

1 Plaintiff Delux Cab, LLC d/b/a/ Nathan Cab, SDC Delux Cab, and Lux Cab
2 ("Delux Cab" or "Plaintiff"), individually and on behalf of all others similarly
3 situated, by and through its undersigned counsel, hereby brings this action against
4 Uber Technologies, Inc., Uber USA, LLC, Rasier, LLC, and Rasier-CA, LLC
5 (collectively, "Uber" or the "Company"). Plaintiff alleges the following upon its
6 own knowledge, or where it lacks personal knowledge, upon information and
7 belief, including the investigation of its counsel.

8 INTRODUCTION

9 1. Plaintiff Delux Cab is an independent California entity operating
10 seven taxicabs in San Diego, California. Delux Cab maintains its headquarters and
11 principal place of business in the City and County of San Diego, California.

12 2. Uber is a transportation network company ("TNC") that competes
13 with taxicab services such as Delux Cab. Specifically, the Company develops,
14 markets, and operates an online-enabled smartphone application and platform (the
15 "Uber App") that connects passengers with drivers who provide transportation
16 services in their personal vehicles. Customers use the Uber App to submit a trip
17 request and the Uber App then automatically sends the request to the Uber driver
18 nearest to the customer, including information on the customer's name, location,
19 and desired destination. The Uber driver then picks up and transports the
20 customer, and the customer is charged a fee for the ride which is proportioned
21 between Uber and the driver. As of August 2016, the service was available in
22 sixty-six countries and 507 cities worldwide, including San Diego, California.

23 3. For years, Uber has engaged in a campaign premised on false or
24 misleading representations that were intended to and did persuade customers to use
25 Uber rather than taxicabs. Specifically, Uber repeatedly touted false and
26 misleading advertisements regarding the purported exceptional safety of Uber,
27 while at the same time falsely disparaging the safety of taxicab rides offered by
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1 taxicab companies such as Delux Cab. For example, Uber's website boasted for
2 years that Uber has the "safest rides on the road," the Company has "the strictest
3 safety standards possible," and that the background checks for Uber drivers were
4 "rigorous" and backed by "industry-leading standards." The Company's has also
5 proclaimed "confiden[ce] that every ride on the Uber is safer than a taxi." More, in
6 order to further bolster consumers' expectations that Uber provides the safest ride
7 possible, Uber charged millions of customers a \$1 "Safe Rides Fee" per ride over
8 the span of multiple years.

9 4. Uber's repeated disparaging remarks were blatantly false and/or
10 misleading when made. As an initial matter, Uber's safety claims are not backed
11 by empirical data. In fact, as has been widely reported by various news sources,
12 there is very little reliable information available anywhere concerning the
13 frequency of safety breaches in Uber rides or taxicab rides, including with respect
14 to comparative statistics. Nonetheless, while data comparing the safety of Uber
15 verses taxicabs is not readily available, as detailed further herein, taxicab drivers
16 are typically subject to substantially more rigorous safety training and qualification
17 testing requirements than Uber drivers, including in San Diego. Given the
18 heightened requirements for taxicab drivers, taxicabs are likely the safer
19 transportation option as compared to Uber.

20 5. In any event, Uber's claims that driver background checks are more
21 rigorous than taxicab background checks are demonstrably false. For example,
22 while most cities, including San Diego, require taxicab companies to run
23 fingerprint-based background checks of their drivers through the U.S. Department
24 of Justice and Federal Bureau of Investigation systems, Uber does not. Rather,
25 potential Uber drivers are merely required to remotely provide certain personal
26 information to the Company through Uber's website, which Uber then sends to one
27 or more third-party services to purportedly perform a background check. As a
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1 result, according to a recent comprehensive and peer reviewed report (the "TNC
2 Safety Report"),¹ Uber's background checks have an astonishing estimated error
3 rate of approximately 43% compared to an estimated 1% error rate found for the
4 background checks utilized by most taxicab companies.

5 6. On December 9, 2014, District Attorneys in San Francisco and Los
6 Angeles filed a complaint against Uber in San Francisco Superior Court on behalf
7 of the People of the State of California (the "District Attorneys' Lawsuit"). The
8 District Attorneys' Lawsuit focused in large part on Uber's deception pertaining to
9 its background checks, specifically noting that "Uber's representations concerning
10 the quality of its background check process are untrue or misleading." As part of
11 the suit, which Uber ultimately settled for \$25 million, California regulators
12 uncovered evidence that Uber failed to screen out twenty-five drivers with criminal
13 records, including convictions for kidnapping and murder. Further, the Company
14 agreed to stop using terms such as "the safest ride" in its promotions.
15 Unfortunately for Delux Cab and the Class (as defined below), the damage has
16 already been done.

