

# ***MICHAEL DEMIDECKI & CO***

## **Solicitors**

M R Demidecki - Demidowicz MSc, Solicitor  
J D Luckhurst BSc (Hons), Barrister (non-practising)  
and Solicitor advocate

Taxi House  
11 Woodfield Road  
London W9 2BA  
Tel: 020 7266 3607  
Fax: 020 7266 4050  
johnl@ltda.co.uk

Our Ref L269044/sb/L/LTDA(Taxify)

Your Ref

Transport for London - London Taxi and Private Hire Office  
Palestra, 197 Blackfriars Road  
London  
SE1 8NJ

6 September 2017

FAO: Ms Helen Chapman by email to: HelenChapman@tfl.gov.uk  
Dear Sirs,

**Taxify OÜ (a company registered in Estonia with CRN 12417834)**  
**City Drive Services Limited (a company registered in England with CRN 08885431)**

### ***Introduction***

1. We write on behalf of our client, the Licensed Taxi Drivers Association ("the LTDA"). The LTDA is a co-operative community benefit society whose membership comprises around 10,500 "black cab" drivers (so, drivers licensed by TfL under s.6 of the Metropolitan Carriage Act 1869 to be in charge of hackney carriages plying for hire within London).
2. Our client is extremely concerned by the recent launch of the "Taxify" platform in London.
3. The launch appears to have been facilitated by the use of an existing company, City Drive Services Limited ("CDSL"), which holds London PHV operator licence number 008955.
4. We write to set out our client's concerns and to request that TfL take immediate action.

### ***Introduction***

5. Taxify OÜ ("Taxify") is a global business headquartered in Estonia. According to its website (taxify.eu) ("the Website") it is "connecting riders with the best local drivers at the best prices".
6. Taxify operates globally from a common internet-based platform. It licences smartphone applications, "Taxify Driver" ("the Driver App") and "Taxify - Transport & Taxi App" ("the Customer App"). Drivers of PHVs licensed by TfL have been invited to join the platform. The platform allows those drivers to go online so that their location and the availability of themselves and their

vehicles for immediate hire is shown on the Customer App by vehicle icons on a map. Customers can use the Customer App to request a vehicle, seeing before doing so where and approximately how many minutes' drive away the nearest vehicles are. Fares are charged at the conclusion of journeys, and are either paid directly to the driver in cash, or by credit or debit card to Taxify as agent for the driver.

7. So far as we are aware, there are no London Cabs on the platform.
8. Taxify's website has UK terms and conditions for "riders" (customers) which are dated 5 September 2017 and which are said to be between CDSL "trading as Taxify" and customers ("the UK Terms") (copy enclosed).

### ***The "Taxify" brand***

9. The first and immediate issue is the use of the brand "Taxify" for the platform ("the Brand").
10. As you will be aware, in London, the word "taxi" is exclusively associated with hackney carriages, which, when licensed by TfL, are the only vehicles that may stand and ply for hire in the city. "Taxi" is the word that is displayed on the roof sign of London's licensed hackney carriages.
11. Ensuring that there is some way in which those who wish to use either hackney carriages or PHVs can readily distinguish one type of vehicle from the other is one of the objectives of the licensing regime: see *R v. Wirrall Metropolitan Borough Council, ex parte the Wirrall Licensed Hackney Carriage Owners Association* [1983] 3 C.M.L.R. 150 at [39] per Glidewell J.
12. In London, this distinction is given partial statutory effect by s.31 of the Private Hire Vehicles (London) Act 1998, which provides:

#### **31 Prohibition of certain advertisements.**

- (1) *This section applies to any advertisement—*
  - (a) *indicating that vehicles can be hired on application to a specified address in London;*
  - (b) *indicating that vehicles can be hired by telephone on a telephone number being the number of premises in London; or*
  - (c) *on or near any premises in London, indicating that vehicles can be hired at those premises.*
- (2) *No such advertisement shall include—*

- (a) *any of the following words, namely “taxi”, “taxis”, “cab” or “cabs”, or*
- (b) *any word so closely resembling any of those words as to be likely to be mistaken for it,*

*(whether alone or as part of another word), unless the vehicles offered for hire are London cabs.*

