

maintenance” under *Dr. Miles Medical Co. v. John D. Park & Sons, Co.*, 220 U.S. 373
(1911), and encouraged the Supreme Court to reevaluate that rule. In June 2007, in

In re: Certain Leather Products, 127 S. Ct. 2705 (2007), the Court

Accordingly, for the reasons set forth below, Nine West respectfully

[REDACTED]

West also employs a cooperative advertising program for its products whereby it shares the costs of certain retailers' advertising and promotional expenses. (*Id.* ¶ 11.)

The Order and the Relief Nine West is Seeking

In its Complaint, the Commission alleged that Nine West had engaged in

The Order also contains exemptions for conduct permissible under *Colgate*, stating that it does not prohibit Nine West from “announcing resale prices in advance and unilaterally refusing to deal with those who fail to comply” or “establishing and maintaining cooperative advertising programs that include conditions as to the prices at which dealers offer Nine West Products, so long as such advertising programs are not a part of a resale price maintenance scheme”. (Order ¶ II.)

Section 5(b) of the Federal Trade Commission Act provides that the

applicant “makes a satisfactory showing that changed conditions of law or fact” require

prohibition because the *Leegin* decision constituted a “changed condition[] of law” — the

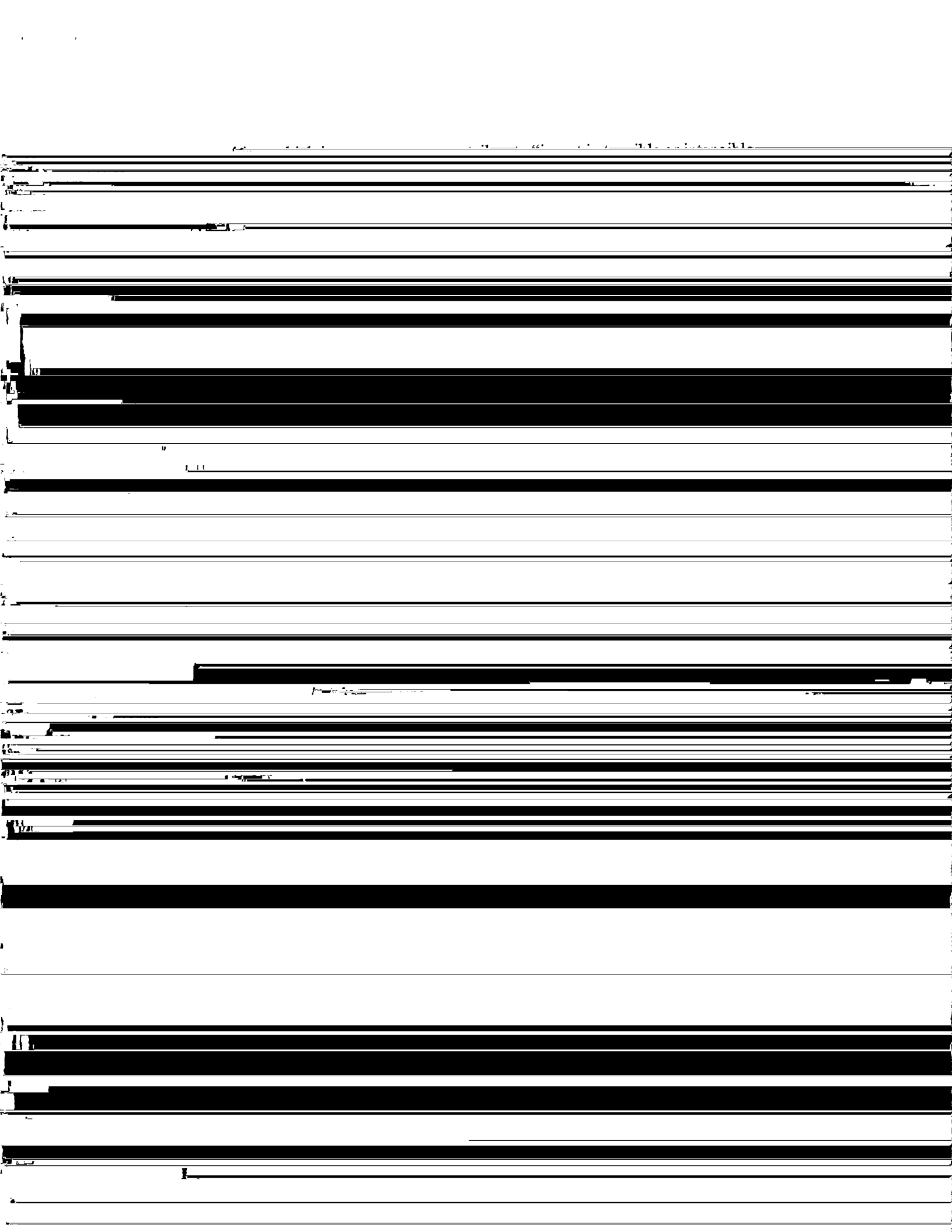
_____ the law called for by Commissioners Swindle and Leary. This restraint on _____

procompetitive and legal under the rule of reason, and thus Paragraph II's prohibition of

the restraints on Nine West should be set aside.

