

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

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PSKS, Inc. d/b/a Kay's Kloset...Kay's Shoes;
and Toni Cochran, L.L.C., d/b/a Toni's

Plaintiffs,

v.

Leegin Creative Leather Products, Inc.

Defendant.

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Civil Action No. 2-030 v-107 Tju

Original Complaint

For their causes of action against defendant LEEGIN CREATIVE LEATHER PRODUCTS, INC., PSKS, INC. d/b/a KAY'S KLOSET...KAY'S SHOES, and Toni Cochran, L.L.C., d/b/a Toni's, Plaintiffs, states and alleges as follows:

**I.
Parties**

1. Plaintiff PSKS, Inc. d/b/a Kay's Kloset...Kay's Shoes ("Kay's Kloset") is a corporation duly organized and registered in accordance with Texas law.
2. Plaintiff Toni Cochran, L.L.C., d/b/a Toni's ("Toni's") is a Limited Liability Corporation, duly organized and registered in accordance with Texas Law.
3. Defendant Leegin Creative Leather Products, Inc. ("Leegin") is a California Corporation. Defendant may be served with process by serving its registered agent, Jerry Kohl at 14022 Nelson Ave., Industry, California 91746.

**II.
Jurisdiction**

4. This Court has jurisdiction in this case under 28 USC § 1331, 28 USC § 1337, and 28

U.S.C. § 1367. This Court also has jurisdiction in this case as it involves a federal question.

More specifically the case involves the Sherman Anti-Trust and Clayton Acts.

5. The court has jurisdiction over the state law claims by virtue of supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

III. Venue

6. Venue of this case is appropriate in the Eastern District of Texas under 15 U.S.C. §15(a). More specifically, Defendant is doing business in the Eastern District and has agents in the Eastern District. Additionally, venue of this case is appropriate in the Eastern District of Texas under 28 USC § 1391(b) and (c). Leegin has sufficient contacts with this district to subject it to personal jurisdiction. In fact, numerous retail stores, including ladies' boutiques, sell Brighton products supplied by Defendant Leegin. Further, the Brighton Ladies Division Manager for Defendant Leegin is Laura Young, who resides in Tyler, Texas. She has regional and/or national responsibility for Defendant Leegin, was a significant party to transactions involving Defendant Leegin and the Plaintiff Kay's Kloset, and on information and belief, at all natural times acted in the course and scope of her employment.

IV. Facts of the Case

7. Plaintiff PSKS, Inc. does business as Kay's Kloset...Kay's Shoes in Lewisville, Texas. Kay's Kloset is a retail store for fashions, shoes and accessories. For a number of years, it has been a retail store for a line of handbags, belts, jewelry and accessories manufactured by Defendant Leegin. It was instrumental in introducing Leegin's Brighton line of products to the market Kay's Kloset serves. Over the course of the years, these products have accounted for a

substantial portion of plaintiff's business, and in the last 36 months accounted for approximately \$1,500,000 or more in retail sales.

8. Plaintiff Toni Cochran, L.L.C., does business as Toni's in Livingston, Texas. Toni's opened in April, 2000, and began offering Brighton products. Between April, 2000, and February, 2002, Brighton products accounted for approximately \$180,000 in retail sales at her store.

9. In the early 1990's Leegin began to manufacture the Brighton brand of products, which it markets as its signature product. Leegin distributes the Brighton line through thousands of independent retailers, as well as through stores directly owned or controlled by Leegin or its owner.

10. Defendant Leegin has, at material times, had a retail pricing and promotional policy to suppress price competition among retailers of Brighton products. Leegin applied suggested retail prices ("SRP") to the Brighton line through a so-called "Retail Pricing and Promotion Policy." A copy of this policy is attached hereto as exhibit "A." This policy solicits agreement from retailers not to discount Brighton products, permitting discounts only when agreed to in writing by Jerry Kohl, the owner of Leegin, or Laura Young, Ladies Division Sales Manager. Defendant Leegin has orchestrated and allowed certain retail discounts to certain of its favored customers, some of whom competed with Kay's Kloset in the Lewisville, Texas area. In the last twelve months when Kay's Kloset learned of the discounting, and was losing Leegin-related business because of the discounting, Plaintiff began to compete by discounting Brighton products..