- (3) *An advertisement which includes the word “minicab”, “mini-cab” or “mini cab” (whether in the singular or plural) does not by reason only of that fact contravene this section.*
- (4) *Any person who issues, or causes to be issued, an advertisement which contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.*
- (5) *It is a defence for a person charged with an offence under this section to prove that—*
  - (a) *he is a person whose business it is to publish or arrange for the publication of advertisements;*
  - (b) *he received the advertisement in question for publication in the ordinary course of business; and*
  - (c) *he did not know and had no reason to suspect that its publication would amount to an offence under this section.*
- (6) *In this section—*

*“advertisement” includes every form of advertising (whatever the medium) and references to the issue of an advertisement shall be construed accordingly;*

*“telephone number” includes any number used for the purposes of communicating with another by electronic means; and “telephone” shall be construed accordingly.*

- 13. We submit that CDSL and Taxify are issuing advertisements that contravene section 31.
- 14. The Brand plainly falls within s.31(2). The saving for London Cabs does not apply.

15. You will note the wide definition of “advertisement” in s.31(6) of the Act. The advertisements in question are the use of the Brand on the Website, the Customer App, in online stores for the App (like the Apple “App Store”) and on social media accounts (for example @TaxifyUnitedKingdom on Facebook and @taxifyapp on Twitter). There has also been a concerted press campaign.
16. All these advertisements indicate that a vehicle may be hired by downloading the Customer App to a smartphone and using that App to request a vehicle.
17. The Customer App is licensed to UK customers by CDSL, the UK Terms stating that Taxify (defined in the UK Terms as CDSL trading as Taxify) “grants You a limited, non-transferable, non-exclusive, non-assignable and revocable licence to access and use the Taxify Platform”. The Taxify platform includes the Customer App and the Website.
18. CDSL’s registered office is at Unit G32b, Waterfront Studios, Dock Road, London, England E16 1AG. This is - self-evidently - an address in London.
19. The Appendix to the Terms states that:

*The Transportation Services are provided under City Drive Services Ltd [sic] PHV operator licence number 008955, issued by Transport for London and based in the London borough [sic] of Newham, in accordance with Private Hire Vehicles (London) Act 1998.*

20. That Appendix states that the booking of vehicular transport (defined as “Transportation Services”) occurs via the Taxify Platform provided by Taxify (i.e. by CDSL).
21. The UK Terms are incorporated into the Customer App and the Website. They are found on the Website, and a link to them is found on the Customer App.
22. It follows that the advertisements (be they the Customer App, the Website, or app stores, social media or other press directing customers to the Customer App or the Website) indicate that vehicles can be hired on application to a specified address in London, namely CDSL’s premises in London, the address of the licensed operator under which the Transportation Services are said to be provided. That application is made by downloading the Customer App and using it to request a vehicle.
23. This, in our submission, constitutes a clear breach of s.31(1)(a) of the 1998 Act.
24. Further and in any event, we contend that the method in s.31(1)(b), “by telephone on a telephone number being the number of premises in London”, is here being satisfied by provision of the Customer App. “Telephone number” is widely defined in s.31(6) as including “any number used for the purposes of communicating with another by electronic means; and “telephone” shall be construed accordingly.” In our submission, a purposive construction of the section would encompass construing the use of the Customer App and what is

in effect the direct line between the it and the London operator as hire “by telephone on a telephone number being the number of premises in London”.

25. In our submission, in breaching s.31(1)(a) and (b) of the 1998 Act, CDSL and Taxify are committing offences. So far as CDSL is concerned, this is sufficient ground for its licence to be revoked: s.16(2)(b) of the Act.
26. Further and in any event, the use of the Brand clearly offends the licensing objective of ensuring that those who wish to use either hackney carriages or PHVs can readily distinguish one type of vehicle from the other.
27. It is hard to think of a brand name more likely to lead members of the public to believe that the services of taxis are being offered than “Taxify”.
28. Even if it be contended that there is no breach of s.31, that would not prevent licensing intervention on the basis that the licence holder is operating a platform that - in the two-tier system operating in London - can only cause confusion and blur the line that needs to be maintained between hackney carriages and private hire vehicles. Leaving s.31 aside for the moment, this - we submit - is sufficient ground for a revocation of CDSL’s licence on the basis that, by virtue of CDSL’s conduct, TfL can no longer be satisfied that it is fit to hold a licence.

