

MNES, NON-FINANCIAL REPORTING, PROCESS ADVERTISING AND GLOBALIZATION

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ABSTRACT

The conduct of modern corporations, particularly multinational enterprises (MNEs), is increasingly linked to broader social and other values and expectations. Consequently, modern public relations practice appears to extend to non-financial aspects of corporate activity. Non-financial issues are expanding in content and scope. Such issues are in some cases, evidently 'global' issues. Evidence suggests proliferation of, mainly, voluntary non-financial reports. Awareness of, and reliance on, such reports is increasing. Regulation of corporate reporting in many jurisdictions appears to be solely, (or at least mainly), targeted at financial reporting. The critical question is whether it is the appropriate stage for legal and regulatory intervention in MNE non-financial reporting. Is there any public issue of responsibility in such reporting? Is non-financial reporting a class of advertising? Can one classify non-financial reporting as process advertising?

Keywords: *globalization, multinational enterprises, non-financial reporting, process advertising, regulation*

Introduction

The corporate form may be regarded as “the most significant institutional development” (Chandler Jr., 1977) in business. Corporations are a common business form and may be described as “the quintessential institution of capitalism” (Lipartito and Sicilia, 2004). The role, power and benefits of corporations are often topical issues among diverse interest groups. Globally, corporations now have enormous “control over the economic and social machinery” (Timberg, 1946). The present world has been labelled a “corporate system” (Berle, Jr. and Means, 1932) as result of the impact of corporations on individual and collective lives. Historical accounts of the corporation trace the concept and form of the modern corporation to the sixteenth century joint stock companies in England (Allen, 2001). Incidentally, multinational enterprises (MNEs) were among the earliest cases of the use of the corporate form (Allen, 2001).

For the modern corporation, the concept of public relations has moved from traditional marketing process to the identification and satisfaction of the needs and interests of diverse ‘stakeholders’. Consequently, modern public relations practice appears to extend to non-financial aspects of corporate policy, activity and reporting. Such practice is based on the acceptance of wider corporate responsibility and accountability. The result is that stakeholders increasingly link the ‘business’ conduct of MNEs to broader social values and expectations. Commentaries (Clinard, 1990; Gabrosky and Sutton, 1989; Litvin, 2003; Hertz, 2001) on such issues as corporate abuse, criminal conduct, environmental impact, and performance of governmental or quasi-governmental roles show that corporate power may be positive or negative. MNEs, no doubt, possess some powers. But the degree of such powers usually elicits debate (Anderson, 2005). Whether with respect to the economy, politics, law or society, corporate power raises issues and analytical problems which pose “unprecedented theoretical challenges” (Bowman, 1996).

An issue that appears to be gaining ground in corporate practice and in the consciousness of commentators, activists, and other interest groups is the question of corporate non-financial (and social) activity and performance. Non-financial reputation is of increasing importance to modern corporations, particularly MNEs. Evidence suggests proliferation of mostly voluntary non-financial and social reports in various jurisdictions. External awareness of, and reliance on, such reports is evidently increasing. Reaction to negative non-financial reputation can be harmful. Non-financial issues are expanding in content and scope. Such issues can be (and in some cases, are evidently) 'global' issues particularly where MNEs are involved. The primary role of MNEs in globalization may be a factor.

Regulation of corporate reporting in many jurisdictions appears to be solely concerned with financial reporting. Even in the rare cases of apparent regulation of non-financial reporting, such regulatory intervention is often targeted at the financial aspects of the relevant issues. The critical question is whether it is the appropriate stage for legal and regulatory intervention in the area of non-financial reporting by MNEs. Are the relevant issues of sufficient importance and seriousness to attract legal and regulatory response? What is the scope of such issues? Is there any public issue of responsibility in such reporting? Is non-financial reporting a class of advertising? Can one classify non-financial (and social) reporting as process advertising? Is MNE non-financial reporting a form of global corporate advertising? What is the effective regime for addressing the relevant issues in such non-financial reporting? These questions are the subject of this paper.

