

AUG 24 2016

RECEIVED

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re :
Gawker Media LLC, et al.,¹ :
Debtors. :
-----X

Chapter 11

Case No. 16-11700 (SMB)

(Jointly Administered)

- Date Stamped Copy Returned
- No Self-Addressed Stamped Envelope
- No Copy Provided



REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM

1. Name of Claimant: Christopher Sadowski (Through Counsel, Liebowitz Law Firm, PLLC)
2. Name of Debtor claim asserted against: Gawker Media, LLC
3. Nature and description of the claim (you may attach a separate summary): See Complaint attached.
4. Date(s) claim arose: June 5, 2016

5. Amount of claim: \$150,000 (Per Complaint, First Claim for Relief, 17 USC Sect. 504(c)(3))
 Plus \$25,000 (Per Complaint, Second Claim for Relief, 17 USC Sect. 504(c)(3))
 = \$175,000
 6. Documentation supporting the claim must be attached hereto. Documentation should include both evidence of the nature of the administrative expense claim asserted as well as evidence of the date or dates on which the administrative expense claim arose.

Plus Attorney's Fees and Costs (per 17 USC Sect. 505).

Date: August 19, 2016
 Signature: Richard Liebowitz
 Name: Richard P. Liebowitz, Esq.
 Address: Liebowitz Law Firm, PLLC
 11 Sunrise Plaza, Suite 301
 Valley Stream, New York 11580
 Phone Number: 516-233-1660

¹ The last four digits of the taxpayer identification number of the debtors are: Gawker Media LLC (0492); Gawker Media Group, Inc. (3231); and Kinja Kft. (5056). The offices of Gawker Media LLC and Gawker Media Group, Inc. are located at 114 Fifth Avenue, 2d Floor, New York, NY 10011. Kinja Kft.'s offices are located at Andrassy ut 66. 1062 Budapest, Hungary.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTOPHER SADOWSKI,

Plaintiff,

- against -

GAWKER MEDIA LLC

Defendant.

Docket No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Christopher Sadowski (“Sadowski” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Gawker Media LLC (“Gawker” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of an UBER car owned and registered by Sadowski, a New York City based photojournalist. Accordingly, Sadowski seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or are doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Sadowski is a professional photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 46 Viola Avenue, Clifton, New Jersey, 07011. Sadowski's photographs have appeared in many publications around the United States.

6. Upon information and belief, Gawker is a limited liability corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 210 Elizabeth Street, Ste. 4, New York, New York, 10012. Upon information and belief, Gawker is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Gawker has owned and operated the websites at the following URL's: www.Gizmodo.com and Gawker.com (the "Websites").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. On or about August 19, 2014, Sadowski photographed an UBER car (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Sadowski then licensed the Photograph to The New York Post. On August 19, 2014, The New York Post ran an article that featured the Photograph on its web edition entitled, *Uber users are mistakenly jumping into random cars*. See (<http://nypost.com/2014/08/19/uber-users-are-mistakenly-jumping-into-random-cars/>). Sadowski's name was featured in a gutter

credit identifying him as the photographer of the Photograph. A true and correct copy of the Photograph on the article is attached hereto as Exhibit B.

9. Sadowski is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

10. The Photograph was registered with Copyright Office and was given Copyright Registration Number VA 1-925-762 effective September 30, 2014.

B. Defendant's Infringing Activities

11. Upon information and belief, on or about June 17, 2015, Gawker ran an article on the Website entitled *Uber drivers in California will be employees, not contractors*. See (<http://gizmodo.com/uber-drivers-in-california-will-be-considered-employees-1711956394>) and another article entitled *NYC Has Impounded 500 Uber Cars Since April for Picking Up Illegal Fares*. See (<http://gawker.com/nyc-has-impounded-500-uber-cars-since-april-for-picking-1712012779>) The articles prominently featured the Photograph. A true and correct copy of the articles is attached hereto as Exhibit C.

12. Gawker did not license the Photograph from Plaintiff for its articles, nor did Gawker have Plaintiff's permission or consent to publish the Photograph on its Websites.

