

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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CITY OF NEW YORK,

Plaintiff,

Index No.
_____ / 2021

-against-

BEAM BIKE CORP. d/b/a JOCO BIKES,

VERIFIED COMPLAINT

Defendant.
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Plaintiff the City of New York (“City”), by its attorney, James E. Johnson, Corporation Counsel of the City of New York, for its complaint against Defendant Beam Bike Corp. d/b/a Joco Bikes (“Joco”), alleges upon personal knowledge as to itself, and on information and belief as to all other matters, as follows:

PRELIMINARY STATEMENT

1. This action seeks injunctive relief and civil penalties against Joco following its recent launch of a bicycle sharing network in New York City. Applicable law at both the state and local level provides that bicycle sharing systems may not be operated in the City unless authorized by the New York City Department of Transportation (“DOT”). Joco has not sought, much less obtained, the necessary authorization. Therefore, the operation of its business in New York City violates the law.

2. Joco makes its electric bicycles, or e-bikes, available for rent at self-service bicycle docks located in numerous parking garages across a large portion of Manhattan. Once removed from the dock, the e-bikes can be ridden anywhere for up to 24 hours and returned to any Joco dock in the City. Joco’s e-bikes are equipped with kickstands and can be

secured, using a lock provided by the rider, to common fixtures on the street or sidewalk such as bicycle racks and sign posts.

3. Joco's system is designed to compete with the popular Citi Bike bicycle sharing system operated by a different company, NYC Bike Share (a subsidiary of Lyft, Inc.), pursuant to a contract with the City dating to 2012. Since that time, Citi Bike has become the largest bike sharing system in the United States and an integral part of the City's transportation network. With a \$300 million expansion being undertaken by Lyft at no cost to the City, Citi Bike, which was already available to a huge number of New Yorkers, operates throughout much of the City, including not only Manhattan below 96th Street (where Joco has located its bicycle docks), but also large portions of upper Manhattan, Brooklyn, Queens, and the Bronx.

4. By contracting for, overseeing, and regulating the Citi Bike system, DOT delivers numerous public benefits including safety, service levels, and maintenance standards; policies to promote equity and accessibility; and privacy protections for customer data. These and other public benefits from the successful operation of the Citi Bike system—now and, following the completion of the expansion, in the future—depend on the effective regulation of other bicycle sharing systems including the one operated by Joco, which is expressly positioned to compete directly with Citi Bike.

5. Despite having received a cease and desist directive from DOT, Joco is proceeding to implement its business plan in violation of the law. The City is therefore entitled to an injunction to stop Joco's unlawful conduct, as well as civil penalties for its past and ongoing violations.

PARTIES

6. Plaintiff the City of New York is a municipal corporation organized under the laws of the State of New York.

7. Defendant Beam Bike Corp., which operates under the name Joco, is a corporation organized under the laws of the State of Delaware with an address at c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19806.

PROHIBITION AGAINST UNAUTHORIZED BIKE SHARE SYSTEMS

8. In 2018, subject to the notice and comment and other rulemaking requirements of the New York City Administrative Procedure Act, DOT promulgated a rule prohibiting the operation of a bike share system without authorization from DOT. According to DOT's statement of basis and purpose of the proposed rule, the rule "would clarify that a bicycle sharing system must not be operated in New York City without the DOT's prior written authorization."

9. The DOT rule states:

Operating a bicycle sharing system without written authorization prohibited. No person may operate a bicycle sharing system in the City of New York without the prior written authorization of the Department [of Transportation].

34 R.C.N.Y. § 4-12(p)(6). The term "bicycle" is defined to include pedal-assist bicycles, such as Joco's e-bikes. *Id.* § 4-01(b). The term "bicycle sharing system" is defined as "a network of self-service and publicly available bicycles in which a bicycle trip begins and/or ends on *any* public highway in the City of New York." *Id.* (emphasis added).

