

Speech



Introduction

Nike is a well known international company whose main products are Nike shoes and sports merchandize. This dynasty has grown greatly due to its marketing strategy based on a favorable branded image. In 1996 some allegations came up that Nike was underpaying and greatly mistreating its employees at foreign facilities and later on a controversy ensued between Nike and a California residence called Marc Kasky over commercial speech where Kasky claimed that Nike was publicizing their products through commercial speeches and the case went as far as the U.S Supreme Court ¹.

To sum up the themes, the basis of the argument between Nike and kasky arose out of the contention over Globalization. Over the years the Nike Company has greatly grown with more than 6000,000 employees in 51 countries but with allegations of using commercial speech to achieve this globalization. In addition, the article also highlights the concern of publicity as a marketing strategy. After allegations were made about Nike underpaying and mistreating its customers it sort all ways and means of publicizing its stand by issuing press releases writing letters to news papers and purchasing editorial advertisements.

In conclusion, the U.S Supreme Court did not take the chance to bring consistency to the commercial speech policies. It's not until justice is achieved that the lower courts will realize that the California Supreme judgment in this particular case will eventually be refused since it was not credible according to the interest of the people

¹ David C. Vladeck (2004), *Lesson From A Story Untold: Nike V.Kasky Reconsidered*, Georgetown University Law Center, Georgetown

Summary of the Article

There were claims of mistreatment of employees in Nike facilities in Southeast Asia. To counter the attacks, Nike appointed the former United Nations Ambassador, Andrew Young to carry out a review of its activities in the affected facilities.

On completion, Nike publicized the findings through newspaper columns, advertisements and university meetings ¹. Two years later, a California's resident Marc Karsky, sued the company Nike under California's Unfair Competition Law (UCL) and False Advertising Law (FAL) on behalf of the general public. According to Karsky, Nike omitted important facts and gave false information on the working conditions in the affected facilities. Nike contended the suit arguing that it was not supported by the California constitution.

The Trial court dismissed the case, a move that was avowed by the California Court of Appeal. However, the California Supreme Court established that Nike's messages were commercial speech on a matter of immense public concern and did not conflict with the supreme courts 'Commercial Speech Decisions. According to this decision, there are three criteria of determining whether information is commercial or non-commercial. These are: the speaker, the anticipated audience and the message communicated ². The Supreme Court established that there were no clear boundaries between private and commercial speech. To backup its decision, the court argued that the firm Nike made statements to an audience, the customers, deeming it as commercial speech. Similarly, the court accomplished that Nike's employment policies governing their factories were 'factual'.

The author notes that the decision of the California Supreme Court was

¹ David C. Vladeck (2004), *Lesson From A Story Untold: Nike V.Kasky Reconsidered*, Georgetown University Law Center, Georgetown

² Kurt Strasser, (2011), *Myths And Realities Of Business Environmentalism; Good Work, Business Or Green Wash*, Edward Elgar Publishing, New York City

inconsistent with the definition of commercial speech as indicated by the U.S. Supreme Court. Kasky further retaliated that the communication by Nike stimulated and was intended to stimulate an increase in the firm's sales.

Issuing the ruling, Justice Janice Rogers Brown described that Nike had suffered an attack by the media over the working conditions in their foreign firms. This led to political interference which gave rise to condemnation of Nike. The issue was no longer a private issue but rather a subject of public scrutiny, making it at liberty to be warranted 'special protection'. The U.S Supreme Court granted a certiorari subsequent to the California Supreme Court denial for a petition, based on the dispute of defining commercial and non-commercial speech. Conclusively, the author indicates that it was regrettable that the U.S Supreme Court's decision was indecisive and in general, it was unpersuasive and will be rejected in due course.

Discussions on the author's perspective

The author in his article argues that the California Supreme Court was immensely injudicious and in due time, it will be reversed by the U.S Supreme Court. The revisit of the Nike v Karsky case after the trial and court of appeal indicates a lack in the judgment. The California state requires that firms indicate how their products are produced, what they contain, what they can remanufacture and set clear displays of the marketing strategies². This information should be made known to the consumers. Similarly, Nike claimed that the first amendment pointed out that indeed, it was commercial speech. Furthermore, the report from the external audit was never made public. It is probably most likely that there was an instance of malice. This leads me to an agreement with the author on the premise that the ruling by the California Supreme Court was deficient and it only a matter of time that it will be challenged.

² Kurt Strasser, (2011), *Myths And Realities Of Business Environmentalism; Good Work, Business Or Green Wash*, Edward Elgar Publishing, New York City