



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JING ZHAO, )  
 )  
 Plaintiff, )  
 ) Civil Action No. \_\_\_\_\_  
 v. )  
 )  
 YAHOO! INC., )  
 )  
 Defendants. )

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

Jing Zhao (“Plaintiff”) brings this action against Yahoo! Inc. (“Yahoo!” or the “Company”) seeking relief under 8 *Del. C.* § 220 (“Section 220”), and for his complaint alleges upon knowledge as to himself and otherwise upon information and belief as follows:

1. In this action, Plaintiff seeks to enforce his right to inspect certain corporate books and records of Yahoo! pursuant to Section 220 of the Delaware General Corporation Law.
2. At all times relevant to this action, Yahoo! was and is a Delaware corporation with its principal place of business located at 701 First Avenue, Sunnyvale, CA 94089.
3. At all times relevant to this action, Plaintiff was, and continues to be, a beneficial holder of Company common stock. Additionally, Plaintiff has been, and remains, an active, interested, and committed shareholder in the Company since July 13, 2004.

4. On November 18, 2011, Plaintiff's counsel, as permitted by statute, sent a demand letter on Plaintiff's behalf to Yahoo! (the "Demand Letter")<sup>1</sup> (attached hereto as Exhibit A), at Yahoo!'s principal place of business, demanding, pursuant to Section 220, the right to inspect and copy certain books and records of the Company. Attached to the Demand Letter was a true and correct copy of a Limited Power of Attorney, executed by Plaintiff, authorizing Plaintiff's counsel to make the demand. Plaintiff's counsel also attached a true and correct copy of the Plaintiff's most recent brokerage account statement to the Demand Letter as proof of Plaintiff's beneficial ownership of Company stock.

5. The Demand Letter was signed under oath by Plaintiff, and was sent to Yahoo!'s corporate headquarters via United Parcel Service ("UPS"). The Company received the Demand Letter on November 21, 2011. The UPS tracking information for the Demand Letter indicates that it was received and signed for by "Gonzales" at 9:08 a.m. on November 21, 2011. Pursuant to Section 220, Plaintiff demanded to inspect and copy certain books and records of the Company, including the following:

- A. All Board Materials<sup>2</sup> concerning the establishment and the operations of the Yahoo! Human Rights Fund a.k.a. Yahoo! Irrevocable Human Rights Trust (the "Fund").

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<sup>1</sup> Plaintiff sent an initial demand letter on November 17, 2011. Exhibit B. The Demand Letter was an amendment to the November 17, 2011 initial demand letter. *See* Exhibit A.

<sup>2</sup> The term "Board Materials" was defined as all documents concerning, related to, provided at, considered at, discussed at, or prepared or disseminated in connection with any meeting of the Company's Board of Directors or any regular or specially created committee thereof, including all presentations, board packages, recordings, agendas, summaries, memoranda, transcripts, notes, minutes of meetings, drafts of minutes of meetings, exhibits distributed at meetings, summaries of meetings, or resolutions.

- B. All Board Materials and Company materials concerning Harry Hongda Wu's, the Laogai Research Institute's, and the Fund's involvement with Yahoo! or any entity related to Yahoo! including but not limited to communications received from Tienchi Liao, Harry Wu's principal assistant at the Laogai Research Foundation, and any responses made to those communications and/or internal documents related to the subject matter of those communications, providing specific details to Yahoo! concerning alleged misappropriations of funds and other fraudulent and unlawful or unethical practices in the handling of the Fund grants and accounts, and also including but not limited to any documents describing or dealing with the handling, resolution and negotiation conducted by Harry Wu and Yahoo! regarding requests for assistance made by Jiang Lijun and Li Zhi to Yahoo! and to the Fund during the period of 2008-2009.
- C. All legal documents, memoranda of agreement, and notes and records produced, used or maintained by Yahoo! officials and/or staff members, including those of Yahoo! CEO Jerry Yang, related to the establishment, funding and operation of the Fund. This item includes all memoranda and legal documents associated with the establishment and funding of the Fund, and the role that Yahoo! and/or Yahoo! officials and staff members play in the operation and supervision of the Fund, including participation with the Fund's Advisory Board.
- D. All notes, records, memoranda and documents prepared by or for, or in the possession of, Yahoo! officials and staff members associated with or involved in any way with the Advisory Board of the Fund, or with the decisions and actions taken by the Fund, including negotiations and decisions regarding the provision or granting of assistance by the Fund to applicants or recipients applying to the Fund for assistance, and specifically including all records, notes and memoranda of Michael Samway, Vice-President and Deputy General Counsel of Yahoo! and Yahoo!'s representative on the Yahoo! Human Rights Fund Board related to the operations, decisions and activities of the Fund, Harry Wu, and the Laogai Research Foundation, and any questions or issues that have been raised concerning the activities, structure, supervision and direction of the Fund, and Harry Wu's role in the Fund's operations.
- E. All notes, documents, records and reports of the Yahoo! Board members and Yahoo! officials and staff members, relating to issues

