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Minimum Advertised Pricing (MAP) Policy Enforcement

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Manufacturers implement minimum advertised price (MAP) policies to control the prices at which retailers can advertise their products.

MAP policies are often thought of as memorializing agreements between manufacturers and authorized retailers regarding the lowest prices at which the retailers are permitted to advertise the manufacturers' products. However, they are merely policies, not actual agreements.

Nonetheless, MAP policies are often necessary for companies, as shoppers generally look for the lowest-priced goods, including for e-retail sales. And many e-commerce websites display products from lowest-to-highest price.

Of course, MAP policies are not binding on unauthorized retailers. Thus, unauthorized sellers are more likely to violate MAP policies than authorized retailers.

In fact, a recent study revealed 53 percent of unauthorized retailers violate MAP policies. This is in contrast to 15 percent of authorized retailers.

Ayelet Israeli (now a Harvard Business School assistant professor of business administration) and Eric Anderson and Anne Coughlan (Kellogg School of Management marketing professors) also noted that authorized retailers are less likely to violate MAP policies because they have the most to gain by complying with manufacturers' pricing.

For instance, a manufacturer that becomes aware of an authorized retailer violating its MAP policy, can stop supplying products. Without products, the authorized retailers obviously cannot make money – the whole point of becoming an authorized distributor.

Enforcement

If manufacturers are serious about enforcement (and want to be taken seriously), they must have—and clearly communicate to authorized retailers—policies for addressing MAP violations. Specifically, they must have a system for penalizing or punishing their authorized retailers.

For example, a manufacturer might let an initial MAP policy violator off with a warning – albeit a stern warning that it can legitimately back up with action if necessary.

Subsequent violations, however, can result in suspensions, which should increase in severity.

Manufacturers might suspend authorized retailers for 60 days for their second violation, for example. Third violations could result in six- or 12-month suspensions. After fourth violations, the manufacturers should probably terminate the authorized retailers.

It is critical that manufacturers try to create a deterrent effect and cut off the offenders completely if necessary. Otherwise, they will struggle to stop the authorized distributors and, in turn, lose control of their pricing and brands.

Of course, unauthorized retailers have a higher propensity of violating MAP policies and their pricing violations put pressure on authorized retailers to compete on price. In other words, they pose a greater threat to companies.

Thus, while it is important to take action against authorized retailers, it is arguably more critical to address unauthorized retailers.

Certainly, a company cannot actually enforce its MAP policy against unauthorized retailers, as those sellers are not under any contractual obligation. But a manufacturer can still take enforcement actions against them for engaging in unauthorized sales (e.g. violating the manufacturers' trademark rights).

Obviously, companies should focus their enforcement efforts on the most serious offenders and then work their way down.

That is not to say that they should ignore one-off sellers. But manufacturers must be smart and prioritize their enforcement efforts.

For more information, contact Vorys' Illegal Online Seller Enforcement team at 877.545.6905. Learn more about the practice at services-648.html and through https://www.youtube.com/watch?v=FwowrsQp1I4, and follow Whitney on Twitter (@WhitneyCGibson).