MNEs and Globalization

What are the driving forces behind the growth and influence of MNEs? The existence, growth and expansion of MNEs are encouraged by developments in research, science, technology, transport, communications, production methods, international trade, and financing. These forces are also the pertinent factors in globalization. Consequently, an appropriate definition of globalization may be the "accelerating interdependence" of states with MNEs as the "primary agent" (Ostry, 1992). The major component of this definition is the MNE in its various manifestations. The conduct of MNEs has become an important issue for commentators and policy makers of diverse backgrounds. In fact, one can rightly say that the conduct of MNEs used to be dismissed as "a footnote"; but "[t]hose footnotes, however, are now appearing in the main text" (Stopford, 1994).

MNE activity directly and indirectly affects its socio-economic environment. The effect of MNEs' activity could be both local and international. Villiers (2000), for instance, discusses a company's relationship with its local community and international community. The observation is that MNEs "were directly subject to each nation's authority where they operated, yet appeared fully controllable by no single political sovereign [while] [m]ultinationally located and transnationally integrated operations yield resources and options unavailable to solely national firms, giving [MNEs] more independence from a local government's policy direction" (Kline, 1993). The present international situation is one where states compete for inward investments; control of corporations is no more a priority unlike in the 1970s (Anderson, 2006; Ratner, 2001; Held *et al* 1999). The concern of governments, particularly those of developed countries, is the establishment of "conditions for *increased* economic activity in the interests of the companies themselves rather than with control of the social and environmental impact" of corporations (Gray *et al* 1996).

The current reality is a world where MNEs make investment decisions based on factors they perceive as conferring competitive advantage, while states are now not "in a position to screen and control potential investors" (Michalet, 1994). With relative ease, MNEs can pool together, distribute or exploit production methods, processes, costs and resources, research, management and technical knowledge, and funding across different jurisdictions. With the

implications of MNE activity in mind, the difficulty is how to geographically situate the MNE. Geographical situation usually provides indication of the location of the political or regulatory control. Some commentators (e.g. Held *et al* 1999) argue that MNEs are national entities with international (and not global) influence. On the other hand, some commentators (e.g. Hirst and Thompson, 1996) insist that the state maintains its power of regulation over the MNE even in the face of increasing corporate power.

The question of defining the geographical location of MNEs can also be found within the framework of general discussions on globalization. Part of the relevant issues in globalization is the definition of the roles of states and MNEs. The roles of states and large MNEs have continued to be blurred by globalization (Servais, 2005; Boiral, 2003; Hepple, 1999). Globalization has produced a “reconfigured state” (Anderson, 2005) and elevated MNEs as major global political actors. Evidence of corporate power in this regard could be seen from corporate influence on political processes, corporate performance of governance roles, and corporations’ role in the global economy (Anderson, 2005). Internationally, corporations have also been seen as “political actors” (Grant, 1993). However, the existence of corporate activity and power is without doubt. The appropriate conclusion is that MNEs and not governments in most cases provide “the direct source” (Anderson, 2005) of decisions on people’s lives.

Globalization challenges the authority of the state in two ways. With the emergence of the global economy as the context, firstly, it reveals a discrepancy between traditional notions of state power and present reality; and secondly, it questions the idea of the state as the “exclusive, or even primary source of law” (Anderson, 2005). Among the non-state actors and institutions that have benefited from this situation are large corporations. Consequently, the power of such corporations has been growing (Anderson, 2005). As a result of the transnational scope of corporate power, it may simply be “misleading” to analyse such power only nationally (Bowman, 1996). Also, locating the legal domicile of an MNE may appear “arbitrary” particularly when such enterprises practically attempt to be “good corporate citizens” and “adapt to the political realities” of the different countries of their operation (Bowman, 1996).

