

EXHIBIT 17

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HISTORICAL ORIGINS

[2:1] **Introduction:** Today, California's Unfair Competition Law (Bus. & Prof.C. §17200 et seq.) ("UCL") stands as a sprawling oak. But it was not always so. It grew from the acorn of common law trademark and trade name infringement law as it had developed early last century. Subsequent legislative amendments to the original statute have substantially broadened the scope of §17200, but its transformation into California's most sweeping consumer protection law has occurred largely through court-developed doctrine and interpretation.

A. EARLY COMMON LAW OF UNFAIR COMPETITION

1. [2:2] **Business Competitors:** At common law, a business competitor adversely affected by trademark or trade name infringement could file suit for unfair competition. The common law claim of "unfair competition" was an equitable doctrine that protected against the inequitable pirating of the fruits of another's labor, and then either "palming off" those benefits as one's own or gaining unearned economic benefit from them. [*KGB, Inc. v. Giannoulas* (1980) 104 CA3d 844, 850, 164 CR 571, 578] It afforded primarily injunctive relief to stop the unfair or deceptive use of a title, trade name, or trade design so similar to the one owned by the plaintiff as to be confusing to consumers.

In those days, business competitors found it hard to sue. To prevail, a plaintiff had to prove that it was in actual competition with the defendant and that the defendant passed off the goods with fraudulent intent. [See *American Auto Ass'n v. American Auto Owners Ass'n* (1932) 216 C 125, 142, 13 P2d 707, 714; *Yellow Cab Co. of San Diego v. Sachs* (1923) 191 C 238, 242-243, 216 P 33, 34-35; *Dunston v. Los Angeles Van Storage Co.* (1913) 165 C 89, 94, 131 P 115, 117] Furthermore, the common law cause of action traditionally required public deception or confusion and, in some cases, that the name or design has acquired a "secondary meaning," i.e., that the public has come to identify the name or design with the goods or services of the plaintiff. [*Lutz v. DeLaurentiis* (1989) 211 CA3d 1317, 1322, 260 CR 106, 108-09; *Tomlin v. Walt Disney Prods.* (1971) 18 CA3d 226, 235, 96 CR 118, 123]

2. [2:3] **Consumers:** At common law, deceived consumers had no claim for unfair competition. This made little sense, since ultimately it is the consumer who is harmed by a business that passes off goods or services as genuine, or as those of another. Ask someone who has mistakenly bought a Rolex watch, thinking it to be genuine, if he or she feels cheated. No matter; consumers were left without a claim or remedy. This was the era of