

WILL FAIR-TRADE LAWS HELP?

By PAUL H. HAYWARD

Junior Capper-Kelly Bill May Solve Golf Pros Price-Cutting Competition

DO RESALE price maintenance laws—sometimes called the Junior Capper-Kelly or fair trade laws—which are now on the statute books of nine states offer the professional golfer any hope of protected profits on the goods he sells?

The answer is yes—but let it immediately be pointed out that this is still only a hope. So far as can be judged (there may be some precincts in California where such a law has been in effect since 1933 which will report differently) a good many drives may go down the fairways before the hope is translated into actuality.

These resale price laws, all modelled on the California statute, have been enacted only this spring in the remaining eight states, namely, New York, New Jersey, Maryland, Oregon, Wisconsin, Iowa, Pennsylvania and Washington. Independent retail druggists and grocers and their organizations are the principal backers of such legislation, and it is in these fields that the California law has found its principal applications.

So far as the statutes themselves are concerned, however, there is no reason why they cannot apply to the trade-marked goods handled by the golf professional, providing those goods, in the words of the statutes, are “in fair and open competition with commodities in the same general class.”

To make the picture clear, the California statute and most of the others have as their stated purpose the protection of “trade mark owners, distributors and the public against injurious and uneconomic practices in the distribution of articles of standard quality under a distinguished trade mark brand or name.”

Rules Against Price-Cutters

The “injurious and uneconomic practices” referred to are, of course, wrapped up in retail price-cutting. The measures offer opportunities to eliminate this last by curtailing state anti-trust laws to the extent of allowing manufacturers to stipulate and enforce minimum retail prices on their trade-marked merchandise. More specifically, the laws:

1. Grant permission to manufacturers of trade-marked commodities which are in

fair and open competition with commodities of the same general class to make resale price agreements with their wholesale and retail distributors.

2. Prohibit wholesale and retail distributors, even though they do not sign such agreements, from “willfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated” in any resale price agreement.

3. Provide that wholesalers and retailers shall not be bound by such resale price agreements in the case of legitimate closing-out sales; damaged goods when published notice of the damage is given, and sales under court order.

4. Prohibit resale price agreements between groups of manufacturers, or between groups of wholesalers or groups of retailers.

Constitutionality of the California law has been questioned and while upheld in several California superior courts it has been ruled invalid in one. This last case is waiting final decision before the California Supreme Court at this writing, and hinges on Section 1½ of the law, outlined in Paragraph 2 above.

By its wording, according to some attorneys, the disputed section means that establishment of a resale price agreement with a single distributor in the state can set the minimum price at which a trade-marked article can be sold by all other distributors in that state, provided the manufacturer notifies them of the agreement and the price it stipulates.

However this case may be decided, more than 200 manufacturers, chiefly food and drug, are now operating under the California statute and many are bringing their operations under the new laws in the other eight states or are considering such moves.

Dealers and Makers Must Agree

What can professional golfers in these nine states do to get profit protection on the goods they handle? California experience has indicated that manufacturers who have retail price maintenance as a definite part of their sales policies need no urging to avail themselves of the permissive authority the law grants to bolster such policies. It indicates likewise that some manufacturers, due to competitive conditions or desires to increase volume,

have been reluctant to enter into price agreements with their distributors or, having entered them, to enforce them.

California food and drug retailers and their organizations have found that definite campaigns to urge the advantages of such agreements upon manufacturers have been productive of results. Professional golfers might follow a similar course, it would seem, and urge manufacturers and their representatives to place themselves and their goods under the law. The pros can doubtless find allies in such a move in independently owned sporting goods stores which are also interested in maintenance of prices at profitable levels.

In states which have not passed resale price laws the same interests can urge the passage of such laws upon their legislators. It may be interesting to note here that bills aimed at resale price establishment were introduced this year, but failed of passage, in the following states: Alabama, Arizona, Colorado, Connecticut, Indiana, Michigan, Minnesota, Montana, Nebraska, Nevada, Oklahoma, South Dakota, Texas, Utah and Wyoming.

Where Are Flaws?

So far as unfavorable results of such legislation are concerned we must again hark back to California's experience. As already intimated, some manufacturers there are reported as having failed to enforce the price agreements they have made, this either through actual disinclination or through financial inability to keep adequate check upon retailers' compliance with the agreements or to prosecute violators. In such case conscientious and responsible distributors find themselves in the sad plight of seeing less conscientious and responsible competitors merrily cutting prices on the supposedly protected merchandise but being inhibited from meeting such competition themselves by respect for their own contract.

There are also reports that the tendency has been for the minimum price stipulated by the manufacturer to become the maximum for which his product is sold through any outlet. Thus on drug commodities, say, which have a full retail price of 25 cents, manufacturers' contracts may provide a minimum resale price of 19 cents. Most California druggists, it is reported, shade their prices down toward this minimum, whereas in states which do not have uniform price laws many more druggists adhere to the full retail price or at worst cut only a cent or two below it.

There is also complaint, especially in connection with goods which have been favorite footballs with the price cutters, that the minimum prices some manufacturers stipulate in their contracts do not afford sufficient margin to retailers. Manufacturers of badly chisled items dare not hike prices too suddenly if they wish to maintain volume, however, and retailers generally have shown a disposition to go along with them, doubtless in the hope that in time new contracts can be made which will allow them greater margins.

Whatever the unfavorable results of the law, California sentiment seems to be that the advantages greatly outweigh the disadvantages. That the list of states adopting such laws is destined to grow is hardly to be doubted. Impetus seems likely to be lent by the collapse of NRA and code-maintained prices. On the other hand, like NRA, the uniform price laws may themselves receive major setbacks in the courts.

In any case, until and unless such setbacks occur, the laws seem to offer golf professionals, through cooperation with manufacturers, one of their best chances to protect profits on brands which they build into public favor.

Pro Uses Unfavorable Season to Boost Shop Sales

"THIS has been the biggest week for club sales I've ever had in my life," a middle-aged pro at a metropolitan district club told a GOLFDOM representative right after the middle of June.

Questioning the man brought out a selling talk that many other pros can use. This pro's sales had been held back by wet, cold weather early in the season but that bad weather also cut down house business at the club.

The pro went after the men who usually came out to the club a lot and said to them:

"You haven't been able to be out at the club much this year on account of the weather. That must have cut your house bills down a couple of hundred dollars so far this season over what they usually run. Come to think of it that money will pay for a new set of these irons for you wife and yourself and still leave you plenty of money ahead on your golf this year."

That's the best line this pro said he'd ever struck to make up for time lost in getting the season's sales under way.