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JUDICIAL BRANCH
COURT OF JUSTICE OF SÃO PAULO

ORDER

Writ of Mandamus nº 1040391-49.2015.8.26.0100
Rapporteur: . Roberto Luiz Corcioli Filho
Tribunal: 12st Civil Court
Petitioner: Union of Drivers and Workers in Taxi Firms in São Paulo State
Defendant: Uber of Brazil Technology Ltd

This case is about a demand by the UNION OF DRIVERS AND WORKERS IN TAXI FIRMS IN SÃO PAULO STATE that is willing to prevent the immediate operation of the service provider UBER OF BRAZIL TECHNOLOGY LTD and to block the access to its servers, so that the UBER application is inaccessible to the public, in Brazil, with the argument that the required promotes the provision of private service professional taxi driver while their vehicles are not authorized to act, not following the rules of identification and inspection, and not being subjected to administrative control, including in relation to prices, among other allegations.

As well argued by the applicant, "in Brazil, any work, trade or profession exercise is free, since it observes the professional qualifications which the law establish (art. 5, XIII CF). Similarly, it ensures all the free exercise of any economic activity, regardless of authorization from government agencies, except in cases provided by law (article 170, sole paragraph, CF.) "(pgs. 15 - emphasis added).

The article 2 of the Law No. 12,468/2011 stipulates that "it is a private activity of the professional taxi drivers the use of motor vehicle, own or third parties to individual public remunerated transport of passenger, whose capacity will be a maximum of seven (7) passengers." According to article 4, VIII of the Law No. 12.587/2012, it is considered" public individual transport: service paid to transport passengers open to the public through car rental, for conducting individual rides"

The Brazilian Traffic Code itself establishes in its article 135, that "car rental, intended for individual or collective transport of passengers in regular lines or used in any paid service for registration, licensing and its commercial feature license plate, must be duly authorized by the public power grantor"

Also at the municipal level, here in São Paulo, it's established that, according to article 1 of the Law No. 7,329/69, the individual transport passenger service is a service of public interest, which can only be provided upon prior approval of the City Hall. The same goes with the Municipal Law of São

Paulo No. 15,676/12 that states to be "sealed paid individual transport of passengers without the vehicle being authorized for this purpose."

In a recent article in the national press, the spokesman of the required in Brazil argued that Uber is "a technology company formed in the United States that created a innovative platform to connect two proposals: passenger reliable transport and search self-employed drivers, recognizing that this "innovation" would require proper regulation in Brazil (Folha de S. Paulo, A3, 04/18/2015).

Therefore, the company required is offering a clandestine service, as it looks. Besides that, the article 1 of the Resolution No. 4287-14 of the National Transportation Agency Land - ANTT understands that "clandestine service is the paid transport of people, performed by an individual or legal entity without authorization or permission of the Government competent".

By the way, although in preparatory procedure, which is being processed by the Ministry Federal public, dealing also on the regularity of activity of the company, it has stated that "the service provided by Uber partners is not public because it is not open to the public", as "only passengers previously registered in the Uber app can hire this type of service, provided only when there is a driver interested in offering the service at the time required by the user", being impossible, for example, "motioning for an Uber car on city streets "(pgs. 130 ff.), it is clear that the public character of the service provided by the requested is not left away by the mentioned factors.

On the contrary, the attempt of the required to point out differences between their activity and that exerted by taxis only shows the similarity between the two, offering evidence that the service provided fits as individual public transport. After all, what else would be the service provided from an application available for download to any interested 18+ (fl. 126), in virtual cellphone applications shop devices, but open to the public? The mere fact of requiring a prior registration to the use of application, which relates, obviously, to secondary aspects of the business, that is, the need of making payments by credit card (pg. 126) and possible reduction of insecurity and uncertainty inherent in the business does not make the service in question private, as offered to most people. Nor could be different, compared to the size of the company. Indeed, if the secondary factors mentioned are disregarded, which only are relevant because of the virtual nature of the service provided by the required, it persists essentially as identical as the service offered by taxi drivers.

Therefore, there is a clear presence of smoke of the good right to authorize the issue of this injunction.

Beside this, it was adequately demonstrated in the initial the danger in delaying this decision, since thousands of professional taxi drivers are being daily undermined by the rapid expansion of the required services - not to mention the matter pertaining to the very logic the regulation of the transport market (supervision and control by the authorities regarding an activity taken by the public service). Postponing the declaration of a clear unlawfulness (Under the elements of a preliminary look), in a case like the present, to after the contradictory, surely would bring even

more damage, that is difficult, if not impossible, to repair to the professionals represented by the applicant and also to the legal order homeland (a couple of potential risks users, on the assumption that the regulation of the activity is socially recommended), which It remains being violated in a matter of significant social relevance.

It is not to condemn, in social terms, the business model promoted by the defendant. It is important to say, although, that the model appears to lack regulation, which is a prerequisite to exercise. The mere fact that, in our times, which we live with thousand of news in all segments and at all times (many propagandizing "social revolutions" at the click of a button and pass of a credit card) does not seem, on the other hand, that it has already become legitimate the official dismantling of the democratic institutions as we know. It is true that it is necessary, in current times, to discuss the direction of our political organization, but no less correct is that we live under the aegis of a democratic rule of law and respect for the Constitution.

In the aforementioned demonstration on Trends and Debates of the newspaper Folha de S. Paulo, the spokesman of the company required maintained that "in the last 8 April, during protests, when the representatives of taxi drivers associations that have appropriated the roads of São Paulo, Uber demand for services increased five times. " In fact, maybe instead of criticizing the mobilization of the taxi drivers, the required could be inspired by it, also mobilizing politically to see answered their plea for regulation of their activity. If you get political success or not is another question - and quite natural to democracy. What is not natural is simply going to exercise in a clandestine way a regulated activity. Thus, while the current law is unchanged, whether or not a service rather in line with today's society, the fact is that the required activity remains sealed.

The national scope of this decision is justified as it relates to the suspension of the application in question, despite the state territorial base of the labor union author, not only by the common assignment of such effect to collective action, but also by the nature of the business carried on by the defendant, clearly cross-border nature, and, because they give their hiring and advertising in a virtual environment, the order now issued would not have any effectiveness if it were limited only to the portion of the Brazilian territory.

It should be noted, also, that similar considerations were made, deeply for Spanish Court, while prohibiting activities of the required in that Country[1].

I grant, then, the injunction to determine that the requested cease the availability and the application operation in question (nationally) and suspend its activities in the city of São Paulo, SP (as the initial application specification), under penalty of daily fine of R$ 100,000.00 (one hundred thousand reais) - limited, for now, at R$ 5 million - to occur from the third day of the execution of the required summons.

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[1] Decision:
http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=AN&reference=7222269&links=uber taxi&optimize=20141210&publicinterface=true e acessada em 28.04.2015.

This Decision will serve as a warrant, to be fulfilled by the part applicant, determining that the companies Google, Apple, Microsoft and Samsung stop providing in their respective online stores the Uber application as well as to suspend Remotely Uber applications of users who already have installed on their cell phones.

If there is request, it is already granted to subpoena the defendant and compliance with the mandate to retro companies through bailiff, since collected the necessary costs.

I note that the defendant may enter in the case specifically to strive the repeal of this injunction - so even before drained its time limit for opposition, and without Subject to that - should the notary promote the immediate completion of this injunction.

São Paulo, April 28, 2016.