

The background of the entire page is a dark, low-angle shot of a skyscraper's facade, with numerous US dollar bills falling from the windows and balconies, creating a sense of financial chaos or a 'rain' of money. The bills are in various orientations and focus, some appearing sharp and others blurred as they fall.

CORPORATE REFORM COALITION

**Boycotting the President's Brand:
Commercial Reactions to Trump
2015-2017**

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Acknowledgments

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About The Corporate Reform Coalition

The Corporate Reform Coalition is comprised of investors, academics, and national and state-based non-profit organizations that are all seeking disclosure of corporate engagement in politics. For more information on the coalition or questions please contact Rachel Curley at coalition member Public Citizen: rcurley@citizen.org.



Corporate Reform Coalition
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Executive Summary

For most companies, picking a side in a partisan fight is perilous because it can alienate customers in the process. When businessman Donald J. Trump entered the presidential race in 2015, no one knew how his political career would impact his commercial brand. The results so far, one year into his presidency, have been mixed.

On one hand, the presidential campaign and the presidency have offered multiple opportunities for product placement and free advertising for the Trump commercial brand. Notably, on nearly a weekly basis, the President visits one of his Trump-branded properties, typically to golf.¹ This brings reminders of his golf courses, resorts and condominiums to a world-wide audience of potential customers.

On the other hand, Mr. Trump's candidacy and presidency have been marred with controversy including an on-going criminal probe into his 2016 campaign, which could expand into his business dealings, his family, and his associates. Already, Special Counsel Robert Mueller has indicted President Trump's campaign manager Paul Manafort and received a guilty plea from President Trump's National Security Adviser Michael Flynn for lying to the FBI.²

Another source of controversy for the new administration has been the President's perceived racial insensitivities, including most famously, his reaction to neo-Nazis marching in Charlottesville, Virginia, in the late summer of 2017. This bizarre episode led many business leaders to resign from White House business councils in protest.³

And meanwhile, the strength of the Trump commercial brand seems to be largely on the decline. There are several ways to document this decline. First, the brand is the subject of a large and on-going boycott. Moreover, former business partners of the Trump Organization have severed ties. There are efforts to remove Trump's name from buildings around the world. And there have been rebranding efforts to move away from the Trump name by the Trump Organization itself. Further evidence of the brand's diminishment includes the fact that the Trump Organization tumbled to 40 on *Crain's New York's* list of the largest privately held companies in 2017 from number 3 in 2016.⁴

But the story is complicated. For one, Trump branding is on everything from water, to ties, to wine, to golf resorts. While the consumer goods may be particularly vulnerable to boycotts, other Trump services like hotel rooms may still fetch a premium. For example, brand tracking in late 2017 found

¹ Jessica Estepa, *President Trump has visited a Trump property on 34 out of his 45 weekends in office*, USA TODAY (Updated Nov. 22, 2017 6:27 p.m.) ("The president has visited at least one of his properties on 34 out of his 45 weekends in office (including this one).").

² Jeremy Herb, Katelyn Polantz, Evan Perez & Marshall Cohen, *Flynn pleads guilty to lying to FBI, is cooperating with Mueller*, CNN (Updated Dec. 1, 2017).

³ Ben Jacobs, *Trump disbands business councils as CEOs flee after Charlottesville remarks*, THE GUARDIAN (Aug. 16, 2017).

⁴ Aaron Elstein, *The Trump Organization sees fortunes fall, Why the firm saw itself drop on our list of the largest privately held companies*, CRAIN'S NEW YORK (Updated Dec. 15, 2017).

the Trump hotels and golf courses doing well while at the same time Trump branded ties, watches and clothing were losing ground.⁵ And without more transparency from the Trump Organization, it is impossible for an outsider to tell for sure whether the Trump commercial brand overall is doing better or worse now than the day before he declared his candidacy in 2015.

But there are interesting lessons to learn from the two-year presidential campaign and the first year of the Trump Presidency. First, Trump's commercial brand is an on-going Achilles heel for Trump the man because those who are disenchanted with his politics can focus that rage at his commercial interests. Second, while the limelight that follows the presidency does give his commercial brand a large platform, that attention can also bring damning criticism. And with an eponymous brand, critiques of the man may end up devaluing the associated commercial brand as well.

Finally, a reason that the Trump commercial brand is such an easy target for boycotts (and other forms of rejection) is that the Trumps have not hidden their commercial role in promoting Mr. Trump's political ambitions. This is dissimilar from many companies' approaches to political involvement, which tends to be more circumspect and even purposefully hidden. However, as counter-intuitive this may seem, from an accountability standpoint, the brazenness of the Trumps makes it easier for voters and consumers to react to their behavior. This is actually preferable to the trend of companies' hiding their political actions through opaque front groups, which leave the public without a means of objecting. If businesses are going to get involved in politics, they should at least be honest about the behavior so that their constituencies can take their politicking into account.

⁵ Cory Schouten, *The Trump brand's shrinking power*, MONEYWATCH (Oct. 5, 2017, 5:30 AM).

Introduction

In late 2016 an architect named Jeffrey Roberts was trying to figure out a particular architectural feat: how to obscure a name on the façade of a high rise in Chicago. His solution was to use giant 30-by-15-foot inflatable golden colored pig shaped balloons and to fly them at the precise height such that viewers from below would not be able to make out the name.⁶ The balloon pigs were an homage to the “Animals” album cover by Pink Floyd.⁷ The band, of course, owns the intellectual property rights to this image. But when cofounder of Pink Floyd Roger Waters heard of the plan, the band gave their consent for him to go forward with the caper.⁸ The name on the building that the architect was trying to hide from view, if only for a day, was written in platinum colored letters: TRUMP.⁹

A few months later, on February 24, 2017, activists Ryan Clayton and Jason Charter handed out hundreds of Russian flags in the crowd at the Conservative Political Action Conference (better known as CPAC) as President Trump was about to speak to the conservative group. The Russian flag is red, white and blue. The activists had written the word “Trump” on the Russian flags in gold lettering. Many in the CPAC crowd waived the Russian Trump flags not realizing they were part of a political prank.¹⁰ And on the evening of May 15, 2017, artist and filmmaker Robin Bell used light to project the words “Pay Trump Bribes Here” over the entrance to the Trump International Hotel Washington, D.C.¹¹

The impulses of this architect, these prankster activists, and this filmmaker were more creative than most, but they were not isolated. Rather they tapped into an American zeitgeist of ongoing political protests. In 2018, Americans live in a time of polarized partisan politics¹² when business and politics intersect on multiple levels: from companies’ supporting particular candidates or political parties, to companies’ advertising at the nominating conventions of political candidates, to political candidates paying their own companies with campaign funds.¹³

Most Americans don’t have the time to create an epic art project to express their political disenchantment. The protest that is most readily available to the average citizen is voting with their dollars through boycotts (and buycotts). American voters only get to weigh in on federal candidates at the ballot box every two years. But as consumers, American voters have the ability to make a choice every time they make a purchase. As Thomas C. O’Guinn, a professor of marketing at the

⁶ Priscilla Frank, *Architects Want To Hide Trump Tower Logo With A Bunch Of Flying Gold Pigs Weirder things have happened, right? Namely, one.*, HUFF. POST (Dec. 9, 2016).

⁷ *Architect wants to install giant pig balloons to block Trump's name on Chicago high-rise*, CHI. TRIB. (Dec. 7, 2016).

⁸ Karen Brill, *A Series of Flying Pigs Will Block Trump's Chicago Tower*, ARCHITECTURAL DIGEST (May 4, 2017).

⁹ Joe Vince, *Flying Pigs Over Chicago's Trump Tower Sign Grounded For Now*, PATCH (Updated July 27, 2017 5:01 pm ET). Thus far, the City of Chicago has not granted the permits for the flying pigs.

¹⁰ Ali Breland & Taylor Lorenz, *CPAC attendees seen waving Russian flags*, THE HILL (Feb. 24, 2017 11:16 AM EST).

¹¹ Nicole Chavez & Emily Smith, *'Pay Trump bribes here' sign projected onto Trump's DC hotel*, CNN (Updated May 16, 2017 12:39 PM ET).

¹² *Partisanship and Political Animosity in 2016 Highly negative views of the opposing party – and its members*, PEW (June 22, 2016) (35% of Democrats think Republicans are more immoral than other Americans and 47% of Republicans think Democrats are more immoral than other Americans).

¹³ Olivia Nuzzi, *Donald Trump Is Paying Himself to Run for President*, DAILY BEAST (Mar. 1, 2016).

University of Wisconsin in Madison said, “Americans have come to define themselves more as consumers than as citizens. It is the role in which they finally have power over corporations and politicians, and with the help of the internet, they can flex that muscle with much more frequency and in much greater numbers.”¹⁴

Increasingly, commercial choices take on a political valence.¹⁵ Empirical evidence confirms that customers are willing to end their patronage of businesses over corporate involvement in politics.¹⁶ A 2012 poll conducted asked whether the respondents would be willing to refuse to buy a company's products or services based on their political spending.¹⁷ A sizable 79% of Americans polled responded that, yes, they would be willing to stop buying a company's products or services based on corporate politicking;¹⁸ with 36.7% stating that they would be very willing to stop buying.¹⁹ These domestic findings are consistent with findings among consumers around the globe. A 2015 global consumer survey found, “91% of global consumers expect companies to do more than make a profit, but also operate responsibly to address social and environmental issues[;] 84% say they seek out responsible products whenever possible[; and] 90% would boycott a company if they learned of irresponsible or deceptive business practices.”²⁰

For a few years now, I've been investigating the phenomenon of the brand risk that businesses take if they get too involved in political fights. I wrote about that in a law review article entitled “Shooting Your Brand in the Foot: What *Citizens United* Invites” and in my book, Corporate Citizen? An Argument for the Separation of Corporation and State.²¹ My basic thesis in both pieces was that business insiders should be careful about spending corporate resources on politics, even though they have that right thanks to the Supreme Court's 2010 case *Citizens United v. FEC*, because such partisan spending could alienate politically heterogeneous customers at a time of increasing political polarization in the United States.²² I remain convinced that companies should be wary of getting in the middle of political fights. A brand that is perceived as favoring one party could be sideswiped with fury from customers and investors who belong to the other. I stand by this intuition. Most businesses that sell to the general public are likely to have a happier and returning

¹⁴ Pat Wechsler, *The Boycott*, SAGE BUSINESS RESEARCHER (May 1, 2017).

¹⁵ Hillary Greene, *Antitrust Censorship of Economic Protest*, 59 DUKE L.J. 1037, 1041 (2009-2010) (“While people are participating less in the political process, as consumers they see that one way they can exercise power is by where they spend their money and where they don't.”).

¹⁶ See Liz Kennedy, *Citizens Actually United: The Bi-Partisan Opposition to Corporate Political Spending and Support for Common Sense Reform*, DEMOS (Oct. 25, 2012).

¹⁷ PhonetCall, *PhonetiCall Corporate Reform National Survey*, Q10A, (2012), <http://www.citizen.org/documents/toplines.pdf>.

¹⁸ *Id.*

¹⁹ *Id.*; see also Kennedy, *supra* note 16.

²⁰ 2015 Cone Communications/*Ebiquity Global CSR Study*, CONE COMMUNICATIONS (2015) (emphasis added).

²¹ Ciara Torres-Spelliscy, *Shooting Your Brand in the Foot: What Citizens United Invites*, 68 RUTGERS U. L. REV. 1295 (Spring 2016); CIARA TORRES-SPELLISCY, *CORPORATE CITIZEN?: AN ARGUMENT FOR THE SEPARATION OF CORPORATION AND STATE* (2016).

²² *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

customer base if the business at least keeps up a pretense of being politically neutral or apolitical.²³ Polling of consumers in 2017 found a majority dislike brands' getting political.²⁴

But over the 2015-2016 period, the United States elected entrepreneur Donald Trump.²⁵ This turn of events stands as a challenge to my basic thesis, since at least in the short term, the confluence of business and politics racked up a huge electoral win.²⁶ As he assumed the presidency, Mr. Trump refused to divest from his ownership of the Trump Organization.²⁷ This new state of affairs with a businessman in the White House raises a host of questions from the small to the constitutional. For instance, would Mr. Trump have to sell his Washington, D.C., hotel upon assumption of office? No. Would he use his government platform to sell his own products or the products of his family? Yes. And, would taking money from foreign governments through his businesses violate the Emoluments Clause of the U.S. Constitution?²⁸ The court cases are still pending.

The Trump brand is eponymous: thus "Trump" refers to both the man (Donald J. Trump) and the brand (associated with the products and services of the Trump Organization). Heather Digby Parton described the particular dilemma for a politician having a powerful commercial brand:

most of Trump's fortune is tied up in luxury properties and licensing deals for people who play golf at his golf clubs, stay in his expensive hotels and buy multimillion-dollar condos in buildings with his name on them. They live in big cities and wealthy suburbs, and many of them are appalled by Trump's crude campaign. They can vote with their pocketbooks, too. It certainly sounds as if Keith Olbermann could be right when he said, 'In Russia, there was quite a spree of pulling down statues of Stalin and erasing his likeness from buildings. That's how the real estate market will treat Trump.' *When your name is your brand and your brand is your business, people running away from it is a problem. Donald stands to lose a lot more than the election.*²⁹

²³ Leanna Garfield, *The anti-Trump boycott of 70 retailers won't back down – here's how it could affect sales*, BUSINESS INSIDER (Jan. 21, 2017) (quoting Robert Passikoff) ("Brands don't tend to do well when they involve themselves with ideologies.").

²⁴ Samantha Wolf, *New 4A's Survey Finds Majority of Consumers Dislike When Brands Get Political*, 4A (May 24, 2017 9:01 am) ("A complementary consumer study fielded by the 4A's and research partner SSRS found the majority of consumers (58 percent) dislike when brands get political.").

²⁵ Harrison Smith, *Donald Trump is elected president of the United States*, WASH. POST (Nov. 9, 2016).

²⁶ Robert Passikoff, *Trump Brand Triumphs: The President-Elect Effect*, BRAND KEYS (Nov. 14, 2016) ("From a political perspective, with the White House won, the Senate race no longer a toss-up, and the House firmly within GOP hands, a brand that was once deemed toxic by many consumers – and totally mismeasured by most researchers and political polls – is now seen as not only a safe option, but an emotionally desirable option.").

²⁷ Chase Peterson-Withorn, *Trump Refuses To Divest Assets, Passes Control To Sons*, FORBES (Jan. 11, 2017 11:41 AM).

²⁸ Miriam Hall, *Trump might be forced to sell his DC hotel at a loss*, BUSINESS INSIDER (Dec. 21, 2016, 9:15 PM); Elizabeth Segran, *Is It Legal For Ivanka and Donald Trump To Use The Presidency To Market Their Products?*, FAST COMPANY (Nov. 15, 2016); Aaron C. Davis & Karen Tumulty, *D.C. and Maryland AGs: Trump 'flagrantly violating' emoluments clause*, WASH. POST (June 12, 2017).

²⁹ Heather Digby Parton, *Has Donald Trump destroyed his brand and his business? The GOP nominee stands to lose more than the election*, SALON (Oct. 21, 2016) (emphasis added).

This process may have already started: in Chicago, street signs that used to say “Trump” no longer do.³⁰ The Chicago City Council voted to remove the street signs before the 2016 election in reaction to candidate Trump’s negative characterization of the city on the campaign trail.³¹

As this piece is being written, the Trump presidency is nearly a year old and is likely to go on for three more years, if not seven more years if he is re-elected in 2020. Thus, it is possible that the President Trump that is reviewed by historians will be a different man than the one that can be viewed now.³² By nearly any objective measure, the Trump presidency has been off to a rocky start. In his first year, President Trump failed to pass health care reform—a key campaign promise.³³ He set up a much criticized commission to look into alleged voting fraud to back up his unsubstantiated claim that “millions” of people voted illegally in the 2016 election.³⁴ In his first year in office, he fired the Acting Attorney General Sally Yates, fired his National Security Adviser Michael Flynn, fired the Director of the FBI James Comey, fired 47 U.S. Attorneys, including Preet Bharara who had jurisdiction over him in New York, had his first Attorney General Jeff Sessions recuse himself from DOJ investigations into the 2016 Trump Campaign, had Special Counsel Robert Mueller appointed to investigate his campaign, and four concurrent Congressional investigations are looking into his campaign and Russian interference in the 2016 election.³⁵

Thus far, Special Counsel Robert Mueller has indicted four members of the Trump 2016 campaign—including Mr. Trump’s campaign manager Paul Manafort—and two of those indicted pled guilty to lying to the FBI.³⁶ The first guilty plea was from George Papadopoulos, a junior figure in the campaign.³⁷ The second guilty plea was far more significant as it was from General Michael Flynn who worked in the White House for President Trump as his National Security Advisor.³⁸

The downside for a scandal-ridden presidency is much larger for President Trump (compared with his recent predecessors) because he could tank his commercial business’s reputation if he tarnishes his own reputation as President. With Mr. Trump there are far more targets for consumers to boycott than with other Presidents. And yet President Trump has continued to do things to outrage his opponents like three Muslim immigration bans, hostile acts against sanctuary cities, rollbacks of environmental rules, pulling out of the Paris Climate Accord, banning transgendered people from the military, and backing health care bills that would have left 20 million people uninsured, all of

³⁰ Chicago Tribune Staff, *Chicago removes remaining Donald Trump street signs*, CHI. TRIB. (Dec. 6, 2016).