13. Upon information and belief, Gawker removed Sadowski's gutter credit and did not attribute the Photograph to anyone.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST GAWKER)
(17 U.S.C. §§ 106, 501)

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-13 above.

15. Gawker infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Websites. Gawker is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the foregoing acts of infringement by Gawker have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

18. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

19. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

20. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

21. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST
GAWKER
(17 U.S.C. § 1202)

22. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-21 above.

23. When the Photograph was published in an article in The New York Post, the article contained copyright management information protected under 17 U.S.C. § 1202(b).

24. Upon information and belief, in its article on the Website, Gawker intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph.

25. The conduct of Gawker violates 17 U.S.C. § 1202(b).

26. Upon information and belief, Gawker's falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

27. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Gawker intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photograph. Gawker also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photograph.

28. As a result of the wrongful conduct of Gawker as alleged herein, Plaintiff is entitled to recover from Gawker the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by Gawker because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

29. Alternatively, Plaintiff may elect to recover from Gawker statutory damages pursuant to 17 U.S.C. § 1203(c)(3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Gawker be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant Gawker be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);
5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
6. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
7. That Plaintiff be awarded pre-judgment interest; and
8. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
June 5, 2016

LIEBOWITZ LAW FIRM, PLLC

By: /s/ Richard Liebowitz

Richard P. Liebowitz

11 Sunrise Plaza, Suite 301

Valley Stream, NY 11580

Tel: (516) 233-1660

RL@LiebowitzLawFirm.com

Attorney for Plaintiff Christopher Sadowski

EXHIBIT A



EXHIBIT B

Uber users are mistakenly jumping into random cars

By Sophia Rosenbaum

August 19, 2014 | 1:52am

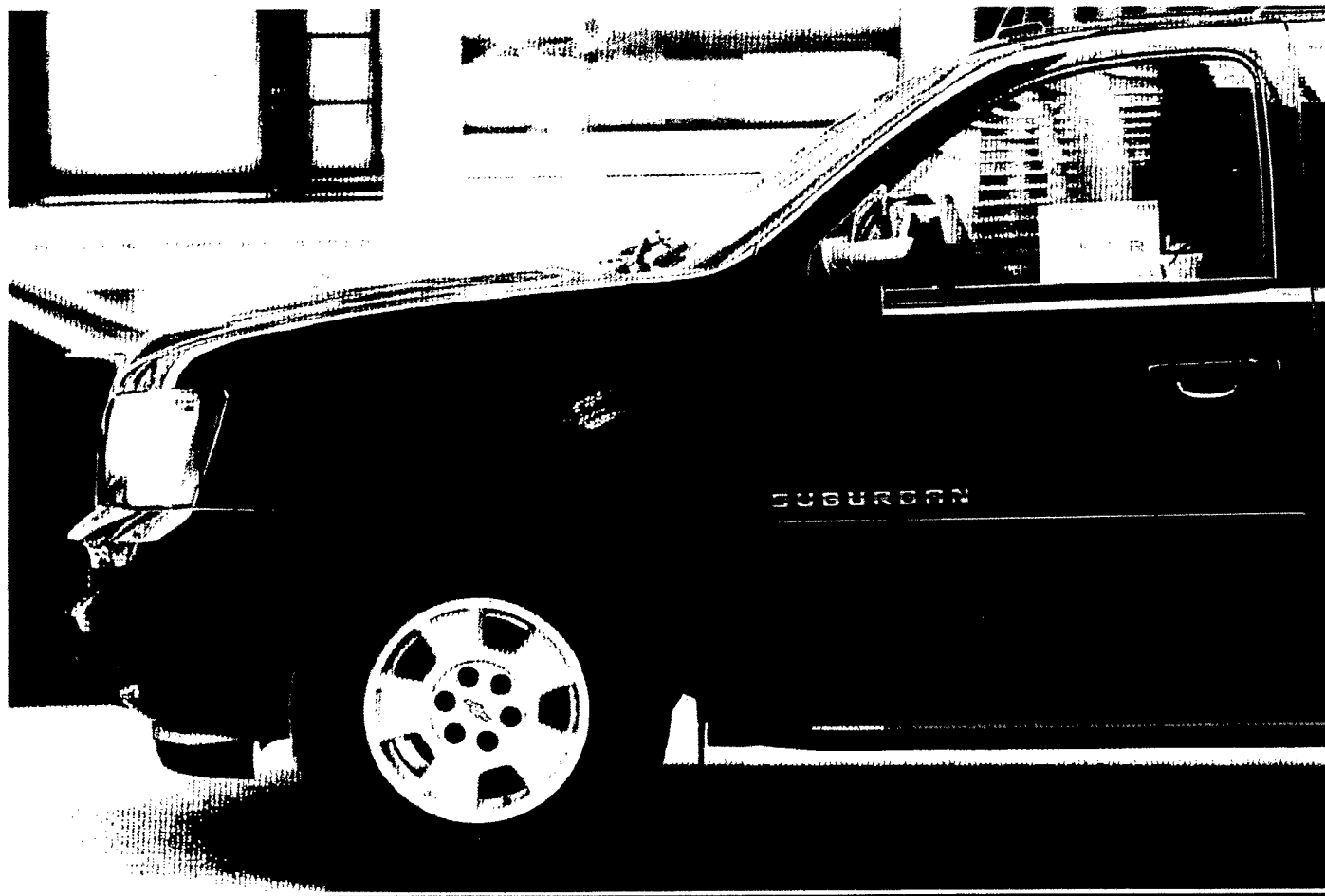


Photo: Christopher Sadowski

Wacky Uber users think the ride-sharing app is so popular that everyone's in on it — jumping into random cars across the country.

"Basically, anytime I'm pulled over on the side of the street, someone tries to hail me or just opens my car door," one New Yorker told the media blog ValleyWag.

