

Comments by Phil Smith, Kay's Kloset
The American Antitrust Institute Press Conference
Price Fixing in the Retail Industry
National Press Club
529 14th Street NW, Washington, D.C.
The First Amendment Lounge (13th Floor)

Good morning. My name is Phil Smith. I am the owner of Kay's Kloset and I was the plaintiff in the Leegin Supreme Court Case. I am here today to tell you the story of my family's store in Dallas and how it failed after 23 years in business. My family retail store was a victim of price fixing in America.

I began working with the Leegin Company in the mid nineties when my store started carrying their Brighton line of products - handbags, belts and other accessories. Over the years, my business invested tens of thousands of dollars on television, newspaper and direct mail ads promoting the Brighton brand. As a result, my business became the place to purchase Brighton products in my market area, and the line accounted for nearly 50 percent of my sales revenue.

As is standard practice in retailing, I would discount Leegin products from time to time, either as part of an in-store promotion, to compete with other Brighton retailers, or to help move aging inventory. In addition, my store was in close proximity to the airport. To stay competitive with airport shops, I matched the 20% discount the Brighton retailers in the airport offered to all airport and airline employees. I even extended this discount to all of my customers, because I didn't feel it was fair to offer different prices based solely on where a customer was employed.

In 2002, my Leegin sales rep repeatedly sought to get me to stop discounting their product line to all customers. They demanded that I immediately remove the sale signs and adjust all prices. Through conversations with antitrust authorities and some basic research on the internet, I learned that Leegin's conduct was illegal and they, as a manufacturer, could not dictate a minimum price for the products in my store. After refusing to comply with their multiple requests to raise prices, Leegin ceased supplying their line of Brighton products to my store.

The loss of the Brighton line of products was devastating and led to the eventual failure of my family's retail store. Leegin not only ceased supply, but instituted a form of punishment by aggressively targeting my customers with special offers for Brighton products at competing stores. My total store sales fell 32% the first year and 50% the second year. We ultimately closed our doors in October of this year.

My story of coercion and intimidation to fix retail prices in America is a decades old story in the retail industry. Back in 1991, former FTC Commissioner Terry Calvani was quoted in the New York Times as saying "Antitrust enforcers can recount scores of retailers calling their offices, too scared to give their names, telling of coercion and intimidation by manufacturers' representatives and rival dealers because their prices were too low".

While other retailers remained anonymous, I stood my ground against Leegin's threats and followed the clear law that agreements to fix prices violate the Sherman Antitrust Act. I took Leegin to court where the jury found that they had indeed entered into price fixing agreements and terminated my store's supply when I refused to raise prices.

Leegin didn't appeal the jury's finding that they engaged in price fixing for their Brighton brand of products – but instead appealed the 96 year old law banning price fixing all the way to the Supreme Court.

It's that Supreme Court decision that we are all here to talk about today...and I want to tell you where I believe the Supreme Court's decision will lead the retail industry.

From 23 years of experience, I know that the process of ordering goods is the most important ongoing decision a retailer makes. The nature of the fashion industry is that it suffers a short shelf life. The supply of most everything in the fashion industry is finite, only so much is ever produced each season. The fact is, most everything in the fashion industry is marked down at the end of each selling season to make room for the next seasons styles. Allowing manufacturers to fix prices will force the American retailers to hold onto poor performing inventory and to operate contrary to their own economic self interest. It is an insult to my status as an independent retailing entrepreneur to have my prices dictated by a manufacturer.

Allowing price fixing will result in higher retail prices, lower store sales volumes, lower store profits and higher business failures. The American retailer in its own desire to maintain the flow of goods for resale will be forced to sign manufacturer imposed price fixing contracts. This will only be the start of inefficient, regretful, and eventual cartel behavior. It will not be hard to imagine significant numbers of retailers spying on each other to catch and report to the manufacturer deviations from price fixing contracts. Armed with powerful price fixing contracts (especially liquidated damage clauses for sales below mandated prices) the manufacturers now become the commerce police. American retailers will come under the powerful thumb of manufacturers to operate contrary to their own economic best interest. Without the legally protected right of price competition in the marketplace, the American consumer will always be on the losing end. With all the pricing power, manufacturers cannot be trusted to treat the retail market in a fair manner.

I commend the Federal Trade Commission in their announcement to conduct public workshops on this price fixing issue. I would respectfully ask that the facts of Leegin be included in the "examples of actual conduct" portion of the workshops.

My reason for being in Washington today is to urge all of elected officials to address the problems caused by the Leegin Supreme Court decision as soon as possible to prevent the further destruction of price competition in the U.S. retail industry. Price competition is what produces lower prices in the marketplace so that all in society can have a better quality of life. The American dream is under attack with the Leegin Supreme Court decision. I would ask our new President Obama and Vice-President Biden (who is a co-sponsor of legislation in the Senate) to focus on this price fixing issue next year. I ask all this to protect the American Dream and the American way of Life.

