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Transaction ID 69121075
Case No. 2023-0135-JTL



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEVEN SKLAR,)	
)	
Plaintiff,)	C.A. No. 2023-0135-JTL
)	
v.)	
)	PUBLIC VERSION OF
VISA INC.,)	Trans. ID 69076374
)	
Defendant.)	PUBLIC VERSION
)	FILED: February 9, 2023

**VERIFIED COMPLAINT PURSUANT TO
8 DELAWARE CODE § 220 TO
COMPEL INSPECTION OF BOOKS AND RECORDS**

Plaintiff, Steven Sklar (“Plaintiff”), herein alleges, upon knowledge as to himself and his own action and upon information and belief, as follows:

NATURE OF THE ACTION

1. In this action, Plaintiff seeks to enforce his rights to inspect certain corporate books and records of defendant Visa Inc. (“Visa” or the “Company”), a Delaware corporation, pursuant to title 8, section 220 of the Delaware General Corporation Law (“Section 220”). Plaintiff is a beneficial stockholder of the Company.

2. On August 10, 2022, Plaintiff sent an inspection demand to Visa (“Inspection Demand” or “Demand”).¹ The Inspection Demand complied with all

¹ A true and correct copy of the Inspection Demand is attached hereto as Exhibit A.

the form and manner requirements of Section 220.

3. In the Inspection Demand, Plaintiff stated that he wished to investigate potential wrongdoing occurring at the Company, including potential breaches of fiduciary duty. Plaintiff has serious concerns as to whether the Company was facilitating and profiting from child sexual abuse materials (“CSAM”) and whether the Company’s directors, management and employees disregarded CSAM and child pornography risks in continuing to facilitate electronic payments for MindGeek S.A.R.L. (“MindGeek”), including after compelling evidence was brought to light that MindGeek was hosting CSAM and encouraging child pornography.

4. In response to the Inspection Demand, Visa agreed to produce documents responsive to the Inspection Demand. Following the parties’ negotiation of and entry into a confidentiality agreement, Visa, on December 23, 2022, made a production of documents.

5. Upon review, Plaintiff found the production, consisting of heavily redacted board materials that make nearly no references to the CSAM controversy that embroiled the Company, to hardly be relevant or responsive to the requests in the Inspection Demand. The materials produced are so deficient that it prevents Plaintiff from carrying out the stated purposes of his Demand, including investigating whether there were breaches of fiduciary duty and potential wrongdoing by Visa’s leadership.

6. In light of this grossly deficient production, Plaintiff files this action seeking an Order that Visa make available the books and records identified in Plaintiff's Inspection Demand, described below.

THE PARTIES

7. Plaintiff is a beneficial stockholder of Visa and has been holding Visa stock continuously since 2008.

8. Defendant Visa, a Delaware corporation, is a global payments technology company, headquartered in San Francisco, which facilitates electronic funds transfers around the world, most commonly through Visa-branded credit cards, debit cards and prepaid cards.

FACTUAL BACKGROUND

9. On December 4, 2020, the New York Times published a report detailing the prevalence of child sexual abuse materials on Pornhub and other pornographic websites, owned by parent company MindGeek ("NYT Article").² Among the many disturbing case studies mentioned, the article examined the story of Serena Fleites, who was sexually exploited by her then-boyfriend who made naked videos of her

² Kristof, N., "The Children of Pornhub." New York Times, December 4, 2020. <https://www.nytimes.com/2020/12/04/opinion/sunday/pornhub-rape-trafficking.html> ("NYT Article").

from when she was 14 years old and uploaded these onto the Pornhub website;³ and the devastating effect it had on her, including multiple suicide attempts, developing a drug addiction, and becoming homeless. The article also mentioned that a petition, charging Pornhub with abetting child pornography and sex trafficking, and calling for it to be shut down, was garnering immense support with more than 2.1 million signatures received as of the date of the article.⁴ The article also noted U.S. senator Ben Sasse’s letter to Attorney General William P. Barr calling for “the Justice Department to investigate Pornhub.”⁵ By this time, PayPal Holdings Inc. (“PayPal”), one of the world’s largest financial payment processors, had completely “halt[ed] payment support” to Pornhub’s models, citing that “Pornhub has made certain business payments through PayPal without seeking our permission.”⁶ However, in contrast, Visa continued processing payments and supporting advertisements on MindGeek’s website, notwithstanding the fact that the termination of this relationship would have had a devastating effect on MindGeek’s business model and would likely force it to take significant corrective action

³ See Amended Complaint dated March 21, 2022, *Fleites v. MindGeek S.A.R.L.*, cv-21-04920-CJC (C. D. Cal.) (“*Fleites* Complaint”), ¶¶ 258-259.

