

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

2014 DEC - 8 P 3:10

Alexandria Division

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

DATACELL EHF.,

Plaintiff,

v.

VISA INC., VISA EUROPE LTD., and  
MASTERCARD INCORPORATED,

Defendants.

) Civil Action No.

1:14cv1658

GBL/TCB

COMPLAINT

For its complaint against defendants VISA Inc., VISA Europe Ltd. and MasterCard Incorporated, plaintiff DataCell ehf. states as follows:

The Parties and Jurisdiction

1. Plaintiff DataCell ehf. ("DataCell") is a closely-held corporation organized under the laws of and having its principal place of business in the Republic of Iceland.
2. Defendant VISA Inc. ("VISA") is a corporation organized under the laws of the State of Delaware, having its principal place of business in the State of California.
3. Defendant VISA Europe Limited ("VISA Europe") is a corporation organized under the laws of England and Wales, having its principal place of business in the United Kingdom of Great Britain and Northern Ireland, and is an affiliate of defendant VISA, Inc.

4. Defendant MasterCard Incorporated (“MasterCard”) is a corporation organized under the laws of the State of Delaware, having its principal place of business in the State of New York.

5. The amount in controversy exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1367.

#### FACTS

7. DataCell is an Icelandic closely-held corporation, which provides a variety of services to, among others, Sunshine Press Productions, ehf. (“Sunshine Press”). Its services to its customers include server hosting and technical support.

8. Sunshine Press is a not-for-profit media organization, which operates a website known as Wikileaks with a worldwide audience, which includes United States citizens, whose goal is to bring important news and information to the public by providing a means for sources to leak information to journalists.

9. All of Sunshine Press’s funding comes from public donations, of which a significant portion is paid via credit cards, specifically credit cards issued as VISA and MasterCard cards.

10. In October 2010, Data Cell and Sunshine Press jointly entered into an arrangement with PBS International A/S of Denmark (“PBS/Teller”) pursuant

to which PBS/Teller agreed to provide acquiring services for credit card transactions to DataCell and Sunshine Press through its licensee, Korta, in Iceland.

A translated version of the PBS/Teller Contract is attached as Exhibit A.

11. In November 2010, Sunshine Press coordinated with various other media organizations to release United States Department of State diplomatic cables, many of which proved embarrassing to the United States government.

12. The release of those cables angered a great many people in the United States government, including Joseph Lieberman, who was then a United States Senator from the State of Connecticut and the Chairman of the Senate Committee on Homeland Security & Governmental Affairs, and Peter King, was then and remains a member of the United States House of Representatives, representing the 2<sup>nd</sup> District in the State of New York, and the Chairman of the House Committee on Homeland Security.

13. Lieberman publically called for any company or organization providing services to Sunshine Press immediately to cease any business relationship with it.

14. King requested that Sunshine Press be placed on the terrorist organization list and that it be blacklisted from doing any business with American companies.

15. To punish Sunshine Press and try to put it out of business as retribution for disclosure of the State Department cables, Lieberman and King instructed their respective staffs to contact defendant VISA and defendant MasterCard and demand that they block individuals from donating money to Sunshine

Press. The efforts of the staffs of Lieberman and King were coordinated and were successful.

16. On August 25, 2011 MasterCard admitted in a letter from its counsel to the European Commission that Lieberman's and King's staffs contacted it regarding Sunshine Press.

17. On December 7, 2010, defendant VISA Europe, at the direction of defendant VISA, instructed PBS/Teller immediately to suspend the processing of any VISA payments for DataCell, because of its association with Sunshine Press. On December 7, 2010, defendant MasterCard also instructed PBS/Teller to immediately suspend processing any MasterCard payments for the benefit of DataCell.

18. The suspension began the next day, December 8, 2010, after which PBS/Teller never provided acquiring services to DataCell and Sunshine Press again.

19. On June 15, 2011, DataCell opened a merchant processing account with Valitor, an Icelandic company that provides credit card processing services.

20. Valitor is VISA's and MasterCard's licensee in Iceland.

21. On July 8, 2011, Valitor stopped all credit card processing for DataCell, because of its association with Sunshine Press, after being contacted by VISA and MasterCard.

