The rise and fall of the relationship between Unilever and Ben & Jerry's

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ABSTRACT

Unilever, a global conglomerate, acquired the premium ice cream brand Ben & Jerry's in 2000. A unique acquisition agreement allowed the ice cream company to retain autonomy through an independent board of directors, while Unilever would control the firm's financial and operational decisions. Ben & Jerry's often takes strong stances on political and human rights issues. One such stance that stirred trouble for Unilever was Ben & Jerry's 2020 announcement that the ice cream brand wanted to cut sales to Israel-occupied territories. This put the parent company in the tough position of having to balance shareholder concerns against its subsidiary's core values, and brought about various legal actions. Unilever has recently shifted its strategic direction and is now simplifying its portfolio, leading to the spinoff of its entire ice cream segment. 24 years after first being acquired by Unilever, Ben & Jerry's must now determine its own best path for sustaining future operations, under its new reality of being outside Unilever's umbrella.

Keywords: Unilever, Ben & Jerry's, acquisition, spinoff, governance, licensing

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INTRODUCTION

Background of Ben & Jerry's

Ben & Jerry's, founded by Ben Cohen and Jerry Greenfield, began operations in 1978 in Burlington, Vermont. Over the years, the company grew in popularity through the inclusion of "chunks" of candies or nuts in its premium ice cream. As it expanded in the United States, Cohen and Greenfield emphasized a three-part mission that encompassed ice cream products, sustainable economic growth, and social improvements (Evans, 2022). While Cohen and Greenfield are no longer directly involved in the operations, they are still powerful influences within the organization.

Ben & Jerry's is not shy in expressing support for various liberal causes, such as climate change, racial justice, and LGBTQ rights. For example, during the Black Lives Matter movement in 2021, the company released a special flavor of ice cream named "Change Is Brewing" promoting the People's Response Act, which was a proposed piece of legislation that aimed to curb police brutality experienced by minorities (Adams, 2021). Ben & Jerry's progressive stance is an integral part of its identity.

Background of Unilever

Unilever is a multinational company that produces a wide range of consumer goods, participating in segments like food, beverages, personal care, and cleaning products. Resulting from a 1929 merger between a margarine producer and a soap maker, Unilever has built an expansive global presence over the past century. The conglomerate is the parent company to more than 400 different brands, thereby accumulating a very diversified brand portfolio. In 2023, it was listed as the fifth largest consumer goods company worldwide, behind brands like Procter & Gamble and PepsiCo (Statista, 2024). In 2022, the company announced an adjustment to their governance structure, and to better streamline operations, organized their operating model around five business groups, with each group being responsible for overseeing the brands under their business segments (Unilever, 2022). The five group categories included beauty & wellbeing, personal care, nutrition, home care, and ice cream.

Ben & Jerry's Acquisition

In 2000, Unilever acquired Ben & Jerry's for $326 million. The acquisition agreement was unique, as it laid out provisions related to the future governance of Ben & Jerry's that centered around Ben & Jerry's having an independent board of directors. In the agreement's terms, Unilever would have the final say in matters related to financial and operational changes, while Ben & Jerry's would have its own board of directors that was responsible for protecting the company's core values and pursuing environmental, social, and governance efforts (Benmelech, 2022). This allowed Ben & Jerry's to control its external missions and uphold its philanthropic values, while reaping the financial and operational benefits that Unilever provided. The agreement also included a provision stating that Unilever would be able to appoint two out of the eleven Ben & Jerry's board members.

Yves Couette, a 24-year long Unilever employee, was appointed CEO of Ben & Jerry's and can be credited for the acquisition's success. Couette made efforts to adapt his leadership style and practices to better integrate with Ben & Jerry's culture, which preserved its brand identity and allowed for a smoother transition into the parent-subsidiary structure (Caligiuri, 2012). This acquisition was mutually beneficial, as Ben & Jerry's could accelerate its expansion into a global presence, by leveraging the extensive global network and supply chains of Unilever. Unilever also benefitted, since the acquisition allowed it to enter the niche market that Ben & Jerry's catered to: consumers of premium ice cream with unusual names and flavors, and consumers who supported socially proactive companies.

LAWSUITS

Background

Tensions between Unilever and Ben & Jerry's rose in 2020 when Ben & Jerry's announced that it would no longer sell its products in any Israeli-occupied territories. This decision stemmed from the ongoing Israel-Palestine conflict occurring in the West Bank, an event that continues to stir difficult discussions over politics, religion, and human rights even today. Left-wing activists have shown support for Palestine and have protested any U.S. government and business affiliations with Israel, partially explaining why Ben & Jerry's wanted to exit that region (Karaian, 2024). Lawsuits emerged as a result of Unilever's conduct in handling this situation that focused on mitigating the risk that shareholders could have faced if it disaffiliated with Israel.

Unilever vs. Shareholders

Unilever faced a lawsuit in 2022 from its shareholders, specifically from the Michigan pension fund. The plaintiff claimed that Unilever had misled investors, arguing that Unilever was required to disclose Ben & Jerry's decision to sever ties with Israel. The lawsuit sought compensation for damages resulting from a drop in Unilever's share price following the subsidiary's announcement (Godoy, 2023). With the increase in political pressure, other state pension funds began divesting from Unilever. Though the case was eventually dismissed, Unilever grew concerned about how the decision of one of its brands increased the risks that its shareholders faced, resulting in the growth of an increasingly strained relationship with its subsidiary.

Unilever vs. Ben & Jerry's

In July 2022, Ben & Jerry's filed a lawsuit against its parent company over the sale of its distribution rights in Israel and the West Bank region to a local licensee. This bid to block ice cream sales in the region, was initiated as the subsidiary felt that the transaction was a violation of Ben & Jerry's core values (Benmelech, 2022). The suit was filed to seek damages, to enable the return of trademarks, and to cease ice cream sales in the occupied areas.