⁴ <https://traffickinghubpetition.com/>; see also NYT Article.

⁵ NYT Article.

⁶ Reuters Staff, “PayPal halts payment support to PornHub models.” Reuters, November 19, 2019. <https://www.reuters.com/article/us-paypal-pornhub-idUSKBN1XO2SV>.

immediately.⁷

10. Further, as detailed in the Inspection Demand, even before the publication of the NYT Article, there was a substantial amount of negative media coverage regarding Visa’s failure to properly combat CSAM. For example, as early as February 6, 2020, Visa was listed as one of the companies that “facilitate[d], profit[ed] from, or normalize[d] sexual exploitation” on the annual “Dirty Dozen” list published by the National Center on Sexual Exploitation (the “NCOSE”).⁸ Moreover, on a conference call with anti-sex trafficking advocates who pleaded with Visa to take action, Visa’s Director of Global Brand Protection was allegedly informed of the various ways in which MindGeek was enabling and profiting from rape and trafficking women and children.⁹ The director allegedly asked the advocates to provide more information so that she could present it to others at Visa, but no action against MindGeek was taken once the information was received. Visa was also alleged to have been notified about the pervasiveness of CSAM on

⁷ Kolhatkar, S., “The Fight to Hold Pornhub Accountable.” *The New Yorker*, June 13, 2022. <https://www.newyorker.com/magazine/2022/06/20/the-fight-to-hold-pornhub-accountable>.

⁸ “Meet the 2020 Dirty Dozen List.” National Center on Sexual Exploitation, February 6, 2020. <https://endsexualexploitation.org/articles/meet-the-2020-dirty-dozen-list/>. In fact, Visa has remained the subject of criticism in 2021 and 2022. See <https://endsexualexploitation.org/visa/>.

⁹ *Fleites* Complaint, ¶ 291.

MindGeek’s websites through a number of emails sent throughout 2020, which implored Visa to terminate its relationship with MindGeek,¹⁰ particularly by disabling the use of Visa cards to make payments on MindGeek’s websites. On July 15, 2020, in response to this campaign, Visa announced that it would continue doing business with MindGeek, stating that “[w]e believe that any truly effective solution must come from thoughtful changes to laws and regulations by those elected to establish the laws of our country” and that “maintaining a neutral stance under the law is vital for the free flow of commerce.”¹¹

11. However, on December 10, 2020, in response to the NYT Article, Visa and its competitor Mastercard announced that they would stop processing payments on Pornhub.¹² Mastercard, for its part, announced that it would be “permanently ending [MindGeek’s] use of its cards” as its “investigation confirmed the presence of illegal content on the platform.”¹³ Visa, however, announced that it would only be “suspending payments until an investigation was completed.”¹⁴ On December

¹⁰ See *Fleites* Complaint, ¶ 295.

¹¹ *Fleites* Complaint, ¶ 297.

¹² See Hussain, N., & Vengattil. M., “Mastercard, Visa halt payments on Pornhub over allegations of child sex-abuse content.” Reuters, December 10, 2020. <https://www.reuters.com/article/us-pornhub-mastercard/mastercard-visa-halt-payments-on-pornhub-over-allegations-of-child-sex-abuse-content-idUSKBN28K30C>.

¹³ *Id.*

¹⁴ *Id.*

23, 2020, Visa announced that, purportedly “following a thorough review,” it would “reinstate acceptance privileges for MindGeek sites that offer professionally produced adult studio content that is subject to requirements designed to ensure compliance with the law.”¹⁵ This reinstatement would apply, among other things, to TrafficJunky, MindGeek’s internal advertising business, which distributes “the lucrative ads” found on Pornhub videos, including those that potentially contain CSAM.¹⁶

12. On June 17, 2021, Serena Fleites sued MindGeek and Visa, among other co-defendants in the United States District Court for the Central District of California. In her amended complaint dated March 21, 2022, Fleites alleged violations of sex trafficking pursuant to 18 U.S.C. §§ 1591 and 1595, as well as the receipt, transport, and possession of child pornography in violation of 18 U.S.C. §§

¹⁵ Goodwin, J., “Visa continues its ban on Pornhub but will allow payments on some of its parent company's sites.” CNN, December 23, 2020. <https://www.cnn.com/2020/12/23/business/visa-pornhub-mindgeek-ban/index.html>.