associated with the alleged mistreatment and fraudulent actions by Harry Wu affecting potential and actual recipients of assistance from the Fund, including alleged payments to Harry Wu and/or the Laogai Research Foundation by Fund beneficiaries; the alleged misappropriation of Fund resources for the personal gain of Harry Wu and/or the Laogai Research Foundation; the payment from the assets of the Fund of a life insurance annuity for Harry Wu; the payment of salaries to Harry Wu and to his wife; and the purchase with Fund assets of real estate property in Washington, D.C. or other locations in the name of Harry Wu and/or the Laogai Research Foundation.

- F. All notes, documents and records relating to the role played by Yahoo! Directors, officials and staff members in the operation of the Fund, and in the decision making process associated with grants and awards made by the Fund to intended beneficiaries in China, including the handling of the cases involving Jiang Lijun and Li Zhi that involved a grant recommendation by the Fund that was not awarded by Harry Wu.
  - G. All notes, documents and records relating to the procedures to be followed in how decisions regarding grants of awards made by the Fund are determined, including the role of the Fund's Advisory Board in this process.
  - H. All notes, documents and records relating to the procedures to be followed, and actual procedures taken, regarding how taxes were to be paid and were paid in connection with the establishment of the Fund as part of the settlement agreement in *Wang v. YAHOO!, Inc., et. al.*, No. 07-02151 (N.D. Ca.), and how tax obligations were handled regarding compensation provided by the Fund to Harry Wu and to the Laogai Research Institute.
6. The Demand Letter stated the Plaintiff's desire to inspect the documents for the following legitimate and proper purposes, reasonably related to Plaintiff's interests as a stockholder of Yahoo!:
- A. To investigate potential wrongdoing, mismanagement, and breaches of fiduciary duties by the members of the Company's Board of Directors or others in connection with the events, circumstances, and transactions described above;

- B. To assess the ability of the Company's Board of Directors to impartially consider a demand for action (including for permission to file a derivative lawsuit on the Company's behalf) related to the items described in this demand; and
  - C. To take appropriate action in the event the members of the Company's Board of Directors did not properly discharge their fiduciary duties, including the preparation and filing of a shareholder derivative lawsuit, if appropriate.
7. All of the documents identified in the Demand Letter are essential for the purposes stated in Paragraph 6 above.
8. The purpose of the Demand Letter is reasonably related to Plaintiff's interest as a stockholder of the Company. Specific instances which serve as credible evidence that wrongdoing at Yahoo! by its directors and officers may have occurred and actions by Yahoo! that may have placed the Company's reputation and assets at risk include:
- A. The filing of a lawsuit by Yu Ling and her husband, Chinese Internet detainee Wang Xiaoning, principal beneficiaries of the Fund humanitarian grants, and principal Plaintiffs in the lawsuit against Yahoo!, (*Wang v. YAHOO!, Inc., et. al.*, No. 07-02151 (N.D. Ca.)), that resulted in the settlement agreement establishing the Fund, containing allegations, made under oath, that Harry Wu demanded and forced the payment of a one million dollar "kick-back" from the \$3.2 million humanitarian award made to Yu Ling and Wang Xiaoning by Yahoo! and the Fund.
  - B. Statements by Tienchi Liao, the principal staff assistant to Harry Wu, at the Laogai Research Foundation confirming that Harry Wu made fraudulent and inappropriate demands for kick-back payments from Yu Ling and Gao Qinsheng in connection with their awards from the Fund.
  - C. Statements by Yu Ling that Harry Wu had misappropriated portions of the grant to Yu Ling, as well as other assets of the Fund that were in his custody, for his personal use and benefit, including purchase of a one million dollar paid-up life insurance annuity, payment of

improperly high salaries to Harry Wu and his wife, and purchase of highly valued real estate property in Washington, D.C.

