

2. Data Analytics, Inc., and eProducts Corporation market competing software products. Data Analytics launches an advertising campaign claiming that eProducts, instead of testing software before it is marketed, has customers “test” the software by using it. eProducts knows this is not true but begins to lose sales to Data Analytics. On what grounds could eProducts sue Data Analytics for injury to eProducts’ reputation?

ANSWER:

Issue: Does eProducts have a claim against Data Analytics for defamation for the harm it is causing to eProducts’ reputation. Does eProducts have a claim for slander of quality?

Rule: Defamation occurs when: (1) a party makes a false statement, (2) which is published to others; (3) that injures another’s reputation. Slander of quality occurs when (1) a party makes a false statement about the quality of the plaintiff’s goods; (2) which is published to others; (3) that injures the reputation of the plaintiff’s goods.

Analysis: Here, we know that Data Analytics is making a false statement about eProducts and its products, because eProducts knows that the statement that customers test the software is not true. Unless Data Analytics is considered a public figure, it does not matter whether Data Analytics knows that its statement is false. Second, we know that the statement has been published since it is part of Data Analytics advertising campaign. Finally, the loss of sales would be evidence that the statement has injured eProducts reputation.

If Data Analytics is a public figure, then eProducts will additionally have to prove that Data Analytics knew that the statement was false.

Since the statement made is false not only as to Data Analytics but also as to the quality of its software Data Analytics will be able to establish both a defamation and slander of quality claim.

eProducts might also include a claim based on the tort of misrepresentation, or fraud. Misrepresentation leads another to believe in a condition that is different from the one that actually exists. This tort requires several elements: (1) misrepresentation of facts or conditions with knowledge that they are false or with reckless disregard for the truth, (2) intent to induce another to rely on the misrepresentation, (3) justifiable reliance by the deceived party, (4) damages suffered as a result of the reliance, and (5) a causal connection between the misrepresentation and the injury.