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Business interference/unfair competition: Don't let it happen to you



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Does this sound familiar?

Your company spends countless hours and resources developing, manufacturing and marketing a product to a certain customer. Everything seems to be going well. Unbeknownst to you, however, something has been going on between your customer and your closest competitor. Suddenly, the contract is breached by your customer, or the business relationship that you worked so hard to develop abruptly ends. Soon you discover that your competitor has entered into a contract or business relationship with that same customer.

Some may call this fair competition, but, when do the actions of your competitor rise to the level of something more egregious?

What you need to know.

If your company has gone through a similar scenario, you should be aware that in certain circumstances you may be able to recover monetary damages against the competitor under a legal concept known as tortious interference. Generally, tortious interference occurs when a party, without a privilege to do so, induces or otherwise purposefully causes a third party not to enter into or continue a business relationship with another, or induces a party not to perform

a contract with another. Importantly, you may have a claim for tortious interference even if your business relationship does not include a contract.

One has a claim for tortious interference with a contract if the following can be shown: the existence of a contract; the wrongdoer's knowledge of the contract; the wrongdoer's intentional procurement of the contract's breach; lack of justification; and damages. In short, the competitor may not intentionally and improperly interfere with your contractual relationship without the potential for substantial liability.

A claim for tortious interference with a business relationship is different in that it does not require the existence of a contract. A claim exists if the following can be shown: a business relationship; the wrongdoer's knowledge of that business relationship; intentional interference causing a breach or termination of the business relationship; and damages. In short, the competitor may not intentionally and improperly interfere with your business relationship without the potential for substantial liability.

The most important factor in determining the existence of a claim for tortious interference is that the interference must be intentional. In other words, the competitor in this fact scenario must have acted with the sole purpose or desire to interfere with the performance of the contract (i.e., induce a breach) or to induce a party not to enter into a business relationship before it can be liable for tortious interference. Therefore, a thorough, fact intensive investigation as to whether a competitor acted intentionally will be needed to determine whether you may have a claim against your competitor for tortious interference.

Conclusion

If the scenario above has ever happened to your company, you need to know that your competitor may not always be operating under the umbrella of fair competition. Depending upon the facts, your company may have a claim against your competitor for tortious interference. ☞

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