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Swoosh Philanthropy Redux

By Rick Cohen

We couldn't help but chortle (a tiny bit) to see the report on Nike Inc.'s settlement of a free speech case in favor of a workers' rights group—that Nike appealed all the way to the U.S. Supreme Court and lost (William McCall, "Nike Settles Commercial Free Speech Case," an Associated Press story reprinted by *Yahoo News*, Sept. 12, 2003). Most people might not think that a challenge to Nike has much bearing on philanthropy, but oh, it does.

Back in 2002, the philanthropic activities of Nike and the Gap were showcased at the annual conference of the Council on Foundations as exemplary models of corporate grantmakers engaged in international grantmaking. Usually, COF assembles panelists with some diversity of perspectives, but this panel represented a range of opinions all the way from A to B. In other words, the panelists were representatives of Nike, the Gap, and the nonprofits Nike and the Gap had recruited and paid for to monitor the sweatshop conditions of Third World factories manufacturing apparel for the two behemoth haberdashers.

Prompted by calls from nonprofit advocates and progressive funders, NCRP looked into the global philanthropic track record of both corporations and found enough of questionable performance that prompted us to issue a four-page paper (still available from NCRP) that was circulated widely at the Chicago COF gathering. NCRP's critique of the "Nurturing the Human Face of Globalization" panel described Nike and the Gap as "two corporations with exceptionally controversial and generally reproachable track records of operating sweatshops, paying far below livable wage levels and frustrating labor organizing efforts in Third World nations where they manufacture their products." We described the grantmaking they were promoting at the COF panel as creating NGOs that Nike and the Gap "themselves sponsor, fund and help govern, and which take the place of independent monitors and evaluators of



Rick Cohen

factory conditions."

The NCRP paper described in detail the labor practices of Nike and the Gap in South America and Southeast Asia, based on documentation by respected independent NGOs such as Global Exchange and Oxfam Community Aid Abroad. In addition, we cited examples of philanthropic retribution, such as Nike's withdrawal of a \$30 million commitment to the University of Oregon because the university had pledged to avoid purchasing university-badged apparel from sweatshops.

We described the model NGO that Nike and the Gap were highlighting in the council panel, the Global Alliance for Workers and Families. At the time, Nike and the Gap—the two corporate members of the Global Alliance's six-member board of directors—had invested \$7.8 million in philanthropic contributions in launching the alliance. Conducting research on Nike and Gap sweatshops, the alliance reached conclusions about worker conditions noticeably different from those of independent nonprofits like Oxfam CAA, not surprisingly lauding the improvements that Nike and the Gap were making in their Third World factories.

Like many observers, we were underwhelmed and suggested, "Monitoring sweatshop conditions by puppet NGOs directly controlled by the factory owners and sponsors is not independent research. ... Support of such NGOs, whose purpose is essentially to justify the two corporations' practices—and therefore to promote their economic interests—is not philanthropy. ... It is grant-

making to support the policy and public relations objectives of the sponsoring corporations, not to participate in the public good." We concluded, "Supporting captured NGOs that do the corporate-specific bidding of their grantors is not philanthropy at all."

At the council meeting, NCRP and many other critics of the purported philanthropy of Nike and the Gap showed up at the "Nurturing" workshop, giving the session an overflow audience, listened to the presentations and raised questions from the audience. It was all relatively civil, though the Council on Foundations newsletter, *Council Columns*, in June 2002 reported that the expected protest and disruption of the panel had not materialized, even though nothing of the sort was planned. The council's report on the dialogue cited the responses of panelists such as Nike's Maria Eitel basically putting us in our place, though that wasn't quite the way we and the bulk of the audience remembered it.

Nonetheless, Nike and the Gap had their presentations, continued their philanthropy, and received additional high profile coverage of their good works (*Foundation News & Commentary*, September/October 2003). After Nike's Eitel joined Independent Sector only the previous year, IS demonstrated its thinking by vaulting her to its board of directors (she has since resigned).