11. Beginning in the late Fall of 2002, and continuing thereafter, Leegin, began to enforce the SRP policy against Kay's Kloset, attempting to secure agreement from Plaintiff to comply with

the policy, while at the same time receiving agreements from other retailers to adhere strictly to Leegin's pricing policy. In conversations trying to secure plaintiff's agreement to adhere to the policy, Brighton's sales representative was asked whether a competitor of the plaintiff had agreed to the policy. Plaintiff was assured that the competitor had agreed to the policy, and that the competitor no longer would be discounting Brighton products.

12. Plaintiff Kay's Kloset had, at certain times, offered to its customers 20% off Leegin-related products to directly compete within Plaintiff's market. Leegin demanded that signs promoting the sale be removed, and threatened sanctions of loss of the Leegin product line. As stated by Leegin's sales representative, Jan Clinkscale, told the owners of Kay's Kloset: "When people discount, it always comes back to haunt them. We don't want people to discount – we want people to sell Brighton at regular price." When Plaintiff refused to adhere to the SRP, Leegin stopped shipping products to Kay's Kloset. At the time that Plaintiff was informed of the action taken by Leegin, Plaintiff was told that the action was subject to review if Plaintiff would indicate agreement to adhere to the SRP in the future.

13. Plaintiff Toni's, from time to time placed Brighton products on sale. On occasion when this would happen, Leegin's sales representatives would call on her and attempt to secure her agreement not to place Brighton products on sale. When she refused to so agree in February 2002, Leegin stopped shipping to her.

14. Defendant has deliberately set up an unlawful retail pricing policy which it enforces to effect a vertical pricing control to monopolize the market and unfairly penalize the consumers of goods. Defendant reduces competition, which is and can be an effective tool to provide the consumer the maximum benefits of a free market. By enforcing independent retailers to agree

not to discount, Defendant can insulate the retail stores it owns or controls from price competition.

15. As a result of the plaintiffs attempting to exercise their protected rights to compete, and to sell products at prices below those mandated by Leegin, Leegin deliberately sought to punish Plaintiffs, and cut off all future purchases of Leegin-related products. Plaintiff Kay's Kloset had, for many years, a growing business as a result of the sale of Leegin products. Plaintiff Kay's Kloset had an approximate forty-plus percent gross profit margin on the sale of those products, and will lose that base for sales and the anticipated profits of approximately \$200,000 per year. Plaintiff Toni's will lose anticipated sales and approximately \$50,000 in anticipated profits per year as a result of losing Brighton product sales. Plaintiffs estimate currently that it will take at least seven years for its lost market to be recovered, and that there is no particular line of products that will allow Plaintiffs to quickly find a replacement for the Brighton product line. Leegin-related products occupy such a position in the marketplace that they are not easily replaced, and it will take a long time for customer satisfaction and loyalty to be reestablished to a new product and in turn, Plaintiffs' stores. That is, not only do Plaintiffs lose the benefit of the particular attachment that customers have to Leegin products, it also loses those sales which were from other product lines purchased by Brighton customers. Plaintiffs' estimates of damage are preliminary and continuing.

V. Causes of Action

16. Anti-Trust Violations: Defendant has committed anti-competitive acts in violations of the federal and state anti-trust laws. Defendant Leegin is a manufacturer and distributor of the

Brighton line of clothing accessories. Plaintiffs were a retailers of Brighton products with Defendant. The Brighton products affect interstate commerce in that the product line is sold and used throughout the country.

17. Defendant has engaged in a price fixing scheme for the Brighton line of products that is illegal per se, and fail as a permissible practice under what is known as the 'Colgate Doctrine'. Defendant has developed and enforced a pricing policy whereby retailers for Brighton products are required to observe "suggested retail prices". Defendant attempted to coerce Plaintiffs to enter into an illegal agreement to follow such suggested retail price. When Plaintiffs failed to do so, Defendant refused to provide any Brighton products for sale by Plaintiff. Defendant's actions in refusing to sell the Brighton line of products to Plaintiff have created an anti-competitive effect in the market for the Brighton line. Specifically, Defendant has violated the Sherman Anti-Trust Act and Clayton Act.

