

Translation by Felipe Mansur – researcher at [InternetLab](#), law and technology research center – São Paulo, Brazil.

**JUDICIAL BRANCH
COURT OF JUSTICE OF SÃO PAULO**

ORDER

Writ of Mandamus nº 1040391-49.2015.8.26.0100

Rapporteur: Fernanda Gomes Camacho

Tribunal: 19th Civil Court

Petitioner: Union of Drivers and Workers in Taxi Firms in São Paulo State

Defendant: Uber of Brazil Technology Ltd

Visas.

I. It is innominate injunction, requesting an injunction, between the above parties, qualified in the case, in which the author claims, in summary, that the defendant offers services through UBER application, which is contrary to the government legislation over transport of passengers and the profession of a taxi driver. The Municipality of São Paulo initiated an administrative procedure, notifying Google and Apple about Uber's withdrawal of its digital stores. There is unfair competition and violation of the economic order. Required the termination of the operation of the digital platform / provider connections that provides the UBER application; closing its operations and activities in the city of São Paulo; withdrawing UBER application providers /Google, Apple and other platforms and servers that host Internet or make available the said application; order for companies like Google, Apple, Microsoft and Samsung to suspend and remove the application of its Brazilian application's stores. They gathered documents.

Distributed freely to the 12th Civil Court of Central Court, it was granted an injunction (pgs. 911/915) by the Judge, who later recognized the prevention of the 19th Civil Court of the Forum Central, compared to previous action filed (pgs. 981/982).

In the Judiciary, it was brought as an interlocutory appeal, with granting suspensive effect in terms of the monocratic decision pgs. 1,066 / 1069.

The author reiterated his injunction order (pgs.984/990), while the reverse has expressed pgs. 1070/1074.

It is the report.

II. Foundation and decide.

At the decision of pgs. 981/982, MM. Judge Auxiliary Capital, Dr. Luiz Roberto Corcioli Son, which granted the injunction and then acknowledged the existence of prevention of the 19th Civil

Court of the Central Court and the terms of the monocratic decision in interlocutory brought (pgs. 1066/1069), then I begin to review the preliminary injunction and the initial petition.

It is impossible to receive the initial petition, because of active illegitimacy and lack of interest to act of the petitioner.

Presumed from the initial petition, the Main action to be proposed will seek the defense of the interests of the taxi drivers from the union in São Paulo, professionals who would suffer damage resulting from loss of customers because of the use of the UBER application, which offers shuttle service, against the applicable law of the regulated activity.

Similar matter was examined by this Court, in the proceedings No. 1084191-64.2014.2014.8.26.0100 and 1009999-39.2014.8.26.0100.

It is, therefore, the defense of the collective interest, for which the only legitimated are the ones that constants in the art. 5 of Law No. 7,347 / 85.

The Law of Civil action has not granted police power for the legitimated in art. 5. Therefore, it would be necessary to the union to represent to the Public Prosecutor for this, if understood appropriate, to initiate the competent civil investigation about the irregularities in the application.

The civil public action is not an action of calculation procedure (this being the clear intention of demand), neither it grants, to the association or to the union, police power that the law didn't grant.

Furthermore, it is stated that the City of São Paulo has already established a procedure, with notifications and assessments, indicating that the Government is acting in surveillance service, which departs in principle, the alleged urgency.

Either way, the application precautionary, as formulated, appears as a repetition of the terms to be deducted in the case of the major action to be timely proposal and the anticipation of the permanent guardianship, special procedure that can not be appreciated in this action because of the absence of adequacy, resulting from the lack of interest to legitimize the persecution by the elected route.

It should be noted that the precautionary measure innominate, with the reform of the Civil Procedure Code, which allows the anticipation of judicial protection, had their field reduced, and for some scholars even disappeared. Before the doctrine and the jurisprudence admitted this kind of guardianship order, looking forward it's anticipation, it is now obtained by legal means.

Thus, considering that the interim action is to serve as an instrument to ensure the scope effectiveness of the outcome of the main action, it does not serve as instrument for the final solution of the conflict between the parties or as an anticipation of the final protection of the main action

(Art. 798, d.c. art. 801, III C.P.C.), failing to set up as a nonexistent sentence of provisional execution (RT 634/55, 636/120 and RJTJESP 97/188, 97/196, 111/343, 115/213; "Apud" Theotônio Negrao, C.P.C. and Procedural Legislation in force, Ed. Malheiros, 24th ed., 1992, p. 508).

III. Based on the foregoing and on the reportedly in this file, I reject the claim, based on Articles 267, I, and 295, II, III and V, both of the Civil Procedure Code, with immediate revocation of the injunction.

Expenses by the author.

This will serve as a craft to be printed and sent by the defendant, so that the companies Google, Apple, Microsoft and Samsung are aware of the revocation of the injunction pgs. 911/915.

After the final judgment archive the case.

São Paulo, May 04, 2015.

FERNANDA GOMES CAMACHO
Judge Law