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Monster Beverage sued for lack of diversity on board

Monster Beverage is facing a derivative shareholder complaint accusing its board of breaching fiduciary duty, among other charges. The suit claims Monster repeatedly flagged its diversity policies but has yet to appoint a Black board member or senior executive. It calls for at least one board member to step aside for a Black candidate, annual board diversity training, and the creation of a $800M fund to promote the hiring and promotion of minority employees.

Monster is just the latest firm to find its shareholders holding it accountable for diversity pledges. Quite notably, these derivative actions have become high-profile amid the increased visibility of the Black Lives Matter movement. When we last highlighted similar litigation involving big tech firms Facebook, Qualcomm and Oracle, we noted that in each case diversity was not being defined as a social or moral issue, but instead a business asset.

Shareholders argued diversity was advantageous to business, and claimed that by neglecting diversity strategy, directors were failing to act in the interests of the company’s success.

In Monster’s particular case, as the story above notes, shareholders said that despite having diversity policies in place, the firm’s executives were simply falling short. The suit explicitly claims that Monster’s pledged commitment to diversity was a PR exercise conducted to “avoid public backlash” amid a background of recent social justice pledges from corporate firms.

At the beginning of the protests triggered by the killing of George Floyd by a police officer in Minnesota, we highlighted that companies were facing consumer pressure to support the Black Lives Matter movement and issue anti-racism pledges, to ensure their silence wasn’t interpreted as being complicit in a system that condones disproportionate police brutality against Black communities. Less than two months later, the shareholder suits began.

From this perspective, corporates seem to have found themselves in a Catch-22: they must pledge support and change to appeal to their consumer base, but if they do so before they are ready to actually implement that change, shareholders will be quick to hold them accountable.

Further thought from Curation – While the main focus of this litigation is Monster’s recent diversity policies and board appointments, it should be noted that the company culture has been criticised before. Various allegations were made in the suit concerning historic discrimination against, and harassment of, female and minority colleagues.

In 2018, Monster faced five separate lawsuits from women alleging the firm’s culture encouraged misogynistic behaviour from senior staff and, in some cases, assault.

With this in mind we can be a bit more discerning about the particular situation that Monster is in. While in most other cases of litigation, companies may be able to defend themselves by qualifying their lack of diversity progress with the ongoing stress of the pandemic, or the relatively short turnover period since the pledges were made. What Monster’s 2018 cases show is a sustained toxic culture which not only seems to ignore the value of diversity, but to be actively hostile and discriminatory towards it.

While corporate diversification can be complicated, especially in current times, companies that advertise commitment to inclusivity, but repeatedly fail to change their culture to create a space where it can thrive, should expect to face consequences.

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