³¹ *Id.*

³² If you are reading this in 2017, forgive me. I’m going to write this for a future audience who may never have heard of Donald J. Trump.

³³ John Podhoretz, *Trump’s failure to unite GOP led to epic health care reform disaster*, N.Y. POST (July 18, 2017).

³⁴ Roberta Rampton, *Trump’s voter fraud panel convenes amid intense criticism*, REUTERS (Jul. 19, 2017, 12:49 PM).

³⁵ Kyle Kim & Priya Krishnakumar, *A guide to every Russia investigation happening right now*, L.A. TIMES (Updated June 14, 2017).

³⁶ Zachary Cohen & Madison Park, *The four people charged in Mueller’s investigation*, CNN (Updated Dec. 4, 2017 12:44 PM ET).

³⁷ Miles Parks, *First Guilty Plea In Russia Probe: Who Is George Papadopoulos?*, NPR (Oct. 31, 2017 5:01 AM ET).

³⁸ Jeffrey Toobin, *Michael Flynn’s Guilty Plea Sends Donald Trump’s Lawyers Scrambling*, THE NEW YORKER (Dec. 11, 2017).

which provide a continual stream of new reasons to his opponents to boycott his brand. This is one of the perils of having an eponymous brand.³⁹

But is the Trump Presidency proof that business and politics make fine bedfellows after all? Is it just the case that when one is on both sides of particular transactions, like being the President and the owner of the President's favorite place to golf, then there simply is no downside for mixing business and politics for such a person? Or is the bigger picture that the candidacy and the presidency of Mr. Trump pose the same risk to the Trump commercial brand that all political entanglement poses for any brand—that the political brand will alienate more customers than it will attract? This piece addresses an associated basic question: will Mr. Trump's candidacy and his presidency be good or bad for the Trump commercial brand?⁴⁰ Of course, the answer could be different for the candidate and the president.⁴¹

³⁹ Kerry Close, *Is It Worth It to Boycott Donald Trump Products?*, TIME (Oct. 18, 2016) ("Brayden King ...[said] 'Most consumers don't use Trump businesses,' he noted in an email. 'But using a boycott will definitely draw negative attention to his businesses and taint their reputations.'").

⁴⁰ Rachel Abrams, *Early Signs Suggest Trump's Actions Are Taking a Toll on Trump Brand*, N.Y. TIMES (Feb. 4, 2017) ("Major companies appear to be re-evaluating their relationships with the Trump brand, which, in some instances, does not appear to have benefited from Mr. Trump's presidency.").

⁴¹ *Donald Trump's brand loses appeal among wealthy people*, AP (Oct. 25, 2016, 7:54 AM) ("The current trajectory is very harmful to his businesses," said Scott Galloway, a marketing professor at New York University. "Right now his brands cater to the affluent, who are disproportionately turned off by his activities.").

Part I. Branding 101

A. Loser, Bigot or Criminal are Not Good Brand Attributes

Creating a strong brand requires building up a set of positive connotations for a company's product (or services) in the minds of as many members of the consuming public as possible.⁴² One way to build a strong brand is to have an appealing, well-designed product that does what it claims to do. But barring that, typically crafting positive connotations for a brand is done through advertising using standard puffery.⁴³ Old standbys for advertisers are the assertion (true or not) that the product being sold is better, newer, faster, tastier, of a higher quality, or more effective than everything else on the market. Another popular trope is that if the customer buys this product, then the customer will be more powerful, rich, intelligent, sexy, envied or successful.⁴⁴ And a well-established brand enables the brand's owner to charge a premium over a competing similar generic product (or service).⁴⁵

Classically, most commercial brands try to steer clear of negative associations like being thought of as racist, stupid, harmful, incompetent, or traitorous. And so while the Trump commercial brand pre-2015 evoked a rather thin veneer of luxury,⁴⁶ the new question is: what does the Trump commercial brand evoke now that he has become President?⁴⁷ Consumer surveys have found contradictory associations with the Trump commercial brand. As reported by NPR's Jim Zarroli in early 2017, "Trump, the brand, is seen as aggressive, selfish and ambitious but also friendly, stylish and elegant..."⁴⁸ As criticism of Trump's presidency mounts, there could be transference between the negative criticism generated by President Trump and the commercial Trump brand.⁴⁹ If Mr.

⁴² Michael J. Freno, *Trademark Valuation: Preserving Brand Equity*, 97 TRADEMARK REP. 1055, 1056 (2007) ("Essentially, the brand comprises all publicly identifiable knowledge associated with a particular product, service, or company. The trademark is just the legally protectable portion.") (internal citations omitted).

⁴³ Raymond Perrier, *Valuation Issues: The Value of a Brand as a Financial Asset*, CORP. FIN. REV. (March/April 1998), available at 1998 WL 35601018 ("A brand represents a promise of benefits to a consumer, more than that, an emotional pact.").

⁴⁴ Deven R. Desai, *From Trademarks to Brands*, 64 FLA. L. REV. 981, 990-91 (2012) ("Many companies encourage consumers to see a brand as having a personality and to accept the idea that owning a branded good connects the consumer to the brand in some deep, personal way. Buying branded goods, authorized or not, is one way in which consumers build that connection. Given the mystique behind McDonald's, Apple, Nike, Gucci, and other powerful brands, the consumer is buying the brand itself. Taken further, a consumer may use a brand to express herself.") (internal citations omitted).

⁴⁵ Mark Fenster, *Coolhunting the Law*, 12 HARV. NEGOT. L. REV. 157, 161 (2007) ("the owner ultimately hopes that the brand will build value into the products to which it is attached through consumers' reliance on the brand for product identification, purchase, and satisfaction. ...A successful brand will both command a high premium and control significant market share. In this way, successful brands offer 'brand equity,' an intangible asset with a fuzzily measurable value that can, in some instances, represent a significant portion of a corporation's overall value.") (internal citations omitted).

⁴⁶ Will Johnson & Michael D'Antonio, *Trump's Campaign Is Damaging His Brand*, POLITICO (Jan. 11, 2016) ("Trump has built his distinctive trademark over the course of decades in public life, turning his own wealth, glamorous lifestyle and personality into emblems of his multi-billion dollar company through endless self-promotion.").

⁴⁷ Hayley Peterson, *The Value of Donald Trump's Brand Is Taking a Beating*, FISCAL TIMES (Oct. 12, 2016) ("That's because the Trump name at the time stood for 'wealth, luxury, and glamour, and for some, wretched excess,' wrote Robert Passikoff, Brand Keys' founder and president.").

⁴⁸ Jim Zarroli, *Trump's Role As President May Be Boosting His Brand's Reputation*, NPR (Feb. 8, 2017, 4:35 AM).

⁴⁹ Brian D. Till & Terence A. Shimp, *Endorsers in Advertising: The Case of Negative Celebrity Information*, 27 J. ADVERTISING 67, 80 (1998) ("Also at great risk are brands closely tied to a specific celebrity. . .").

Trump gets a reputation for being an inept political manager, or other negative attributes, those negative connotations could transfer to his commercial brand as well.⁵⁰

B. Renegade Brands and Renegade Spokesmen

There are, of course, a few brands that like to flirt with a more edgy image as a way to cut through the clutter for entree into the public's consciousness. Think of Redbull's sponsorship of dangerous sporting events and stunts, some of which have turned deadly.⁵¹ Here being a "renegade" is actually part of building the brand. If branding is in part a battle to grab the audience's attention, then being "extreme" can actually be helpful in building a brand.

But edgy brands walk a delicate line. If the "extreme" brand or the "extreme" brand ambassador gets in real trouble socially or legally, then the company behind the brand can suffer. For instance, before it went bankrupt in 2017,⁵² American Apparel ran ads with models in nothing but socks or legwarmers, or other states of undress.⁵³ The sexualized image seemed to help sell the brand, which lasted 19 years. American Apparel's founder Dov Charney seemed to revel in the controversy over the sexy ads,⁵⁴ right up until the point his board ousted him after a series of sexual harassment lawsuits were filed against him.⁵⁵

Being "edgy" has long been an aspect of Donald Trump's public persona. Consequently, being a maverick is part of his brand. Whether it was his catch phrase from *The Apprentice*, "you're fired!" to his years of pushing unsubstantiated "birther" claims against President Obama, Mr. Trump has been someone who courted the spotlight by courting controversy.⁵⁶ Other CEOs have been punished for their political stances like Mozilla Chief Executive Brendan Eich who stepped down after a boycott organized by OK Cupid highlighted his financial support of the anti-gay Prop 8. in California.⁵⁷ Until his run for president, Mr. Trump remained largely unscathed for his embrace of politically charged stances.

⁵⁰ Darin W. White, Lucretia Goddard & Nick Wilbur, *The Effects of Negative Information Transference in the Celebrity Endorsement Relationship*, 37 INT'L J. RETAIL & DISTRIBUTION MGMT. 322, 331 (2009) ("[E]xposure to negative information about a celebrity can have an adverse impact on the endorsed product with which that celebrity is associated. Results show a strong correlation between consumer perception of celebrity image and the endorsed product. . . . This critical finding suggests that when consumers are exposed to negative information about a celebrity endorser, a negative transference of the information towards the product may occur.").

⁵¹ Tom Porter, *Red Bull Under Fire Over Seventh Death at Tyrol Stunt Event*, INT'L BUS. TIMES (May 5, 2013 17:32 BST).

⁵² *Bankrupt Retailer American Apparel Begins Laying Off Thousands of Workers*, REUTERS (Jan. 16, 2017).

⁵³ *American Apparel Adverts Banned: 'Sexual And Objectifying' Images Show Models Half Naked*, HUFF. POST (Updated Oct. 4, 2013).

⁵⁴ Hannah Marriott, *Dov Charney: the man who put the sleaze factor into American Apparel*, THE GUARDIAN (June 19, 2014 8:50 EDT).

⁵⁵ Frank Bruni, *A Grope and a Shrug Dov Charney, American Apparel and Sexual Harassment*, N.Y. TIMES (June 30, 2014).

⁵⁶ Lisa Capretto, *The First Time Donald Trump Ever Fired Anyone*, OWN (Oct. 28, 2015); Michael Barbaro, *Donald Trump Clung to 'Birther' Lie for Years, and Still Isn't Apologetic*, N.Y. TIMES (Sept. 16, 2016); German Lopez, Libby Nelson, & Andrew Prokop, *Once you know Trump's history, what his campaign has done is unsurprising. That makes him scarier.*, VOX (Oct. 11, 2016, 6:35 PM) ("2011: Trump played a big role in pushing false rumors that Obama — the country's first black president — was not born in the US. He even sent investigators to Hawaii to look into Obama's birth certificate. . . .").

⁵⁷ Sarah McBride, *Mozilla CEO resigns, opposition to gay marriage drew fire*, REUTERS (April 3, 2014 3:55 PM).

One thing that could make the Trump commercial brand toxic is if it is linked to rank racism.⁵⁸ Mr. Trump has a long history of making racially charged remarks and has been accused of racial discriminatory practices as a landlord.⁵⁹ In 1989,

[i]n a controversial case that's been characterized as a modern-day lynching, four black teenagers and one Latino teenager — the 'Central Park Five' — were accused of attacking and raping a jogger in New York City. ...[Mr. Trump ran] an ad in local papers demanding, 'BRING BACK THE DEATH PENALTY. BRING BACK OUR POLICE!' The teens' convictions were later vacated after they spent seven to 13 years in prison, and the city paid \$41 million in a settlement to the teens. But Trump in October [2016] said he still believes they're guilty, despite the DNA evidence to the contrary.⁶⁰

For years, Donald Trump argued that the first African American President, Barack Obama, had not been born in the United States. Many interpreted this "birther" claim as racially motivated, as all of Mr. Obama's documentation proved he was an American citizen born in Hawaii.⁶¹

During the 2016 presidential campaign, Mr. Trump's racial views received a far broader audience, including his hostile comments against Mexicans in the speech launching his campaign. He made many statements hostile to Muslim immigrants throughout the campaign. He also criticized an American-born federal judge based on his Mexican heritage.⁶² Mr. Trump has been a prolific user of Twitter, and during the campaign, he retweeted white supremacists.⁶³ As conservative columnist, Jennifer Rubin wrote in *The Washington Post*, "Trump is a man who navigates the world by racial and ethnic stereotyping. He speaks of 'the' blacks and 'the' Hispanics, a classic 'tell' that the speaker

⁵⁸ Nicholas Kristof, *Is Donald Trump a Racist?*, N.Y. TIMES (July 23, 2016) ("Here we have a man who for more than four decades has been repeatedly associated with racial discrimination or bigoted comments about minorities, some of them made on television for all to see. While any one episode may be ambiguous, what emerges over more than four decades is a narrative arc, a consistent pattern — and I don't see what else to call it but racism.").

⁵⁹ Lopez et al, *supra* note 56 ("1973: The US Department of Justice — under the Nixon administration, out of all administrations — sued the Trump Management Corporation for violating the Fair Housing Act. Federal officials found evidence that Trump had refused to rent to black tenants and lied to black applicants about whether apartments were available, among other accusations. Trump said the federal government was trying to get him to rent to welfare recipients. In the aftermath, he signed an agreement in 1975 agreeing not to discriminate to renters of color without admitting to discriminating before.").

⁶⁰ Lopez et al, *supra* note 56.

⁶¹ Lydia O'Connor & Daniel Marans, *Here Are 13 Examples of Donald Trump Being Racist*, Huff. Post (Oct. 10, 2016).

⁶² Jennifer Rubin, *Trump's ingrained racism*, WASH. POST (Sept. 28, 2016) ("And let's not forget that Trump accused Judge Gonzalo Curiel of not being able to do his job because he is a 'Mexican.' He was actually born in Indiana."); Michael D'Antonio, *Is Donald Trump Racist? Here's What the Record Shows*, FORTUNE (June 7, 2016, 5:25 PM) ("Calling the American-born Gonzalo Curiel a 'Mexican,' he said Curiel was therefore biased against him, and he added to the flurry of objections by suggesting that a Muslim judge might also be incapable of hearing a lawsuit involving any Trump entity.").

⁶³ Kristof, *supra* note 58 ([During his campaign for president,] Trump has also retweeted messages from white supremacists or Nazi sympathizers, including two from an account called @WhiteGenocideTM with a photo of the American Nazi Party's founder. . .).

considers members of a racial or ethnic group as standing apart from 'us,' an undifferentiated mass in which individual characteristics are subsumed under group identity."⁶⁴

The companies behind most consumer brands typically don't want to be pigeon-holed as either partisan or racially discriminatory for similar reasons: either characterization could limit potential market share. If a brand is associated with the Democratic Party, Republican customers may go elsewhere, and vice versa. If a brand is associated with White nationalism, black customers may go elsewhere, and vice versa.

As Mr. Trump's electoral persona evolved during the 2016 presidential campaign, and he embraced more xenophobic stances — mostly against Mexican immigrants and Muslim immigrants; more racist stances — mostly against African-Americans and Latinos; more sexist stances — against women; the more he put his commercial brand at risk.⁶⁵ He could alienate not just the targets of the attacks like people of color and women, he could also alienate white men who find racism and sexism abhorrent. The basic problem was who would want to buy a shirt, a tie, or a hotel room, that supported these types of bigotry? Clearly the number is not zero, since he won his election. His electorate saw all of these qualities, and either were attracted to them or were not repulsed by them. As *Business Insider* summarized, "[e]ven though Trump threatened to enact racist, sexist, homophobic, and xenophobic policies on the campaign trail, it [was] difficult to tarnish his name. It is latched onto one of the most powerful brands in the world."⁶⁶ His cluster of generally socially stigmatized phobias has the potential to ruin Trump's commercial brand, which is marketed to a customer base that is broader than just Trump voters.

If a spokesman has become synonymous with a brand, then when the spokesman has a problem, the brand has a problem.⁶⁷ Spokesman scandals can harm the bottom line of the company that is behind a brand.⁶⁸ And a spokesperson with a scandal can be dropped by a brand like a hot potato. Avoiding negative connotations for a brand is a reason why companies will back far away from a spokesperson if he or she is involved in a scandal or criminality.⁶⁹ For example, when Tiger Woods

⁶⁴ Rubin, *supra* note 62.

