



# State Unfair Competition Statutes

Trademark & Unfair Competition  
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## 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).

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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, once 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 the statute in such a way as to find limits on its reach – limits that aren't explicit in the text.

## A few examples of state unfair competition statutes pled in trademark cases

*FreecycleSunnyvale v. Freecycle Network*, 626 F.3d 509 (9th Cir. 2010): On January 18, 2006, FS filed a declaratory judgment action against TFN ... alleging noninfringement of TFN's trademarks and tortious interference with FS's business relations. TFN brought counterclaims for trademark infringement and unfair competition under the Lanham Act and California Business and Professions Code section 17200.

*Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205 (2000): After sending cease-and-desist letters, Samara brought this action in the United States District Court for the Southern District of New York against Wal-Mart, Judy-Philippine, Kmart, Caldor, Hills, and Goody's for copyright infringement under federal law, consumer fraud and unfair competition under New York law, and – most relevant for our purposes— infringement of unregistered trade dress under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

*Best Cellars, Inc. v. Wine Made Simple, Inc.*, 320 F.Supp.2d 60 (S.D.N.Y. 2003): Best Cellars claims in this action that its stores use a distinctive trade dress protected by law, and that the wine shops operated by defendants are so similar to plaintiff's that they infringe upon the protections provided to Best Cellars (1) against trademark infringement, trade dress infringement and false designation of origin pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (2) against trademark dilution under the Trademark Dilution Act, 15 U.S.C. § 1125(c); and (3) against unfair competition under the laws of the States of New York, California, Arizona, Colorado and Idaho.

*Wallace Intern. Silversmiths, Inc. v. Godinger Silver Art Co., Inc.*, 916 F.2d 76 (2d Cir. 1990): [Wallace learned that Godinger was advertising its 20TH CENTURY BAROQUE silverware eating utensils with a pattern very similar to, and alleged to be a 'knock-off' of, Wallace's GRANDE BAROQUE silverware line.] Wallace filed the complaint in the instant matter stating various federal trademark and state unfair competition claims ... [and] sought a preliminary injunction ...

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