

# VOLUME I: NUMBER 36: COMPETITION AND FREE ENTRY

*by Rabbi Aron Tendler*

## Question:

Is it permitted to open a store in a neighborhood that already has a similar store, if by doing so a loss of revenue will be caused to the owner of the original store?

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## Answer:

1. It is permitted for a person to open a store across from another store even though it will be selling the same products as the first store. This applies likewise to any service provider, such as a law office, a travel agency, etc. The owner of the store that was there first is not permitted to take any action that is not Halachically permitted to try to put the newcomer out of business.
  2. A store owner is permitted to take steps to attract customers to his store, such as having sales, to offer free gifts to new customers, and to launch a major advertising campaign, even though it is clear that the new customers will come at the expense of the competing store. The reason this is permitted is because the other store owner is capable of doing the same.
  3. It is prohibited for a merchant to try to put his competition out of business by offering goods or services at prices that other merchants are unable to match without going bankrupt. However, if the store is known to cater to a certain element of society that specifically only buys bargains, and the other stores cater to a different clientele, the merchant does not have to be concerned about this.
  4. If the competing stores offer a similar product but are known to have different qualities of the same product, and some people prefer one brand over the other, one need not be concerned that the competition is unable to reduce their prices to match his.
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## Sources:

The Gemara in Bava Basra (21b) states that there is no prohibition of Hasagas Gvul (lit. removing a neighbor's landmark, but understood by our Rabbis to also mean depriving another of their livelihood) to open a store in a neighborhood that already has an existing store selling the same items. Rashi explains that as long as the consumer is not obligated to patronize the second store, the owner of the first store can not accuse him of depriving him of his livelihood, because he can reply "Whomever chooses to come to me may do so, and whomever chooses to come to you may do so!" Although ultimately the consumers may decide to patronize the second store, since it is not clear that this will happen, we can not prevent the second merchant from opening on the basis that he is indirectly damaging his competition.

Although this ruling is not so simple regarding free entry for foreign competition, this would only be a problem if the foreign competition were not paying local taxes. In this situation, the local merchants would be permitted to argue that it is unfair that the out of town merchant benefit from the local infrastructure without paying taxes. However, in most societies today out of town merchants also pay local taxes, and the local merchants could not prevent him from opening his store on this basis. This is stated in the Shulchan Oruch (Choshen Mishpat 156:5), and is also discussed in the Pischei Teshuva there (3).

However, if it is clear that the customers will now only patronize the new store, we prevent the second store from opening based on the fact that he is indirectly damaging the competing merchant (Garmi). This is stated by the Teshuvos HaRema in the name of the Aviasaf, and is quoted by the Chassam Sofer (Choshen Mishpat 79), and in the Igros Moshe (Choshen Mishpat Vol. 2 , Siman 31). Therefore, we do not allow a merchant to put his competition out of business by lowering his prices to the extent that it is not feasible for the competition to remain in business. However, if he wishes to slash the prices in a manner that others can compete with if they wished, thus ultimately benefitting the consumer, "May he be blessed!", as is stated by the Chachamim in the Mishna in Bava Metzia 4:12.

Feedback is appreciated! It can be sent to [atendler@torah.org](mailto:atendler@torah.org).

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This week's class is based on a column by Rabbi Tzvi Shpitz, who is an Av Bais Din and Rosh Kollel in the Ramot neighborhood of Jerusalem. His Column originally appears in Hebrew in Toda'ah, a weekly publication in Jerusalem. It has been translated and reprinted here with his permission and approval.

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***Please Note:*** The purpose of this column is to make people aware of Choshen Mishpat situations that can arise at any time, and the Halachic concepts that may be used to resolve them. Each individual situation must be resolved by an objective, competent Bais Din (or Rabbinic Arbitrator) in the presence of all parties involved!