

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

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: Is it permissible to open a competing store or business in the same vicinity as an existing establishment owned by another Jew?

DISCUSSION: When dealing with the delicate issue of competition, Jewish law takes into account both the consumer and the proprietor. For the consumer's protection, the law encourages fair competition to keep the prices down and to ensure a plentiful supply of high quality goods. To protect the proprietor, the halachah prohibits unfair business practices and puts limits on competitors who would wish - in halachic terms - to "enter their boundary." The following is a general description of the halachos governing competition. In reality, however, each situation is unique. When a dispute arises, it must be brought before a local beis din for resolution.

THE BASIC HALACHAH

Any local resident⁽¹⁾ may open a competing store or business, even if the two establishments are next-door to each other and the new one will cut into the old one's profits⁽²⁾. The competing business may lower its prices or advertise in order to lure customers away from the existing business⁽³⁾. If a customer, however, has already entered a competitor's store, one is not allowed to lure him to his own establishment⁽⁴⁾.

Although it is permitted to compete this way⁽⁵⁾, some poskim⁽⁶⁾ mention that it is middas chasidus (act of piety) not to ruin another person's livelihood even when it is permitted according to the basic halachah. In larger cities and in growing neighborhoods, however, it is not middas chasidus to refrain from opening a competing business when there is room for both businesses to prosper⁽⁷⁾.

A non-resident may not compete with an existing business(8). There are several exceptions to this rule:

If the non-resident's competition will result in prices being lowered or in superior products being provided to the local populace, competition is allowed(9).

Wholesale and mail order businesses, or any business which does not serve the local population exclusively but attracts customers from afar, may compete anywhere(10).

If beis din has no control over the situation and the field is rife with competition, then all competition is permitted(11).

LIMITATION TO THE BASIC HALACHAH

There is an important restriction that pertains to the basic halachah outlined above, which allows competition between local residents [or non-residents, when they are allowed to compete]:

A competitor may only open a store or a business if he will not cause the existing business to go under. If opening a second store, however, would result in putting the established store out of business, then the second store may not open its doors(12). Even if the owner of the existing store has another business that could support him, and even if he is independently wealthy, it is still prohibited to compete against him if it would force this particular business of his to shut down completely(13). This is the consensus of the majority of the poskim(14), and beis din is empowered to censure any business person who does not adhere to this ruling.

If, however, the new store is offering better prices, better service or more of a selection, etc., then most poskim allow the second store to open its doors. They maintain that the uppermost concern is the welfare of the consumer and time will tell which of the stores will survive(15). A minority opinion in the poskim, however, puts the welfare of the vendors first and prohibits the opening of the second store even though the public would have benefited from the new store(16).

Practically speaking, therefore, a final decision on this issue would depend on the circumstances. If opening the new store will truly and unquestionably benefit the local population, then we can not and may not object to the opening of the new store(17). But sometimes the benefit to the local population is not very real or very clear, and in such cases it may be strictly forbidden to open a store or a business that will result in the closing of an existing establishment. Since it is almost impossible for one to be objective about such a decision, a beis din must be consulted.

All poskim agree, however, that in the following cases, it is prohibited for a competing store owner to open a business - even if he offers better prices and better service - if it will result in forcing out the existing establishment:

If the intent of the competing store owner is to exact revenge, etc.

If the intent of the competing store owner is to shut down the existing business and then, when the

competition is gone, to raise his prices. This is prohibited since in the long-run the public good will not be served.

The competing store may undercut the existing business only by using methods which are considered normal and legal business practices, such as buying in bulk or cutting operating costs, etc. The competition may not use illegal, unethical or reckless methods in order to offer cheaper prices and thus force the existing store out of business(18).

FOOTNOTES

1. A local resident is anyone who lives in the area or who pays taxes to the local municipality in which the store is located.
2. C.M. 156:5, based on Bava Basra 21a.
3. C.M. 228:18.
4. Chasam Sofer C.M. 79; Pischei Teshuvah C.M. 237:3. Several contemporary authorities debate if it is prohibited for a taxi or a car service to pass by a Jewish-owned bus stop in order to solicit passengers, see Pischei Choshen, Geneiva, pg. 272; Even ha-Mishpat, pg. 460; Maishiv B'halachah, vol. 17, pg. 13; Kol ha-Torah, vol. 43, for a full discussion of the various cases and opinions.
5. Even l'chatchilah - Chasam Sofer C.M. 61.
6. Shulchan Aruch Harav (Hasogas Gevul 13) based on Rambam Hilchos Dayos 5:13. See also Teshuvos M'haram m'Rottenburg 677.
7. See Chelkas Yaakov 2:65 and Pischei Choshen (Geneiva, pg. 262). Note that concerning all of these halachos, there is no difference if the competitor is an observant or a non-observant Jew - Ksav Sofer C.M. 20.
8. C.M. 156:7, Sma 20, and Pischei Teshuvah 9.
9. Rama C.M. 156:7 and Aruch ha-Shulchan 11.
10. C.M. 156:7.
11. M'harshdam C.M. 407 and 451; Bais Efrayim C.M. 27; Divrei Chaim C.M. 1:18.
12. Teshuvos Rama 10 based on the view of Aviasaf; Chasam Sofer C.M. 61 and 118 and many other poskim, quoted in Pischei Teshuvah C.M. 156:3; Igros Moshe C.M. 2:31. [Note that whenever competition is clearly prohibited, it is also prohibited for anyone to patronize that establishment.]

13. Chasam Sofer, *ibid.*; Igros Moshe C.M. 1:38 (see also C.M. 2:40-2) concerning a case in which members of a shul broke off from an existing shul and established their own minyan. This action proved disastrous to the livelihood of the rav of the existing shul and radically lowered his shul's property value. Harav Feinstein ruled that it was forbidden for anyone to establish another shul in the same neighborhood, even if their reason for breaking away was because of a difference in nusach or style of davening, and even if they disliked the practices of the present rav.
14. It remains unclear if there is even a minority view which opposes this ruling. [See Chelkas Yaakov 2:65; Piskei Din Rabbaniym, vol. 4, pg. 9; vol. 8, pg. 82, and Yashiv Moshe, pg. 228, quoting Harav S.Y. Elyashiv.]
15. See Teshuvos Lechem Rav 216; Beis Efrayim C.M. 27; Teshuvos Parashas Mordechai C.M. 67 and many other poskim quoted in Even ha-Mishpat, pg. 450.
16. This seems to be the view of the Chasam Sofer C.M. 79, quoted in Pischei Tesuvah 156:8. It is possible that this is the view of Teshuvos Rama 10 as well. See also Teshuvos Ma'amar Mordchai 10 who rules this way.
17. Indeed, in the opinion of some poskim, we should encourage the opening of such a store.
18. Teshuvos Chasam Sofer C.M. 79; Aruch ha-Shulchan 156:11. See also Pischei Choshen (Geneiva, pg. 270-272) quoting from Divrei Chaim 1:19 and Maharam Shick 20

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