

January 8, 2024

VIA INTERNET SUBMISSION

United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549-7010

RE: Stockholder Proposal Submitted by Marvin McCreary

Ladies and Gentlemen:

Tesla, Inc. (the “Company” or “Tesla”) is submitting this letter to notify the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude a stockholder proposal (the “Proposal”) from its proxy materials to be distributed in connection with its 2024 annual meeting of stockholders (the “Proxy Materials”). Marvin McCreary (the “Proponent”) submitted the Proposal.

The Company respectfully requests that the Staff advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials for the reasons discussed below. Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company is submitting this letter electronically, setting forth our reasons for excluding the Proposal. Rule 14a-8(k) and Section E of SLB 14D provide that stockholder proponents are required to send companies a copy of any correspondence that the stockholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if it submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the Company.

Proposal

The Proposal sets forth the following resolution:

RESOLVED, Tesla, Inc. (the “Company”) shareholders request that the Board of Directors authorize and implement an educational, data driven, comprehensive advertising strategy for the Company’s vehicles, and report to the shareholder on the progress and results of such strategy within one year of the adoption of this resolution.

A copy of the Proposal is attached hereto as Exhibit A.

Basis for Exclusion

The Company respectfully requests that the Staff concur in our view that the Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal inextricably deals with matters relating to the Company’s ordinary business operations.

Rule and Analysis

Rule 14a-8(i)(7) allows the omission of a stockholder proposal from a registrant’s proxy statement if such proposal “deals with a matter relating to the company’s ordinary business operations.” As set out in Securities Exchange Act Release No 34-40018 (May 21, 1998) (the “1998 Release”), there are two “central considerations” underlying the ordinary business exclusion. One is that certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct stockholder oversight. The other relates to the degree that a proposal seeks to “micro-manage” the company by probing too deeply into matters of a complex nature upon which stockholders, as a group, would not be in a position to make an informed judgment.

In this case, the Proposal would interfere with management’s ability to run the Company on a day-to-day basis. The Proposal explicitly seeks to direct and manage the Company’s advertising strategy by requesting that the board “authorize and implement an educational data driven, comprehensive advertising strategy . . . and report . . . on the progress and results of such strategy.” The Staff has consistently permitted the omission under Rule 14a-8(i)(7) of stockholder proposals that aim to manage a company’s advertising as relating to ordinary business matters. For example, in *Amazon.com, Inc. (Mar. 23, 2018)*, the Staff concurred in exclusion of a proposal, noting that the proposal “relates to the manner in which the Company advertises its products

and services.” See also *Ford Motor Company (Feb. 2, 2017)* (concurring in exclusion of a proposal requesting that the company assess the political activity resulting from its advertising and any resulting exposure to risk because the proposal related to Ford’s ordinary business operations); *FedEx Corp. (Jul. 11, 2014)* (concurring in exclusion of a proposal requesting a report on the reputational damage to the company from its sponsorship of the Washington, DC NFL franchise team given controversy over the team’s name, noting that the proposal “relate[d] to the manner in which FedEx advertise[d] its products and services”); *PG&E Corporation (Feb. 14, 2007)* (concurring in exclusion of a proposal requesting that the company cease its advertising campaign promoting solar or wind energy sources); *Tootsie Roll Industries Inc. (Jan. 31, 2002)* (concurring in exclusion of a proposal asking the company to identify and disassociate from any offensive imagery to the American Indian community in product marketing and advertising because the proposal related to “the manner in which a company advertises its products”).

In the Proposal’s supporting statement, the Proponent attempts to analyze the Company’s strategy and suggests that the Proponent knows best what by methods and to which demographics the Company should advertise, rather than management. However, as the Staff has repeatedly recognized in the past, advertising strategy and the allocation of advertising resources to best promote a company’s products and services is a key management function. The Company devotes significant time, energy and resources in making decisions relating to the advertising of the Company’s products, including determining whether to advertise, and the appropriate channels for advertising, such as social media platforms or otherwise, while accounting for costs, in the context of the Company’s budget for marketing activities, as well as potential impacts on the Company’s brand and the effectiveness of its marketing efforts. The Proposal reflects the Proponent’s attempt to intrude upon such functions, and impose on the Company the Proponent’s own views on advertising strategy and standards, which inappropriately interferes with management’s ability to run the Company on a day-to-day basis. Thus, because the Proposal concerns the manner or context in which a company advertises its products, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the ordinary business operations of the Company.

The Company understands that in cases in which stockholder proposals raise significant social policy issues the ordinary business exclusion of Rule 14a-8(i)(7) may be found not to apply. The Proposal does not, however, focus on any significant social policy issue. The Proposal and its supporting statements exclusively refer to business matters associated with advertising – including demographic targeting, pricing and product demand. Based on the subject matter of the Proposal, the Company believes that the exclusion provided under Rule 14a-8(i)(7) is applicable to the Proposal.

