

Upon the recommendation of her child's pediatrician, a mother purchased a vaporizer for her child, who had been suffering from respiratory congestion. The vaporizer consisted of a gallon-size glass jar, which held water to be heated until it became steam, and a metal heating unit into which the jar fit. The jar was covered by a plastic cap with an opening to allow the steam to escape. At the time the vaporizer was manufactured and sold, there was no safer alternative design.

The booklet that accompanied the vaporizer read: "This product is safe, spillproof, and practically foolproof. It shuts off automatically when the water is gone." The booklet had a picture of a vaporizer sending steam over a baby's crib.

The mother used the vaporizer whenever the child was suffering from congestion. She placed the vaporizer on the floor near the child's bed.

One night, the child got out of bed to get a drink of water and tripped over the cord of the vaporizer as she crossed the room. The top of the vaporizer separated from the base, and boiling water from the jar spilled on the child when the vaporizer tipped over. The child suffered serious burns as a consequence.

The child's representative brought an action for damages against the manufacturer of the vaporizer. The manufacturer moved to dismiss after the representative presented the evidence above.

Should the manufacturer's motion be granted?

- A. No, because a jury could find that the manufacturer expressly represented that the vaporizer was spillproof.
- B. No, because the vaporizer caused a serious injury to the child.
- C. Yes, because it should have been obvious to the mother that the water in the jar would become boiling hot.
- D. Yes, because there was no safer alternative design.

### Explanation:

A court should grant a defendant's motion to dismiss if the plaintiff fails to present legally sufficient evidence to support every element of his/her claim (ie, no reasonable jury could find in the plaintiff's favor). Therefore, a court should grant a motion to dismiss a **products liability** action based on **misrepresentation** if there is insufficient evidence to support any of the following elements:

The defendant (a **commercial seller**) made a **misrepresentation of material fact** about a product to the public.

A consumer (not necessarily the plaintiff) justifiably relied on this misrepresentation when purchasing that product.

That product caused the plaintiff harm.

Here, the manufacturer sold the vaporizer with a booklet that *expressly stated* that the vaporizer was spillproof and included a picture that implied that the vaporizer could be safely used beside a child's crib (misrepresentation). Because a reasonable jury could conclude that the mother justifiably relied on these assertions when she purchased the vaporizer and that the vaporizer caused her child harm, the manufacturer's motion to dismiss should be denied.

**(Choice B)** The fact that the vaporizer seriously injured the child provides evidence of harm. However, the child cannot recover for that harm unless there also is evidence that the manufacturer falsely represented that the vaporizer was spillproof. Since there is such evidence, the court should deny the manufacturer's motion.

**(Choice C)** While it should have been obvious to the mother that the water in the vaporizer would become extremely hot, it was still reasonable for her to rely on the manufacturer's assertion that the product was spillproof.

**(Choice D)** Even if a reasonable jury could find that the manufacturer did not defectively *design* the vaporizer because there was no safer alternative design, the manufacturer may still be liable for *misrepresenting* the vaporizer's safety.

### Educational objective:

Products liability based on misrepresentation arises when (1) the defendant (a commercial supplier) misrepresents a material fact about a product, (2) a consumer justifiably relied on that misrepresentation, and (3) the product caused the plaintiff harm.

### References

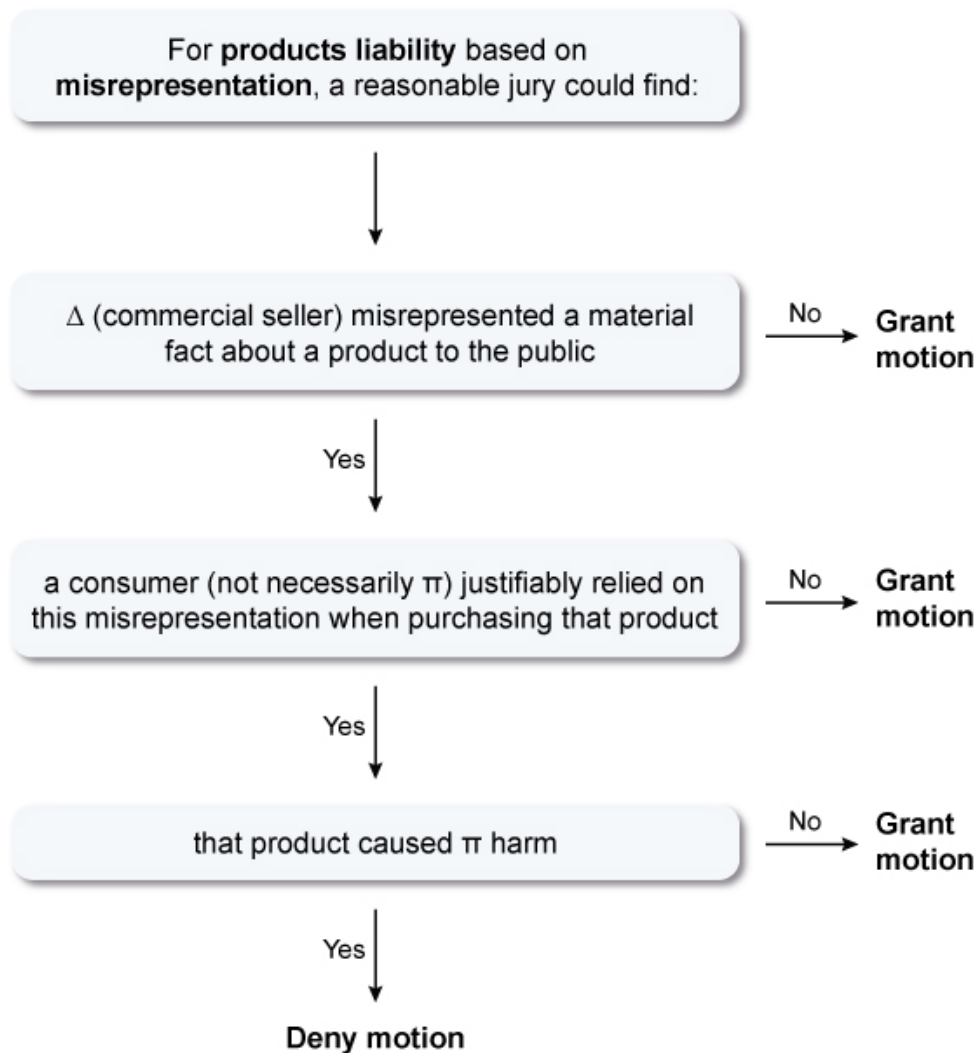
Restatement (Third) of Torts: Prods. Liab. § 9 (Am. Law Inst. 1998) (products liability by misrepresentation).

Restatement (Second) of Torts § 402B (Am. Law Inst. 1965) (strict products liability by misrepresentation).

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### Defendant's motion to dismiss



Δ = defendant; π = plaintiff