

# COMMENTARY

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## Freedom of commercial speech?

The U.S. Supreme Court heard arguments April 23 in *Nike Inc. v. Kasky*, a free-speech case that could determine what constitutes a business' opinion versus its commercial speech.

The case turns on whether Nike, in defending itself in the

mid-1990s against accusations that it used sweatshop labor, was engaging in protected political speech in the context of a public debate or trying to protect its reputation and sell its products.

Marc Kasky argued Nike's defense was false and used to

promote its business. If true, this could violate a California law against false advertising and unfair competition.

Nike argued that it wasn't selling products but simply was adding to the First Amendment-protected "marketplace of ideas."

### Companies must be free to join public dialogue

The distinction between commercial speech and speech that warrants the full protection of the First Amendment is a purposeful one, the point of which is not to silence companies from speaking about controversial issues, but to prevent them from making false claims about their products in order to exploit consumers. The difference between the two can be clear, or it can be so small as to be virtually indiscernible. It just so happens that the Nike suit concerns the latter category, which is why it's such an important case.

Nike's attempts to vindicate its labor practices abroad of course have an element of advertising; it would be absurd to argue otherwise. Public perception of how a company conducts business is at least weakly correlated with its livelihood.

But Nike's protestations also transcend mere commercial speech, because they double as arguments in the larger issue of globalization — a debate that very much belongs in the public domain, where the First Amendment presides. A company should not be effectively barred from weighing in on an issue simply because it stands to profit from it; after all, personal benefit — whether it be material gain or moral gratification — is the driving force behind any opinion.

It is important to remember that this issue pertains to all businesses, not just the reviled Nike. If the California Supreme Court's expansive definition of commercial speech is upheld, farms and pet stores could be sued for defending themselves against the claims of animal rights activists; logging companies could be sued for arguing that clear-cutting isn't as bad as environmentalists allege.

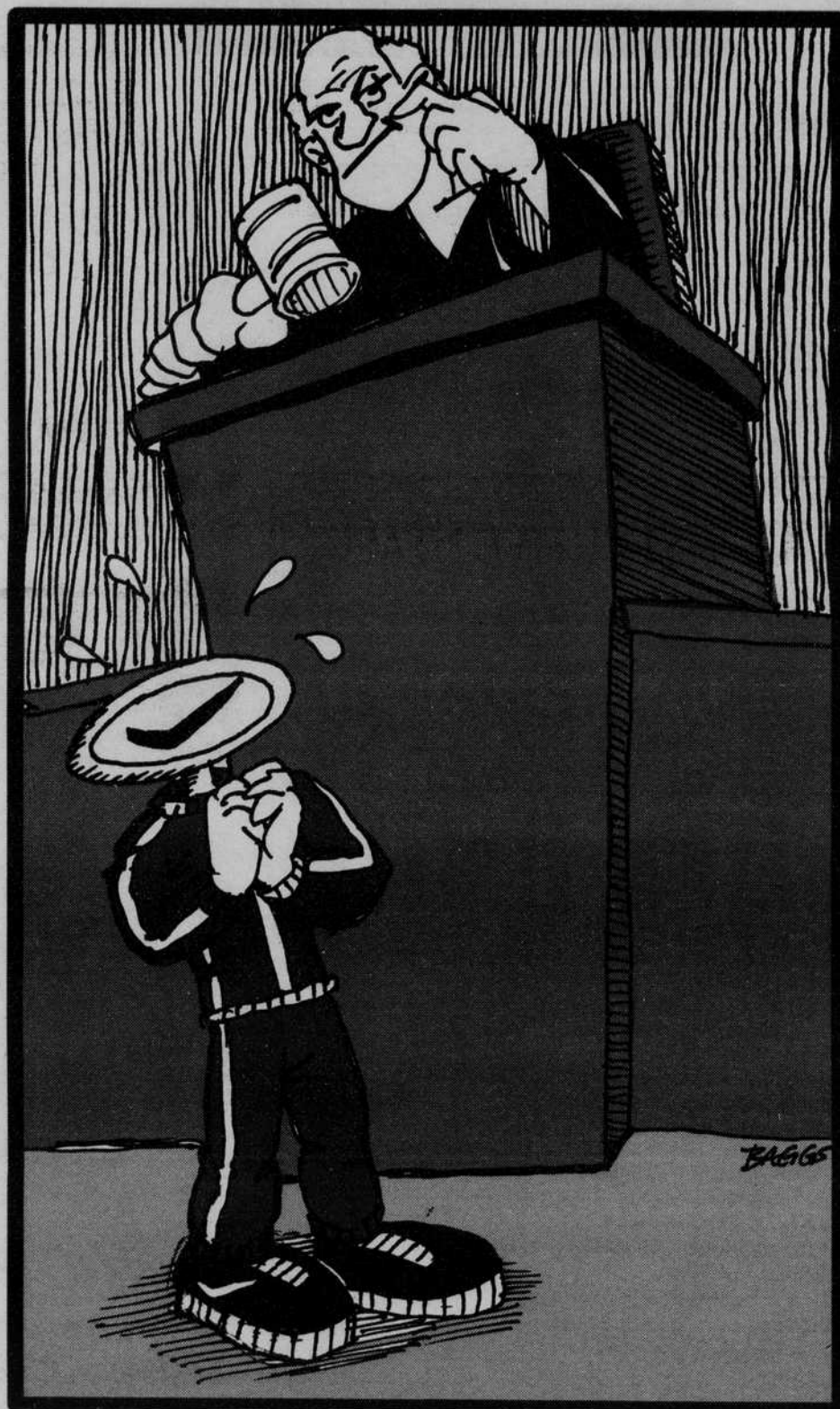
Unless we are categorically, mindlessly anti-business, I think we can admit that these are matters about which reasonable people may disagree. Companies, just as the rest of us, should have the liberty to be wrong without being labeled liars and summarily thrust into court. Hell, they may even be right sometimes.

