

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HARSH ALKUTKAR,
Plaintiff,
v.
BUMBLE INC., et al.,
Defendants.

Case No. 22-cv-00422-PJH

**ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL ARBITRATION**

Re: Dkt. No. 30

United States District Court
Northern District of California

Defendants' motion to compel arbitration came on for hearing before this court on August 4, 2022. Plaintiff appeared through his counsel, Daniel A. Rozenblatt and Cody R. Padgett. Defendants appeared through their counsel, Kyle C. Wong, Sharon Song, and Gia Jung. Having read the papers filed by the parties and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby rules as follows.

BACKGROUND

Plaintiff Harsh Alkutkar is a resident of Daly City, California, and a user of the online dating app Bumble. Compl. ¶ 10. Defendant Bumble Inc. is a Delaware corporation, with its principal place of business in Austin, Texas. Compl. ¶ 11. Defendant Bumble Holding Limited is a corporation organized and operated in the United Kingdom. Compl. ¶ 12. Bumble Holding Limited is a subsidiary of Bumble Inc. and is listed as the recipient of payments made on the Bumble app. The court refers to defendants collectively as "Bumble" throughout.

1 **A. Bumble App**

2 Bumble operates a popular online dating, friendship, and professional networking
3 application (the “Bumble app”), on which users can create a profile with photos and
4 information about themselves. Compl. ¶ 1. The Bumble app launched in 2014 and has
5 over 1 million paying users. Compl. ¶ 17. Users of the Bumble app can create a profile
6 and use the app to swipe through and potentially match with other Bumble app users for
7 free. Compl. ¶ 18. A user is presented with other user profiles that can be swiped left to
8 “dislike” or right to “like” the other user’s profile. Compl. ¶ 1. If two users mutually right-
9 swipe each other’s profiles, a match is created. Compl. ¶ 2 n.1. When a match is made
10 between a man and a woman, a private line of communication is created between the
11 two in the Bumble app, and the woman can initiate a conversation. Compl. ¶ 2 n.1.

12 **B. Bumble App’s SuperSwipes and Spotlights**

13 The Bumble app offers for sale certain premium features that “increase the
14 likelihood of matching with another user.” Compl. ¶¶ 2,18. Two of those features are
15 called SuperSwipes and Spotlights.

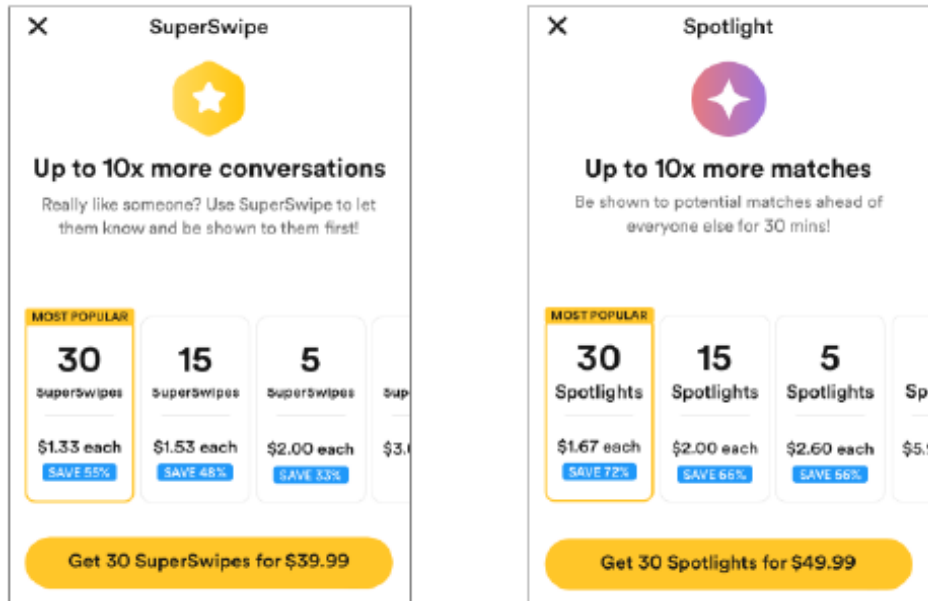
16 SuperSwipes allow a user to let potential matches know that he or she is
17 particularly interested in them. Compl. ¶ 19. Specifically, a user can use a SuperSwipe
18 to tap a yellow heart at the top right of other users’ profiles, which would inform the other
19 users that they’ve been “SuperSwiped” by the user before they swipe left or right on the
20 user’s profile. Compl. ¶¶ 4 n.2, 19. As provided by the screenshots included in the
21 complaint, Bumble app users can purchase SuperSwipes in packs of various quantities,
22 including 30, 15, five, and one. Compl. ¶¶ 3, 20.

23 With Spotlights, a user can activate the Spotlight mode, which advances a user’s
24 profile to the top of the list of potential matches so that it can be more viewable by other
25 users in a geographic area. Compl. ¶¶ 8 n.7, 21. A user can use one Spotlight to activate
26 the mode for 30 minutes or two Spotlights to activate the mode for 150 minutes. Compl.
27 ¶ 8 n.7. Bumble app users can purchase Spotlights in packs of various quantities,

28 including 30, 15, five, and one. Compl. ¶¶ 3, 22.

C. Plaintiff's Allegations

Plaintiff alleges that Bumble advertises Spotlights as providing “Up to 10x more matches” and SuperSwipes as providing “Up to 10x more conversations,” and that such advertising is a “gross exaggeration[] of the actual benefits these features provide.” Compl. ¶¶ 3-4. The “up to 10x more” statements appear in the screenshots below:



Compl. ¶ 3.

