**Week 5 Case Studies:**

**5.3: Free Speech or False Advertising: Q3 and Q4**

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Question: Should commercial speech receive less First Amendment protection than other types of speech, or does this violate the rights of corporations?

This is an extremely difficult question, because it is based on the assumption that corporations are living entities outside of their employees, and are therefore entitled to the same rights as a human being.

When I think about the possible positives and negatives in advocating or opposing this concept I find myself thinking about the “what if’s”.

If a corporation is entitled to the same rights as a human being, then the first amendment would definitely apply. However, this potentially blanket protects corporate liabilities to statements that are made in “off the cuff” mannerisms, such as the NIKE example for this case study, and would essentially allow corporations to say anything that they wanted to say, so long as they were within any other legal bounds of the law.

Thus, so long as the corporation could legitimately claim that they were not falsely advertising their product or intentionally slandering another company or person to directly affect their business in a positive manner, anything could be said under the guise of Corporate Free Speech. While this concept sounds innocuous enough, it could easily be abused, and would be used extensively to the extent that as our text suggests, corporations would literally become political powerhouses, much more so than they currently are.

However, if a corporation is not entitled to the same rights as a human being, then the first amendment would be extremely restricted for corporations. There would never be a press release, speech, or any other type of public statements ever made, unless they had been prepared by legal experts and rehearsed, and some people might argue that this is how it stands in the corporate world today.

For me, I believe that this falls back to, what was the “intent” of the statement. If the statement was made in good faith, as something that the corporation or corporate representative honestly felt to be a true statement, then the company should have some protection of the freedom of speech. Yet, if statements are being made that aren’t in good faith that the statement is honest, then freedom of speech should not apply nearly as much.

As such, as much as it would bog down the legal system even more, I think that this question can only be answered properly on a case-by-case basis. If the intent of NIKE in this case was to present the company in a light that would not negatively influence their product sales, then they should not be protected by the first amendment.

However, if the intent of NIKE was to present the company in a light such as NIKE’s advocates took, that NIKE was trying to state that they do not condone “Sweatshop” atmospheres and that they were legitimately paying double minimum wage in the countries in question. Because it was the morally correct thing to say and do, then they should be protected by the first amendment.

Question: Do corporations have the same moral rights as individual human beings? Should they have the same political rights? Is it morally permissible to limit the speech of corporations in ways that it would be wrong if applied to the speech of individual citizens? If it is permissible, is it good public policy?

I think that there are certain scenarios where the corporation should be allowed free speech and other scenarios where it should be appropriately restricted. My reasoning for this is that I do not believe that a corporation is a living entity outside of its employees, and therefore not eligible for the same rights as human beings.

For corporations to qualify as having the same moral rights as individual human beings, the corporation would literally have to be able to speak for itself, without the counterpart of a human being doing the speaking.

“I (the corporation MyCorp) have made the decision to layoff X number, of people within the next few months, and outsource all of those jobs overseas. The board of directors is extremely grieved about this decision and the loss of local jobs, but was unable to convince me (MyCorp) to change my mind. On the positive side I (MyCorp) have informed the board of directors that making this change, will increase company profits”.

As this is not possible, then assigning corporations the same moral rights as human beings, grants the controllers of the corporation a very large shield against any type of responsibility that they would not have normally had as an individual instead of a corporation.

In addition, as our text suggests, giving corporations the moral rights of a human, also enables the corporation to act and affect the very politics that form society. Corporations already have enough political power as things currently stand, with all the varying lobbyist groups, and they should not be given anymore. Once corporations gain enough political power such that they can change at will the regulations that govern certain aspects of modern living, then it will only be a half step away from deciding what risks are acceptable to society.

That being said, is it permissible to restrict speech of corporations that would be wrong on the individual level? And if permissible is it good public policy? I currently cannot think of any examples in which it should be mandatory to restrict corporate speech, but when I think about corporations today, I don’t think they receive equal levels of free speech, and are thus already restricted to some extent. I do think that this issue will be debated for years to come, but I also think there is a more appropriate question to ask.

 “If a corporation is granted the same level of freedom of speech as an individual, does that ability enable the speech of the corporation to become more powerful than that of the individual such that the voice of the individual is no longer heard?

Thinking about this, I believe that the in the end, the individual would be completely drowned out and silenced by the will of the corporations that control the economic pulse of society, placing us at the mercy of the bottom line, even more so than current society.