### ***CDSL - changes to operating model***

29. We are concerned to note that the trading names of CDSL shown on TfL’s licence checker at the date hereof are “Avanti Car Service”, “CityDrive” and “Sigma Car Service”. “Taxify” is not mentioned.
30. It will be a condition of CDSL’s London PHV licence that it notify TfL of any material changes to its operating model that may affect its compliance with the 1998 Act, the Private Hire Vehicles (London) (Operators’ Licences) Regulations 2000 and any conditions of its licence.
31. We query what notification CDSL has given TfL of this very substantial change to its operating model? If it transpires that no or inadequate notification has been given, this is a further ground for revocation.

### ***The Taxify model is a plying for hire model***

32. The UK Terms expressly assert that Taxify “does not provide Transportation Services or otherwise operate as a provider of vehicular transportation” and expressly disclaims any contractual liability on Taxify’s part for transport services provided under the platform.
33. Taxify’s UK driver terms (“the Driver Terms”) (enclosed) provide by clause 20.3 that drivers shall determine “in their absolute discretion” if and when they use the platform and if and when and where they work under it.

34. Taxify, via the Customer App, solicits requests for the immediate provision of a vehicle with a driver. When requests are made we assume that they are allocated by Taxify's servers to the driver nearest to the passenger or (if operated) to the head of a geo-fenced queue. By virtue of clause 20.3 of the Driver Terms, the driver has discretion whether or not to accept a request.
35. Taxify thus has no control over which driver receives (or ultimately accepts) which request.
36. The only way a driver can provide services via the platform is for him to be:
  - (1) in a vehicle;
  - (2) immediately available for work;
  - (3) online on the Driver App; and
  - (4) either:
    - (a) the nearest such person to the requested pick-up location of a passenger; or
    - (b) (if operated) in a geo-fenced area at the head of a virtual queue.
37. There is a striking similarity between these requirements and what hackney carriages have to do obtain trade. This is because:
  - (1) Both Taxify vehicles and hackney carriages must be available for immediate hire, and be physically near people who wish to be immediately carried in a vehicle.
  - (2) Both exhibit their availability for immediate hire: hackney carriages by standing in rank or plying for hire in the street with their 'Taxi' roof signs illuminated; Taxify vehicles by standing in a (virtual) rank or plying for hire in the street with their availability and presence exhibited on the Customer App.
  - (3) Both are hailed by the public: hackney carriages by being approached at the head of the rank or hailed whilst plying; Taxify vehicles by being requested via the Customer App as either being the nearest vehicle to the customer or at (if geo-fencing is operated) at the head of a virtual queue.
  - (4) Hackney carriages are known as taxis; Taxify vehicles seek to be associated with the word "taxi".
38. Hackney carriages either stand or ply for hire<sup>1</sup>. We submit that Taxify vehicles do the same.
39. Importantly, the UK terms specify that the drivers of Taxify vehicles (and *not* any Taxify entity) contract with passengers<sup>2</sup>.

---

<sup>1</sup> It is their defining characteristic: ss. 4 and 7 Metropolitan Public Carriage Act 1869.

<sup>2</sup> The UK Terms: Appendix.

40. In effect, Taxify's role is to act as tout for the drivers of vehicles on its platform. So:
- (1) When drivers are online on the Driver App, they authorise Taxify to indicate their locations and immediate availability for hire.
  - (2) Taxify does this by showing on the Customer App, what we assume to be the approximate location of available drivers with vehicles, with an estimate of how many minutes' drive away the nearest vehicle in any particular "product" line is.
41. There is no conceptual difference between, on the one hand, soliciting custom by touting in the street (say, by standing outside a theatre asking departing patrons if they require a minicab) and, on the other hand, by using technology to the same effect. In either case, the tout indicates to the public that vehicles are in the vicinity and are immediately available for hire. Touting is a manner of plying for hire: *Cavill v. Amos*<sup>3</sup>.
42. In *Sales v. Lake*<sup>4</sup>, Trevethin L.C.J. said:
- ... a carriage cannot accurately be said to ply for hire unless two conditions are satisfied. (1) There must be a soliciting or waiting to secure passengers by the driver or other person in control without any previous contract with them, and (2) the owner or person in control who is engaged in or authorizes the soliciting or waiting must be in possession of a carriage for which he is soliciting or waiting to obtain passengers.*
43. Here, there is a soliciting or waiting to secure passengers by the driver without any previous contact with those passengers. The driver solicits or waits by authorising Taxify to show the location and immediate availability of his vehicle on the Customer App. The driver has in his possession a vehicle for which he is soliciting or waiting to obtain passengers. The driver has complete freedom over when, where and for how long he does this, and whether or not to accept requests for him to provide a journey. This is a plying for hire model.

