

APR 22 2021



S-213988

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

JACOB BREUM

PLAINTIFF

and

MATCH GROUP INC f/k/a TINDER INC and MATCH GROUP LLC

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiffs and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

THE PLAINTIFF'S CLAIM

Part 1: STATEMENT OF FACTS

Overview

1. The advent of smartphones has led to new means of connection between prospective romantic partners, including through the use of so-called "dating apps". Foremost among these is Tinder, designed and operated by the Defendants. Unlike in real-life interactions, connections between users are mediated through the Tinder App. The Tinder App is free to use, but Tinder makes money by selling Premium Features. From a time unknown to the Plaintiff but well known to the Defendants, contrary to consumer protection legislation in British Columbia and other Canadian provinces, the Defendants have unlawfully manipulated the Tinder App and its algorithm, including secretly discriminating against users based on age, to compel the Plaintiff and Class Members to purchase more expensive Premium Features. Through this suit, Canadian consumers seek to hold the Defendants accountable for this unlawful conduct, and to recover their losses.

The Parties

2. The Defendant Match Group Inc f/k/a Tinder Inc is a corporation incorporated under the laws of Delaware, United States, with an address for service at The Corporation Trust Company, Corporation Trust Center, 1209 Orange St, Wilmington, New Castle, DE, 19801, and a primary place of business at 8750 North Central Expressway, Suite 1400, Dallas, Texas, 75231. Match Group Inc is traded on the NASDAQ stock exchange. Match Group Inc makes its products available to people in British Columbia and collects money from residents of British Columbia. Match Group Inc sells advertising to and on behalf of residents of this province and throughout Canada. At material times, Match Group Inc was the owner of intellectual property, including copyrights and trademarks, associated with and employed in the operation of the Tinder App in Canada during the Class Period. Match Group LLC is a subsidiary of Match Group Inc.

3. The Defendant Match Group LLC is a corporation incorporated under the laws of Delaware, United States, with an address for service at The Corporation Trust Company, Corporation Trust Center, 1209 Orange St, Wilmington, New Castle, DE, 19801. Match Group, LLC is the contracting entity under the Tinder Terms of Use. Match Group, LLC makes its products available to people in British Columbia and collects money from residents of British Columbia. Match Group LLC is the current owner of intellectual property, including copyrights and trademarks, associated with and employed in the operation of the Tinder App in Canada during the Class Period.

4. The Defendants are together “Tinder”. These Defendants function as a joint enterprise. Each of these Defendants is an agent of the other for the purposes of developing, marketing, distributing and selling the products and services referred to herein. They are jointly and severally liable for their wrongdoing.

5. The Plaintiff, Jacob Breum, is a resident of British Columbia. He is a customer of the Defendants. During the Class Period he spent money to purchase Tinder Gold, a Premium Feature, in the Tinder App from the Defendants during the Class Period. He made these purchases for personal purposes.

6. The Plaintiff brings this claim on his own behalf and on behalf of all persons in Canada who have purchased Tinder Premium Features between January 1, 2015 and the date this action is certified as a class proceeding (the “Class”, “Class Members” and “Class Period”), and an included subclass of users aged 30 and older (the “Subclass”).

Tinder

7. Tinder was launched in 2012. It is a dating app. Tinder makes its product and services available as an application or “app” (the “Tinder App”) through the Apple App Store (for iOS devices) and the Google Play Store (for Android devices). It is also useable on desktop.

8. Tinder and the Tinder App have millions of users in Canada, including in British Columbia.

9. The Tinder App allows users to register and create a profile. The profiles usually include a picture and some basic biographical information inputted by the user. For example:



10. When using the Tinder App, users are presented with profiles from other users, usually within a certain geographical area. A key feature of the Tinder App is that, when presented with another person’s profile, a user can “Swipe Left” (to indicate no interest in a prospective match) or “Swipe Right” (to indicate interest in or “Like” a prospective match).

11. If both users Swipe Right or Like each other, then they “Match”. Upon matching, additional functionality is made available to both “Matches”, including the ability to send and receive messages (chat). Those chats may lead to real-world encounters and relationships outside the Tinder App, or they may remain inside the Tinder App with all further contact between users solely within the digital realm.