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18 ¹ The May 2015 report titled, "One Standard for All – Criminal Background
19 Checks for Taxicab, For-Hire, and Transportation Network Company (TNC)
20 Drivers," was prepared by several people with extensive experience in law
21 enforcement, government, law, and technology, and reviewed by an exemplary
22 panel of academics, criminalists, law enforcement officials, and security experts,
23 including: Hon. Michael A. L. Balboni, former Deputy Secretary for Public Safety
24 for New York State, former New York State Senator, and Chair of the New York
25 State Senate Committee on Veterans, Homeland Security and Military Affairs;
26 Professor William J. DiVello, former Executive Director, Office of Integrity and
27 Oversight for the District of Columbia Chief Financial Officer; Professor
28 Lawrence Kobilinsky, Professor and Chairperson of the Department of Sciences,
John Jay College of Criminal Justice, CUNY; and Professor Philip Zisman,
Executive Director of the Association of Inspectors General and former Inspector
General for the City of Yonkers.

1 request a ride. Defendant Uber serves customers in North and South America,
2 Europe, the Middle East, Africa, and Asia.

3 13. Defendant Uber USA, LLC ("Uber USA") is a Delaware corporation
4 with principal executive offices located at 1455 Market Street, 4th Floor, San
5 Francisco, California. Defendant Uber USA is a subsidiary of defendant Uber.

6 14. Defendant Rasier, LLC ("Rasier") is a Delaware corporation with
7 principal executive offices located at 1455 Market Street, 4th Floor, San Francisco,
8 California. Defendant Rasier is a wholly owned subsidiary of defendant Uber.

9 15. Defendant Rasier-CA, LLC ("Rasier-CA") a Delaware corporation
10 with principal executive offices located at 1455 Market Street, 4th Floor, San
11 Francisco, California. Defendant Rasier-CA is an affiliate of defendant Rasier and
12 a subsidiary of defendant Uber.

13 **CLASS ACTION ALLEGATIONS**

14 16. Plaintiff brings this action individually and on behalf of the following
15 class pursuant to Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil
16 Procedure:

17 All persons or entities licensed or permitted to operate taxicab
18 services in the City of San Diego, California, in the past four years
19 (the "Class").

20 17. Excluded from the Class are the defendants, any of their parent
21 companies, subsidiaries, and/or affiliates, officers, directors, legal representatives,
22 employees, co-conspirators, all governmental entities, and any judge, justice, or
23 judicial officer presiding over this matter.

24 18. This action is brought and may be properly maintained as a class
25 action. There is a well-defined community of interests in this litigation and the
26 members of the Class are easily ascertainable.

1 19. The members in the proposed Class are so numerous that individual
2 joinder of all members is impracticable, and the disposition of the claims of all
3 Class members in a single action will provide substantial benefits to the parties and
4 Court.

5 20. Questions of law and fact common to Plaintiff and the Class include,
6 but are not limited to, the following:

7 (a) whether defendants represented that Uber is safer than taxicabs;

8 (b) whether defendants represented that Uber's background checks
9 were "rigorous" and backed by "industry leading standards."

10 (c) whether defendants' representations presented false or
11 misleading description of fact, or false or misleading representation of fact, which
12 in commercial advertising or promotion, misrepresents the characteristics or
13 qualities of Uber's, Plaintiff's, or the Class' goods, services, or commercial
14 activities;

15 (d) whether those representations are likely to deceive a reasonable
16 consumer;

17 (e) whether defendants had knowledge that those representations
18 were false, deceptive, and misleading;

19 (f) whether defendants continue to disseminate those
20 representations despite knowledge that the representations are false, deceptive, and
21 misleading;

22 (g) whether defendants' representations are likely to mislead,
23 deceive, confuse, or confound consumers acting reasonably;

24 (h) whether Plaintiff and the Class were harmed by defendants'
25 false and misleading representations;

26 (i) whether defendants violated the Lanham Act, 15 U.S.C. §1125;

27 (j) whether defendants were unjustly enriched;

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1 (k) whether Plaintiff and the members of the Class are entitled to
2 actual, statutory, and punitive damages; and

3 (l) whether Plaintiff and members of the Class are entitled to
4 declaratory and injunctive relief.