Conclusion

The Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Proposal from the Proxy Materials. If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at derek.windham@tesla.com. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Sincerely,



Derek Windham
Senior Director and Deputy General Counsel

Enclosures

cc: Marvin McCreary

EXHIBIT A

Marvin R. McCreary

To: Tesla, Inc.
1 Tesla Road
Austin, Texas 78725
Attention: Legal Department

October 20, 2023

cc: shareholdermail@tesla.com

Re: Shareholder proposal attached

Dear Tesla Legal Department,

I'm writing as a long-term shareholder who intends to hold TSLA stock for many years to come.

I am submitting a shareholder proposal for the 2024 annual meeting. The proposal is attached to this letter.

As required by the SEC Rule 14a-8(b), I have continuously held at least \$25,000 of the company's securities entitled to vote on the proposal for at least one year by the date of submission. This letter also serves as a written statement that I intend to continue to hold the securities through the date of the meeting. I have included my name, address, and proof of ownership of the securities.

In accordance with SEC Staff Legal Bulletin 14L, the intent of this proposal is not to address ordinary business but to provide shareholder input in a significant business strategic matter.

I am submitting this proposal no later than 120 calendar days before the date of the company's proxy statement release for the previous year's annual meeting. I will not submit more than one proposal for the same meeting.

I am available during your normal business hours to discuss this further via the methods noted in the header above.

Thank you for your attention to this matter.

Sincerely,


Marvin McCreary
Tesla Shareholder Since 2016

Educational Advertising ***

PROPOSAL:

RESOLVED, Tesla, Inc. (the "Company") shareholders request that the Board of Directors authorize and implement an educational, data driven, comprehensive advertising strategy for the Company's vehicles, and report to the shareholders on the progress and results of such strategy within one year of the adoption of this resolution.

SUPPORT:

Tesla has been able to capitalize on the engagement of early adopters and EV enthusiasts to drive demand, largely through word-of-mouth and social media. However, we believe that the Company's reliance on organic marketing and free publicity cannot sufficiently scale as quickly as Tesla's production capacity. Elon Musk stated in the May 2023 shareholder meeting that Tesla "will try a little advertising." Thus far, the advertising appears to be negligible. While advertising is a commonly used driver of demand, the primary demand lever Tesla has used is price reduction with a resultant significant cost to automotive gross margins.

Multiple polls/articles describe that most potential car buyers in America have misconceptions about EVs such as too expensive, limited range, difficult to charge, and that they are not really "green."^{1,2,3} Seventy percent are unaware of the new EV tax credits.² Educational advertising can help the Company increase demand by enlightening potential car buyers. Price reduction primarily targets the minority of the car buyers who are already interested in Tesla. Mr. Musk himself noted in the May 2023 shareholder meeting that most people think Teslas are "super expensive." Dropping the price without informing the broader public does not change that.

Tesla reportedly spent \$151,947 on advertising in the U.S. in 2022 which was less than 0.0002% of revenue, while the average for the auto industry was ~2.5%.⁴ This means that Tesla is underinvesting in advertising relative to its peers and industry norms. This underinvestment is a missed opportunity for the Company to capitalize on its leadership in the EV market while maintaining automotive gross margins. Advertising can also help the Company counter the negative publicity and misinformation that it often faces from its critics and competitors.

¹ <https://www.washingtonpost.com/climate-solutions/2023/09/15/ev-tipping-point-electric-poll/>

² <https://finance.yahoo.com/news/new-yahoo-finance-ipsos-poll-shows-over-half-of-americans-unlikely-to-buy-an-ev-130040140.html>

³ <https://www.cnbc.com/2023/04/11/nearly-half-of-americans-say-its-unlikely-theyll-buy-an-ev-next-poll.html>

⁴ <https://cleantechnica.com/2023/05/19/read-all-about-it-teslas-advertising-to-go-traditional-with-some-artistic-element-to-it/>

The median Tesla buyer is over 50 years old.⁵ The majority of that age group notably prefers to get their news from television rather than digital media.⁶ Expanding advertising beyond social media (such as billboards, direct mail, traditional media) might help reach most of the consumers who are uninformed or misinformed about EVs in general and Tesla specifically. While there is debate within the Tesla community regarding the value of advertising, “geo-testing” and other marketing tools might provide clarity of its value.⁷

In an ideal market where all consumers are fully informed about a product and alternatives, pricing might be the primary driver of demand. However, in an environment where most consumers are uninformed or misinformed about EVs/Tesla, educating those consumers is paramount to expanding the addressable market, securing Tesla’s profitability, and maintaining shareholder value.

Therefore, we urge you to vote FOR this proposal.

⁵ <https://hedgescompany.com/blog/2018/11/tesla-owner-demographics/>

⁶ <https://www.pewresearch.org/journalism/fact-sheet/news-platform-fact-sheet/?tabId=tab-b39b851c-e417-48ef-9b10-93ee21a0030e>

⁷ <https://medium.com/expedia-group-tech/market-segmentation-for-geo-testing-at-scale-8d593e0aa755>