### ***Taxify's reliance on CDSL's London PHV operator's licence is a sham***

44. Taxify has relied upon CDSL's London PHV operator's licence to launch in London, and on-board London PHVs onto its platform.
45. In fact and in law, vehicles on the Taxify platform are and will be plying for hire. Taxify knowingly uses its operator's licence to give a veneer of legality to what is in truth an unlawful operation. That is not a proper usage of that licence: it should be revoked for that reason alone.

---

<sup>3</sup> (1899) 16 T.L.R. 156, *per* Channell J. "In ordinary cases, in order that there should be a plying for hire, the carriage itself should be exhibited. It is, however, possible that a man might ply for hire with a carriage without exhibiting it, by going about touting for customers".

<sup>4</sup> [1922] 1 K.B. 553

46. Furthermore, TfL has discretion to revoke a London PHV operator's licence where the applicant does not intend to use it in accordance with the legislative scheme. Taxify's expressed intention is to continue to operate as a peer-to-peer intermediary where it connects drivers with members of the public who wish to hire a vehicle, so that those drivers can contract directly with them. Insofar as CDSL acts as an operator (making provision for the invitation or acceptance of bookings) the provision it makes is unlawful and an improper use of an operator's licence.

***The Taxify platform requires drivers to act in contravention of the Private Hire Vehicles (London) Act 1998***

47. S.2(1) of the 1998 Act provides:

*No person shall in London make provision for the invitation or acceptance of, or accept, private hire bookings unless he is the holder of a private hire vehicle operator's licence for London (in this Act referred to as a "London PHV operator's licence").*

48. PHV drivers on-boarded onto the Taxify platform, when in London:

- (1) make provision for the invitation of bookings for their PHVs by being online on the platform;
- (2) make provision for the acceptance of bookings for their PHVs in the same manner;
- (3) accept private hire bookings by indicating so on the Driver App.

49. When a passenger makes a request through the Customer App, we assume that the next human intervention will be when a driver uses the Driver App to accept that request following its allocation to him. The driver, and no-one else, accepts the booking, having made provision for the invitation and acceptance of the same. Indeed, as we observe below, Taxify expressly disclaim any role in accepting bookings.

50. S.2(1) of the 1998 Act is drafted to ensure that the allocation of bookings for London PHVs is directed and controlled by a London PHV operator (the statutory equivalent of the "job-master" found in the case-law<sup>5</sup>).

51. The operator is the lynchpin of the private hire licensing regime<sup>6</sup>. The existence of an operator who directs and controls licensed PHVs driven by licensed PHV

---

<sup>5</sup> Vehicles that are being directed by a "job-master", where the job-master selects which vehicle would satisfy which job, do not ply for hire: *Allen v. Tunbridge* (1871) L.R. 6 C.P. 461 at 485, *per* Montague Smith J.; *Armstrong v. Ogle*, [1926] 2 K.B. 438 *per* Hewart L.C.J.; and *Cogley v. Sherwood* [1959] 2 Q.B. 311 *per* Parker L.C.J. (at 326) and Salmon J. (at 331).

<sup>6</sup> Law Commission Consultation Paper on "Reforming the law of taxi and private hire services" (CP No 203), paragraph 2.15 [http://www.lawcom.gov.uk/wp-content/uploads/2015/03/cp203\\_taxi-and-private-hire-services.pdf](http://www.lawcom.gov.uk/wp-content/uploads/2015/03/cp203_taxi-and-private-hire-services.pdf), as cited by Hickinbottom J. in *Blue Line Taxis (Newcastle) Limited v. The Council of the City of Newcastle upon Tyne* [2012] EWHC 2599 (Admin), at [7].



drivers whose services are pre-booked<sup>7</sup> is what distinguishes private hire vehicles from hackney carriages, which alone are permitted to stand and ply for hire in public. The regime is a two-tier regime.