5 21. Defendants engaged in a common course of conduct giving rise to the
6 legal rights sought to be enforced by Plaintiff individually and on behalf of the
7 other members of the Class. Identical statutory violations and business practices
8 and harms are involved. Individual questions, if any, are not prevalent in
9 comparison to the numerous common questions that dominate this action.

10 22. Plaintiff's claims are typical of Class members' claims in that they are
11 based on the same underlying facts, events, and circumstances relating to
12 defendants' conduct.

13 23. Plaintiff will fairly and adequately represent and protect the interests
14 of the Class, has no interests incompatible with the interests of the Class, and has
15 retained counsel competent and experienced in class action, consumer protection,
16 and false advertising litigation.

17 24. Class treatment is superior to other options for resolution of the
18 controversy because the relief sought for each Class member is small such that,
19 absent representative litigation, it would be infeasible for Class members to redress
20 the wrongs done to them.

21 25. Questions of law and fact common to the Class predominate over any
22 questions affecting only individual Class members.

23 26. As a result of the foregoing, Class treatment is appropriate.

24 **PLAINTIFF AND THE CLASS COMPETE WITH**
25 **UBER FOR CUSTOMERS**

26 27. Plaintiff and the Class are licensed to operate taxicab services in San
27 Diego County and are authorized to provide transportation services in exchange for
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1 compensation in San Diego County.

2 28. Uber operates a separate transportation network that provides
3 transportation services in exchange for compensation in many cities throughout the
4 United States and internationally. Uber launched its San Diego service in or about
5 mid-2012.

6 29. Uber is a direct competitor of Plaintiff and members of the Class, and
7 has been since the Company launched its San Diego service.

8 **UBER REPEATEDLY MISREPRESENTED THAT UBER'S SAFETY AND**
9 **BACKGROUND CHECKS ARE FAR SUPERIOR TO TAXICABS**

10 30. Plaintiff, members of the Class, and Uber all heavily rely upon
11 ensuring that customers trust their lives and personal safety to unknown drivers
12 who are often hired to pick up or drop off customers at their personal homes or
13 other personal safe havens. As detailed below, in order to induce customers to use
14 Uber rather than competing taxicab services, Uber knowingly engaged in a multi-
15 year pattern of deceit concerning the purported superior safety of Uber and the
16 Company's "industry leading" background check standards, while at the same time
17 falsely disparaging the safety and background check standards of competing
18 taxicab companies. Below are a few examples of Uber's numerous misleading
19 statements and false advertisements.

20 31. For several years and continuing through at least May 2016, Uber's
21 prominent "Safety" webpage on the Company's website represented, under the
22 tagline "SAFEST RIDES ON THE ROAD – Going the Distance to Put People
23 First," that "[w]herever you are around the world, Uber is committed to
24 connecting you to the *safest ride on the road.*" The website also boasted that Uber
25 sets "the strictest safety standards possible," and further explained that:

26 The specifics vary depending on what local governments allow, but
27 *within each city we operate, we aim to go above and beyond local*
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1 **requirements to ensure your comfort and security** – what we're doing
2 in the US is an example of our standards around the world.

3 32. Uber also repeatedly boasted to the media about the supposed superior
4 safety of Uber rides and background checks. For example, on April 24, 2014,
5 Lane Kasselmann ("Kasselmann"), Uber's Head of Communications, bragged to NBC
6 that: "***We're confident that every ride on the Uber is safer than a taxi.***"

7 33. Similarly, Uber's Senior Communications Associate, Central North
8 America, Lauren Altman, issued a statement to NBC which stated, in part, as
9 follows:

10 What I can tell you is that Uber takes passenger safety very seriously.
11 We work every day to connect riders with ***the safest rides on the road***
12 and go ***above and beyond local requirements in every city we***
13 ***operate.***

14 Uber only partners with drivers who pass an ***industry-leading***
15 screening that includes a criminal background check at the county,
16 federal, and multistate level going back as far as the law allows. We
17 also conduct ongoing reviews of drivers' motor vehicle records during
18 their time as an Uber partner.... For more information on what makes
19 ***Uber the safest rides on the road***, please see our website....

20 34. Uber's supposed "industry-leading" background checks and
21 superiority with respect to safety were again touted in an April 29, 2014 *Mashable*
22 article entitled, "Faulty Background Checks May Put UberX Passengers at Risk,
23 Report Says." Specifically, Uber's Head of Communications, Kasselmann, stated:

24 ***Uber's industry-leading background checks*** help connect consumers
25 with the ***safest ride on the road.... Our driver-partner background***
26 ***checks are more thorough than those of taxis*** in most cities and
27 include county, state and federal screens going back seven years. We
28 continue to improve and are always working hard to tighten our
policies and processes to ensure that ***Uber remains the safest***
transportation option available.