18. Defendant has also violated the anti-trust laws in that it has entered into agreements with retailers to charge only those prices fixed by Leegin. If a retailer refuses to enter into such an agreement, or if after agreeing to such a price fixing scheme, violates the agreement, Leegin deliberately withdraws their products from price competing retailers such as the Plaintiffs, at the request of and/or in combination with each other and competing retailers as part of a conspiracy to protect the other retailers from price competition and protect the suggested retail prices of Defendant.

19. Defendant has also violated Texas Business and Commerce Code § 15.05, et seq., relating to monopolies, trusts, and conspiracies in restraint of trade. Defendant has committed

the unlawful practices as described above, including: a) entering into a contract, combination, or conspiracy in restraint of trade or commerce; b) monopolizing, attempting to monopolize, or conspiring to monopolize trade or commerce; and/or c) selling, leasing, or contracting for the sale or lease of goods for use, consumption, or resale, or to fix a price for such use, consumption, or resale, or to discount from or rebate upon such price, on the condition, agreement, or understanding that the Plaintiff would not be permitted to sell Brighton products without conforming to a price fixing scheme, where the effect of the condition, agreement, or understanding may be to lessen competition substantially in trade or commerce.

20. As a consequence of Defendant's actions, Plaintiffs have suffered injury in the form of prospective lost profits, and are entitled to actual and treble damages. Defendant has taken actions to hurt the value and market share of Plaintiffs' retail business to the benefit of Defendant. As a result of Defendant's actions, Plaintiffs have suffered injury and are entitled to actual and treble damages in accordance with the federal and state anti-trust statutes.

21. Breach of Contract: Defendant sold goods to the Plaintiffs on the basis of FOB Defendant's factory in Industry City, California. Pursuant to the UCC, Plaintiffs were obligated to pay for actual shipping costs for the goods to be delivered to its store. Without informing the Plaintiffs, the defendant charged an amount well in excess of the actual charges for shipping, reimbursement for which costs it was entitled, breaching its obligation to the Plaintiffs. As a result the Plaintiffs were injured and now are entitled to recover the amount improperly charged.

22. Fraud: The Defendant billed the Plaintiffs for "shipping" charges. The Plaintiffs relied upon the representation of the Defendant that the shipping charges were proper charges, and the Defendant's implicit representation that the shipping charges represented the amount of the

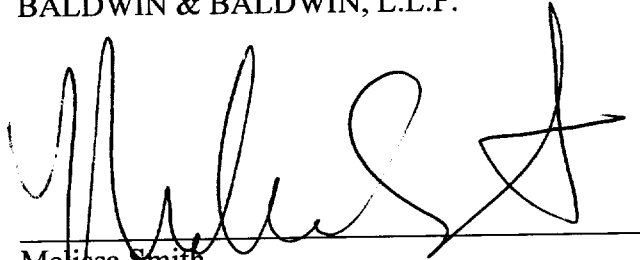
actual costs charged by the common carrier to deliver the goods. In reliance upon the shipping charge bills, the Plaintiffs paid those charges. The charges were false and inflated, and that the inflation of the charge was intentional by the Defendant. As a result of this false and fraudulent practice, the Plaintiffs are entitled to recover the difference between the actual freight costs, and the shipping charges made by the Defendant, as well as punitive damages.

23. Deceptive Trade Practices Act: The Plaintiffs were consumers of goods they purchased from the Defendant; the Defendant engaged in false, misleading and deceptive acts in charging more for shipping than the actual cost of shipping; and as a result of those charges, the Plaintiffs have been injured. Pursuant to the Texas Deceptive Trade Practices Act, the Plaintiffs are entitled to recover those damages suffered as well as attorney fees.

WHEREFORE, ON THE ABOVE PREMISES, Plaintiffs respectfully requests, after trial of this cause, that Plaintiff be awarded; a) actual damages; b) treble and/or punitive damages; c) attorney's fees and costs; and d) all other relief to which Plaintiffs may be justly entitled, including equitable relief necessary to protect Plaintiffs' interest and/or to reinforce the applicable protection of federal and state law.

Respectfully submitted,

BALDWIN & BALDWIN, L.L.P.