⁶⁵ Paul A. Argenti & Bob Druckenmiller, *Reputation and the Corporate Brand*, 6 CORP. REPUTATION REV. 368, 373 (2004) (discussing the risks companies face when an individual "becomes the corporate brand" and that person's reputation is diminished).

⁶⁶ Garfield, *supra* note 23.

⁶⁷ Lianxi Zhou & Paul Whitla, *How Negative Celebrity Publicity Influences Consumer Attitudes: The Mediating Role of Moral Reputation*, 66 J. BUS. RES. 1013, 1018 (2013) ("demonstrat[ing] that moral reputation impacts attitudes towards the celebrity and also those attitudes impact attitudes towards endorsed brands."); Matthew Hood, *The Tiger Woods Scandal: A Cautionary Tale for Event Studies*, 38 MANAGERIAL FIN. 543, 556 (2012) (stating that "when a celebrity athlete behaves poorly off the field or performs poorly on the field, the reputation of the sponsor is also on the line").

⁶⁸ Stephen K. Koernig & Thomas C. Boyd, *To Catch a Tiger or Let Him Go: The Match-up Effect and Athlete Endorsers for Sport and Non-sport Brands*, 18 SPORTS MARKETING QUARTERLY 25, 26 (2009) ("Celebrities also may prove ineffective when negative press about the celebrity occurs that tarnishes their image and subsequently damages the image of the associated brand."); Therese A. Louie, Robert L. Kulik, & Robert Jacobson, *When Bad Things Happen to the Endorsers of Good Products*, 12(1) MARKETING LETTERS 13, 20 (2001) (Negative events where the celebrity is at fault "tend to generate negative abnormal returns" in the stock market for companies whose products they endorse).

⁶⁹ Sherry Bartz, Alexander Molchanov & Philip Stork, *When a Celebrity Endorser is Disgraced: A Twenty-five Year Event Study*, 24 MARKETING LETTERS 131, 132 (2013) ("The Tiger Woods scandal is in no way unique. A snapshot of Michael Phelps smoking marijuana cost the Olympic gold medalist an endorsement deal with Kellogg. Tabloid photos of supermodel Kate Moss snorting cocaine cost her deals with Burberry and Chanel. Madonna, O.J. Simpson, and Michael

was suspected of cheating on his wife, many brands that he had endorsed dropped him as a spokesperson.⁷⁰ When Michael Vick got in criminal trouble for dog fighting, brands similarly shunned him.⁷¹ As Jason Cavnar, managing director at Sports Business Ventures, told *Advertising Age*, “[w]hen you hang a brand on one guy, you’re taking a huge risk.”⁷² Again, this is particularly problematic for an eponymous brand with the CEO as the spokesperson for the brand. If there’s a scandal with the CEO, it’s unlikely that he or she will be fired like a normal celebrity endorser, though as Dov Charney’s experience shows, it could happen if the board agrees to remove the CEO for the good of the company.

Given the potential legal jeopardy faced by Donald Trump and his family members through the Special Counsel investigation, the closest analogous situation to the Trump commercial brand in recent history might that of Martha Stewart, the CEO and face of the brand Martha Stewart Living. When Martha Stewart (the woman) was convicted of obstruction of justice, the value of her brand Martha Stewart Living tumbled downward 60%-75% as measured by the company’s stock price.⁷³ Of course, none of the Trumps (or Kushners) have been charged with or convicted of anything yet. But should any of the multiple investigations swirling around the family bear fruit, one casualty could be the value of the Trump commercial brand.

C. The Value of Trump’s Brand

Brands are notoriously difficult to value and Trump’s commercial brand is no different.⁷⁴ Indeed the value of his brand could be why Donald Trump calls himself a billionaire while others dispute the vastness of his wealth.⁷⁵ In 2013, the Trump Organization put the value of the Trump brand at \$4

Vick are but a few examples of celebrities whose endorsement contracts were terminated because of disgraceful behavior.”); Kevin Y.C. Chung, Timothy P. Derdenger & Kannan Srinivasan, *Economic Value of Celebrity Endorsements: Tiger Woods’ Impact on Sales of Nike Golf Balls*, 32 *MARKETING SCI.* 271, 273 (2013) (finding the “scandal surrounding Tiger Woods regarding his marital infidelities had a negative effect which resulted in a loss of approximately \$1.4 million in profit and 136,000 sales of dozen golf balls for the four months following the scandal.”).

⁷⁰ Geoffrey Norman, *Can You Forgive Him?*, 18 *WEEKLY STANDARD* 26 (2013) (“After the scandal, he [Tiger Woods] lost almost all of his high profile endorsements. ... One study estimated shareholder losses from the damage to brands caused by the scandal at between \$5 billion and \$12 billion.”).

⁷¹ Melody K. Hoffman, *Michael Vick Loses Endorsement Deals; Co-defendant Cops Plea, Could Testify Against Quarterback*, 112(7) *JET* 51 (2007) (Michael Vick’s debacle showed the financial impacts of negative celebrity action: “Reebok stopped sales of his No. 7 jersey. Upper Deck removed all Vick autographed memorabilia from its online store and said it was removing Vick trading cards from NFL sets to be released in October.”); Emily B. York, *Phelps Brand Takes a Hit*, 80 *ADVERTISING AGE* 24, 27 (2009) (“Few brands want a puppy-killing, dogfight-organizing felon. Powerade, Airtran, Hasbro all walked away. So did Nike when the verdict came in.”).

⁷² Jeremy Mullman, *Reducing Risk of Vick-timization*, 78 *ADVERTISING AGE* 27 (2007) (quoting Cavnar).

⁷³ Clarke L. Caywood & Hud Englehart, *Crisis Management: The Model Unchanged but the Costs are Skyrocketing*, J. *INTEGRATED COMM.*, 2002–2003, at 46, 47 (“[Martha Stewart’s] questionable trade was valued at \$227,000. The lie caused her company stock to fall 60 percent or \$600 million.”); James S. O’Rourke, *Martha Stewart Living Omnimedia Inc.: The Fall of an American Icon*, 30 *PUB. REL. REV.* 447, 455 (2004) (“[Martha Stewart Living Omnimedia’s] value, following the IPO in 1999, rose to a peak of more than \$2 billion. Following the conviction of the firm’s founder, namesake, and public face, that value tumbled to \$539 million, just a quarter of what it was four years earlier.”).

⁷⁴ Nick Wells, *What’s in a name? For Trump, it could be \$3.3 billion*, *CNBC* (July 20, 2016, 11:44 AM) (“Because brands are intangible assets belonging to individuals and companies, there’s a lot of disagreement on how to estimate brand valuation. Most experts use an ‘income approach’ which estimates how much a brand will be worth going forward, depending on potential future income.”).

⁷⁵ Will Johnson & Michael D’Antonio, *Trump’s Campaign Is Damaging His Brand*, *POLITICO* (Jan. 11, 2016) (“Trump considers this reputation alone a hugely significant part of his business: Financial documents the candidate released

billion.⁷⁶ This figure was disputed at the time as being wildly inflated.⁷⁷ *Forbes*, which puts out lists of the world's billionaires, admits there are issues with this valuation.⁷⁸ *Fortune* valued the brand at \$125 million.⁷⁹ *Bloomberg* lowballed the value of the Trump brand at \$35 million. Both are a far cry from the billions that Mr. Trump himself asserts as the value of the brand.⁸⁰

In considering the ups and downs of the brand in the lead up to the November 2016 election, it is worth remembering that Mr. Trump was widely forecast to lose the election.⁸¹ He did lose the popular vote by roughly 3 million votes, but obviously, this does not matter under the U.S. Constitution, which awards the presidency to the winner of the electoral college, which he won handily.⁸²

Another way to conceptualize the value of the Trump commercial brand isn't what it would cost to buy it outright, but rather what type of premium customers are willing to pay for a Trump branded good or service compared with a generic alternative. Using this measure, one analysis of Trump's commercial brand found that it was sinking as he went into the 2016 election that he was largely anticipated to lose, but that the brand rebounded when he became President in January 2017.⁸³ As Robert Passikoff, the founder of Brand Keys who has been tracking the value of the Trump brand for years, noted:

Before Trump declared his candidacy, the overall added value for Trump's brand was 25%. This means if an apartment complex normally sold at \$1,000 per square foot, it could sell for \$1,250 per square foot with Trump's name on it. ... After Trump entered the race, his brand power decreased 20% for products like suits,

earlier this year set the value of his company's 'deals, brand and branded developments' at \$3 billion, which makes his name the single most significant item in his portfolio.”).

⁷⁶ Katherine Clarke, *A Complete Breakdown of Donald Trump's Net Worth*, BUSINESS INSIDER (July 2, 2013, 3:15 PM) (“In addition, and most controversially, the company said it believes the Trump brand is worth some \$4 billion.”); *but see id.* (“He [Mr. Trump] also has some \$451.7 million in debt and other commitments, plus personal cash and marketable securities in the amount of \$169.7 million, according to WeiserMazars.”).

⁷⁷ *Id.* (“James Fox...said the Trump Organization's brand estimate of \$4 billion ‘seems like a very high number given that, certainly in the U.S., his brand has been in pretty steady decline.’”).

⁷⁸ Catherine Thompson, *Forbes Magazine Puts Trump's Worth at \$4.5 Billion: 'We've Settled The Issue'*, TALKING POINTS MEMO (Sept. 29, 2015, 9:43 AM). (Noting that while Trump asserts his brand is worth multiple billions, “*Forbes* talked to 20 brand experts who estimated the worth of the Trump brand anywhere from \$125 million to \$1.1 billion.”).

⁷⁹ Erin Carlyle, *Trump Exaggerating His Net Worth (By 100%) In Presidential Bid*, FORBES (June 16, 2015, 1:14 PM) (“We value his brand at just \$125 million; we give him another \$128 million in management fees for Trump-branded hotels.”).

⁸⁰ Wells, *supra* note 74 (“*Bloomberg* recently gave Trump's brand a value around \$35 million, which is ‘one times sales from ongoing licensing deals.’”); *but see id.* (“Trump's own estimate of \$3.32 billion would represent a sales multiple around 100.”).

⁸¹ Callum Borchers, *The wrongest media predictions about Donald Trump*, WASH. POST (Nov. 9, 2016).

⁸² Gregory Krieg, *It's official: Clinton swamps Trump in popular vote*, CNN (Updated Dec. 22, 2016); Chris Ashby, *Trump's Bad Voter Fraud Math*, POLITICO (Jan. 26, 2017).

⁸³ Will Johnson & Michael D'Antonio, *Trump's Campaign Is Damaging His Brand*, POLITICO (Jan. 11, 2016) (“But as Trump the candidate has ascended, hitting the top of the polls and staying there thanks to a series of controversial statements and a groundswell of Republican populist support, the opposite has happened to Trump the brand: Among the people Trump's business depends on—the consumer making over \$100,000 a year—the value of the Trump name is collapsing.”).

ties, and jewelry, but increased for branded items geared toward wealthier Americans, like country clubs and luxury condos. When *The Washington Post* leaked audio of Trump making lewd comments about women in October 2016, that percentage plunged to 8%. But following the election, Trump's brand power increased 35% across every category. His name has more power now than ever...⁸⁴

This reading of the data is consistent with the finding of a *Fortune* poll of consumers on the eve of the 2016 election which found 40% of voters would shun Trump's commercial brand as consumers.⁸⁵ The same poll found a sharp difference among self-identified partisans. The *Fortune* poll found, "70% of Republicans would be willing to stay at Trump hotel, compared to 36% of independents and 16% of Democrats."⁸⁶ What should be particularly worrying to the Trump Organization is contemporaneous polling from 2016 that demonstrated weakness for the Trump brand among those making more than \$100,000 a year, a key target demographic for a luxury brand.⁸⁷ Another worrying bit of data for the Trump commercial brand from 2016 showed foot traffic was down at Trump properties. As reported by *Travel & Leisure*, "bookings at Trump Hotels plummeted 59 percent during the first half of 2016 and data from Foursquare shows a 17 percent drop in foot traffic at Trump properties since June 2015, when the reality TV star announced his presidential bid. . . ."⁸⁸ Foursquare also noted the partisan aspect of the drop in patronage at Trump properties during the 2015-2016 election cycle, finding that the dip was steeper in blue states. "Breaking out Blue States, the loss in foot traffic runs deeper than the national average. For the past five months, Trump's blue state properties—spread between New York, New Jersey, Illinois, and Hawaii—have taken a real dip, with diminishing visits starting in March and a widening gap that continues straight through July, when share fell 20% versus July 2015."⁸⁹

⁸⁴ Garfield, *supra* note 23 (Quoting Robert Passikoff); see also *The Trump Brand Is Losing Its Shine for Rich Consumers*, AP (Oct. 25, 2016) ("Brand Keys, a research firm that polled 1,536 registered voters nationwide, said Trump's comments about groping women has sent the premium you can charge for something bearing the Trump name down sharply.").

⁸⁵ John Kell, *Nearly 40% of Consumers Say They Will Shun Trump Businesses*, FORTUNE (Oct. 25, 2016) ("Morning Consult, a polling and market research company, surveyed a national sample of 1,983 registered voters, and it found nearly four out of ten voters said that Trump's campaign for president would make them 'less likely' to buy Trump-related products. Only 17% said it made them *more* likely.").

⁸⁶ *Id.*

⁸⁷ Will Johnson & Michael D'Antonio, *Trump's Campaign Is Damaging His Brand*, POLITICO (Jan. 11, 2016) ("A December [2015] survey of American consumer opinion, fielded by the BAV Consulting division of advertising and marketing giant Young & Rubicam (and the largest and longest running study of brands in the world), found that since Donald Trump's run for president, the Trump brand has lost the confidence of the people who can afford to stay at one of his hotels, play at one of his country clubs or purchase a home in one of his developments."); *The Trump Brand Is Losing Its Shine for Rich Consumers*, AP (Oct. 25, 2016) ("Will Johnson, an analyst at research firm BAV Consulting, which monitors brand perception for 3,500 brands, said that the Trump brand was 'collapsing' among people with a household income of over \$100,000 a year.").

⁸⁸ Cailey Rizzo, *Trump Hotels Ditching Name for New Hotels*, TRAVEL & LEISURE (Oct. 21, 2016) ("Trump Hotels, however, refutes the analysis. 'Our business at Trump Hotels is stronger than ever and we are incredibly excited about the future of Scion, the newest brand in our hotel portfolio,' Ivanka Trump...").

⁸⁹ Foursquare, *How the Trump Presidential Campaign is Affecting Trump Businesses*, FOURSQUARE (Aug. 4, 2016); see also *id.* ("The properties that were hardest hit were the Trump SoHo, Trump International Hotel & Tower Chicago and Trump Taj Mahal, down 17–24% in raw foot traffic this past year as compared to the previous year.").

Far before he ran for president (pre-2015), Trump branded real estate (mostly condominiums) did command a premium from purchasers.⁹⁰ Press reports about the profitability of Mr. Trump's real estate businesses was decidedly mixed heading into the November 2016 elections. Some reports had his real estate business up,⁹¹ and others had it down.⁹² Like much of Mr. Trump's worth, the value of Mr. Trump's golf courses is also a matter of dispute. As *Forbes* noted in June 2015 at the start of his presidential campaign, Mr. Trump valued his American golf courses at \$800 million but, "[i]ndependent valuation experts tell us our figure of \$200 million is much closer to the mark."⁹³

Whether the value is \$200 million or four times that amount, this value is substantial and this makes Mr. Trump's golf courses another pressure point for boycott efforts. The women's group Ultraviolet has urged the LPGA to not use Trump's golf courses for tournaments including by gathering 100,000 signatures on a petition to the LPGA.⁹⁴ A few athletes have also objected to the Trump location.⁹⁵ At least so far, the LPGA has not bowed to the pressure.⁹⁶ But the LPGA has recognized the controversy: "'It's obviously gotten the attention of a lot of people and I think I probably get about 50 calls a day from both sides of the coin,' LPGA chief [Mike] Whan told *Reuters* ahead of the ANA Inspiration tournament, where players during a practice round on Tuesday could hardly avoid seeing the anti-Trump banner flying overhead."⁹⁷

Before election day in 2016, there were widespread reports in the media that Trump hotels were struggling.⁹⁸ For example when the IMF had a conference in D.C. shortly before the election, Trump's new D.C. hotel was not a destination of choice.⁹⁹ As *New York Magazine* explained, "[f]or a five-star hotel in downtown Washington to have vacancies during major IMF meetings is a little like

⁹⁰ Clarke, *supra* note 76 ("Jon Low, a partner at Predictiv, said his analysis found that Trump-branded projects generally commanded prices and rents between 9 and 17 percent above the average for the areas in which they're located.").

⁹¹ *The Trump Brand Is Losing Its Shine for Rich Consumers*, AP (Oct. 25, 2016) ("Streteasy compared prices for Trump-branded condos in 16 buildings in Manhattan to similar ones nearby and has found no evidence the brand has been damaged. In fact, Trump condos sold for 5.6% more in August than they did a year earlier, versus a drop for rivals.").

