



July 13, 2022

Ms. Lauren R. Hobart
President and Chief Executive Officer
DICK'S Sporting Goods, Inc.
345 Court Street
Coraopolis, PA 15108

Dear Ms. Hobart:

We write to you in your capacity as Chief Executive Officer and Chairman of the Board on behalf of DICK'S Sporting Goods, Inc. (the "Company") shareholders and customers.

The purpose of this letter is to alert you to apparent mismanagement and violations of federal civil rights laws that threaten the waste of the Company's assets. As you may know, workplace anti-discrimination mandates are an essential and mission critical regulatory compliance risk. You and the Board, among your other fiduciary obligations, have a duty of oversight and must put into place a reasonable board-level system of compliance monitoring and reporting relating to these mandates. See *Marchand v. Barnhill*, 212 A.3d 805, 824 (Del. 2019); *In re Clovis Oncology, Inc. Derivative Litig.*, No. CV 2017-0222-JRS, 2019 WL 4850188, at *12 (Del. Ch. Oct. 1, 2019). However, it appears that you and the Board have failed to do these critical things, suggesting both a lack of internal controls and an inappropriate disregard for your fiduciary duties to the Company and its shareholders.

The Company describes itself as "a leading omni-channel sporting goods retailer offering an extensive assortment of authentic, high-quality sports equipment, apparel, footwear and accessories." It acknowledges that "Negative publicity or perceptions involving us or our brands, products, vendors, spokespersons, or marketing and other partners may negatively impact our reputation and adversely impact our ability to attract and retain athletes and teammates." It further acknowledges that "Issues that might pose a reputational risk include our handling of issues relating to environmental, social, and governance ('ESG') matters, including inclusion and diversity, and the transparency of our progress toward ESG goals and initiatives [and our] public stances on controversial social or political issues". DICK'S Sporting Goods, Inc., Form 10-K at 3, 14 (Mar. 22, 2022), <https://bit.ly/3yoK7JK>.

To begin with, on or about June 24, 2022, you announced a special employee benefit of "up to \$4,000" solely for an employee or dependent, "along with one support person"

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to travel for the purpose of aborting an unborn child.¹ However, Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978, prohibits discrimination with respect to “compensation, terms, conditions, or privileges of employment” because of pregnancy and childbirth. *See* 42 U.S.C. §§ 2000e(k); 2000e-2(a)(1). Therefore, your decision to offer the “travel benefit” (which is properly classified both as increased compensation and/or as a privilege of employment as a matter of law) to a pregnant woman who chooses to abort her child, while denying any equivalent compensation to a pregnant woman who chooses life, facially violates applicable federal civil rights laws.

Even if legal, this decision raises serious concerns regarding management’s commitment to maximizing shareholder value. We note with concern that you cited no facts suggesting that providing benefits to facilitate abortions, without making at least the same amount available to mothers who give birth, is in the Company’s best interests. Rather, the empirical evidence indicates management’s discriminatory conduct on an issue of such intense public interest and concern that is otherwise wholly detached from the Company’s business (selling sporting goods and golf equipment) may needlessly destroy shareholder value.²

Also, in 2020, the Company published “Inclusion and Diversity (sic) Goals” for recruitment, hiring, training, and contracting. *See* “DICK’S Sporting Goods 2020 Sustainability Report” (last accessed July 11, 2020), <https://bit.ly/3ataWEC>. Specific “goals” included:

- “Achieve 50% BIPOC (sic) and/or women for entry-level hires for technology by 2025.”
- “Increase BIPOC (sic) representation in leadership roles by 30% by 2025.”
- “Increase overall representation of women in store leadership to 40% by 2025.”

Additionally, the Company represented that it had:

- Implemented an “enterprise-level strategy to meet gender and ethnic diversity recruitment targets.” The strategy “to increase diversity in our internship class lead (sic) to a 14.9% increase in BIPOC (sic) representation between 2020–2021. Additionally, of our incoming tech interns, 54% are women.”
- Engaged in contracting practices “prioritizing diverse suppliers, which we define as businesses that are owned and operated by underrepresented groups. Within the next year, we intend to announce a diverse supplier percentage

¹ Heather Lang, *Dick’s Sporting Goods CEO announces travel expense reimbursement to employees seeking abortions in another state*, CBS News Pittsburgh (June 24, 2022), <https://cbsn.ws/3P1v7Zg>.

² *See* Phil Hall, *The Crisis at Disney: Part 1, Bob Chapek’s Blunder Road*, Markets Insider (June 21, 2022), <https://bit.ly/3zTe6vM>.

spend goal. In addition, our go-forward strategy will seek to include Supplier Diversity requirements for other organizations that we do business with to ensure our values are amplified broadly.”

