

BUSINESS COMPETITION BETWEEN INDIVIDUALS: WHEN IS IT PROPER? PART I

by Rabbi Doniel Neustadt

The following is a discussion of Halachic topics related to the Parsha of the week. For final rulings, consult your Rav.

There he established a decree and an ordinance (14:25)

In Mara they were given the rules of civil law... (Rashi)

QUESTION: How does the Halachah view an insurance or travel agent who tries to wrest away an established client from another Jewish agent? Is it proper for a Judaica store owner, a wig stylist or a kosher caterer to recruit the established clients of his Jewish competitor?

Many poskim maintain that it is prohibited to actively pursue a client or a customer, Jewish or non-Jewish, if the client has developed an ongoing business relationship with a competitor. The classic case quoted in Rama (1) is that of a medieval tailor who for many years had an exclusive account with a local non-Jew. When another Jewish tailor actively sought the non-Jew's business, the dispute between the two tailors was brought before the Rashba. The Rashba ruled that the second tailor was acting improperly and that the account should remain the exclusive right of the first tailor. The Rashba explains that his ruling is based on the following halachic concept: The long-term business relationship and apparent commitment between the tailor and his client gives the tailor a certain sense of *semichus da'as*, a well-founded assumption and expectation that this particular account is his. Even though there was no explicit verbal or contractual agreement between them regarding future business, still it was clearly understood that he will continue to be the tailor for this non-Jew. No other Jew is allowed, therefore, to infringe on that existing relationship and understanding, and one who does so is acting improperly and should be censured (2).

Nevertheless, rules the Rashba, if by the time *bais din* was notified, the second tailor had already succeeded in wresting the account away from the first tailor, *bais din* is powerless to force him to relinquish it, since in a very literal sense, the second tailor did not actually take something which is

not his. Technically speaking, the account was not sealed and delivered and, therefore, it was open to bidding from competition. [This is especially true when dealing with a non-Jewish customer, since more often than not, non-Jews do not have a sense of loyalty towards their Jewish tradesmen and will readily drop one business relationship in favor of another (3).]

Indeed, the Rama quotes opinions who disagree with the Rashba altogether and permit--or at the very least, do not object to-- the second tailor's actively pursuing any account that he can, regardless of any long-term relationship his competitor may have had with an existing account (4).

In the years since the Rashba's ruling, various customs evolved in European communities in regard to this issue. Some communities strictly forbade their members from pursuing each other's steady business accounts, going so far as to invalidate such contracts and returning the accounts to the original vendor or tradesman (5). Other communities prohibited such dealings but did not invalidate them if they already transpired, while yet others allowed such competition and did not restrict it in any way (6).

Although today a clear-cut custom does not exist, the opinion of the majority of the poksim (7) is to follow the middle-of-the-road ruling of the Rashba, which is to prohibit and discourage this type of competition whenever possible (8), but not to invalidate a business deal once it has been transacted.

Based on the above, the answer to our original question concerning the insurance or travel agent, Judaica store owner, wig stylist and caterer should be very clear: If a Jewish vendor or tradesman has a long-term (9) steady customer with whom he assumes and expects to continue doing business, another Jew is not allowed to lure that customer away. If, however, the competitor was ignorant of--or disregarded--this rule and was successful in collaring the account, he cannot be forced to give it up, nor is one allowed to refer to him as a rasha, a wicked person.

There are, however, two very important considerations which may drastically affect the halachah in several of the cases mentioned above.

It is obvious that one is restricted from soliciting another person's steady business only if all other competitors will also restrict themselves from soliciting established accounts. If, however, the particular business field is full of non-Jewish or non-observant salesmen who will not restrict their customer-baiting activities, then the restriction is lifted (10).

The insurance field, for instance, is filled with agents who are constantly attempting to lure established accounts from other agents or agencies. This is a legal procedure and considered normal business practice. There is no restriction, therefore, on an observant Jewish agent soliciting business from another agent's established accounts, since, as explained, even if he will not solicit the account, others surely will. There is no requirement for the observant agent to place himself at a disadvantage.

The halachah is different, however, in regard to Judaica store owners, wig stylists or kosher caterers.

These types of businesses are generally run by observant Jews who follow the dictates of the halachah. Consequently, when a particular vendor regularly assumes and expects that a steady long-term account will remain his for the foreseeable future, one may not pursue that account.

In the final analysis, therefore, there is no blanket answer. The halachah will depend on the type of business and on the general business climate in that particular field. If--as is the case in many service-type of businesses--customers are generally not pursued by others in the field and are usually loyal to their service provider, then the observant businessman may not chase after their business. On the other hand, a type of business where competition is the norm (e.g., commission-based businesses), is unrestricted to the observant businessman.

Another important point to remember is that the restriction applies only to a competitor soliciting or enticing a client to buy his product over his competition's. It is permitted, however, for the client or customer to solicit a different provider or agent, even though he has been doing steady business with a particular concern business for a long period of time (11).

NOTE: *As in all matters of halachah, one should consult a rav before deciding how to approach a questionable situation. Especially in regard to business related issues, where it is almost impossible for one to be completely objective as it is his livelihood which is at stake, the halachic perspective of a competent authority is imperative.*

FOOTNOTES

1 C.M. 156:5, based on Teshuvos Rashba 6:259

2 Rashba offers two Talmudical sources for this ruling:

- a) Bava Basra 21a, concerning fish which were almost netted by a fisherman and then swept away at the last moment by a competing fisherman;
- b) Gitin 30a, concerning the laws of Makirei kehunah, which give a kohen the right to claim his steady stipend from the yisrael because of the assumption that they are his, based on their long-term relationship.

3 Indeed, some poskim are of the opinion that the Rashba's ruling applied only to competitors pursuing a non-Jew's business, as in the case of the two tailors. If the tailors were competing for a Jewish customer, the first tailor would have an even stronger case, since Jewish customers have a

greater degree of loyalty and commitment to their service providers, tradesmen, etc., and the first tailor would have had a firmer assumption that the account would remain his--Chasam Sofer C.M. 79; Beis Efrayim 29; M'harsham 1:151; See Seridei Eish 3:66 for a different approach.

4 The logic behind this view may be explained in one of two ways:

- a) Semichus da'as, assumptions and expectations, are not legally nor halachically binding (Beur ha-Gra C.M. 156:5; Aruch ha-Shulchan C.M. 156:);
- b) In a fiercely competitive business world, there are no assumptions and expectations since the threat of competition is always present (Teshuvos Mahrshal 36).

5 Teshuvos Mahrshal 36 as explained in Ma'asas Binyamin 27 and Chasam Sofer C.M. 61.

6 The various views are quoted in Rama and Be'er Heitev ibid. See also Teshuvos Chavos Yair 42.

7 Chasam Sofer C.M. 61.; Beis Efrayim 27; Yeshuos Malko C.M. 19; M'haril Diskin (pesakim 1); Minchs Yitzchak 2:94; 3:127. See also Shulchan Aruch Harav (Hasagas Gevul 13) that a G-d fearing person should be stringent in this.

8 Even if the competitor is offering the potential client a lower price, still he may not pursue a client who "belongs" to his competitor--Teshuvos Lechem Rav 216. See also Teshuvos Beis Shelomo Y.D. 19.

9 The exact length of the relationship is not clearly defined, although some poskim suggest three years (or three deals) as a rule of thumb, see Chavos Yair 42.

10 See Teshuvos Kol Aryeh 135 and Yeshuos Malko C.M. 19 for an explanation of this issue.

11 Sma C.M. 386:

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