

To
The Norwegian Consumer Ombudsman, Forbrukerombudet
post@forbrukerombudet.no

Oslo 3. March 2016

Complaint regarding unfair contractual terms in the Terms of Use for the mobile application Tinder

Tinder Inc. is a US company based in Texas, and as far as we are aware the company has no established European operation or representation.

Tinder offers its services in a global market, including the European and Norwegian markets. Tinder's affiliation with Europe is that the company also aims its services at the European market. With the exception of the Terms of Use, the service has been adapted for the Norwegian market in that the language used in the actual application is Norwegian for Norwegian users and that the service is marketed in Norwegian on the Apple App Store.

As well as being the company's name, Tinder is also the name of the application developed by the company. Users must accept Tinder's Terms of Use in order to use the application. Tinder's Terms of Use are in English. The target group is persons aged 13 and over.

The Norwegian Consumer Council has examined Tinder's Terms of Use. The Council has a few initial thoughts on Tinder's Terms of Use in relation to Section 22 of the Marketing Control Act on unfair contract terms and conditions and believes that there may be grounds for asking the regulator to investigate the matter further.

The Norwegian Consumer Council therefore asks the Consumer Ombudsman to rule on whether Tinder's Terms of Use are unfair under Section 22 of the Marketing Control Act. This case is of great significance to consumers. There were around 500,000 Tinder users in Norway in the summer of 2015¹.

Jurisdiction and governing law

According to Section 18 of Tinder's Terms of Use, any dispute shall be settled by binding arbitration in Texas under Texan law.

The Norwegian Consumer Council finds it pertinent to query whether this type of terms and conditions could be deemed to be unfair. The service is aimed at a global market, and such terms create a practical and financial barrier to taking action against Tinder. Although common, such terms and conditions affect the balance of power between the company and its users by limiting the users' scope for taking legal action against the company.

¹ http://www.nrk.no/kultur/over-en-halv-million-nordmenn-bruker-sjekkeapper_-her-ekspertenes-dom-1.12444057



Accepting Tinder's Terms of Use

Tinder's Terms of Use:

"By accessing the Tinder application or its website found at www.gotinder.com, whether through a mobile device, mobile application or computer (collectively, the "Service") you agree to be bound by these Terms of Use (this "Agreement"), whether or not you create a Tinder account. If you wish to create a Tinder account and make use of the Service, please read these Terms of Use."

The Norwegian Consumer Council presupposes that this contractual term is practised and interpreted as implied in the wording. The term stipulates that anyone accessing the application or website is bound by the Terms of Use irrespective of whether the person creates a Tinder account. This would imply that any person accessing Tinder's website is bound by the Terms of Use before having familiarised themselves with the terms and without genuinely giving their consent or making a decision.

What the users permits Tinder to do

Tinder's Terms of Use Section 9 (c):

"... you automatically grant to the Company, its affiliates, licensees and successors, an irrevocable, perpetual, non-exclusive, transferable, sub-licensable, fully paid-up, worldwide right and license to (i) use, copy, store, perform, display, reproduce, record, play, adapt, modify and distribute the Content, (ii) prepare derivative works of the Content or incorporate the Content into other works, and (iii) grant and authorize sublicenses of the foregoing in any media now known or hereafter created."

Tinder's Terms of Use, Section 4:

«After your account is terminated for any reason, all terms of this Agreement survive such termination, and continue in full force and effect, except for any terms that by their nature expire or are fully satisfied.»

This permission granted to Tinder by the user is far-reaching and would appear to be infinite. It includes all forms of storage and processing of information, including the sharing of information with partners ("affiliates" and "licensees"). Tinder's partners may hold the same far-reaching rights and licences as Tinder as a result of the Terms of Use equating the company with its partners and others. The Terms of Use impose no restrictions on its partners' use or storage of information. It is Tinder who agrees the type and extent of use with its partners.

The consent given to Tinder by the user is "... irrevocable, perpetual ...". The Terms of Use imply that consent may not be revoked from Tinder. The Norwegian Consumer Council should like to add that user accounts cannot be deleted. As far as we can tell, it is only possible to deactivate an account.