12. The Tinder App is powered by an algorithm. Tinder is the sole creator, custodian and operator of the algorithm. Tinder has absolute control over how the algorithm operates. This, in turn, drives how users are presented and interact with the Tinder App.

13. The Tinder App has certain basic features:

- a. Likes – the number of Swipes Right per day that a user is entitled to;
- b. Super Like – a means to highlight your profile to a particular prospective match, with a bright blue border and star emphasising that you have Super Liked them;
- c. Boost – a means to make your profile a “top profile” in your area for 30 minutes.

14. Tinder operates on what is referred to as a “Freemium” model. It is free to register as a user on the Tinder App and to use certain basic features. Additional products and services may be purchased in-app. Users pay for these using in-app payment, and the funds are received by Tinder.

15. Using the free version of the Tinder App, users have restricted functionality, including:

- a. A limited number of Likes per day, to a level set by Tinder in its absolute discretion, but at material times approximately 100 per day;
- b. One free Super Like per day;
- c. One free Boost per month.

16. Tinder has introduced various paid add-ons since 2012, including:

- a. *Tinder Plus*, introduced in early 2015. It provides Unlimited Likes, Review, 5 Super Likes per day, 1 Boost per month, Passport and no ads. At material times, *Tinder Plus* was available for \$9.99 USD per month.
- b. *Tinder Gold*, introduced in about July 2017. It provides the same features as *Tinder Plus* as well as the “See Who Likes You before You Like or Nope” and

“New Top Picks” every day features. At material times, Tinder Gold was available for \$14.99 USD per month.

c. *Tinder Platinum*, introduced in 2020. It provides the same features as Tinder Plus and Gold as well as “Message Before Matching”, “Priority Like” and the ability to see the Likes sent in the past seven days. At material times, Tinder Platinum was available for \$17.99 USD per month.

d. À la carte purchases of Super Likes, Boost at various prices.

(together, Tinder Plus, Tinder Gold, Tinder Platinum and à la carte purchases are “Premium Features”).

17. Premium Features can be purchased on a month-by-month basis or as an ongoing subscription. Premium Features can be cancelled by users, which returns them to the free version of the Tinder App.

18. Tinder profits by selling the Premium Features, namely Tinder Plus, Tinder Gold and Tinder Platinum, as well as through advertising in the free version of the Tinder App. Tinder’s profitability depends significantly on getting users to pay for the Premium Features.

Unlawful Practices

19. At material times since the introduction of the Premium Features, the Defendants have manipulated the Tinder App and its algorithm to induce and compel users, including the Plaintiff and Class Members, without their knowledge or consent, to purchase Premium Features. Particulars of the manipulation are well known to the Defendants but include:

- a. Hiding matches from a user that should have been visible using the free version of the Tinder App, unless and until a user purchases Premium Features;
- b. Hiding a user from prospective matches when the user should have been visible to those prospective matches using the free version of the Tinder App, unless and until a user purchases Premium Features;

- c. Providing Match notifications without showing matches, unless and until a user purchases Premium Features;
- d. Secretly raising and lowering the number of Likes that a user has using the free version of the Tinder App, unless and until a user purchases Premium Features;
- e. Secretly reducing the number of matches if a user Swipes Right too often, unless and until a user purchases Premium Features;
- f. Punitively reducing the visibility of the profiles of users who have purchased but later cancelled Premium Features;
- g. Actively promoting a user's profile when they first sign up for an account, or pay for a new Premium Feature, but then reducing the visibility of the user's profile to induce them to purchase (additional) Premium Features.

20. None of these actions by Tinder are disclosed to users.

21. In addition, Tinder discriminates against its users based on their age. Specifically, Tinder charges a higher price to users for the same Premium Features based on their registered age in the Tinder App, as shown below:

Users under age 30 <i>Get Tinder Gold®</i> 6 months \$10.00/mo ... \$59.99	Users age 30 and older <i>Get Tinder Gold®</i> 6 months \$20.00/mo ... \$119.99
<i>Get Tinder Plus®</i> 6 months \$6.66/mo	<i>Get Tinder Plus®</i> 6 months \$13.33/mo

... \$39.99	... \$79.99
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22. Tinder charges nearly twice as much to users over age 30, solely because of their age. This differential treatment is not disclosed to users by the Defendants. The Premium Features are no different for users age 30 and over than they would be for users under age 30.

