

State of California ~ Department of Justice
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Attorney General Halts Online Cosmetics Price-Fixing Scheme

The settlement is one of the first applications of California's pro-consumer antitrust law banning vertical price-fixing

LOS ANGELES - Attorney General Kamala D. Harris today announced that her office had stopped Bioelements, Inc., a cosmetics company operating in California, from engaging in "a blatant price-fixing scheme" in which it prohibited retailers from selling its products online at a discount.

"Bioelements operated a blatant price-fixing scheme by requiring online retailers to sell its products at high prices," Harris said. "Price manipulation harms consumers, competition and our business community. We will continue to be vigilant in protecting our markets from these kinds of abuses."

The settlement is one of the first applications of California's strict, pro-consumer antitrust law banning vertical price-fixing in the wake of a controversial 2007 U.S. Supreme Court decision that weakened federal law in this area. Vertical price-fixing occurs when companies along the distribution chain conspire to set the price of a product or service at an artificially high level. In California, prices must be set independently -- and competitively -- by distributors and retailers.

Bioelements markets a line of human beauty-care products under its BIOELEMENTS trademark, offering skin products it claims have quasi-medicinal properties such as reducing wrinkles. These products -- known as "cosmesceuticals" because they supposedly merge the attributes of cosmetics and pharmaceuticals -- are sold at beauty salons across California, as well as on the Internet.

An investigation initiated by Harris' predecessor as attorney general, Edmund G. Brown Jr., revealed evidence that since 2009, Bioelements had entered into dozens of contracts with other companies that required them to sell Bioelements' products online for at least as much as the retail prices prescribed by Bioelements. (There were no express pricing requirements for products sold in person or in shops.)

In doing so, Bioelements violated California's antitrust and unfair competition laws.

Under the settlement, in the form of a stipulated court judgment signed Tuesday by Riverside Superior Court Judge Harold W. Hopp, Bioelements is required to:

- Permanently refrain from fixing resale prices for its merchandise
- Inform distributors and retailers with whom Bioelements made price-fixing contracts that Bioelements considers the contracts void and will not try to enforce them
- Pay a total of \$51,000 in civil penalties and attorney fees.

The 2007 U.S. Supreme Court decision *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* sharply curtailed federal antitrust law pertaining to vertical price-fixing, but did not affect California's strict state antitrust law. In the last three years, the California Attorney General has sent two open letters to Congress urging passage of legislation reinstating federal safeguards against vertical price-fixing schemes like Bioelements'. In February 2010, the Attorney General obtained an injunction under California law against another cosmetics company, DermaQuest, Inc., which halted a price-fixing scheme similar to Bioelements'.

A copy of People v. Bioelements civil complaint and the stipulated judgment are attached to the press release online at www.ag.ca.gov

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