

Corporate Governance

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VIA EMAIL: shareholderproposals@sec.gov
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

February 9, 2021

Re: (The) Home Depot Company

To Whom It May Concern:

This is in response to the January 15, 2021 no-action request by Elizabeth Ising, acting as an agent of (The) Home Depot Company. I have attached my rebuttal, prepared by Open MIC, a prominent non-profit organization that works to foster accountability in the tech and media sectors.

As argued in my rebuttal, Staff must deny the no-action request and Home Depot must include my proposal in the proxy.

Sincerely,



Myra K. Young
Shareholder Advocate

cc: Stacy Ingram <stacy_ingram@homedepot.com>
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February 9, 2021

Shareholder Proposal to The Home Depot Inc. Regarding Advertising Policies and Social Media on Behalf of Myra Young

Proponent's Reply to Home Depot's January 15 No-Action Request to the Corporate Finance Staff of the Securities and Exchange Commission.

Myra K. Young (the "Proponent") is the beneficial owner of common stock of The Home Depot Inc. (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. In a January 15, 2021 letter to the Corporate Finance Staff of the Securities and Exchange Commission (the "Staff"), Home Depot has requested that the Staff concur in the view that the Proposal may be excluded from the Company's 2021 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations and does not focus on a significant policy issue.

Ms. Young has asked Open MIC, a non-profit organization that works to foster greater corporate accountability in the tech and media sectors¹, to analyze and help reply to the Company's letter. Open MIC is familiar with the issues raised by the Proposal and the Company's request.

The Proposal requests that the Board of Directors commission an independent third-party report assessing how and whether Home Depot ensures the Company's advertising policies are not contributing to violations of civil or human rights. Among other things, such report should consider whether advertising policies contribute to the spread of hate speech, disinformation, white supremacist recruitment efforts, or voter suppression efforts, and whether the policies undermine efforts to defend civil and human rights such as through the demonetization of content that seeks to advance and promote such rights.

To put these issues in perspective, consider the opinions of the Advertising Protection Bureau of the American Association of Advertising Agencies, a leading industry trade association whose members help direct more than 85% of total U.S. advertising spend. In an October 2020 white paper that addresses only one of the many ongoing concerns related to social media – misinformation and disinformation – the association said:²

"Misinformation and disinformation have revealed themselves as fundamental enemies of economic stability and growth, and as such supporting their spread through media investment with partners who serve to distribute misinformation and disinformation at scale must become anathema for advertisers."

The Proposal does not attempt to control the content of advertising, but only to ensure that the Company has policies in place to defend the Company's reputation against support for and affiliation with hate speech,

¹ <https://www.openmic.org/>

² https://www.aaaa.org/index.php?checkfileaccess=/wp-content/uploads/Misinformation-Disinformation-In-Focus.pdf&access_pid=92898

discrimination and disinformation in social media. These social media problems have become a significant policy issue, and the Company's nexus as a major advertiser in those platforms is clear.

Home Depot has argued to the Staff that this Proposal is excludable under Rule 14a-8(i)(7) because it relates to advertising matters which are traditionally considered "ordinary business."

The Proponent asserts that the Proposal is not excludable because the Company's policies regarding placement of advertising on social media platforms transcend ordinary business concerns due to the potential threat of these practices to Home Depot's overall business, and to society. At its core, this shareholder proposal is not about advertising; it is about human rights and the well-being of society.

The Proposal is an investor effort to guide Home Depot to protect its reputation and to avoid business practices which may negatively impact society, by ensuring that its advertising policies are not financing the spread of hate speech, disinformation and misinformation online. While the content of advertising is historically a matter of ordinary business, shareholders are concerned that the placement of advertising on social media platforms promoting hate speech, discrimination and disinformation go far beyond ordinary business due to the current threat of these implications to the Company's overall business, and to society. (Moreover, the focus of the Proposal does not concern the content of the Company's advertisements, but the impact of advertising placement policies on the Company's reputation as a whole.)

At its core, this shareholder proposal is not about advertising; it is about human rights and the well-being of society.

The evidence outlined below describes the academic and industry research, news commentary, human rights research, and public attention surrounding the concerns with social media advertising, which, taken as a whole, suggest both that:

1. The impact of social media advertising, which appears to support the proliferation of hate speech and misinformation online, is a significant public policy concern, with serious potential impacts on human rights, free expression, and the state of credible journalism; and
2. That this concern has risen to a significant level of reputational risk for Home Depot, as a major social media advertiser.

The Company's argument for exclusion rests largely on a prior Staff decision in the case of *Disney 2021*; recent events demand new and greater scrutiny of corporate social media advertising policies and practices. The *Disney 2021* decision does not take into account the recent, widely condemned role of social media platforms in enabling white supremacists, fascists and conspiracy theorists in organizing a violent attempted coup at the U.S. Capitol, nor does it reflect the unprecedented role of social media platforms in influencing access to public health information for billions during a global pandemic.

Social media platforms that are supported by advertising revenue – including Facebook, YouTube, Twitter and others – have been shown to play a central role in inciting the violent insurrection in the U.S. Capitol on January 6th, 2021. Those same platforms have also been cited by many experts for spreading increasing amounts of disinformation about the global coronavirus pandemic, threatening the health and well-being of millions of people.

A report by the non-partisan German Marshall Fund, published on January 27, 2021, concluded:³

³ https://www.gmfus.org/blog/2021/01/27/social-media-engagement-deceptive-sites-reached-record-highs-2020?utm_source=email&utm_medium=email&utm_campaign=press%20releases&fbclid=IwAR1GcsU3N5ASMdKX-hihr8GvUIBYrVe1gjV5JJudInGnC7S4fWO3Odk__os

“The level of engagement with deceptive content on Twitter and Facebook hit record highs in 2020 and remained high in the fourth quarter of the year, as false and manipulative content about the election and the coronavirus spread widely.”

A featured article in Fast Company magazine carried the headline:⁴ *The attempted coup at the Capitol needs to be brands’ wake-up call about funding online disinformation*. The article continued: “A significant lack of control in digital advertising makes brands vulnerable to funding disinformation inadvertently and defunding legitimate news.”

In an article published in The New York Times on January 6th – the day of the Capitol insurrection – Lawrence Lessig, a law professor at Harvard University, discussed the “destructive” impact that social media advertising expenditures can have on society.⁵

“There’s a very particular reason why this more recent change in technology has become so particularly destructive: it is not just the technology, but also the changes in the business model of media that those changes have inspired. The essence is that the business model of advertising added to the editor-free world of the internet, means that it pays for them to make us crazy. Think about the comparison to the processed food industry: they, like the internet platforms, have a business that exploits a human weakness, they profit the more they exploit, the more they exploit, the sicker we are.”

In July 2020, Bloomberg reported⁶ that a study by the nonprofit Global Disinformation Index found that “digital advertising platforms run by Google, Amazon.com Inc. and other tech companies will funnel at least \$25 million to websites spreading misinformation about Covid-19 this year.” The co-founder of the research group said they released the study partly “as a way to alert advertisers when their marketing spots show up on this kind of website” and that “brands can help by pulling ads from tech platforms when they see issues like this.”

“A significant lack of control in digital advertising makes brands vulnerable to funding disinformation inadvertently and defunding legitimate news.”

-Fast Company Magazine

There is a clear nexus between Home Depot’s business and the significant public policy issue of social media harms.

Home Depot was reportedly the largest advertiser on Facebook in 2019, spending \$178.5 million, according to data compiled by the research firm Pathmatics which have been widely quoted by news organizations including The Wall Street Journal⁷ and CNN.⁸ Home Depot is also an advertiser on YouTube; estimates of the Company’s YouTube ad budgets are not publicly available.

Home Depot faces reputational risk due to the implications of its advertising practices as they relate to a significant public policy issue: the proliferation of hate speech and disinformation online. Home Depot’s activity navigating this business risk has been noted by the press.

