Q&A

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Q **When is a competitor's interference with your business relationships, your customer(s), or your client accounts "unfair" and actionable?**

A In the commercial marketplace it is generally accepted that business competition is healthy, unrestricted and subject to free reign. However, all means of competition are not viewed as equitable, and at times constitute "unfair competition". Certain unfair competition that arises from a competitor's interference with another's business, existing accounts or goodwill are known as tortious interference claims. New Jersey has dissected such claims into two distinct causes of action. First, a claim may be made for a competitor's interference with one's customer contract(s) or "contractual relations". A related, yet distinct, claim exists where the competitor has not interfered with a contract, but has acted intentionally to interfere with an "economic advantage" otherwise reasonably expected from the customer relationship. To succeed on an economic advantage claim does not require proof that a written contract existed.

To recover from a competitor's interference with a contract, contractual relationship or economic advantage, the damaged party needs to prove the interference was the direct cause of business loss or monetary harm. The competitor's actions need not be evil-minded or malicious. For an actionable claim, the interference, i.e., the tortious conduct, simply must be determined to fall outside the "rules of the game" expected in the marketplace for fair competition.

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