Tweets countrywide show it isn't limited to New York.

In DC, @KasibShah wrote, "Someone just got in my car thinking I was her uber."



sunny
@KasibShah

Follow

Someone just got in my car thinking I was her uber..... I said no bitch this is my car..... Like she got in and got comfortable

12:03 AM - 23 Jun 2014

33 37

EXHIBIT C

GIZMODO

Uber Drivers in California Will Be Employees, Not Contractors (Updated)



Kate Knibbs

6/17/15 11:05am · Filed to: UBER

49.5K 450 24



An Uber driver is an employee, not a contractor, according to a ruling from the California labor commission. This is horrible news for Uber but good news for anyone concerned that the ruthless ride-hailing service is building a corporate empire by dicking over its drivers.

Uber insists that it's a merely a tech company peddling a mobile platform that happens to connect drivers with riders, not a driving service. That's a convenient way to think about the service, since it means Uber can shrug off the responsibility of treating its growing supply of drivers like they work for the company.

Case 1:16-cv-04178-A-JN Document 1-3 Filed 06/05/16 Page 3 of 8
Semantics aside, this ruling makes it clear that Uber is a service that employs drivers.

“The defendants hold themselves out as nothing more than a neutral technological platform, designed simply to enable drivers and passengers to transact the business of transportation,” the commissioner wrote. “The reality, however, is that defendants are involved in every aspect of the operation.”

The ruling came after a San Francisco-based former Uber driver Barbara Berwick filed a claim against the company. Uber will have to pay her \$4000 in business expenses for her stint driving for them.

Even though Uber tries to paint itself as a matchmaking platform for riders and drivers, it sets strict controls on how drivers conduct their business. Uber sets fare rates and prohibits drivers from collecting tips, and it has rules about what kind of cars they can drive. It’ll also boot drivers who receive low ratings on the app. As the ruling pointed out, that heavy level of control fits the profile of an employer.

While this ruling is just about Berwick, it will give drivers ammo in other cases, especially in California. This isn’t the first time Uber drivers have tried to get employee status; some Uber drivers have filed a class action lawsuit in order to be considered employees instead of contractors. And in May, a Florida agency ruled that a former Uber driver injured on the job was an employee.

That doesn’t mean that every Uber driver will be happy with this ruling. Many people driving as a side gig could be hemmed in by an “employee” designation, since 1099 workers have more flexibility. The divide between agreeing or disagreeing with the ruling may come down to whether a driver is picking rides up as a side gig or extra cash, or whether they’re attempting to eke out a living.