In June 2020, after Facebook announced that the service planned to crack down on hateful messaging in ads and posts from politicians, Home Depot spokeswoman Sara Gorman said: “Given the measures [Facebook] just announced, we’re watching this very closely...Like others, we’re disgusted by hate

4 <https://www.fastcompany.com/90592199/the-capitol-coup-needs-to-be-brands-wake-up-call-about-funding-online-disinformation>

5 <https://www.nytimes.com/2021/01/06/opinion/trump-lies-free-speech.html?searchResultPosition=5>

6 <https://www.bloomberg.com/news/articles/2020-07-08/google-amazon-funnel-over-20-million-to-virus-conspiracy-sites?sref=ZvMMMOkz>

7 <https://www.wsj.com/articles/disney-slashed-ad-spending-on-facebook-amid-growing-boycott-11595101729>

8 <https://www.cnn.com/2020/07/01/tech/facebook-top-advertisers/index.html>

speech and discriminatory content we see on social media.”⁹

In January 2021, following the attack on the U.S. Capitol, Home Depot said in a statement that it was “saddened and outraged by the violent attack on the U.S. Capitol and our lawmakers” and “disgusted” by malicious content on social media.¹⁰

Yet there’s been no public indication of Home Depot taking action regarding hate speech and discriminatory content on social media. A June 2020 Fortune article headlined *We still haven’t heard from some of Facebook’s biggest advertisers on the growing ad boycott*¹¹ noted that Home Depot had not yet joined an advertiser boycott, saying: “Several of Facebook’s top advertisers have remained silent as a growing number of companies continue joining a temporary boycott of ads on the service. ... Top advertisers on Facebook this year include Disney, Procter & Gamble, the U.S. Census Bureau, Home Depot, CBS, Wix.com, Purple Innovation, Domino’s Pizza, Sprint, and Walmart, according to data from digital marketing firm Pathmatics. None of those companies have joined the #StopHateForProfit campaign, which calls for companies to pause advertising on Facebook during the month of July.”

The business decisions of Home Depot’s peer advertisers affirm how advertisers’ role in stemming harmful content online is perceived by many advertisers as a major business concern and a matter of public importance.

Dozens of Home Depot’s peers who are also among the largest advertisers have affirmed the importance of addressing hate speech fueled by online advertising by participating in industry networks such as the newly formed GARM, Global Alliance for Responsible Media. Home Depot is not listed as an alliance member on GARM’s website.¹² As reported by CNN:¹³

“Some of the world’s biggest advertisers have joined forces with Facebook (FB), YouTube and Twitter (TWTR) in an attempt to prevent harmful online content messing with their campaigns. Companies such as Procter & Gamble (PG), Kellogg (K), Adidas (ADDDF), Unilever (UL), and PepsiCola (PEP), are worried that their ads can pop up next to content they don’t want associated with their brands, such as violent or terrorist videos and hate speech. The Global Alliance for Responsible Media, which represents 60 companies, ad agencies, industry associations and digital platforms, announced at the World Economic Forum on Thursday a series of measures it says will help keep harmful content offline and away from advertisements.”

In addition to the work of GARM, public statements by peer companies during and prior to the **#StopHateforProfit** advertiser boycott of Facebook in summer 2020 also show that advertising practices are increasingly considered a matter of public importance due to the role of advertising in fueling online harm. For example, in June 2020, CNBC reported¹⁴ that Procter & Gamble, a company that, like Home Depot, is a major advertiser on Facebook, stated that it was reviewing its advertising practices “to ensure that the content and commentary accurately and respectfully all people, and that we are not advertising on or near content we determine to be hateful, discriminatory, denigrating or derogatory.” Similarly, Coca Cola announced it would pause social media advertising for 30 days. Starbucks too suspended advertising across social media and committed to “discussions internally and with media partners and civil rights organizations to stop the spread of hate speech.”¹⁵

9 <https://fortune.com/2020/06/29/facebook-ad-boycott-top-advertisers-silent-which-companies/>

10 <https://www.nytimes.com/2021/01/18/business/media/investors-push-home-depot-and-omnicom-to-steer-ads-from-misinformation.html>

11 <https://fortune.com/2020/06/29/facebook-ad-boycott-top-advertisers-silent-which-companies/>

12 <https://wfanet.org/garm>

13 <https://www.cnn.com/2020/01/23/tech/youtube-facebook-advertisers/index.html>

14 <https://www.cnn.com/2020/06/26/coca-cola-pauses-advertising-on-all-social-media-platforms-globally.html>

15 <https://www.bbc.com/news/business-53214291>

These actions by Home Depot peer advertisers demonstrate that it is becoming increasingly common for corporations to publicly acknowledge and commit to improving their online advertising practices in order to address the potential harm these practices may have on a significant public policy issue.

While the 2020 Facebook advertiser boycott generated greater media attention toward the role of advertisers in fueling online hate, this is not a new issue, nor was this the first time major online advertisers weighed in publicly on the connections between online hate speech, advertising, and the well-being of society. In 2017, major digital advertiser AT&T pulled advertising from YouTube after its ads fueled videos with extremist content, saying: "We are deeply concerned that our ads may have appeared alongside YouTube content promoting terrorism and hate."¹⁶ Although historically, it is unusual for companies to make public statements about their advertising practices, in today's climate of growing hate speech and misinformation online, advertisers and many of Home Depot's peer companies may be expected to, and do, weigh in publicly on the impact of their advertising practices and their ability to manage the associated risks.

Contrary to Home Depot's arguments, not all advertising related proposals are excludable as ordinary business.

When the nexus to a very significant policy issue, including reputational risk, is as clear as it is in the present case, Staff decisions have shown that a balance of considerations — even in a proposal that touches on advertising — tips in favor of non-exclusion.

In Staff decisions, a major controversy on a significant policy focus attaching to the company has overridden the general prohibition on advertising-related proposals. The proliferation of racism, hate speech and disinformation by social media platforms is one of the major problems and controversies of our time, and the affiliation of Home Depot potentially supporting such platforms with its advertising rises to such a level.

For example, content and information in advertising of products or services is generally an "excludable topic," however, practices of advertising by realtor RE/MAX, of properties in Israeli settlements that are highly controversial because of their potential negative human rights impacts on Palestinian populations and their shaky legal status, was found to be a non-excludable topic. *RE/MAX Holdings Inc.* (March 14, 2016).

From investors' perspective, advertising practices transcend ordinary business when those practices may threaten a company's reputation and business.

Similarly, controversy surrounding tobacco companies' marketing to institutionally marginalized populations has also been a clear example of an exception to the advertising exclusion. Proposals regarding advertising of tobacco products to young people, *RJR Nabisco Holding Corp.* (February 22, 1999), communications regarding health risks of menthol cigarettes to Black people that were disproportionate consumers of the products, *Loews Corporation* (February 9, 2006), and on the marketing and sale of cigarettes to African-American and low income communities, *Lorillard Inc.* (March 3, 2014) were each found non-excludable despite ordinary business claims, because of the concrete links to significant policy concerns of discrimination and disparate impact.

Today, the potential association of Home Depot's brand with hate speech, discrimination and disinformation represents a potential reputational crisis for the Company. From investors' perspective,

¹⁶ <https://variety.com/2017/digital/news/att-youtube-advertising-terrorism-hate-videos-1202014165/>

advertising practices transcend ordinary business when those practices may threaten a company's reputation and business¹⁷ and may contribute to threats to a healthy democratic society.

The Proponent is not seeking to micro-manage Home Depot's advertising practices nor is she working to "prevent any of [the Company's] ads from appearing on certain social media platforms," as Home Depot has argued. The Proponent is also not working to "alter its advertising policies," as the Company suggests, because the Proponent is not aware of Home Depot's advertising policies. The Proponent simply believes that shareholders deserve third-party reassurance that Home Depot is effectively managing its business to the extent that it is not entangled in inadvertently promoting discrimination, fake news, and incitements to violence online.

In seeking a report, the Proponent is requesting more information about the *existing and/or potential* strategies and standards Home Depot may be using or may use in the future to address these business risks. That is, the Proponent seeks to understand the Company's existing efforts to address such business risks. The underlying subject matter of the report is the extent to which Home Depot is protecting its global brand from association with significant policy concerns and potential negative social impacts.