¹⁶ Kolhatkar, S., “The Fight to Hold Pornhub Accountable.” The New Yorker, June 13, 2022. <https://www.newyorker.com/magazine/2022/06/20/the-fight-to-hold-pornhub-accountable>. (“Mickelwait went on the Web site for TrafficJunky, MindGeek’s online advertising business, and noticed that the Visa and Mastercard logos had been removed from the site. But when she initiated a chat with a sales representative, posing as a prospective advertiser, the representative told her that TrafficJunky could still accept ad purchases using all major credit cards.”)

2252, 2252A, and 2255, among other listed violations.¹⁷ The complaint alleges that Visa “knowingly profit[ed]” from MindGeek’s illegal CSAM, and “was uniquely suited to stop this exploitation but chose instead to participate in the profiteering.”¹⁸ Further, the complaint alleges that Visa’s “participation was deliberate, informed, and based on a full understanding of MindGeek’s active and widespread incorporation of trafficked and CSAM content in its business model.”¹⁹ The complaint additionally states that, notwithstanding its temporary suspension of MindGeek in 2020, “Visa reembraced MindGeek and began processing payments again” despite “knowing that these revenue streams are likewise permeated with trafficking.”²⁰ Fleites also contrasted Mastercard’s response to allegations of child pornography to Visa’s: “Visa’s investigation revealed the same thing, and more, yet it refused to also publicly acknowledge this fact because it wanted to continue doing business with, and profiting from, MindGeek’s trafficking venture.”²¹

13. On July 29, 2022, United States District Court Judge Cormac J. Carney, denied in substantial part Visa’s motion to dismiss, ruling that the Plaintiff’s pleading had sufficiently demonstrated that Visa had engaged in a conspiracy with

¹⁷ *Fleites* Complaint at p. 1.

¹⁸ *Fleites* Complaint, ¶ 14.

¹⁹ *Id.*

²⁰ *Fleites* Complaint, ¶ 303.

²¹ *Fleites* Complaint, ¶ 302.

MindGeek to profit off child pornography (the “MTD Decision”).²² The MTD Decision held that “Visa – with knowledge of what was being monetized and authority to withhold the means of monetization – bears direct responsibility (along with MindGeek) for MindGeek’s monetization of child porn, and in turn the monetization of Plaintiff’s videos.”²³ Judge Carney further stated that “Visa is not alleged to have simply created an incentive to commit a crime, it is alleged to have knowingly provided the tool used to complete a crime.”²⁴ Visa, the Court found, “is simply being asked to refrain from offering the tool with which a known alleged criminal entity performs its crimes. That is not a tall order and does not spell out an existential threat to the financial industry.”²⁵

14. The next day *i.e.*, July 30, 2022, Bill Ackman, the CEO of the hedge fund Pershing Square Capital Management, L.P., responding to the MTD decision, tweeted that “Visa’s conduct here [was] inexcusable” and was “likely to cause the company incalculable financial and reputation damage and create serious Caremark personal liability and potential criminal liability for the board.”²⁶ He also accused

²² *Fleites v. MindGeek S.A.R.L.*, No. cv 21-04920-CJC (ADSx), 2022 WL 1314035 (C.D. Cal. Feb. 10, 2022).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ <https://twitter.com/BillAckman/status/1553510104200351746>.

Visa of having earlier banned the use of its cards for “BTC” (business to consumer) payments on the free pornography sites, where anyone can upload content, yet quietly re-authorized its cards for B2B, “that is, the purchase of ads on these same tube sites and for subscription to “premium” content, together about 90% of the business.”²⁷

15. On August 4, 2022, in response to the MTD decision, Visa’s CEO Alfred Kelly Jr. announced that Visa would be suspending TrafficJunky’s Visa acceptance privileges. Mr. Kelly clarified that as a result of this suspension, “Visa cards will not be able to be used to purchase advertising on any sites including Pornhub or other MindGeek affiliated sites.”²⁸

A. Plaintiff Has Shown Proper Purpose to Seek Inspection of Visa’s Book and Records

16. On August 10, 2022, Plaintiff sent an Inspection Demand to Visa providing a detailed description of the events discussed above and explained that he was investigating:

- a. Potential wrongdoing, mismanagement, breach of fiduciary duty, and/or lack of oversight by the members of the Company’s Board of Directors, management, and/or other employees in connection with the above-mentioned electronic payments practices of the Company and its business relationships with MindGeek, and other entities alleged to have profited off child pornography;

²⁷ <https://twitter.com/billackman/status/1553510116196028418>.

