

TECHNOLOGY

Zestimates protected as free speech, Zillow argues in legal challenge

Company files motion to dismiss a complaint alleging Zestimates are illegal

BY TEKE WIGGIN ★

JUN 29 

105
SHARES



Key Takeaways

- Zillow has maintained that the charges against the Zestimate are "without merit" and the court filing reveals the basis of its legal defense: The First Amendment.

Don't miss Hacker Connect SF

Take a deep real estate technology dive, Aug 7, 2017

[LEARN MORE](#)

Stock forecasts, search engine rankings, editorial reviews, Zestimates. What do they have in common?

They're all constitutionally protected as free speech, Zillow argued in a [memorandum](#) responding to a class-action lawsuit in Illinois challenging its online home valuations.

The legal analysis accompanied a [motion to dismiss](#) the suit, which alleges that Zillow's Illinois Zestimates are illegal appraisals and violate consumer protection laws. Zillow has maintained that the charges are "without merit" and the court filing reveals the basis of its legal defense: The First Amendment, which covers the Zestimate "just like a newspaper editorial about the value of a new public works project," the company said.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VIPUL B. PATEL; BHASKER T. PATEL and
JYOTSNA B. PATEL, as co-trustees of the
Jyotsna B. Patel Living Trust dated March 9,
2001; and CASTLE BLDRS.COM, INC.,
individually and on behalf of others similarly
situated,

Plaintiffs,

v.

ZILLOW, INC. and ZILLOW GROUP, INC.,

Defendants.

Case No. 1:17-cv-04008

Honorable Amy J. St. Eve

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS**

Page 1 / 22



Plaintiffs drafting a response to the motion

In mid-May, a family of Illinois homebuilders sued Zillow over Zestimates that appear on the site's property details pages for properties they own. The plaintiffs' attorney, [Barbara Anderson, told Inman at the time](#) that the Zestimate could cause injury to a homeowner by arousing unjustified skepticism in prospective homebuyers over a property's price.

Anderson had previously sued Zillow Group over her own home's Zestimate. But she dropped that case and filed the new one after receiving "overwhelming demand" to challenge the legality of Zestimates on behalf of all homeowners whose properties are listed on Zillow, she told Inman.



SPONSORED CONTENT

Secrets of high-growth real estate teams

The complaint asked a judge to order Zillow to take down Zestimates for all Illinois homeowners and pay damages and attorneys' fees. Since the complaint was filed, attorneys David Novoselsky and Charles Jeffrey Thut have also signed on to represent the homebuilders, along with Anderson.

Anderson said she's drafting a response to the motion.

"I really don't want to comment to the press on pleadings pending before the court," she said. "The ultimate decision maker is obviously the judge."

'Opinion of value'

In the memorandum, Zillow Group elaborates that its home valuation is an opinion of value and is clearly represented as such. The company acknowledges that licensed appraisers can "have diminished First Amendment protection" but that Zillow Group is not acting as one.

It contends that publishing profiles with home facts — which it says come from public records, users or listing data — without a homeowner's permission and refusing to remove them is above board because the "creation and dissemination of information are speech within the meaning of the First Amendment."

Moreover, state appraisal law doesn't provide for a private right of action and only covers appraisals conducted to support real estate financings, the filing said.

The law doesn't apply to Zillow because it doesn't represent itself as an appraiser and "a Zestimate home valuation by its terms cannot be used for real estate financings," it said.

It also notes that the law expressly excludes "the procurement of an automated valuation model [AVM]," and that the Zestimate is an AVM. ([Anderson has previously claimed](#) the exemption only applies to financial institutions.)

As for the plaintiffs' claim that the Zestimate intrudes upon a person's "right to seclusion," it "most clearly fails because Zillow did not use any 'private facts' in its Zestimates, such as family problems, romantic interests, sex lives, the contents of a person's mail or banking information," Zillow Group said.

Zillow Group also contended that Zestimates don't violate state laws protecting consumers from fraud and deceptive trade practices because, among other reasons, "consumers will understand and not be deceived by Zestimates" and will realize that the real estate agent ads that appear on Zillow property pages are "obviously ads."

The collection and dissemination of information without a homeowner's consent is "the exercise of Zillow's freedom to speak about real estate," Zillow Group says.

It also said the plaintiffs failed to plead an actual injury, instead only claiming "hypothetical injuries that might occur in the future."

"The Zestimate has proven itself to be a sought-after and valuable free tool for consumers," Zillow spokesperson Emily Heffter told Inman. "It is the most accurate computerized home value estimate anywhere, and serves as an important data point for millions of homeowners, buyers and sellers every day.


