

Study Session 2

BUSINESS AND ELEMENTS OF BUSINESS

Introduction

Dear learners, welcome to session of this module! Under this session you will cover issues related with elements of business, and how business functions. The regulation of unfair business competition, such as the regulation of advertisement. More over this session also tries to cover issues related to dumping in trade. Enjoy attending this session!

Study Session Outline

- I. Business and Elements of Business
- II. Types of Unfair Competition
- III. Trademark and Infringement
- IV. False Advertising
- V. Bait-and-Switch Tactics
- VI. Below-Cost Selling
- VII. Dumping
- VIII. Rumor Mongering

Study Session Duration

This Study Session requires a 2 hours of formal study time.

Learning Outcomes of Study Session 2

After attending this session students will be able to:

- Discuss business formation, and elements a business
- Explain goodwill as an intangible asset in business
- Distinguish trademarks and infringement thereof
- Discuss the fair-trade competition

UNIT 2-Business and Elements of Business

2.1 Elements of Business

Business is an abstract concept that encapsulates elements which in combination are geared towards the objective of profit making. Among the elements of business are good will, trademarks, trade name etc. As Marison describes it business has the following components. (*Marson, & Ferris, 2020*).

Product – a forthright offer, preferably one that solves a specific need and is easily described.

Market – a market for a thing indicates that people require, desire, and obtain it. In a nut shell market can be explained as a point of conjunction where demand and supply side meet.

Money – A means of transaction payed in return top the goods and services received. Many firms fail as a result of a lack of funds and an underestimation of the time required to get their product in front of the appropriate buyers.

People – A firm can possess all three of the aforementioned characteristics and still fail if it lacks individuals that are stubborn, curious, and willing to persist even in the face of difficulty.

Elements of a business from the legal perspective

Good will

Goodwill is an intangible asset of a company/business. One of the most important intangible assets in business is a company's goodwill. A company's goodwill can be attributed to a range of variables, including the *brand name's worth*, the *size of its customer base*, the *quality of its customer relationships*, the *quality of its employee relationships*, and the *proprietary technology it owns*. (*Kalkhoff Company. n.d.*).

Trade Name

Trade names are names given in order to designate businesses or companies. According to *Praninskas, (2017)* there are several types of trade names, and each one serves a certain purpose

in the commercial world. Trade names can also be referred to as fake names, "DBAs," or "D/B/As." You can register your company's fake name or D/B/A (doing business as) in the county where your firm is located. A firm called "Ask Enterprises LLC," which owns a chain of grocery stores called "Super S Stores," is running the stores under a false name.

"*Doing Business As*" is the acronym for "DBA." Trade names and fictional names are both examples of DBAs. People in your neighborhood need to know who owns the companies in your area.

Trademark

Trade mark is any symbol or mark that designates a business or company. For example, the trade marks (symbols) for the products of “*Nike*” “*Adidas*” are common in our daily activities. According to *McGrath, Elias, & Shena*, (1992), you can trademark anything from a word or phrase to a symbol, or even a combination of these items. It's a way for clients to recognize certain business. Both trademarks and service marks are included under the umbrella term "trademark." A trademark is used to identify items, whereas a service mark is reserved for the branding of specific types of goods and services.

Significance of trade marks

- Provides proof of origin for your products and services.
- Gives you legal protection for your company's name and logo.

- Provides you protection from the risk of fabricating/forging and cheating.

Having a trademark does not mean that you can legally restrict others from using a word or phrase that you have trademarked. It's important to understand that you don't own the term or phrase as a whole; rather, you own the use of the term or phrase in connection with your specific products or services alone.

If you utilize a logo for your small woodworking business to identify and distinguish your products or services from those of other woodworkers in the industry, Does that mean you can prevent them from doing the same business?

- Using a similar mark for non-woodworking products or services does not mean you can prevent others from doing the same.

Patents: A patent is a right granted to an inventor by a government. Exclusive use of the patented design or invention is granted to the inventor in exchange for an extended term of full disclosure of the invention. (InfoBase, & Sunburst Visual Media (Firm), 2015)

Dear Learners Can you mention some patented rights in your countries?

Elements of Business? *Ethiopian Legal perspective*

Patent-Defining what a patent is the first step in submitting an invention for a patent. As mentioned above, a patent is a fresh, creative step, and industrially applicable innovation according to the Ethiopian patent law, Minor Inventions, (Proclamation Concerning Inventions, and Industrial Designs Proclamation No. 123/1995). The inventor is entitled to a patent. However, if an innovation is the result of the combined efforts of more than one individual, the patent rights belong to the group as a whole (Schneider, M., & Ferguson, V. (2020).

