

EFiled: Jan 19 2023 04:18PM EST  
Transaction ID 68884519  
Case No. 2023-0059-



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

OPERATING ENGINEERS )  
CONSTRUCTION INDUSTRY AND )  
MISCELLANEOUS PENSION FUND )  
)  
Plaintiff, )  
)  
v. )  
)  
VISA INC., )  
)  
Defendant. )

C.A. No. 2023-\_\_\_\_\_

**VERIFIED COMPLAINT PURSUANT TO 8 DEL. C. § 220  
TO COMPEL INSPECTION OF BOOKS AND RECORDS**

Plaintiff Operating Engineers Construction Industry and Miscellaneous Pension Fund (“Plaintiff”), by and through its undersigned counsel, alleges upon knowledge as to itself and its own actions and upon information and belief as to all other matters, as follows:

**NATURE OF THE ACTION**

1. Plaintiff brings this action to enforce its right to inspect certain corporate books and records of defendant Visa Inc. (“Visa” or the “Company”), a Delaware corporation, pursuant to 8 *Del. C.* § 220 (“Section 220”). Plaintiff seeks to inspect these documents to investigate possible wrongdoing and/or breaches of fiduciary duty by the board of directors (the “Board”) and officers of the Company in connection with Visa’s provision of payment processing services to companies

involved potentially illegal activities relating to the creation, distribution and possession of child pornography. Plaintiff further seeks access to certain books and records to investigate the independence and disinterestedness of Visa’ Board generally and with respect to providing payment services to companies involved in child pornography.

2. On September 19, 2022, Plaintiff served Visa with a demand (the “Demand”) (Exhibit A) to inspect certain of the Company’s books and records pursuant to Section 220. The Demand specifies, among other things, Plaintiff’s concerns that Visa’s fiduciaries may have breached their fiduciary duties by knowingly allowing the Company to provide payment processing services to companies that engage in illegal activity—trafficking in child pornography.

3. Since Plaintiff served the Demand, Plaintiff and Visa have engaged in good faith negotiation concerning the scope of the documents the Company is willing to produce, and the terms of an acceptable confidentiality agreement relating to the documents the Company will produce.

4. Negotiations regarding the terms of the confidentiality agreement reached an impasse in December 2022, and as of January 3, 2023, the Company has refused to agree to the terms of a confidentiality agreement and has not produced any documents in response to the Demand.

5. Plaintiff files this action to enforce its rights to inspect the Company's books and records.

### **JURISDICTION**

6. This Court has exclusive jurisdiction to hear and determine this action pursuant to Section 220. Visa is incorporated in Delaware and maintains a registered agent within the State of Delaware. Venue is also appropriate pursuant to Section 220.

### **THE PARTIES**

7. Plaintiff is a current Visa stockholder and has continuously been a stockholder of the Company at all times relevant herein.

8. Defendant Visa is a Delaware corporation headquartered in San Francisco, California, and has been in the business of providing payment processing services between consumers and businesses since its founding in 1958. Visa common stock is traded on the New York Stock Exchange under the symbol "V."

### **FACTUAL BACKGROUND**

#### **A. Plaintiff Has a Proper Purpose to Investigate Visa's Links to Child Pornography**

9. Visa received the Demand on September 19, 2022. As set forth more fully in the Demand, Plaintiff has a proper purpose to investigate Visa's business relationship with alleged traffickers in child pornography.

10. Non-party MindGeek S.A.R.L. (“MindGeek”) is a holding company incorporated in Luxembourg. One of MindGeek’s various subsidiaries, MG Freesites, operates various websites, including Pornhub, which host free pornography. MindGeek sells advertising space and user data from its “free” websites, including Pornhub. The more user traffic a website generates, the more advertising revenue it earns, and the more valuable the website’s user data becomes.

11. Visa’s Board and officers were well aware that MindGeek is a large, very profitable distributor of online pornography. To satisfy their fiduciary duties to the Company, Visa’s Board and officers should have ensured that sufficient due diligence was performed relating to MindGeek’s practices relating to child pornography. As detailed in the Demand, there are serious and facially credible allegations that Visa’s officers and directors failed to perform adequate due diligence, and either knew or should have known of, yet continued to facilitate, MindGeek’s potentially criminal activity involving child pornography.

12. Visa provided MindGeek with payment processing services for many years despite widespread public concern with MindGeek’s hosting of child pornography on its websites. As early as 2019, PayPal, one of Visa’s biggest competitors in the online payment processing space, ended its business relationship with MindGeek and issued a public statement acknowledging that PayPal “explicitly prohibits the use of [its] services for the sale of materials that depict criminal

behavior.”<sup>1</sup> On the heels of PayPal’s announcement, activists called for shutting down Pornhub over concerns with underage sex trafficking related to the website.<sup>2</sup>

13. On December 4, 2020, The New York Times published a detailed article describing Pornhub’s ties with child pornography, noting that “it’s possible to find hundreds of apparent child sexual abuse videos on Pornhub in 30 minutes.”<sup>3</sup> The article went on to describe how MindGeek’s business model “profits from sex videos starring young people,” and the company had grossly inadequate content moderation practices that allowed the proliferation of such videos.