- D. Statements and information provided in writing to Yahoo! by Tienchi Liao, the principal staff assistant of Harry Wu at Laogai Research Foundation, that Harry Wu, with the possible knowledge of Yahoo!, has misused Fund and grantee assets for his personal benefit, and requesting action from Yahoo! to remedy and prevent these practices.
- E. Statements by Tienchi Liao, Harry Wu's principal staff assistant at the Laogai Research Foundation, made to the Board of Directors of the Laogai Research Foundation and reported in part on the Laogai Research Foundation web site, that Harry Wu, with the possible knowledge of Yahoo!, had been engaged in a long-standing pattern and practice of cheating Fund beneficiaries by underpaying grant awards and using the resulting Fund assets for his personal benefit.
- F. Agreement by Harry Wu to settle the lawsuit filed against him by Yu Ling and Wang Xiaoning, and to make the full repayment demanded in the case for the kick-back payments and other misappropriation of property alleged in the Complaint.
- G. Information that Harry Wu, with the possible knowledge of Yahoo!, used major portions of the Fund's resources to fund the purchase or rental and renovation of a second townhouse building in a prime and very costly downtown location to serve as the headquarters for the Laogai Research Foundation. Voice of America on April 8, 2011 also specifically reports the Fund as the source of the funding for a new Laogai Museum.
- H. Information that Yahoo! may have asked Harry Wu to obtain "legal releases" from Yahoo! Human Rights Fund recipients as part of the grants of assistance that they were provided by the Fund, assuring Yahoo! that they would not make any further legal claims against Yahoo! in return for receipt of assistance from the Fund.
- I. Yahoo!'s Official Notice to Shareholders for the June 23, 2011 Annual Shareholders' Meeting, included in their advice to shareholders to vote against a proposed shareholders' resolution calling for improved monitoring of Yahoo!'s human rights practices, the following statement: "Yahoo! also established the Yahoo! Human Rights Fund with noted Chinese human rights activist Harry Wu to provide humanitarian and legal support to political dissidents

who have been imprisoned for expressing their views online.” This statement provides a strong indication of the nature and extent of Yahoo!’s ongoing close ties and working relations with Harry Wu and the Fund, and Yahoo!’s reliance on Harry Wu and the Fund to deal with human rights issues and problems that arise from the Company’s Chinese operations.

- J. Testimony delivered to Congress on May 20, 2008 by Michael Samway, Vice-President and Deputy General Counsel of Yahoo! who also serves as Yahoo!’s representative on the Fund Board, in his testimony before Senator Durbin’s Subcommittee on Human Rights of the Senate Judiciary Committee, noting that “Jerry Yang [then CEO of Yahoo!] announced the Yahoo! Human Rights Fund in November, 2007, as part of [Yahoo!’s] broader effort to address human rights challenges in China and around the world,” and noting that, “We have partnered with noted dissident and human rights activist Harry Wu, who is here with us today, and the Laogai Research Foundation to establish this fund.”
- K. Information that Harry Wu, with the possible knowledge of Yahoo!, dismissed his principal assistant Tienchi Liao from her positions at the Laogai Research Foundation and at the Fund when she notified Yahoo! of mismanagement of the Fund, and she assisted Yu Ling in her lawsuit to obtain return of the one million dollar kickback that Harry Wu demanded and received from the grant made to Yu Ling and her husband, Wang Xiaoning, by the Fund.

9. These specific instances of evidence provide a credible basis that the Company’s directors and officers were aware that Harry Wu was misappropriating and misusing Fund assets and the Company’s directors and officers did not use proper judgment or due care when establishing the Fund and when it failed to prohibit or end these wrongdoings.