MNEs, Globalization and Non-Financial Reporting

Issues pertaining to corporate non-financial activities, policies and performance are of increasing relevance and importance to the modern corporation. Profit is no longer the exclusive priority contrary to previously expressed views of some commentators. For example, Friedman had insisted that the “direct responsibility” of corporate management is profit generation; but he also agreed on the corporation’s need to conform to “the basic rules of the society, both those embodied in law and those embodied in ethical custom” (Friedman, 1970). The shift from solely shareholder concern to inclusion of other interests is based on a concept of “social capital [involving] an evaluation of a deeper and more complex set of social relationships of the corporation” (Clarke, 2004).

It is now understood that a link exists between “practical social values” and “public expectations” of business conduct as may be expressed in the media, by special interest and pressure groups (Smith and Walter, 2006) or other outlets. For example, a challenge for the modern corporation “is to find means of enduring value creation without social or environmental harm” (Clarke, 2004). There have also been moves towards “extending the corporate constituency” (Vagts, 1966) with the aim of rendering “the conduct of the enterprise institutionally responsive to interests beyond those encompassed in corporate law” (Sauvant and Lanier, 1980; Handy, 2003). Some publications, for example the magazine *Multinational Monitor* (Mokhiber and Weissman, 1999), are dedicated to identifying perceived worst culprits for corporate abuses on such matters as interference in political process, human rights, labour standards and the environment (Mokhiber and Weissman, 1999).

The scope of some existing concepts in corporate law has also been widened to include non-financial issues. For instance, the idea of corporate governance has expanded to non-financial matters. In this sense, corporate governance has been defined as “the system of checks and balances, both internal and external to companies, which ensures that companies discharge their accountability to all their stakeholders and act in a socially responsive way in all areas of their business activity” (Solomon and Solomon, 2004). This definition is based on the “perception that companies can maximize value creation over the long term, by discharging their accountability to all of their stakeholders and by optimising their system of corporate governance” (Solomon and Solomon, 2004). The wider conception of corporate governance includes regard to the interests of these stakeholders and other interests such as the community, the environment and the nation (Butcher, 2000; Dodd, Jr., 1931-1932; Sealy, 1989; Stapleton, 1996).

It is uncontroversial that corporate governance has financial aspects (Hampel, 1998; Solomon and Solomon, 2004). However, there are now some generally recognised corporate governance issues (Solomon and Solomon, 2004) that may be classified as non-financial. These include rolling contracts for executive directors, internal control mechanisms (Financial Reporting Council, 2005; (Solomon and Solomon, 2004), voting rights of shareholders and directors, proxy voting, training programmes for directors (Committee on the Financial Aspects of Corporate Governance, 1992; Solomon and Solomon, 2004), effectiveness of the board of directors and non-executive directors (Higgs, 2003). The assessment of the performance of the board of directors, committees of directors, individual directors and senior executives or employees is a key aspect of corporate governance (Financial Reporting Council, 2003; Australian Stock Exchange Corporate Governance Council, 2003; New Zealand Securities Commission, 2004; Leblanc, 2006). For instance, Nichol (2006) examines the effect of the UK corporate governance codes on board relationship and structure. Again, there have been proposals for annual “reporting measures of board diversity along several dimensions, including the gender, nationality, ethnicity, age and prior experience” (Tyson, 2003; Parkinson, 2006) of non-executive directors.

Also, a growing socially responsible investment (“SRI”) industry now exists (Parkinson, 2006). SRI is “a body of investors who take a direct interest in the social, ethical and environmental performance of the companies in which they hold shares” (Parkinson, 2006). Also growing around the SRI industry are fund managers and support organisations such as analysts, rating agencies and research organisations, and even ethical indices in some of the major stock exchanges (Parkinson, 2006; Little, 2003; Simpson, 2002). Although earlier research found inconclusive evidence of the extent of the influence of non-financial reports on financial investors (Mathews, 1987; Owen *et al*, 1987), current evidence indicates reliance on such reports by SRI funds and even other funds (Miles *et al*, 2002; Friedman and Miles, 2001; Harte *et al*, 1991; Rockness and Williams, 1988). Clarke and de la Rama (2004) contain an analysis of the growing impact of ‘socially responsible funds’.

