

Costco v. Hoen

Litigation Update

Prepared for: Joint Select Committee on Beer and Wine Regulation
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Background

- February, 2004: Costco files federal law suit alleging 9 regulations of the state's three-tier system of beer and wine distribution violate federal anti-trust law.
- March, 2006: U.S. District court agrees with Costco, striking down 8 of the 9 challenged regulations.
- January, 2008: Following LCB appeal, the 9th Circuit Court of Appeals mostly reverses district court, finding only 2 of the challenged regulations in violation of federal law.

Challenged Regulations

1) Uniform pricing rule

- Breweries and wineries must offer uniform prices to distributors.
- Distributors must offer uniform prices to retailers.
- Prevailing party: LCB

2) Price posting

- Distributors must post wholesale prices with the state.
- Prices are publicly available after they take effect.
- Prevailing party: Costco

3) Price holding

- Posted prices must be held for 30 days.
- Prevailing party: Costco

Challenged Regulations

4) Minimum mark up

- Selling price of a product must be at least 10% over the posted price.
- Prevailing party: LCB

5) Volume discounts

- No price discount based on volume of product purchased.
- Prevailing party: LCB

6) Credit Sales

- Distributors cannot sell beer and wine to retailers on credit.
- Prevailing party: LCB

Challenged Regulations

7) Delivered price

- Price to retailer includes cost of delivery, even if delivery is declined.
- Prevailing party: LCB

8) Central Warehousing

- Retailers cannot store or take delivery of beer and wine at a central warehouse.
- Prevailing party: LCB

9) Retail-to-Retail sales

- Retailers cannot sell to other retailers.
- Prevailing party: LCB

LCB Implementation of Decision

- Uniform pricing still in effect.
- Price hold requirement is eliminated.
- Price posting (now known as price filing) changed as follows:
 - Suppliers and distributors still required to file prices, however prices will not be publicly available.
 - Changes to prices may be made at any time, with the new price to be in effect immediately.

Recent Developments

- February, 2008: Costco files for en banc review by 9th Circuit.
- April, 2008: 9th Circuit denies Costco's request for en banc review.
- April 8, 2008: LCB implements new system for enforcing uniform pricing to comply with court ruling.
- June 30, 2008: Deadline for either party to appeal to U.S. Supreme Court.