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Getting Taken for a Ride by Uber Technologies Incorporated

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Abstract

This paper explores Uber Technologies Incorporated and its business practices. Through the use of surge pricing, Uber takes advantage of uninformed customers. Uber's inadequate screening methods have put customers at risk of physical violence. By misclassifying their drivers as independent contractors instead of employees, Uber rids employees of rights such as minimum wage and benefits and forces drivers to pay taxes and fees, all while putting the drivers' lives at risk by offering inadequate insurance. Furthermore, through misrepresentation of the company and their services, Uber has violated many standards and regulations applicable to the commercial transportation industry. Overall, with the support of multiple scholarly articles, this paper contends that by taking advantage of vulnerable customers, ridding drivers of basic employee rights and violating numerous industry laws and standards Uber Technologies Incorporated and its business practices epitomize white collar crime.

Introduction

With the dawn of a technology-driven era fueled by smartphone applications, Global Positioning System (GPS) technology and zero-contract transactions, ridesharing services or transportation network companies (TNCs) have gained unprecedented popularity. These services provide consumers with seemingly lower prices, increased convenience and faster, higher quality service. TNCs and ridesharing services have become a competitive threat to the transportation market, displacing traditional taxi services around the world and facilitating a newfound "sharing economy" (Chen, Mislove & Wilson, 2015, p. 495). Recently, Uber has emerged as the leader in the ridesharing industry. While many have embraced Uber's services with open arms, this industry giant has already been subject to countless lawsuits and accusations of policy violations and unethical business practices. By taking advantage of vulnerable customers, ridding drivers of basic

employee rights and violating industry standards and laws, Uber Technologies Incorporated and its business practices epitomize white collar crime.

Uber Technologies Incorporated, colloquially known as Uber, was founded in March 2009. The multinational company markets and operates using the Uber mobile application. This application allows consumers with smartphones to request a driver in order to satisfy transportation needs. Uber pairs available drivers, who provide their own vehicle, with patrons looking for rides (Chen, Mislove, & Wilson, 2015, p. 495). Customers are charged based on the distance and time of travel. According the Uber.com (2015), the services provided by this California-based company are now available in sixty-four countries and over 300 cities worldwide. Today, several other companies have mimicked its business model characterized by digital disruption and convenience technology (Marsden, 2014); a trend that is

Mastorillo

now known as “Uberfication” (Marsden 2014).

Uber and its exploitation of customers

What differentiates Uber from traditional cab and taxi services is that Uber uses a “surge multiplier” (Chen, Mislove, & Wilson, 2015, p. 495). The cost will typically incorporate a base fare, cost per mile or kilometer, cost per minute and various fees, taxes and tolls (Chen, Mislove, & Wilson, 2015, p. 496). These prices also vary depending on the type of vehicle. With surge, or dynamic pricing, prices adjust upward from the standard rate when demand exceeds supply (Horpedahl, 2015, p. 364). At times, the price can even increase several multiples of the base price. Uber has argued that their surge pricing model is aimed at achieving two specific goals: increasing profits for drivers in hopes that more people will be encouraged to drive during periods of high activity and that the higher prices may reduce demand by discouraging cost-conscious customers from requesting rides, thus decreasing wait time for willing passengers (Chen, Mislove, & Wilson, 2015, p. 495).

There are two important things to note about Uber’s surge pricing method. First, on the consumer side, users are not shown the surge multiplier until they have requested a ride (Chen, Mislove, & Wilson, 2015, p. 496). The consequences are discussed shortly. Second, on the driver’s end, drivers are provided with a map in which areas experiencing a high volume of driver requests are displayed (Chen, Mislove, & Wilson, 2015, p. 497). This suggests that drivers are more likely to operate in areas of higher surge where they would be more likely to make more money.

Uber’s dynamic pricing has been the target of widespread criticism. Customers have argued that the company’s use of surge pricing takes advantage of uninformed passengers (Mitchell, 2015, p. 81). “Regulators have challenged its practice of surge pricing—increasing fares during high-demand periods—as price gouging” (Davis, 2015, p. 1105). In *Uber’s Loophole in the Regulatory System*, author Erin Mitchell cites one example where a woman was charged nine times the surge price on a twenty-two minute excursion (2015, p. 81). Her ride totaled \$362.57, an obviously outrageous amount for a relatively short trip. There have also been several accounts in which the final cost of the service was clearly indicated on the Uber app, the customer’s receipt and by the driver at the time of travel but the customer was later charged a significantly greater amount than previously specified (Mitchell, 2015, p. 80).

Uber has also been condemned for implementing its surge pricing during emergency situations. There are many examples of this unjustifiable act: clients were charged four times the base rate during a hostage siege in Sydney, Uber doubled prices following Hurricane Sandy in New York and users are frequently up-charged during severe weather conditions (Mitchell, 2015, p. 81).

