

The New Virtual Doors at the “Multidoor Courthouse”

Kluwer Mediation Blog
September 8, 2019

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Please refer to this post as: Andrea Maia, “The New Virtual Doors at the “Multidoor Courthouse”; Kluwer Mediation Blog, September 8, 2019, <http://mediationblog.kluwerarbitration.com/2019/09/08/the-new-virtual-doors-at-the-multidoor-courthouse/>

I am very happy to share with all of you that on October 28 - 30 I will take part on the 2019 International ODR Forum, in Williamsburg, Virginia, USA, with some of the most outstanding ODR's thought leaders as Colin Rule, Paul Embley, Daniel Rainey, Ethan Katsh and Orna Rabinovich-Einy, among others. I will be speaking about “the Brazilian Consumer Disputes Boom and first steps in ODR/Legal analytics, conflict mapping and online dispute prevention”, together with my colleague Daniel Becker. I will share with you in first hand a highlight of the topics we will bring to the Forum.

Overall, we are going to present very interesting Brazilian initiatives for ODR being brought to the market by public and private entities related to Consumer Relations. In Brazil, we are understanding more and more how access to justice does not only mean access to the judge. In a country with 100 million procedures waiting for trial, it is common for parties to spend years before getting an answer, not to mention the amount of money. This is why there are several initiatives for reshaping the system and accepting diverse ways for dispute resolution. We are learning, as Colin Rule stated in a recently article, that “ODR aims to make every mobile phone a point of access to justice, with algorithms dynamically directing cases toward hundreds or thousands of virtual doors available to fit each disagreement to a specifically crafted and appropriate forum for resolution.”

One of the most relevant case of the Brazilian environment for ODR is Consumidor.gov.br, which is a platform created by the Federal Government in 2015 and dedicated to online dispute resolution for consumer relations. In this platform parts are encouraged to negotiate directly the solutions for their disputes. The rates of success are very high.

Another very successful case is Mercado Livre a large e-commerce company, that provides both a marketplace and payment methods within its platform. Mercado Livre has its own ODR system, with rates of success around 80%. Besides, they added negotiation and mediation clauses in its terms of use, recommending users to seek alternative ways of solving disputes, such as Consumidor.gov.br (where 96% of cases involving Mercado Livre are solved without the need of a lawsuit).

Those initiatives are starting to cause a change on the culture of the system. Earlier this year, Professor Kazuo Watanabe, a prominent Scholar in the field, wrote an important opinion (for Mercado Livre) stating that consumers who pursue directly the judicial system without prior attempt to solve disputes through available means, such as Consumidor.gov.br and other private options, have no standing to sue. He said that, in this case, judges could extinguish the procedures or at least suspend for 30 days until they try to solve the issue through ODR systems.

In the same field, we will comment on a real case from April 2019, in which a judge ruled that a consumer who sued a Bank had no standing to sue, because he didn't attempt any other alternative dispute resolution prior to the judicial. It is interesting that in this case, the judge gave the party 30 days to try to solve the dispute on Consumidor.gov.br, such as Professor Watanabe stated in his opinion (for a similar but different field).

I am very proud to share these experiences at the 2019 International ODR Forum, especially because I am developing myself an ODR company, using Artificial Intelligence, and I everyday face the challenges of teaching machines how to communicate and negotiate in a positive and empathic way. But this is a topic for future posts. I hope to see you at the Forum!