"We always say that it's an estimate, not an appraisal, and sellers should work with an agent to determine the best listing price for their particular home."


[Email Teke Wiggin.](#)

ROLL OVER FOR DETAILS

STAY CONNECTED
to your clients and
their applications 24/7

[Learn More ▶](#)

 PNC | HOME INSIGHT®

 ©2017 PNC Bank, National Association. Member FDIC

MOST READ

11 reasons for sale by owner is a terrible idea

BY CHRIS REDIGER | JUN 10

36 useful items for real estate agents to keep in the trunk

BY AMBER TAUFEN ★ | JUN 28

S

Blogger fighting back in Zillow listing photo battle

When the market doesn't want your listing

BY BERNICE ROSS | JUN 26



The agent's guide to the ultimate Facebook business page

BY GREG LYLES | JUN 27



The advertisement features the Moxiworks logo at the top, consisting of a black circle with a white dot inside, followed by the text "moxiworks". Below the logo, the text reads: "Brokerages are **growing profits & future-proofing** their businesses with a fully integrated open platform." A blue button with the text "Learn How" is centered below the text. At the bottom of the ad is a collection of black and white icons: a cloud with three vertical lines extending downwards, a mail envelope, a document with a magnifying glass, a smartphone, a lightbulb, a person icon with a plus sign, a network diagram, a computer monitor, a speech bubble, and a document with "www" on it.

[Hide Comments](#)

COMMENTS

13 Comments

Sort by Oldest ▾



Add a comment...



Eric Axelson · Associate Broker at Keller Williams Realty, Inc.

Or is it libel? What if I posted inaccurate versions of Zillow's financial statements on a website? Free speech? This really is one of the hottest topics of the decade and I find it genuinely interesting.



Donna Stott · Owner, ACC Accredited Coach at Your Coaching Matters

I call it a ZestiLIE

Like · Reply · 4 hrs



Gregory Guminski - Laurie Guminski - Century 21 Selling Paradise

It seems to me that Zillow could potentially be sued under the tort of defamation (one of which is libel), which is defined as: 1) a false statement purporting to be fact; 2) publication or communication of that statement to a third person; 3) fault amounting to at least negligence; and 4) damages, or some harm caused to the person or entity who is the subject of the statement.

An inaccurate zestimate seems to fit all 4 criteria for a defamation suit, at least 3 of the 4 seem to be solid. They may say publicly that they are simply purporting an opinion (free speech) and not purporting the... [See More](#)

Like · Reply · 6 · 5 hrs



Jon Blaze · Realtor at Jonathan Blaze PA Realtor at Domain Realty

Very informative and great points. I love how Zillow also makes this Statement: "Zillow Group also contended that Zestimates don't violate state laws protecting consumers from fraud and deceptive trade practices because, among other reasons, "consumers will understand and not be deceived by Zestimates" and will realize that the real estate agent ads that appear on Zillow property pages are "obviously ads."

In my opinion, Zillow is making a presumption that the average/common consumer knows or understands, with no supportive data. They should be required to conduct nationwide and state by state... [See More](#)

Like · Reply · 1 hr



Emile L'eplattenier

For something to be libelous it has to be known to be false. Since any estimate of value is inherently subjective, I don't think this would apply here. Whether or not they would require a license to offer these valuations is another story.

Like · Reply · 1 · 44 mins



Gregg Sharpe · Works at HSG Realty

So when I tell clients that zestimates are inaccurate and can prove it, am I exercising my free speech and can therefore not be worried about any action by Zillow? Weak position folks...

Like · Reply · 1 · 5 hrs



Lisa Renee Harris · Realtor at Keller Williams Realty Columbia SC

So the guy they are trying to sue over the picture who gave his opinion using a picture that Zillow claims came from their website.... which by the way could have come from the MLS or anyone of the 100+ sites our listings feed to, and those pictures belong to the agent or home owner not zillow..... They now want to use the same defense of free speech????? I find that hilarious! Zillow you can not have it both ways! You are making a mockery of real estate industry!

Like · Reply · 3 · 5 hrs



Curtiss Clemens Sr · President/co owner at CENTURY 21 Clemens & Sons Realty, Inc.