Among actors in this area, the media play an important role in the identification, creation and sustenance of awareness, and measurement of performance in corporate non-financial issues. This is a consequence of a combination of increasing business coverage in the media and apparent recognition of the media’s role as “scrutinizers of the social responsibility of corporations” (Engwall, 2006). Increasing media attention on non-financial issues and increasing connection between corporate reputation and share price have taken corporate non-financial (and social) activity and reputation to a board level issue (Miles *et al*, 2002). Similarly, business ethics is now an academic subject, while the relationship between morality and business attracts attention (Barry, 1991). There are “real” (Schwartz and Gibb, 1999) consequences for the corporation and individual officers in cases of negative press or customer reports. As some incidents have proved, adverse consequences may follow where

corporations are “blindsided by issues that violated the trust of large segments of the public” (Schwartz and Gibb, 1999).

One of the effects of globalization is increased awareness of corporate non-financial issues. The media are an important factor here. In this regard, globalization can also be described as “the transnational extension and habituation of local ideas and practices” (Anderson, 2005). The domestic sphere does not exist in isolation. It is clear that “transnational influences can and do condition relations of power, conventions, and shared cultural constructions in the domestic sphere” (McNichol, 2006). The existence and role of MNEs in non-financial issues is an example. With the globalization of corporations, disclosure and transparency are emerging as important business principles. Globalization has placed such issues “at the centre of public policy debates” (Sullivan, 2006). The reason is the trans-boundary implications of corporate non-financial issues. For example, the suggestion is that “competitive erosion of labour standards” (Singh and Zammit, 2004) may result particularly from the existence of globalization. The fact that current evidence does not apparently support any view of harmful effects of globalization on labour standards in developed countries does not exclude such effects in the future (Singh and Zammit, 2004).

What is the relevance of company size to the reporting of corporate non-financial activity and performance? MNEs are likely to constitute the bulk of large corporations. Incidentally, evidence suggests that abuses by large corporations are of major concern to people (Clinard, 1990). People are particularly worried about the extent of power and exercise of power and influence by MNEs (Clinard, 1990). Size also matters in relevant corporate practice. For instance, profit making for a small company may be different for a large company, which may think more of long-term planning and position (Berle, 1965). Such approaches determine corporate responses to issues. The larger the size of the corporation, the more likely that its “[s]ize extends business decisions from the purely economic into fields of social movement” (Berle, 1965).

Large companies and consumer goods companies are more likely than small companies or producers of unbranded goods to be affected by public interest in non-financial issues (Parkinson, 2006). In corporate non-financial activity, reputation risk increases with the size of the company; the bigger the company, the more people are interested in its non-financial reputation. Large companies also tend to adopt codes of labour standards since they are more sensitive to criticisms of poor practices. (Servais, 2005) Evidence suggests that small companies are less conscious of corporate image (Barnard *et al*, 2004). In particular, it appears that a connection exists between the size of the company and the level of embrace of corporate social responsibility (“CSR”) (Barnard *et al*, 2004). Survival seems to be a major objective of small companies (Barnard *et al*, 2004). Even where survival is not in issue, CSR appears to have relatively lower degree of influence on small companies (Barnard *et al*, 2004). Where there is awareness of CSR principles, no substantive change in the corporate operational systems or terms is usually affected (Barnard *et al*, 2004).

Non-Financial Reporting, Reputation and Process Advertising

Non-financial issues and reputation now constitute a significant aspect of corporate marketing, public relations and related practices. For example, the modern concept of public relations has moved from traditional marketing process to the identification and satisfaction of the needs and interests of customers and other stakeholders including the local community (Cingula, 2006). In fact, it could be argued that modern public relations and corporate governance share the same concerns, particularly social responsibility issues (Cingula, 2006). As a result, modern corporations, particularly large ones, engage in various forms of corporate social and environmental reporting (CSER).