²⁸ <https://usa.visa.com/visa-everywhere/blog/bdp/2022/08/03/we-do-not-1659542369610.html>.

- b. Breach of fiduciary duties by the Board, management and/or employees for disregarding CSAM and child pornography risks in facilitating electronic payments for MindGeek; thereby violating the Company's human rights policy;
- c. Breach of fiduciary duties by the Board, management and/or employees for failure to use reasonable oversight in suspending payment support to potentially exploitative websites containing CSAM and child pornography;
- d. The independence and disinterest of the Board, and whether a pre-suit demand is necessary or would be excused prior to commencing any derivative action on behalf of the Company, if appropriate;
- e. Whether the Company's directors are suitable to continue serving in this role, and whether stockholders should commence a proxy contest to remove them from the Board; and
- f. Whether any stockholder campaigns to agitate for changes in management policies related to Visa's affiliations with MindGeek and related companies are advisable.²⁹

17. The Inspection Demand stated that the demanded books and records were needed in order for Plaintiff to evaluate whether to seek derivative relief on behalf of the Company, in the event the members of the Company's Board of Directors, management or employees engaged in wrongdoing.

18. Plaintiff demanded to inspect the following categories of documents:

1. All Board Materials concerning the above-mentioned electronic payment practices of Visa to MindGeek and other pornography companies.
2. All Board Materials concerning Visa's activities that provide payment or financial services to MindGeek or other companies that are alleged to be financing or otherwise producing exploitative CSAM and child pornography content.

²⁹ See Inspection Demand at pp. 7-8.

3. All Board Materials discussing the Company's dealings with MindGeek in the last five years.
4. All Board Materials and documents reflecting management and/or Board discussions concerning the December 4, 2020, NYT Article referenced above.
5. All Board Materials discussing investigations into, or compliance with, the Company's human rights policy as it relates to its processing of electronic payments for MindGeek or other pornography companies.
6. Documents sufficient to identify the total value of Visa's fees and/or profits received from the Company's dealings with MindGeek in the last five years.
7. Documents sufficient to identify all MindGeek and other pornographic companies who are clients of Visa and the total revenues received by Visa from each of these clients in the last five years.
8. All Board Materials, documents, memoranda, reports, or analyses prepared within the Company discussing actions taken or to be taken by Visa to address MindGeek's alleged involvement in disseminating child pornography, including any actions taken or to be taken in connection with the suspended payment period announced on or about December 10, 2020
9. All Board Materials documents, memoranda, reports, or analyses prepared within the Company concerning Visa's decision to "reinstate acceptance privileges for MindGeek sites" announced on December 23, 2020.
10. All Board Materials discussing the possibility of the Company or Company officials or employees being prosecuted or being subject to regulatory or other civil liability from profiting or otherwise facilitating electronic payments supporting exploitative CSAM and child pornography content.

11. All board materials concerning communications between Visa and MindGeek or MindGeek-associated companies in the last five years.

12. Documents sufficient to identify the various committees or persons within the Company responsible to oversee client electronic payment support and human rights committee review.

13. Documents sufficient to reflect any relationship, either of a social, familial, business or professional nature, between, on the one hand, any member of the Visa Board or management, and, on the other hand, any person or entity affiliated with MindGeek.

14. Documents sufficient to identify any internal investigation/s carried out with respect to or in response to the NYT article or suspending payment support to MindGeek or MindGeek-associated companies, including any internal investigation reports and accompanying exhibits.

15. All Documents presented to the Board concerning the investigations identified above.

16. All responses of all Visa directors to all annual director questionnaires for the years 2018, 2019, 2020, 2021, and 2022.

17. All Documents provided to any other stockholder of Visa seeking books and records concerning the facts described above and documents sufficient to identify such stockholders and their counsel.

B. Plaintiff Has Served a Proper Demand

19. Plaintiff complied fully with all requirements under Section 220 concerning the form and manner of making a demand for inspection of Visa's books and records, including that they were accompanied by an Authorization to Act and

proof of Plaintiff’s current ownership of Visa stock.³⁰

C. Visa’s Response to the Inspection Demand

20. On September 23, 2022, Visa responded to the Inspection Demand by stating, among other things, that “[t]he Demand Letter [did] not establish a proper purpose” because it allegedly failed to “proffer even a scintilla of evidence . . . that the board failed to oversee management or ignored red flags of trouble.”