Growing evidence and widespread public discussion — among academics, corporate executives, legislators, civil and human rights advocates and the press — about the role of advertisers in fueling civil or human rights violations online demonstrate that the thrust of the proposal is a significant social policy issue.

Following many years of social media companies ignoring, deflecting, or deriding the calls from civil and human rights groups to address the dangerous spread of hate and misinformation online,^{18,19, 20} in 2020, advocates organized a #StopHateforProfit campaign²¹ asking major advertisers to boycott Facebook in order to pressure the social media giant to improve conditions online for BIPOC (Black, Indigenous and People of Color) social media users, LGBTQ+ users, and other historically marginalized groups. The advertiser boycott campaign garnered widespread media coverage and the participation of over 1,000 boycotting businesses, including major companies such as Unilever, Verizon, Adidas, Ford, Williams Sonoma, and Patagonia. The campaign was covered by major television news outlets such as MSNBC, Bloomberg TV, CNN, NBC News, and more, and by print/digital outlets including USA Today, Associated Press, Fox News, The New York Times, CNBC, The Wall Street Journal, and more.

The boycott was also discussed by Facebook's global advertising executive in her speech at the Association of National Advertisers' "Masters of Marketing" conference in October 2020,²² where the Facebook executive noted that she was "thankful" for the role that advertisers played in pushing the company to do better, saying: "We're doing everything that we possibly can to protect the democratic process in this country." The swift and tremendous response by over 1,000 advertisers to the advertiser

17 For example, in its request for no-action by the SEC Staff, Home Depot cites a Staff decision excluding a 2014 proposal at FedEx Corp. (concurring with the exclusion of a proposal that requested the company to prepare a report addressing, among other things, efforts to disassociate the company from imagery that disparages American Indians). It is notable that investors continued to have concern over this FedEx relationship, and in 2020, pressure by FedEx shareholders reportedly prompted the company to finally take steps that forced a name change by the football team. As reported by [NPR](#):

- "FedEx, the title sponsor of the Washington Redskins' stadium, is asking the team to change its name following a report that investors are lobbying for the company to cut ties with the National Football League team.
- FedEx, which paid \$205 million in 1999 for the naming rights to the team's stadium in Landover, Md., said in a statement on Thursday that it had 'communicated to the team in Washington our request that they change the team name.'
- The request follows a report in AdWeek on Wednesday that letters signed by 87 investment firms and shareholders worth \$620 billion had asked FedEx, Nike and PepsiCo to cut business ties with the team unless it agrees to the name change."

18 <https://www.washingtonpost.com/technology/2020/07/08/facebook-civil-rights-audit/>

19 <https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-1/>

20 <https://muslimadvocates.org/complicit/>

21 <https://www.stophateforprofit.org/>

22 <https://www.cnn.com/2020/10/22/facebooks-ad-chief-takes-ad-boycotts-1/index.html>

Social media's "free" advertising-driven business model is "a significant barrier to addressing digitally mediated human rights harm, from unchecked data collection to gaming of social media algorithms."

-Human Rights Watch

boycott, the significant public attention to these actions, and corporate advertising executives' statements such as this one by Facebook's executive, all demonstrate that social media advertising is perceived to be playing a role in the "democratic process."

The international advocacy organization Human Rights Watch has warned that social media's "free" advertising-driven business model is "a significant barrier to addressing digitally mediated human rights harm, from unchecked data collection to gaming of social media algorithms." Human Rights Watch said:

"If regulators, investors, and users want true accountability, they should press for a far more radical re-examination of tech sector business models, especially social media and advertising ecosystems."²³

International advertiser associations and industry trade bodies have affirmed the reputational risks, as well as the social importance, of online advertising practices for a number of years now. These efforts, which often offer a blueprint for best practices for a company's overall business, have recently become more widespread and urgent.

In October 2020, the 4A's Advertiser Protection Bureau released a white paper, which was endorsed by the Global Disinformation Initiative and the European Association of Communications Agencies and reported on by AdWeek.²⁴ The report – *Misinformation/Disinformation in Focus*²⁵ – highlighted how a company's proximity to misinformation and disinformation online can have a detrimental impact on a company's bottom line, stating that:

"When brand safety is considered, proximity to unsuitable content, including misinformation and disinformation, has been shown to affect brands in a variety of negative ways, including damaging a brand's reputation and its bottom line. Placement beside such unsuitable content can reduce the credibility of the brand in question, and, especially for younger consumers, can significantly affect opinions towards the brand. Research indicates that Millennial and Gen X consumers exposed to brand ads beside unsafe placements are three times more likely not to recommend the brand and four times more likely not to consider purchasing from the brand, **creating a 'negative reach' for paid placements – worse than not advertising at all.**" (Emphasis added.)

In addition, the Conscious Advertising Network, a coalition of 70 organizations working "to ensure that industry ethics catches up with the technology of modern advertising" released a manifesto on Hate Speech,²⁶ stating their formal position that: "Advertising funds hate speech inadvertently. We advocate action by advertisers to make hate unprofitable." In 2018, ISBA, a trade body representing over 3,000 U.K. brands that works to "champion an advertising environment that is transparent, responsible and accountable," released a guide for advertisers titled, *Challenging hate speech on social media platforms*.²⁷

Multiple studies have explored how a company's advertising practices, and proximity to potentially hateful material online, impact business. As discussed in the Proposal, one study by the Trustworthy

²³ <https://www.hrw.org/news/2018/12/21/social-medias-moral-reckoning>

²⁴ <https://www.adweek.com/agencies/4as-advertiser-protection-bureau-tackles-misinformation/>

²⁵ https://www.aaaa.org/index.php?checkfileaccess=/wp-content/uploads/Misinformation-Disinformation-In-Focus.pdf&access_pid=92898

²⁶ https://www.consciousadnetwork.org/manifestos/hate_speech.pdf

²⁷ <https://www.isba.org.uk/media/1589/challenging-hate-speech-guidance.pdf>

Accountability Group and the Brand Safety Institute found that 80% of Americans would reduce or stop buying a product if advertised next to extreme or dangerous content online, noting that advertising next to hate speech is “the real and measurable risk to a company’s bottom line from a preventable brand safety crisis.”²⁸ 73% of users agreed that advertisers’ placing ads next to hate speech was most damaging for brand reputation. 70% of users believed that advertisers should be responsible for ensuring ads do not run beside harmful content. Responding to these findings, the chief executive of the research group stated: “While reputational harm can be hard to measure, consumers said that they plan to vote with their wallets if brands fail to take the necessary steps to protect their supply chain from risks such as hate speech, malware, and piracy.” This is one among many studies demonstrating the extent to which online advertising placement is a significant concern to an advertiser’s business overall due to its influence on a brand’s reputation.

A 2018 global Brand Safety Survey by AdColony found that a “majority of users also said that they encounter hateful, inappropriate, or offensive content primarily on social media, especially Facebook (60%!),” that “ads from ‘fake news’ outlets were also most commonly found on social media,” and concluded that “Hateful, inappropriate, or offensive content placed next to, above, or below an ad is not only more likely to negatively impact how users view the outlet (social or a gaming app), but also their perceptions of the advertiser.”²⁹

Omnicom Media Group research produced similar results, finding that 70% of millennials and Gen Xers “will not like, recommend, or purchase from a brand whose ads appear next to offensive, hateful, or derogatory content” and that 51% said they are less likely to purchase from the brand, even if the harmful ad placement was not the brand’s fault.³⁰

Another study by Chief Marketing Officer Council, covered by MarketingWeek,³¹ found that social media platforms were the least trusted media channel for delivering advertisements to consumers, with 60% of consumers stating “that offensive content appearing on the likes of Facebook and Twitter had already caused them to ‘consume more content from trusted, well-known news sources and established media channels.’”

The critical role that advertisers play in the social media landscape has attracted attention in the U.S. Congress. Lawmakers have weighed in on the specific role of advertisers in addressing online hate speech and misinformation as a major public policy issue.

In a June 2020 Congressional hearing³², Facebook CEO Mark Zuckerberg was asked if the company is so big that it doesn’t care about an ad boycott. “Of course we care, but we’re also not going to set our content policies because of advertisers,” Zuckerberg replied.