The license sale was made to Avi Zinger of American Quality Products Ltd., a partner of Ben & Jerry's since 1987. Zinger, however, launched his own lawsuit regarding the renewal of the license. Zinger argued that ceasing sales in the occupied areas violated U.S. laws regarding trade boycotts and Israeli relations. Feeling pressure from every direction, Unilever decided that it would be best to sell its sales license to Zinger. Though this transaction settled the Zinger lawsuit and made investors feel more comfortable, it essentially cut off any remaining good relations between the parent and its subsidiary.

Ben & Jerry's took to X, formerly known as Twitter, to express its disagreement over Unilever's move. In its tweet, the company stated that it would no longer be profiting from sales in Israel, and that selling its products in the occupied Palestinian territories was inconsistent with its values (Ben & Jerry's, 2022). The firms decided to settle the lawsuit in December 2022, but tensions still persisted.

BEN & JERRY'S SPINOFF

Unilever's Future

The future of Unilever has shifted, and a new strategic approach is being implemented in the conglomerate. The new "productivity program" involves Unilever concentrating on its highest-performing subsidiaries, by reducing its extensive brand portfolio to its top 30 brands which contribute 70% of Unilever's revenue (Naidu, 2024). These brands have strong positions in attractive industries, so Unilever plans to increase investments in its most profitable segments.

The strategic shift was initiated by Hein Schumacher, who joined Unilever as CEO in 2023 with a plan to revitalize the firm's operations. Schumacher's plan was backed by Nelson Peltz, a well-known activist investor who pushed for simplifying organizational structures, and joined Unilever's board of directors in early 2022 (Picchi, 2024). The purpose behind simplifying the portfolio is to support a more innovation-centric pipeline, and to develop its own operating capabilities.

After analyzing the most beneficial brands to retain, Unilever determined that the ice cream sector did not align with its future plans. Profit margins earned on ice cream products are less than half of the margins earned on Unilever's other segments, such as on personal care products like the Dove product line. Unilever is not just spinning off Ben & Jerry's, but rather it is completely cutting off its ice cream segment from its portfolio, including brands like Magnum, Cornetto, and Kwality Wall's. With this spinoff, Unilever will be reducing 7,500 jobs, a majority of those being office-based roles, which would save the firm an estimated $870 million in costs over the next three years (Karaian, 2024). The spinoff of its ice cream segment is expected to be completed by the end of 2025.

The Ice Cream Industry

Unilever is not the only firm divesting from the ice cream industry. Competitors like Nestle have broken away from its Dreyer's and Haagen-Dazs brands. The issue with the ice cream sector compared to other food sectors, is that the ice cream sector has a different, more complex operating model. There are specific requirements for the supply chain and for points of sale that support frozen food. The primary difficulty is accommodating the balance between temperature control and product quality. If the product is exposed to higher than freezing temperatures, it can change the product's consistency or make the product go bad. This requires processes such as thermal mapping, refrigerated transportation, and proper storage to be implemented along the supply chain, which requires a large capital investment (Sensitech, n.d.). Any issues along that supply chain could result in product loss, reputational damage, and high disposal costs.

The industry is also at the hands of trends, from seasonal flavors that require constant rotation, to diet fads that negatively influence the fluctuating demand. Considering that ice cream is a premium product, the sector is one that will struggle significantly during economic downturns, such as in high inflation environments where prices for goods dramatically increase resulting in declining sales volumes. Heightened prices in recent years have forced consumers to choose more affordable alternatives. In Unilever's earnings report, its ice cream division faced the highest input-cost inflation compared to any other segment in its portfolio (Karaian, 2024).

Ben & Jerry's Future

Now that Unilever's ice cream segment is being spun off, questions have emerged about the future of Ben & Jerry's. Schumacher says that the most likely path from the de-merger would be listing the new ice cream company, which will comprise of Unilever's entire ice cream segment, on the stock market. He notes that the company is also looking for other options, especially those that would maximize shareholder value (Ziady, 2024).

While Ben & Jerry's is famous for its ESG activities, the company has struggled with the governance of the organization. Prior to the acquisition, Ben & Jerry's had a unique governance structure that included three different classes within its board of directors. Class A directors' voting rights utilized a one-share-one-vote rule. Class B's voting rights were 10 votes per share, though this class only consisted of the two company founders Cohen and Greenfield. This class, along with one other corporate insider, consisted of 47% of the company's total voting rights. Class C consisted of the B&J foundation, a community action group that is controlled by Ben & Jerry's (Benmelech, 2022). Essentially, the company's board of directors was controlled by corporate insiders. Another governance issue was the staggered election process, where only one director was ever up for election at a time, which made it more difficult for its shareholders to elect directors.

These practices could deter investors, causing the brand to struggle once it is no longer affiliated with Unilever potentially. It is currently unclear what path Ben & Jerry's will take following the spinoff from its parent company after 24 years. The company is at the mercy of economic pressures, health trends, and the risks associated with ice cream production. Ben & Jerry's has until the end of 2025 to determine its strategic plan for its continuing operations.

DISCUSSION QUESTIONS

Question 1: Does the investment in ESG benefit shareholders? Does it affect short-term investors and long-term investors differently?

Question 2: What was the expected synergy effect of M&A in this case?

Question 3: When does the independent governance of the subsidiary benefit shareholders? Also, can you provide real-world examples (actual M&A cases)?

Question 4: Discuss the pros and cons of allowing for a governance structure that has shares with more than one vote.

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