

▶ **SPEAKING OUT**

The Truth About MAPP

Separating fact from fiction when it comes to minimum advertised pricing policies.

By Ron Solomon

In the seven years since launching MAPP Trap, we've dealt with hundreds of manufacturers and retailers in a wide variety of markets, including pet, toy, juvenile, gift, automotive, power tools, and more. However, while the spread of hyper-discounting and its negative effects have moved at varying speeds in different industries, the confusions about minimum advertised pricing policies (aka MAPP) have remained constant. Although it would take far more than a short article to clarify these questions, this should serve as a good start to those who are interested in the topic.

MAPP IS ILLEGAL.

MOSTLY FALSE

Minimum advertised pricing policies are not illegal. In its *Leegin Creative Products Inc. v. PSKS Inc.*, 551 US 877 (2007) case, the U.S. Supreme Court overruled a century-old precedent and held that minimum resale price maintenance is not technically illegal under Section 1 of the Sherman Act. Rather than being "per se" illegal, the court ruled that this practice should instead be subject to the antitrust "rule of reason," which requires a case-by-case analysis. That puts the onus on the brand owner to unilaterally create and uniformly enforce its policy.

MAPP IS A PRICE-FIXING SCHEME.

FALSE

MAPP has nothing to do with price-fixing—which, by the way, if done properly, is not illegal either. A minimum advertised pricing policy has nothing to do with the "selling" price of a product. It is a unilaterally determined statement that tells retailers the price at which a manufacturer's product(s) may be "advertised." Once the product gets to the checkout page or the cash register, whatever discounts the retailer wants to apply may be applied.

RETAILERS CAN BE SUED FOR VIOLATING MAPP.

FALSE

MAPPs are unilateral policies created by vendors in order to defend their brands from price erosion. As such, they are not legally defensible. However, in their policies, vendors set forth the "rules" by which a retailer must play in order to remain a customer. The enforcement aspects can include a myriad of actions for violations such as removing discounts, restoring freight allowances and, ultimately, revoking the right to purchase goods from the vendor or its distributors.

MAPP IS AN IRREVOCABLE DOCUMENT.

MOSTLY FALSE

As a unilateral policy, a MAPP may be amended at any time by the vendor. Changes may include increases or decreases in allowed advertised price, changes to enforcement actions, blackout periods (days or periods of time during which there is a MAPP holiday), whether shipping costs are included, if "place in cart to see price" strategies are acceptable, etc. Note, however, that manufacturers need to take reasonable steps to ensure that all of their trading partners are aware of any policy changes.

MAPP IS A CONTRACT.

POSSIBLY TRUE

A minimum advertised pricing strategy can be a policy or an agreement/contract, unlike a

MAP policies tell retailers the price at which a manufacturer's product may be "advertised," but they don't restrict the discounts the retailer may apply.



minimum retail price policy, which can only be a policy. A MAP "policy" is a unilateral statement that establishes a vendor's rules. By purchasing the vendor's goods, retailers are tacitly accepting the terms of that policy. A MAP "agreement" is a contract, the terms of which must be signed by both parties. The dangers of having a MAP agreement are that any changes must be renegotiated and agreed to by all parties. Additionally, in the cases of certain states that hold MAP to be illegal, that statement refers to MAP "agreements," not policies (see Section 1 of the Sherman Act).

AMAZON HELPS VENDORS TO ENFORCE MAPP.

FALSE

Amazon is a consumer-centric business and, therefore, puts its buyers in the driver's seat by allowing any and every product listing discount. It offers absolutely no help to vendors when it comes to enforcement of their policies. This lack of cooperation extends to refusing to help identify merchants' contact information, refusing to take down product listings of MAPP violators, sluggishness in removing scam sellers and more. In certain instances, Amazon might agree to delist merchants who have been proven to sell counterfeit goods, or out-of-date vitamins and supplements, but those vendors must provide irrefutable proof of their claims. Getting that proof can be time-consuming and costly.

MAPP IS GOOD FOR RETAILERS.

TRUE

By creating, monitoring and uniformly enforcing a MAPP, vendors are not only protecting their brands from extreme price erosion and product commoditization, but they are also protecting their brick-and-mortar retailers and compliant online sellers by creating a level playing field in which all retailers can enjoy an acceptable profit margin. Unprotected brands risk a decrease in not only the retail cost of their goods but, ultimately, decreased distribution, deflation to their wholesale prices and a loss of margin such that quality of goods and customer service become impossible to maintain. In this writer's opinion, MAPP is the best option available in today's market given the effects of the Amazon disruption. •

In addition to founding MAPP Trap, a cutting edge, B2B enterprise-level software as a service (SaaS), Ron Solomon has written novels and television shows, created award-winning children's products, and run a commercially successful children's toy and game company. In order to protect his toy company, Swingset Press, in 2006 Solomon started The Creditors Network, a unique crowdsourcing platform that allows vendors to exchange credit information on shared customers. In 2012, the company added MAPP Trap to its portfolio to help companies keep track of how their products are being represented by online merchants and to assist in brand-value threats caused by over-distribution, hyper-discounting, gray-market sellers and policy compliance. The system is currently in use by manufacturers in a variety of industries spanning pet products, toys, games, juvenile products, gift, housewares, auto parts, sporting goods, health, beauty and more.

ABOUT MAPP TRAP

A proprietary search engine designed by ex-manufacturers, MAPP Trap tracks products on Amazon, eBay, Chewy, Google Shopping and thousands of other e-commerce merchants to find MAP and MRP policy infractions, intellectual property violations, unauthorized sellers and more. The company then identifies the merchants' true identities and automatically sends and tracks emails for policy compliance. According to its many customers, MAPP Trap is the industry leader in merchant identification. For more information about MAPP Trap, visit mapptrap.com, call 303-670-5111 or email ron@mapptrap.com.