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DJ Fuller  
No holds barred

### Voice off



Steve Baggs Emerald

### Why is it so bad to ask companies to tell the truth?

Aw, shucks. I have to admit, I don't really understand all the flap over this Nike case. From what I've been told, it seems sort of straightforward. A fellow is saying Nike's speech was an "unfair trade practice" because it wasn't telling the truth.

I've got to say, I agree with him. Call me simple, but if a company talks to the public about how it does business, about its products — about the things, in short, that help me decide whether to buy those snazzy shoes — it ought to shoot straight.

In other commercial speech, companies can't fib. You can't lie in a TV commercial, and by golly, you shouldn't be able to lie in a press release about how your company makes products.

And there's the rub, to many of the folks who disagree with me. This speech by Nike, they say, isn't commercial speech. It's free speech. Now I know the Supreme Court has already said that spending money is considered protected speech — which is a heaping pile of cow dung, truth be told — but I keep scratching my head about this and can't figure it out.

If Nike's speech in this case isn't commercial, then what is it? Companies don't tell people about the grub they ate for dinner, or what their favorite movie is. Now maybe if they were telling me who to vote for, or whether we ought to have the death penalty, I would have to re-think myself.

Some people say that if Nike doesn't win this case, well then, any crank could shut businesses down by lying about them. Uh-uh, no they couldn't. Nike could still sue 'em for libel. And other people say that Nike was just weighing in on an important public conversation — global labor. Uh-uh, no they weren't. In this case, Nike was talking about the way it does business. It was talking about its own factories and its own products.

That's commercial speech, dad gum it. And people use that speech to decide whether to buy from Nike or Adidas or Reebok. Given that, Nike needs to tell the truth, or pay the fiddler.

Contact the editor in chief at [editor@dailyemerald.com](mailto:editor@dailyemerald.com). His views do not necessarily represent those of the Emerald.

### Letters to the editor and guest commentaries policy

Letters to the editor and guest commentaries are encouraged. Letters are limited to 250 words and guest commentaries to 550 words. Authors are limited to one submission per calendar month. Submission must include phone number and address for verification. The Emerald reserves the right to edit for space, grammar and style.

### Letter to the editor

#### Wealthy should help fill budget deficit

I am outraged! The Legislature is about to dismantle the Oregon Health Plan, reduce K-12 schools another \$1 billion, and there will be a \$31.3 million cut from public safety.

Oregon has a large number of wealthy individuals, and our tax structure has no longer made them responsible for their fair share of participating in a civilized society. Recent tax measures have reduced their share of the tax

burden, and two events have brought their wealth to my attention.

Our "Paris to Portland" art museum show demonstrated great wealth when they displayed art masterpieces from France owned by Portland residents. It looked like a \$100 million-plus show!

The second show of wealth are the two proposed sport arenas; the basketball stadium for Eugene and the baseball arena for Portland. This is in addition to Eugene's football stadium, with the \$30 million improvements, that is used seven or eight days per year.

Another demonstration of wealth is reading

the home section of local newspapers with their \$300,000-plus homes. With this much wealth, surely we can first of all pay for schools and the basic needs of health care and public safety. Is our economy just for a few?

If you are concerned about the future of your children growing up with impoverished schools, if you have friends and neighbors who depend on assistance with health care, or if you just care about your community, call your state legislator at (800) 332-2313.

Ruth Duemler  
Eugene