

CLIENT ALERT

California's Predatory Pricing Law Differs From Federal Counterpart

Nov.30.2010

The California Supreme Court has let stand an appellate court ruling that allows for broad interpretation of California state predatory pricing law. Significantly, the case holds that proof of recoupment is not required to prevail in predatory pricing cases. This broad interpretation means that it will be easier to bring predatory pricing cases against California retailers and merchants.

In *Bay Guardian Co. v. New Times Media LLC*, 187 Cal.App.4th 438 (August 11, 2010), the First District Court of Appeal in San Francisco held that California's state predatory pricing statute, the Unfair Practices Act (§1700 et seq.), does not require proof of the defendant's ability to recoup losses. The case was brought by the *Bay Guardian* against the *SF Weekly*, and its parent New Times Inc., alleging that *SF Weekly* was selling advertisements below cost to drive *Bay Guardian* out of business. On November 23, 2010, the California Supreme Court declined to hear the appeal.

The appellate court found that under California law, there is no requirement to prove that the defendant is likely to recoup its losses in the future, an element that is essential in predatory pricing claims brought under federal antitrust laws. The appellate court looked at the intent of the legislature and the language of the statute and determined that the UPA in many respects does not mirror federal predatory pricing laws. The appellate court found that the UPA does not expressly mention recoupment in any way and that the California statute has distinctive language and dissimilar elements and a different focus than its federal counterparts.

Predatory pricing wins for any plaintiff are rare, but under *Bay Guardian Co.*, California law is more plaintiff-friendly than U.S. federal law. Because plaintiffs are not required to prove that defendants are able to recoup their losses, the bar for prevailing on a predatory pricing claim is much lower.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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