10. Similarly, these specific instances of evidence provide credible basis that Yahoo! may have materially participated in the malfeasances of Harry Wu and the Fund by failing to provide the minimum necessary operational safeguards and oversight mechanisms that would have prevented the abuses and unlawful activities from taking

place. These specific instances of evidence also provide credible basis that Yahoo! may have participated in the malfeasances of Harry Wu and the Fund by allowing these wrongdoings to continue un-remedied after knowledge of specific instances of abuse came to Yahoo!'s attention.

11. Additional information is necessary to determine, among other things whether Yahoo! and its directors and officers may have played a role in the wrongdoings and failed to disassociate the Company from these actions well after receiving notice of the problems, further jeopardizing Yahoo!'s reputation and financial situation.

12. On or around November 30, 2011, counsel for the Company responded by letter to the Demand Letter claiming that it was improper because it did not articulate any basis that there has been any wrongdoing by anyone at Yahoo!, it exceeded the scope of inspection permitted under Delaware law, the Demand Letter sought inspection of books and records for a 14 month period before Plaintiff became a Yahoo! shareholder, and the Plaintiff did not state that his evidence of beneficial ownership of Company stock was true and correct. Nevertheless, counsel for the Company indicated that Yahoo! was prepared to allow an inspection of books and records if Plaintiff met certain conditions. (Exhibit C).

13. Taking Yahoo! at its word that it was prepared to allow an inspection of its books and records, Plaintiff's counsel wrote to the Company's counsel on December 6, 2011, to address the issues identified in the November 30, 2011 letter. (Exhibit D).



14. Plaintiff provided an additional letter from his broker demonstrating his ownership of Company stock since July 13, 2004 and confirmed that his documentary evidence of ownership was true and correct. *Id.*

15. Moreover, the December 6, 2011 letter explained that the Demand Letter provided a credible basis that Yahoo! and its Board of Directors may have breached their fiduciary responsibilities and that this breach has direct consequences and impacts Yahoo!'s reputation, assets, and the financial well-being of the Company and its shareholders. (*Id.* at 2-4). Although Yahoo! would prefer otherwise, Plaintiff is not under any obligation to prove by the preponderance of the evidence under Section 220 that any wrongful conduct actually occurred. Indeed, he only needs to demonstrate that there is a possibility of wrongdoing through documents, logic, testimony or otherwise.

16. The Demand Letter details through documents, logic, testimony or otherwise, among other things, that Yahoo! relied on Harry Wu as an agent to operate the Fund. Similarly, the documents, logic and testimony in the Demand Letter provide that the possibility exists that Yahoo! and its Board of Directors were aware of Harry Wu's misappropriation of Human Rights Fund assets, breached their fiduciary duty when failing to prevent and stop the wrongdoings of Harry Wu, and that Yahoo! and its Board of Directors themselves may have played a role in a variety of questionable acts related to the Human Rights Fund.

17. In any event, while the Demand Letter clearly provided a credible basis that the Company's directors and officers may have breached their fiduciary duties when the Company's directors and officers knowingly failed to prohibit the Company's

agent's, Harry Wu's, misappropriation of the Fund's assets and other fraudulent, unlawful, or unethical practices in handling the Fund, the December 6, 2011 letter supplemented the Demand Letter with the following information:

