

# Browning West seeks court order to prevent Gildan sale before vote on new directors

NICOLAS VAN PRAET > AND ANDREW WILLIS >

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Usman Nabi (left), Co-Founder and CIO, and Peter Lee, Co-Founder and Partner, of the investment firm Browning West at their office in Los Angeles on March 25.

PHILIP CHEUNG/THE GLOBE AND MAIL

U.S. investment firm Browning West is seeking a court order preventing the board of Gildan Activewear Inc. from signing any binding deal to sell the clothing maker until shareholders vote on new directors.

The request was made last week as an amendment to an existing suit in the Quebec Superior Court's commercial division, filed by Browning West, which has a roughly 5-per-cent stake in [Gildan GIL-T \(/investing/markets/stocks/GIL-T/\)](#) -1.09% ▼ .

“We do not believe the current board has a mandate to be making any decisions about the future of the company,” Browning West founders Usman Nabi and Peter Lee said in an e-mailed statement.

Gildan dismissed Browning's gambit to hamstring existing directors as “ridiculous.”

It's the latest in a series of legal volleys between Montreal-based Gildan and Browning West in what has become one of the most acrimonious corporate power struggles in recent years in Canada. As the clock ticks down on an [April 10 deadline](#) for initial offers for the apparel manufacturer, the clash has taken on another level of urgency.

The saga, now in its fourth month, started when the board fired co-founder and long-time chief executive Glenn Chamandy last December. The board concluded he had run out of ideas to increase sales and profits, and hired former Fruit of the Loom executive Vince Tyra to replace him. Dissident shareholders unhappy about that decision are trying to push current directors out and demanding the reinstatement of Mr. Chamandy back at the helm.

### **Gildan board can't be trusted to oversee sales process, top shareholder Browning West says**

Gildan has called an annual meeting for May 28, during which shareholders would normally vote in directors. But in a surprising twist last month, the [board put the company up for sale](#) after a takeover approach from a potential buyer.

Gildan has hired investment banks RBC Capital Markets and Goldman Sachs Group to scout for additional bidders. Canaccord Genuity Group Inc. is advising the special committee of Gildan's board that will consider takeover offers.

The prospect that Gildan could be sold has angered some of its shareholders. Their view: The board does not have the confidence of investors required to run a sales process. Investors holding an estimated 35 per cent of Gildan stock have publicly called for Mr. Chamandy's return and several are also backing Browning West's proposed slate of eight director nominees.

In its amended lawsuit with the Quebec Superior Court, Browning West says that given the “unprecedented level of shareholder discontent” over the board’s leadership, investors had a reasonable expectation that the board would not undertake fundamental changes to the company until after they’ve had a chance to exercise their rights as stockholders at the annual meeting. The firm is asking the court to order the Gildan board not to enter into a binding sales agreement until that meeting takes place.

Browning says in its suit that even if the Gildan board is acting in a good-faith attempt to explore a sale, the continuing uncertainty regarding the future leadership of the company weakens its negotiating position in talks with any potential buyer.

Gildan punched back Sunday.

“This latest tactic is ridiculous and without precedent or merit,” Gildan spokesman Simon Beauchemin said by e-mail. “It appears designed solely as an attempt to generate headlines and obstruct a potential sale of the company.”

At least one court decision has confirmed boards can do what they believe is in the best interest of the company for the entirety of their term. In a 2011 case concerning Bennett Environmental, then in the midst of a proxy battle, Justice Ruth Mesbur, an Ontario Superior Court judge, said: “A board need not curtail its activities in the face of a fight for control.”

In an interview with The Globe and Mail on March 27, Gildan chairman Donald Berg said the board chose to launch a sales process because the takeover approach it received was a “serious offer.” Shareholders will ultimately have the last say in any case, he said.

It’s not in the best interest of shareholders and other stakeholders to seek to tie the hands of the board of directors and prevent its work, said François **Dauphin**, chief executive of Montreal’s Institute for Governance of Private and Public Organizations, who’s been following the Gildan drama. Regardless of the recriminations some shareholders might have against the current board, directors must consider and analyze any offer received, which might mean having to incur costs, he said.

Said Mr. **Dauphin**: “Browning West put forth its plan and vision for Gildan. Vince Tyra’s plan is expected soon. Shareholders will have the choice between those two visions and a proposed purchase offer, if there is one. It would be reasonable to let shareholders decide on these choices. Everything else is just noise.”

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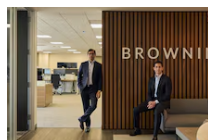
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