23. The Defendants manipulated the Tinder App and made these decisions deliberately, employing psychological strategies, their knowledge of user behaviour, and their total control over the Tinder App, to exploit their users, including the Class and Subclass Members, all without their knowledge or consent.

24. The Defendants have willfully concealed the nature of their enterprise and their manipulation of the Tinder App and algorithm from the Plaintiff and Class Members, as well as the age discrimination against the Subclass.

25. Each of the Defendants is involved in the consumer transaction relating to the purchase of Premium Features.

26. The senior officers and directors of the Defendants were at all times fully aware of the unfair and unconscionable nature of their enterprise and took active steps to carry it out. In the alternative, the senior officers and directors of the Defendants were reckless or willfully blind to the unlawful nature of their enterprise and took active steps to implement it.

27. The Plaintiffs and Class Members have an interest in the funds received by them from the Defendants on account of their purchases of Premium Features.

Part 2: RELIEF SOUGHT

28. An order certifying this action as a class proceeding;

29. A declaration that the Defendants have contravened the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 (“*BPCPA*”), ss 4, 5, 8 and 9; the *Consumer Protection*

Act, RSA 2000, c C-26.3 (“*Alberta CPA*”), ss 5 - 6; the *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A (“*Ontario CPA*”), ss 14-17; la *Loi Sur La Protection Du Consommateur*, chapitre P-40.1 (“*Quebec CPA*”); and related provincial consumer protection statutes;

30. A statutory injunction under the *BPCPA*, s 172(1)(b) and related provincial consumer protection statutes to restrain the breaches;

31. A restoration order under the *BPCPA*, s 172(3) and damages or restitution under related provincial consumer protection statutes;

32. Interest under the *Court Order Interest Act*, RSBC 1996, c 79;

33. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

Breach of the Business Practices and Consumer Protection Act, the Alberta CPA, the Ontario CPA, the Quebec CPA, and related enactments

34. The Defendants have breached the *BPCPA*.

35. The Plaintiff and Class Members purchased and used the Premium Features for purposes that are primarily personal, family or household and are “consumers” within the meaning of s. 1 of the *BPCPA*.

36. The Premium Features are “goods” and “services” within the meaning of s. 1 of the *BPCPA*.

37. The Defendants are “suppliers”, within the meaning of s. 1 of the *BPCPA*. The *BPCPA* does not require privity of contract between suppliers and consumers.

38. The payment for purchase of Premium Features is a “consumer transaction”, within the meaning of s. 1 of the *BPCPA*.

39. By the conduct set out above, the Defendants have breached ss 4-5 and 8-9 of the *BPCPA*, and their actions constitute unfair and unconscionable business practices. The Defendants knew or ought to have known that their manipulation of the Tinder App and algorithm to induce users to purchase Premium Features was and is unconscionable.

40. In particular, the Defendants' actions have breached *inter alia* the *BPCPA*, s 8, whether or not the factors in ss 8(3) are present in any individual case, and under s-ss 8(3)(a), (b), (c) and (e).

41. Specifically, per *BPCPA*, s-s 8(3)(a), the Defendants subjected Class members to undue pressure through their manipulation of the Tinder App to compel them to purchase Premium Features by employing psychological strategies and deliberately withholding matches and playing on their very human fears of being ignored, rejected and left alone.

42. Further and in the alternative, the Defendants took advantage of the inability of consumers per *BPCPA*, s-s 8(3)(b), including the Plaintiff and Class Members, to reasonably protect their own interests because of their ignorance or inability to understand the character or nature of the consumer transaction and the Defendants' misconduct within it, as set out above, based on their total control over the service.

43. Further and in the alternative, per *BPCPA*, s-s 8(3)(c), for the Subclass, the total price grossly exceeded the total price at which similar subjects of similar consumer transactions were readily by similar consumers. To wit, the Defendants secretly charged the Subclass members twice as much for exactly the same service offered to Class Members under age 30.