In June 2020, House Speaker Nancy Pelosi urged social media advertisers to use their “tremendous leverage” to pressure social media platforms to address the spread of disinformation online, saying: “Advertisers are in a position, they have power to discourage platforms from amplifying dangerous and even life-threatening disinformation. Some major advertisers and some not so major have begun to

“We need to empower advertisers to continue to object and to use their power to hold social media companies accountable for their bad behavior. This is an undermining of democracy. It is a challenge to people’s health. It is just wrong.”
-House Speaker Nancy Pelosi

28 <https://www.thedrum.com/news/2019/08/13/80-people-would-avoid-buying-brands-featured-next-extreme-or-dangerous-content>

29 <https://www.adcolony.com/blog/2018/07/25/the-importance-of-brand-safety/>

30 <https://venturebeat.com/2018/07/25/adcolony-brands-are-worried-about-unsafe-content-and-fake-news-on-facebook-social-media/>

31 <https://www.marketingweek.com/social-least-trusted-media-channel/>

32 <https://www.cnet.com/news/facebook-ad-boycott-how-big-businesses-hit-pause-on-hate/>

express objections to platform policies that promote voter fraud and violence...We need to empower advertisers to continue to object and to use their power to hold social media companies accountable for their bad behavior. This is an undermining of democracy. It is a challenge to people's health. It is just wrong."³³

Even when social media platforms state their efforts to keep harmful content offline, enforcement of these efforts may be insufficient — and advertisers are implicated in the impact of these inadequate enforcement measures. In April 2020, after Facebook's vice president for global affairs and communication stated that the platform would not allow any posts directing people to drink bleach, or discrediting social distancing, Consumer Reports created seven paid ads to run on Facebook making those exact claims (regarding drinking bleach and social distancing, as well as other "false or dangerous information"), and Facebook approved them all. According to Consumer Reports, "Facebook confirmed that all seven ads that I created violated its policies, but did not specify which rules were broken."³⁴ Despite their acknowledgement that the content was inappropriate, Facebook's moderation system had approved all the ads.

In the absence of effective action by companies, regulators and legislators are looking at this issue. The Honest Ads Act is a Senate bill introduced in May 2019 with bipartisan support (as well as support from Facebook and Twitter).³⁵ It seeks "To enhance transparency and accountability for online political advertisements by requiring those who purchase and publish such ads to disclose information about the advertisements to the public, and for other purposes." The bill would work to address the kinds of discriminatory targeted ads that Russian groups purchased from social media platforms and used to influence the 2016 U.S. elections, such as by targeting Black voters in the U.S. to discourage them from voting. The introduction of this bill demonstrates how legislators are concerned about the role of online advertising, especially as it relates to people's ability to fairly access necessary aspects of democratic process, such as elections. For companies like Home Depot that greatly rely on online advertising, including targeted advertising, to do business, this bill may point to a future of greater regulation surrounding online advertising and the interest of legislators in subjecting online ads (and their sources) to greater transparency as the link between online advertising and offline harm becomes more and more clear.

The role of advertisers in facilitating the spread of hate speech, misinformation and disinformation online has also been widely discussed in academic and policy research.

For example, a 2018 policy paper, *#DIGITALDECEIT: The Technologies Behind Precision Propaganda on the Internet*, by Dipayan Ghosh and Ben Scott, published by Harvard Kennedy School, New America, and Public Interest Technology, discusses the role of advertisers at the center of this significant issue threatening democracy:

"The problem is that when disinformation operators leverage this system for precision propaganda, the harm to the public interest, the political culture, and the integrity of democracy is substantial and distinct from any other type of advertiser. Our thesis is that we must study the entire marketplace of digital advertising and disentangle the economic alignment of interests in order to find the best ways to constrain bad actors and minimize harm to the public."³⁶

A September 2020 policy brief for European audiences, authored by members of the Conscious Advertising Network and Mozilla, argues that "digital advertising – the business model that underpins

³³ <https://www.cnn.com/2020/06/16/pelosi-says-advertisers-should-push-platforms-to-combat-disinformation.html>

³⁴ <https://www.consumerreports.org/social-media/facebook-approved-ads-with-coronavirus-misinformation/>

³⁵ <https://www.congress.gov/bills/115th-congress/senate-bill/1989/text>

³⁶ <https://www.newamerica.org/pit/policy-papers/digitaldeceit/>

most of the internet as we know it today – fails to support or sustain healthy digital spaces that are fit for purpose for the majority of people. The nature of contemporary digital advertising and its practices are at the core of some of the most pressing challenges facing societies today, from widespread and routine invasions of consumer protection and fundamental rights, to the funding of hate and misinformation.”³⁷ The authors “urge regulators to act fast,” indicating that the issue of social media advertising practices fueling unhealthy digital spaces may also be a potential regulatory risk for advertisers like Home Depot.

A January 2020 report by Avaaz exploring the spread of climate misinformation on social media platforms states: “(A)dvertisers must both ensure that they follow through on their own corporate social responsibility commitments and track what kind of content their advertising revenue is inadvertently funding – and work with YouTube to be more transparent and socially responsible when it comes to where the platform places their brand names. Advertisers must establish detailed ethical ad placement requirements for platforms that include correcting the record and detoxing the algorithm. Avaaz commends the brands who have already begun this critical work.”³⁸ Avaaz’s report also demonstrates that not only do advertisers play a key role in addressing this public policy issue, they have also been effective in doing so, noting that “companies have pulled their ads from YouTube after realizing that they were being shown on videos where inappropriate comments were being made about children. This led to expedited policy and enforcement changes at YouTube.”

The body of research about this topic has included an examination of how online advertisers haphazard, and often automated, attempts to control brand safety measures may be negatively impacting the journalism industry, a key part of democracy.

A 2019 paper by University of Massachusetts Amherst scholars explored how “the programmatic advertising industry understands ‘fake news,’ how it conceptualizes and grapples with the use of its tools by hoax publishers to generate revenue, and how its approach to the issue may ultimately contribute to reshaping the financial underpinnings of the digital journalism industry that depends on the same economic infrastructure.”³⁹

In July 2020, amid a global anti-racist uprising following the murder of George Floyd by Minneapolis police, NBC reported⁴⁰ that Vice Media Group was urging advertisers “to review ‘brand safe’ keywords, after the company recently found that ad blocklists have included such terms as ‘Black Lives Matter,’ ‘George Floyd,’ ‘protest’ and – in one case – ‘Black people.’” (A blocklist – sometimes also referred to as an exclusion list, or a blacklist – suppresses advertising based on keywords appearing in URLs or nearby content.) Vice research had found that “content related to the death of George Floyd and resulting protests was monetized at a rate 57% lower than other news content” and that topics about the coronavirus pandemic were 137% more likely to end up on advertisers’ blocklists during February - March 2020. By influencing the ability of legitimate online news content and public health information to proliferate or not, online advertising practices impact business, as well as the health of a democracy.

2020 Adalytics research found that the use of brand safety technology to avoid brands’ advertisements being placed next to controversial content led to “21% of economist.com articles, 30.3% of nytimes.com, 43% of wsj.com, and 52.8% of articles on vice.com being labeled as ‘brand unsafe’” and that “journalists who focus on certain ‘serious’ topics, such as Middle East affairs, obituaries, or political events, are disproportionately likely to have their work marked as “unsafe” by brand safety vendors.”⁴¹ As referenced in the Proposal, on World Press Freedom Day 2020, the Global Forum for Media Development (GFMD), the International Civil Society Organization on the Safety of Journalists Coalition

37 https://789468a2-16c4-4e12-9cd3-063113f8ed96.filesusr.com/ugd/435e8c_fbf809d789cf466fab9a0013b01d3dff.pdf

38 https://secure.avaaz.org/campaign/en/youtube_climate_misinformation/

39 https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1000&context=journalism_faculty_pubs

40 <https://www.nbcnews.com/news/nbcblk/vice-urges-advertisers-stop-blocking-black-lives-matter-related-keywords-n1232103>

41 <https://adalytics.io/blog/tens-of-thousands-of-news-articles-are-labeled-as-unsafe-for-advertisers>