Copyrights: copyrights inherently belong to the creator of an original work of authorship like a book, song, film or piece of software, and are referred to as "copyrights." The owner of a copyrighted work has the freedom to decide how his or her work is made available to the general public. (Abdo, (2013)

In order to be protected by copyright, a work must meet these three criteria. Those are:

Originality: To be considered original, *a piece of work must have been made on its own. However, there is no way to duplicate it. Unlike patent law, there is no requirement that the work be innovative (as in patent law), unique, inventive, or imaginative. Only a modest quantity of inventiveness is required to meet the standard of originality.* (Abdo, (2013)

A Work of Authorship: According to copyright law, a work must be an original work created by its author(s) and fit into a specific subset of subject matter protected by the law.

Fixed: ‘‘A work must be fixed in a physical medium of expression in order to meet the fixation requirement. The instant a qualified job is completed, it is automatically protected. Because the work is long-lasting or solid enough to allow for reproduction, transmission, or display for more than a brief period, it is regarded to have been fixed.’’ (Abdo, (2013)

‘‘Copyright Index’’ is an internationally recognized copyright institution that provides legal copyright registration in Ethiopia as part of international copyright agreements (Weldegebrial, 2019).

2.2 Unfair trade competition

Traders are required to trade in a fair manner in a way that doesn't affect the interests and rights of another competitor. In order to achieve a competitive edge, a business must not engage in unethical or misleading commercial activities. Concealing the source of a product is a primary tactic used to cheat buyers, while unfair trade practices are a secondary tactic. *Bait-and-switch marketing techniques*, such as switching a cheaper product from a different brand for a more expensive, higher quality product, are some of the most typical kinds of unfair competition.

The following are some of the manifestations of unfair trade competition: (Weldegebrail, 2019).

- *Fraudulently using a competitor's specific formulation or other trade secrets is an example of a breach of confidentiality.*
 - *It's illegal to replicate a product's physical appearance in order to trick a buyer into purchasing it.*
 - *Theft of a trademark.*
 - *Breach of a non-compete or other restrictive agreement.*
 - *Exaggerating a product's capabilities is an example of false portrayal of a service or product.*
 - *Reverse passing off, or misleading the public about the origin of a product by omitting the creator's name.*
 - *This frequently occurs when a business sells a product after removing the mark.*
 - *Substituting a different brand of goods or products for another.*
-
- *Rumor-mongering or trade libel/slander (written or verbal statements that would harm or ruin a company's reputation in the industry).*
 - *To be considered a kind of trade libel/slander, the false statement must have a negative impact on the public's perception of your company or product. Trade defamation is usually a civil matter, but it can become a criminal one in the most egregious circumstances.*
 - *Counterfeiting or copying.*
 - *The practice of selling something at a loss.*

Types of Unfair Competition

Unfair competition is a broad term that encompasses a wide range of behaviors. Among them are:



Trademark Infringement-Trademark infringement happens when one company uses another's trademark without securing permit. Example: Using the Coca-Cola trademark on a soda container manufactured by a rival beverage company would be an example of trademark infringement.

False Advertising-It is illegal for a firm to make uncorroborated claims about a product's ability to effectively cure certain wound, for example, when such claims have never been confirmed.

Unauthorized Substitution-When a seller substitutes one brand of goods for another without permission, it is known as an unauthorized replacement. A cheap product could be substituted for an expensive one. In such cases, buyers aren't getting what they paid for.

Bait-and-Switch Tactics –Are other manifestations of an unfair competitive practice that have negative implications on customers and clients. For example, someone is advertising a highly desirable product at a relatively affordable price. Many flocked to the store to buy the item, only to be told that it was already out of stock. However, buyers may get similar model for only a few dollars extra, and they frequently do so without realizing it.

- Bait and switch is considered a crime in several jurisdictions if the marketed goods were never available in the first place.

Misappropriation of Trade Secrets-One of the most common forms of unfair competition is the theft of a competitor's trade secrets, such as their unique formula.

Below-Cost Selling -Consumers are subjected to "below-cost" sales practices when businesses sell goods and services at a price below their actual costs. Temporary situations like this are sometimes used to snip customers from competitors that are unable or unwilling to compete. When the company selling at a discount improves its market share, the corporation secures the benefits.

Dumping-This is a trade practice where products are sold abroad at a far lower price than they would be if they were sold domestically. Why? Grants and cash incentives are among the many temptations provided by importing countries.

Rumor Mongering-It's the practice of diffusion false rumors about a rival in order to defame them in the media and other channels.

Self-assessment Test Questions

1. What are the main elements of business?

2. What are the 4 main forms of business?
3. How do you define patent or copy right? Trade name and trade mark?
4. What is [un]fair trade competition?
5. Differentiate between partnership and sole proprietorship
6. What is the difference between a patent and copyright?