52. By making use of the Driver App in London, PHV drivers do so as operators in breach of s.2(1) of the 1998 Act.
53. Furthermore, by accepting booking vehicles in their vehicles, PHV drivers also breach s.4(1) of the 1998 Act, which prohibits the acceptance of a private hire booking other than at an operating centre.

### ***Taxify does not purport to comply with s.4(1) of the 1998 Act***

54. On the face of its own documentation, Taxify does not comply with s.4(1) of the 1998 Act, which as we have stated prohibits the acceptance of a private hire booking other than at a London operating centre. The UK Terms provide:

*Taxify does not accept Bookings or act as an agent of or on behalf of Suppliers but rather provides a platform to facilitate Bookings directly between Users and Suppliers.*

### ***Drivers cannot derive authority from CDSL's PHV operator's licence***

55. A licensed principal's unlicensed agents can derive authority from their principal's licence when under the control and direction of the principal: see *Williamson v. Norris*<sup>8</sup>; *Mellor v. Lydiate*<sup>9</sup>; *Anderton v. Rogers*<sup>10</sup>.
56. So, where a licence is held by a company, it can only act by its human agents (telephone operators and the like), who will not be licensed. The agents do not commit offences so long as they act under the control and direction of the company.
57. By contrast, a principal cannot derive authority from a licence held by an agent where that agent is a mere nominee who is not controlling and directing the licensable activity: *Dunning v. Owen*<sup>11</sup> and *Mellor v. Lydiate*<sup>12</sup>. The drivers cannot derive authority from Taxify, when Taxify is a mere conduit for the drivers' entirely autonomous activities, conducted on their own accounts.

---

<sup>7</sup> S.4(1) of the 1998 Act. "Bookings" are not defined in the Act. The OED definition of "booking" is "the action of arranging in advance or reserving freight transport, accommodation, a seat, a ticket to travel etc.; the issuing of a ticket, reservation, etc. Also: an instance of this".

<sup>8</sup> [1899] 1 Q.B. 7

<sup>9</sup> [1914] 3 K.B. 1141 at 1153.

<sup>10</sup> [1981] Crim L.R. 404

<sup>11</sup> [1907] 2 K.B. 237

<sup>12</sup> [1914] 3 K.B. 1141

***The Taxify model will give rise to unacceptable nuisance and risks to public safety***

58. The above matters are in no sense ‘technical’. The primary purpose of the statutory regime is the protection of the public. It requires the licensing, and therefore regulatory control, of operator, driver and vehicle. The Taxify model (under which the driver is the real operator, but is only licensed as a driver; and the so-called ‘licensed operator’ is no such thing - on its own documentation it does not accept bookings or otherwise exercise the expected functions of an operator) undermines the *raison d’être* for the three-division licensing regime for PHVs. The consequences will be a matter of genuine concern and will exacerbate the issues already being experienced in London.

***Requested steps***

59. We request on behalf of the LTDA that:
- (1) TfL give immediate consideration to revoking CDSL’s London PHV operator’s licence and to prosecuting CDSL and Taxify OÜ for breach of s.31 of the 1998 Act;
  - (2) that, in relation to any revocation, that these written representations are placed before the appropriate decision-makers;
  - (3) the LTDA is permitted to attend, call evidence and make representations at a hearing before the said decision-makers, convened to determine whether or not to revoke CDSL’s licence.
60. We submit that the revocation should have immediate effect pursuant to s.17(2): the public safety consequences of permitting a model where there is a total abrogation of responsibility on the part of the purported operator are all too obvious.
61. We submit that it is imperative that TfL provide explicit and detailed reasons for whatever should it decline to prosecute and/or revoke, or to revoke but not without immediate effect. If there are matters that are genuinely “commercially confidential” (the claim is too-frequently made by parties to litigation in order to defeat transparency) then those and those alone should be scheduled in a confidential annexe.

62. If there are any points in this letter which we can clarify or particularise further, please do not hesitate to contact us and will endeavour to provide such clarification and particularity with all due expedition.

Yours faithfully,

Michael Demedecki & Co.

cc. Company Secretary, City Drive Services Limited  
Taxify OÜ (by email only to [info@taxify.eu](mailto:info@taxify.eu))  
Mr Howard Carter [HowardCarter@tfl.gov.uk](mailto:HowardCarter@tfl.gov.uk)