State Unfair Competition Statutes

Trademark & Unfair Competition
Eric E. Johnson
ericejohnson.com

State unfair competition statutes

- These statutes go by various names: unfair and deceptive trade practices acts, general unfair competition statutes, state consumer protection acts, or "Little FTC Acts."

- They often use very broad language that prohibits all "unfair" and "deceptive" conduct.

- It seems that every state has something along these lines.

- These statutes were generally adopted during a period spanning the 1960s and 1970s.

- The statutes are commonly enforceable by a state agency or the state's attorney general.

- A key difference with the FTC Act is that commonly these state statutes create a private right of action (i.e., enforcement is not limited to a government agency).

State unfair competition statutes

These statutes vary greatly among the states, including:

- what is prohibited ("false"? "deceptive"? "unfair"? and how is "unfair" defined?)
- whether there is an intent requirement, and if so what it is
- what counts as an injury sufficient for suit
- what remedies are available
- whether costs and attorneys fees are recoverable (they often are)
- whether the plaintiff is entitled to a jury trial
- whether class actions are allowed
- whether certain defendants are excluded (e.g., learned professions)

State unfair competition statutes

- The key thing to understand is that these statutes exist.
  - BTW, one you are alert to them, you'll often find them recited as among the plaintiffs' claims in trademark infringement cases and other suits. (For instance, look out for §17200 in California cases.)
- You don't know unfair competition or consumer law in your state until you know the situation with the state statutory law.
- Such statutes' broad language may allow consumer plaintiffs to sue businesses in situations where other claims – fraud, breach of contract, intentional interference torts – wouldn't work.
- By the same token, you have to check the case law, because the broad language invites courts to interpret limits on the reach of the statute that aren't explicit in the text.