Countless patrons have been unknowingly victimized by surge pricing. Uber seems to use their newfound prestige and image of credibility combined with their promise of low prices, higher quality and increased convenience to take advantage of their most vulnerable customers. While the idea that prices rise upon increased demand is one of the most basic in economic theory, no company should be allowed to use this theory to exploit clients and customers. University of Chicago law professor Eric

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Posner has suggested that Uber and similar services should be subject to price caps on the grounds that TNCs have the potential to displace taxi and traditional services as “the new monopoly” (Horpedahl, p. 364). In fact, taxi services are presently regulated in terms of how much they may charge (Mitchell, 2015, p. 82). What makes Uber immune to the standards imposed on other commercial transportation services? Uber should be required to abide by the regulations that taxi companies have to follow. It could be argued that it is even more important to regulate the prices charged by companies that implement a surge pricing method of operation.

Uber has also ignored the wellbeing of their customers through their inadequate use of background checks. While Uber Technologies Inc., attests to ensuring that all drivers are given a sufficient background check before they are granted employment, others contest that this is not the case. Spokesperson for the Taxicab, Limousine & Paratransit Association, Dave Sutton, explains that Uber’s background checks are not conducted by law enforcement agencies and do not involve fingerprinting (Marshall, 2015, p. 5). While Uber does run background checks, economist Dean Baker notes that unless background checks are required by a regulatory framework, there is no guarantee that these checks are being performed consistently for each driver (Marshall, 2015, p. 10). Articles such as *Uber Background Checks Missed Drivers’ Criminal Records* and *Uber’s Background Checks Don’t Catch Criminals* clearly support this argument. According to *The Sharing Economy*, Uber has declined requests for interviews and have yet to dispute these claims (Marshall, 2015, p. 5).

Unfortunately, Uber’s lack of proper background checks have had some grave

consequences for many unsuspecting customers. One case involving Shiv Kumar Yadav is particularly disturbing. Yadav, 32, was an Uber driver in Delhi (Siddiqui, 2014). On December 7 2014, Yadav was arrested for raping a 25-year-old woman in his vehicle. While this act is mortifying in and of itself, the case becomes even more appalling when Yadav’s past is considered. This middle-aged man was a repeat offender (Siddiqui, 2014). In 2003, he was arrested for molesting and assaulting minors in his home town (Siddiqui, 2014). Yadav was also charged for rape in 2011 and again in 2013 (Siddiqui, 2014) and spent seven months in prison (Siddiqui, 2014).

According to the Delhi Police, Uber made several major lapses that likely contributed to or even facilitated the actions of Yadav (Mehrotra, 2014). First and foremost, Uber did not do a background check on Yadav (Mehrotra, 2014). Uber had failed to check if Yadav had a criminal record and, in contrast to what is mandated of cab drivers, it was not compulsory that Yadav be examined using police verification. Next, the address Yadav provided was false. Uber was not made aware of this until after his arrest (Mehrotra, 2014). Yadav also did not have the Public Service Vehicle license that is required for all commercial vehicles. There was no GPS system in his car that, if necessary, could be used for tracking (Mehrotra, 2014). The only way Uber would be able to track the driver was through the app. Unfortunately, the driver had switched off his phone and thus became invisible to his employers (Mehrotra, 2014).

These stories are becoming all too common. If Uber implemented stricter background checks or simply even followed the regulatory framework that traditional services are subject to, it is likely that there would be fewer of these horrifying accounts.

Mastorillo

Regrettably, there has been no word of an alteration of Uber's security methods.

Uber and its misrepresentation and mistreatment of drivers

In addition to the direct negative impact that Uber has had on its customers, Uber has also failed its drivers. Co-Executive of the New Virginia Majority, Jon Liss, explains that Uber's business model, "is predicated on high levels of job insecurity and large numbers of part-time workers" (Liss, 2015, p. 6). Employees are deprived of several employee rights, including the right to minimum wage (Mitchell, 2015, p. 83). Drivers are forced to pay for operating expenses and are required to continuously update and improve their vehicles (Mitchell, 2015, p. 83).

While some fees may be justifiable, the issue resides primarily in Uber's misclassification of employees. Under Uber's business model, drivers are considered independent contractors and are not employees (Mitchell, 2015, p. 82). According to the International Revenue Service (IRS), a worker cannot be classified as an independent contractor if their employer has the "legal right to control the details of how the services are performed" (2015). Through its implementation of policies for drivers and vehicle standards, its payment structure and its established method of customer service, Uber does in fact control the details of its drivers' services (Mitchell, 2015, p. 83).

