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COURT PERMITS BUSINESSES TO PROTECT THEIR GOOD NAMES FROM FALSE REPORTS

(Suzuki Motor Corp. v. Consumers Union of the United States)

The U.S. Court of Appeals for the Ninth Circuit in San Francisco yesterday reinstated a product disparagement suit filed by an automobile manufacturer against the magazine *Consumers Report*, ruling that a business is entitled to bring tort claims to protect its good name from false reports.

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief in the case in support of the plaintiff, Suzuki Motor Corporation. The decision overturns the district court's dismissal and returns the case to the district court for trial.

The defendant published a false report concerning the Suzuki Samurai (an SUV manufactured by the plaintiff) in the July 1988 edition of *Consumer Reports*. The cover story warned American consumers that “the Samurai rolls over too easily.” In particular, the magazine declared that the Samurai suffered from an “unusually high propensity to roll over while performing an accident avoidance maneuver that could be demanded suddenly of *any car during routine driving*.” However, these statements were patently false and the magazine’s publisher, Consumers Union (CU), knew it. CU knew that the Samurai had not rolled over, despite being driven 37 times through CU’s standard course at speeds of up to 56.6 mph—more testing at higher speeds than any other vehicle tested at the time. Only after the Samurai passed such rigorous testing with flying colors did CU’s Editorial Director scold CU’s test drive by complaining, “If you can’t find someone to roll this car, I will!” CU then redesigned its test course for the specific purpose of forcing the Samurai to lift off the ground.

Not content with its original misstatements, CU repeated them eight years later in the “60th Anniversary Issue” of *Consumer Reports*. In summarizing its institutional history, CU stated that in 1986 it “discover[ed] the Suzuki Samurai easily rolls over in turns and rate[d] it Not Acceptable.” It later published virtually the same claim in a “Memo to Members,” written by CU’s President; in CD-ROMs offering advice to potential car buyers; and over the Internet. CU repeated these claims, despite its knowledge that the 1988 report had been based on rigged

tests and that government agencies in the United States and Great Britain had criticized CU's conclusions for lacking a scientific basis.

Faced with millions of dollars in losses, Suzuki sued CU for product disparagement in the U.S. District Court for the Central District of California. CU filed a motion for summary judgment, arguing that Suzuki had failed to show that CU acted with "actual malice," a term of art meaning that CU knew at the time that its statements were false, or acted with reckless disregard of their falsity. The court granted CU's motion, and Suzuki appealed.

In reversing, the appeals court essentially adopted WLF's arguments. The court held that in order to be entitled to present its case to the jury, a product disparagement plaintiff need not present evidence directly demonstrating that the defendant acted with actual malice; rather, the court held, it is sufficient to present evidence (as did Suzuki) from which actual malice could be inferred. WLF also argued that the "actual malice" standard espoused by CU is so stringent that it threatens to wipe out the tort of product disparagement as a meaningful form of relief.

"Product disparagement serves an important purpose in tort law," said WLF Chief Counsel Richard Samp after reviewing the Ninth Circuit's decision. "It allows companies that suffer from false and disparaging statements to recover compensation for their loss. By reversing the district court's decision, the appeals court has made it possible once again for companies to get relief from false reports."

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. It devotes a significant portion of its resources to defending and promoting the principles of free enterprise and individual rights.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is available on its web site, www.wlf.org.