⁹² Christopher Elliot, *How Trump's Divisive Campaign Is Hurting His Hotel Business*, *FORTUNE* (Aug. 1, 2016) ("A recent study by Redfin, the real estate brokerage firm, found that condominiums bearing the Trump name no longer get a market boost, reports *Luxury Daily*.").

⁹³ Carlyle, *supra* note 79 ("Another major discrepancy is golf courses: Trump has been advocating for a valuation for his chain of American golf courses as high as \$800 million.").

⁹⁴ Larry Fine, *LPGA chief says sport trumps push to boycott Trump course*, *REUTERS* (Mar. 29, 2017, 7:38 PM) ("UltraViolet said more than 100,000 people have signed a petition calling on the U.S. Golf Association and LPGA Tour to move the event, which it says would provide Trump millions of dollars in revenue, free advertising and branding."); Anya Alvarez, *Teed off by Trump? Why protests to move the US Women's Open miss the mark*, *THE GUARDIAN* (Mar. 28, 2017, 5:30 PM) ("When that tape surfaced, people immediately denounced the USGA, asking them to move the US Women's Open to a different course.").

⁹⁵ Fine, *supra* note 94 ("There has been some opposition to Trump from LPGA players, with England's Jodi Ewart Shadoff against the site of the Women's Open.").

⁹⁶ *Id.* ("But the game is still on for Bedminster ...").

⁹⁷ *Id.*

⁹⁸ Hayley Peterson, *The Value of Donald Trump's Brand Is Taking a Beating*, *FISCAL TIMES* (Oct. 12, 2016) ("Jack Ezon, president of the travel company Ovation Vacations, told *The Boston Globe* in September that business was down at least 30% at several of Trump's properties.").

⁹⁹ Cailey Rizzo, *Trump Hotels Ditching Name for New Hotels*, *TRAVEL & LEISURE* (Oct. 21, 2016) ("Nightly rates at the newly-opened Trump International Hotel in D.C. plummeted below \$500 while practically every other five-star property was sold out for the International Monetary Fund conference two weeks ago.").

having empty rooms when the Super Bowl is in town.”¹⁰⁰ Some of this downturn could be attributable to reactions to Trump’s campaign. As a meeting planner told *Fortune*, “‘There’s a pragmatic reason for steering clear of a Trump hotel...The majority of my clients feel that booking one of his hotels would be too polarizing right now, potentially driving away a good portion of their members,’ he says. ‘There is clear concern about driving away attendees who are or might be against his bigotry, racism, xenophobia, and intolerance.’”¹⁰¹

¹⁰⁰ Michelle Celarier, *Donald Trump’s D.C. Hotel Shows His Brand is Sinking Along With His Poll Numbers*, N.Y. MAG. (Oct. 13, 2016, 4:18 AM) (“Last weekend bankers and dignitaries from around the world descended on Washington for the annual World Bank–IMF meetings. But just a few days before the conference, rooms were not only still available at Trump International, they were heavily discounted.”).

¹⁰¹ Christopher Elliot, *How Trump’s Divisive Campaign Is Hurting His Hotel Business*, FORTUNE (Aug. 1, 2016) (quoting Timothy Aaron).

Part II. How Being Political Helped the Trump Commercial Brand

A. Product Placement

When Mr. Trump first announced his candidacy there were widespread questions about his seriousness or whether the campaign was just a publicity stunt. Part of what made the announcement suspicious is it did not take place in a location of American historical significance like Barack Obama's announcement in Abraham Lincoln's hometown of Springfield, Illinois, or in a location of electoral significance like George W. Bush's presidential announcement in Iowa. Rather, he announced his candidacy self-servingly in Trump Tower in Manhattan. For a while, the telos of the campaign seemed to be providing an opportunity for product placement of the Trump commercial brand. And from this standpoint, the campaign was a resounding success as the Mr. Trump got nearly \$5 billion in free airtime on television during the campaign alone.¹⁰²

The question of whether the 2016 presidential campaign was good for the Trump commercial brand cannot ignore the fact that the overlap between the campaign and the Trump Organization was considerable. The Trump campaign paid rent to Trump Towers, held election events on Trump properties, flew from campaign stop to campaign stop on Trump owned aircraft, dined in Trump restaurants, and had Trump family on the campaign payroll.¹⁰³ And in a particularly weird campaign event, candidate Donald Trump, like Vanna White, stood near a pile of Trump brand steaks, Trump brand wine and Trump brand water as reporters snapped pictures and video camera rolled.¹⁰⁴ Mr. Trump even spent one of his last precious days of the campaign, which other candidates would have spent stumping in a swing state, at a grand opening of his D.C. hotel in what many interpreted as free advertisement for the business.¹⁰⁵

In the end, the Trump campaign paid at least \$12.8 million to the Trump Organization or other Trump family members.¹⁰⁶ So the Trump Organization likely got a double benefit from these campaign expenditures: (1) it got the money, but it also got (2) the free publicity of being the location where the press corps had to be to cover the candidate. The Trump 2020 re-election committee is doing the same thing that the Trump 2016 committee did: spending in Trump properties, paying Trump lawyers, and buying Trump food.¹⁰⁷ Besides the Trump campaign, other Republican candidates and the Republican Party have also paid to stay in Trump hotels. According to the Center for Responsive Politics, in the 2016 cycle, \$174,000 was spent by the Republican

¹⁰² Emily Stewart, *Donald Trump Rode \$5 Billion in Free Media to the White House*, THE STREET (Nov. 20, 2016 1:20 PM EST), <https://www.thestreet.com/story/13896916/1/donald-trump-rode-5-billion-in-free-media-to-the-white-house.html>.

¹⁰³ Ciara Torres-Spelliscy, *The Trump Campaign Is Brought to You by Trump Inc.*, BRENNAN CTR. BLOG (Mar. 15, 2016).

¹⁰⁴ Brett Neely, *Trump Doesn't Own Most Of The Products He Pitched Last Night*, NPR (Mar. 9, 2016, 11:39 AM ET).

¹⁰⁵ Dave Jamieson, *Donald Trump's Grand Opening For His Hotel Is Greeted With A Boycott*, HUFF. POST (Oct. 26, 2016, 6:50 PM) ("With less than two weeks before the election, Trump, slipping ever further in the polls, burned a precious few hours promoting his new hotel in a city with just three electoral votes that inevitably go to the Democrat on the ballot. The ceremony wasn't a campaign event so much as another free advertisement for Trump properties.").

¹⁰⁶ Jim Zarroli, *Trump's Campaign Paid Millions To His Own Properties, FEC Documents Say*, NPR (Feb. 3, 2017 11:32 AM ET).

¹⁰⁷ Ciara Torres-Spelliscy, *Trump Already Profiting From 2020 Campaign*, BRENNAN CTR. BLOG (Aug. 7, 2017).

Party, Republican candidates and their PACs at Trump properties.¹⁰⁸ In 2017, these groups spent an additional \$253,000 at Trump properties.¹⁰⁹

The Trump campaign was also very effective at selling branded merchandise like the iconic “Make America Great Again” red hats, which retailed for \$25 to \$50 a piece.¹¹⁰ According to a report in mid 2017, the Trump campaign (which restarted the day of his inauguration to work on his reelection) has sold over half a million hats since 2015.¹¹¹ As President, Mr. Trump has been criticized for wearing hats that are for sale to official events like hurricane disaster relief trips, but this criticism hasn't stopped him from wearing these branded hats.¹¹²

Donald Trump's presidency provides him all the power and press attention that goes with the office. One way that President Trump has leveraged public office to the benefit of his commercial brand is by visiting, on nearly a weekly basis, one of his Trump properties. According to *NBC News*, in Trump's first 332 days in office he has spent 106 days at a Trump owned property. He has been particularly fond of using his Mar-a-Lago property in Florida, which he visited for 34 days of his presidency. In the same time period, he has also visited four different Trump owned golf courses for a total of 82 days.¹¹³

One hypothesis is Trump the President can only help his commercial brand because he can bring positive attention to particular properties and thereby attract more customers at higher prices — especially those properties that generate hefty membership fees. Mar-a-Lago reportedly doubled its membership fee from \$100,000 upon Trump's ascendancy to the White House to \$200,000.¹¹⁴ If the Mar-a-Lago fee hike is being replicated elsewhere among Trump clubs, then he is surely profiting from the presidency. Simultaneously, Mr. Trump has also profited from his status as a landlord since the Secret Service had to pay rent to be in Trump Tower for several months.¹¹⁵ Apparently, the Secret Service and the Trump Organization had a dispute over the rent and the Secret Service moved out of Trump Tower in July 2017.¹¹⁶ A report in August of 2017 showed his D.C. hotel, which

¹⁰⁸ Ctr. for Responsive Politics, *All the President's Profiting* (2015-2016 cycle), <https://www.opensecrets.org/trump/trump-properties?cycle=2016> (last visited Dec. 18, 2017).

¹⁰⁹ Ctr. for Responsive Politics, *All the President's Profiting* (2017-2018 cycle), <https://www.opensecrets.org/trump/trump-properties?cycle=2018> (last visited Dec. 18, 2017).

¹¹⁰ Donald Trump's 'Make America Great Again' hat sells out, AOL, (Nov. 9, 2016, 5:43PM).

¹¹¹ Dean Balsamini, *Trump campaign has sold more than half a million 'MAGA' hats*, NY POST (Apr. 29, 2017, 9:22 pm).

¹¹² Clark Mindock, *Donald Trump sported USA hat you can buy on his campaign website for \$40 throughout Harvey trip*, THE INDEPENDENT (UK) (Sept. 1, 2017 19:48 BST); Adam K. Raymond, *Trump's 'USA' Hat Criticized by Ethics Group and Those Who Don't Like Ugly Hats*, NY MAGAZINE (Aug. 30, 2017).

¹¹³ Liz Johnstone, *Tracking President Trump's Visits to Trump Properties*, NBC NEWS (Aug. 10, 2017, 9:39 am ET), <http://www.nbcnews.com/politics/donald-trump/how-much-time-trump-spending-trump-properties-n753366> (updated daily) (last visited Dec. 18, 2017).

¹¹⁴ Brooke Seipel, *Mar-a-Lago doubles initiation fee to \$200,000*, THE HILL (Jan. 25, 2017); Caleb Melby, *Trump's Net Worth Slips to \$2.9 Billion as Towers Underperform*, BLOOMBERG (June 21, 2017, 5:00 AM EDT) (“Mar-a-Lago, which Trump has visited frequently since the election, saw a 25 percent jump in sales.”).

¹¹⁵ Julia Glum, *The Government is Paying \$2.4 Million to Rent Space in New York City's Trump Tower*, NEWSWEEK (July 19, 2017 at 10:58 AM).

¹¹⁶ Peter Ryan & Jeremy Venook, *Trump's Interests vs. America's, Secret Service Edition*, THE ATLANTIC (Aug. 4, 2017).

had been struggling before the election (see discussion above), was turning a \$2 million profit with President Trump in the White House.¹¹⁷

B. Corporate Support for the Trump Inaugural

While only a single publicly traded company backed Trump as a candidate, corporations (both publicly traded and privately held) came out of the woodwork to financially support his inauguration celebrations once he won the presidency. As Mr. Trump assumed office, corporations including AT&T, Bank of America, Boeing, Dow Jones and Qualcomm, each gave at least \$1 million to the inaugural committee.¹¹⁸ Additional corporations on the \$1 million list include Reynolds American, the Madison Square Garden Company, Allied Wallet, Access Industries, Green Plains, and MacNeil Automotive Products.¹¹⁹ As *The New York Times* noted, many of the corporate donors to the Trump inaugural had pending business with the federal government or particular policy wish lists. For instance, telecom companies may have given to the inaugural committee to influence the FCC's stance on net neutrality, while pharmaceutical companies like Pfizer and Amgen may have wanted to influence the direction of the health care debate.¹²⁰ This corporate embrace of a new president is not unique to Mr. Trump. Many of the same corporations, who are repeat players in D.C., gave to Mr. Obama's inaugurals as well.¹²¹ So at least with the inaugural, many blue chip brands were willing to associate themselves with Trump's brand, if only for the day.

A more curious corporate donor was CITGO, which is an oil company owned by the Venezuelan government that gave \$500,000 to Trump's inauguration.¹²² This raised eyebrows for a number of reasons. First, Venezuela is destitute and going through enormous social upheaval, including riots in the streets.¹²³ Second, foreigners are not allowed to give money to U.S. candidates.¹²⁴ And third, CITGO has financial entanglements with a Russian oil company.¹²⁵ This donation to the Trump inaugural committee led to a complaint against CITGO at the FEC questioning its legality.¹²⁶ This FEC complaint has not been resolved at the time of this writing.

¹¹⁷ Jacob Pramuk, *Trump's DC hotel reportedly turns a sizable, unexpected profit*, CNBC (Aug. 11, 2017).

¹¹⁸ Ashley Balcerzak, *250 donors shelled out \$100k or more for Trump's inauguration, providing 91% of funds*, OPEN SECRETS (Apr. 19, 2017).

¹¹⁹ Dave Levinthal, *Donald Trump inauguration bankrolled by corporate giants*, CTR. FOR PUBLIC INTEGRITY (Apr. 19, 2017).

¹²⁰ Nicholas Confessore, *Trump Inaugural Drew Big Dollars From Donors With Vested Interests*, N.Y. TIMES (Apr. 19, 2017); Brian Fung, *The FCC just voted to repeal its net neutrality rules, in a sweeping act of deregulation*, WASH. POST (Dec. 14, 2017).

¹²¹ Reuters, *Here's Who Donated to President Trump's Gigantic Inauguration Fund*, FORTUNE (Apr. 20, 2017) (Mentioning many of these companies also donated to Obama's inauguration).

¹²² Julian Borger, *Socialist Venezuela chipped in \$500,000 to Trump's inauguration*, THE GUARDIAN (Apr. 19, 2017).

¹²³ Ana Campoy, *Venezuela, where people are starving, gave Trump half a million dollars for his inauguration*, QUARTZ (Apr. 19, 2017) ("There are many good uses towards which Venezuela's government could put \$500,000. Importing food for its starving citizens and replenishing medical supplies at threadbare hospitals come to mind. Instead, Venezuela chose to donate that amount to [the Trump Inaugural].")

¹²⁴ 52 U.S.C. § 30121.

¹²⁵ Dr. Vanessa Neumann, *Russia Gave to Citgo, Then Citgo Gave to Trump*, DAILY BEAST (Apr. 27, 2017 1:00 AM ET) ("Many big oil companies funded Trump's inauguration. Only one is deeply in debt to the Kremlin.")

¹²⁶ Kat Sieniuc, *FEC Urged To Investigate Citgo's Trump Inauguration Kick-In*, LAW360 (Apr. 26, 2017, 4:22 PM EDT) ("Nonprofit group Free Speech For People said Wednesday that it filed a complaint with the FEC, alleging the committee

Part III. How Getting Political Hurt the Trump Commercial Brand

A. Lost Business-to-Business Relationships

As noted above, there have been notable boosts to the Trump brand through the free exposure the brand got during the campaign and each time the President of the United States steps onto a Trump owned property. However, all the free advertisements may not be able to counter all of the negative connotations that are simultaneously being built up around the Trump name. What could be particularly damaging are the criminal charges issued from the Special Counsel investigating the Trump campaign and associates. Since the Special Counsel's work is not done yet, assessing its long-term impact is premature.

The assumption that Trump's presidential run could only help his commercial brand, was put to an immediate test as his announcement of his candidacy included vicious swipes at Mexican immigrants.¹²⁷ Most notably, after Mr. Trump made these negative comments about Mexican immigrants, Macy's which had sold his wears for years, ended their relationship with him.¹²⁸ As Macy's said, the company "'stands for diversity' and ... 'In light of statements made by Donald Trump, which are inconsistent with Macy's values, we have decided to discontinue our business relationship with Mr. Trump and will phase-out the Trump menswear collection, which has been sold at Macy's since 2004.'"¹²⁹

Interestingly, many long-term business partners distanced themselves from Mr. Trump. Also in reaction to the anti-Mexican statements, celebrity chef Goeffery Zakarian cancelled plans to open a restaurant in a Trump hotel,¹³⁰ as did celebrity chef Jose Andres.¹³¹ NBC which had long supported Mr. Trump and his family by airing his show "The Apprentice," decided not to air his Miss USA Pageant.¹³² It also kept Mr. Trump off of "The Celebrity Apprentice."¹³³ Serta also ended its

violated U.S. laws when it accepted the contribution made by Petr leos de Venezuela SA through its U.S. affiliate Citgo Petroleum Corp. ...").

