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unfair competition

The law of unfair competition encompasses torts that cause economic harm to a business through deceptive or wrongful business practices. Unfair competition can be broadly divided into two categories:

- Unfair competition: This term is sometimes used specifically to refer to torts that confuse consumers about the source of a product, known as deceptive trade practices.
- Unfair trade practices: This category includes all other forms of unfair competition not directly related to consumer confusion.

Unfair competition law does not address economic harms related to monopolies and antitrust legislation. The definition of what constitutes an “unfair” act can vary based on the business context, the specific action being examined, and the facts of the individual case.

Common Examples of Unfair Competition

Two common examples of unfair competition are trademark infringement and misappropriation. The right to publicity is often invoked in misappropriation issues. Other practices that fall into the area of unfair competition include:

- False advertising
- “Bait and switch” selling tactics
- Unauthorized substitution of one brand of goods for another
- Use of confidential information by former employee to solicit customers
- Theft of trade secrets
- Breach of a restrictive covenant

- Trade [libel](#)
- False [representation](#) of products or [services](#)

Governance and Legal Framework

The law of unfair competition is mainly governed by state [common law](#). Federal law may apply in the areas of [trademarks](#), [copyrights](#), and [false advertising](#). See: [trademark](#), [copyright](#), and [§ 1125 of the Lanham Act](#).

Congress established [The Federal Trade Commission \(FTC\)](#) in part to protect consumers from deceptive trade practices. The FTC indirectly protects competitors because some deceptive trade practices (e.g. “bait and switch tactics”) that injure consumers also injure competing businesses. The FTC regulations concerning unfair competition are found in various parts of [Title 16 of the Code of Federal Regulations](#). If there is a conflict between federal and state law, the federal law will often triumph because of the [doctrine of preemption](#).

Some states have enacted specific [legislation](#) to address unfair competition. For example, the [Uniform Deceptive Trade Practices Act](#) provides a model for states to [codify](#) laws against deceptive trade practices, ensuring consistency and fairness in business practices.

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