

A First Day Thought on "Truth on the Market"

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I didn't pick the name of this weblog, but I really like it. It encapsulates, I believe, much of what the blogosphere is about.

As Bill [noted](#), the truth-on-the-market defense essentially prevents a finding of securities fraud based on a defendant's misstatement or omission if the truth has effectively entered the market. The doctrine thus reflects an optimistic confidence that in a confrontation between truth and falsity (or half-truth), truth will win. But there's a caveat: For the defense to apply, the truth must have been "transmitted to the public with a degree of intensity and credibility sufficient to effectively counterbalance any misleading impression created by an insider's one-sided representations." [Provenz v. Miller \(9th Cir. 1996\)](#).

For years, many of us have sat around frustrated as we've watched professional journalists tell and re-tell the sorts of compelling stories that generate advertising revenue — e.g., the corporate "raiders" intent on taking over the underperforming company are just seeking to line their pockets at the expense of jobs for working folks (the government should intervene!), [cost-cutting apple producers are using chemicals that are sure to harm children's health](#) (the government should intervene!), etc. We've known that many of these stories are half-truths (which are, in the world of securities fraud, tantamount to lies). We've also known that these half-truths have a way of adversely affecting public policy. But what could we do? While we may have had "intensity" and "credibility," we had no effective means of transmitting the other half of the story to the public.

Now we do. Our old friend Technology has once again made the world a better place by reducing costs — this time, the costs of communicating ideas. Folks who detect fraud on the market(place of ideas) now have a means of transmitting a counterbalance of truth. I'm confident that if we provide the requisite intensity and credibility, truth will prevail.

That is not to say that we are arbiters of what's true. Indeed, one of the hallmarks of a market liberal is a belief that important information (truth?) is not given to anyone in its entirety. See, e.g., [F.A. Hayek, The Use of Knowledge in Society](#). Our role is therefore to transmit, with intensity and credibility, what we believe to be true, confident that, if so communicated, truth will prevail.



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