Protecting Your Business: Unfair Competition Under New Jersey Law

Client Alert

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What You Need to Know

- In New Jersey, unfair competition is a flexible, common-law doctrine used by courts to penalize wrongful, deceptive, or dishonest commercial practices that cross the line from ordinary competition into improper conduct.
- Disputes frequently arise during employee departures, in business divorces, and in real estate brokerage transitions, typically involving claims of trade secret theft, client solicitation, or breaches of restrictive covenants.
- Businesses can proactively mitigate risks by drafting airtight confidentiality and restrictive covenant agreements and taking decisive legal action to halt ongoing competitive harm.

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Unfair competition claims arise when a business alleges that a competitor, former employee, or business partner has engaged in improper conduct that damages its goodwill, customer relationships, or ability to compete fairly in the marketplace. These claims are frequently asserted alongside breach of contract, trade secret misappropriation, breach of fiduciary duty, tortious interference, and restrictive covenant disputes, and they often form the backbone of "business divorce" and employee departure lawsuits.

Unlike some causes of action that are narrowly defined by statute, unfair competition serves as a "catch-all" and in New Jersey is largely a common-law doctrine that has developed through case law and equitable principles. While there are some unfair competition type claims governed by specific statutes, courts typically evaluate

unfair competition claims based on the specific facts of each case and broader notions of fairness in the marketplace.

What Is Unfair Competition?

In New Jersey, unfair competition generally refers to conduct that is wrongful, deceptive, or inconsistent with honest commercial practices, and causes harm to another business. It can include a wide range of conduct, such as:

- Misappropriation of confidential or proprietary information
- Improper solicitation of customers using protected information
- Breach of restrictive covenants (non-compete or non-solicitation agreements)
- Disparagement of a competitor's business or services
- Trade secret theft
- Intellectual property (trademarks, copyrights and patents) infringement
- "Raiding" employees or customers in violation of legal or contractual duties

It is important to note that courts do not treat ordinary competition as unlawful but instead consider whether the conduct goes beyond legitimate competitive behavior and crosses into improper or deceptive practices.

Unfair Competition and Trade Secrets

Many unfair competition matters overlap with trade secret claims, in which a business alleges that a competitor has unlawfully acquired, used, or disclosed its proprietary, economically valuable information. New Jersey has adopted the Uniform Trade Secrets Act, which provides statutory protection for confidential business information that derives independent economic value from not being generally known. Examples of protectable trade secrets may include:

- Customer lists and pricing structures
- Proprietary formulas or processes
- Business strategies or marketing plans
- Confidential vendor or supplier relationships

When a former employee or a competitor misuses this type of information, courts may find both trade secret misappropriation and unfair competition.

Employee Departures and Competitive Conduct

Many unfair competition disputes arise when employees leave one company to join or start a competing business. In general, employees are permitted to compete after leaving their employer. However, they are not permitted to:

- Use confidential information obtained during employment
- Solicit customers in violation of a valid restrictive covenant

- Recruit employees in breach of contractual or fiduciary obligations
- Take or misuse proprietary business materials

New Jersey courts closely examine the line between lawful preparation to compete and unlawful competitive conduct. While employees may plan to start a competing business while still employed, they cannot actively undermine their employer's business while still owing duties of loyalty.

Business Partner and Internal Disputes

Unfair competition claims are also common in disputes between business partners, particularly in closely held corporations and LLCs, and often overlap with breach of fiduciary duty and shareholder oppression claims under New Jersey law. In these cases, allegations often involve:

- One owner diverting business opportunities for personal benefit
- Misuse of company funds or assets
- Secretly competing with the business
- Exploiting control of the company to disadvantage minority owners

The Real Estate Sector

Unfair competition issues frequently arise in the real estate industry, particularly when real estate salespersons change brokerages or leave to start independent offices. Because salespersons often build business through personal relationships and client trust, disputes commonly involve the solicitation of former clients, the use of brokerage-generated leads, and the retention or misuse of confidential brokerage information.

While salespersons are generally free to change firms and continue practicing, they cannot engage in improper competitive conduct in the process. This may include using confidential databases, misappropriating client lists, or violating contractual confidentiality, non-compete or non-solicitation obligations. For both brokerages and salespersons, clear written agreements governing confidentiality and post-departure conduct are often key to reducing the risk of disputes and litigation.

Remedies for Unfair Competition

New Jersey courts have broad authority to remedy unfair competition through both legal and equitable relief. Depending on the facts of the case, these remedies may include:

- Injunctions preventing further competitive misconduct
- Monetary damages for lost profits or unjust enrichment
- Disgorgement of profits gained through improper conduct
- Return of confidential or proprietary information
- Attorneys' fees where authorized by statute or contract
- Temporary restraints or preliminary injunctions early in litigation to prevent ongoing harm

Proving an Unfair Competition Claim

Because unfair competition is fact-intensive, successful claims often depend on early evidence gathering and clear documentation to demonstrate that conduct has crossed into wrongful interference with another business' rights. Key issues typically include:

- What information was used or taken
- Whether the information was confidential or proprietary
- Whether any contractual restrictions existed
- How customers or business opportunities were obtained
- Whether the conduct caused measurable financial harm

Preventing Unfair Competition Disputes

Many unfair competition disputes can be reduced or avoided through proactive planning and proper documentation. Well-structured agreements help clarify expectations and reduce the likelihood of litigation when employees or business partners leave. Businesses should consider:

- Strong confidentiality and trade secret protection agreements
- Carefully drafted restrictive covenant agreements where appropriate
- Clear policies regarding use of company information and devices
- Well-defined ownership of customer relationships and data
- Exit procedures for departing employees or partners

Key Takeaways

Unfair competition claims in New Jersey play an important role in protecting businesses from misconduct that undermines fair competition and misappropriates valuable business assets. At the same time, courts are careful not to stifle legitimate competition or prevent individuals from pursuing lawful employment opportunities.

Because these cases are highly fact-specific and often involve overlapping contractual, fiduciary, and statutory issues, early legal guidance is critical. Businesses that act quickly to address potential unfair competition can often better protect their customer relationships, preserve confidential information, and prevent further financial harm. Prompt intervention can also improve the likelihood of obtaining injunctive relief, which is often the most effective remedy in these disputes.

For companies and individuals facing these issues, experienced counsel can help assess the strength of potential claims, develop a strategy to protect business interests, and take decisive action to stop ongoing competitive harm. Please contact the authors of this Client Alert to discuss your specific business circumstances.

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