Fast forward 18 months, and Nike settles for \$1.5 million in a case in which a San Francisco-based labor activist, Marc Kasky, had accused it of "false advertising for claiming the company was protecting labor rights at overseas contract factories that make footwear for Nike." The Associated Press report quoted Nike's reasoning for settling as follows: "The two parties mutually agreed that investments designed to strengthen workplace monitoring and factory worker programs are more desirable than prolonged litigation."

In *Nike Inc. v. Kasky*, Nike had tried to stop the false advertising complaint, taking the case up to

the U.S. Supreme Court after the California Supreme Court had ruled for Kasky. But the U.S. Supreme Court heard oral arguments and then dismissed the case in June, referring it back to the California courts.

Although Nike had garnered the backing of lots of companies supporting its contention that a false advertising claim on its purportedly improved factory conditions was no more than simple free speech—the company said "such statements are part of the marketplace of ideas protected by the First Amendment and that it must be free to explain itself to customers, potential customers or anyone else"—in the end Nike's settlement left hanging the issue of how much truth or dishonesty there actually was in Nike's sweatshop factory statements.

NCRP never doubted that the hiring of even a client NGO like the Global Alliance would result in some improvements in Nike and Gap factory

Nike withdrew a \$30 million commitment to the University of Oregon after the university pledged to avoid purchasing university-badged apparel from sweatshops.



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conditions. But hiring the Global Alliance constituted a business decision of the two corporations, benefiting them in ways that could have resulted in the Nike contentions at issue in the Kasky case. The bottom line is that recruiting a nonprofit to service the corporation might be socially responsible corporate behavior, but not philanthropy.

In fact, the settlement agreement requires Nike, admitting no wrongdoing, to pay \$1.5 million to the Fair Labor Alliance, formed in 1999, to promote a code of conduct based on international labor standards and monitor labor practices in sweatshop factories around the world.

The short attention span of many foundation players means that NCRP's questioning whether Nike and the Gap live up to their billing as model corporate philanthropists was noticed briefly in April 2002 and was quickly forgotten. We can only hope that we won't see Nike's compulsory \$1.5 million payment to the Fair Labor Association touted as corporate philanthropy. Settlement agreements and court-ordered contributions are a far cry from charitable giving—and the former should not masquerade as the latter.

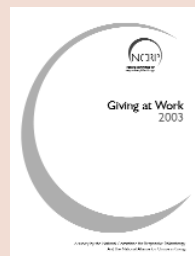
NCRP is as guilty as anyone else of inadequate follow-through here. Like others, we spot issues, comment on them, and sometimes fail to stay on top of them when they reappear years later. It's obviously a resource issue, not having enough people and money to consistently track and stay

on top of items like the Nike/Gap philanthropic angle. We need to do better and so does the entire sector, or else philanthropic learning is hampered.

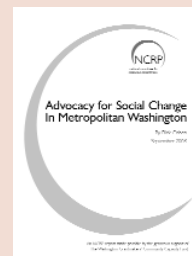
But there has been learning as a result of the Kasky case. The Yahoo report cited as a Nike spokesperson none other than its philanthropic representative, Maria Eitel, saying, "We have learned a great deal in the five years since this case was first filed about the challenges we and others face in addressing issues in manufacturing environments." Good for them, and hopefully good for the Nike workers in their Southeast Asian and Latin American factories. ☺

Rick Cohen is executive director of the National Committee for Responsive Philanthropy (NCRP). NCRP was founded in 1976 and is dedicated to helping the philanthropic community advance the traditional values of social and economic justice for all Americans. Committed to helping funders more effectively serve the most disadvantaged Americans, NCRP is a national watchdog, research and advocacy organization that promotes public accountability and accessibility among foundations, corporate grantmakers, individual donors and workplace giving programs. To obtain more information on NCRP or to join, please visit www.ncrp.org, call (202) 387-9177 or use the enclosed membership form.

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Advocacy for Social Change in Metropolitan Washington, released in September 2003, maps the funding landscape for nonprofits engaged in local and regional public policy advocacy in the metropolitan Washington area.

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