(ICSO SoJ Coalition) and many other media and journalism organizations published a “joint emergency appeal” for journalism and media support in response to the coronavirus pandemic crisis, which called on advertisers to:

- “Responsibly manage blacklist technology: Work with media companies and ad agencies to find solutions to blacklisting of COVID-19 or other news reporting related content, and stop using blacklist technology to block ads from appearing next to credible journalism and news media stories that mention the COVID-19 pandemic and other critical health and social issues online. This is in-line with our similar call to technology platforms and telecommunications companies (see 4.3 above).
- Change how you measure and value engagement: Build your long-term brand reputation by turning away from programmatic, click/view-based and/or cookie-driven targeted advertising. Journalism offers value to the brands beyond just the traffic and offers a safe environment for brand exposure and both commercial and societal impact.
- Advertise through trusted media: Make it a policy to include as many quality journalism outlets, particularly at the local level, as possible in your digital advertising spend. Work with [United for News](#), the [Journalism Trust Initiative](#), or local journalism associations in each market to add reputable, local news outlets to your advertising inclusion lists...Ramp up existing direct advertising relationships with quality media, and review your programmatic “blocklists” to develop a more subtle approach to your brand safety concerns ensuring that you do not block news altogether. This is a time to support the media above and beyond commercial interests and imperatives.”⁴²

As an indication of how concerning these issues are, there is now an emerging industry seeking to address this business challenge, with companies and non-profit organizations like NewsGuard, the Global Disinformation Index, and Check My Ads popping up to step in where companies and their advertisers have fallen short.

Brand safety advocate Nandini Jammi, the cofounder of Check My Ads, told BuzzFeed:⁴³

“(The) coronavirus is going to dominate our lives for the foreseeable future, which means that newsrooms are going to need to dedicate significant resources to cover the issues. If brands don’t proactively make sure their ads are funding these stories, they’re going to be seeing a lot of traffic, but that traffic is not going to translate into revenue. In my experience, brand marketers aren’t even aware that brand safety companies are making life-and-death decisions for the news industry through their ad budgets.”

The nonprofit Ranking Digital Rights found in a 2020 study on social media platforms and telecommunications companies that:

“Companies lack transparency and accountability about how their targeted advertising policies and practices and their use of algorithmic systems shape online content. Unaccountable and unconstrained targeted advertising business models can result in the amplification of sensationalistic and inflammatory content in order to optimize user engagement and maximize profits. This can result in the dissemination of problematic, even illegal content that can unfairly influence public opinion, undermine democratic processes, and violate internet users’ human rights.”⁴⁴

A growing body of research on the impact of advertising practices, as well as calls-to-action to advertisers — made not only by civil rights groups, but also by other companies and by companies that have been created specifically to deal specifically with these advertising concerns — demonstrates

⁴² <https://gfmd.info/emergency-appeal-for-journalism-and-media-support-2/>

⁴³ <https://www.buzzfeednews.com/article/craigsilverman/news-sites-need-ads-to-survive-the-coronavirus-more-than-35>

⁴⁴ <https://rankingdigitalrights.org/wp-content/uploads/2020/03/pilot-report-2020.pdf>

As a major and highly visible advertiser, Home Depot's social media advertising practices have the potential to significantly impact the Company's reputation, and therefore the Company's core business.

how the impact of advertisers' practices on the public, including as it relates to issues of public health and safety, is a topic of interest for advertisers, media groups, and the press.

The evidence above shows how, as a major and highly visible advertiser, Home Depot's social media advertising practices have the potential to significantly impact the Company's reputation, and therefore the Company's core business.

The extent to which online advertising practices transcend ordinary business, and become a matter of companies' overall business as a whole, have been noted by organizations such as the Global Disinformation Index, which has proposed corporate policy responses by brands and advertisers that clearly encompass business decisions far beyond marketing choices and other matters of "ordinary business." The recommendations suggest that brands:

- "recognise their role and power to defund disinformation and stop offline harms.
- use impartial and trusted disinformation risk ratings for news sites as part of brand suitability decisions.
- align their corporate responsibility agendas with what content they indirectly fund via marketing activities.
- demand from ad tech partners the adoption of state-of-the-art detection of content which is at high risk of disinforming readers."⁴⁵

CONCLUSION

The Proposal does not attempt to control the content of advertising, but only to ensure that the Company has policies in place to defend the Company's reputation against support for and affiliation with hate speech, discrimination and disinformation in social media. These social media problems have become a significant policy issue, and the Company's nexus as a major advertiser in those platforms is clear.

In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Companies seeking to establish the availability of exclusion under Rule 14a-8, therefore, have the burden of showing ineligibility. As argued above, the Company has failed to meet that burden. Staff must deny the No-Action request and notify the company that the Proposal must appear on the proxy. ■

⁴⁵<https://disinformationindex.org/2020/10/how-can-advertisers-disrupt-disinformation-dont-fund-it/>

January 15, 2021

VIA E-MAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *The Home Depot, Inc.*
Shareholder Proposal of Myra K. Young
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, The Home Depot, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2021 Annual Meeting of Shareholders (collectively, the “2021 Proxy Materials”) a shareholder proposal (the “Proposal”), including statements in support thereof, submitted by John Chevedden on behalf of Myra K. Young (the “Proponent”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2021 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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THE PROPOSAL

The Proposal states:

Resolved: Shareholders request the Board commission an independent third-party report, at reasonable cost and omitting proprietary information, assessing how and whether Home Depot ensures its advertising policies are not contributing to violations of civil or human rights. The report should consider whether the policies contribute to the spread of hate speech, disinformation, white supremacist activity, or voter suppression efforts, and whether policies undermine efforts to defend civil and human rights, such as through the demonetization of content that seeks to advance and promote such rights.

A copy of the Proposal, including statements in support thereof, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations and does not focus on a significant policy issue. As discussed below, the Proposal is nearly identical to the "Resolved" clause in the proposal submitted by the same Proponent this proxy season to another company, which the Staff concurred was excludable pursuant to Rule 14a-8(i)(7). *See The Walt Disney Co.* (avail. Jan. 8, 2021) ("*Walt Disney 2021*"). Accordingly, the Proposal is likewise excludable pursuant to Rule 14a-8(i)(7).

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Relates To The Company's Ordinary Business Operations.

A. Background On The Ordinary Business Standard Under Rule 14a-8(i)(7)

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept [of]

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providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. As relevant here, one of these considerations was that "[c]ertain 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 shareholder oversight." *Id.*

As discussed below, the Proposal is excludable under Rule 14a-8(i)(7) because it relates to the manner in which the Company advertises and markets its products.

B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Manner In Which The Company Advertises Its Products

The Staff has recognized that decisions regarding a company's advertising of products and services relate to a company's ordinary business operations and thus may be excluded under Rule 14a-8(i)(7), regardless of where the advertising occurs. For example, in *Amazon.com, Inc.* (avail. Mar. 23, 2018), the Staff concurred with the exclusion of a shareholder proposal requesting that "the board take the steps necessary to establish a policy that will ensure that the [c]ompany does not place promotional or other marketing material on online sites or platforms that produce and disseminate content that expresses hatred or intolerance for people on the basis of actual or perceived race, ethnicity, national origin, religious affiliation, sex, gender, gender identity, sexual orientation, age or disability" as relating to the company's ordinary business operations. Amazon argued that the proposal implicated "complex decisions regarding [c]ompany advertising standards, including complex technology processes regarding how advertising sites are selected and assessed for consistency with [c]ompany standards, that are not appropriate for shareholder determinations." The Staff's response noted that the proposal "relates to the manner in which the [c]ompany advertises its products and services." Similarly, in *Ford Motor Co.* (avail. Feb. 2, 2017), the Staff agreed with the company that it could exclude a shareholder proposal requesting that the company assess the political activity resulting from its advertising and any resulting risk. Ford argued that the "advertising function and any potential 'risks' resulting from the chosen media channels fall well within the scope of normal business operations and well outside the scope of normal shareholders' expertise." The Staff concurred, noting that "[t]here appears to be some basis for your view that Ford may exclude the proposal under rule 14a-8(i)(7), as relating to Ford's ordinary business operations." *See also General Electric Co.* (avail. Jan. 18, 2005) (concurring with the

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exclusion of a proposal prohibiting the company from advertising through medium that carry statements advocating firearm control legislation); *General Mills, Inc.* (avail. Jul. 14, 1992) (concurring with the exclusion of a proposal prohibiting the company from advertising on television programs that were “insulting to people of any racial, ethnic or religious group”); and *Hershey Foods Corp.* (avail. Dec. 27, 1989) (concurring with the exclusion of a proposal directing the company to discontinue advertising the company’s products on MTV following the company’s sponsorship of an allegedly sexually explicit video).