21. Visa’s response further stated that Plaintiff’s requests were “overbroad and imprecise” but that “Visa [was] willing to discuss potentially producing...a targeted set of materials responsive to... [the] demand.”

22. The Parties then negotiated a confidentiality agreement, which was executed on December 7, 2022.

23. On December 23, 2022, Visa made a document production comprising of 1,446 pages of [REDACTED] (“220 Document Production”).³¹

24. The documents, as presented, leave Plaintiff with no additional substantive information than he already had to further his investigation. [REDACTED]

³⁰ See Exhibit A, pp. 12-17.

³¹ For context, there are 1,135 instances of redactions for “non-responsiveness” in a 1,446-page production. Interestingly, there are no redactions for “attorney-client privilege.”

[REDACTED] all [REDACTED]

[REDACTED] annexed to the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Below is the relevant excerpt:

[REDACTED]

- [REDACTED]

[*content of footnote:*] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

25. Plaintiff has sufficient reason to believe, supported by Visa’s own production, that there exists considerably more [REDACTED] relevant to Plaintiff’s Demand. For example, Visa has publicly touted the “thorough[ness]” of its investigations into its alleged facilitation of child pornography, which ostensibly formed the basis of Visa’s decision to reinstate MindGeek’s payment processing privileges.³² However, [REDACTED]
[REDACTED]
[REDACTED] t.

26. Another example can be found in an interview from earlier this week between Time Magazine and Al Kelly, who stepped down as Visa’s CEO on February 1, 2023, to serve as executive chairman of its Board.³³ When Kelly was asked whether he had “looked into claims” of those like Serena Fleites, his response was the Visa did not “have a relationship with Pornhub, or Mindgeek,” but only through those companies’ “acquirers [the institutions that connect merchants to credit card companies] and they have looked into it and have attested to us that they

³² See supra ¶ 11.

³³ See Luscombe, B., “Russia, Guns and Pornhub: How Outgoing Visa CEO Al Kelly Navigated His Final Stretch in the Top Spot.” The Time Magazine, January 31, 2023. <https://time.com/6250487/visa-ceo-al-kelly-leadership-brief/> (“Al Kelly Time Interview”).

have not identified any cases [on Pornhub or Mindgeek] where there is an issue.”³⁴

[REDACTED]

[REDACTED]³⁵

27. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³⁶

CAUSE OF ACTION

(Demand for Inspection Pursuant to 8 Delaware Code Section 220)

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

29. Plaintiff made a written demand on Visa for the inspection of books, records, and documents set forth in the Inspection Demand.

³⁴ See Al Kelly Time Interview. The brackets above are in the original quotation.

³⁵ During the Time Interview, Kelly also made the remarkable admission that “I haven’t read the Nick Kristof article [i.e., the NYT Article] so I can’t make a judgment [about it].” When pressed about the issues raised in the NYT Article, Kelly stated: “I run a company. So I leave my personal feelings to myself. We’re not moral arbiters. We’re not lawmakers, we follow the law of the countries in which we do business.” *Id.*

³⁶ To be clear, Visa’s production is deficient in many other respects, aside from the reasons mentioned in this and the immediately preceding paragraphs.

30. Plaintiff has complied fully with all requirements under Section 220 with respect to the form and manner of making a demand for inspection of Visa's books, records, and documents.

31. Plaintiff's Inspection Demand is for a proper purpose.

32. Upon a review of Visa's 220 Document Production, Plaintiff found that the materials were not responsive to his Inspection Demand.

33. Visa's production is plainly inadequate under Delaware law.

34. By reason of the foregoing and pursuant to Section 220, Plaintiff is entitled to an Order permitting him to inspect the books and records demanded in the Inspection Demands and herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment in his favor and prays for relief as follows:

- A. That the Court summarily order Visa to produce to Plaintiff and his agents the books and records requested in his Inspection Demand;
- B. That the Court award Plaintiff his costs and expenses, including reasonable attorneys' fees, in connection with this action; and

C. That Plaintiff be awarded such other and further relief as is just.

Dated: February 6, 2023

COOCH & TAYLOR, P.A.

PUBLIC VERSION

FILED: February 9, 2023

/s/ Carmella P. Keener

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