Plaintiff alleges that on March 21, 2021, he purchased a pack of 15 SuperSwipes from within the Bumble app. Compl. ¶¶ 10, 33. Plaintiff claims that “[b]ased on” Bumble’s statement that SuperSwipes would provide “Up to 10x more conversations,” he believed he would receive “ten times, or close to ten times, more matches and conversations than he usually received without the use of SuperSwipes.” Compl. ¶ 33. Plaintiff further alleges that there was no discernable increase in his number of matches or conversations as a result of using the SuperSwipes he purchased, and even if there was, it would be “negligible and/or nowhere close to the 10x multiplier promised.” Compl. ¶ 33.

Plaintiff also claims that he subsequently purchased packs of five and 15 Spotlights, respectively, on August 15, 2021, and September 9, 2021, on the Bumble

1 Spotlight would provide “Up to 10x more matches,” he believed he would receive “ten
 2 times, or close to ten times, more matches than he usually receives without the use of
 3 Spotlights.” Compl. ¶ 34. Plaintiff further contends that there was no discernable
 4 increase in his number of matches as a result of using the Spotlights he purchased.
 5 Compl. ¶ 34. Plaintiff alleges that even if there was an increase in his number of
 6 matches, it “was negligible and/or nowhere close to the 10x multiplier promised.” Compl.
 7 ¶ 34.

8 **D. Bumble’s Terms and Arbitration Agreement**

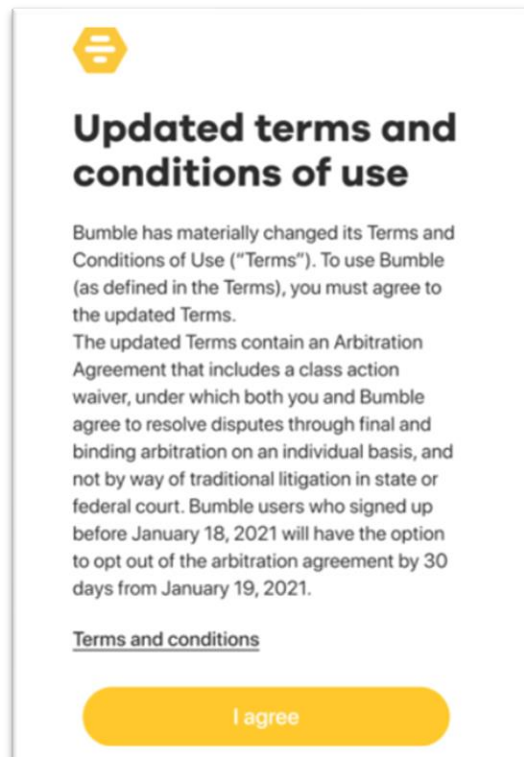
9 According to defendants’ records, plaintiff created a Bumble account on February
 10 16, 2016, and has maintained an account ever since. See Chheena Decl. ¶ 6 (Dkt. 30-1
 11 at 2-3). On or around January 19, 2021, Bumble emailed all users who had signed up for
 12 a Bumble account before that date to inform them that Bumble’s Terms were being
 13 updated to include, among other things, the Arbitration Agreement, effective as of
 14 January 18, 2021 (the “Notice Email”). Chheena Decl. ¶ 8 (Dkt. 30-1 at 3). Bumble’s
 15 records show that plaintiff received the Notice Email from Bumble on January 19, 2021,
 16 with the subject line “UPDATED TERMS AND CONDITIONS OF USE.” Chheena Decl.
 17 ¶ 9 (Dkt. 30-1 at 3). The Notice Email advised users of the following in the first
 18 paragraph:

19 We (Bumble Group) are updating our Terms and Conditions. .
 20 . . . Effective as of January 18, 2021, updates have gone into
 21 effect for our Terms and Conditions of Use. Continued use of
 22 Bumble will constitute acceptance of the updated Terms and
 23 Conditions of Use. For your convenience, we’ve put together
 the following summary of some of the important changes,
 though we recommend reviewing the Terms and Conditions in
 full. You can find the full Terms and Conditions here:
<https://bumble.com/en/terms>.

24 Chheena Decl., Ex. A (Dkt. 30-2). The blue-font URL in the Notice Email was a direct
 25 hyperlink to the full version of the Terms containing the Arbitration Agreement. See
 26 Chheena Decl., Ex. B (Dkt. 30-3). The Notice Email further informed users that the
 27 updated Terms provide “that any covered dispute . . . between you and Bumble Group
 28 that cannot be resolved informally or in small claims court will be settled by binding

1 arbitration rather than through court proceedings,” but that “users who signed up before
2 January 18, 2021 will have the option to opt out of the arbitration agreement by 30 days
3 from January 19, 2021.” Chheena Decl., Ex. A (Dkt. 30-2).

4 Beyond the Notice Email, for all users that signed up for a Bumble account before
5 January 18, 2021, an in-app “Blocker Card” entitled “Updated terms and conditions of
6 use” popped up when those users opened the Bumble app for the first time after January
7 18, 2021. Chheena Decl. ¶ 11 (Dkt. 30-1 at 3-4). The Blocker Card stated that Bumble’s
8 updated Terms “contain an Arbitration Agreement that includes a class action waiver,
9 under which both you and Bumble agree to resolve disputes through final and binding
10 arbitration on an individual basis.” Chheena Decl. ¶ 11 (Dkt. 30-1 at 3-4). The Blocker
11 Card advised users that “[t]o use Bumble . . . , you must agree to the updated Terms” and
12 prevented Bumble users from accessing or using the Bumble app unless they clicked on
13 an orange colored “I agree” button. Chheena Decl. ¶¶ 11-13 (Dkt. 30-1 at 3-4). The
14 Blocker Card that was shown on the Bumble app looked like this image:



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.