A handwritten signature in black ink, appearing to read 'Melissa Smith', written over a horizontal line.

Melissa Smith

Texas State Bar No. 24001351

Jack Baldwin

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ATTORNEYS FOR PLAINTIFFS



Brighton Retail Pricing And Promotion Policy

We continue to be fully committed to furthering our relationship with you, our retailers, and to promoting the image and reputation of Brighton Accessories. Our goal is to make the Brighton name and accessory line the leading, most successful brand in the marketplace.

In order to accomplish this goal, our companies must work together and build consumer confidence in our product and our retailers. In this age of mega stores like Macy's, Bloomingdales, May Co. and with the selection of catalog shopping as well as the Internet and the myriad of other choices, consumers are perplexed by promises of product quality and support of product, which we believe, is lacking in many of these distribution channels. Consumers are further confused by the ever popular sale, sale, sale.

We at Leegin, choose to break away from the pack by selling specialty stores; specialty stores that can offer the consumer great quality merchandise, superb service, and support the Brighton product 365 days a year on a consistent basis.

We realize that half the equation is Leegin producing great Brighton products and the other half is you, our retailer, creating great looking stores and selling our products in a quality manner.

Over the last 10 _ years we have created marketing opportunities for our retailers to promote and showcase the brand to the consumers in a way that conveys our philosophy of quality products and unique designs. We are a company that stands behind our product! In addition, we have backed up our philosophy by building the brand in specialty stores via educated employee events such as Brighton on the road, Personalized catalogs, Contests for the store consumers and Incentives for your sales associates to sell Brighton. We have chosen these creative ways to sell our brand rather than basing our product on sales, deals, and phony promises.

We are advising all retailers of our Suggested Retail Prices stated below for Brighton Products. Below is a list of our Brighton product categories and unilaterally suggested prices, which have been in effect since 1997.

Suggested Retail Pricing

Handbags	Keystone Plus \$10.00
Mini Bags	Keystone Plus \$4.00
Ladies Wallets	Keystone Plus \$5.00
Watches	Keystone Plus \$5.00
Men's/Ladies belts	Keystone Plus \$4.00

a Division of
LEEGIN
Creative
LEATHER

14022 Nelson Avenue

City of Industry

California 91746

626 • 961 • 9381

FAX 626 • 961 • 9380

www.brighton.com

Suggested Retail Pricing cont.

Jewelry	Keystone Plus \$3.00
Sunglasses	Keystone Plus \$6.00
Mens Wallets	Keystone Plus \$5.00
Western Belts	Keystone Plus \$2.00
Keyfobs	Keystone Plus \$2.00
Bandits	Keystone Plus \$2.00
Frames	Keystone Plus \$2.00
Rings	Keystone Plus \$5.00
Home Accessories	Keystone Plus \$2.00
Hair Clips	Keystone Plus \$2.00
Other Accessories	Keystone Plus \$2.00

We strive to keep Brighton as a brand that consumers love to own and are confident is priced fairly 365 days a year. Because of our commitment to this philosophy, we stand firm on our Suggested Retail Prices. We all know from time to time (in retail) you may have a style that's been in your store seasons and seasons, a style that is no longer available for re-order, in other words, you've had it "way to long" and you need to take a "final markdown". We certainly understand that this is just good business. The spirit of our philosophy is that you not make a practice of promoting Brighton 'on sale'. In fact, we ask that you exclude Brighton from your 'storewide' sales and that you not attempt to attract consumers into your stores by promoting Brighton sale incentives.

Our Suggested Retail Pricing and Promotional Policy have been issued by Leegin. Exceptions are not favored, should not be assumed, and will be granted only in extra-ordinary circumstances as determined independently by Leegin/Brighton. Any exceptions to this policy must be requested in writing and will be granted in writing only by either Jerry Kohl, Leegin owner and President, or Laura Young, Ladies Division Sales Manager; no other representative of Leegin is authorized to consider or grant these exceptions. Leegin reserves the right to make any changes in this Policy at our sole discretion.

We thank you for your understanding of our philosophies and hope this will help you to maximize your profits with Brighton for years to come.

Sincerely,

Jerry Kohl

Laura K. Young