14. On June 17, 2021, a woman who was sexually exploited at age 14 when someone posted naked video of her on Pornhub’s website sued both MindGeek and Visa in federal court in California. The woman alleged that MindGeek allowed child pornography videos to be uploaded, and that MindGeek monetized those illegal videos only because Visa provided payment processing services for the websites. She further alleged that Visa was aware that MindGeek’s claims regarding its efforts to prevent the posting of child pornography were wholly pretextual, and continued to process payments for MindGeek. On July 29, 2022, the district court denied Visa’s motion to dismiss the complaint, specifically finding that Visa provided

---

<sup>1</sup> Shanti Das, *PayPal Cuts Off Porn Site that Ran Child Abuse Videos*, The Times (London), Nov. 19, 2019.

<sup>2</sup> Laila Mickelwait, *Time to Shut Pornhub Down*, WASH. EXAMINER, Feb. 9, 2020.

<sup>3</sup> Nicholas Kristof, *The Children of Pornhub*, N.Y. TIMES, Dec. 4, 2020.

Mindgeek with payment processing services “with the alleged knowledge that there was a wealth of monetized child porn on MindGeek’s sites.”<sup>4</sup>

15. Plaintiff has asserted a proper purpose in the Demand. It is well established that the investigation of potential breaches of fiduciary duty and/or corporate wrongdoing are proper purposes under Section 220.

16. The conduct discussed in the Demand provides more than a credible basis to infer possible wrongdoing and/or breaches of fiduciary duty in Visa’s decision to continue to provide payment processing services to MindGeek despite Visa’s knowledge of MindGeek’s potentially illegal activities relating to child pornography.

**B. Plaintiff Served A Proper Demand**

17. On September 19, 2022, Plaintiff served the Demand on Visa. (Exhibit A).

18. Plaintiff included with the Demand a verification and documentary evidence of Plaintiff’s beneficial ownership of Visa common stock, and a signed power of attorney appointing the undersigned counsel, and any person designed by them, to act as true and lawful attorneys-in-fact for Plaintiff and as Plaintiff’s agent

---

<sup>4</sup> Order at 11, *Fleites v. MindGeek S.A.R.L.* No. 21-cv-4920 (C.D. Cal. July 29, 2022), Dkt. 166.

to act on Plaintiff's behalf regarding the examination of Visa's books and records. (Exhibit A).

19. The Demand requested that Visa allow inspection of certain specifically identified books and records regarding the subject matter described above.

20. The Demand sets forth the following proper purposes: (1) investigating possible breaches of fiduciary duties by Visa's Board and/or officers in connection with the provision of payment processing services to MindGeek; (2) investigating the independence and disinterestedness of the members of the Visa Board; and (3) determining whether to commence an action on behalf of the Company and/or its public stockholders to remedy the potential misconduct detailed herein.

21. Each of Plaintiff's purposes is proper for a Section 220 demand, and each has been recognized as a proper purpose under Delaware law. In addition, as described in the Demand, and as will be shown at trial, there is a credible basis to believe that wrongdoing occurred in connection with Visa's provision of payment processing services to MindGeek, warranting the investigation.

22. Counsel for Plaintiff and Visa met and conferred on November 10, 2022, to discuss the scope of the documents Visa was willing to produce in response to the Demand, and the terms of a confidentiality agreement governing Visa's anticipated document production in response to the Demand. Subsequently, counsel

have exchanged several draft confidentiality agreements, but have been unable to finalize an agreement.

23. On January 3, 2023, Plaintiff's counsel emailed Visa's counsel a proposed final confidentiality agreement and indicated that if Visa would not accept the terms of that agreement, Plaintiff would commence litigation to enforce its inspection rights under Section 220. Visa has rejected the January 3 confidentiality agreement.

## COUNT I

### **Demand for Inspection Pursuant to 8 *Del. C.* § 220**

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

25. Plaintiff's Demand satisfies the form and manner requirements of Section 220.

26. Plaintiff's stated purposes in making the Demand are proper under Delaware law and are directly related to Plaintiff's interest as a Visa stockholder. The requests for information and books and records are narrowly tailored to serve these stated purposes, and are necessary and essential to fulfill these purposes.

27. To date, Visa has failed to produce documents responsive to Plaintiff's Demand.



28. For the foregoing reasons, Plaintiff is entitled to a judgment directing Visa to produce to Plaintiff, or otherwise to permit Plaintiff to inspect and receive copies of, the books and records requested in the Demand.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment as follows:

- A. Entering judgment in favor of Plaintiff and against Visa;
- B. An order requiring Visa to produce to Plaintiff, or to otherwise permit the inspection and copying of each and every book and record requested by Plaintiff's Section 220 Demand;
- C. Awarding to Plaintiff the costs and disbursements of the action, including without limitation reasonable attorneys' fees, costs, and expenses; and
- D. Granting such other and further relief in Plaintiff's favor as the Court deems just and proper.

Dated: January 19, 2023

**GRANT & EISENHOFER P.A.**

*/s/ Michael J. Barry*

---

Michael J. Barry (#4368)  
Rebecca A. Musarra (#6062)  
Edward M. Lilly (#3967)  
123 Justison Street  
Wilmington, DE 19801  
(302) 622-7065

*Counsel for Plaintiff Operating  
Engineers Construction Industry and  
Miscellaneous Pension Fund*