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Court says Uber can't hold users to terms they probably didn't read

Adding a link to a registration page isn't good enough, court says.

TIMOTHY B. LEE - 1/5/2021, 5:33 PM

David Paul Morris/Bloomberg via Getty Images



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The highest state court in Massachusetts has **rejected** Uber's efforts to force a blind man's discrimination claims to be settled in arbitration. In the process, the Massachusetts Supreme Judicial Court raised the bar for technology companies trying to impose one-sided terms of service on users without providing clear notice that they were doing so.

When Christopher Kauders signed up for an Uber account several years ago, he had to fill out three screens of information. The third screen was titled "link payment" and offered users various ways to pay for Uber rides. Below these options was a message that stated that "by creating an Uber account, you agree to the Terms and Conditions and Privacy Policy."

Users could click on a link to view these legal documents, but the app didn't require users to do so. At no point was Kauders required to click an "I agree" button.

Later, three Uber drivers refused Kauders service because he was accompanied by a guide dog. Kauders sued Uber for illegal discrimination. In an early 2018 ruling, a judge held that Uber's terms of service required that Kauders' case go to arbitration. The arbitrator then ruled against Kauders, finding that drivers are independent contractors and hence Uber isn't responsible for their actions.

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“Did not constitute a contract”

But on appeal, Kauders' lawyers argued that he had never agreed to arbitration in the first place. On Monday, the highest state court in Massachusetts **accepted Kauders' argument**, holding that merely mentioning terms and conditions on a registration page wasn't sufficient to create a binding contract between Kauders and Uber.

"Uber's terms and conditions did not constitute a contract with the plaintiffs," the high court wrote (another woman had also sued Uber). The case was sent back down to the lower court.

It's not clear if Kauders will prevail in the lawsuit. It's possible that the court will reach the same conclusion the arbitrator did. But the broader impact of the ruling is to put companies on notice that they can't bind users to restrictive terms merely by linking to those terms somewhere in a site or app's registration process. In order to create a legally binding contract, a tech company has actually put the terms in front of the user and get them to affirmatively agree to them.

The high court points out that when it's signing up new drivers, Uber takes a different approach. Before drivers can register, they are required to push a button marked "YES, I AGREE" not once but twice.

"The contrast between the notice provided to drivers and that provided to users is telling," the court writes. "As Uber is undoubtedly aware, most of those registering via mobile applications do not read the terms of use or terms of service included with the applications."

Thanks to Ars reader Andrewb610 for pointing me to the ruling.



How well do tech companies warn users about data collection, location tracking & privacy policies?

49,371 PEOPLE HAVE ANSWERED

Not well



Very well

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