



January 10, 2012

Hon. Henry C. "Hank" Johnson, Jr.  
1427 Longworth HOB  
Washington, D.C. 20515

Dear Congressman Johnson:

We write on behalf of the nation's leading consumer rights organizations to offer our strong support for H.R. 3406, the Discount Pricing Consumer Protection Act and we thank you for your leadership in introducing this important measure that will repeal the Supreme Court's decision in *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* and restore the ban against resale price maintenance ("RPM") agreements. Such agreements, by restricting the freedom of retailers to engage in discounting, harm consumer welfare and economic innovation.

We disagree with the assertion of the American Bar Association that RPM agreements are "likely to be used by manufacturers to achieve efficiencies in distribution of their products" and that "recent" empirical studies support that conclusion. *See* Letter from James A. Wilson, Chair, ABA Section of Antitrust Law, to Henry C. "Hank" Johnson, Jr., May 5, 2009. The fact that many economists may agree that RPM agreements *can* be "procompetitive" in some circumstances may have persuaded five conservative Justices of the Supreme Court that RPM agreements should always be subject to the rule of reason, but should not deter Congress from restricting such agreements.

It is unequivocal that RPM agreements raise consumer prices, prevent efficient retailers from passing on the benefits of their lower costs to consumers, and tend to retard the development of new forms of retailing. At the same time, the purported benefits to consumers of RPM agreements are dubious and even if such benefits exist they can be achieved by less restrictive business practices.

Except for an unsuccessful experiment with "fair trade" between 1937 and 1975, resale price agreements have been banned for almost the entire history of the Sherman Act – until the Supreme Court overturned the ban in 2007 without an iota of evidence that the ban had done any harm and in spite of clear congressional support for the ban. The outdated and flawed "recent" studies referred to in the ABA letter provide no support for the procompetitive theories of RPM, as the dissent in *Leegin* showed.

Allowing manufacturers to forestall discounting by legitimate retailers is problematic at any time, but it is particularly harmful during this time of deep recession when consumers depend on discounts to make ends meet and manufacturers may be more pressured than ever to use RPM agreements to stop retail price wars.

Accordingly, we urge you to make repeal of the *Leegin* decision a high priority in on the legislative agenda for the 112th Congress.

Very truly yours,



Sally Greenberg  
President  
National Consumers League



Bert Foer  
President  
American Antitrust Institute



Ellen Bloom  
Director of the Washington DC Office  
Consumers Union