Furthermore, the Staff has repeatedly determined that proposals that require companies to consider specific social policy issues in making advertising decisions are excludable under Rule 14-8(i)(7). Notably, in *Walt Disney 2021*, the proposal, like the Proposal here, sought a report “assessing how and whether [the company] ensures the company’s advertising policies are not contributing to violations of civil or human rights.” Moreover, in *Walt Disney 2021* the company argued that “allocation of advertising resources to best promote a company’s products and services is a key management function” and that the proposal’s request “reflects the Proponent’s attempt to impose on the [c]ompany the Proponent’s own views on advertising strategy and standards,” such that the proposal is excludable. As in *Walt Disney 2021*, the same arguments and reasoning apply. The Proposal is nearly identical to the “Resolved” clause at issue in *Walt Disney 2021*, and the supporting statements in each case are focused on the same issues and practices and contain overlapping language. In this regard, as in *Walt Disney 2021*, the Proposal includes the same statements regarding “reputational and business risk” from “contributing to the spread of racism, hate speech, and disinformation [online through] advertising on social media platforms.” Further, the Proposal, like in *Walt Disney 2021*, notes that “platforms like Google and Facebook may be failing to protect civil and human rights” and both proposals criticize the companies for advertising on Facebook. Given the substantial similarity between the Proposal and *Walt Disney 2021*, and because the Proposal likewise seeks a report that bears on the ordinary business topic of the manner in which the Company advertises its products, the Proposal is also excludable pursuant to Rule 14a-8(i)(7).

By way of further example, in *FedEx Corp. (Trillium)* (avail. Jul. 7, 2016), the proposal requested that the company prepare a report describing legal steps FedEx has taken and/or could take to distance itself from the former name of the Washington D.C. NFL team. The proponents characterized that team name as “a dehumanizing word characterizing people by skin color and a racial slur with hateful connotations.” The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7) because it addressed the manner in which the company advertises its products and services. See also *FedEx Corp.* (avail. Jul. 14, 2009) (concurring with the exclusion of a proposal that requested the company to prepare a report addressing, among other things, efforts to disassociate the company from imagery that

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disparages American Indians); *The Walt Disney Co.* (avail. Nov. 30, 2007) (concurring with the exclusion of a proposal requesting a report regarding what actions the company is taking “to avoid the use of negative and discriminatory . . . stereotypes in its products”); *Federated Department Stores, Inc.* (avail. Mar. 27, 2002) (concurring with the exclusion of a proposal requesting that the company “identify and disassociate from any offensive imagery to the American Indian community” in product marketing, advertising, endorsements, sponsorships and promotions); and *Apple Computer, Inc.* (avail. Oct. 20, 1989) (concurring with the exclusion of a proposal requesting that the company create a committee to regulate public use of the company’s logo).

As in *Walt Disney 2021*, *Amazon.com, Inc.* and *Ford Motor Co.*, and the other precedents cited above, the Proposal reflects an attempt to intervene in how the Company manages its advertising strategy and standards. However, and as argued in *Walt Disney 2021*, the allocation of advertising resources to best promote a company’s products and services is a key management function. The Company’s internal and external advertising professionals devote significant time, energy and resources in making decisions relating to the advertising of the Company’s products and services, including determining the appropriate channels for advertising, such as social media platforms. Further, the Company operates in a highly competitive industry and marketing effectiveness is among the competitive factors that affect the sales of its products and services. By requesting a report “assessing how and whether Home Depot ensures its advertising policies are not contributing to violations of civil or human rights,” the Proposal intrudes upon the ordinary business operations of the Company in making advertising decisions by seeking to override the Company’s determinations on the processes and standards it employs when implementing its advertising decisions and strategies. This is especially the case with the Proposal, given the complex and evolving technology involved in digital and online advertising and marketing, the subjective nature of the topics targeted by the Proposal, and the Company’s internal, existing processes and standards for managing its online advertising and marketing activities. The well-established precedents cited above, including the Staff’s recent decision in *Walt Disney 2021*, demonstrate that the Staff consistently has concurred that proposals seeking to restrict the manner or context in which a company advertises its products and services address ordinary business issues, and the Proposal therefore is properly excludable under Rule 14a-8(i)(7).

C. *The Proposal Does Not Raise A Significant Policy Issue That Transcends The Company’s Ordinary Business Operations*

The well-established precedent set forth above demonstrates that the Proposal squarely addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7). Consistent with the 1998 Release, a proposal that relates to both ordinary business matters and significant social policy issues may be excludable in its entirety in reliance on

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Rule 14a-8(i)(7) if it does not “transcend the day-to-day business matters” discussed in the proposal. Moreover, as Staff precedent has established, merely referencing topics in passing that might raise significant policy issues, but which do not define the scope of actions addressed in a proposal and which have only tangential implications for the issues that constitute the central focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business. Here, although the Proposal’s reference to “the spread of racism, hate speech, and disinformation,” white supremacist activity, voter suppression efforts, and “whether policies undermine efforts to defend civil and human rights” could touch upon significant policy considerations in some contexts, the Proposal remains excludable under Rule 14a-8(i)(7) because it does not transcend the day-to-day business matters of the Company.

The Staff consistently has concurred that proposals that do not transcend the day-to-day operations of a company may be excluded under Rule 14a-8(i)(7) even if they touch upon or reference a significant policy issue. For example, as earlier discussed, in *Walt Disney 2021*, the proposal submitted by the same Proponent contained similar language as the Proposal and the Staff concurred with exclusion. In *Walt Disney 2021*, the company also argued that the proposal “does not raise a significant policy issue as to the [c]ompany because it does not have a sufficient nexus to the business of the [c]ompany.” Notwithstanding the social concerns touched on *Walt Disney 2021*, the proposal was fundamentally focused on the manner in which the company advertises, as is the Proposal here. As in *Walt Disney 2021*, the Proposal does not raise a significant policy issue that transcends the Company’s ordinary business operations and is likewise excludable.

Further, in *Amazon.com*, the proposal referenced issues related to “hatred or intolerance for people on the basis of . . . race, ethnicity, national origin, religious affiliation, sex, gender, gender identity, sexual orientation, age or disability,” many of which are protected classes under U.S. federal law. Even though the Staff has found that proposals that focus on human rights concerns can implicate a significant policy issue such that exclusion is not appropriate, the Staff concurred that, as to Amazon, the proposal related to an ordinary business issue (*i.e.*, the manner in which the company advertises its products and services) and was properly excludable, despite statements within the resolved clause regarding hatred and intolerance based on protected classes.

As in *Walt Disney 2021* and *Amazon.com, Inc.*, to the extent the Proposal references a significant policy issue generally, even in the resolved clause, it does not necessarily raise a significant policy issue *as to the business of the Company*. As a home improvement retailer, the Company does not produce or promote content that, in the Proposal’s words, “contribute[s] to the spread of hate speech, disinformation, white supremacist activity, or voter suppression efforts, [or that] undermine[s] efforts to defend civil and human rights.”

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Instead, the supporting statements of the Proposal reference a “widespread concern that platforms like Google and Facebook may be failing to protect civil and human rights by supporting government censorship, facilitating white supremacist activity, and enabling voter suppression.” Specifically, the Proposal takes to task these social media platforms for the, at times, questionable and concerning third-party content that they host and for the actions they take (and/or fail to take) in response to such content, which the Proposal labels as threatening, unsafe, offensive, hateful, and derogatory and believes contributes to “the spread of racism, hate speech, and disinformation.” None of this offensive content, however, relates to the content or speech by the Company or Company advertisements that may appear or be placed on such platforms. Thus, similar to the proposal at issue in *Walt Disney 2021* and *Amazon.com, Inc.*, the Proposal focuses on certain content produced and disseminated by third parties on online sites and social media platforms on which the Company’s products and services may be advertised. As argued in *Walt Disney 2021* and *Amazon.com*, such concerns here have no nexus to the Company, and it is readily apparent that no content generated by the Company is at issue or being criticized in the Proposal. As such, these types of considerations simply do not transcend the day-to-day operations of the Company.

