

# *Litigation As A Sword or Shield*

## *Tactical Reasons for Filing Lawsuits*

Lawsuits are one of the weapons that companies have in their arsenal to protect their business from competitors. For example, a lawsuit can be filed against a competitor to stop them from infringing on a company's existing patents.

Whether the litigation is a sword or a shield depends on the intention of the party filing suit. If a competitor is developing a product that infringes on the company's patent, then the litigation is used as a shield to protect the company's valuable business asset. However, if a competitor's new product has the potential of making the company's existing product obsolete, then litigation is used as a sword to attack before the competing product can go to market or garner market share.

When litigation is used as a sword in business, the purpose is to either delay the introduction of the new product into the marketplace (so your company has time to create and market a competing product), to distract the competitor from focusing on another market opportunity that they are just beginning to look into, or to drain the competitor of its financial resources to be competitive in the marketplace. If the competitor is too busy defending the lawsuit, it will not be able to focus on its core business and make money. A company with limited resources facing litigation has the unpleasant choice of either spending the money to develop the product and take it to the market (in which case they will lose the lawsuit), or they can spend the money litigating (in which case their business will go under because they did not have the funds to develop and get their product to market). In either case the competitor loses.

To avoid the forced closure of their business, the competitor will try to negotiate a settlement that will allow them to survive or to get something for their efforts. Possible concessions and scenarios include entering into

joint marketing and distribution that will allow companies to take advantage of each other's expertise; changing the product's design to make it indistinguishable from existing products in the market; and licensing agreements to share technology.

Whether you are planning to file a lawsuit against a competitor or are forced to defend against one, the choices that you make will have seen and unforeseen consequences. As an officer of your business, it is important for you to understand why the lawsuit is being filed and the possible outcomes.

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