

Speech, Citizenry, and the Market: A Corporate Public Figure Doctrine

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That corporations are people for First Amendment questions is a fait accompli. We can debate the merits or wisdom of that fact, but the fact remains.¹ I argue that under current Supreme Court jurisprudence, corporations are not only people, but corporations are public figures. Like other public figures, corporations affect public affairs, take political positions, engage in matters of public concern and public controversy, and have reputations. Corporations no longer exist in a purely commercial world. A host of political issues from fair trade to gay rights to organic farming to children's development to gender bias to labor and more intersect with and are shaped by corporate policies. Thus Google urges countries to embrace gay rights; Mattel launches a girl power campaign; activists question Nike, McDonald's, and Shell Oil; and bloggers police the Body Shop's claims about its manufacturing practices. The social, political, and commercial have converged, and corporate reputations rest on social and political matters as much, if not more, than commercial matters. A foundational commitment of free speech law, perhaps the foundational commitment, is that public figures don't and can't own their reputations. Yet, through trade libel, trademark, and commercial speech doctrine corporations have powerful control over their reputation. If corporations are people for free speech purposes, as a constitutional matter, their power to control their reputations can be no greater than the power biological public figures have. Corporations cannot have it both ways. Corporations want and receive many of the benefits natural persons receive. They should also be subject to the same rules as other powerful, public figures.

¹ For an excellent discussion of why corporations are different than individuals for speech and other purposes, see C. Edwin Baker, *The First Amendment and Commercial Speech*, 84 Indiana L. Rev. 981, 987-990 (2009) (arguing that commercial entities as "are created for instrumental purposes" and have "morally different status than living, flesh-and-blood people"); cf. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 341 (1974) (connecting protection of someone's good name to dignity) (citations omitted); see also Patricia Nassif Fetzer, *The Corporate Defamation Plaintiff as First Amendment Public Figure: Nailing the Jellyfish*, 68 Iowa L. Rev. 35, 65-69 (1982) (tracing the Supreme Court's different approaches to corporate personhood depending on the question presented).