44. Further and in the alternative, per *BPCPA*, s- 8(3)(e), the terms or conditions on or subject to which the Plaintiff and Class Members entered for the purchase of Premium Features from the Defendants were so harsh or adverse to these consumers as to be inequitable because of the inequality of bargaining power and the lack of candid disclosure by the Defendants about their manipulation of the Tinder App and algorithm, and the age-based pricing discrimination.

45. In addition, the Defendants' actions have breached *inter alia* the *BPCPA*, s 4. Specifically, the Defendants representations in connection with the promotion of the Premium Features, breached s-ss 4(3)(b)(vi) and (c)(i).

46. Specifically, per *BPCPA*, s-s 4(3)(b)(vi), the manipulation of the Tinder App by the Defendants, as set out above, makes use of exaggeration, innuendo and ambiguity about the need for Premium Features, such that the effect is misleading to Class Members.

47. Further and in the alternative, per *BPCPA* s-s 4(3)(c)(i), for the Subclass, the prices displayed by Tinder are displayed in such a way that a person could reasonably conclude that a price benefit or advantage exists but it does not, because the exact same service is being sold to non-Subclass Members for half the price.

48. The Plaintiff and Class Members have an interest in the funds received from them by the Defendants and obtained in breach of ss 4-5, 8-9 and which are not binding per s 10(1), and they are entitled to the restoration of those amounts. The Plaintiff and Class Members would have a right to make a claim for damages under the *BPCPA*, s. 171 and a claim for unjust enrichment for which the unlawful act is a breach of the *Criminal Code*, s 380(2).

49. As a result of Defendant's breaches of the *BPCPA*, the Plaintiff and Class Members are entitled to a declaration under *BPCPA*, s 172(1)(a), an injunction under s 172(2) to restrain the conduct, and a restoration order against the Defendants, under the *BPCPA*, s 172(3)(a).

50. For the same reasons, the Defendants have breached the *Alberta CPA*. Class Members in Alberta are "consumers" within the meaning of the *Alberta CPA*, s 1. The Premium Features are "goods" and "services" within the meaning of the *Alberta CPA*. The Defendants are each a "supplier" within the meaning of the *Alberta CPA*. The payment for access to or purchase of Premium Features within Tinder is a "consumer transaction" within the meaning of the *Alberta CPA*, s 1.

51. As set out above, by reason of the Defendants' conduct, the Defendants have breached the *Alberta CPA*, ss 5-6. The Defendants' actions constitute unfair practices. As a result of the Defendants' breaches of the *Alberta CPA* Class Members in Alberta are entitled to an award of damages, or alternatively, restitution under the *Alberta CPA*, s 7(3). Class Members in Alberta further plead and rely on ss 1, 2, 2.1, 3, 7(1)-(2), 7(4), 7.2, 7.3, 13, and 16 of the *Alberta CPA*.

52. For the same reasons, the Defendants have breached the *Ontario CPA*. Class Members in Ontario are "consumers" within the meaning of the *Ontario CPA*, s 1. The Premium Features are

“goods” and “services” within the meaning of the *Ontario CPA*. The Defendants are each a “supplier” within the meaning of the *Ontario CPA*. The payment for Premium Features is a “consumer transaction”, and involves a “consumer agreement” within the meaning of the *Ontario CPA*, s 1.

53. As set out above, by reason of the Defendants’ conduct, the Defendants have breached the *Ontario CPA*, ss 14-15 and 17. The Defendants’ actions constitute unfair and unconscionable business practices. As a result of the Defendants’ breaches of the *Ontario CPA* Class Members in Ontario are entitled to an award of damages under the *Ontario CPA*, s 18. Class Members in Ontario further plead and rely on ss 3, 4, 6, 7, 8 of the *Ontario CPA*.

54. For the same reasons, the Defendants have breached the *Quebec CPA*. Class Members in Quebec are “consumers” (“consommateurs”) within the meaning of the *Quebec CPA*. Premium Features within Tinder are “goods” (“biens”) and “services” within the meaning of the *Quebec CPA*. The Defendants are each a “manufacturer” (“fabricant”) and a “merchant” (“commerçant”) within the meaning of the *Quebec CPA*. The payment for access to Premium Features is a “contract for goods or services entered into between a consumer and a merchant in the course of his business” (“contrat conclu entre un consommateur et un commerçant dans le cours des activités de son commerce et ayant pour objet un bien ou un service”) within the meaning of the *Quebec CPA*.

