

NEWS

LITIGATION DEPARTMENT

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WIGGIN AND DANA

Counsellors at Law

Wiggin and Dana Submits Amicus Brief In Landmark Antitrust Case in U.S. Supreme Court



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NEW HAVEN, CT – Wiggin and Dana LLP assisted in the preparation of an *amicus curiae* brief in *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, a landmark antitrust case now before the United States Supreme Court. The brief was submitted on behalf of PING, Inc., a manufacturer of innovative, custom-fit golf products.

The *Leegin* case challenges a century-old decision, *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. 373 (1911), which held that a manufacturer's agreements with its retailers fixing the minimum resale price ("minimum resale price maintenance" or "RPM" agreements) are *per se* illegal under the antitrust laws. PING's amicus brief supports the position of the petitioner in *Leegin*, arguing that such resale price agreements should be governed instead by "rule of reason" analysis, as most antitrust issues are.

PING's brief presents a unique perspective to the Court as it considers this issue. While a manufacturer cannot enter resale price agreements with retailers, it can under current law unilaterally set minimum prices and unilaterally terminate its relationship with retailers who charge less than those prices. But the case law allowing such pricing policies is complicated and imposes enormous practical costs on manufacturers. PING is one of those manufacturers. It implemented a minimum resale pricing policy to preserve its brand by, among other things, ensuring that its retailers have the resources and incentive to custom-fit each set of golf clubs for every PING consumer, a unique service that enables PING to compete effectively in the market and provides an alternative valued by its customers. But the costs and inefficiencies of operating the policy under the current law are extraordinary. PING spends millions of dollars and employs up to twelve people just to ensure the policy unquestionably complies with the law – resources that could be better spent on its products and its customers. In an effort to ensure compliance with current law, PING has terminated over 1,000 of its retailers who violated the policy, ultimately limiting consumer choice and undermining PING's relationship with retailers and customers alike.

"This is a critically important antitrust case, perhaps the most important in a generation, presenting the Court with an opportunity to bring antitrust law into line with present-day economic reality," said Robert M. Langer, who worked on the PING brief with Wiggin and Dana colleagues, Aaron S. Bayer and Suzanne E. Wachsstock. "We are confident that the Court will benefit from hearing about the practical realities involved in administering a real-world minimum resale pricing policy under the strictures of current law."

continued

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In addition to Wiggin and Dana, attorneys from Bryan Cave LLP and The Cavanagh Law Firm, P.A. worked on the brief. A copy is available for the media, and members of the Wiggin and Dana team are available for comment. Any specific questions about PING policies or products should be directed to Bill Gates at PING.

Wiggin and Dana LLP is a full service firm serving clients domestically and abroad from offices in Connecticut, New York and Philadelphia. For more information on the firm, visit its website at www.wiggin.com.

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