CSER or 'social audit' as preferred by some commentators (*e.g.* Geddes, 1992) emphasizes the social responsibility of enterprises. It consists of relevant corporate activity and the reporting of such activity. CSER has been defined as "the process of communicating the social and environmental effects of organisations' economic actions to particular interest groups within the society at large" (Gray *et al.*, 1987; Gray *et al.*, 1996). Such reporting is based on the acceptance of corporate responsibility and accountability wider than just profit (Gray *et al.*, 1996). CSER usually concerns effects of corporate activity on areas such as the natural environment, employees, consumers, and the local community, and on such social issues as race and gender (Gray *et al.*, 1996). Of the various components of CSER, the quantity of environmental reporting rose in the 1990s, while reporting on community, ethical and employee issues was declining (Miles *et al.*, 2002). At present, environmental reporting appears to be the most common form of reporting (Miles *et al.*, 2002).

Compared to financial reporting, CSER has a short history (Gray *et al.*, 1996). An early work on social reporting is Dierkes and Bauer (1973). Both financial reporting and non-financial reporting (including CSER) apply and rely on the concept of disclosure. Disclosure has always been an important part of company regulation (Davies, 2003; Bird *et al.*, 2000; Sealy, 1981). Corporate finance providers-shareholders, lenders, and creditors- are regarded as the traditional recipients of corporate information. In addition to these financial stakeholders, recipients of corporate information may include employees, trade unions, consumers, the general public, government and regulatory authorities (Muchlinski, 1999; Choi and Muller, 1992).

CSER differs from financial accounting in terms of the contents, media, purposes, and target recipients (Gray *et al.*, 1996). It recognises "a wider conception of disclosure" (Muchlinski, 1999). Different concepts of CSR exist (Abreu and David, 2004). CSR has both internal and external aspects. For example, the European Commission recognises that "within the company, socially responsible practices primarily involve employees and relate to issues such as...health and safety" (European Commission, 2001). CSER is usually a formal account by the organisation mainly for its internal use, although in some cases there may be external disclosure (Gray *et al.*, 1996). CSER ordinarily assumes a 'stakeholder' view of reporting to include such recipients as employees, trade unions and the local community (Gray *et al.*, 1996). A conventional CSER, in essence, is "a formal report, prepared and communicated by an 'organisation', about social and environmental aspects of the organisation's activities, communicated to the internal and external 'participants' of the organisation" (Gray *et al.*, 1996).

An important question is the classification of corporate non-financial reports (including CSER). Can non-financial reporting and CSER be classified as advertising? Advertising generally includes "all measures that aim at increasing one's or a third person's sales" (Glinski, 2006). Close examination of the practice and scope of corporate non-financial reporting indicates that such activity may fall within the scope of the definition. It is also arguable that non-financial reporting and CSER are 'social labelling'. 'Social labelling' is an aspect of advertising; since 'social labelling' on a product or packaging, or otherwise attached to the producer, indicates "information on the social conditions in which a product was manufactured or a service provided" (Servais, 2005).

As both economic entities and social institutions (Litowitz, 2005) among corporations, "a competitive structure that encompasses social responsibility agendas" has now emerged (Wheeler, 2002; Smith, 1994). Corporate competition exists in "cause related marketing" and over "social awareness and responsiveness" (Wheeler, 2002; Stork, 1999) in addition to the traditional areas of competition such as price, production costs and product development. The subjects, audience and contents of, and motivation for such non-financial and social reporting are potentially wide (Gray *et al.*, 1996). The fact is that reputation management is "essential"

(Brammer and Pavelin, 2005) to modern corporations. Modern corporations place a high value on “their reputations and fear any damage to them” (Clinard, 1990). Research indicates that negative ethical publicity can adversely affect other areas of corporate activity including earnings and employee morale (Clinard, 1990; Fisse and Braithwaite, 1983).

