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March 26, 2008

In the Matter of Nine West Group Inc.
Docket No. C-3937
Petition to Reopen and Modify Order

Dear Eric:

Enclosed are my letter and its addenda submitted on behalf of Nine West Footwear Corporation, successor-in-interest to Nine West Group Inc., in further support of its petition to reopen and modify the order in the above-referenced matter. Because the letter contains privileged and confidential commercial information, I have enclosed a non-public, confidential version of the letter, as well as a public, redacted version of the letter, pursuant to 15 U.S.C. §§ 46(f), 57b-2(c).

Sincerely,



Ronald S. Rolfe

Eric D. Rohlek
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Encl.

BY FEDEX

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CHRISTINE BESHAR

March 26, 2008

In the Matter of Nine West Group Inc.
Docket No. C-3937
Petition to Reopen and Modify Order

Dear Eric:

Your email of March 7, 2008 asked us to respond to the following additional inquiries:

1. **Product Market definitions (A1, B6, and B8): Some Commissioners are concerned that imposition of RPM by Nine West in a particular segment of the women's fashion footwear market could raise concerns if Nine West has market power in some or any of those market segments. This is consistent with the concerns expressed in the *Leegin* decision. Please break out, if possible, Nine West's approximate market shares in identifiable segments of the overall market, e.g., dress shoes, casual shoes, walking/light exercise shoes, sandals, etc. Also, state any arguments or evidence about why these lines are or are not antitrust markets.**

Below are Nine West's 2007 shares of total sales by segment, based upon available total department store and national chain store sales:

PUBLIC

Segment	Total Dollar Sales	Nine West's Share of Total Sales	Average Nine West Price
Dress	\$443,638,900	15.3%	\$49.43
Dress Casual	\$2,107,361,000	14.1%	\$44.80
Casual	\$1,750,730,000	5.8%	\$35.05
Leisure/Low Performance	\$724,834,300	8.4%	\$45.37
Evening	\$109,920,900	12.1%	\$46.78

These categories do not constitute antitrust markets. Notably, the price points for these categories, with the exception of “casual”, are within a few dollars of one another, as reflected in the table above. And retailers and manufacturers regularly change the actual and suggested selling prices of shoes. Further, the various styles of footwear falling within several of these categories are reasonably substitutable for one another — that is, a consumer seeking a pair of shoes for one particular use (*e.g.*, basic work pump) might find acceptable candidates in each of the “dress”, “dress casual” and “evening” categories. Because pairs of shoes within these categories are generally reasonably substitutable based on style and price, these categories should not be treated as separate antitrust markets.

In addition, these categories should not be treated as distinct antitrust markets because of the supply substitution among them. As described in response A2 of my February 29, 2008 letter, Nine West contracts with third-party manufacturers to produce the shoes it designs and sells. For the same reasons that barriers to entry are non-existent for companies adopting Nine West’s wholesaler business model, such companies can easily and inexpensively transition production among the above categories. All that is required for such a transition is a shoe design, capital and a third-party manufacturer. As a result, in an antitrust market analysis, every footwear firm that adopts Nine West’s business model must be viewed as a producer for each and every category. *See, e.g., Horizontal Merger Guidelines*, U.S. Department of Justice and Federal Trade Commission (Apr. 2, 1992, revised Apr. 8, 1997), § 1.321 (“If a firm has existing assets that likely would be shifted or extended into production and sale of the relevant product within one year, and without incurring significant sunk costs of entry and exit, in response to a ‘small but significant and nontransitory’ increase in price for only the relevant product, the Agency will treat that firm as a market participant.”). Given this cross-elasticity of supply, it is not reasonable to treat the categories as separate antitrust markets.

2. **Entry (A2): How difficult is it for a new manufacturer/distributor of women’s shoes to develop a brand, i.e., how long does it take, how costly is it to get shelf space in retail locations, does it matter if the distributor has other shoes or is a**

new entrant, how much cost is involved in brand development, e.g., market studies, advertising, etc., do brand entry conditions vary by type of shoe, e.g., easier to enter with a sandal than a dress shoe?

As noted in response A2 to my February 29, 2008 letter, all that is required for a firm to enter into women's fashion footwear is a shoe design and a modest amount of start-up capital for brand development and manufacturing. The process for developing a brand is similar for established wholesalers like Nine West and for start-up designers.