**COUNT I**  
**(Violation of the Sherman Act, 15 U.S.C. § 1)**

22. Plaintiff incorporates paragraphs 1 through 21 by reference.

23. The defendants successfully conspired with each other, at the insistence of Senator Lieberman and Congressman King, to prevent DataCell from receiving any payments using their credit cards by instructing PBS/Teller and Valitor to cease providing services to Sunshine Press, which they did.

24. In 2010, defendant VISA Europe had 67.8% share of the payment card market while defendant MasterCard had 27.7% share of the payment card market.

26. Teller and Valitor are a part of the downstream market for acquiring services for credit card companies.

27. DataCell is a consumer that utilizes both the credit card market and the market for acquiring services.

28. The defendants did not have a legitimate economic reason to prevent credit card payments to DataCell.

29. The defendants' blockade of credit card payments to DataCell, because of its association with Sunshine Press, injured the media market by suppressing the market place of ideas.

30. As a result of this violation of the Sherman Act, DataCell was damaged.  
WHEREFORE, DataCell prays judgment as hereinafter set forth.

**COUNT II**  
**(Tortious Interference with Business Expectancies and Contract)**

31. Plaintiff incorporates paragraphs 1 through 30 by reference.

32. Sunshine Press received donations via VISA and MasterCard through a chain of contractual relationships that included PBS/Teller. Through its relationship and contract with Sunshine Press, DataCell was entitled to five percent of these donations.

33. The defendants knew of the existence of the relationships that DataCell and Sunshine Press had with PBS/Teller and knew that, if they instructed PBS/Teller to stop processing VISA and MasterCard payments for Sunshine Press, financial donations to Sunshine Press would be effectively stopped.

34. The defendants nevertheless instructed PBS/Teller to stop processing payments for the benefit of Sunshine Press and DataCell, without any legitimate reason to do so.

35. As a result of the interference, DataCell was damaged.

WHEREFORE, DataCell prays judgment as hereinafter set forth.

**COUNT III**  
**(Violation of Virginia Antitrust Act, Va. Code § 59.1-9.12(b))**

36. Plaintiff incorporates paragraphs 1 through 35 by reference.

37. The defendants conspired to shut Sunshine Press out of the media market by instructing PBS/Teller to stop providing acquiring services to Sunshine Press.

38. Consequently, Virginians were unable to use credit cards to pay DataCell and Sunshine Press.

39. As a result of the defendants' conspiracy, DataCell was damaged.

WHEREFORE, DataCell prays judgment as hereinafter set forth.

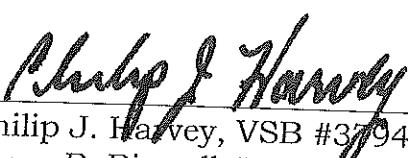
**COUNT IV**  
**(Civil Conspiracy)**

40. Plaintiff incorporates paragraphs 1 through 39 by reference.
41. The defendants conspired with each other, Lieberman, and King to tortiously interfere with DataCell's economic advantage.
42. As a result of this conspiracy, DataCell was damaged.

WHEREFORE, DataCell requests that this Court (1) enter judgment in an amount to be proven at trial in excess of Five Million (\$5,000,000.00), jointly and severally, against VISA, Inc., VISA Europe Ltd., and MasterCard Incorporated, trebled; (2) award DataCell its costs and fees; and (3) grant such further relief as is just and equitable.

Dated: December 8, 2014

HARVEY & BINNALL, PLLC

  
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*Counsel for Plaintiff DataCell ehf.*

PBS International A/S

3 6



VISA

VISA



ÞJÓNUSTAN

Name: Datacell ehf. Representative: Ólafur Sigurvinsson  
Alternative Name: Sunshine Press ID No. of Representative: 270764-2159  
Reg. No.: 460709-0160 Telephone / Fax: 5124400  
Address: Skúlagata 19 E-mail: afink@datacell.com  
Postal Code and City: 101 Reykjavík E-mail for Statements: same  
Type of Business: Datacenter Bank Account No.: 0301-26-054073

(Hereinafter referred to as the Merchant)

EUR: IS6303 0138 7189 7146 0709 0160  
SWIFT: ESJAISRE

And Kortathþjóustan ehf.  
Skipholt 50b  
105 Reykjavík, Iceland  
Reg. No. 4306023650

together with PBS International A/S  
Lautrupbærg 10,  
2750 Ballerup, Denmark  
CVR No. 41 13 61 11

Have today entered into a contract on acquiring services by PBS International of MasterCard, Visa, Visa Electron and JCB card transactions with the Merchant with the assistance of Kortathþjóustan.

