

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

VUGO, INC., DONALD DEANS, DENISE
JONES, GLOUSTER BROOKS, and
PATRICIA PAGE,

Plaintiffs,

and

MURRAY MEENTS, individually, and on
behalf of all others similarly situated,

Plaintiff-Intervenor,

v.

CITY OF CHICAGO, an Illinois municipal
corporation,

Defendant.

Case No. 17-cv-864

Hon. Elaine E. Bucklo

**DEFENDANT CITY OF CHICAGO'S
CROSS MOTION FOR SUMMARY JUDGMENT**

Defendant City of Chicago (the “City”), by its counsel, Edward N. Siskel, Corporation Counsel for the City of Chicago, hereby moves for judgment in its favor on the Amended Complaint of Plaintiffs Vugo, Inc. (“Vugo”), Donald Deans, Denise Jones, Glouster Brooks, and Patricia Page, and on the Drivers’ Complaint in Intervention of Plaintiff-Intervenor Murray Meents (together, the “Complaints”), pursuant to Federal Rule of Civil Procedure 56. In support of its motion, the City states as follows:

1. The Individual Plaintiffs and Intervenor Meents are drivers in the Transportation Network Provider (“TNP”) industry, in which TNP companies – such as Uber or Lyft – arrange for people to use their personal vehicles to transport passengers for a fee. These Plaintiffs wish to display commercial ads generated by third parties, or advertising their own business, on the exterior and interior of their vehicles – through Plaintiff Vugo’s video software or otherwise. Vugo operates a mobile media network that enables TNP drivers to show video advertisements

and other media on their tablet devices, which are mounted on their vehicles' headrests directly in front of a rear-seat passenger. The Complaints allege that the City's ordinance prohibiting commercial advertising on the exterior and interior of TNP vehicles, see Municipal Code of Chicago ("MCC") § 9-115-130 (the "Ordinance"), constitutes an unlawful restriction of commercial speech and a violation of equal protection under the federal and Illinois Constitutions.

2. Summary judgment should be granted where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). While the moving party has the burden of showing that the evidence, taken in the light most favorable to the non-moving party, demonstrates that the movant is entitled to judgment, in order to overcome that showing the non-movant must then set forth specific facts showing that there is a genuine issue for trial. See Scott v. Harris, 550 U.S. 372, 378 (2007); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986) ("[A] party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial."); Carmichael v. Village of Palatine, 605 F.3d 451, 460 (7th Cir. 2010). On cross motions for summary judgment, the Court assesses whether each movant has satisfied the requirements of Rule 56. See Laskin v. Siegel, 728 F.3d 731, 734 (7th Cir. 2013); Cont'l Cas. Co. v. Nw. Nat'l Ins. Co., 427 F.3d 1038, 1041 (7th Cir. 2005).

3. As set forth more fully in the City's Memorandum in support of this motion, incorporated as if set forth fully herein, Plaintiffs' challenge to the Ordinance's regulation of commercial speech fails. The Ordinance is subject to the intermediate judicial scrutiny prescribed by the Supreme Court in Central Hudson Gas & Electric Corp. v. Public Service

Commission of New York, 447 U.S. 557, 561 (1980). The Ordinance satisfies the Central Hudson test. The City's restriction on advertising in and on TNP vehicles directly advances the City's substantial interests in traffic safety, aesthetics, and passenger comfort by reducing visual and audio clutter that can be distracting to other drivers or pedestrians and intrusive to passengers. It also prevents TNP vehicles from having exterior adornment that could cause them to look like taxis, which serves the City's interest in maintaining taxis and TNPs as distinct classes of transportation service, and, in particular, prevents passengers on the street looking to hail a taxi from confusing a TNP vehicle for a taxi. In addition, the restriction burdens no more commercial speech than necessary because it applies precisely to the areas where allowing commercial advertising would thwart these interests.

4. Plaintiffs' equal protection claim likewise fails. Without Plaintiffs' First Amendment claim, the equal protection claim is governed by the deferential rational basis review standard, and the City has numerous rational justifications for restricting advertisements in and on ridesharing vehicles.

WHEREFORE, the City respectfully requests that the Court enter judgment in its favor on Plaintiffs' Amended Complaint and the Drivers' Complaint in Intervention pursuant to Federal Rule of Civil Procedure 56 and grant the City such further relief as the Court deems just and appropriate.

Date: October 5, 2018

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Respectfully submitted,

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By: /s/ Tara D. Kennedy
Assistant Corporation Counsel

CERTIFICATE OF SERVICE

I, Tara Kennedy, an attorney, hereby certify that on October 5, 2018, I caused the foregoing **(1) Defendant City of Chicago's Cross Motion for Summary Judgment** along with **(2) Defendant City of Chicago's Memorandum in Support of Its Cross Motion for Summary Judgment**, and **(3) Defendant City of Chicago's Local Rule 56.1(a)(3) Statement of Undisputed Material Facts** to be electronically filed with the Clerk of the United States District Court for the Northern District of Illinois using the CM/ECF system, which will send notification of such filing to all parties that have appeared in this action.

/s/ Tara D. Kennedy