

Editor's Introduction to the 2026-2027 edition

Corporate Counsel's Guide to Unfair Competition provides the tools necessary to develop and monitor an antitrust compliance program. This practical title offers an overview of relevant antitrust statutes, guidelines on implementation, advice on how to assess and monitor compliance programs, and time-saving guidelines and forms.

Highlights to the 2026-2027 edition include:

- **Expanded discussion of false designation of origin and pleading requirements under Lanham Act § 43(a)(1)(A), including *Deltona Transformer Corp. v. NOCO Co.*, 2026 WL 2236806 (11th Cir. 2026)**, where the court held that allegations of unfair competition and false designation of origin did not adequately plead a separate false-advertising claim. The court further held that the defendant did not impliedly consent to trying an unpleaded false-advertising theory where the evidence introduced was equally relevant to the pleaded false-designation claim. (§ 3:22)
- **New caselaw on the enforceability of customer nonsolicitation and noncompetition agreements, including *C.H. Robinson Worldwide, Inc. v. Traffic Tech, Inc.*, 161 F.4th 1101 (8th Cir. 2025)**, where the court held that a restrictive covenant prohibiting former employees from doing business with any current or potential business partner was overbroad and unenforceable under Minnesota law because it extended far beyond protection of customer relationships and effectively restricted participation throughout the industry. (§ 6:29)
- **Additional discussion of restrictive covenants and partial enforcement, including *Premium Productions, Inc. v. O'Malley*, 246 A.D.3d 948 (N.Y. App. Div. 2026)**, where the court held that although nonsolicitation and noncompetition covenants appeared overbroad in scope, duration, and geographic reach, dismissal at the pleading stage was improper because the record was insufficiently developed to determine whether partial enforcement was appropriate. (§ 6:29)
- **New guidance on customer nonsolicitation restrictions under Georgia's Restrictive Covenants Act, including *Falcon Ridge, Inc. v. Leon*, 376 Ga. App. 554 (2025)**, where the court held that a customer nonsolici-

tation covenant was not unenforceable merely because it lacked a geographic limitation, as Georgia law expressly permits customer nonsolicitation provisions without territorial restrictions in certain circumstances. (§ 6:29)

- **Expanded discussion of copyright infringement and substantial similarity, including *Lego A/S v. Zuru Inc.*, 827 F. Supp. 3d 313 (D. Conn. 2026)**, where the court held that most aspects of LEGO's Minifigure design were not functional because alternative designs could achieve the same movement and compatibility. After filtering out the few utilitarian attachment features, the court concluded that Zuru had appropriated the protected total concept and overall feel of the Minifigure figurine. (§ 11:10)
- **New caselaw on trade dress functionality and the relationship between trade dress and utility patents, including *Whoop, Inc. v. Shenzhen Lexqi Electronic Technology Co., Ltd.*, 818 F. Supp. 3d 207 (D. Mass. 2026)**, where the court found that Whoop's wearable-device trade dress was likely nonfunctional despite certain design elements appearing in a utility patent. The court concluded that the claimed features were ornamental aspects of the product design rather than the patent's central inventive advance and therefore did not trigger a presumption of functionality. (§ 11:10)
- **New discussion of Lanham Act genuineness and gray-market pharmaceuticals, including *Gilead Sciences, Inc. v. Meritain Health, Inc.*, 2026 WL 2357415 (4th Cir. 2026)**, where the court held that imported foreign-market versions of Gilead medications were not genuine goods because differences in labeling, warnings, patient information, regulatory disclosures, and identifying information were material and likely to affect consumer purchasing decisions, even though the medications were chemically identical to their U.S.-market counterparts. (§ 15:5)