This contract is accompanied by the following annexes (see [www.korta.is](http://www.korta.is)):

1. General Rules for the acceptance of payments with international payment cards, July 2002 (Eurocard / Mastercard, Visa, Visa Electron and JCB) (hereinafter referred to as the General Rules)
2. Procedures for accepting cards
3. Rules applicable to online commerce (Additional Rules for Online Merchants)
4. Services rendered by Kortathþjóustan in respect of card transactions.

The annexes form an integral part of the Contract.

Authorisation:

The Merchant must obtain an authorisation for all card payments above the following floor limits:  
Retail: ISK 15.000      Restaurants: ISK 12.000

Prices:

POS service charge: 2.80% for MasterCard, VISA, JCB and foreign VISA Electron card transactions

POS service charge: 0.60%, minimum 10 ISK and maximum 220 ISK for VISA Electron card payments

Internet / MOTO service charge: 2.80% for MasterCard, VISA and JCB (leave blank if not used)

The PBS service charge covers:

- Complete acquiring of MasterCard, Visa, Visa Electron and JCB
- Direct connection authorisation of all transactions 24 hours a day, 365 days a year
- Manual authorisation as a back-up when PBS International direct connection authorisation is not available
- Authorisation for the currency of the transactions
- Daily settlement of transactions from PBS International
- Payment in ISK (Icelandic crowns) into the Merchant's account
- Settlement overview sent via e-mail
- Settlement Report (with decimal-commas) sent via e-mail
- Customer services in English 24 hours a day, 365 days a year

Additional charges

- Retrieval Charge DKK 250,50 for each retrieval claim. The Charge is not collected if the objections made by the cardholders are justified.



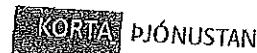
PBS International A/S



VISA

VISA

JCB



**Settlement**

Settlement shall take place within two business days from the time PBS International receives the transactions, provided that PBS International receives and confirms reception not later than at 22.00 hours GMT winter time from October to March and not later than 21.00 hours GMT summer time from March to October according to the following table:

Number of Transactions	Settlement statement	Settlement
Tuesday	Wednesday	Thursday
Wednesday	Thursday	Friday
Thursday	Friday	Monday
Friday	Saturday	Monday
Saturday	Tuesday	Wednesday
Sunday	Tuesday	Wednesday
Monday	Tuesday	Wednesday

Settlements will only be executed on banking days in Denmark, which are all the days of the week except Sunday, holidays (such as Easter, Pentecost and Christmas) 24 December and 5 June. The settlement is carried out as a domestic transfer to the Merchant's bank account in Iceland.

PBS International sends a settlement report with detailed information on transactions, retrievals, charges etc. in a report using decimal-commas to an e-mail address provided by the Merchant.

**Service provider and processor:**

Kortathjonustan ehf. Skipholti 50b, 105 Reykjavik, Iceland – is the service provider and processor pursuant to Annex 4 as regards acquiring, data processing, direct authorisations and transmittal of transactions to PBS International. Kortathjonustan and the Merchant will receive the settlement report in English from PBS International. Kortathjonustan will provide the Merchant with an settlement overview in Icelandic. All payments according to the settlement report will come directly from PBS International.

Kortathjonustan will be the Merchant's local service provider. That service will be provided over/through the service telephone number and an e-mail address. The service is comprised of information on daily transmitted of transactions to Kortathjonustan and on settlements where Kortathjonustan will answer queries in connection with the transmittal of and settlement of transactions, including information on amounts of and dates of transactions. PBS International will provide back-up services, i.e. services to the customer in English 24 hours a day, 365 days a year and a telephone service regarding transactions and settlements as set out below.

[table with contact information]

**Responsibility for relationship with Merchant:**

PBS International is fully responsible for and controls the relationship/ communications with the Merchant, including the services to be provided by Kortathjonustan to the Merchant.

Iceland, 18.10.10

Ballerup

Iceland

[signature]

Merchant

[signature]

Kortathjonustan

Reykjavik, 28.9.2011

Certified translation

Ingvar H. Eggertsson

*Ingvar H. Eggertsson*