The practice of publishing corporate governance or CSR reports is now widespread (Parkinson, 2006). Among MNEs, various forms of non-financial reports (and CSER) are now “fashionable and strongly encouraged” (Kamminga and Ziarifi, 2000). The growth of such reports is, arguably, a direct result of the recognition by corporations of the importance of the reports. As a result of the values and expectations of the inter-connected global community, all corporations including MNEs operate in “corporate integrity risk environment” (Mendes and Mehmet, 2003). For instance, there exist “compelling public opinion surveys” showing that people want corporations to consider “corporate integrity, rather than the pursuit of profits as end in itself” (Mendes and Mehmet, 2003; Balkan, 2004). Moreover, good public image and trust attract better employees and stronger customer loyalty (Mazaar, 1999). In a global community, coupled with the advancement in information, communications and other technologies, people, more than ever, care about what happens to other people and in other places. Geographical location is apparently not a very important factor. It is in the same vein that the activities of an MNE, wherever they are located, constitute its “reputational asset” (Muchlinski, 1999). “Reputational capital” is “a fragile, intangible asset” that “complements- and sometimes surpasses- the material and financial assets” (Fombrun, 1996). Reputation has a link with “brand equity” and makes “real” but not always “directly quantifiable” contribution to the value of the company (Schwartz and Gibb, 1999).

Credibility, Regulation and Non-Financial Reporting

The pertinent issue for law is establishing the credibility (*The Economist*, 2004) of non-financial reports in the light of their widespread use and growing importance. How does the law prevent the spreading of “encouraging rumours” (Hadden, 1972), half-truths, reckless statements, or deliberately false or misleading statements on corporate reputation? As early as 1696, one of the reasons suggested in the 1696 Report of the Commissioners of Trade as justification for legal intervention in company practice was the problem of corporate “reputation, falsely raised and artfully spread” (Hadden, 1972). Surveys indicate that corporations regularly “lie about any and everything” (Rayman-Bacchus, 2004). The general view is that the “tale of corporate misconduct conflicts with the glowing image that advertising and other media portray of the corporations” (Clinard, 1990). With no attempt to quantify performance or reporting, the contents of annual reports focus on “creation of images” of active corporate involvement in a relevant activity, for example environmental protection (Crowther, 2004).

The primary proposal here is that corporate non-financial reporting (including CSER) is an area that requires legal intervention. This is evident from the multiplicity of codes on private behaviour and the massive literature on both corporate governance and CSR (*e.g.* Parkinson, 2003). The “growing expectation of public policy” (Muchlinski, 2002) is that corporations should be socially responsible. The disclosure of social, ethical and environmental performance of a corporation is required for “a more complete picture” than that provided by “purely financial data” of the effects, costs and benefits of corporate activities on the society (Williams, 1999). Incidentally, the UK Company Law Review committee indicated that the Operating and Financial Review (“OFR”) is not exclusively for shareholders (Company Law Review Steering Group, 2000). In contrast, the White Paper noted that the OFR is meant for use by “current shareholders”, although the OFR would also be of benefit to a wide range of stakeholders (DTI, 2002).

Regulation of non-financial reporting addresses discrepancies between corporate public rhetoric and corporate practice. The probable result is that MNEs will raise their practices to the level of their public claims. Under the principle of guarantee of freedom of speech, advertising is generally permitted in most legal systems. This right is not without restriction. In addition to other possible grounds for restricting advertising of some issues in some jurisdictions, advertising may also be rightly excluded where it is untruthful or misleading, or where it promotes unfair competition (*Casado Coca v Spain*, 1994). The aim of consumer advertising is clearly to attract public attention and support to a particular product or service. But advertising may also have the objective of attracting attention to the reputation of an organisation including the organisation's non-financial ideas, activities, performance, policies or values.