55. As set out above, by reason of the Defendants’ conduct, the Defendants have breached the *Quebec CPA* articles 219, 220, 221, 222, 228, 229, 233, and 253. The Defendants’ actions constitute unfair and unconscionable business practices. As a result of the Defendants’ breaches of the *Quebec CPA* Class Members in Quebec are entitled to an award of damages under the *Quebec CPA* article 272. Class Members in Quebec further plead and rely on the *Quebec CPA* articles 8, 11.1, 261, 262, 263, 270, and 271.

56. Class Members resident outside British Columbia, Alberta, Ontario, and Quebec plead and rely on *inter alia*: *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; *Consumer Protection Act*, CCSM c C200; *Consumer Protection Act*, RSNS 1989, c 92; *Consumer Protection Act*, RSPEI 1988, c C-19; *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1; *Consumers Protection Act*, RSY 2002, c 40; *Consumer Protection Act*,

RSNWT 1988, c C-17; and *Consumer Protection Act*, RSNWT 1988 (Nu), c C-17; each as amended from time to time and with regulations in force at material times.

Limitation Period

57. The Defendants willfully concealed the unlawfulness of their scheme from the Plaintiff and Class Members. The Plaintiff and Class Members rely on the doctrine of fraudulent concealment and *Pioneer Corp. v. Godfrey*.

58. In addition, the Plaintiff or Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by acts of the Defendants, or that a court proceeding would be an appropriate means to seek to remedy the injury until this action was filed.

59. The Plaintiff and Class Members rely on the doctrines of postponement and discoverability to postpone the running of the limitation period until 2021.

60. The Plaintiff and Class Members plead and rely on the *Limitation Act*, SBC 2012, c 13, and in particular ss 8, 21(3). In the alternative, or in addition, the Plaintiffs and Class Members rely on the *Limitation Act*, SBC 2012, c 13, s 30 and the *Limitation Act*, RSBC 1996, c 266. In addition, the Plaintiff and Class Members plead and rely on the *Emergency Program Act*, Ministerial Order No. M089 and related enactments to suspend the running of the limitation period from March 26, 2020.

Service

61. The Plaintiffs and Class Members have the right to serve this Notice of Civil Claim on the Defendants pursuant to the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*), because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based.

62. The Plaintiffs and Class Members rely on the following grounds, in that this action concerns:

- a. restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f));
- b. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
- c. a business carried on in British Columbia (*CJPTA*, s 10(h)).

Plaintiffs' address for service:

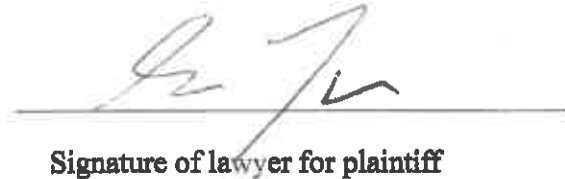
Slater Vecchio LLP
1800 - 777 Dunsmuir Street
Vancouver, BC V7Y 1K4

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: April 22, 2021



Signature of lawyer for plaintiff

Mathew P. Good	Anthony Vecchio QC
Co-Counsel for the Plaintiff	Co-Counsel for the Plaintiff
Good Barrister	Slater Vecchio LLP

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiff claims the right to serve this pleading on the Defendants outside British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*) applies because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based. The Plaintiff and Class Members rely on the following grounds, in that this action concerns:

- a. restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f));
- b. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
- c. a business carried on in British Columbia (*CJPTA*, s 10(h)).

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a proposed class proceeding regarding the manipulation of the Tinder App by the developer.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

a motor vehicle accident

medical malpractice

another cause

A dispute concerning:

contaminated sites

construction defects

real property (real estate)

personal property

the provision of goods or services or other general commercial matters

investment losses

the lending of money

an employment relationship

a will or other issues concerning the probate of an estate

a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Limitation Act, SBC 2012, c 13

Court Order Interest Act, RSBC 1996, c 79

Business Practices and Consumer Protection Act, SBC 2004, c 2