

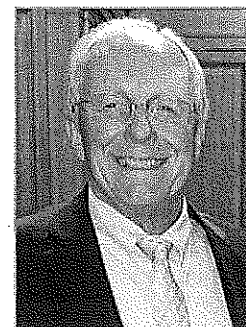


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Uber May Have Met Its Waterloo In Europe

By **Thomas Dickerson**

Law360, New York (May 18, 2017, 12:53 PM EDT) -- Uber's business model — built on its claims that it is a digital platform between consumer and driver (as opposed to a transportation company), and that its workers are merely independent contractors (as opposed to employees governed by local labor laws) — may be approaching collapse sooner than anticipated, both in the United States[1] and now in the European Union.



Thomas Dickerson

Notwithstanding Uber's extraordinary net worth of \$69 billion, its aggressive business practices and its genuine popularity worldwide (as of last November, it had a presence in over 300 cities across six continents[2]), the forces of change are at the gate.

In a recent survey, 81 percent of millennials said they preferred using ride-hailing services to traditional taxis.[3] Nonetheless, as Condé Nast Traveler recently reported:

Uber is banned in several countries and cities throughout Europe after losing lawsuits in Spain, Belgium, Germany and France. Uber also has a case that the court will rule on regarding their classification in Barcelona. The main taxi operator in the country has asked the (European Court of Justice) to decide if Uber is a digital or transport service.[4]

Uber In France

A French law enacted in 2014 makes it a crime to operate illegal taxi services, restricting the use of software to connect customers and drivers. Uber claims that it is being targeted. [5]

In 2015 taxi driver protests resulted in the banning of UberPop, and two of the company's executives have been fined \$500,000.[6] But France allows higher-end ride-hailing services whose drivers have commercial licenses and are properly insured.[7]

Uber In The U.K.

In the U.K., Uber's drivers have been classified as employees, rather than independent contractors, by a London employment tribunal, which means that the drivers should receive minimum wages, rest breaks and holiday pay:

The GMB union described the decision as a "monumental victory" for some 40,000 drivers in England and Wales. ... The ruling accused Uber of "resorting in its documentation to fictions, twisted language and even brand new terminology"

adding "The notion that Uber in London is a mosaic of 30,000 small businesses linked by a common 'platform' is in our mind faintly ridiculous." [8]

Uber In Italy

Uber was banned throughout Italy in a court ruling on April 7, 2017. The ruling favored taxi associations who asserted that Uber's business model amounted to unfair competition.

As a result of the decision, Uber's Black, Lux, Suv, X, XL, Select and Van services cannot operate in Italy, and the company cannot advertise in the country either. [9]

Uber In Denmark

As of April 18, 2017, Uber has quit in Denmark, claiming unworkable changes in taxi rules.

The rules, which take effect next year, cap the number of new taxi licenses at 125 per quarter, place restrictions on which types of cars may be used, and require all cars to have taxi meters.

Uber claimed that it had 2000 drivers and 300,000 Danish riders. [10]

Uber In Switzerland

In Switzerland, Uber has faced another setback with regard to the employment status of its drivers.

A Swiss insurance agency has ruled that the company's drivers are employees, for whom the company must pay social security. "The mobile cab-hailing app company had argued that its drivers are freelance contractors, but Swiss public sector insurer Suva found that they should be classified as staff." [11]

Uber Before The European Court

In November of last year, Uber appeared before the European Court of Justice, as part of a case offering a legal challenge to how Uber operates in Europe.

Again, the key question was whether Uber a transportation service or a digital platform acting independently to connect drivers with passengers. The company argued that it is helping to bolster Europe's economy with its business model. [12]

Uber's Waterloo?

In a recent report from Maciej Szpunar, an advocate general at the European Court of Justice in Luxembourg, Uber is categorized as a transportation company and not solely a digital platform: "Uber therefore controls the economically significant aspects of the transport service offered through its platform." [13]

In designating Uber a transportation service, Szpunar noted that Uber, like any other transportation service in the EU, should comply with each European country's transportation rules. Szpunar's opinion will be reviewed by the European Court of Justice, which is expected to make a final ruling by late summer. [14]

Conclusion

If the European Court of Justice agrees with the advocate general's report, Uber's business model in Europe may have to dramatically change, as it may also be forced to change in the United States due to other developments. [15] Uber drivers in Uber's two most

important markets may ultimately come to be treated as employees protected by local labor laws.[16]

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[1] Dickerson, Uber: The Turning Of The Tide, www.law360.com (April 24, 2017); Uber On The Brink, www.law360.com (May 8, 2017).

[2] Scott, Uber, Seeking to Expand, Defends Itself at Europe's Highest Court, www.nytimes.com (Nov. 29, 2016).

[3] Craggs, Where Uber Is Banned Around the World, www.cntraveler.com (April 20, 2017).

[4] Id.

[5] Id.

[6] Scott, Uber and Its Executives Are Fined in France, www.nytimes.com (June 9, 2016) ("As part of the continuing global backlash over the popular ride-sharing service, Uber and two of its senior European executives were convicted and fined nearly \$500,000 in France on Thursday for running an illegal transportation business.").

[7] What cities, states or countries have banned Uber?, www.quora.com.

[8] Johnston, Uber drivers win key employment case, www.bbc.com (Oct. 28, 2016).

[9] Statt, Italy issues a nationwide Uber ban, www.theverge.com (April 7, 2017).

[10] Farvel, Uber is getting out of Denmark, <https://qz.com> (March 28, 2017).

[11] Johnson, Uber Dealt Another Blow in Workers' Rights Battle, www.law.com (Jan. 5, 2017)

[12] Scott, Uber, Seeking to Expand, Defends Itself at Europe's Highest Court, www.nytimes.com (Nov. 29, 2016).

[13] Guarnaccia, Uber May Need Permits to Operate in EU, Court Advisor Says, www.law360.com (May 12, 2017).

[14] Scott, Uber Suffers Bloody Nose in Its Fight to Conquer Europe, www.nytimes.com (May 11, 2017).

[15] Dickerson, Uber On The Brink, www.law.360.com (May 8, 2017).

[16] Editorial Board, The Gig Economy's False Promise, www.nytimes.com (April 10, 2017) ("In reality, there is no utopia at companies like Uber, Lyft, Instacart and Handy, whose

workers are often manipulated into working long hours for low wages while continually chasing the next ride or task. These companies have discovered they can harness advances in software and behavioral sciences to old-fashioned worker exploitation, according to a growing body of evidence, because employees lack the basic protections of American law.”).

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