

The suits started with pictures of mainly white board members and executive leadership teams. They alleged that Oracle and Facebook were known to have “the oldest and most egregious ‘Old Boy’s Club’ in Silicon Valley.” The lawsuits also said that “[i]f Oracle simply disclosed that it does not want any Black individuals on its Board, it would be racist but honest.” And “[a]t Facebook, apparently Zuckerberg wants Blacks to be seen but not heard.”

Frank Bottini of Bottini & Bottini in La Jolla, California, and Louise Renne of Renne Public Law Group in San Francisco jointly filed the lawsuit against Oracle, and Bottini & Bottini took on Facebook alone. Bottini said he hopes the powerful language in the complaint gets people’s attention. “We need them to take action now to be good corporate citizens and actually do what they say they’re trying to do,” he said.

We sat down with the pair to discuss the lawsuits. Answers have been edited for length and clarity. **Please walk us through the decision to begin the complaint with photos of the mainly white boards and executive management teams.**

Bottini: We’re talking about diversity, and when you look at these pictures, I think it brings home the glaring lack of diversity at Oracle, both at the board level and executive management. We didn’t cherry-pick anything in either complaint. We went to Oracle’s website, and we pulled all the top executives as they listed them. When Louise and I were researching the suit, we said let’s see what Oracle actually says about diversity. The one that stood out to us was a quote from their proxy statement in 2019 where they say, “Diversity and inclusion in our workforce starts at the top.” So we went and looked at the top, and we couldn’t find any diversity as far as Blacks. There are some women at the top ranks, which is great, but there’s certainly no Blacks.

Renne: Or Latinos or other minorities. What this case is basically about is economic inclusion.

What exactly do you mean by economic inclusion?

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Bottini: We did a lot of research into how they treated employees, you can see by the lawsuit filed by the Department of Labor that they alleged based on the specific evidence that the government has accumulated that Oracle underpaid women and minorities by \$400 million over a four-year period. So, minorities are not being fairly included on an economic basis. I think it’s fair to call it discrimination when you look at them compared to other companies. It’s having a very powerful economic impact in a negative way on Blacks and minorities, and that is so important given the climate we’re in—really it’s a depression that we’re facing from COVID-19.

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Can you talk about your decision to use that strong and direct language, such as “... Zuckerberg wants Blacks to be seen but not heard?” **Bottini:** Somebody could say that's strong language, but we think it's appropriate. Again, we looked at the facts. I think when you look at Oracle and Facebook, they use a lot of platitudes. “We're committed to diversity. Inclusion starts at the top. Blah, blah, blah.” They're saying they're trying, but they're not successful. If they were honest, they would say, “We want to create the veneer of a company that's committed to diversity and inclusion, but we're not really going to try that hard.” We do believe they're lying in their proxy statements. When you file something with the Securities and Exchange Commission, there's a duty to be truthful. So, it's bad enough they're not having success at what they're claiming to do, but we think their representations are not true.

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You two worked together on the shareholder derivative suit over Google's executive sexual harassment scandal. Did you learn anything from that case that you're bringing to the Oracle litigation?

Bottini: Well, the first takeaway is that it was wonderful working with Louise. We're so fortunate she's still working. She's had such a long and illustrious career.

Renne: I pay him to say these things.

Bottini: This is really kind of a civil rights case. It's a shareholder case, but it has a civil rights element. And Louise has incredible experience in the civil rights area, so that's why she's such a critical member of the team to try to get a good result here.

Renne: We do have a good team. One of my partners is Ruth Bond. She is related to Julian Bond, the civil rights icon. I think between all of us, we do have a commitment to do everything we possibly can to make sure we improve diversity and inclusion, and I think the shareholders feel exactly the same way.

How did you decide the type of relief you're seeking in the suits, specifically asking to replace three board members with Black and minority leaders?

Bottini: The purpose of a shareholder derivative case—you try to get some money from the company, because that's important—but here the thing that's more important is effectuating changes that will have a long-term effect at the company. When we started looking at Oracle, we asked, “What kind of changes would really make a difference at the company and help improve and advance the economic opportunities for Blacks and minorities?” At Oracle, they say diversity and inclusion starts at the top. So with respect to changing out the board members, there are no Blacks on the board, and there are no Blacks among executive management, so that's why there's a request that the message is set at the top. It's hard to claim that you're really trying to do something about it when you don't have a single Black person among the top managers. The other ones are all related to changes that we think corporate governance experts have said are the types of governance practices that can help not only make the changes at a company but make them stick.

We've heard allegations about discrimination at Oracle for some time, and Facebook has been criticized for the lack of racial diversity on its board for several years, as well. What makes now the right time to file this suit?

Bottini: If not now, then when? They're long overdue. It sort of hit me one day when I was thinking about these issues. When you actually go back and look at these proxy statements and what they've filed with the SEC, they're actually lying to shareholders. That's the word I would use. Louise doesn't like the word lying as much.

Renne: I say falsely asserted.

Bottini: Louise has always been a lot more diplomatic than me. I think the time's now, and I think there's a unique opportunity to do more than ever has been done before, and we need to seize the moment. The purpose of this shareholder lawsuit is to say you've made representations, but we think you're not making the efforts you claim you want to make. So, make them or revise your public statements to not contain misrepresentations. You can't have it both ways. And Oracle has been relatively silent in response to the Black Lives Matter movement, isn't that right, Louise?

Renne: That is right. We haven't heard much from Oracle at all. What we've heard is a lot of corporate America saying, "Yeah, we're going to do this, we're going to do that." But when you go and take a look at who is in charge, there are few if any minorities represented at the top. Now it's more than time to turn things around. As Frank said, this is the time, and we need to seize the moment.

Do you plan to file similar lawsuits in the near future?

Renne: Let's just say never say never.

Bottini: There are some other companies—certainly Oracle is not the only one. You can see from Facebook that's another glaring example. And there are some companies that lack diversity at the top. Everybody recognizes, especially in Silicon Valley, that the companies haven't been successful in achieving diversity. Everybody runs it up the flagpole and talks about "Oh yeah, diversity is great. We're all for diversity." Silicon Valley is great at being a cheerleader, but they're not great at achieving real results. That's what needs to change.

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Alaina Lancaster

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WIPL is known for having some of the most engaging and energizing keynote speakers attend to share their thoughts, experiences, war stories and tips on effective leadership. And this year is no exception. This year, we are grateful to welcome two remarkable women come and inspire us: Tina Tchen, the President and CEO of the "Times Up" Legal Defense Fund and Paula Boggs, Founder of Boggs Media LLC and Former Executive Vice President, General Counsel and Secretary, Law and Corporate Affairs at Starbucks from 2002-2012.

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The class action complaint asks the Northern District of California to require YouTube to open up its Content ID copyright identification tool to everyone.

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Gilford, a partner at Sidley Austin in Los Angeles who works with the NAACP Legal Defense and Educational Fund, said racism cuts across all African Americans. "We're not protected by our status as professionals," she said.

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