Zestimates have nothing to do with free speech. It is a con used to attract consumers to their website. Their estimates are highly inaccurate and can fluctuate significantly over a short period of time

Like · Reply · 2 · 4 hrs



Donna Stott · Owner, ACC Accredited Coach at Your Coaching Matters

What a crock. My dad's home is for sale and our appraisal is \$70K over the "zestiLIE". Their excuse is that that local MLS won't participate in Zillow, so they can't see the comps as easily and REFUSE to even look at our appraisal we paid \$600 for in this remote area. I REALLY am starting to hate Zillow. It hurts more than helps and worse thing of all is they STEAL your leads for YOUR listings and sell them back to you or worse, to your competition. [#boycott](#)

Like · Reply · 4 hrs



The Jurgensen Group - Fairfax, Prince William, Stafford & Fredericksburg VA

Zestimates were \$80K low on our vacation home because their algorithms cannot distinguish between a home with a water view and a home with no water view - we even had two agents give us values that were similar to the Z-estimates and I think they got their valuations from them! They showed me nothing, just from the hip "your home is probably worth about \$xxx,xxx. Seriously, lazy agents aside, \$80K or about 20% off the true value? My CMA's are typically within 0-2% of true value as determined by the appraisal. I hope they lose this case and it sets precedent nationally - that would hopefully put an end to this nonsense.

Like · Reply · 1 · 3 hrs



Tom Riggins · Real Estate Consultant at Keller Williams Realty Northeast

By their own account in 25 states they rate themselves as having a fair idea to none at all when it comes to the Zestimate. You can find this by clicking down through many layers and eventually stumbling on the data tables and star ranking system they have published. That's not a very good feeling in my opinion that in 25 home owning states and districts they admit they don't have a

I'm sure there will be some defense about giving everyone the chance to log in and fix the values, but why shou... [See More](#)

[Like](#) · [Reply](#) · 3 hrs



Gene Crouch · Associate Broker/Realtor at Keller Williams Realty, Anniston, AL.

The problem is Zillow. Their zestimates are not accurate. Zillow is bad for our business. Realtors need to wake up to this. Instead of worrying about a court case, just quit using them. If your customers think Zillow is so good ask them if they would want their home on Zillow with a low value.

[Like](#) · [Reply](#) · [1](#) · 3 hrs



Joel Jadofsky · Panama City, Florida

The difference is Zillow knows that their Zestimates are not accurate and have admitted that by offering \$1,000,000 to anyone that can make them accurate. Free speech is not about being able to knowingly lie. Thats called slander...They are slandering the home owners by knowingly lying about the valuation of their property and misrepresenting it as fact to people.

[Like](#) · [Reply](#) · [1](#) · 3 hrs · Edited



Andy Fulton · Demand Generation Marketing Manager at Market Leader

Zillow would argue that the \$1 million bounty is for making the Zestimate MORE accurate. If, in 2017, a car manufacturer offered engineers a \$1 million bounty to make their cars safer, you wouldn't see that as an admission by that manufacturer that their cars are currently inherently unsafe, would you?

[Like](#) · [Reply](#) · 1 min



Paul Stonkus · Broker/Owner/Realtor at EXIT ELITE Realty,

so essentially, ZILLOW has just claimed protection as FAKE NEWS MEDIA...

[Like](#) · [Reply](#) · [1](#) · 1 hr



Roland Estrada · Real Estate Agent/Broker at Bennion Deville Homes Laguna Niguel

This is a frivolous lawsuit. We have bigger fish to fry than this BS.

[Like](#) · [Reply](#) · 32 mins



Lee Ehrke · Real Estate Agent at The Ehrke Team, Keller Williams Realty East Valley

When Zillow provides Z-estimates to the consumer, they are taking advantage of the consumer's lack of knowledge of the market. This information can and is used by consumers and agents to justify their offer to a Seller. It is human nature to take advantage of information when it works in their favor. Shame on Zillow for using free speech to justify hurting the consumer. It is time for consumers and agents to see this company is more interested in their profits and not interested in providing accurate information to the consumer and only by trying to hide behind free speech to justify their actions. If you know you are doing wrong and you keep on doing wrong, don't you get punish for those action?

Agent with Keller Williams Realty East Valley

[Like](#) · [Reply](#) · 1 min

RELATED ARTICLES

Zillow mania: \$1.7B value boost, 27K haters

BY BRAD INMAN ★ | JUN 23



The agent's data science cheat sheet

BY MIKE SCHNEIDER | JUN 12



Zillow Instant Offers indigestion: What's the industry cure?

BY GREG FISCHER | JUN 20

Inman

- About
- Contact
- Advertise
- Sponsor Connect
- Careers
- Code of Conduct
- Privacy
- Terms of Use

Community

- Inman Facebook group
- Agent War Room
- Broker War Room
- Vendor Exchange
- Contributor submissions
- Image submissions

Products

- Select
- Inman Pro
- Market Intel

Awards

- Inman 101
- Inman Innovators
- Inman Influencers



