

Libeling Lawnmowers?
The Surprising Tort of Commercial Disparagement as Applied to 'Hard' Assets

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Everybody owns some type of tangible physical asset. Something made of metal for instance, such as an automobile. Imagine that you don't own just any old car, but a restored Shelby Cobra, a true American classic. You obtained the car "pre-owned," at a bargain price, and then obliterated any savings made on the purchase by pouring significant dollars into the car's restoration. You love this car and derive great pleasure from it, having handpicked the model based on your extensive knowledge of cars and desire for the absolute best. You routinely show the car in vintage automobile shows and even occasionally race it, although you mainly use the car for pleasure.

Now imagine that you are informed that the automobile's original manufacturer, through its officers, has made public statements insinuating that the specific car you are driving is "no good" and that it should be junked because it was once in an accident and is, therefore, dangerous. You know this to be false; not only do you regularly drive the vehicle, but you had it restored perfectly and it is licensed as a vintage car. You are now concerned that the car's resale value has been destroyed, since the market for such cars is notably small, and "people talk." The comments that the manufacturer made about your car not only rankle you, they may have injured you financially as well.

Can you sue the car's manufacturer? Is it possible to defame an inanimate object such as a plane, or a house, or a painting? Surprisingly, the answer to this question is "yes." This very sort of claim, which is generically captured by the designation "commercial disparagement," has recently been pursued successfully at trial involving "hard" assets similar to a vintage automobile, such as a private aircraft. The tort of commercial disparagement falls generally within the penumbra of libel and slander-related claims, although it is overshadowed by the more commonly recognized version of the tort relating to personal claims (like those celebrities frequently bring against supermarket tabloids). Yet not only are claims based upon the libeling of an object a legitimate cause of action, they can

result in verdicts for plaintiffs. A better understanding of this little-known tort is necessary if a company is to evade the risks it poses.

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