1 35. The Company's false representations continued for years. For
2 example, on April 25, 2014, Kasselmann made the following representations in a
3 blog post:

4 All Uber ridesharing and livery partners must go through a rigorous
5 background check. The three-step screening we've developed across
6 the United States, which includes county, federal and multi-state
7 checks, has *set a new standard....* We apply this comprehensive and
8 *new industry standard* consistently across all Uber products,
including UberX.

9 Screening for safe drivers is just the beginning of our safety efforts.
10 Our process includes prospective and regular checks of drivers' motor
11 vehicle records to ensure ongoing safe driving. *Unlike the taxi*
12 *industry, our background checking process and standards are*
13 *consistent across the United States and often more rigorous than*
what is required to become a taxi driver.

14 36. In order to reinforce the Company's false superior safety
15 proclamations, from about April 2014 through about March 2016, Uber charged
16 consumers using its UberX service option, the most popular and economical
17 option, a \$1 "Safe Rides Fee." After an UberX ride was completed, the "Safe
18 Rides Fee" was separately itemized on an electronic receipt sent to the consumer
19 via Uber's smartphone application and via e-mail. Next to the words "Safe Rides
20 Fee" on the receipt was a hyperlink prompting customers to learn about Uber's
21 justification for the additional \$1 "Safe Rides Fee." According to the hyperlink,
22 the "Safe Rides Fee" was used to support, among other things, Uber's "continued
23 efforts to *ensure the safest possible platform* for Uber riders and drivers, including
24 an *industry-leading background check process*, regular motor vehicle checks,
25 driver safety education, development of safety features in the app, and insurance."

1 **UBER'S REPRESENTATIONS CONCERNING THE SUPERIOR SAFETY**
2 **AND BACKGROUND CHECKS OF UBER AS COMPARED TO**
3 **TAXICABS WERE KNOWINGLY FALSE WHEN MADE**

4 **Uber's Superior Safety Claims Are Not Backed by Empirical Data**

5 37. Over the past several years, multiple journalists have unsuccessfully
6 attempted to investigate which are safer, Uber or taxicabs. For example, on March
7 3, 2015, after "[a]nother Uber driver [was] arrested for sexual assault," *The*
8 *Atlantic* published an article entitled, "Are Taxis Safer Than Uber?" Journalists
9 from *The Atlantic* contacted several police departments for various major cities and
10 found that "there's no data [available] to compare reports against Uber drivers
11 verses taxi drivers or limo drivers."

12 38. Similarly, on February 26, 2016, following a deadly shooting rampage
13 by an Uber driver in Kalamazoo, Michigan, the *Las Vegas Sun* published an article
14 entitled, "Which is Safer – Uber or a Taxi? There's No Clear Answer." According
15 to that article, "[p]olice and transportation authorities around the U.S. say they
16 know of no rigorous comparison of cabbies and Uber drivers." In fact, when the
17 *Las Vegas Sun* specifically asked Uber's own Head of Safety and Public Policy,
18 Dorothy Chou, which is safer, she dodged the question while also essentially
19 admitting that Uber was not safer than taxicabs, stating "[a]s long as we keep
20 innovating ... eventually it will definitely be safer to take a ride-sharing vehicle
21 [such as Uber]."

22 **Taxicab Licensing and Driving Requirements Are Significantly Stricter than**
23 **the Requirements to Become an Uber Driver**

24 39. As noted above, Uber touts that the Company "go[es] above and
25 beyond local requirements in every city [the Company] operate[s]." However, in
26 most cities, including San Diego, taxicab drivers are subject to significantly stricter
27 requirements than Uber drivers.

1 40. In San Diego, like in most cities in the United States, taxicab drivers
2 are required to complete safety training and qualification testing. Specifically,
3 prospective drivers must participate in a Driver Safety Training course through
4 Foundation Community Services which focuses on safety, crime reduction, and
5 city geography. After attending the safety training course, drivers are required to
6 pass two exams also administered through Foundation Community Services: one
7 focuses on driver safety while the other exam assesses the driver's knowledge of
8 city geography. Additionally, the Department of Transportation requires that all
9 taxicab drivers must be drug tested at the time of licensing as well as on an
10 ongoing random basis, and substance abuse test results are required to be submitted
11 to the San Diego Sheriff's Department at the time of application for a taxicab
12 driver's identification card.

