

# Tech firm directors face shareholder lawsuits for low diversity

Respective shareholders have filed three lawsuits against Facebook, Qualcomm and Oracle, claiming the firms' executives are doing little to make their boards more diverse, despite public pledges to do so.

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In a blog post, the Harvard Law School Forum on Corporate Governance warned that although the three legal filings face several hurdles, they could still inflict severe financial and reputational damage on the tech firms and their directors. Commentators added that the litigation could lead to more legal battles over ESG accountability.

Why does this matter? The lawsuits are targeting boards and executives on four concerns, claiming: they do not comply with anti-discrimination laws, their statements about commitment to diversity were false, they acted against their charters to deprive boards of diversity and its advantages, and that they were able to compensate themselves financially due to pay-gaps disadvantaging minority-ethnic workers.

These points all shape the argument as a matter of corporate governance shortcomings on the part of the executives to do the best for the company, rather than framing it as a social issue that companies are morally obligated to support. It seems to take the model of a diverse company as a successful one. Executives depriving a company of diversity, therefore, are not acting in the interests of shareholders.

As evidence, the suits have highlighted the business impacts of failing to appropriately address diversity concerns. For Facebook, this has played out as a direct endangerment to the company, as its failure to moderate hate speech is being called into question, creating a loss in advertising revenue following boycotts.

For Qualcomm, it's manifested in concern the company is losing money due to the lawsuits it faces for practices of gender-pay discrimination, and the payouts it has been forced to make. Despite these losses, it has not taken any action to improve the situation and therefore is presenting a liability to company finances.

It will be notable to see how these assertions are upheld in court, but also how actionable the proposed demands of the suit will be. As part of damages, shareholders have asked that judges force the companies to diversify their boards.

Further thought from Curation – The article above notes these shareholder suits could be just the beginning of a slew of legal battles led by diversity concerns. This is particularly important when we consider the implications of corporate responses to the recent George Floyd and Black Lives Matter protests.

Many large brands issued support for improved social justice and racial equality, publishing statements admonishing police brutality and discrimination, and pledging to improve diversity and inclusion within their own workplaces. Some went further, cutting ties with companies and organisations that were believed to be facilitating discriminatory practices.

Even at the time, there were calls of “virtue signalling” as brands fell in line to make statements and issue Black Lives Matter brand campaigns. Following the initial uproar, however, who will determine whether enthusiasm has been followed through with appropriate systemic change in the workplace?

In early June, Adidas released a statement in support of Black Lives Matter, pledging to recognise its own internal racism. Its staff, however, immediately responded with criticisms over the statement, and called for an investigation into the discriminatory hiring practices of its HR head. The investigation led to her resignation.

By publicly pledging diversity support and action, companies may have opened themselves up to a potential litigation risk. It may be that if this type of litigation is proved successful, corporates will be much quieter on such issues, to save themselves from lawsuits down the line.

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