

MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(City of St. Louis)  
**ENTERED**  
JUL 14 2014

**FILED**  
JUL 14 2014  
22<sup>ND</sup> JUDICIAL CIRCUIT  
CIRCUIT CLERK'S OFFICE  
BY \_\_\_\_\_ DEPUTY

METROPOLITAN TAXICAB COMMISSION,	)	
	)	
Plaintiff,	)	Cause No. 1422-CC00890-01
	)	
vs.	)	Division No. 31
	)	
LYFT, INC, et al.,	)	
	)	
Defendants.	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PRELIMINARY  
INJUNCTION**

This cause came before the Court on Plaintiff Metropolitan Taxicab Commission's Motion for Preliminary Injunction on May 14, 19, 20, and 21, 2014. The Court heard evidence from the parties, which included the testimony of Ronald Klein, Robert Thomure, Ray Mundy, Joseph Okpaku, Peter Kinder, Scott Ogilvie, Joan Bray, Carlos Sun, Cara Spencer, and David Newburger.

**PROCEDURAL HISTORY**

On April 18, 2014, Plaintiff Metropolitan Taxicab Commission ("MTC") filed a Motion for a Temporary Restraining Order against Defendant Lyft, Inc. ("Lyft"). A temporary restraining order was put in place on April 21, 2014 by the Honorable David L. Dowd. The temporary

restraining order prohibited Lyft from using its software application in the City of St. Louis and St. Louis County; advertising the availability of rides in the City of St. Louis and St. Louis County; paying, reimbursing, or providing anything of monetary value to any driver in return for the driver providing transportation to any person in the City of St. Louis and St. Louis County; and soliciting money or anything of value from anyone seeking transportation in the City of St. Louis and St. Louis County. Lyft was also required to disable its software application from use by its prospective riders in the City of St. Louis and St. Louis County. See Temporary Restraining Order, Metropolitan Taxicab Commission v. Lyft, Cause No. 1422-CC00890 (Circuit Court City of St. Louis, Division 2, April 21, 2014). On April 22, 2014, Lyft filed a Motion to Dissolve or Modify the Temporary Restraining Order, which was denied.

On April 28, 2014, Lyft filed a Notice of Removal and removed this matter to the United States District Court for the Eastern District of Missouri. The United States District Court remanded the case on April 30, 2014.

Following a Motion to Disqualify Judge Dowd by Lyft, this case was reassigned to the Honorable Robert H.

Dierker, Jr., in Division 18. A Motion to Disqualify Judge Dierker was filed by MTC, and the case was reassigned to Division 31 on May 2, 2014.

On May 5, 2014, MTC filed its Amended Petition for Preliminary and Permanent Injunction. The Amended Petition alleges that an injunction is necessary because Lyft will continue to engage in conduct that both violates and substantially interferes with the enforcement of the Vehicle for Hire Code, which places the general public of the City of St. Louis and St. Louis County at an immediate risk of harm. On May 5, 2014, Lyft filed its Answer, Affirmative Defenses, and Counterclaim to the Amended Petition.

On May 13, 2014, Defendants Emily Roig and Nicholas Gardon were served with the Amended Petition and Notice of the Hearing on the Preliminary Injunction. The Amended Petition alleges that Defendants Roig and Gardon, individually and through Lyft, operated a vehicle for hire and picked up a passenger on a point to point basis within the regional taxicab district of St. Louis City and County without first obtaining a MTC driver's license and vehicle permit.

A hearing on the Preliminary Injunction was commenced on May 14, 2014 and continued on May 19 through May 21, 2014. At the time of the hearing on the Preliminary Injunction, three of the individual defendants, Matthew C. Ratliff, Melanie Darmsteadter, and John Von Bokel, had not yet been served.

#### FINDINGS OF FACT

Based on the evidence before it, the Court makes the following findings of fact:

1. MTC is a political subdivision of the State of Missouri organized and existing under Section 67.1800-67.1822, RSMo, to regulate vehicles for hire, their drivers, and vehicle for hire companies within the district boundaries, which include the City of St. Louis and St. Louis County.
2. Lyft is a Delaware corporation whose principle place of business is located in San Francisco, California.
3. This Court has jurisdiction over Defendants under the laws of the State of Missouri because Lyft has continuous and systematic contacts within the State of

Missouri and in the City of St. Louis and St. Louis County.