10. The geographic scope of the rule reflects DOT's broad jurisdiction to regulate traffic, including bicycle traffic, in New York City. A "public highway" is (among

other things) any street, avenue, “public driveway,” “public place,” or “public way.” 34 R.C.N.Y. § 4-12(b). This definition is identical to the one set forth in Vehicle and Traffic Law (“VTL”) § 134, which forms part of the basis of DOT’s jurisdiction under the New York City Charter to regulate traffic throughout the City. Charter § 2903(a)(14). DOT’s jurisdiction includes both public thoroughfares and privately owned places made generally accessible to pedestrian, bicycle, and other traffic.

11. In 2020, the State Legislature enacted a law expressly authorizing the City and other localities to regulate the operation of bicycle (and e-bike) sharing systems and prohibiting the operation of such systems unless duly authorized by the local government. Codified as VTL § 1243, the statute provides, in relevant part:

The governing body of any city, town or village may, by local law, ordinance, order, rule or regulation, authorize and regulate shared bicycle systems or shared bicycle with electric assist systems within such city, town or village. No such shared systems shall operate within a city, town or village except as authorized by such local law, ordinance, order, rule or regulation. For the purposes of this subdivision, the term shared bicycle system or shared bicycle with electric assist system shall mean a network of self-service and publicly available bicycles or bicycles with electric assist in which a bicycle or bicycle with electric assist trip begins and/or ends on any public highway.

BIKE SHARE IN NYC PURSUANT TO DOT’S RULE

12. One company is presently authorized by DOT to operate a bike share network: NYC Bike Share, LLC, now a subsidiary of Lyft, which operates the bike sharing system known as Citi Bike pursuant to a contract with DOT. Citi Bike, which launched in 2012, is the largest bike share system in the United States.

13. The Citi Bike system originated in a request for proposals issued by DOT in order to provide, regulate, and administer a bike share system. The system was designed to be, and is, privately funded, without cost to the City. Indeed, far from paying money into the

system, the City shares in revenues from the operation of the system, having received approximately \$1.5 million in revenue from the Citi Bike operations to date.

14. The Citi Bike system is designed to benefit the public. These benefits are many, including mandated safety, service levels, and maintenance standards; equipment standards including third-party engineering certifications; equity and accessibility programs; affordable pricing; the redistribution of bikes in order to maintain availability throughout the program area; insurance and indemnification that covers, among other things, third party claims against the City; privacy protections and the appropriate reporting and sharing of data; and consumer protections, such as the City's insistence that Lyft's user agreement does not contain class action waivers or binding arbitration clauses.

15. In connection with these benefits to the public, the DOT contract grants NYC Bike Share the exclusive right to operate a bike share system within the program area, including all of Manhattan and much of the outer boroughs. This exclusivity is a principal inducement for the investment of private capital necessary to expand the system. Pursuant to the contract (including the exclusivity provision) as amended most recently in 2020, Lyft is investing \$300 million to expand the system.

16. The Citi Bike system has been enormously successful. It has recorded over 111 million trips, has 70,000 daily trips in peak riding months, and has more than 170,000 annual members.

JOCO'S UNLAWFUL OPERATIONS

17. On or around April 28, 2021, Joco launched its bicycle sharing system, making its e-bikes available to the public for rental.

18. Joco's bike sharing system is comprised of hundreds of pedal-assist bicycles, a type of electric bicycle (e-bike) in which a relatively low-powered electric motor engages when the rider is pedaling in order to assist the rider in the propulsion of the bicycle.

19. Joco's e-bikes are housed at docks located in at least 30 parking garages. These parking garages, located in the borough of Manhattan, occupy an area stretching from south of Houston Street near the Hudson River to East 95th Street.

20. Joco plans to rapidly expand its system, making 1,000 e-bikes available for rental at 100 parking garages by June 2021.

21. Joco offers memberships for a set monthly or annual fee, with members able to access unlimited rides for no additional cost. Those who are not members can rent Joco's e-bikes on a single ride use basis. According to Joco's policies, anyone age 16 or older can rent an e-bike.

22. Joco's bike sharing network is self-service. The docks where Joco's e-bikes are housed are not staffed. Riders can remove Joco e-bikes from a dock using the Joco app on their smartphones.

23. The parking garages where Joco's docks are located are open to the public, many of them 24 hours a day. Signage at the entrance of some of these garages invites members of the public into the areas where Joco's e-bikes are docked.