13 41. Unlike San Diego taxicab drivers, Uber drivers are not required to
14 take any safety training or qualification testing, and are not subject to drug testing
15 as a condition of working as Uber drivers. Rather, according to the Company's
16 website, applicants are only required to be at least twenty-one years of age, use an
17 eligible four-door vehicle, and have at least one year of driving experience if over
18 twenty-three years of age or three years of driving experience if under twenty-three
19 years of age.

20 **Taxicab Background Checks Are Far Superior to Uber Background Checks**

21 42. Uber's background check process falls far behind that of most taxicab
22 companies, including Plaintiff and members of the Class. In most major cities in
23 the United States, taxicab drivers are required to pass fingerprint-based background
24 checks conducted by state or local authorities. In San Diego, the background
25 check is conducted in person through the California Department of Justice, Federal
26 Bureau of Investigation, and other local agencies.

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1 43. In stark contrast, Uber pays a private company to perform background
2 checks on applicant names and social security numbers that access public records
3 through the Internet. Uber does not even meet with prospective drivers in person.
4 Rather, the application is simply submitted online through Uber's website, and the
5 Company does not take any reasonable steps to ensure that applicants are who they
6 represent themselves to be.

7 44. Conducting thorough criminal background checks on drivers who
8 transport passengers is crucial to keeping passengers safe. Passengers are
9 frequently alone with these drivers in their vehicle, while being exhausted,
10 inebriated, or traveling in a strange city makes them even further vulnerable.

11 45. Shockingly, the TNC Safety Report found that *name-based*
12 *background checks such as those used by Uber are forty-three times more likely*
13 *to have errors than the fingerprint-based checks used by taxicab companies such*
14 *as Plaintiff and the Class.* The TNC Safety Report further notes that "[Uber's]
15 policy of relying on name checks for checking courthouse records, multi-state
16 criminal records and driving records opens [it] up to the possibility of errors and
17 perhaps to the possibility that at least 12% of their new drivers each year have [an
18 undiscovered] federal offense listed in their criminal record." Indeed, as a result of
19 Uber's inferior background checks, multiple felons have been proven time and time
20 again to be behind the wheel of Uber vehicles.

21 46. Consequently, Uber's marketing statements that its background check
22 process "leads the industry" and that riding with an Uber driver is "safer than a
23 taxi," are patently false. In fact, in January 2016, Uber agreed to pay \$28.5 million
24 to settle a consolidated class action brought on behalf of consumers who claimed,
25 among other things, that Uber's marketing of the \$1 charge as a "Safe Rides Fee"
26 constituted false advertising. Thereafter, in March 2016, Uber agreed to pay as
27 much as \$25 million as a civil penalty in the District Attorneys' Lawsuit. The
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1 District Attorneys' Lawsuit focused in large part on Uber's deception pertaining to
2 its background checks, specifically noting that "Uber's representations concerning
3 the quality of its background check process are untrue or misleading."

4 47. As part of the above-noted settlements, Uber discontinued use of the
5 term "Safe Rides Fee" and replaced it with the term "Booking Fee," which Uber
6 described as covering safety initiatives and other operational costs.

7 **COUNT I**

8 **(Against Uber for Violations of the Lanham Act, 15 U.S.C. §1125(a)(1)(B))**

9 48. Plaintiff incorporates by reference and realleges each and every
10 allegation contained above, as though fully set forth herein.

11 49. Uber's false advertising violates the Lanham Act, codified at 15
12 U.S.C. §1125(a)(1)(B), which states:

13 Any person who, on or in connection with any goods or services ...
14 uses in commerce any word, term, name, symbol, or device, or any
15 combination thereof, or any ... false or misleading description of fact,
16 or false or misleading representation of fact, which – in commercial
17 advertising or promotion, misrepresents the nature, characteristics,
18 qualities, or geographic origin of his or her or another person's goods,
19 services, or commercial activities, shall be liable in a civil action by
any person who believes that he or she is or is likely to be damaged by
such act.

20 50. As detailed herein, Uber made numerous false or misleading
21 statements concerning the supposed superior safety of its transportation services
22 and the superiority of its background checks. Uber also made numerous false or
23 misleading statements disparaging the safety and background checks of taxicab
24 services.

25 51. Uber's statements actually deceived or had the tendency to deceive a
26 substantial segment of their audience.

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