



Consumer Federation of America

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CONSUMER FEDERATION OF AMERICA FILES SUPREME COURT BRIEF TO STOP INDUSTRY EFFORTS TO INCREASE CONSUMER PRICES AND UNDERMINE RETAIL COMPETITION

A Wrong Decision by the Supreme Court Could Curtail the Incredible Consumer Benefits of the Internet

Washington, D.C., February 27, 2007 – The Consumer Federation of America (CFA) yesterday filed an *amicus* brief in a critically important consumer case in the Supreme Court¹ that, if wrongly decided, could dramatically raise consumer prices and undermine important innovations in retailing.

Dr. Mark Cooper, CFA's Director of Research, issued the following statement explaining why this case is important to consumers:

In this case, a manufacturer of luxury goods is asking the Supreme Court to overturn the ban on retail price maintenance (RPM). This ban prevents manufacturers from setting minimum prices and allows discounters to offer products to the public at whatever price they choose. RPM has been illegal under the antitrust laws for over a century. The result has been to foster innovation and discounting in marketing and distribution. When employed, RPM prevents consumers from "shopping around" for the best price because it prevents retailers from putting on sale any and all types of products, including not only large purchases, but also everyday purchases—from groceries to gasoline. Because of this rule, consumers have saved hundreds of billions of dollars over the years, while the retailing industry has progressed from small shops to department stores to discount warehouses to, most recently, Internet distribution.

Decades ago, America experimented with "fair trade" laws, which legalized RPM for a time. These laws invariably led to anticompetitive practices and raised prices. Over 30 years ago, Congress adopted legislation to ban this practice in order to combat inflation and provide lower prices for consumers. Now, manufacturers are asking the courts to overturn the clear will of Congress based on bogus economic theories that have been thoroughly discredited in both the academic literature and in real world markets.

The Appeals Court saw through the arguments of the manufacturers and rejected them. The Supreme Court should do the same. There are no constitutional, legal or economic grounds for the Supreme Court to ignore the express will of Congress at the expense of the American consumer.

This case is a dagger aimed at the heart of the most consumer-friendly aspects of the Internet. The Internet has shifted power to the consumer in two ways. First, it allows consumers to search for and gather information in a cost-effective, efficient manner. Second, it provides a low-cost means of retailing, making it easy for discounters to offer products to the public. This combination squeezes excess profits and inefficiencies out of product prices. Retail price maintenance is a last ditch effort by big business to short circuit this extremely consumer friendly process. By setting minimum prices, manufacturers can build in excess margins for themselves and for their favored retailers – prices that consumers have no choice but to pay.

Consumer Federation of America (CFA) is a non-profit association of 300 consumer groups, with a combined membership of more than 50 million people. CFA was founded in 1968 to advance the consumer's interest through advocacy, research and education.

¹ Leegin Creative Leather Products, Inc. v. PSKS, Inc, d/b/a Kay's Kloset, No. 06-480.