¹²⁷ *Here's Donald Trump's Presidential Announcement Speech*, TIME (Jun 16, 2015) ("When Mexico sends its people, they're not sending their best. They're not sending you. They're not sending you. They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists.").

¹²⁸ Garfield, *supra* note 23 ("Macy's dropped Donald Trump menswear in 2015 after he said many Mexicans are rapists or criminals...."); Dawn Chmielewski, *The activist group UltraViolet calls on Amazon to dump Trump's clothing line*, RECODE (May 9, 2016, 1:17PM) ("Some 1,500 Amazon shareholders organized by UltraViolet signed a letter urging the online retailer to follow the lead of Macy's, which pulled its Trump merchandise last summer after the candidate referred to immigrants as rapists and drug dealers.").

¹²⁹ M.J. Lee, *First on CNN: Macy's Dumps Trump*, CNN.COM (July 1, 2015, 6:35 PM).

¹³⁰ Chris Fuhrmeister, *Geoffrey Zakarian on Why He Backed Out of Donald Trump's DC Hotel*, EATER (Nov. 8, 2016, 10:27am EST).

¹³¹ Ian Simpson, *Trump Hotel, Chef Settle Suit Over Canceled Washington Restaurant*, U.S. NEWS (Apr. 11, 2017, at 11:39 a.m.).

¹³² Neal Hartman, *Are Trump's Insults Harming His Business?*, NEWSWEEK (Jan. 27, 2016, 2:56 PM) ("But the impact has also been felt in the U.S. Macy's in June stopped carrying Trump-branded merchandise; NBC and Univision announced they would not air Trump's Miss USA Pageant; and NASCAR decided not to hold its end-of-season awards banquet at a Trump resort. ...").

¹³³ Stephen Battaglio, *Macy's Cuts Ties with Trump Over Mexican Immigration Comments*, L.A. TIMES (July 1, 2015, 8:51 AM) ("Trump has already lost business from Univision, which will not air the Miss USA and Miss Universe pageants. NBC,

relationship with Mr. Trump during the presidential campaign.¹³⁴ NASCAR decided to distance itself from Trump by cancelling an event at Doral—a Trump property.¹³⁵ Kawasaki USA also threatened to cut its sponsorship of “The New Celebrity Apprentice” until Donald Trump gives up his executive producer credit.¹³⁶ Mr. Trump responded to being jilted by his previous business partners, thusly, “[a]ttacking the companies that have left or plan to leave him, Trump said ‘Macy’s, NBC, Serta and NASCAR have all taken the weak and very sad position of being politically correct even though they are wrong in terms of what is good for our country.’”¹³⁷

Some of the lost business relationships did not materialize until after the election. As *Business Insider* explained, “Bellacor, Wayfair, Zulily, RueLaLa, and Stein Mart— removed Trump merchandise soon after the election. Some cited dwindling sales; others didn’t provide an official statement.”¹³⁸ There were also international rejections of Trump’s branded products like the Dubai-based retailer called Lifestyle, which rejected selling Trump’s home decor.¹³⁹ And the Trump Soho New York Hotel had its restaurant close in mid 2017 because of slumping sales.¹⁴⁰

Another sign of the toxicity of Trump’s brand during the campaign was that nearly no big corporations spent to support his candidacy. During the election, while corporations spent to support congressional candidates and supported other Republicans during the presidential primary such as Jeb Bush and Marco Rubio, most corporate spenders shunned candidate Trump.¹⁴¹ In fact, the only publicly traded company to support candidate Trump was the GEO Group, a private prison company.¹⁴² GEO could afford to support Trump because its “customer base” is literally involuntary prisoners. Every other publicly traded company avoided supporting him publicly during the

Trump’s partners in the pageants, has also announced it will sever ties with Trump, and will keep him off his hit reality show ‘Celebrity Apprentice.’ Mexican TV companies Televisa and TV Ora have also parted ways with Trump.”).

¹³⁴ John Santucci, *The Companies That Have Dumped Donald Trump*, ABCNews.COM (July 4, 2015, 3:00 PM) (“Trump’s mattress line became another casualty of his racially-infused comments. Serta, the nation’s number one bedding producer, decided to begin ‘unwinding [its] relationship’ with Trump. In a July 1 statement, the company said it ‘values diversity and does not agree with nor endorse the recent statements made by Mr. Trump.’”).

¹³⁵ *Id.* (“The ceremony was held at the Trump National Doral Miami last year. On July 3, NASCAR spokesman David Higdon said the ceremony won’t be at the Doral this year.”).

¹³⁶ Garfield, *supra* note 23 (“On January 18, Kawasaki USA spokesperson Kevin Allen told *The New York Times* that the company will drop its sponsorship of ‘The New Celebrity Apprentice,’ unless Trump cut ties with the show.”).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Daniel Bukszpán, *Donald Trump Lost All of These Business Deals Since June*, FORTUNE (Dec. 17, 2015, 7:00 AM) (“On December 9, [2015] hot on the heels of his proposal to ban all Muslim immigration into the United States, CNN reported that the Dubai-based retailer had announced a ban on all of the Trump-branded home décor products in all 195 of its stores. ‘In light of the recent statements made by the presidential candidate in the U.S. media, we have suspended sale of all products from the Trump Home décor range,’ Lifestyle CEO Sachin Mundhwa said.”).

¹⁴⁰ Jill Disis, *Restaurant to leave Trump Soho Hotel due to poor business*, CNN (Apr. 29, 2017: 10:53 AM ET).

¹⁴¹ Ciara Torres-Spelliscy, *Corporate America’s Wasted Investment in Jeb Bush*, BRENNAN CTR. BLOG (Feb. 29, 2016) (“Another million-dollar donor to [Jeb Bush’s Super PAC] Right to Right was NextEra Energy Inc. NextEra is a horse of different color because it is a publicly traded company (NYSE ticker: NEE).”); The publicly traded GEO Group also gave to a pro-Marco Rubio Super PAC called Conservative Solutions PAC. See Ctr. for Responsive Politics, *Conservative Solutions PAC* (2016 cycle), <https://www.opensecrets.org/outsidespending/contrib.php?cmte=C00541292&cycle=2016> (last visited Dec. 18, 2017) (showing \$110,000 donation from GEO Group).

¹⁴² Mirren Gidda, *Private Prison Company Geo Group Gave Generously to Trump and Now Has Lucrative Contract*, NEWSWEEK (May 11, 2017 5:00 AM).

campaign.¹⁴³ GEO also stood to gain lucrative contracts to detain people on behalf of the new Trump administration.¹⁴⁴ It's also possible that publicly traded companies were supporting Mr. Trump, but that they hid that support for him through dark money conduits like the social welfare organizations or trade associations.¹⁴⁵

B. Consumers' Boycotting Trump

In addition to losing business-to-business relationships, another vulnerability for the Trump commercial brand is losing customers. Even before there were any prosecutions, there were signs that the Trump brand is vulnerable.¹⁴⁶ Products from the whole Trump family have been subject of on-going boycotts.¹⁴⁷ As James Surowiecki wrote in *The New Yorker*, "there's something new about the speed and ferocity with which people now respond to corporate statements or signals. You can see it as the next logical step in the evolution of what's sometimes called *political consumerism*. In the past few decades, we've grown accustomed to holding corporations responsible for their labor practices and environmental records. So it's not surprising that they are being called to account for their real or imagined political messages."¹⁴⁸

Advocates of one political stripe or another have long urged shoppers to think of themselves as voting with their pocketbooks.¹⁴⁹ Or as Anna Lappé once put it, "[e]very time you spend money, you're casting a vote for the kind of world you want."¹⁵⁰ As citizens become more disconnected from influencing policy through small d—democratic means, increasingly activists are focusing on influencing businesses instead of members of Congress or the Executive.¹⁵¹ With a brand in the White House, political objections to the President can be taken out on his commercial brand. As *Salon* noted, "[t]here's no such thing as divorcing your politics from your consumption — every

¹⁴³ Ciara Torres-Spelliscy, *Why One Company Backed Donald Trump*, BRENNAN CTR. BLOG (Nov. 29, 2016)

¹⁴⁴ Franco Ordoñez, *Did companies' donations buy a Trump change in private prison policy?*, MIAMI HERALD (Mar. 3, 2017 7:16 PM); see also LAUREN-BROOKE EISEN, *INSIDE PRIVATE PRISONS: AN AMERICAN DILEMMA IN THE AGE OF MASS INCARCERATION* (2017).

¹⁴⁵ See generally Ciara Torres-Spelliscy, *Has the Tide Turned in Favor of Disclosure? Revealing Money in Politics After Citizens United and Doe v. Reed*, 27 GA. ST. U. L. REV. 1057 (Summer 2011); Ciara Torres-Spelliscy, *Hiding Behind the Tax Code, the Dark Election of 2010 and Why Tax-Exempt Entities Should Be Subject to Robust Federal Campaign Finance Disclosure Laws*, 16 NEXUS: CHAP. J. L. & POL'Y 59 (2011).

¹⁴⁶ Kate Taylor, *People are threatening to boycott Wegmans for selling Eric Trump's wine*, BUSINESS INSIDER (Feb. 15, 2017) ["Since October, the #GrabYourWallet campaign has encouraged people who disagree with Trump's actions and policies to boycott companies such as Amazon, Walmart, and Macy's that do business with the Trump family, from selling Trump Home lamps to Ivanka Trump shoes."].

¹⁴⁷ Kristen Doerer, *Upset with Trump the president, consumers boycott Trump the brand*, PBS NEWSHOUR (Feb. 11, 2017 at 3:02 PM EDT).

¹⁴⁸ James Surowiecki, *The Trump-Era Corporate Boycott*, THE NEW YORKER (Jan. 19, 2017) (emphasis added).

¹⁴⁹ Melissa Schwartz, *Putting Your Money Where Your Mouth Is*, HUFF. POST (June 27, 2014) ("It's true, most of us will never have the resources to be major financial players in political campaigns. Our advocacy lies in our voice, and in our wallets.").

¹⁵⁰ Blaine McCormick & Burton Folsom, *It's Dangerous When Corporations Give Away Your Money*, REAL CLEAR MARKETS (Feb. 14, 2014).

¹⁵¹ Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12(3) PERSPECTIVE ON POLITICS 564, 564 (2014) ("Multivariate analysis indicates that economic elites and organized groups representing business interests have substantial independent impacts on U.S. government policy, while average citizens and mass-based interest groups have little or no independent influence.").

rural American who saw their Main Street devoured by a Walmart knows this.”¹⁵² For those voters who don't like Mr. Trump's performance as president, barring an impeachment, they will have to wait four years before they can vote him out of office. But they can boycott President Trump's businesses every day. Moreover, organizing a boycott has never been easier given technological tools like social media and smart phone apps.¹⁵³

If American founding fathers and mothers understood the power of a political boycott, they were at a technological disadvantage to their current descendants.¹⁵⁴ Boycotts of old required direct knowledge on the part of the boycotter of what was objectionable about a particular product or retailer. Now American consumers have smart phones that not only organize schedules and musical catalogs; current smartphones can also organize and facilitate boycotts. A new crop of smartphone applications has been designed specifically to enable consumers to avoid buying products that conflict with their personal ideologies.¹⁵⁵ Want to boycott every product produced by a particular brand?¹⁵⁶ Well guess what? There's an App for that.¹⁵⁷ In fact, there are at least three Apps to help end-users avoid products that conflict with their core beliefs: Buycott, Buypartisan and 2nd Vote.¹⁵⁸ And there is even an App simply called “Boycott Trump” which enables consumers to avoid Trump products and retailers of Trump products.¹⁵⁹ As of February of 2017, the Boycott Trump App had

¹⁵² Erin Keane, *Ivanka goes out of style: More women are refusing to buy what she's selling, Donald Trump's daughter is learning a hard lesson in politicized American consumerism*, SALON (Feb. 11, 2017, 05:00 PM EST).

¹⁵³ Rosa Golijan, *App Makes Boycotting Companies as Easy as Scanning a Barcode*, NBC NEWS (May 16, 2013, 2:19 PM) (“Boycotting has probably never been simpler.”).

¹⁵⁴ LEORA AUSLANDER, *CULTURAL REVOLUTIONS EVERYDAY LIFE AND POLITICS IN BRITAIN, NORTH AMERICA AND FRANCE* 84 (2009) (“American colonists responded to the [Stamp] Act in 1765-1766 by boycotting the sale of these stamps. This initial consumer protest was followed by others responding to subsequent revenue acts in 1768-1770 and 1774-1776. Through these boycotts colonists were mobilized and convinced of injustice of English behavior and of the legitimacy of their protest.”).

¹⁵⁵ See Kevin D. Williamson, *Ender's Boycott*, NAT'L REV. (July 12, 2013) (“Buycott, the consumer-activism app that lets you scan products and match your purchases with your principles . . .”); Victoria Bassetti, *How to Make Campaign Finance Disclosure Work*, BRENNAN CTR BLOG (May 11, 2015) (citing BuyPartisan App).

¹⁵⁶ See Patrick Lorentz, *Seller Beware: Buycott App Reveals Ideologies Behind Brands*, GREENBIZ (July 22, 2013, 6:00 AM) (“The [Buycott] app is simple but effective.”).

¹⁵⁷ *Id.*

¹⁵⁸ In addition to the smartphone apps that are discussed in this piece, there are also Ethical Barcode, which allows users to learn more about the environmental, social and ethical ramifications of the products they are about to purchase; Good Guide, which allows customers to access information on a product's safety, health, environmental impact and social responsibility; and Shop Ethical, which provides information on environmental impacts of goods for the Australian market.

¹⁵⁹ Annalisa Merelli, *An App to Boycott Donald Trump Shows Just How Many Conflicts of Interests He Has*, QUARTZ (Dec. 1, 2016) (“Boycott Trump, an app that lists businesses linked to Trump, was released on Nov. 21 by Democratic Coalition Against Trump, ...the group now focuses on creating a broad movement to boycott the president-elect's businesses.”); Heather Dockray, *7 Extremely Useful Sites and Apps to Help You Organize in Trump's America*, MASHABLE (Nov. 29, 2016).

325,000 users.¹⁶⁰ Boycotters, naturally, have a variety of motivations, but moral revulsion is a common theme among boycotters.¹⁶¹

Some boycotts of the Trump commercial brand started during the campaign in the 2015-2016 period in reaction to statements from candidate Trump. *The New York Times* described the phenomenon: “[a]cross the country, voters alarmed by the tenor of Mr. Trump’s campaign and the emerging accounts of his personal conduct are engaging in spontaneous, unorganized and inconspicuous acts of protest that take direct aim at perhaps his most prized possession: his brand name.”¹⁶² One of the things that enable boycotts of the Trump brand, is the fact that most products and services the Trump Organization and his children have on offer are not particularly unique. There are alternative hotel rooms, golf courses, ties, clothes and wine for consumers to buy.¹⁶³ Or as Erin Keane quipped about Trump’s daughter’s products, “Ivanka’s wearables are economically vulnerable because they are needed by none, and now coveted by few.”¹⁶⁴

One locus of a boycott effort during the presidential campaign was the RNC’s convention in the summer of 2016. Corporations have long donated to the nominating conventions of both major political parties.¹⁶⁵ Indeed this is one of the great loopholes in American campaign finance law, which has barred corporations from directly giving to federal candidates since 1907’s Tillman Act. Often corporations will hedge their bets and sponsor both political conventions.¹⁶⁶ In the run up to the GOP’s presidential nominating convention in 2016, advocacy groups put pressure on corporate sponsors of the Republican National Convention (and to a lesser extent the Democratic National Convention) to drop or reduce their corporate sponsorships.¹⁶⁷ For example, “Color Of Change and a group of advocates sent letters to Coca-Cola Company, Google, Adobe Systems Inc., Xerox Corporation, AT&T Inc., and Cisco Systems Inc. calling on them to cancel their sponsorships of the Republican National Convention if current Republican front-runner Donald Trump is slated to be

¹⁶⁰ Renee Morad, *Want To Boycott Trump-Friendly Companies? These Apps Aim To Assist You*, FORBES (Feb. 14, 2017, 04:07 PM) (“To date, the Boycott Trump app has more than 325,000 users...”); Jena McGregor, *Boycotts. Backlash. Breitbart: U.S. Companies Confront a Volatile Political Climate*, WASH. POST (Dec. 2, 2016) (“An app called ‘Boycott Trump,’ created by a grass-roots anti-Trump organization, tells users whether companies are connected to the president-elect. On Thursday, the organizers behind it said the app had been downloaded nearly 90,000 times since it was released Nov. 21.”).

¹⁶¹ Carmen-Maria Albrecht, Colin Campbell & Daniel Heinrich, *Exploring why consumers engage in boycotts: toward a unified model*, J. OF PUBLIC AFFAIRS 4 (2013) (“Most respondents associated a boycott with the punishing of a company by consumers whose value system was infringed upon through expression of an aversion to objects due to inappropriate behaviors or activities.”); Jill Gabrielle Klein, N. Craig Smith & Andrew John, *Why We Boycott: Consumer Motivations For Boycott Participation And Marketer Responses*, London Business School Centre for Marketing Working Paper No. 03-702 (June 2003), <http://facultyresearch.london.edu/docs/03-702.pdf> (“boycott participation is generally prompted by the belief that a firm has carried out some egregious act.”).