Although the Proposal refers to “violations of civil or human rights,” consistent with *Walt Disney 2021* and *Amazon.com* and other precedent, a mere reference to a possible significant policy issue does not automatically transform a proposal focused on ordinary business matters to one that transcends ordinary business. Here, the Proposal does not indicate or allege that the Company’s advertising policies have contributed to human rights issues. Additionally, the content concerns that the supporting statements address (*i.e.*, “hate speech and discriminatory content” and “offensive, hateful, or derogatory content”) do not rise to the level of a human rights concerns that the Staff has determined in the past may preclude exclusion of a proposal pursuant to Rule 14a-8(i)(7) (*i.e.*, where the proposal at issue focuses on fundamental human rights or relates to the mistreatment of human beings). As in *Walt Disney 2021*, such concerns are not enough to transcend the ordinary business of the Company. Accordingly, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations. *See also Viacom, Inc.* (avail. Dec. 18, 2015) (concurring with the exclusion of a proposal requesting that the company issue a report assessing the company’s policy responses to public concerns regarding linkages of food and beverage advertising to impacts on children’s health, despite the public health implications raised by the proposal); *PetSmart, Inc.* (avail. Mar. 24, 2011) (concurring with the exclusion of a proposal requesting that the board require its suppliers to certify they had not violated “the Animal Welfare Act, the Lacey Act, or any state equivalents,” the principal purpose of which related to preventing animal cruelty, despite the fact that the proposal implicated animal welfare concerns); *Intel Corp.* (avail. Mar. 19, 1999, *recon. granted* Mar. 31, 1999) (concurring with the exclusion of a proposal requesting that the

GIBSON DUNN

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company condition its sponsorship of the International Science and Engineering Fair on the fair's operators changing their rules to restrict the use of animal tests by some contestants, despite the fact that the proposal raised concerns regarding animal welfare); and *Rite Aid Corp.* (avail. Mar. 5, 1997) (concurring with the exclusion of a proposal requesting the adoption of a policy for the company to stop selling cigarettes unless management could demonstrate that its stores can implement FDA regulations limiting advertising and access of cigarettes and tobacco products to minors, despite the related public health implications).

Based on the Proposal language and supporting statements, it is clear that what the Proposal truly wants is for the Company to alter its advertising policies, and to prevent any of its ads from appearing on certain social media platforms. However, as demonstrated above, the foregoing concerns merely crystalize the ordinary business focus of this Proposal. The Proposal is focused on *how* and *where* the Company advertises, which, as previously established, clearly relates to the manner in which the Company advertises its products and services, and the policies related thereto. Accordingly, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2021 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287, or Stacy S. Ingram, the Company's Associate General Counsel and Deputy Corporate Secretary, at (770) 384-2858.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Stacy S. Ingram, The Home Depot, Inc.
John Chevedden

GIBSON DUNN

EXHIBIT A

From: John Chevedden *** >
Sent: Friday, November 20, 2020 7:33 PM
To: Ingram, Stacy <STACY_INGRAM@homedepot.com>
Cc: Burton, Lyndsey M <LYNDSEY_M_BURTON@homedepot.com>
Subject: [EXTERNAL] Rule 14a-8 Proposal (HD)``

Dear Ms. Ingram,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,
John Chevedden

Ms. Teresa Wynn Roseborough
Corporate Secretary
The Home Depot, Inc. (HD)
2455 Paces Ferry Road NW
Atlanta GA 30339
PH: 770-433-8211
Via: Teresa_Roseborough@homedepot.com

Dear Corporate Secretary,

I am pleased to be a shareholder in The Home Depot, Inc. (HD) and appreciate the leadership our company shown in many areas.

I am submitting a shareholder proposal for a vote at the next annual shareholder meeting on **Advertising Policies and Social Media**. The attached proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year and I pledge to continue to hold the required amount of stock until after the date of the next shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This letter confirms that I am delegating John Chevedden to act as my agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden (

o facilitate prompt communication. My husband, James McRitchie is hereby delegated to act as Mr. Chevedden's backup agent regarding this proposal. Please identify Myra K. Young as the proponent of the proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. *We are open to negotiating possible changes to the proposal or withdrawal. We expect to forward a broker letter soon. Therefore, if you simply acknowledge my proposal in an email message to* *** *, it may not be necessary for you to request such evidence of ownership.*

Sincerely,



Myra K. Young

November 20, 2020

Date

cc: Stacy Ingram <stacy_ingram@homedepot.com>
Associate General Counsel – Corporate & Securities
Lyndsey Burton <Lyndsey M_Burton@homedepot.com>

Home Depot spent \$1.2 billion on advertising in 2019,¹ with large budgets for social media platforms. The company was Facebook's biggest 2019 advertiser, spending \$179 million,² plus \$40 million in the first half of 2020.³

There is widespread concern that platforms like Google and Facebook may be failing to protect civil and human rights by supporting government censorship,⁴ facilitating white supremacist activity,⁵ and enabling voter suppression.⁶ Facebook itself noted, "One of the biggest issues social networks face is that, when left unchecked, people will engage disproportionately with more sensationalist and provocative content."⁷ In June 2020, a Home Depot spokeswoman said: "Like others, we're disgusted by hate speech and discriminatory content we see on social media."⁸

Home Depot faces reputational and business risk if it is perceived as contributing to the spread of racism, hate speech, and disinformation by facilitating advertising on social media platforms. Potential inadvertent promotion of harmful viral content by advertisers threatens user safety and brand value. Seventy percent of millennials and Gen Xers "will not like, recommend, or purchase from a brand whose ads appear next to offensive, hateful, or derogatory content."⁹

In 2018, after CNN found YouTube ran ads from major brands on extremist channels, one analyst said, "If brands want to make sure this stops, the only way for that to happen is for them to stop spending [on YouTube] until it's fixed." Advertisers are not passive bystanders when they inadvertently finance harm. Their spending influences what content appears online. For instance, Omnicom found some advertisers excluding content like "News and Current Events" from ad buys;¹⁰ journalism groups have asked that advertisers not block ads from financing credible journalism.¹¹

According to House Speaker Nancy Pelosi, advertisers "have power to discourage platforms from amplifying dangerous and even life-threatening disinformation." However, steps taken to date are insufficient. For instance, the Global Alliance for Responsible Media announced shared recommendations between social media platforms and advertisers, including common definitions for hate speech. Critics question its efficacy. The president of Color Of Change called the recommendations, "another reminder that the incentives are broken and government regulation is still needed." WIRED magazine observed: "It's fair to wonder whether a consortium that includes Facebook and Google—the two dominant digital advertising companies—will produce any meaningful change to the status quo."¹²

Resolved: Shareholders request the Board commission an independent third-party report, at reasonable cost and omitting proprietary information, assessing how and whether Home Depot ensures its advertising policies are not contributing to violations of civil or human rights. The report should consider whether the

¹ https://ir.homedepot.com/~/_media/Files/H/HomeDepot-IR/2020/2019_THD_AnnualReport_vf.pdf

² <https://fortune.com/2020/06/29/facebook-ad-boycott-top-advertisers-silent-which-companies/>

³ <https://www.marketingcharts.com/digital/social-media-114732>

⁴ <https://impactpolicies.org/en/news/30>

⁵ <https://www.techtransparencyproject.org/sites/default/files/Facebook-White-Supremacy-Report.pdf>

⁶ <https://int.nyt.com/data/documenthelper/533-read-report-internet-research-agency/7871ea6d5b7bedafbf19/optimized/full.pdf#page=1>

⁷ <https://www.facebook.com/notes/mark-zuckerberg/a-blueprint-for-content-governance-and-enforcement/10156443129621634/>

⁸ <https://fortune.com/2020/06/29/facebook-ad-boycott-top-advertisers-silent-which-companies/>

⁹ <https://venturebeat.com/2018/07/25/adcolony-brands-are-worried-about-unsafe-content-and-fake-news-on-facebook-social-media/>

¹⁰ https://www.omnicommediagroup.com/wp-content/uploads/2020/05/OMG_COVID-19_SocialMediaPricingPOV_22April20.pdf

¹¹ <https://gfmf.info/emergency-appeal-for-journalism-and-media-support-2/>

¹² <https://www.wired.com/story/she-helped-wreck-the-news-business-heres-her-plan-to-fix-it/>

policies contribute to the spread of hate speech, disinformation, white supremacist activity, or voter suppression efforts, and whether policies undermine efforts to defend civil and human rights, such as through the demonetization of content that seeks to advance and promote such rights.

