





# WHICH PRICING POLICY IS RIGHT FOR YOUR BRAND?

POLICY	PROS	CONS
 <p><b>MANUFACTURER SUGGESTED RETAIL PRICE (“MSRP”)</b></p>	<ul style="list-style-type: none"> <li>• Provides a way for businesses to influence resale prices without entering into an agreement that would be subject to the Sherman Act and state antitrust laws</li> <li>• No monitoring required</li> <li>• Lowest risk option for publicizing a preferred resale price</li> </ul>	<ul style="list-style-type: none"> <li>• No “teeth” from an enforcement perspective</li> <li>• Difficult to control/enforce</li> </ul>
 <p><b>MINIMUM ADVERTISED PRICE POLICY (“MAP”)</b></p>	<ul style="list-style-type: none"> <li>• Analyzed under the rule of reason</li> <li>• Provides some flexibility in terms of enforcement</li> <li>• Tiered enforcement possible with appropriate internal framework and training</li> <li>• Cases and enforcement actions involving MAP policies are relatively rare (though this may change in the current e-commerce environment)</li> <li>• Easiest policy to proactively monitor</li> </ul>	<ul style="list-style-type: none"> <li>• Addresses advertised prices and therefore does not actually affect resale price</li> <li>• Resellers constantly search for new ways to circumvent</li> <li>• The absence of cases/enforcement actions leaves some uncertainty in terms of how courts will analyze MAP policy provisions</li> <li>• Policies usually only concern off-site advertising and will not restrict in-store advertising or sales price offered at “brick and mortar” locations</li> <li>• Requires consistent enforcement</li> </ul>
 <p><b>MINIMUM RESALE PRICE POLICY (“MRP”)</b> <b>AKA COLGATE POLICY</b></p>	<ul style="list-style-type: none"> <li>• Judged under the rule of reason</li> <li>• Affords higher level of control with respect to resale price</li> </ul>	<ul style="list-style-type: none"> <li>• More difficult to monitor than MAP</li> <li>• Requires firm commitment by brand to enforce</li> <li>• Tiered enforcement not recommended</li> <li>• Training required for employees to avoid inadvertent agreements on price</li> <li>• Limits flexibility for price adjustments in the distribution chain to reflect market conditions</li> </ul>
 <p><b>MINIMUM RESALE PRICE AGREEMENT</b></p>	<ul style="list-style-type: none"> <li>• Offers the most price control</li> <li>• No longer per se illegal under federal law but will be judged under the rule of reason</li> </ul>	<ul style="list-style-type: none"> <li>• Per se illegal in certain states (CA, MD); unenforceable in NY; may run afoul of the antitrust laws of other states in which courts have not ruled on the issue, or where there has been enforcement action by attorneys general (e.g., MI, IL, NC)</li> <li>• Requires extensive vetting by experienced antitrust counsel</li> <li>• Greatest limitation in terms of flexibility for price adjustments in the distribution chain to reflect market conditions</li> </ul>