4. Venue is proper in this case because the activity giving rise to MTC's Amended Petition occurred within the City of St. Louis and involves enforcement of Missouri statutes and MTC's Vehicle for Hire Code.
5. Pursuant to Section 67.1804, RSMo, the MTC is a "regional taxicab commission," which is created for "the public purposes of recognizing taxicab service as a public transportation system, improving the quality of the system, and exercising primary authority over the provision of licensing, control, and regulations of taxicab services within the district."
6. The MTC regulates vehicles for hire pursuant to the Vehicle for Hire Code, version 8.3, adopted February 28, 2010, effective March 15, 2010, as revised December 19, 2013.
7. MTC's district encompasses the City of St. Louis and St. Louis County.
8. Under Section 101.58 of the Vehicle for Hire Code, a vehicle for hire shall "refer collectively to airport shuttles, airport taxicabs, alternative transportation vehicles, commercial shuttles, courtesy vehicles,

limousines, non-emergency medical transport vehicles, on-call taxicabs, premium sedans, promotional vehicles or vintage premium sedans and any motor vehicle engaged in the business of carrying persons for hire on the streets of the city or county where the compensation for said transportation is made either directly or indirectly."

9. "On-call/reserve taxicabs" are defined under Section 67.1800(14), RSMo, as "any motor vehicle or non-motorized carriage engaged in the business of carrying persons for hire on the streets of the district, whether the same is hailed on the streets by a passenger or is operated from a street stand, from a garage on a regular route, or between fixed termini on a schedule and where no regular or specific route is traveled, passengers are taken to and from such places as they designate, and the charge is made on the basis of distance traveled as indicated by a taximeter.
10. A taximeter is defined under Section 67.1800(18), RSMo, as "a meter instrument or device attached to an on-call taxicab or airport taxicab which measures mechanically or electronically the distance driven and the waiting time upon which the fare is based."

11. Under Section 67.1809, RSMo, MTC "may license, supervise, and regulate any person who engages in the business of transporting passengers in commerce, wholly within the regional taxicab district established in section 67.1802, in any motor vehicle designed or used to transport not more than eight passengers, including the driver." The powers granted to MTC under this section "apply to the motor vehicles described in this subsection and to the persons owning or operating those vehicles: (1) Whether or not the vehicles are equipped with a taximeter or use a taximeter; and (2) Whether the vehicles are operated by a for-hire motor carrier of passengers or by a private motor carrier of passengers not for hire or compensation."
12. Section 201 of the Vehicle for Hire Code mandates that "[n]o person shall own, operate or lease a vehicle for hire service, purchase any assets from a vehicle for hire service to be issued in the conduct of a similar service or conduct dispatch operations without first obtaining a CCN [Certificate of Convenience and Necessity] or appropriate permit, permission or

license for the operation of such service from the MTC."

13. Pursuant to Section 401 of the Vehicle for Hire Code, no person shall operate a vehicle for hire in the City of St. Louis or St. Louis County without first obtaining a MTC driver's license authorizing the operation of that particular class of vehicle for hire.
14. MTC does fingerprint background checks on applicants, analyzing and comparing fingerprints with the FBI database. MTC also reviews driving records. MTC does drug testing on all applicants and drivers and requires a statement from a physician that an applicant is physically capable of safely operating a vehicle for hire and providing reasonable assistance to disabled, elderly, or frail passengers.
15. MTC also inspects vehicles for compliance with state and local livery laws.
16. MTC also requires proof of valid commercial automobile insurance and liability limits consistent with state laws.



17. MTC requires evidence that an applicant has completed a comprehensive driver training program approved by MTC.
18. Lyft began operations in St. Louis on April 18, 2014.
19. Lyft provides a software application, also identified as a ride matching platform, which facilitates individuals using their personal automobiles to provide transportation services to individuals seeking rides.
20. The vehicle utilized by a Lyft driver is a personal automobile identified by a pink moustache on the front of the vehicle.
21. The Lyft software application provides a picture of the driver to the rider and of the rider to the driver. The rider is given a picture of the driver's vehicle and license plate.
22. In order to use the Lyft service, a rider must electronically set up an account with Lyft using a valid credit card or debit card.
23. The Lyft software application gives the rider a "suggested donation" upon the completion of the ride.
24. Lyft provides a "suggested donation" based on the distance traveled and the time of the trip, which is

calculated by the software application's GPS system on the driver's mobile phone.