Please vote for: Advertising Policies and Social Media – Proposal [4*]



[This line and any below are *not* for publication]
Number 4* to be assigned by the Company

The graphic above is intended to be published with the rule 14a-8 proposal. The graphic would be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss the in unison elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.

Reference SEC Staff Legal Bulletin No. 14I (CF)

[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

Notes: This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also Sun Microsystems, Inc. (July 21, 2005)

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email ***

From: John Chevedden *** >
Sent: Friday, November 27, 2020 1:55 PM
To: Ingram, Stacy <STACY_INGRAM@homedepot.com>
Cc: Burton, Lyndsey M <LYNDSEY_M_BURTON@homedepot.com>
Subject: [EXTERNAL] Rule 14a-8 Proposal (HD) blb

Dear Ms. Ingram,
Please see the attached broker letter.
Please confirm receipt.
Sincerely,
John Chevedden



11/27/2020

Myra Young

Re: Your TD Ameritrade Account Ending in ***

Dear Myra Young,

Pursuant to your request, this letter is to confirm that as of the date of this letter, Myra K. Young held, and had held continuously for at least 13 months, 47 shares of Home Depot Inc. (HD) common stock in her account ending in *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in cursive script that reads 'Gabriel Elliott'.

Gabriel Elliott
Resource Specialist
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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From: Ingram, Stacy <STACY_INGRAM@homedepot.com>
Sent: Tuesday, December 1, 2020 1:56 PM
To: John Chevedden <***>
Cc: Burton, Lyndsey M <LYNDSEY_M_BURTON@homedepot.com>
Subject: Re: [EXTERNAL] Rule 14a-8 Proposal (HD) blb

Mr. Chevedden – please see the attached letter regarding the proposal you submitted on behalf of Ms. Myra Young. Thank you.

Stacy S. Ingram | Associate General Counsel and Deputy Corporate Secretary
The Home Depot | 2455 Paces Ferry Road, C20 | Atlanta, GA 30339
Phone: 770.384.2858 | Cell: 404.797.7180 | Fax: 770.384.5842 | stacy_ingram@homedepot.com



The Home Depot, Inc. • 2455 Paces Ferry Road • Atlanta, GA 30339-4024
Email: stacy_ingram@homedepot.com
(770) 384-2858 • Fax: (770) 384-5842

December 1, 2020

Stacy Ingram
Associate General Counsel and Deputy Corporate Secretary

VIA UPS OVERNIGHT AND EMAIL

John Chevedden

Dear Mr. Chevedden

I am writing on behalf of The Home Depot, Inc. (the "Company"), which received on November 20, 2020, the shareholder proposal you submitted on behalf of Myra K. Young (the "Proponent") entitled "Advertising Policies and Social Media" pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for the Company's 2021 Annual Meeting of Shareholders (the "Proposal").

The Proposal contains a procedural deficiency, which SEC regulations require us to bring to your attention. Rule 14a-8(d) of the Securities Exchange Act of 1934, as amended, requires that any shareholder proposal, including any accompanying supporting statement, not exceed 500 words. The Proposal, including the supporting statement, exceeds 500 words. To remedy this defect, the Proponent must revise the Proposal so that it does not exceed 500 words.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please send any response to me by email at stacy_ingram@homedepot.com. You may also send the response to me at The Home Depot, Inc., 2455 Paces Ferry Road, C20, Atlanta, GA 30339.

If you have any questions with respect to the foregoing, please contact me at (770) 384-2858. For your reference, I enclose a copy of Rule 14a-8.

Sincerely,

Stacy S. Ingram
Associate General Counsel and Deputy Corporate
Secretary

Enclosure

From: John Chevedden <***>
Sent: Thursday, December 3, 2020 7:26 PM
To: Ingram, Stacy <STACY_INGRAM@homedepot.com>
Cc: Burton, Lyndsey M <LYNDSEY_M_BURTON@homedepot.com>
Subject: [EXTERNAL] Rule 14a-8 Proposal (HD)`` revised

Dear Ms. Ingram,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Sincerely,
John Chevedden

Home Depot advertises heavily on social media platforms. The company was Facebook’s biggest 2019 advertiser, spending \$179 million,¹ plus \$40 million in the first half of 2020.²

There is widespread concern that platforms like Google and Facebook may be failing to protect civil and human rights by supporting government censorship,³ facilitating white supremacist activity,⁴ and enabling voter suppression.⁵ Facebook itself noted, “One of the biggest issues social networks face is that, when left unchecked, people will engage disproportionately with more sensationalist and provocative content.”⁶ In June 2020, a Home Depot spokeswoman said: “Like others, we’re disgusted by hate speech and discriminatory content we see on social media.”⁷

Home Depot faces reputational and business risk if it is perceived as contributing to the spread of racism, hate speech, and disinformation by facilitating advertising on social media platforms. Inadvertent promotion of harmful content threatens user safety and brand value. Seventy percent of millennials and Gen Xers “will not like, recommend, or purchase from a brand whose ads appear next to offensive, hateful, or derogatory content.”⁸

In 2018, after CNN found YouTube ads from major brands on extremist channels, one analyst said, “If brands want to make sure this stops, the only way for that to happen is for them to stop spending [on YouTube] until it’s fixed.” Advertisers are not bystanders when they inadvertently finance harm. Their spending influences what appears online. For instance, Omnicom found some advertisers excluding content like “News and Current Events” from ad buys;⁹ journalism groups have asked that advertisers not block ads from financing credible journalism.¹⁰

According to House Speaker Nancy Pelosi, advertisers “have power to discourage platforms from amplifying dangerous and even life-threatening disinformation.” However, steps taken to date are insufficient. For instance, the Global Alliance for Responsible Media announced shared recommendations between social media platforms and advertisers, including common definitions for hate speech. Critics question its efficacy. The president of Color Of Change called the recommendations, “another reminder that the incentives are broken and government regulation is still needed.” WIRED magazine observed: “It’s fair to wonder whether a consortium that includes Facebook and Google—the two dominant digital advertising companies—will produce any meaningful change to the status quo.”¹¹

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⁴ <https://www.techtransparencyproject.org/sites/default/files/Facebook-White-Supremacy-Report.pdf>

⁵ <https://int.nyt.com/data/documenthelper/533-read-report-internet-research-agency/7871ea6d5b7bedafb19/optimized/full.pdf#page=1>

⁶ <https://www.facebook.com/notes/mark-zuckerberg/a-blueprint-for-content-governance-and-enforcement/10156443129621634/>

⁷ <https://fortune.com/2020/06/29/facebook-ad-boycott-top-advertisers-silent-which-companies/>

⁸ <https://venturebeat.com/2018/07/25/adc-olony-brands-are-worried-about-unsafe-content-and-fake-news-on-facebook-social-media/>

⁹ https://www.omnicommediagroup.com/wp-content/uploads/2020/05/OMG_COVID-19_SocialMediaPricingPOV_22April20.pdf

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¹¹ <https://www.wired.com/story/she-helped-wreck-the-news-business-heres-her-plan-to-fix-it/>

suppression efforts, and whether policies undermine efforts to defend civil and human rights, such as through the demonetization of content that seeks to advance and promote such rights.

Vote for: Advertising Policies and Social Media – Proposal [4*]



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