

A solid yellow right-angled triangle pointing downwards and to the right.

BLOGS
Antitrust

California and New York Have Varied Success in Attacks on Resale Price Controls

Two states reached different results last month concerning separate resale price controls. First, on January 11, California entered into a consent decree with a cosmetics manufacturer that had been prohibiting discounting by internet dealers. *California v. Bioelements, Inc.*, No. 10011659 (Cal. Sup. Ct. Jan. 11, 2011). Although the manufacturer was required to stop controlling internet discounts, this result was achieved by settlement rather than a court decision, so its weight can be (and is being) questioned. Then, three days later, New York lost its court case against a mattress manufacturer that it had accused of illegally prohibiting certain discounting practices. *New York v. Tempur-Pedic Int'l, Inc.*, No. 400837/10 (N.Y. Sup. Ct. Jan. 14, 2011). The court held that a state statute making resale price contracts "unenforceable" does not make them illegal.

As we have reported ever since the United States Supreme Court's 2007 decision in *Leegin*, most of the activity related to resale price controls has been in the form of actions brought under state statutes. These two recent cases continue that trend. Because these matters also arose in the context of manufacturer-dealer relationships, as opposed to business format franchising, we will provide further analysis in our next special "Distribution" edition of *The GPM Memorandum*, to be published in April.