24. Joco allows rides to last for up to 24 hours.

25. Joco does not impose any geographical limit on rides. Therefore, Joco's e-bikes can be taken anywhere in the five boroughs of New York City (and beyond).

26. Joco's e-bikes have kickstands that can be used to hold a bike upright if it is left on the street or sidewalk.

27. A bicycle lock provided by the rider can be used to secure a Joco e-bike to a bicycle rack on the street or sidewalk, as with any other bicycle. In addition, Joco's rental agreement with its customers provides that Joco's e-bikes might be equipped with "on-board locks" that can be used to secure a bike left on the street or sidewalk.

28. Joco requires its riders to end their e-bike trips on the street. Joco's rental agreement with customers provides that "[w]hen returning a bike, you must dismount and walk the bike through any private premises such as parking garages to access available docks." In accordance with this requirement, in two different places on Joco's e-bikes themselves, riders are instructed: "Dismount bike prior to entering docking premises."

DOT'S CEASE AND DESIST DIRECTIVE

29. On April 23, 2021, having learned that Joco was planning to start operating a bike share system in the City, DOT sent Joco a letter directing it not to commence bike share operations. DOT representatives took the same position during an April 26 telephone conference with attorneys for Joco.

30. On April 28, after Joco launched its bike share operations despite DOT's earlier directives, DOT sent Joco and its attorneys a letter demanding that Joco cease and desist from conducting bike share operations without authorization.

31. Nonetheless, Joco has continued operating its bike share system without authorization.

32. Joco executed a media strategy in connection with its launch. This led to the publication of several articles, one of which was entitled, "It's War: New Bike Rental Company Ignores City 'Cease and Desist' Order." This article was accompanied by a picture of

Joco's two founders smiling while holding Joco e-bikes on the street in front of a parked New York City Police Department vehicle.

**FIRST CAUSE OF ACTION
Violation of 34 R.C.N.Y. § 4-12(p)(6)**

33. Plaintiff repeats and realleges all of the above allegations with the same force and effect as if fully set forth in this paragraph.

34. Defendant operates a bicycle sharing system without authorization in violation of 34 R.C.N.Y. § 4-12(p)(6).

35. For each such violation, Defendant is liable for a civil penalty of up to \$5,000, with each day when a violation occurs constituting a separate and distinct offense. Defendant is also subject to an injunction to restrain further violations of 34 R.C.N.Y. § 4-12(p)(6).

**SECOND CAUSE OF ACTION
Violation of Vehicle and Traffic Law § 1243**

36. Plaintiff repeats and realleges all of the above allegations with the same force and effect as if fully set forth in this paragraph.

37. Defendant operates a bicycle sharing system without authorization in violation of VTL § 1243(1).

38. Defendant is subject to an injunction to restrain further violations of VTL § 1243(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court grant judgment against

Defendant as follows:

- (a) enjoining Defendant from operating a bike share network without authorization;
- (b) imposing a civil penalty of \$5,000 for each violation of committed by Defendant, with each day when a violation occurs constituting a separate and distinct offense; and
- (c) granting such further relief as the Court may deem just and proper.

Dated: New York, New York
May 5, 2021

JAMES E. JOHNSON
Corporation Counsel of the City of New York

By: /s/ _____
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Attorney for Plaintiff the City of New York

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Brian T. Horan, being duly sworn, says that he is a Senior Counsel in the office of James E. Johnson, Corporation Counsel of the City of New York, attorney for Plaintiff the City of New York ("City"); that the allegations in the complaint are true to his knowledge; that he believes to be true any matters alleged therein upon information and belief; and that his knowledge is based on the books and records of the City, statements made to him by officers or employees thereof, and records available on the internet. This verification is not made by the City because it is a municipal corporation.

[Handwritten signature of Brian T. Horan]
Brian T. Horan

Sworn to before me this
5th day of May 2021

Cynthia Weaver
NOTARY PUBLIC

State of New York
No. 02WE6314387

Qualified in Kings County

Commission Expires 1/14/2023

Notarized pursuant to Executive Order 202.7

Signer located in Columbia County. Notary located in New York County.