¹⁶² Michael Barbaro, *The New Protesters Defying Donald Trump: His Customers*, N.Y. TIMES (Oct. 17, 2016).

¹⁶³ Kerry Close, *Is It Worth It to Boycott Donald Trump Products?*, TIME (Oct. 18, 2016) (“Consumers outraged by the Republican nominee’s behavior are aided by the fact that there are readily available, and likely cheaper, alternatives to using Trump products. ‘It’s more likely to work against someone like Trump because it’s easy to book another hotel or move from one golf course to another,’ Schweitzer said.”).

¹⁶⁴ Keane, *supra* note 152.

¹⁶⁵ *Party Conventions Are Free for All for Influence Peddling*, PUBLIC CITIZEN (July 2012).

¹⁶⁶ Lindsay Renick Mayer, *Corporate Sponsors Get the Party Started*, CTR. FOR RESPONSIVE POLITICS (May 15, 2008) (showing 56 companies that gave to both Republicans and Democrats in 2008); Liz Olson, *Why 2016 Political Conventions Can’t Attract Corporate Sponsors*, FORTUNE (Apr. 25, 2016).

¹⁶⁷ Raul A. Reyes, *For corporations, GOP Convention is bad business*, CNN (Updated Apr. 25, 2016).

the nominee.”¹⁶⁸ For some advocates, the role of any corporate support for any candidate is objectionable. But here, the focus was primarily an objection to Mr. Trump and his unvarnished racism and sexism.¹⁶⁹ In one attempt to get Google’s attention, “[a]ctivists ... delivered more than 500,000 petition signatures to Google headquarters in Mountain View, California.... As part of their action, a plane holding a banner with the message, ‘Google: Don’t be evil. #DumpTrump,’ flew over Google headquarters and the San Francisco Bay.”¹⁷⁰

Candidate Trump predicted that there would be riots if the convention ended up nominating anyone but him.¹⁷¹ The question these advocates have asked was “are you willing to attach your branding to someone so belligerent that they have threatened riots at the convention?”¹⁷² As quoted in *The New York Times*, the question was put even more starkly: “[d]o they want riots brought to us by Coca-Cola?”¹⁷³ And some companies scaled back their support for the RNC convention in 2016.¹⁷⁴ Several firms bowed out entirely, including Wells Fargo, United Parcel Service, JPMorgan Chase, Ford and Walgreens.¹⁷⁵

The boycotts are not limited to brands associated with Donald Trump, instead boycotts have metastasized to all the brands associated with his three adult children: Ivanka, Eric and Don Jr. who were key figures in the Trump campaign.¹⁷⁶ Since Trump’s presidency started, within three months, his daughter joined the Trump administration and his two elder sons are in charge of running the Trump Organization from which the President refused to divest.

And these three Trump children seem as eager to monetize the presidency as their father does. During the campaign and transition period, Ivanka Trump has tried to sell her branded items by using the press that followed her father. Ivanka Trump wore an Ivanka Trump™ dress when she introduced her father at Republican National Convention in Ohio, and she turned around and sold it

¹⁶⁸ Press Release, Color of Change, Coca-Cola Responds to Pressure From Advocates to Cease Support of the Republican National Convention (Mar. 30, 2016).

¹⁶⁹ Dawn Chmielewski, *The activist group UltraViolet calls on Amazon to dump Trump’s clothing line*, RECODE (May 9, 2016, 1:17PM) (“Progressive and civil rights groups including Color of Change and CREDO Action petitioned Google to withhold sponsorship of a Trump-led Republican National Convention — to no effect.”).

¹⁷⁰ Daniel Marans, *Progressive Groups Ratchet Up Pressure On Google To Dump The GOP Convention*, HUFF. POST (May 5, 2016, 4:26 PM).

¹⁷¹ J. Freedom du Lac, *Trump: ‘I think you’d have riots’ if contested convention results in a different nominee*, WASH. POST (Mar. 16, 2016).

¹⁷² Press Release, Color of Change, *supra* note 168.

¹⁷³ Jonathan Martin & Maggie Haberman, *Corporations Grow Nervous About Participating in Republican Convention*, N.Y. TIMES (Mar. 30, 2016).

¹⁷⁴ Tim Mak, *Major Corporate Sponsors Are Scaling Back Support for GOP Convention From Coca-Cola to Microsoft, companies that gave big bucks to the 2012 convention that nominated Mitt Romney are slashing this year’s budgets for the July coronation of Donald Trump.*, DAILY BEAST (May 6, 2016 1:00 AM ET).

¹⁷⁵ *More Companies Opt to Sit Out Trump’s Coronation in Cleveland*, BLOOMBERG (June 16, 2016); Amy Goodman, *Part 2: Color of Change’s Rashad Robinson Confronts Fraternal Order of Police over Racial Profiling*, DEMOCRACY NOW (July 18, 2016) (“The corporations that we know that pulled out entirely are HP, Apple, Ford, Wells Fargo, are companies that we know have pulled out completely.”).

¹⁷⁶ Suzanne Monyak, *Shoppers Boycott Ivanka Trump’s Clothing Line to Protest Donald’s Misogyny*, SLATE (Oct. 24, 2016, 6:05 PM) (“Throughout a presidential campaign defined by misogyny and prejudice, Donald Trump’s oldest daughter, Ivanka Trump, has remained steadfastly by his side.”).

online for \$138. When she appeared with the rest of the Trump family in a *60 Minutes* interview in November 2016, the next day fashion reporters received a picture noting that Ivanka Trump had been wearing “her favorite bangle from the *Metropolis Collection*,” at the hefty price tag of \$10,800.

Eric and Donald Jr. have been fundraising for the Republican Party since their father became President.¹⁷⁷ And while most of the press reports have focused on Ivanka Trump’s boycotts, there have also been boycotts focused on the Trump hotels, which are run by the sons. Additionally, the grocery chain Wegmans is being asked to stop selling Eric Trump’s wines.¹⁷⁸ This effort is being spearheaded by a Virginia Chapter of the National Organization for Women.¹⁷⁹ But the boycott is not limited to women. *The New York Times* related the story of one boycotter and why he turned against Eric Trump’s wines: “Gary Berry, a military veteran and Gold Star father whose son died while serving in the Army, used to love Mr. Trump’s sparkling wines. He bought the ornate bottles, stamped with the candidate’s heavily serified surname, near his hometown, Charlottesville, Va., for special occasions like the birth of a grandchild and wedding anniversaries. That stopped the moment Mr. Trump mocked the parents of Humayun Khan, an Army captain who was killed in Iraq.

...¹⁸⁰

Before the 2016 general election, some consumers had already turned against all Trump brands, including Ivanka’s brand. Women seemed particularly likely to boycott her wares. As *Fortune* found, “less than a quarter of women said they would be willing to buy clothes under a brand cultivated by Trump’s daughter Ivanka. Almost six in ten women said they would not.”¹⁸¹

Hostility from women consumers picked up considerably after an old videotape from *Access Hollywood* aired on October 7, 2016, showing Donald Trump saying lewd comments about sexual assault.¹⁸² In response to the *Access Hollywood* tape, two women, Shannon Coulter and Sue Atencio, reacted by creating the #grabyourwallet boycott effort.¹⁸³ This boycott targets Trump branded products as well as retailers that sell such products. The group has a spreadsheet online of retailers that lists which one is selling any Trump branded products, including products from the adult

¹⁷⁷ Vaughn Hillyard, *Donald Trump Jr: At Fundraiser, President’s Son Says ‘Zero Contact’ With Dad*, NBC NEWS (Mar. 12, 2017 8:21 am ET); Gromer Jeffers Jr., *Donald Trump Jr., Ted Cruz headline local GOP Reagan Day Dinner*, DALLAS MORNING NEWS (Feb. 9, 2017).

¹⁷⁸ Kate Taylor, *People are threatening to boycott Wegmans for selling Eric Trump’s wine*, BUSINESS INSIDER (Feb. 15, 2017) (“Customers are threatening to boycott the iconic grocery chain Wegmans for selling Trump Winery products. The regional chain, which has notoriously loyal customers, is under fire for selling wine from the vineyard — owned by President Trump’s son Eric — at Virginia locations.”).

¹⁷⁹ *Id.* (“A local chapter of the National Organization for Women is backing the effort to pressure Wegmans to ditch products from Trump Winery, *The Washington Post* reported. More than 300 members of the group met over the weekend to make plans as to how to convince the grocery chain to ditch the brand.”).

¹⁸⁰ Barbaro, *supra* note 162.

¹⁸¹ Kell, *supra* note 85.

¹⁸² *Access Hollywood Archival Footage Reveals Vulgar Trump Comments From 2005*, ACCESS HOLLYWOOD (Oct. 7, 2016 4:55 PM PDT).

¹⁸³ Christine Rushton, *Shoppers boycott Ivanka Trump’s clothes with #GrabYourWallets*, L.A. TIMES (Oct. 25, 2016, 5:59 AM) (“San Francisco marketing specialist Shannon Coulter launched the #GrabYourWallets campaign after a video surfaced on Oct. 7 of Trump talking about groping women. Coulter told the Guardian she has experienced sexual harassment at work before and felt she needed to act.”).

Trump children.¹⁸⁴ As leaders of boycotts going back to founding fathers knew, if you want consumers to boycott, giving them an alternative to buy is often key. The #grabyourwallet webpage also includes stores that consumers can “boycott” to support alternatives.

As *The New York Times* reported about the #grabyourwallet protest, “[a]t first, it was just a tweet — a list she had compiled of companies that sold Trump products — but the ember quickly turned into a coast-to-coast blaze. Thousands of people have contacted the stores Ms. Coulter has on her boycott list, including Macy’s and Amazon.” Even the name “#grabyourwallet” was a bit of branding genius. The original hashtag was #fashionnotfacism. But Shannon Coulter who is a professional marketer found that too strident and changed it. Ms. Coulter told CBS’s *Moneywatch*, “[c]ollege-educated women in particular are well aware of the epic consumer power they wield, and they’re flexing that power[.]”¹⁸⁵ Ms. Coulter also explained, “[t]he goal came originally from a place of really wanting to shop the stores we loved again with a clear conscience.”¹⁸⁶ As *The Washington Post* noted, “[Ms.] Coulter exemplifies the new and potent possibilities that social media presents for ordinary consumers and voters to catapult an idea for activism from their living rooms to like-minded people across the country — and to the center of the news cycle.”¹⁸⁷

While there is no way to test the counterfactual of what would have happened to the anti-Trump boycotts if Mr. Trump had lost, following the election, boycotts like #grabyourwallet expanded.¹⁸⁸ As *The New York Times* noted, the movement has the support of celebrities.¹⁸⁹ But for the most part, the #grabyourwallet movement simply went viral on its own and interest spikes in the boycott effort with the news cycle about the President.¹⁹⁰ And more generally, online activism has become a way to change corporate behavior. As Farhad Manjoo in *The New York Times* put it, “the effects of

¹⁸⁴ Jamie Feldman, *This Shopping Spreadsheet Is A One-Stop Way To Boycott The Trumps*, HUFF. POST (Nov. 16, 2016) (“Now the hashtag [#GrabYourWallet] has its own handy spreadsheet that shoppers can use to avoid such businesses as the retail holiday season heats up.”).

¹⁸⁵ Kerry Close, *The Grab Your Wallet Movement Wants People to Boycott Donald Trump-Affiliated Retailers*, TIME (Nov. 17, 2016).

¹⁸⁶ Rachel Abrams, *The Anti-Trump Activist Taking On Retailers*, N.Y. TIMES (Feb. 25, 2017).

¹⁸⁷ Sarah Halzack, *The woman behind the boycott that is pressuring retailers to dump the Trumps*, WASH. POST (Feb. 13, 2017).

¹⁸⁸ Aimee Picchi, *Anti-Trump GrabYourWallet boycott is gaining steam*, CBS (Nov. 17, 2016); Jamie Feldman, *This Shopping Spreadsheet Is A One-Stop Way To Boycott The Trumps*, HUFF. POST (Nov. 16, 2016) (“Coulter told *The Huffington Post* the #GrabYourWallet movement has seen increased interest since the election. ‘Particularly in the wake of Trump’s selection of Steve Bannon as chief strategist, more and more people are committing to not doing business with companies that do business with the Trump family,’ she said.”).

¹⁸⁹ Abrams, *supra* note 186; Brayden G King, *The Tactical Disruptiveness of Social Movements Sources of Market and Mediated Disruption in Corporate Boycotts*, 58(4) SOCIAL PROBLEMS 491, 508 (Nov. 2011) (“celebrity endorsements [of boycotts] are more able to sustain media coverage, which in turn leads to further market disruption as investors react negatively to ongoing media coverage of the boycott.”).

¹⁹⁰ Abrams, *supra* note 186 (“As many as 32,000 people visit her site in an hour, Ms. Coulter said. When the women’s marches took place across the country in January, 350,000 people arrived during a 24-hour period.”); Halzack, *supra* note 187 (“While Coulter started the campaign as an outcry against Donald Trump’s treatment of women, it has mushroomed into a more sprawling expression of anti-Trump sentiment. Some are worried about the conflict-of-interest issues associated with having president with such a tangled web of business ties in the White House. Others came into the fold after President Trump issued an executive order that barred refugees and people from seven majority-Muslim nations from entering the United States.”).

these campaigns go beyond business. In a nation where politics have grown pitched and sclerotic, fighting brands online suddenly feels like the most effective political action many of us can take. Posting a hashtag — #deleteUber, for instance, or #grabyourwallet — and threatening to back it up by withholding dollars can bring about a much quicker, more visible change in the world than, say, calling your representative.”¹⁹¹

How a particular company gets in the cross hairs for a political action when others don't can be a matter of happenstance like a reporter deciding to focus on this firm and not that one. But sometimes companies get attention because of alleged violations of laws, including campaign finance laws. This is how L.L.Bean became a target of an anti-Trump boycott. Linda Bean gave more money than is allowed under federal law to a pro-Trump PAC. This led to press reports about Linda Bean and her company L.L.Bean. As a result, #grabyourwallet included L.L.Bean on its list of companies that are worthy of boycotting as being pro-Trump. Linda Bean defended herself in the press.¹⁹² And then the President elect tweeted about it encouraging his followers to buy from the company.¹⁹³ As *The Washington Post* put it, “Duck boots and politics don't mix. ...[L.L.Bean is] the latest brand to drift into a blizzard of political vitriol over a perceived stance on the Republican president-elect's politics.”¹⁹⁴

Measuring the impact of any boycott movement is fraught. But many of the stores that #grabyourwallet targeted have in fact stopped selling Trump branded products months later. Shoes.com was the first to cease selling Trump brands after #grabyourwallet targeted them.¹⁹⁵ Sears followed and stopped selling Trump brands.¹⁹⁶ Both high-end and low-end retailers have dropped Trump lines. At the top of the market, Nordstrom, Neiman Marcus and Gilt let go of Ivanka Trump's lines.¹⁹⁷ And at the bargain bin, T.J. Maxx, Kmart, Belk and Burlington all backed away from selling Trump.¹⁹⁸ While none of the stores that dropped the Trump brands would admit that

¹⁹¹ Farhad Manjoo, *How Battling Brands Online Has Gained Urgency, and Impact*, N.Y. TIMES (June 21, 2017), <https://www.nytimes.com/2017/06/21/technology/how-battling-brands-online-has-gained-urgency-and-impact.html>.

¹⁹² Joyce Chen, *Donald Trump Encourages Followers to Buy L.L. Bean in Controversial Tweet Amid Boycott*, US WEEKLY (2017) (“[Linda] Bean herself appeared on *Fox & Friends* on Thursday, January 12, calling the boycott a form of ‘bullying’ and insisting that she did nothing wrong. ...she said. ‘I never back down if I feel I’m right.’”).

¹⁹³ WBUR, *‘Grab Your Wallet’ Movement’s L.L. Bean Boycott One of Many Focused On Trump-Supporting Companies*, WBUR.ORG (Jan. 16, 2017) (“The U.S. Office of Government Ethics prohibits the president from endorsing organizations, businesses or people. So a recent tweet by President-elect Donald Trump raised a few eyebrows when it ended with the words ‘Buy L.L.Bean.’”).

¹⁹⁴ Kim Bhasin, *L.L. Bean faces boycott for family member donation to Trump PAC*, WASH. POST (Jan. 10, 2017).

