



About Jay Landrum

Jay Landrum is a member of Silicon Valley Law Group's Corporate & Securities and Intellectual Property Groups. As former General Counsel for a NYSE company and as a former CEO of a health products company, he has extensive experience representing companies in all stages of operation, including organizational matters, licensing, strategic relationship agreements, fund-raising, and merger transactions.

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THEY CAN'T TELL ME WHAT TO DO! (can they?)

*There is no victory at bargain basement prices.
-- Dwight D. Eisenhower*

You buy a car seat for your baby from a store for \$310, then only too late, find it online for \$229. Now, you feel a bit taken advantage of. You wore your expensive designer label jeans into a discount store, where they are on sale for much cheaper than you paid, and they suddenly don't feel so cool and trendy.

Manufacturers have often tried preserving their brands from the tarnish that discount prices can bring. But since 1911, manufacturers who punished retailers for price discounting often found themselves in automatic violation of antitrust laws.

However, last year, a Supreme Court ruling upended the law, and changed the face of discount retailing, when they allowed manufacturers to dictate minimum prices. Since then, manufacturers have taken the gloves off, and are now enforcing minimum prices -- and not all retailers are objecting. In fact, knowing they won't be undercut, many retailers are more willing to increase their marketing on those protected goods.

Critics say that minimum price policies, known as "minimum price maintenance," will only serve as fuel to inflation and increase consumer costs. Supporters say the policies prevent low-price discounters from getting a "free ride" from another company's efforts, since the rival company may likely have to charge higher prices to offset costs of marketing and promotion. Supporters also say it keeps customers from feeling "cheated" because they paid more.

It's still illegal for a group of manufacturers or retailers to fix prices - the Court's decision was focused more narrowly on a manufacturer's right

to independently fix minimum prices on its own products.

Further, even with the Supreme Court's decision, pricing policies are still examined on a case-by-case basis, using a "rule of reason" test, where the fact-finder weighs all the circumstances. So, manufacturers seeking to set minimum prices still need to work within the guidelines of this law to ensure compliance.

Retailers also need to be aware of their rights and risks. A lower court, interpreting this change in the law, acknowledged the possibility that a dominant retailer could still be in violation of antitrust laws by abusing a pricing policy in a way that was anticompetitive.

Whether you're a manufacturer or a retailer, you should know what you can and cannot do under these new decisions, or the next price you will have to deal with is the "price of your education."

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