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When does healthy business competition become illegal?

Competition. It's the American way, as red, white and blue as baseball and apple pie. We teach it in our schools, celebrate it through sports and, in the business world, we must thrive on it to survive. Thanks to good old American competition, we have lower prices for goods and services, increased quality, greater choice, innovation and more. Could anything so engrained in our culture, and such a core concept in our economic strategy, be a problem?

To be a good thing, competition must be fair. In our schools we have codes of conduct, including honor codes; in sports we have the rules of the game and referees to enforce them; and in the business world we recognize certain conduct as unfairly competitive.

But where is the line between healthy rivalry and unfair competition? State and federal laws address unfair competition of various types. Concerning head-to-head competition between businesses in the marketplace, Tennessee draws a line at "intentional interference." Tennessee law protects contractual relationships by providing statutory and common law actions to redress wrongful inducements to breach a contract. More to the point, where two parties have an existing contractual relationship, and another who is aware of that contract acts to disrupt it with malicious intent and succeeds, the contracted parties can recover their resulting loss from the interfering party, and may also receive an award of punitive or multiple damages.

Importantly, in the case of prospective business relationships, Tennessee courts have long recognized that generally "a person engaged in business may, at his election, and without good reason, refuse to deal with some other person." The right to do or not to do business with whom ever we choose is alive and well if the reasons behind the choice are lawful; and businesses retain the privilege to compete with one another to win

those potential relationships, so long as the methods they use are not "improper."

What does improper competition for business relationships look like? Even conduct that is not unlawful or independently actionable can form the basis of actionable unfair competition. Here are a few methods that should cause you concern if they are used to win business over or from a competitor:

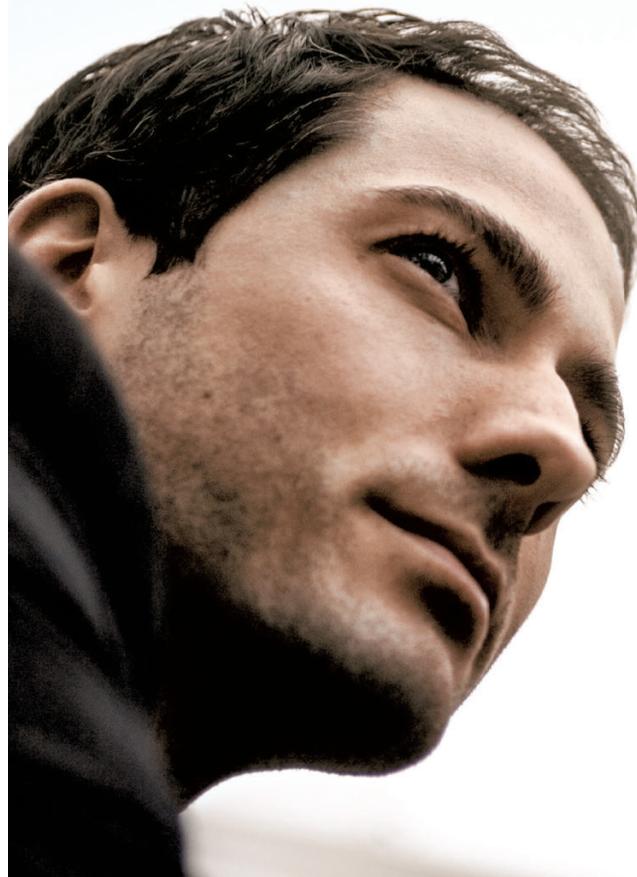
- » Use of confidential or inside information
- » Misrepresentations
- » False or misleading statements about a competitor or its product/service
- » Actions that violate state or federal law
- » Noncompliance with regulations or ordinances
- » Intimidation and threats
- » Incentives and inducement that might constitute bribery
- » Strategies that violate established standards of a trade or profession

While keeping these concepts in mind will not eliminate the possibility that your business methods are challenged as wrongful, doing so may help reduce some of the risk inherent in the all-American struggle to best your competition.

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Cheryl Rice is a shareholder with the law firm of Egerton, McAfee, Armistead & Davis, P.C., where she focuses her practice in prosecution and defense of civil cases relating to business and commercial issues. This column is provided through the Knoxville Bar Association, your trusted source for lawyer referrals. The KBA is a nonprofit corporation that offers community service programs such as the Lawyer Referral & Information Service, speakers' bureau and public education programs.

- 7:50am Ecommerce site ready to launch.
- 7:51am Called IT to make sure fraud protection was in place.
- 7:52am It wasn't.
- 7:55am Postponed site launch.
- 8:00am Called Megan at First Tennessee.



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