¹⁹⁵ Kate Taylor, *An Anti-Trump Movement Is Calling for the Boycott of These 32 Retailers*, BUSINESS INSIDER (Nov. 15, 2016, 12:15 PM) (“Shoes.com announced on Twitter that it was removing Ivanka Trump shoes from its inventory. ...this was the first time a retailer responded to the Grab Your Wallet movement by actually dropping Trump products.”).

¹⁹⁶ Jeremy Quittner, *Ivanka Trump’s Neiman Marcus Products Are No Longer Online*, FORTUNE (Feb. 3, 2017) (“Shoppers on Neiman Marcus’ website will no longer be able to purchase a \$12,000 diamond bracelet designed by Ivanka Trump. The bracelet was reportedly one of more than a dozen jewelry and accessory items designed by the First Daughter that have vanished from the tony retailer’s site with no explanation.”).

¹⁹⁷ Abrams, *supra* note 188 (“Retailers including Nordstrom, Neiman Marcus and T.J. Maxx have backed away from products connected to Ms. Trump...”).

¹⁹⁸ Chavie Lieber, *Burlington Removes Ivanka Trumps Collection From Its Site*, RACKED (Feb. 12, 2017) (“Ivanka Trump’s online presence continues to dwindle; Burlington is the latest company to remove her collection from its website. ... and

#grabyourwallet or other boycotts were the proximate cause, several stores did point to slumping sales which could be caused by the boycotts.¹⁹⁹ According to the *Wall Street Journal*, Ivanka Trump's sales fell 32% in the last fiscal year at Nordstrom.²⁰⁰ When Nordstrom announced that it was ending its relationship with Trump's daughter, the President took to Twitter to complain: "My daughter Ivanka has been treated so unfairly by Nordstrom... Terrible!"²⁰¹

One reaction to the boycotts could have been a stronger attempt by Ivanka to separate her business role from her political role. But much like her father, she doubled down on her political entanglements. She placed her fashion brand into the "Ivanka M. Trump Business Trust, which is overseen by her brother-in-law, Josh Kushner, and sister-in-law, Nicole Meyer."²⁰² Roughly two months after the Nordstrom dust up, Ivanka Trump announced that she would join the White House staff.²⁰³ In July of 2017 negative reactions were still running high against Ivanka Trump, especially among millennial women.²⁰⁴ As Trump brand watcher BrandKeys found, "[i]n the initial 2016 wave, it was hypothesized that consumers could separate Brand Ivanka from Political Advisor Ivanka. Nine months later that does not seem to be the case."²⁰⁵

Six months after it was created #grabyourwallet's "website is averaging 2 million visitors a month and the hashtag has been shared 950 million times on social media."²⁰⁶ While the #grabyourwallet boycott has gained the most press attention, there have been other simultaneous boycotts including those from Color of Change, CREDO Action, and The Donald J. Trump Resistance (DJTR) led by Shaun King.²⁰⁷ The women's group Ultraviolet has also been forceful in calling for boycotts. As

like Nordstrom, Neiman Marcus, Sears, and Belk, which have also dropped the line, if you search for Ivanka Trump on the site, no results turn up. . . . Burlington's move comes after employees at off-price retailers T.J. Maxx and Marshall's have been told to mix the Ivanka Trump label into the racks and toss the brand's signage into the trash.").

¹⁹⁹ Halzack, *supra* note 189 ("The campaign has been chugging along for months, but it has come into a particularly bright spotlight in recent weeks, when big-name chains started to back away from Trump goods, including Neiman Marcus, Belk and, most prominently, Nordstrom None of the companies cited the boycott specifically as the reason for dropping the merchandise. Nordstrom said it did so because of falling sales, not politics.").

²⁰⁰ Miriam Gottfried & Suzanne Kapner, *Internal Nordstrom Data Show Sales Decline for Ivanka Trump Brand's 32% tumble occurred even as the chain's overall sales rose*, WALL ST. J. (Feb. 11, 2017 7:03 a.m. ET).

²⁰¹ David A. Fahrenthold & Sarah Halzack, *Nordstrom drops Ivanka Trump-branded clothing and shoes*, WASH. POST (Feb. 2, 2017).

²⁰² Eric Lipton & Jesse Drucker, *Trump Couple, Now White House Employees, Can't Escape Conflict Laws*, N.Y. TIMES (Apr. 1, 2017).

²⁰³ Dan Merica, Gloria Borger, Jim Acosta & Betsy Klein, *Ivanka Trump is making her White House job official*, CNN (Mar. 30, 2017).

²⁰⁴ Robert Passikoff, *Ivanka Trump Brand Update July 2017*, BRAND KEYS (July 18, 2017) ("In a national survey conducted among Millennial female shoppers July 10th through 15th, Brand Keys, the New York-based brand engagement and customer loyalty research consultancy (brandkeys.com), found that 38% were negatively disposed to considering purchasing Ivanka Trump's line of clothing or shoes.").

²⁰⁵ *Id.*

²⁰⁶ Pat Wechsler, *The Boycott*, SAGE BUSINESS RESEARCHER (May 1, 2017).

²⁰⁷ Garfield, *supra* note 24 ("A number of boycott campaigns, most notably #GrabYourWallet and The Donald J. Trump Resistance (DJTR), have popped up in the last month. As of Trump's inaugural weekend, the #GrabYourWallet campaign has 3.5 million impressions on Twitter (including retweets and likes) and The DJTR has over 44,000 likes on Facebook."); Daniel Marans, *Progressive Groups Ratchet Up Pressure On Google To Dump The GOP Convention*, HUFF. POST (May 5, 2016, 4:26 PM) ("The progressive groups' new initiatives follow a petition campaign started by Color of Change and joined by CREDO Action, UltraViolet Action and other groups demanding that Google, Coca-Cola, Xerox, AT&T, Adobe Systems, Cisco

Recode reports, “UltraViolet Action, a group devoted to fighting sexism, called on Amazon Chief Executive Jeff Bezos to stop selling the Donald J. Trump Collection of menswear and take a stand against the Republican presidential nominee’s ‘bigoted bullying.’”²⁰⁸ Finally, there have been more singular efforts on the part of individuals apart from organized boycotts reacting to Mr. Trump. For instance, “Morrie Gold is not a placard-waving political protester. He is a 69-year-old retired doctor in Pennsylvania. But he recently participated in a quiet act of rebellion: He and 11 golfing buddies canceled their annual trip to a Florida resort owned by Donald J. Trump to express their disgust with his remarks about women, immigrants and minorities.”²⁰⁹

C. Conflicts of Interest

It has been difficult for the Trump administration to resist the temptation to advertise Trump goods and services using his new position in the federal government. For example, the original White House biography for the First Lady Melania Trump included a reference to her selling products on QVC.²¹⁰ This reference to QVC was later removed.²¹¹ The State Department had a webpage about Mar-a-Lago.²¹² After the press caught this, the State Department deleted this reference.²¹³ When Nordstrom made the announcement public that they were dropping Ivanka Trump’s line, the President himself took to Twitter to denounce the store. And in an incident on February 9, 2017, White House aide Kellyanne Conway speaking from the White House on the *Fox & Friends* morning show, urged viewers to buy Ivanka Trump’s products.²¹⁴ “Go buy Ivanka’s stuff is what I would say,” Conway stated. Later, she added, “I’m going to give a free commercial here: Go buy it today, everybody; you can find it online.” This generated an ethics complaint from Congress through Rep. Jason Chaffetz, the then GOP chairman of the House Oversight Committee and ranking member Elijah Cummings to the Office of Governmental Ethics (OGE).²¹⁵ Federal law prevents a federal employee from endorsing private products.²¹⁶ Rep. Jason Chaffetz said Ms. Conway’s endorsement of Ivanka Trump’s products from the White House were “wrong, wrong, wrong, and there’s no

and other companies cancel their plans to sponsor a ‘Donald Trump-led’ Republican national convention in Cleveland this July.”).

²⁰⁸ Dawn Chmielewski, *The activist group UltraViolet calls on Amazon to dump Trump’s clothing line*, RECODE (May 9, 2016, 1:17PM).

²⁰⁹ Barbaro, *supra* note 164.

²¹⁰ Douglas Quenqua, *Another Trump Hopes What Glitters Will Be Gold*, N.Y. TIMES (Apr. 15, 2010) (“Mrs. Trump will unveil a line of jewelry and watches bearing her name and available exclusively through QVC, the home shopping network, and its Web site. ... Among the items in the Melania Timepieces and Jewelry collection are a braided chain necklace, available in silver and gold, for \$40; [and] a cocktail ring featuring a faux ruby surrounded by faux diamonds, for \$35...”).

²¹¹ Kelsey Snell, *White House website touts Melania Trump’s modeling and jewelry line*, WASH. POST (Jan. 20, 2017) (“Early on Friday, the website listed the brand names of Trump’s jewelry lines sold on QVC. But the website was updated after the publication of this story to remove any mention of QVC.”); Betsy Klein, *White House site updated to remove Melania Trump QVC reference*, CNN (Jan. 20, 2017) (“The White House edited First Lady Melania Trump’s biography on WhiteHouse.gov Friday ‘out of an abundance of caution’ that a reference to her clothing line on QVC could be seen as an endorsement, a spokesperson for Trump told CNN.”).

²¹² Jeremy Venook, *Why Was the State Department Promoting Mar-a-Lago?*, THE ATLANTIC (Apr. 26, 2017) (“Multiple government websites have retracted posts that were effectively advertising the president’s property in Palm Beach.”).

²¹³ Dan Merica, *State Department removes Mar-a-Lago blog post*, CNN (Apr. 25, 2017).

²¹⁴ David Sherfinski, *Kellyanne Conway: ‘Go buy Ivanka’s stuff’; I’m giving a ‘free commercial’*, WASH. TIMES (Feb. 9, 2017).

²¹⁵ Max Greenwood, *Top oversight lawmakers ask ethics office to recommend discipline for Conway*, THE HILL (Feb. 9, 2017 5:46 PM EST).

²¹⁶ 5 C.F.R. § 2635.702 (Use of public office for private gain).

excuse for it.”²¹⁷ Mere hours after the *Fox* interview, Sean Spicer, Trump’s then press secretary, announced that Conway had been “counseled.”²¹⁸ The Office of Government Ethics in a letter to the deputy counsel at the White House from Walter Shaub Jr., the then director of the OGE, wrote that “[t]here is strong reason to believe Ms. Conway has violated the standards of conduct and that disciplinary action is warranted.”²¹⁹

D. The End of President Trump’s Business Councils

As noted above, one key vulnerability of the Trump commercial brand is being associated with Mr. Trump’s racially charged views. Late in the Summer of 2017, there were violent clashes among neo-Nazis, members of the KKK, white supremacists and those opposing them in Charlottesville, Virginia.²²⁰ One white supremacist drove his car into a group of peaceful protestors killing a woman named Heather Heyer and injuring 19 others.²²¹ President Trump was at first reluctant to respond. Then he gave an equivocating response that blamed violence on “both sides.”²²² Then he gave a more ringing condemnation of the racist gathering.²²³ But then he undercut his own statement a day later in a 23 minute press conference where he defended some of those on the white supremacist side as being “fine” people.²²⁴ A few days later on August 17, 2017, President Trump lamented that monuments to confederate soldiers were being removed across America.²²⁵

As these events surrounding Charlottesville and President Trump’s reaction to it unfolded, CEOs who sat on two business councils, the Manufacturing Jobs Initiative and the Strategic and Policy Forum, came under increasing public pressure to resign from the councils. The President’s refusal to roundly and forcefully condemn the racist violence in Charlottesville put CEOs on Trump’s business councils to a hard test: did they want their brands to be tainted with Trump’s brand which was getting mired in racist mud.²²⁶ The question in August 2017 was whether other CEO’s would follow the lead of Elon Musk of Tesla and Disney’s CEO Bob Iger who made early exits from

²¹⁷ Richard Pérez-Peña & Rachel Abrams, *Kellyanne Conway Promotes Ivanka Trump Brand, Raising Ethics Concerns*, N.Y. TIMES (Feb. 9, 2017).

²¹⁸ *Id.*

²¹⁹ Letter from Office of Governmental Ethics to Stefan Passantino Deputy Counsel to the President (Feb. 13, 2017), <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Office%20of%20Government%20Ethics%20to%20White%20House%20Feb%2013%202017.pdf>.

²²⁰ Sarah Rankin, *3 dead, dozens injured, amid violent white nationalist rally in Virginia*, AP (Aug. 13, 2017).

²²¹ Steve Almasy & Chandrika Narayan, *Heather Heyer died ‘fighting for what she believed in’*, CNN (Updated Aug. 15, 2017 10:39 PM ET).

²²² Glenn Thrush & Maggie Haberman, *Trump Is Criticized for Not Calling Out White Supremacists*, N.Y. TIMES (Aug. 12, 2017).

²²³ David Nakamura, *Trump denounces KKK, neo-Nazis as ‘repugnant’ as he seeks to quell criticism of his response to Charlottesville*, WASH. POST (Aug. 14, 2017).

²²⁴ David Jackson, *Trump’s assertion left wing protesters just as violent as white supremacists in Charlottesville sets off firestorm*, USA TODAY (Updated Aug. 15, 2017 10:58 p.m. ET); *The fallout from Trump backtracking on his condemnation of neo-Nazis*, POLITICO (Aug. 16, 2017 6:25 AM EDT).

²²⁵ David Nakamura, *Trump mourns loss of ‘beautiful statues and monuments’ in wake of Charlottesville rally over Robert E. Lee statue*, WASH. POST (Aug. 17, 2017 9:44 AM).

²²⁶ Rob Torno, *As 4th CEO quits Trump council, pressure heats up for Campbell Soup executive*, PHILLY.COM (Updated: Aug. 15, 2017, 1:03 PM EDT).

President Trump's Manufacturing Jobs Initiative as a protest of President Trump's pulling the U.S. out of the Paris Climate Accord.²²⁷

After the events in Charlottesville and President Trump's muffled and muted response to the racial violence, Merck CEO Kenneth Fraizer, an African American man, announced that he was leaving the president's manufacturing council.²²⁸ Mr. Fraizer said in a statement, "[a]s CEO of Merck, and as a matter of personal conscience, I feel a responsibility to take a stand against intolerance and extremism."²²⁹ Advocates upset with President Trump's seeming inability to condemn violence from white supremacists, encouraged other CEOs on the business councils to follow Mr. Fraizer's lead and to leave as well. Over the next two days, several business leaders including the CEOs of Intel, Merck, Campbell's Soup, 3M, Under Armour, Ford Motor Company, and the president of the AFL-CIO left. Many put out damning press statements as they exited condemning racism like CEO of Campbell's Soup Denise Morrison who said, "[r]acism and murder are unequivocally reprehensible and are not morally equivalent to anything else that happened in Charlottesville. I believe the President should have been – and still needs to be – unambiguous on that point[.]"²³⁰ On Twitter, the hashtag #quitthecouncil was trending.²³¹ As the resignations cascaded, the members of the Manufacturing Jobs Initiative decided to disband the group.²³² President Trump put out a tweet claiming that he had disbanded both business councils.²³³ Simultaneously, half of his Digital Economy Board of Advisors also left,²³⁴ as did the entire President's Committee on the Arts & the Humanities.²³⁵ Carlos Gutierrez, who served as Commerce Secretary under President George W. Bush, summed up the Charlottesville exodus in this way: "There's always the risk that CEOs will not have their brand associated with administration initiatives, which is extremely dangerous for the president's agenda..."²³⁶ Other assessments of the CEOs walking away from President Trump were even more stark like: "[a]s former Medtronic chief Bill George later told *The New York Times*: 'These executives cannot live with customers thinking they are in cahoots with someone who supports white supremacists or neo-Nazis.'"²³⁷

²²⁷ Dominic Rushe, *Elon Musk and Disney boss quit Trump's business panel over Paris pullout*, THE GUARDIAN (June 2, 2017).

²²⁸ Rebecca Savransky, *Merck CEO resigns from presidential council over Trump remarks*, THE HILL (Aug. 14, 2017).

²²⁹ *Id.*

²³⁰ Lydia Ramsey, *'Racism and murder are unequivocally reprehensible': Campbell Soup CEO quits Trump council moments before he disbands it*, BUSINESS INSIDER (Aug. 16, 2017, 1:16 PM).

²³¹ Roger Yu, *Trump disbands economic councils as Charlottesville fallout continues*, USA TODAY (Aug. 16, 2017).

²³² David Gelles, Landon Thomas Jr., Andrew Ross Sorkin & Kate Kelly, *Inside the C.E.O. Rebellion Against Trump's Advisory Councils*, N.Y. TIMES (Aug. 16, 2017).

²³³ Bryan Menegus & Dell Cameron, *Winning: Trump Dissolves Two Advisory Councils After Advisors Flee in Protest*, GIZMODO (Updated Aug 16, 2017 1:59pm).

