

Antitrust and Unfair Competition Alert

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Opponents of Resale Price Maintenance Decision Propose Legislative Response

Opponents of the U.S. Supreme Court's landmark 2007 ruling making minimum resale price maintenance agreements not automatically illegal are organizing and proposing a federal legislative response to negate the decision.

The ruling led manufacturers nationwide to implement RPM agreements prohibiting discounting by resellers, because it is now more difficult and costly to challenge them. Such agreements, however, may still be found to violate federal antitrust law after a case-specific analysis. Also, although states typically follow the lead of federal antitrust law, a number of states have expressed disagreement with the result. Accordingly, such agreements may still be automatically illegal under certain states' antitrust laws. They also remain illegal in many other countries.

Now added to the uncertainty in this area of the law is proposed legislation that would return the federal law to its state prior to the 2007 ruling.

The proposed legislation, entitled the Discount Pricing Consumer Protection Act, reportedly has the support of the attorneys general from 35 states, including Pennsylvania, New York, California and Massachusetts. Its supporters also include representatives of eBay Inc., Costco Wholesale Corp., online retailers and consumer groups, as well as Federal Trade Commissioner Pamela Jones Harbour. It is expected to be considered in the U.S. Senate in the spring of 2009.

Stevens & Lee is monitoring the bill.

If you wish to discuss this development or your antitrust or unfair competition issues, please contact Neil C. Schur at (215) 751-1944 or ncsc@stevenslee.com or Joe Wolfson at (610) 205-6019 or jwo@stevenslee.com.

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