

# The Truth About MAPP



by Ron Solomon, MAPP Trap

In the four years since launching MAPP Trap in the toy industry, we've dealt with hundreds of manufacturers and retailers in a wide variety of markets (including toy, juvenile, pet, 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 check-out 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 laws. 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 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 their buyers in the driver’s seat by allowing any and every product listing discount. They offer 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 may 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 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.