- A. The Yahoo! Board of Directors issued a statement against Mr. Zhao's shareholder proposal on March 30, 2010 stating: "Yahoo! also established the Yahoo! Human Rights Fund with noted Chinese human rights activist Harry Wu to provide humanitarian and legal support to political dissidents who have been imprisoned for expressing their views online."  
[http://cpri.tripod.com/cpr2010/Yahoo\\_Zhao\\_statement.pdf](http://cpri.tripod.com/cpr2010/Yahoo_Zhao_statement.pdf);
- B. Mr. Zhao informed Yahoo!'s Director of Business & Human Rights Program, Ebele Okobi-Harris of Harry Wu's wrongdoings concerning the Fund. Specifically, Ms. Okobi-Harris called Mr. Zhao and participated in e-mail correspondence in April 2011 before the Yahoo! Shareholders meeting on June 23, 2011;
- C. Mr. Zhao attend the October 25-26, 2011 Silicon Valley Human Rights Conference in San Francisco and met Ms. Okobi-Harris. Yahoo! sponsored the Silicon Valley Human Rights Conference with the following statements in the distributed material: "In partnership with the Laogai Research Foundation, Yahoo! has created a Human Rights Fund to provide humanitarian and legal support to political dissidents imprisoned for expressing their views online, as well as assistance to their families.";
- D. The website, <http://www.observechina.net/info/artshow.asp?ID=72861>, which was posted by Harry Wu and the Laogai Research Foundation, substantiates the majority of the allegations in the Demand and further describes that:
  - i. On March 18, 2011, per the request of the attorney of Yu Ling, Jerry Yang of Yahoo! was subpoenaed in *Wang v. YAHOO!, Inc*, 07-02151 (N.D. Ca.);
  - ii. On November 6, 2007, Harry Wu, Jerry Yang of Yahoo!, Yu Ling, and Gao Qinsheng met to discuss *Wang v. YAHOO!, Inc.*, 07-02151 (N.D. Ca.);
  - iii. Evidence from the *Wang v. YAHOO!, Inc.*, 07-02151 (N.D. Ca.) lawsuit and other sources have provided numerous credible reports and information suggesting that Yahoo!

was complicit in many of the actions that have been identified as highly questionable and more than likely unlawful in nature.

18. Furthermore, the December 6, 2011 letter explained that contrary to Yahoo!'s argument, the Demand Letter does not exceed the scope of inspection that is permitted under Delaware law. (Exhibit D at 4-5). Under Delaware law, Plaintiff should be given enough information to effectively address the problem and inspection should be tailored to the stockholder's stated purposes. As such, each demand for documents contained in the Demand Letter is relevant to the ultimate questions of whether the Company and the Board of Directors exercised due diligence and followed accepted business practices in how the Fund was established and administered and were involved in any wrongdoings involving the Fund.

19. In any event, in the spirit of cooperation, the December 6, 2011 letter agreed to the narrowing of demand 1. (Exhibit D at 5).

20. Despite Plaintiff's cooperative attempt to resolve any outstanding issues between Plaintiff and Yahoo!, the Company's counsel responded via a December 20, 2011 letter that made clear that the Company would continue to deny access to the Company's books and records. (Exhibit E). Specifically, the Company continued to repeat its baseless arguments that the Demand Letter did not articulate a credible basis and exceeds the scope of inspection. Similarly, the Company raised a new objection that Plaintiff had failed to demonstrate that he was a continuous holder of Company stock

despite the fact that Plaintiff had provided a letter from his broker that shows he has continuously held Company stock since July 13, 2004. (Exhibit D).<sup>3</sup>

21. Yahoo! has made it clear that it will not cooperate with Plaintiff and has wrongfully denied Plaintiff access to the materials set forth in the Demand Letter by refusing to permit such access.

22. Plaintiff has complied fully with all requirements under Section 220 concerning the form and manner of making a demand for inspection of Yahoo!'s books and records.

23. As of the date of the filing of this complaint, no documents have been produced to the Plaintiff's counsel.

24. Pursuant to 8 *Del. C.* § 220(c), Plaintiff is permitted to apply to this Court for an Order compelling inspection of Yahoo!'s corporate books and records because Yahoo! has wrongfully refused to permit the inspection after Plaintiff complied with 8 *Del. C.* § 220 concerning the form and manner of making demand for inspection of such documents and articulated a proper purpose for the inspection.

25. Given the foregoing, Plaintiff seeks relief from the Court under Section 220 to compel the inspection set forth in the Demand Letter forthwith without further delay.

26. Plaintiff has no adequate remedy at law.

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<sup>3</sup> In any event, Plaintiff has obtained another letter from his broker that confirms that he has continuously held shares of Yahoo! stock since July 13, 2004. *See* Exhibit F.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays for the following relief:

- A. An order summarily requiring Yahoo! to immediately permit the inspection and copying of each and every requested record;
- B. An order directing Yahoo! to pay reasonable attorneys' fees and expenses in connection with Plaintiff's Section 220 demand and litigation; and
- C. Such other and further relief as this Court deems just and appropriate.

Dated: February 1, 2012

**RIGRODSKY & LONG, P.A.**

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