

## CalPERS v. IAC/InterActiveCorp

**COURT:** Delaware Chancery Court  
**CASE NUMBER:** 12975  
**JUDGE:** Vice Chancellor J. Travis Laster  
**CASE CONTACTS:** Mark Lebovitch

This is a class action filed on behalf of a putative class of IAC/InterActiveCorp (“IAC” or the “Company”) stockholders challenging a proposal disclosed on November 2, 2016 to adjust the capital structure of IAC through an amendment and restatement of IAC’s Certificate of Incorporation to establish a new class of non-voting capital stock.

Leading up to the litigation, IAC was controlled by Barry Diller (“Diller”), who owned less than 8% of IAC’s equity, yet controlled over 44% of the Company’s voting power through his ownership of all of IAC’s outstanding super-voting Class B shares. Absent a change in IAC’s capital structure, public stockholders expected Diller’s voting power to dilute naturally over time as IAC issued stock to fund acquisitions and for executive compensation.

However, in an apparent attempt to ensure that Diller’s control would never be diminished and could be passed on to his chosen heirs, in November 2016, the IAC Board of Directors authorized a new class of non-voting Class C stock. If gone unchecked, IAC would have been able to use the non-voting Class C stock instead of voting stock to fund acquisitions and compensate executives, thus maintaining the Diller family’s control in perpetuity.

Within weeks, CalPERS filed a class action suit in the Delaware Chancery Court alleging breaches of fiduciary duty and requesting an order preventing the company from issuing the non-voting stock. CalPERS’s complaint in the case highlighted that Diller achieved board approval of the issuance of IAC non-voting stock by threatening to use his voting power to prevent the company from making valuable and necessary acquisitions that used IAC stock as consideration.

In direct response to the litigation, on June 23, 2017, the IAC Board of Directors announced that it decided to abandon its plan to create a new class of non-voting IAC stock. IAC’s abandonment of its reclassification plan resulted in a complete litigation victory for CalPERS.