²³⁴ Jessica Guynn & Rachel Sandler, *Trump tech advisory board hit by defections after Charlottesville*, USA TODAY (Updated Aug. 18, 2017 7:31 p.m. ET) ("A new wave of resignations has hit the Commerce Department's 'digital economy' board as private sector advisers quit in protest of statements President Trump made about the violence in Charlottesville. More than half of the members of the 15-person Digital Economy Board of Advisors have quit, according to *Politico*.").

²³⁵ Sameea Kamal & Noah Bierman, *All 17 members of White House arts panel resign to protest Trump's response to Charlottesville*, L.A. TIMES (Aug. 18, 2017, 7:39 A.M.).

²³⁶ Toluse Olorunnipa, John McCormick & Mark Niquette, *Trump's Pro-Business Image Tarnished as CEOs Abandon Him*, BLOOMBERG (Aug. 17, 2017, 4:00 AM EDT Updated on August 17, 2017, 1:37 PM EDT).

²³⁷ Robert Klara, *Why Brands Lost Their Fear of Controversy and Got Political in 2017*, AD WEEK (Dec. 15, 2017).

Also in reaction to the Charlottesville white supremacist debacle, several charities cancelled future events at Mar-a-Lago.²³⁸ Indeed, *The Washington Post* reported that galas at Mar-a-Lago dropped from a high of 52 in 2014-2015 season to a low of six galas in 2017-2018 season.²³⁹ The whole Charlottesville episode showed that CEOs, artists, charities and others were sensitive to pressure from the public on the issue of racism. And for many of the businessmen and businesswomen involved, associating their brands with the Trump brand was no longer worth the downside.

E. Rebranding Trump

A poll in April 2017 showed the weakness of President Trump's endorsement power. This poll indicated, "only 18 percent of people surveyed said they would be 'more likely to use' a product endorsed by the president, while 49 percent were 'less likely to use' such a product and 29 percent would 'actively boycott.'"²⁴⁰ The ultimate sign that the Trump brand is weakening is the move by the Trump Organization and other business partners to rebrand to another name.

In building a brand, typically a business wants to foster positive connotations about the goods and services it has to offer. A related corollary is most businesses will go out of their way to avoid anything that could tarnish the brand in the minds of the public. Some companies will rebrand if the old brand has picked up too many negative connotations. An example of this phenomenon is when a mobile payment system called "Isis," decided to rebrand itself as "Softcard" in 2014 because of the possible negative connotation with the terrorist group ISIS.²⁴¹ The companies involved in the Isis mobile payment project included AT&T, Verizon, and T-Mobile, which decided that the price of rebranding would be less costly than keeping a tainted brand.²⁴² Likewise, the private contractor Blackwater has rebranded itself twice after its employees were accused of killing 17 civilians in Iraq in 2007.²⁴³ First Blackwater changed its name to Xe and then it changed its name to Academi.²⁴⁴

Some of the rebranding of Trump has been done by Trump's business partners who had licensed the use of his name. A golf course in Dubai dropped the Trump name in response to his anti-Muslim rhetoric during the 2016 presidential campaign.²⁴⁵ After the election, buildings in New York and Toronto have removed Trump's name from their façades.²⁴⁶ After Major League sports teams that had previously booked the Trump Soho Hotel began shunning the property,²⁴⁷ in November 2017,

²³⁸ Drew Harwell & David A. Fahrenthold, *Trump's Mar-a-Lago Club loses its ninth big charity event this week*, WASH. POST (Aug. 19 at 3:41 PM).

²³⁹ David A. Fahrenthold, Amy Brittain & Matea Gold, *Trump's divisive presidency reshapes a key part of his private business*, WASH. POST (Sept. 17, 2017).

²⁴⁰ Jeremy Fuster, *Trump's presidency damages his endorsement power, NBC poll shows*, THE WRAP (Apr. 9, 2017, 8:33PM).

²⁴¹ See Press Release, Michael Abbot, CEO, *ISIS Plans to Rebrand According to CEO*, GREEN SHEET (July 7, 2014, 3:00 PM).

²⁴² Stephen T. Watson, *Isis? ISIS? Similarity Causes Change in Branding*, BUFFALO NEWS (Oct. 6, 2014, 6:26 PM).

²⁴³ Nathan Hodge, *Accused Blackwater Shooters Turning Themselves In*, WIRED (Dec. 8, 2008).

²⁴⁴ Nathan Hodge, *Company Once Known as Blackwater Ditches Xe for Yet Another New Name*, WALL ST. J. (Dec. 12, 2011).

²⁴⁵ Kyle Porter, *Dubai real estate firm removes Donald Trump's name from project Donald Trump doesn't want Muslims to enter the United States. That's not going over too well in Dubai*, CBS SPORTS (Dec. 10, 2015).

²⁴⁶ Derek Hawkins, *Trump's name to be removed from three NYC high-rises following petition by 'embarrassed' residents*, WASH. POST (Nov. 16, 2016); Ian Austen, *Toronto Hotel Is Scrapping the Trump Name*, N.Y. TIMES (June 27, 2017).

²⁴⁷ Tim Bontemps & David A. Fahrenthold, *Pro sports teams were once reliable patrons of Trump's hotels. Not anymore.*, WASH. POST (Oct. 12, 2017).

the Trump Soho Hotel decided to change its name.²⁴⁸ There is an on-going effort to remove Trump's name from a building called Trump Palace in New York.²⁴⁹ There is also an effort to remove the Trump name from a hotel in Panama as well.²⁵⁰ And the Mayor of Vancouver wants the Trump International Hotel & Tower Vancouver to change its name to lose the "Trump."²⁵¹

Because the Trump Organization is opaque, figuring out its motivations is a difficult task. Perhaps it was always going to start rebranding certain lines. Or perhaps the move which was reported in the midst of the 2016 election was linked to then candidate Trump's slipping poll numbers.²⁵² But whatever the cause, the Trump Organization announced in March 2016 that it would start a new line of hotels under the "Scion" brand.²⁵³ This is notable for a number of reasons. First, there already is a Scion brand of cars owned by Toyota. And so the name itself could invite intellectual property suits right off the bat. The other reason the Scion brand is notable is it comes from a family that up until 2016 seemed compulsive about putting the Trump name on every product and service it offered for sale.²⁵⁴ As *Vanity Fair* reported, "[w]hile it is unclear the exact extent to which Donald Trump the candidate is hurting Donald Trump the brand, evidence suggests the billionaire's businesses are suffering. Customers are boycotting his products, business partners have cut ties, and[p]erhaps that is why the Trump Organization is launching a new hotel business that notably does not carry the Trump name, unlike virtually every other venture christened with the real-estate mogul's gilded brand. The new company is called Scion, according to a press release in which Donald Trump goes unmentioned."²⁵⁵ In mid 2017, the Trump Organization also announced that it

²⁴⁸ Hui-yong Yu & Caleb Melby, *Trump Organization Bought Out of Its Contract for Trump SoHo*, BLOOMBERG (Nov. 22, 2017, 2:59 PM EST Updated on Nov. 22, 2017, 5:38 PM EST) ("Donald Trump's family company said its management and licensing agreement for the Trump SoHo Hotel was bought out by the New York property's owner...").

²⁴⁹ Isabel Schwab, *Former Goldman exec trying to remove the Trump name from his UES building*, LLNYC (June 1, 2017 5:07 PM) (quoting letter from Weiss to other tenants) ("I understand that for some this is a complicated issue. For me, it's only business. Our homes are worth more without the Trump name.").

²⁵⁰ Olivia Beavers, *Owners of Panama hotel push to strip Trump branding*, THE HILL (Nov. 27, 2017, 02:26 PM EST) ("Owners of the Trump International Hotel in Panama are pushing to remove President Trump's name from the building as the tower attempts to revive its business...").

²⁵¹ Jeremy Hainsworth & Rob Gillies, *New Trump tower is about to open in Vancouver but the welcome isn't warm*, AP (Feb. 24, 2017) ("Trump's name and brand have no more place on Vancouver's skyline than his ignorant ideas have in the modern world," said Vancouver's mayor.).

²⁵² Shivani Vora, *A New Trump Brand Not Named for Trump? Yes, Meet Scion*, N.Y. TIMES (Oct. 25, 2016) ("The new line from Trump Hotels won't bear the famous name behind the original brand, but that was the plan all along, according to its chief executive. ... The announcement of the new brand [Scion] has gained attention as the man for which the company is named, Donald J. Trump, is slipping in the polls in his bid to become president.").

²⁵³ Troy McMullen, *With New Scion Hotel Brand, Trump Sons Plan To Go Small*, FORBES (Mar. 6, 2016) ("Amid the political headlines that came out of *The Washington Post's* interview with President Donald Trump's sons this past weekend was the real possibility that the Trump brand - long associated with going big - is set to go small. Trump Hotels has signed 17 letters of intent with potential owners for its new Scion hotel brand, the Trump Organization's first line of hotels that don't bear the president's name.").

²⁵⁴ Cailey Rizzo, *Trump Hotels Ditching Name for New Hotels*, TRAVEL & LEISURE (Oct. 21, 2016) ("Amidst reports that occupancy rates at Trump Hotels have slipped this election season, the company has announced that new brand hotels will no longer bear the Trump name. The newest line of luxury hotels, geared towards millennials, will be called Scion, the company said. ...").

²⁵⁵ Tina Nguyen, *Even the Trump Organization is Distancing Itself from Trump's Toxic Brand*, VANITY FAIR (Oct. 24, 2016, 11:36 AM).

would have a new discount line of hotels in smaller cities and towns called “American Idea”.²⁵⁶ But according to *The Washington Post* in December of 2017, this new brand has not been launched yet.²⁵⁷

Another instance of rebranding Trump products does not appear to have happened at the behest of the Trump Organization but appears to have been done by a distributor of one of Ivanka Trump's clothing lines. A keen eyed shopper noticed that what appeared to be an Ivanka Trump top was actually labeled “Adrienne Vittadini” and the story was picked up by *Business of Fashion*.²⁵⁸ The rebranded Ivanka merchandise was then sold at Stein Mart to unsuspecting customers.²⁵⁹ One possible reason that the products were rebranded was to avoid boycotts like the #grabyourwallet effort described above. The CEO of Stein Mart reported that Stein Mart had received complaints about carrying Ivanka's line.²⁶⁰ The other explanation is the names were swapped to protect Ivanka's brand from being associated with a discount retailer.²⁶¹

By the end of 2017, if perception is reality, then things were not looking good for the Trump commercial brand.²⁶² According to YouGov which tracks brand perceptions, “both Trump brands [Ivanka's and the Trump Hotel brand] are in the bottom 10 of the more than 1,600 brands that YouGov BrandIndex tracks daily with consumers age 18 and over.”²⁶³ Results like this could motivate future rebranding efforts.

²⁵⁶ Ravneet Ahluwalia, *Brand hides its connection to the 45th President*, THE INDEPENDENT (UK) (June 7, 2017, 15:50 BST) (“the company [Trump Organization] unveiled plans for a new three-star hotel chain called American Idea, providing budget friendly accommodation in small towns.”).

²⁵⁷ Jonathan O'Connell & David A. Fahrenthold, *Trump's name is coming off his SoHo hotel as politics weigh on president's brand*, WASH. POST (Nov. 22, 2017) (“The three discount hotels that were supposed to start the American Idea brand are still operating under their old names.”).

²⁵⁸ Lauren Sherman, *Amidst Backlash, Ivanka Trump Clothing Is Secretly Relabelled as Adrienne Vittadini*, BUSINESS OF FASHION (Apr. 24, 2017, 05:27).

²⁵⁹ Alana Abramson, *Items From Ivanka Trump's Clothing Line Were Mislabeled as Adrienne Vittadini*, FORTUNE (Apr. 24, 2017).

²⁶⁰ *Id.*

²⁶¹ *Who is Adrienne Vittadini – and why is her name in Ivanka Trump's clothes?*, THE GUARDIAN (Apr. 25, 2017) (“now even the people who paid to use Ivanka Trump's name are secretly removing it? Yes, although we don't know why. Apparently, it is common to remove or replace labels on high-end fashion items that don't sell, in order to prevent the brand being seen in discount stores. Inexpensiveness! Ugh!”).

²⁶² Jeremy B White, *Trump brands near rock bottom in customer perception survey*, THE INDEPENDENT (UK) (Nov. 2, 2017, 17:08 GMT).

²⁶³ Ted Marzilli, *Democrats and independents slowly gravitating toward Ivanka Trump brand*, YOUGOV BRAND INDEX (Oct. 31, 2017).

Part IV. The Need for Transparency

As this piece has shown, consumers are becoming more engaged in holding companies accountable for their political stances, including the Trump Organization. But this accountability only works if there is transparency about which company is supporting which cause. The Trumps are an easy target for customer reactions because they have an eponymous brand and the Trump Organization has not hidden its pro-candidate Trump booster-ism.²⁶⁴ Companies that sell Trump goods or sit on President Trump's councils are also easy to pressure because it is clear that a particular company is being supportive of either Trump the man or Trump the brand.²⁶⁵

But what is far more insidious is corporate dark money that supports political candidates or parties out of view of public accountability.²⁶⁶ Dark money is untraceable from the point of view of an outsider, whether that outsider is a voter, a customer, or an investor.²⁶⁷ And without transparency, consumers lack the data they need to determine whether to patronize a business or boycott it. For example in the 2016 election, a 501(c)(4) social welfare organization called the 45Committee raised and spent \$21 million attacking Hillary Clinton and supporting Donald Trump.²⁶⁸ The 45Committee does not disclose its donors. Thus voters, investors and consumers have no idea whether this money is from a particular company or individual. Long after the election, tax returns revealed that a group called the Wellspring Committee provided 45Committee with \$750,000.²⁶⁹ But that hardly provides transparency as Wellspring Committee also does not disclose its underlying donors to the public. Similarly, dark money groups have stepped in to support Trump nominees like the Judicial Crisis Network's support of the nomination of Neil Gorsuch to the Supreme Court.²⁷⁰ Again the Judicial Crisis network does not reveal its donors.

The actions of dark money groups are why common sense reforms like greater transparency for all political spenders are needed both at the Federal Election Commission (FEC) (which regulates

²⁶⁴ Kristen Doerer, *Upset with Trump the president, consumers boycott Trump the brand*, PBS NEWSHOUR (Feb. 11, 2017).

²⁶⁵ Yu, *supra* note 233 ("But the steady drumbeat for them to disassociate from Trump was unrelenting and inspired the Twitter hashtag #Quitthecouncil.")

²⁶⁶ *Dark Money Basics*, CTR. FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/dark-money/basics> (last visited Aug. 19, 2017).

²⁶⁷ *How 'Dark Money' Distorts the Political Process*, KNOWLEDGE @ WHARTON (June 2, 2016) (quoting podcast by Eric Orts and Jill E. Fisch).

²⁶⁸ *45Committee* (2016 cycle), CTR. FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/outsidespending/detail.php?cmte=C90016478&cycle=2016> (last visited Dec. 19, 2017) (showing expenditures of \$21,339,017).

²⁶⁹ Robert Maguire & Anna Massoglia, *Wellspring's dark money crucial to judicial group, helps others in Trump orbit*, CTR. FOR RESPONSIVE POLITICS (Mar. 24, 2017), <https://www.opensecrets.org/news/2017/03/wellsprings-dark-money-crucial-to-trump-orbit/>.

²⁷⁰ Jack Holmes, *Neil Gorsuch Isn't Worried About the \$10 Million in Dark Money Backing His Confirmation*, ESQUIRE (Mar. 21, 2017); Margaret Sessa-Hawkins & Andrew Perez, *White House Relied Upon Dark Money Lobbyist To "Quarterback" Gorsuch's Confirmation*, FAST COMPANY (July 7, 2017).

disclosure in all federal elections)²⁷¹ and at the Securities and Exchange Commission (SEC) (which regulates disclosures by publicly traded companies).²⁷²

Conclusion

Only time will tell how the Trump presidency will end and what the ultimate impact will be on his commercial brand. So far things are trending downwards for the brand. Whether it was getting political or other economic forces, the Trump Organization was downgraded by *Crain's New York* from number 3 to 40 on the list of the largest privately held companies in 2017 from 2016.²⁷³

As this piece as shown there are both big upsides and incredibly large downsides for a brand like Trump's to be in the entangled in politics at this time of political polarization in America. And thus, no matter how much free media he gets for being President, that may not outweigh the heaps of criticism that also goes with the territory. This piece also shows the power of transparency. When consumers know where a brand stands politically, they can make an informed choice of whether to buy it or not.

²⁷¹ Drew Doggett, *One issue Republicans and Democrats agree on? Campaign finance reform*, SUNLIGHT FOUND. (Dec. 18, 2015 10:31 AM); Jennifer A. Heerwig, *Diagnosing Disclosure: A Social Scientific Perspective on Campaign Finance Disclosure*, YALE L. & POL'Y R. (Apr. 3, 2016, 3:45PM).

²⁷³ Elstein, *supra* note 5.