25. The Lyft software application states that "[d]onations are voluntary, but drivers are more likely to accept requests from passengers who submit fair donations."
26. Joseph Okpaku, the manager of government relations for Lyft, testified that there is an expectation of payment.
27. If a rider has not adjusted the donation amount within 24 hours of a ride, the rider is automatically charged the suggested donation amount.
28. Lyft drivers can choose to accept or not accept requests for rides from passengers. In making such decisions, drivers can choose to use a donation threshold, where they are offered only riders who "donate" on average at or above the threshold.
29. Lyft's website for drivers lists a cost per mile of \$1.60 and a cost per minute of \$0.25 for the St. Louis region.
30. According to Lyft's Terms of Service, a cancellation fee of \$5.00 applies if a rider cancels a ride request more than five minutes after a request is made.

31. Lyft receives an administrative fee of up to 20% percent of the rider payment.
32. Drivers receive the amounts collected for their rides, along with a statement, every week.
33. After the ride, riders may rate the driver and leave optional comments. Drivers may also rate their passengers.
34. Lyft contracts with Sterling BackCheck to do background checks of their potential drivers.
35. Lyft does not do fingerprint searches as part of the background check on its potential drivers.
36. Lyft states that it has a zero-tolerance drug and alcohol policy for drivers, and any allegations regarding drug or alcohol use will cause the driver to be immediately suspended.
37. Lyft does not do drug testing on its drivers.
38. Lyft does not require a physician statement regarding the health of a potential driver.
39. Lyft does a driving record check on its potential drivers.
40. Lyft has a Lyft mentor do a safety ride along with a potential driver to analyze whether the driver obeys traffic laws.

41. Lyft does its own 19 point vehicle safety inspection before the driver can use the Lyft platform. Lyft requires all vehicles to be model year 2000 or newer and be four-door vehicles.
42. Lyft drivers are required to have personal auto liability insurance. Lyft also maintains an excess liability coverage policy that applies once the driver has been matched with a passenger.
43. Lyft has not applied for a Certificate of Convenience and Necessity ("CCN").
44. No Lyft driver has obtained a MTC driver's license.

#### CONCLUSIONS OF LAW

Based on the above findings of fact, the Court now makes the following conclusions of law:

#### **Notice**

45. Lyft was given proper notice of MTC's Amended Petition for Preliminary Injunction and the opportunity to be heard.
46. Defendants Roig and Gardon were given proper notice of MTC's Amended Petition for Preliminary Injunction and

the opportunity to be heard. Neither Defendant Roig nor Gardon appeared.

#### Legal Standard

47. "The primary purpose of an injunction is to preserve the status quo and prevent irreparable injury to the plaintiff pending disposition of the case on the merits." Walker v. Hanke, 992 S.W.2d 925, 933 (Mo. App. W.D. 1999).
48. Injunctive relief is discretionary and is granted to prevent likely irreparable harm. It is generally unavailable where the prosecuting party has an adequate remedy at law. Hagen v. Bank of Piedmont, 763 S.W.2d 384, 385 (Mo. App. S.D. 1989). "'Adequate remedy at law' generally means that damages will not adequately compensate the plaintiff for the injury or threatened injury, or that the plaintiff would be faced with a multiplicity of suits at law." Walker, 992 S.W.2d at 933.
49. A court, in weighing a motion for a preliminary injunction, should weigh the plaintiff's probability of success on the merits, the threat of irreparable harm absent the injunction, the balance between such

harm and the injury inflicted by the injunction on other interested parties, and the public interest. State ex rel. Director of Revenue v. Gabbert, 925 S.W.2d 838, 839 (Mo. banc 1996).