See also DICK’S Sporting Goods, “Leveling the Playing Field (last accessed July 11, 2022), <https://bit.ly/3yYmmcM>. Although “BIPOC” is a term without fixed or intelligible legal meaning, it appears the Company uses it as a proxy for persons of a certain race, color, and/or national origin, specifically excluding individuals who are white, Asian, and/or born in the United States.

However, all of these measures are patently illegal. First, since the Civil Rights Act of 1866 (codified at 42 U.S.C. 1981), federal law has prohibited all forms of racial discrimination in private contracting. As the late Justice Ginsburg noted, Section 1981 is a “‘sweeping’ law designed to ‘break down all discrimination between black men and white men’ regarding ‘basic civil rights.’” *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 140 S.Ct. 1009, 1020 (2020) (Ginsburg, J. concurring) (quoting *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 432 (1968)). If, as represented, the Company’s contracting decisions are driven or influenced by the race, color, or national origin of potential business partners, then management is violating the law, creating significant legal and reputational risk, and wasting the Company’s assets, reputation, and goodwill. If race, color, sex, or national origin are *not* influencing or driving the Company’s contracting decisions, then management’s public representations to the contrary are cynical misrepresentations. There can be no other alternative.

Second, racial, color, sex, and national origin “balancing” in hiring, training, internships, and promotion is prohibited by Title VII of the Civil Rights Act of 1964. 42 U.S.C. §§ 2000e-2(a), (d). Decades of case law have held that policies seeking to impose racial balancing or quotas in employment, training, or recruitment, such as those presented on the Company’s website, are prohibited. *See, e.g., United Steelworkers of America v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, U.S. 616, 621, 632 (1987). Again, either management is violating state and federal civil rights laws prohibiting employment discrimination based on race, color, sex, or national origin, or it is lying to shareholders and regulators. This is not a close question.

Management’s conduct, as outlined above, has needlessly exposed the Company to potential state and/or federal civil rights investigations and enforcement actions and suggests either a disregard for its fiduciary obligations or a major breakdown in its compliance controls. The Company is organized and carried on primarily for the profit of its shareholders, and the powers of its officers and directors are to be employed solely for that end. If the Company’s officers and directors are unable to demonstrate that the above-described conduct and policies clearly and concretely create shareholder value, then they are violating their fiduciary duty to shareholders by spending the Company’s funds to advance idiosyncratic political and social views.

Therefore, to prevent the waste of the Company's assets, to repair and safeguard the Company's brand, goodwill, and reputation among its core customers, to protect the Company's shareholders, and in fulfillment of your fiduciary duty to ensure the Company's compliance with civil rights laws, we demand that you and the Board immediately take the following steps.

1. Retain an independent counsel for a full investigation of and a report on the events and circumstances behind management's decision to offer the "travel benefit" to a pregnant woman who chooses to abort her child, while denying any equivalent compensation to a pregnant woman who chooses life. To avoid the expense and disruption of litigation enforcing the Company's disclosure obligations under 8 Del. Code § 220, the Board should affirmatively and transparently disclose all of management's contemporaneous emails and other communications on this topic to the Company's employees and shareholders. Among other things, all communications to or from the Company's General Counsel regarding this matter should be made available, and the Company should promptly and transparently publish all studies and analytic data that it has made demonstrating that this policy enhances the Company's brand reputation and promotes alignment between its business and the tastes and preferences of its core customers.
2. Compel the Company to: (a) Immediately cease and desist from all contracting and employment practices that discriminate based on race, color, sex, or national origin, and/or that are designed to "match the combined demographics" of any racial or other group; (b) to immediately cease and desist from making any statements or representations promoting or promising contracting and employment outcomes based on race, color, sex, and/or national origin; and (c) to retain an independent counsel to conduct a compliance audit of the Company's hiring and contracting practices and to design appropriate internal controls to ensure the Company's hiring, promotion, recruitment, and purchasing practices comply with federal civil rights laws. Again, to avoid the expense and disruption of litigation enforcing the Company's disclosure obligations under 8 Del. Code § 220, the compliance audit and all relevant emails and other management communications regarding the racial balancing and other prohibited hiring and contracting practices described in the Company's "Sustainability Report" should be made promptly and fully available.
3. In anticipation of litigation, direct the Company to preserve all records relevant to the issues and concerns noted above, including but not limited to paper records and electronic information, including email, electronic calendars, financial spreadsheets, PDF documents, Word

documents, and all other information created and/or stored digitally. This list is intended to give examples of the types of records you should retain. It is not exhaustive.

Thank you in advance for your cooperation.

Sincerely,

Reed D. Rubinstein
America First Legal Foundation

Cc: Edward W. Stack, Executive Chairman
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