The IRS requires that independent contractors pay a Self-Employment Tax (IRS.Gov 2015). This tax, which grants independent contractors with medical care and social security, is quite costly. Uber is forcing its employees to pay for these services with money out of their own

pockets, likely in order to avoid paying these fees themselves. They require that drivers (who may not even be making minimum wage) pay for a pricey expense in order to maintain employment. Drivers have spoken out about this unfairness; some have even brought these issues to court in hopes of achieving justice. In California multiple class action suits have been filed insisting that Uber alter their classification of drivers from that of independent contractors to employees (Mitchell, 2015, p. 84). The reclassification of Uber drivers would grant them the rights and benefits that they deserve. Drivers would also avoid paying fees that they should not be paying in the first place. Unfortunately, no policy change has been implemented thus far.

In addition to the expenses that drivers are forced to pay, Uber's policies also deprive drivers from full and proper access to gratuity. Uber charges a 20% gratuity that is automatically (and sometimes unknowingly) included in the fare (Mitchell, 2015, p. 84). While most passengers likely believe that the gratuity goes solely to the driver, this is not the case. The gratuity included in the total cost of an Uber ride is split between the company and the drivers (Mitchell, 2015, p. 84). Uber drivers have argued that customers would be more likely to tip the driver directly if they were aware of this split. The pricing policy of this multinational company directly denies drivers of their rightful earnings. Just as Uber has remained unaffected by the regulations imposed upon taxi services, it also fails to abide by the standards held in the taxi service industry. Uber drivers should receive the full amount of the gratuity just as a restaurant server, for example, is entitled to the same.

Uber's insurance policies have also been under recent scrutiny: "The insurance

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industry has warned that Uber does not provide drivers with adequate auto insurance” (Davis, 2015, p. 1106). Jennie Davis of the Boston Law Review explains that Uber drivers’ insurance coverage is divided into three time periods: the time in which the driver is driving outside of an occupational context, the time in which the driver is seeking fares but has not yet accepted a ride request and the time from when the driver accepts a ride request until the end of the ride (Davis, 2015, p. 1107-1109). While Uber’s insurance covers drivers during the latter two phases of travel, there is the potential for an uncovered gap period to occur (Davis, 2015, p. 1109). Additionally, many personal insurance companies, whose insurance would likely close this gap, do not cover commercial activities, including ridesharing. Personal policies usually contain exclusions stating that the company will not cover the individual if the driver uses the insured vehicle to carry passengers for a fee (Davis, 2015, p. 1109). Therefore, if insurers learn that the driver is participating in ridesharing, the insurance agency can refuse to provide Uber drivers with coverage under their personal policies (Davis, 2015, p. 1109). The gaps within Uber’s insurance coverage, in conjunction with the restrictions implicit in personal insurance options, can potentially leave Uber drivers vulnerable during the time of employment.

Uber’s insurance policies also do not compensate drivers for physical and property damages in the event of an accident (Davis, 2015, p. 1110). Uber does not provide drivers with “collision or comprehensive coverages” (Davis, 2015, p. 1110) which would pay for physical damages to the driver’s vehicle. Uber also does not provide motorist coverage for bodily harm of Uber drivers (Davis, 2015, p. 1110). This form of insurance would protect

drivers from medical costs if an accident were to occur without the involvement of a third party. Essentially, drivers could be putting their lives at risk with minimal coverage to fall back on. Conversely, Uber’s liability coverage will cover third party injuries caused by an Uber driver. It is very clear that Uber is primarily concerned with protecting themselves from lawsuits in the event of an accident, while putting their own employees at risk. They are able to get away with this because they deem their drivers to be independent agents, thereby shortcutting their own corporate responsibilities. The wellbeing of their bottom line seems to be more important to Uber than those who are an extension of their company.

Uber and its constant violation of the law and industry standards

Perhaps the greatest number of issues arise in relation to Uber’s knowing violation of various laws, policies, regulations and standards. Uber has been accused countless times of engaging in unfair competition. “Such ‘app-based’ car-for-hire platforms have met determined resistance from industry competitors, advocacy groups, and government regulators who argue that these services are illegal, unsafe, and competing unfairly”, explains Boris Bindman (Bindman, 2015, p. 141). Competitors have argued that Uber enjoys an unfair competitive advantage over traditional taxi services. This advantage is largely achieved through the company’s ability to avoid the costs and implications associated with the regulations in place in the commercial transportation industry. Simultaneously, Uber gains from the other companies that adequately follow such regulations. This can be demonstrated practically.



Mastrorillo

In California, uberX, one of Uber's many private car services, can be evaluated under *California's Unfair Competition Law (UCL)*. Through the application of content analysis of the UCL to Uber's standard procedures, Jennie Davis of Boston College Law was able to demonstrate exactly how Uber Technologies Inc. should rightly be considered unfair competition (Davis, 2015, p. 1128). First, Uber consistently misrepresents the amount of coverage uberX drivers receive, an act which directly violates California's Unfair Competition Law (Davis, 2015, p. 1128). Specifically, Uber leads its drivers to believe that personal coverage, in conjunction with that provided by the company, cover them entirely during the course of their employment (Davis, 2015, p. 1129). As demonstrated earlier, this is not the case and Uber knows it.