**Probability of Success on the Merits**

50. Under Section 67.1809, RSMo, MTC "may license, supervise, and regulate any person who engages in the business of transporting passengers in commerce, wholly within the regional taxicab district established in Section 67.1802, in any motor vehicle designed or used to transport not more than eight passengers, including the driver." The powers granted to MTC under this section "apply to the motor vehicles described in this subsection and to the persons owning or operating those vehicles: (1) **Whether or not the vehicles are equipped with a taximeter or use a taximeter**; and (2) Whether the vehicles are operated by a for-hire motor carrier of passengers or by a private motor carrier of passengers not for hire or compensation." (Emphasis added.)
51. Section 201.A.1 of the Vehicle for Hire Code states that no person shall own, operate or lease a vehicle

for hire service or purchase assets from a vehicle for hire service to be used in the conduct of a similar service without first obtaining a CCN or appropriate permit, permission or license for the operation of such service from the MTC.

52. It is undisputed that Lyft did not obtain a CCN.
53. It is undisputed that Lyft drivers, Nicholas Gardon and Emily Roig, operated within the MTC district using the Lyft application without a valid license issued by the MTC.
54. Based on the evidence presented at the hearing on the Motion for Preliminary Injunction, the Court concludes that vehicles driven by drivers using the Lyft software application fall within the definition of vehicles for hire under the Missouri Revised Statutes and the Vehicle for Hire Code.
55. Lyft's software application on the driver's phone uses GPS technology to compute the charge for the ride based on time and distance. Lyft's website for drivers lists a cost per mile of \$1.60 and a cost per minute of \$0.25 for the St. Louis region. Lyft's software application is computing charges based on the car's positioning, accomplishing the same purpose as a

taximeter that measures the distance from point to point.

56. Under Section 67.1809, RSMo, MTC's powers allow it to regulate motor vehicles "whether or not the vehicles are equipped with a taximeter or use a taximeter."
57. Lyft advertises that there is no set charge for a ride, but rather "suggested donations." However, Joseph Okpaku, the manager of government relations for Lyft, testified that there is an expectation of payment. A credit or debit card is required to use the service, and passengers are automatically charged the suggested donation if they do not adjust the donation amount within 24 hours of a ride. The Lyft software application also advises passengers that the failure to pay a fair sum for the ride may affect their ability to get rides in the future. Drivers may also set a threshold donation amount before picking up passengers, thereby, eliminating passengers who pay less.
58. Lyft argues that it is a "ridesharing service," equivalent to a carpooling arrangement. It markets itself as "[y]our friend with a car." The evidence produced at the hearing on the Motion for Preliminary



Injunction, however, fails to show a common purpose or goal between the driver and passenger. The driver is driving from point A to point B based on the orders of the passenger. The driver is driving from point A to point B to make a profit.

59. Vehicles driven by drivers using the Lyft software application are "transporting passengers in commerce wholly within the taxicab district in a motor vehicle designed or used to transport not more than eight passengers including the driver."
60. Based on the evidence presented, vehicles using the Lyft application to transport passengers are, therefore, subject to regulation under Section 67.1809, RSMo, if they operate within the district boundaries of the MTC, which includes both the City of St. Louis and St. Louis County.
61. The Court concludes that based on the evidence presented and the findings outlined above, MTC has a high likelihood of success on the merits.

**Threat of Irreparable Harm Absent the Injunction**

62. Based on the evidence presented, if Lyft is allowed to operate in the City of St. Louis and St. Louis County,

continuous violations of the Vehicle for Hire Code will occur.

63. The Vehicle for Hire Code sets forth numerous regulations that are designed to protect the public. Examples of those regulations include requirements for commercial liability insurance (Section 209.A.1), age restrictions (Section 401.B.1), language (Section 401.B.2), criminal background checks (Section 401.B.5), health requirements (Section 401.B.6), driving records (Section 401.B.8), and comprehensive driver training (Section 401.B.14).

64. Lyft failed to produce during the hearing on the Motion for Preliminary Injunction sufficient evidence showing that it satisfied the basic safety requirements of the Vehicle for Hire Code. Most standard personal automobile insurance policies contain livery exclusions. Although Lyft has an excess liability insurance coverage policy, there are questions remaining regarding how this insurance would protect Lyft drivers and passengers. There are also questions as to the reliability of Lyft's background checks, as background checks are not performed using fingerprint technology recognized by local and federal

law enforcement agencies and are not in compliance with MTC regulations. Lyft drivers do not submit to fingerprint identification as part of the application process. Lyft also does not require a physician statement regarding the health of a potential driver. Lyft drivers do not undergo drug testing. There has been no evidence presented that Lyft drivers complete a comprehensive driver training program that would give them knowledge of the streets of the City of St. Louis and St. Louis County. Vehicles operated by drivers for Lyft also do not have their vehicles inspected by the MTC or any other state authorized entity.

