

Samsung 'was hoist with its own petard' in court ruling that could cost it millions for violations of privacy law

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A terms of service agreement—that long list of legalese that most people ignore—could cost Samsung millions of dollars in a mass arbitration action over the Illinois biometric privacy law.

A Chicago federal judge ruled the South Korean electronics giant must pay more than \$4 million in filing fees to begin an arbitration case brought by 50,000 petitioners alleging their Samsung Galaxy devices violated the law by using facial recognition technology without consent.

Filed last year with the American Arbitration Association, the petitioners paid more than \$2 million in initial filing fees, but Samsung refused to pay its share, according to the lawsuit.

Employing the only legal recourse allowed by Samsung's terms of service agreement, the mass arbitration action could result in hundreds of millions in damages, with payouts of \$5,000 or more to the individual petitioners, said Jonathan Gardner, a New York-based attorney whose firm, Labaton Sucharow, brought the claims.

Both Samsung and its attorneys did not respond to requests for comment.

Samsung's terms of service agreement prohibits class-action lawsuits and requires users to resolve disputes "exclusively" through individual arbitration. The agreement designates the American Arbitration Association to hear the cases.

But a coordinated online recruitment effort created the mass arbitration, an alternative to class-action lawsuits that has gained traction in recent years, with 50,000 Illinois Samsung Galaxy owners filing claims Sept. 7, 2022. The petitioners paid their share of the initial filing fee, but on Sept. 27, Samsung notified the American Arbitration Association it would not pay its share of the fees, contending the petitioner list included discrepancies such as deceased claimants and non-Illinois residents.

Samsung did pay the fee for 14 petitioners who had moved to California, where the state imposes sanctions in the event of nonpayment for

arbitration cases.

The American Arbitration Association "cannot comment on active cases," a spokesperson said Thursday.

Attorneys for the petitioners took their case to Chicago federal court in October 2022, seeking to compel Samsung to pay the fee for the other 49,986 Samsung Galaxy owners in Illinois and begin the arbitration process.

In his Sept. 12 ruling, U.S. District Judge Harry Leinenweber dismissed more than 14,000 petitioners who failed to show they resided within the court's jurisdiction in the Northern District of Illinois. But as to the broader arbitration action, he said Samsung needed to pay the \$4.125 million fee and adhere to the dispute resolution rules it laid out in its own terms of service agreement.

His opinion and order borrowed a line from Shakespeare to indicate Samsung was essentially blown up by its own legal device.

"The company may not have expected so many would seek arbitration against it, but neither should it be allowed to blanch at the cost of the filing fees it agreed to pay in the arbitration clause," Leinenweber said. "Alas, Samsung was hoist with its own petard."

Samsung filed an appeal of Leinenweber's ruling Sept. 15 with the 7th U.S. Circuit Court in Chicago.

Gardner said it is "not an appealable order" and expects the 7th Circuit to reject the case. He is planning to refile the petitions to get the mass arbitration moving forward for the nearly 36,000 Illinois Samsung owners that remain qualified, according to the ruling. And when Samsung gets its bill, he expects the company will have to pay it.

For Samsung, there may be a lot more money at stake than the initial \$4 million filing fee.

The arbitration alleges Samsung violated the Illinois Biometric Information Privacy Act through its Gallery app, the default photo viewer installed on its Galaxy smartphones and tablets. Through the app, Samsung "collects, uses and stores" biometric identifiers such as face scans of Illinois residents without consent, the arbitration claims allege.

The state's biometric privacy act, which was passed in 2008, is considered the strictest in the U.S. and requires companies to get permission before using technologies such as facial recognition and fingerprint scans to identify customers or employees.

The law allows \$5,000 per person in damages for "intentional or reckless" violations and \$1,000 for "negligent" violations.

In 2021, a California [federal judge](#) approved a landmark \$650 million settlement for Illinois Facebook users in a class-action lawsuit over alleged violations by the social media giant of the biometric privacy law. Facebook, now known as Meta, also announced it would shut down its facial recognition system and delete more than a billion facial recognition templates it had stored.

Nearly 1.3 million Illinois Facebook users who successfully filed claims collected about \$428 each from the settlement. Labaton Sucharow was co-counsel in the Facebook class-action lawsuit.

In February, the Illinois Supreme Court opened the door to significantly higher damages in a case involving a Chicago White Castle manager when it ruled that biometric privacy claims accrue every time information is gathered without consent.

Gardner said the arbitration will argue that Samsung intentionally violated the biometric privacy law. Each image collected would represent two violations—one for not obtaining user consent and one for not having a destruction policy—meaning each petitioner could represent at least \$10,000 in damages, he said.

"And we will argue that every photograph, every time they collected biometric information, is a separate violation," Gardner said. "So the violations will start to stack up."

Taking the Samsung case to [federal court](#) also made public the usually private world of mass arbitration, where resolutions often remain undisclosed beyond the participants.

For many companies, mandatory arbitration has long been a way to insulate themselves against potentially costly class-action lawsuits. The rise of mass arbitration may be causing some companies to rethink the strategy, Gardner said.

Mass arbitration has "emerged as a way of resolving a large number of individual claims" in consumer and employment disputes, the American Arbitration Association said in a page devoted to the growing practice on its website.

Gardner said his firm has settled more than 15 mass arbitration cases in recent years, generating multimillion dollar payouts. While unable to disclose the private settlements, the Samsung [arbitration](#) could significantly eclipse the rest, he said.

"Samsung is the biggest, the largest number of clients," Gardner said. "That translates to the largest exposure for the company, the largest amount we would insist upon recovering."

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