

## **Hypothetical #1: RackEmStackEm v. SturdyShelf, et al.**

SturdyShelf, Inc. makes industrial storage racks. Its biggest competitor is RackEmStackEm, Inc. SturdyShelf conducted a study comparing the strength of its latest storage rack, the ToughMama, with a new rack – the BigBoy – that RackEmStackEm had been previewing in its marketing materials. StudyShelf produced a report with the following Executive Summary at the beginning:

**Executive Summary:** We tested the ToughMama against a BigBoy furnished by RackEmStackEm. The load bearing capacity of the ToughMama was 18% greater than the BigBoy. ToughMama’s horizontal beams are .38 inches thicker, and its vertical struts are .13 inches thicker. The ToughMama is stronger and more durable than the BigBoy.

SturdyShelf had obtained the BigBoy from a former employee of RackEmStackEm who had come to work at SturdyShelf. The BigBoy he brought with him was a prototype – he had left the company before it finalized the product. So SturdyShelf’s expert inserted this disclaimer in the footer at the bottom of its 2-page report: “\*The BigBoy used in this study was a prototype precursor to the final version available for sale.”

SturdyShelf sent copies of the report to its distributors and posted it on its blog, inviting readers to “share their own bad experiences with RackEmStackEm products.” It also tweeted the contents of the Executive Summary and posted that summary to its Facebook page.

A Facebook user with the profile “RackCritic” posted a comment saying: “Good for you SturdyShelf! YackEmHackEm sucks!! They don’t test the metals used in their products for impurities. They are also breaking the law – they hire undocumented workers and don’t even pay their legal employees overtime pay! Their CEO has stage 4 pancreatic cancer so even if the BigBoy didn’t sink them they will probably be out of business in 6 months anyway.” RackCritic posted these same comments in response to SturdyShelf’s blog post. The statements about the CEO’s cancer are accurate, but the statements about not testing metals for impurities, hiring illegal immigrants, and not paying for overtime are false.

One of SturdyShelf’s horizontal beam suppliers, Metal Maniac, retweeted the Executive Summary and said: “What can we say? Our beams are superior to those used in the BigBoy!”

RackEmStackEm sends its first shipment of BigBoys the next week and sales are terrible. Two months later, RackEmStackEm calls you for help.

**What legal claims does your new client RackEmStackEm have, and against who?**