65. The Court concludes that absent a preliminary injunction, there is a substantial threat of irreparable harm to MTC and the traveling public. Absent a preliminary injunction, MTC has no way of adequately enforcing the regulations that were created for the safety of the public.

#### **Harm to Lyft**

66. Lyft argues that Lyft and its drivers have been financially damaged by not being permitted to operate

in the City of St. Louis and St. Louis County. Lyft estimates that it is losing at least \$30,064.34 per week.

67. Lyft argues that the preliminary injunction will also restrict its commercial and political speech. Lyft states that a preliminary injunction would preclude it from advertising its ridesharing business model and prohibit it from utilizing its software application.

68. While the Court recognizes that the preliminary injunction may have a financial impact on Lyft, the Court concludes that it is justified in light the probability of MTC's success on the merits, the likelihood of irreparable harm, and the public safety interest.

69. The Court does not believe a preliminary injunction would restrict Lyft's commercial and political right of speech beyond curtailing its ability to advertise the availability of rides in the City of St. Louis and St. Louis County. Lyft would be free to use its software application to educate citizens about its business model, to promote community events, and to advertise rides in cities outside of the City of St. Louis and St. Louis County. A preliminary injunction

would only disable the software application from advertising and offering rides to individuals in the City of St. Louis and St. Louis County.

#### **Public Interest**

70. The Court recognizes the importance of new businesses entering the St. Louis marketplace.
71. The Court also acknowledges the public's interest in having a variety of transportation options to choose from when traveling through the City of St. Louis and St. Louis County.
72. The Court, however, must balance these interests with protecting the safety of the public and ensuring the appropriate regulation of vehicles for hire operating within the City of St. Louis and St. Louis County.
73. Based on the evidence presented, the public interest weighs in favor of a preliminary injunction.

**PRELIMINARY INJUNCTION**

Plaintiff Metropolitan Taxicab Commission's Motion for Preliminary Injunctions is granted as follows:

Defendant Lyft, Inc., Defendant Nicholas Gardon, Defendant Emily Roig, and Defendant Lyft's respective officers, agents, representatives, employees, independent contractors, successors, drivers, and all persons in active concert and participation with Defendant Lyft be and are hereby restrained and enjoined from providing transportation in the City of St. Louis or St. Louis County in response to requests for rides through Defendant Lyft's software application; advertising the availability of rides in the City of St. Louis or St. Louis County using Defendant Lyft's software applications; paying, reimbursing, or providing anything of monetary value to any driver in return for the driver providing transportation to any person within the City of St. Louis or St. Louis County; and soliciting money or anything of value from anyone seeking transportation in the City of St. Louis or St. Louis County. Defendant Lyft shall disable its software application from use by drivers and prospective riders in the City of St. Louis and St. Louis County as it relates to prospective riders requesting rides and drivers

accepting and transporting riders within the City of St. Louis and St. Louis County. Defendant Lyft's software application may remain operational in the City of St. Louis and St. Louis County to educate citizens about its business model, to promote community events, and to advertise rides in areas outside of the City of St. Louis and St. Louis County.

It is further ordered that Plaintiff Metropolitan Taxicab Commission's surety or cash injunction bond in the amount of \$500 filed as a condition of the temporary restraining order shall remain in full force and effect until further order of this Court.

Pursuant to Rule 92.02(e), this Order is binding on the parties to this action, their officers, agents, servants, employees, and attorneys and upon those persons in active concert or participation with them who receive actual notice of the terms of this Order by personal service or otherwise.

The Court further orders that this preliminary injunction shall remain in full force and effect through the hearing and disposition by the Court on Plaintiff's

Amended Petition for Permanent Injunction, which is hereby  
set for August 25, 2014, 2014 at 1:30 p.m. in  
Division 31 of the Circuit Court for the City of St. Louis.

SO ORDERED:

  
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Joan L. Moriarty, Judge

Date: July 14, 2014

cc: Charles H. Billings, Attorney for Plaintiff MTC  
Stephen J. O'Brien, Attorney for Defendant Lyft