Case 1:16-cv-04178-AJN Document 1-3 Filed 06/05/16 Page 4 of 8
This is bad news for Uber because it's in the company's best interest to stay a "tech" company. The current model maximizes how much money Uber can make without being saddled with employment responsibilities.

This ruling means Uber may have to start doing stuff like paying for social security and medicare taxes for eligible drivers in California, and it could incentivize drivers in other states to make claims for similar employee standing. It's a blow to the contractor economy.

Uber is appealing the ruling.

Update: Uber pointed out that the ruling only applies to one driver. "Reuters' original headline was not accurate. The California Labor Commission's ruling is non-binding and applies to a single driver," a spokesperson said. "Indeed it is contrary to a previous ruling by the same commission, which concluded in 2012 that the driver 'performed services as an independent contractor, and not as a bona fide employee.' Five other states have also come to the same conclusion. It's important to remember that the number one reason drivers choose to use Uber is because they have complete flexibility and control. The majority of them can and do choose to earn their living from multiple sources, including other ride sharing companies."

[Reuters]

Contact the author at kate.knibbs@gizmodo.com.

Public PGP key

PGP fingerprint: FF8F 0D7A AB19 6D71 C967 9576 8C12 9478 EE07 10C

Image via Getty

NYC Has Impounded 500 Uber Cars Since April for Picking Up Illegal Fares



Jay Hathaway

6/17/15 4:10pm · Filed to: UBER

47.2K 174 27



On the same day that Uber got bad news from the California Labor Commission, the *New York Post* reports another ill omen for the technology-company-and-definitely-not-a-car-service everyone loves to hate and use anyway: NYC has impounded nearly 500 Uber cars since April in a sting against illegal “street hails.”

Levine & Wiss Injury Law

Over 80 Years Combined Experience. Get the Compensation You Deserve
lawpllc.com



Uber Drivers in California Will Be Employees, Not Contractors (Updated)

An Uber driver is an employee, not a contractor, according to a ruling from the California labor...

The NYC Taxi and Limousine Commission limits drivers of black cars and livery cars to pre-arranged trips. They're not allowed to compete with taxis for spontaneous street pickups. But that's apparently what 496 drivers did between late April and this week, and they had their cars seized for their trouble.

Uber officially prohibits its drivers from picking up random street fares, but it also doesn't pay for or own the cars its alleged non-employees drive. If those drivers start using their vehicles to make some money on the side, they bear all the risk themselves.

There were 14,000 Uber cars registered in NYC as of earlier this year, which is technically higher than the number of yellow cabs on the road, but Uber doesn't even come close to cabs when it comes to ride volume or hours driven.

One theory about the uptick in illegal fares, put forth by the New York State Federation of Taxi Drivers, is that Uber alone isn't enough for a driver to get by in NYC.

"If you're willing to risk breaking the law, you have to be willing to lose your car," taxi federation president Fernando Mateo told the *Post*, "I would recommend, go back to the basics. Everyone has an app. You can't make a living with just the Uber application."

Case 1:16-cv-04178-AJN Document 1-3 Filed 06/05/16 Page 8 of 8
Mateo is obviously biased when it comes to Uber, but there might be something to that. At the beginning of this year, Uber cut its fares dramatically across the U.S.—great for passengers, but not so great for drivers. In a blog post, the company assured drivers that they’d actually make *more* money because demand would go up.

In practice, though, it doesn’t work that way. A Philadelphia UberX driver, “Muhammad,” put it very succinctly to the *Philly City Paper*’s Emily Guendelsberger in May:

Overall, demand has increased. But as a human being, we can only drive maybe three trips in one hour. If you give me 300 trips, that won’t do me any good. That demand is for other people, not for me. So cutting the rate is increasing the total business, but the driver is worse off than before.

With Uber cutting profits for individual drivers (but profiting itself from the increased overall demand), it wouldn’t be that surprising for struggling drivers—who in some cases invested in new cars just to drive for Uber—to risk going outside the system to ensure their cars actually make them money.

[h/t *Consumerist*, Photo: Getty Images]