Another example of Uber being non-compliant with unfair competition laws arose in last year in Boston. In 2014, Boston Cab found that Uber was "illegally avoiding financial obligations by not complying with Boston ordinances" (Mitchell, 2015, p. 91). It is required that taxicab drivers in Boston possess a specific type of taxicab license. This license can be obtained only after meeting certain driving qualifications and successfully passing a criminal background check. The medallion license must also be paid for. Furthermore, under Rule 403 of the Boston Police Department, all taxicab operators must possess an authorized dispatch service (Mitchell, 2015, p. 91). At the time of the lawsuit, Uber was not complying with any one of these rules. By avoiding these requirements Uber was able to circumvent legal and financial burdens that the rest of the commercial transportation industry in Boston is forced to bear, thus providing them with an unfair competitive advantage.

Uber has also been accused of encouraging taxi drivers to violate agreements not to work with competitors in the transportation industry, violate trademark clauses by presenting Uber "hangtags" in their mirrors and using cellphones while driving (Mitchell, 2015, p. 92). Other ridesharing companies, such as Lyft, have accused Uber of "poaching drivers by compensating Uber drivers for recruiting a Lyft driver to the Uber service and intentionally slowing Lyft's system by repeatedly ordering Lyft drivers to drive passengers aimlessly for a couple of blocks" (Mitchell, 2015, p. 92-93). This purposeful sabotage could put Uber under even more scrutiny, especially while in court.

Uber's uncanny ability to skirt the law has clearly contributed to its massive success within the transportation industry. This ability can most directly be attributed to Uber's common practice of misrepresentation. First, Uber allegedly misrepresents (or misclassifies) drivers, a topic discussed earlier. This allows Uber to avoid major expenses such as paying for gasoline, benefits, car repairs and maintenance fees. They have even avoided paying minimum wage and have forced employees to pay a Self-Employment Tax. Multiple accounts have also demonstrated that Uber misrepresents their company as a whole. They have been accused of misleading customers to believe that Uber is closely associated with other cab and taxi companies. In *Boston Cab Dispatch Inc. v. Uber Technologies Inc.* Boston Cab argued that Uber's use of Boston Cab's standard colouring and design on their vehicles resulted in a degradation of their company's reputation (Mitchell 2015: 88). They argued that Uber lacks safety features that made their services more desirable (Mitchell, 2015, p. 88). Similarly, in 2014, roughly thirty plaintiffs sued Uber for "deceptively

associating itself with cab companies by referring to them as ‘fleet partners,’ using yellow-colored SUVs in advertisements, and using vehicles that bore the taxi companies’ registered trademarks” (Mitchell, 2015, p. 89). These types of activities violate the *Lanham Act*, a law passed in the 1940s to protect trademark owners from competitors’ use of similar advertising that could lead to customer confusion (Mitchell, 2015, p. 87-88).

In today’s free market society it is essential that the integrity of competition is maintained both in and outside of the transportation industry. Ethical practices among competitors would allow for equal and fair competition thus promoting fair prices for consumers. If Uber is not held to the same standards as the rest of the transportation industry, Uber will continue to be given an unfair advantage in that market. If Uber were to become a monopoly, it would be able to increase prices and further exploit employees and customers even more than it already has. Forcing Uber to comply with regulations and standards would lessen this threat. This unfair advantage is a clear detriment to pre-existing companies and traditional taxiing services who function to provide jobs, fuel competition in the market and provide consumers with choice.

Conclusion

In recent years Uber has become the leader of ridesharing services and transportation network companies. While it is commonly believed that Uber provides consumers with lower prices, increased convenience and faster, higher quality service compared to traditional taxicab services, it is evident that this is not always the case. Through the use of surge pricing, Uber takes advantage of uninformed customers. The lackadaisical nature of

Uber’s screening methods have put these same customers at risk of physical violence. By misclassifying their drivers as independent contractors instead of employees, Uber is able to offer employees less than minimum wage with no benefits package. They have forced employees to pay for their own vehicle maintenance and other taxes and fees while putting the drivers’ lives at risk by offering inadequate insurance. Furthermore, through misrepresentation of the company and their services, Uber has managed to escape many standards and regulations applicable to the commercial transportation industry. Overall, through its mistreatment of customers, its neglectful demeanor toward drivers and its unabashed violation of industry standards and laws, it is clear that Uber Technologies Incorporated and its business practices epitomize white collar crime.

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