



# Problems for Various Topics in Unfair Competition

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## BarBri and Georgia Bar Prep

In the 1970s, BRG of Georgia, Inc. and Harcourt Brace Jovanovich Legal and Professional Publications (using its trade name "Bar/Bri") competed against one another offering bar-exam prep in Georgia. In 1980 BRG and HBJ entered into an agreement whereby (1) BRG was given an exclusive license to market HBJ's tradename "Bar/Bri" (2) HBJ was entitled to receive \$100 per student enrolled by BRG and 40% of revenues over \$350, (3) BRG agreed not to compete with HBJ outside Georgia, and (4) HBJ agreed not to compete with BRG in Georgia. Immediately after the deal, the price for BRG's bar-prep course increased from \$150 to \$400.

*Is this a violation of § 1 of the Sherman Act?*

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## BarBri and Georgia Bar Prep

*Is this a violation of § 1 of the Sherman Act?*

**Yes.** The U.S. Supreme Court held the market-division agreement was a per se violation of §1.

“HBJ and BRG had previously competed in the Georgia market; under their allocation agreement, BRG received that market, while HBJ received the remainder of the United States. Each agreed not to compete in the other's territories. Such agreements are anticompetitive regardless of whether the parties split a market within which both do business or whether they merely reserve one market for one and another for the other. Thus, the 1980 agreement between HBJ and BRG was unlawful on its face.”

*Palmer v. BRG of Georgia, Inc. (U.S. 1990)*



## Vayatom

**Hypo:** Suppose Vayatom builds nuclear power plants for electric utilities, and suppose it costs \$4 billion to build a staff of engineers and to design and test a new nuclear reactor and plant facility that can be marketed. Vayatom has:

- 85% of the new nuclear plant market worldwide
- 100% of the new nuclear plant market in the USA
- 7% of the new power plant market in the world
- 1% of the new power plant market in the USA

***Does Vayatom have monopoly power?***

*(This is for discussion in class ... There's no pre-prepared answer slide.)*



## Connors Car Care

**Hypo:** In Verdant Valley, a town of 50,000 people that is a three-hour drive from any other town, there is only one provider of car upholstery cleaning services: Connors, which has 238 customers. The closest there is to other firms providing such a service are carpet cleaners that steam clean carpeting installed in homes and other buildings.

***Does Connors have monopoly power?***



## Conners Car Care

### *Does Conners have monopoly power?*

There's good reason to think they don't. Auto upholstery cleaning services appears to be a relevant product market by itself. Carpet cleaners must form a separate market, because carpet cleaning is not reasonably substitutable for auto upholstery cleaning. Verdant Valley is probably a relevant geographical market on its own because you probably wouldn't drive three hours out of town to have upholstery cleaned, and it's implausible that someone is going to drive six hours round-trip to do it for you. The market share in this market is 100%. That's more than sufficient for monopoly power just in terms of market share. But are there any real barriers to entry? It seems like it would be pretty easy for someone to get a equipment to clean auto upholstery. (And maybe the carpet cleaners could easily move into the market.) So it looks like there's no monopoly power here.



## Crates Ahoy

**Hypo:** Crates Ahoy is a long-standing local business on the island of San Nicholas that provides 85% of corrugated cardboard boxes and crating services for the island. And they've done a deal with Roland Realty & Relocation, who has 100% of the real estate agent market and over 50% of the moving market to refuse to deal with box-and-crate sellers looking to move to the island to set up shop. Almost everything on San Nicholas is more expensive, but currently, but family-owned Crates Ahoy prices its boxes at 25% less than competitive market prices on the mainland. Qualified economists estimate Crates Ahoy could, however, raise prices 25% above competitive levels and would be able to sustain this price for a number of years. But Crates Ahoy says they care too much about the island to do such a thing.

### *Does Crates Ahoy have potential legal liability?*

*(This is for discussion in class ... There's no pre-prepared answer slide.)*



### Iron Intensity and HexGym

In Verdant Valley, Iron Intensity was the only gym in town that members of the public could join to use serious weightlifting equipment. Then HexGym opened up.

HexGym opened with an advertising campaign stating that its gym “could make anyone strong enough to lift an M1 Abrams tank within six months.” Iron Intensity lost 10% of its customers. A few months later, HexGym advertised that it “didn’t require a contract” and “members can quit at any time.” Iron Intensity immediately lost 50% of its customers. In actuality, HexGym’s sign up sheet incorporated “terms and conditions,” available on request (though no one requested them), and those said gym access would cease immediately, but monthly fee billing would not stop for three months after a customer request. After a month, half of new HexGym members tried to quit, but when they found out about the terms, 90% decided to stick with it. Then just this week, HexGym started advertising that Iron Intensity’s owner and on-site manager, Melinda Marquez, has tuberculosis and has been infecting gym members.



## Iron Intensity and HexGym

*What can Iron Intensity and Melinda do about HexGym?*

HexGym's advertised statement "could make anyone strong enough to lift an M1 Abrams tank within six months." After which Iron Intensity lost 10% of its customers.

*Can Iron Intensity sue for false advertising under Lanham Act §43(a)?*

*Can Iron Intensity sue under FTC Act §5?*

*Could that act help them at all?*

*What else?*

*(For discussion in class ... There's no pre-prepared answer slide.)*



## Iron Intensity and HexGym

*What can Iron Intensity and Melinda do about HexGym?*

HexGym's advertising a few months later that it "didn't require a contract" and "members can quit at any time," after which Iron Intensity immediately lost 50% of its customers. Yet HexGym's sign up sheet incorporated "terms and conditions" available on request (though no one requested them), saying gym access would cease immediately, but monthly fee billing would not stop for three months after a customer request. And then after a month, when half of new HexGym members tried to quit, 90% decided to stick with it after learning about the terms.

*Can Iron Intensity sue for false advertising under Lanham Act §43(a)?*

*Can Iron Intensity sue under FTC Act §5?*

*Could that act help them at all?*

*What else?*

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