Customers and others who care about the environmental, human rights, or other social policies of a manufacturer of a product, or service provider should also be protected from false, misleading or erroneous advertising of such products. Reliance on the good faith of such corporate advertisers cannot be very helpful. Voluntary codes on corporate integrity have been described as "empty rhetoric" (Mendes and Mehmet, 2003) and "window-dressing...and no evidence that [a company's] behaviour has improved or is likely to improve" (Parkinson, 2006). Their implementation has been labelled "disappointing" (Mendes and Mehmet, 2003). A critical review of some corporate codes is undertaken in Paul and Garred (accessed 2007).

A customer who uses a product from business enterprise in the belief that the enterprise is socially responsible in a particular manner is likely to suffer, at least emotionally, if the belief turns out to be false or unfounded. Corporations should not be permitted to play with the sensibilities or sensitivities of their customers. (In a recent case an "animal rights" campaigner was viewed a hypocrite by the media for using a particular drug tested on animals for the treatment of her cancer disease.) The same reasoning may even apply to investors. Incidentally, Cankar (2005) compares an indifferent investor attitude to corporate codes in the east and central European countries and the reactive behaviour of UK investors. The evidence is that investors are increasingly concerned about the social reputation of the target corporations. In the investment market, "ethically screened funds" are on the increase while "ethical investment is a growing phenomenon" (Parkinson, 2006; Ethical Investment Research Service, accessed 2007). It is arguable that reliance by customers or investors on corporate social, ethical or environment performance is sufficient reason for legal intervention in cases where an enterprise, for instance, proclaims that its product is a 'fair trade' product.

Nike's experience with campaigners, which culminated in the *Nike v Kasky* (2002), showed that the credibility of corporate reports is doubtful when they are solely 'regulated' by the concerned corporation, individually or even by an association of business organisations. *Kasky v Nike* concerned Nike's response to allegations of operation of 'sweatshop' factories in South East Asia. Among other claims, Nike stated that its wages were "on average double the minimum wage" in those countries where its factories were located, and that its employees "are protected from physical and sexual abuse" (Kazer and Williams, accessed 2007). Kasky sued Nike claiming that Nike's communications were false and misleading. The case did not go beyond the interlocutory stage as the parties subsequently reached a settlement (Nike, 2003). In furtherance of the terms of settlement, Nike's publication in the aftermath of the *Kasky* litigation documented the employment conditions in its factories. The April 2005 report prepared in conjunction with some 'independent' parties admitted the existence of poor labour standards and practices in a significant number of Nike's factories especially those located in Asia (Nike, 2005, accessed 2007). Nike's report has been described as an "unusual step" (Baker, 2005). It is certainly unusual for business organisations to publish such unfavourable corporate information.

Conclusion

An important question is why despite the amount of literature, activities of pressure groups and diversity of codes of corporate conduct, little progress has been made in the areas of corporate governance and corporate social responsibility, especially in the setting of clear standards and enforcement? (A similar, but not identical, question is asked in Blair (1995). The short answer appears to be the poor and “permissive legal framework” (Parkinson, 2006). The belief is that “[a] close inspection of major corporations, often turns up dirty linen that contradicts their claims of integrity” (Clinard, 1990). The impression is that without external pressure, corporations would not be socially responsible and consider the protection of consumers, workers, the public or the environment (Clinard, 1990).

The view here is that public interest requires the regulation of MNE non-financial reporting. The appropriate judicial guide is that public interest is used “not in the sense of something which catches the interest of the public out of curiosity or amusement, but in the sense of something which is of serious concern and benefit to the public” (*British Steel Corporation v Granada Television Ltd* 1980). Non-financial issues satisfy both the requirements of ‘serious concern’ and ‘benefit to the public’. Investors, employees, consumers and other sections of the society are interested in non-financial issues and corporate non-financial performance. In some cases, the interest is even manifested or expressed by direct action.

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