethan Katch, Daniel Rainey & Mohamed Wahab eds., 2012)). http://www.ombuds.org/odrbook/devanesan_aresty.pdf (last visited November 2, 2018).

¹²⁰ See SCHMITZ & RULE, *supra* note 1, at 76-79.

¹²¹ See *id.* at 76.

¹²² See *id.* at 77.

¹²³ See *id.* at 83-139.

¹²⁴ See *id.* at 83-95.

¹²⁵ See SCHMITZ & RULE, *supra* note 1, at 84.

¹²⁶ See *id.*

¹²⁷ See *id.*

Second, information asymmetry is similar to the volume asymmetry in that it is the result of sellers experiencing many more disputes than the typical consumer.¹²⁸ In most cases the consumer has little to no experience with dispute resolution or the software being used, while, on the other hand, the seller most likely has dealt with many similar, if not identical, disputes.¹²⁹ The solution provided is to spread data and information as efficiently as possible to consumers, so those consumers can leverage information drawn from the experiences of thousands of other buyers.¹³⁰

Finally, the third asymmetry is resource asymmetry.¹³¹ Resource asymmetry is when sellers have more resources to put towards resolutions than the consumer.¹³² Making the process free for all consumers can combat this asymmetry. If consumers do not need to contribute vast amounts of resources to the process because it is free, then the asymmetry is reduced.

Another design factor that needs to be considered was the difference between business-to-consumer conflicts and business-to-business disputes.¹³³ The main purpose of the process the authors are advocating is to assist in dispute resolution between businesses and consumers.¹³⁴ The solution to this issue is categorizing disputes by the nature of the dispute so business-to-business disputes are handled either outside of the system or within a different section of the system.¹³⁵

As for whether the system will create binding or nonbinding results, this book encourages the use of nonbinding decisions.¹³⁶ Nonbinding decisions are beneficial because the system does not block access to the courts for consumers.¹³⁷ For example, if after the entire dispute resolution process is over and the consumer is still unhappy, the court system is still available for them to use. However, if the system is effective, almost all of the disputes will be resolved within the system and never be brought to court.¹³⁸

The dichotomy between individual versus mass claims was also discussed in this chapter.¹³⁹ The authors suggest the use of what they call “tripwires” to allow for efficient use of

¹²⁸ See SCHMITZ & RULE, *supra* note 1, at 84.

¹²⁹ *See id.*

¹³⁰ *See id.*

¹³¹ *See id.*

¹³² *See id.*

¹³³ See SCHMITZ & RULE, *supra* note 1, at 85.

¹³⁴ *See id.*

¹³⁵ *See id.* at 86.

¹³⁶ *See id.*

¹³⁷ *See id.* at 87.

¹³⁸ See SCHMITZ & RULE, *supra* note 1, at 87.

¹³⁹ *See id.*

both individual claims and mass claims. Basically, a tripwire is the mechanism within the system that will be triggered when a certain number of cases are filed that fit the same fact pattern.¹⁴⁰ This process will create an environment where consumers can reap the benefits of both individual claims and mass claims, even if they did not know a mass claim was possible.

The authors also suggest that “*trustmarks*” be used to let consumers know which sellers have a reputation for satisfaction in consumer disputes.¹⁴¹ This system would keep track of each seller’s trust rating based on customer feedback through surveys after each individual dispute.¹⁴²

The specific design the authors described is what they are trying to market to commercial readers. The entire concept is laid out without getting into the technical issues that would have to be left up to a business’s technology department. Businesses would sign-up for the single-platform system and be provided with both a link to their free resolution center, and a code that could be placed on their website in the form of a *newhandshake.org* button.¹⁴³ This button is where the consumer will be able to place their claims, as well as present their experiences for both the merchant and future consumers.¹⁴⁴ When a dispute is filed through the system, the merchant would be immediately notified.¹⁴⁵

The system would use notifications and emails to update both consumers and merchants as the process is completed.¹⁴⁶ Merchant performance will be tracked through a system of notices, suspensions, and fees that will “police” the sellers, as well as provide consumers with reliable reputation information for each seller.¹⁴⁷ The authors also provide more design implementations for merchant appeals, multilingual capabilities, interaction with legal remedies, as well as interaction with credit card chargebacks.¹⁴⁸

After laying out the website for the reader, there are still variables that need to be kept track of over time to make sure that the system continues to succeed. For one, those maintaining the software need to continue to align their maintenance with the original goals for creating a fast and fair system atop its priorities.¹⁴⁹ Therefore, there will need to be high-quality governance and project management.¹⁵⁰ Trust will need to be maintained throughout the existence of the system,

¹⁴⁰ See SCHMITZ & RULE, *supra* note 1, at 87.

¹⁴¹ See *id.* at 88.

¹⁴² See *id.*

¹⁴³ See *id.* at 96.

¹⁴⁴ See *id.*

¹⁴⁵ See SCHMITZ & RULE, *supra* note 1, at 98.

¹⁴⁶ See *id.* at 98-100.

¹⁴⁷ See *id.* at 100-102.

¹⁴⁸ See *id.* at 103-104.

¹⁴⁹ See *id.* at 107-108.

¹⁵⁰ See SCHMITZ & RULE, *supra* note 1, at 108-110.

and both of these sectors will be to its success.¹⁵¹ Marketing, branding, and education will all be important factors in the continued success of the system.¹⁵² Multiple examples of case studies are then provided to give the reader a feel for how the system would work in real life situations.¹⁵³ The book ends by looking towards the future of the system after it has been implemented in the business.¹⁵⁴

IX. CONCLUSION

Overall, this book provides a well thought out plan for creating an ODR system that will sufficiently adhere to the needs of both merchants and consumers. Although very repetitive in many of its points, the reader has a clear view of why dispute resolution systems are so important and why businesses need to make it one of their top priorities.

By creating a basic system and laying the system out on paper for businesses to see, it is not hard to imagine that the authors would be able to expand the basic ODR to fit the needs of any company that wished to utilize it. Not only did the authors lay out all of the reasons for a company to consider improving its ODR, they also provided a basic blueprint for a potential business relationship with any business-owner who may read their book. The system hit on all of the major aspects mentioned in earlier areas of the book while also being flexible enough for it to fit in any industry.

The authors did a good job of hiding their true purpose of pitching their own system until the reader was truly convinced of the importance of improving online dispute resolution. For business-oriented readers it would definitely be difficult to read this book without highly considering the system it was advocating for. Therefore, it would be of no surprise if this book opened the authors up to new opportunities in partnering with businesses searching for ways to improve their ODR. This was clearly the purpose of the book to begin with, and the authors ultimately fulfilled that goal in the end.

¹⁵¹ See SCHMITZ & RULE, *supra* note 1, at 111.

¹⁵² See *id.* at 110.

¹⁵³ See *id.* at 113-128.

¹⁵⁴ See *id.* at 129.