



Consumer Federation of America

1620 I Street, N.W., Suite 200 * Washington, DC 20006

U.S. PIRG

June 8, 2010

Senator Harry Reid, Majority Leader
United States Senate
528 Hart Senate Office Building
Washington, D.C. 20510

Re: The Need to Enact S. 148, the “Discount Pricing Consumer Protection Act,” to Reverse the Supreme Court Decision in *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S.877 (2007)

We represent the nation’s leading consumer groups: Consumer Federation of America, Consumers Union, U.S. PIRG, and the National Consumers League.¹ We are writing to express our strong desire for S. 148, the “Discount Pricing Consumer Protection Act,” Senator Kohl’s bill to overturn the Supreme Court’s *Leegin* decision and restore robust price competition to markets for consumer goods.

Consumers enjoy a wide range of retail options, including independent and chain stores, department stores, discounters, and, more recently, online retailers. For the past century, this diverse set of retailers has competed head-on for consumers’ business by offering a unique combination of price, service and convenience. Consumers know what they want, and in a truly competitive environment, they are likely to find it.

Manufacturers seeking to artificially inflate prices have for years may attempt to set price floors through “resale price maintenance,” policies that prevent retailers from selling their goods below a certain price. Until 2007, however this practice was *per se* illegal – the courts recognized that resale price maintenance (RPM), also known as vertical price fixing, had no procompetitive benefits and certainly did not benefit consumers.

In 2007, though, the Supreme Court ruled in *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* that RPM is not necessarily illegal, and a “rule of reason” should instead be applied in order to determine if the effects of a manufacturer’s RPM policy are anticompetitive.

The *Leegin* decision has made it possible for manufacturers to set price floors and prevent retailers from cutting their prices too deeply. The potential harm to consumers is alarming: in the 1960s, when some states allowed vertical price fixing while others did not, the Department of Justice was able to compare prices between these states. They found that prices were between 19% and 27% higher in those states that allowed RPM. This gave Congress the evidence it needed to ban vertical price fixing nationwide in 1975 by repealing the exemption that had allowed certain states to permit RPM.

Based on the Department of Justice's calculations, Justice Breyer in his *Leegin* dissent calculated the impact on consumers from RPM. He wrote that an environment where RPM is *not* presumptively illegal would increase the average American family of four's retail bills by \$750 to \$1000 annually. Even this is a conservative estimate, and we urge Congress to take action to prevent such an outcome.

Vertical price fixing can have far reaching effects on the American economy. Manufacturers' RPM policies can prevent an innovative new business from thriving simply because they have no way to pass on their efficiencies to customers in the form of lower prices. This narrows the range of choices American consumers have and stifles economic growth.

American consumers value the freedom to make informed purchasing decisions based on price, quality and convenience. The Senate should pass Senator Kohl's bill, the "Discount Pricing Consumer Protection Act," to ensure that manufacturers do not artificially inflate prices and take away consumers' ability to make that choice.

Signed,

Consumer Federation of America

Consumers Union

National Consumers League

U.S. PIRG

ⁱ About our organizations:

The Consumer Federation of America (CFA) is composed of over 280 state and local affiliates representing consumer, senior, citizen, low-income, labor, farm, public power and cooperative organizations, with more than 50 million individual members. CFA represents consumer interests before federal and state regulatory and legislative agencies, participates in court proceedings and conducts research and public education.

Consumers Union is the independent, non-profit publisher of *Consumer Reports*.

Founded in 1899, the National Consumers League is America's pioneer consumer organization. Its mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad. NCL is a private, nonprofit membership organization. For more information, visit www.nclnet.org

U.S. PIRG, the federation of state Public Interest Research Groups (PIRGs), stands up to powerful special interests on behalf of the American public, working to win concrete results for our health and well-being. With a strong network of researchers, advocates, organizers and students in state capitols across the country, we take on the special interests on issues, such as product safety, political corruption, prescription drugs and voting rights, where these interests stand in the way of reform and progress