Under Section 4 of Tinder's Terms of Use, deactivation by the user or suspension from the service by Tinder does not mean that the agreement between Tinder and the user ceases to exist. The contractual relationship continues even if the user is no longer using the service.

The Norwegian Consumer Council is asking whether it is in itself unfair to demand consent for such extensive information-gathering and sharing of personal data as stipulated in Tinder's Terms of Use, especially in light of the fact that the permission granted by the user is irrevocable.

Tinder's right to amend the service and content without notifying users

Tinder's Terms of Use Section 12 (on in app purchases):

"Tinder may manage, regulate, control, modify or eliminate Virtual Items at any time, with or without notice."

Tinder's Terms of Use, Section 13:

"Modifications to Service. The Company reserves the right at any time to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice."

The Terms of Use state that changes may be made to both "Virtual Items" and the service without notifying the user. The fact that the user is not notified of any changes before they are made may in itself be an unfair contractual term.

Tinder also offers Tinder Plus, which is a paid-for subscription. In the case of both Tinder Plus and in app purchases there is a question mark over whether it is unfair that Tinder has such broad scope for changing or deleting content since this content has been paid for. With digital services it cannot be expected that a service is always accessible in the same way as tangible goods, but we deem it to be unfair if the buyer of a service finds the product he has paid for removed or subject to significant change after a short period of time.

The right to make changes extends to "any part of" the service, which means that the Terms of Use may also be amended. The fact that the Terms of Use can be amended without prior notice means that Tinder users are unable to keep oversight over or influence the content of their agreement with Tinder. Furthermore, users cannot avoid being bound by changes made by Tinder since they are not entitled to be notified of such changes, thus losing out on the opportunity to delete their accounts. Nor can accounts be deleted, only deactivated as pointed out above. The Norwegian Consumer Council should also like to stress that the consent given under the Terms of Use is "... irrevocable, perpetual ...", meaning that the agreement can go on to live its own life.

According to Tinder's Privacy Policy, changes to this policy may be made without notifying the user. The user must himself keep up-to-date by checking when the Privacy Policy was last updated.



Age of user group

Tinder's Terms of Use, Section 2:

"You must be at least 13 years of age to access and use the Service. Any use of the Service is void where prohibited. By accessing and using the Service, you represent and warrant that you have the right, authority and capacity to enter into this Agreement and to abide by all of the terms and conditions of this Agreement."

Tinder does not require the consent of parents/guardians for minors to use the service. Under Norwegian law, a person who lacks legal capacity cannot gain such capacity by claiming to be legally capable. The question is whether certain contractual terms, either collectively or individually, are unfair in respect of the younger user group that Tinder targets, even if the terms are not necessarily unfair to adult users. The fact that Tinder targets users this young means that not all users of the service are equally qualified to evaluate the terms and conditions. The Terms of Use are also only available in English, and the wording is difficult to grasp.

In its Privacy Policy Tinder writes that "we do not knowingly collect, maintain, or use personal information from children under the age of 13". This implies that such information is collected and used for users aged 13 and older and that Tinder puts the youngest users on an equal footing with older users.

Other issues

In addition to the above, the Norwegian Consumer Council should like to highlight two further issues.

The Council would point out that under Section 4 of the Terms of Use, Tinder claims the right to terminate or suspend a user account "... for any other reason, with or without cause, in its sole discretion". The question could be raised of whether it is an unfair contractual term for the user to lose access to paid content for any reason and without justification. The other provisions of the Terms of Use remain unchanged even when the user loses access, meaning that information previously collected by Tinder is not deleted, for example. This represents a considerable imbalance in the contractual relationship between Tinder and the user.

Even if individual contractual terms are not deemed to be unfair, the totality of the agreement can still be considered unfair to the user. The Norwegian Consumer Council notes in particular the link between the sweeping permissions granted to Tinder, the fact that consent cannot be revoked, and that the service can also be used by children aged 13 and older.

With kind regards

The Norwegian Consumer Council, Forbrukerrådet

Finn Myrstad

Director, Digital services

Finn.myrstad@forbrukerradet.no