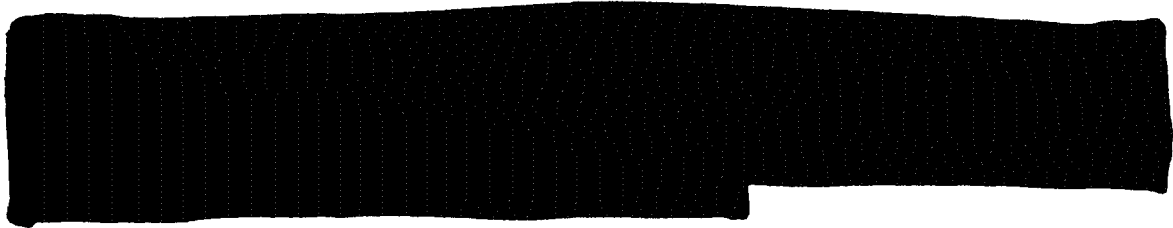
That process begins with a shoe design that is presented to the public in a manner aimed at developing a favorable brand image. Brand image development does not necessarily require formal market research or large advertising campaigns — smaller designers can effectively develop brand image via the Internet and through marketing techniques relying on preexisting social networks and word-of-mouth, such as by placing samples in boutique stores and celebrity gift baskets or by posting videos on social networking websites. Thus, this process need not be expensive and may take only a few months, depending on the type of shoe and the consumer appeal of its design. Though shelf space in larger retail locations may not be immediately accessible for new brands, smaller retail stores, e-commerce retailers and the new entrant's own website provide means for reaching customers during the early stages of brand development.

In addition to brand development, the shoes themselves must be manufactured. For wholesalers like Nine West with preexisting relationships with manufacturers, this process is typically not difficult. Finding manufacturers willing to operate on smaller production scales for start-up designers may be more challenging, but there exist manufacturers who specialize in producing shoes for such designers. Entry conditions do not necessarily vary depending on the style of shoe (sandal versus dress shoe). Rather, the key factors relevant to securing manufacturers are material and factory costs — for instance, Italian factories used for salon shoes can be more costly than Asian factories, but Asian factories may require larger orders.

3. **Ubiquity of RPM practice (A3): In Nine West's experience, have their sales personnel heard of retailers/discounters being terminated by other shoe distributors/manufacturers due to violations of *Colgate*-type sales price restrictions? Intuitively, it seems that Nine West would know through its sales force if other distributors are pushing or enticing retailers to put more money into displays or sales incentives to sell more shoes. Is there any indication that, other than the "no couponing" practices Nine West identified, there are other incentive programs being conducted by other distributors? Also, identify the submarkets or types of shoes that are usually subject to the RPM actions by other distributors.**

We are aware of no instance where retailers/discounters were terminated by other shoe distributors/manufacturers because of violations of *Colgate*-type sales price restrictions.

REDACTED



Also, in addition to the coupon exclusion practices set forth in paragraph 13 of Andrew Cohen's Supplemental Declaration in Support of Petition to Reopen and Modify Order ("Suppl. Cohen Decl."), Nine West executives understand that the Clarks, Merrell and Born brands exclude themselves from certain direct mail flyers and sales books sent out by department stores such as Macy's and Lord & Taylor.

4. Procompetitive Benefits of Previous RPM conduct (A4 and B7): While we understand that Nine West has attempted to abide by the law and Commission Order, are there *any* facts or evidence from the late 1990's that indicate whether more or fewer shoes were sold by the retailers who were subject to the alleged RPM agreements during the time of the agreements? Also, were there any formal planning documents prepared for those alleged RPM agreements or any documents created after-the-fact analyzing whether or not the attempted program was beneficial and led to the sale of more shoes? If there are no documents or evidence from the past practices, please explicitly state that.

Nine West has no further information responsive to these questions beyond that previously provided to the Commission. (See Suppl. Cohen Decl. ¶¶ 8-10; Supplemental Memorandum in Support of Petition to Reopen and Modify Order at 8-10; Response A4 of February 29, 2008 letter to Eric D. Rohlck.)

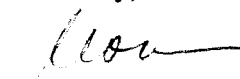
5. Nine West sales personnel: Nine West should provide any (or a sample of) training materials or informational brochures that it distributes to its sales personnel to assist them in selling various styles of Nine West shoes. Does Nine West offer training for retail sales personnel not affiliated with its company-owned stores, i.e., off-site seminars, on-line training, brochures, on-site training with company personnel?

Attached to this letter as Addendum A are samples of training materials and informational brochures sent to sales personnel in company-owned stores. These materials contain both product information and information about sales trends.

Attached to this letter as Addendum B are samples of materials that were provided to non-company-owned retailer sales staff. In addition, personnel from Nine West's "Merchandise Coordinator" program advise larger retailers about appropriate product assortment and product flow, making recommendations about when a product should be re-ordered, providing sales guidance, including the training of store personnel, and

developing advertising programs with the retailer to promote sales. For other (mostly smaller) retailers, Nine West wholesale sales force employees perform many of these same functions in a more informal way, advising those retailers about company products and sales trends. (*See also* Andrew Cohen's Declaration in Support of Petition to Reopen and Modify Order ¶ 10.)

Sincerely,



Ronald S. Rolfe

Eric D. Rohlck
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