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## NBC Dodges Defamation Suit Over Rifle Target 'Bomb' Report

By Zachary Zagger

*Law360, New York (October 2, 2015, 11:37 PM ET)* -- A New York federal judge on Thursday tossed a defamation suit against NBCUniversal News Group over a report on the "Today" show that characterized exploding rifle targets as "bombs," saying the report was true since the targets are meant to explode and that reasonable viewers would conclude that reported dangers were due to improper uses of the product.

Tannerite Sports LLC hit NBC News and NBC Kentucky affiliate WLEX with the libel and slander suit in New York federal court over a March 23 report on the "Today" show followed by a report and online article by WLEX that called the exploding binary rifle targets "bombs for sale," with Tannerite claiming its targets are safe.

U.S. District Judge Shira A. Scheindlin sided with NBC, which argued that the targets were properly and adequately labeled as bombs and that Tannerite had not proved otherwise, and with its affiliate, which sought to escape the suit for lack of personal jurisdiction. The judge granted both motions to dismiss, finding that New York's long-arm statute does not give it jurisdiction over the defamation claims against WLEX and that the report's characterization of the targets as "bombs" is substantially true, since they are meant to explode.

"There is no question that 'Tannerite-brand binary exploding rifle targets' explode. That is their purpose," the judge said. "Indeed, Tannerite's product guide details the explosive nature of the targets and provides a multitude of warnings for their safe and proper use. As a result, the statements in the NBCU report and NBCU Internet article characterizing the exploding targets as bombs were substantially true, and therefore not provably false."

The judge said that while the targets might not meet the precise definition of "bombs," they still fit within the "meaning that reasonable audiences associate with the word."

Tannerite took issue with the "Today" show report in which NBC News reporter Jeff Rossen was shown holding two of the explosive rifle targets and stating, "Right now, I am basically holding a bomb in my hand." The report showed videos of explosions apparently caused by the targets, including one video showing a refrigerator explosion that caused a bystander to lose a hand from shrapnel.

The report further discussed the dangers of ammonium nitrate, one of the two components used in the targets, which has been used in terrorist bombings.

Tannerite said in its complaint that the targets' two active components, an oxidizer and a catalyst, are shipped separately in order to render them inert until mixed by the consumer at a rifle range. Once mixed, the target produces water vapor and an audible boom when hit with a high-powered rifle round. That water vapor, Tannerite said, means the targets have no tendency to start fires.

The company further claimed that the targets "are less flammable than wood and safer than gunpowder."

However, the judge said the report made clear that the components are inert before mixed and said "no viewer could conclude that the explosions featured" in the report were from proper use of the targets.

"The decision was based on an erroneous assumption that anything that explodes may be described as a bomb, regardless of its intended purpose or actual use," Tannerite said in an emailed statement by its attorney, David L. Cargille of Mendelsohn Drucker & Dunleavy PC.

"This case involves significant questions of fact that should be decided by a jury, not the judge, and all reasonable inferences should have been drawn in Tannerite Sports's favor," the company said. "With due respect, the district judge failed to do this."

The judge further denied Tannerite's request to further amend its complaint saying it would be "futile" since it had failed to provide proof of falsity of the report or make a prima facie case for personal jurisdiction against WLEX.

"We are pleased that the court found that there was lack of a connection with the state of New York to bring an out-of-state media company into New York court," WLEX attorney David E. Mills of Cooley LLP told Law360 Friday. "Facing the threat of having to endure the cost defending libel claims chills First Amendment speech. That is why states like New York have set up protections to protect out-of-state media from being brought into court in a state when a report does not target that state."

Representatives for NBC did not immediately respond to a request for comment.

Tannerite is represented by David L. Cargille of Mendelsohn Drucker & Dunleavy PC.

NBCUniversal News Group is represented by in-house counsel Daniel M. Kummer and Chelley Ernette Talbert.

WLEX Communications LLC is represented by David E. Mills and Stephanie B. Turner of Cooley LLP.

The case is Tannerite Sports LLC v. NBCUniversal News Group et al, case number 1:15-cv-02343, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Bryan Koenig. Editing by Aaron Pelc.