

Stealing a Manufacturing Idea From a Competitor

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Case: I got wind of the fact that a competitor of mine is producing a new product and planning to bring it to the market, yet he does not have a copyright on the product. I heard that he plans on selling the new product for \$10 per piece. With my connections in China, I know that I can produce the same item and sell it for \$8 per piece.

Question: Am I allowed to do that?

Answer: That is a fascinating question because we have discussed two halachic concepts that would not apply in this case, which may lead one to believe this is permitted.

1. The concept of *ani mehapech becharara* means that one may not undercut another seller who is in negotiations with a buyer and close to making a deal by offering a lower price. This would not apply here because the competitor is still in the production stage and is not close to making a deal yet with any potential buyers.
2. The concept of *marufia* means that one may not steal a steady customer from a competitor. That would also not apply here because the competitor is still in the production stage and does not have any steady customers yet. However, there are two cases in the Gemara that may possibly be grounds to forbid this case in question. There is the case of the fisherman who set up nets in a specific area, where the Gemara says that another fisherman may not encroach on "his" area and set up his own nets because the first fisherman already set his sights on those fish. Since the first man already expended time, effort and possibly money on this prospect of profit, the fish are already considered as if they belong to him, to some extent, and one is not allowed to take them away from him.

Another Gemara discusses a case where a poor man is knocking fruits of *peah* off a tree with a stick. He has already knocked the fruits to the ground, but has not yet picked them up to obtain ownership. The Gemara says that if anyone else picks up the fruit from the ground and takes them for himself, that would be *gezel d'rabbanan*, (a Rabbinically decreed theft). Since the first man exerted time and effort to knock down the fruits from the branches, they are already considered to be "in his sights", and anyone who grabs them away from him is considered a thief.

The basis to prohibit the case in question would be whether the fact that the competitor expended time, effort and money on producing this product makes it akin to the stories of the fisherman and the man knocking fruits of the tree, which would forbid you from undercutting him and taking away the profits he is expecting.

I would suggest that it may depend on why the competitor doesn't have a copyright. If he simply hasn't completed the process of acquiring the patent yet, I would say that he is comparable to the fisherman and the man knocking fruits of the tree, and one who undercuts him would be deemed a *rasha*.

On the other hand, there are some products that simply cannot be

copyrighted. For example, the person who innovated the idea of square plates as opposed to round plates could never copyright his product, as it is only a slight modification of an existing item and is not really a brand new idea. Therefore, it cannot be said that he "owns" this idea and it would seem that it would be permitted to produce a similar product and sell it for less, as long as there is a large enough market for there to be business for both of you.