

**BLOGS**  
Antitrust

## District Court Refuses to Dismiss Franchisee's Tying Claim

In an opinion issued four days after the *Petland* decision, an Illinois federal court denied Harley Davidson, Inc.'s motion to dismiss the tying claim of an independent manufacturer of plastic merchandise bags. *Packaging Supplies, Inc. v. Harley-Davidson, Inc.*, No. 08-cv-400 (N.D. Ill. Mar. 30, 2009). Whereas the court in *Petland* focused upon the existence of market power in the market for the tying product, the *Packaging Supplies* court evaluated whether the plaintiff had properly alleged that the defendant possessed market power in the market for the tied product.

Packaging Supplies alleged that Harley-Davidson sent an "edict" to its dealers directing them not to purchase their bags from PSI and instead to purchase their bags only from Harley-Davidson's merchandising division, despite the fact that many franchisees preferred PSI's bags. The district court denied Harley-Davidson's contention that PSI had failed sufficiently to allege both a tying arrangement and that Harley-Davidson would acquire market power in the tied market. The district court noted that many of Harley-Davidson's dealers would have preferred to buy from PSI but feared repercussions if they continued to do business with PSI. Moreover, relying on the principle that where "forcing" is present "competition on the merits in the market for the *tied* claim is restrained," the court further held that PSI had pled facts sufficient to show that Harley-Davidson had sufficient market power in the tying market to "appreciably restrain free competition in the market for the tied product."