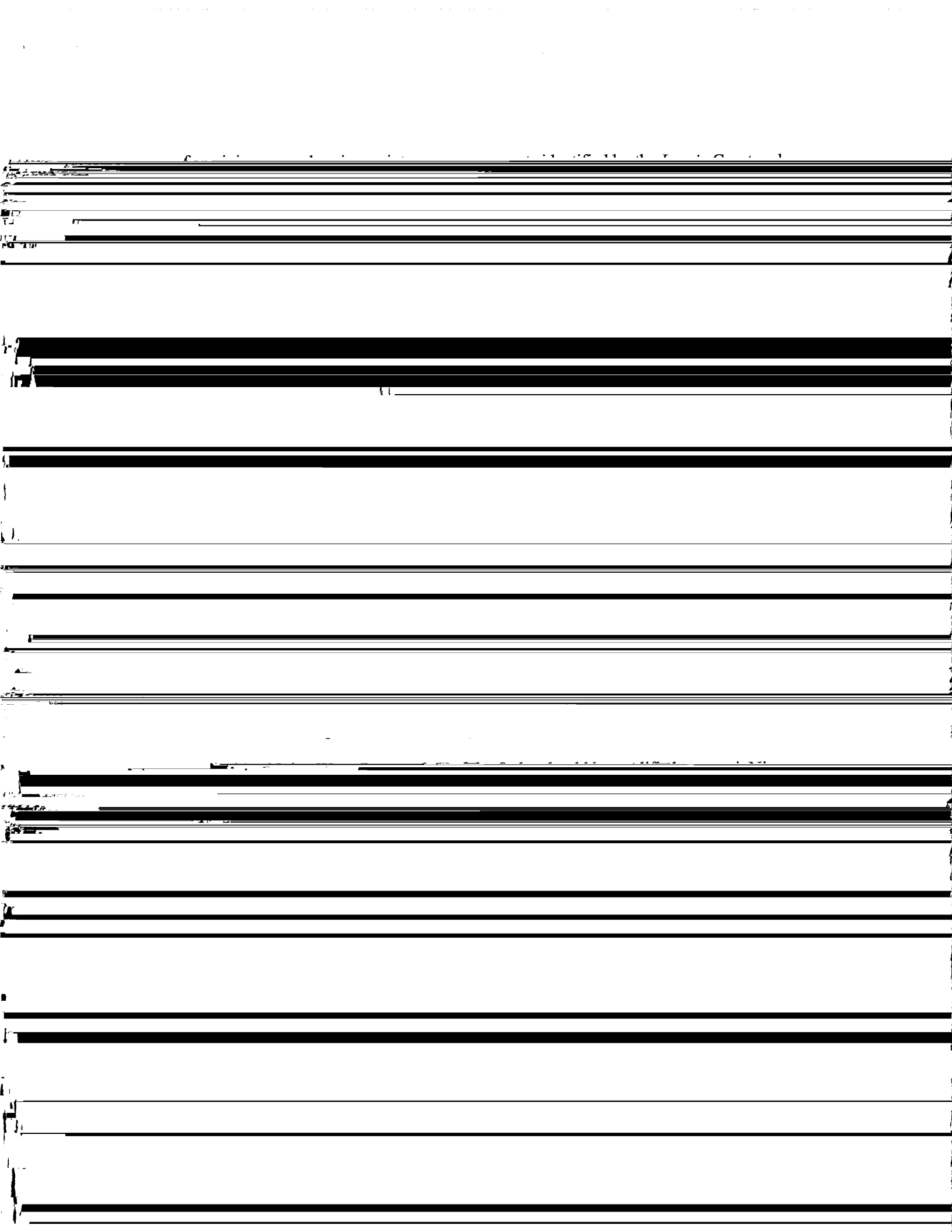
Under Paragraph II, the Commission should remove

the restraints on Nine West to promote considerations of fairness and the public interest.



In addition, highly competitive conditions in the women's footwear

1. (c) It is unlikely that minimum resale price restraints could be used to



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14. *See In the Matter of Clinique Labs, Inc.* 116 F.T.C. 126 132-34 (1993)

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the advertising and promotional programs

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It is to be evaluated using a rule of reason analysis and

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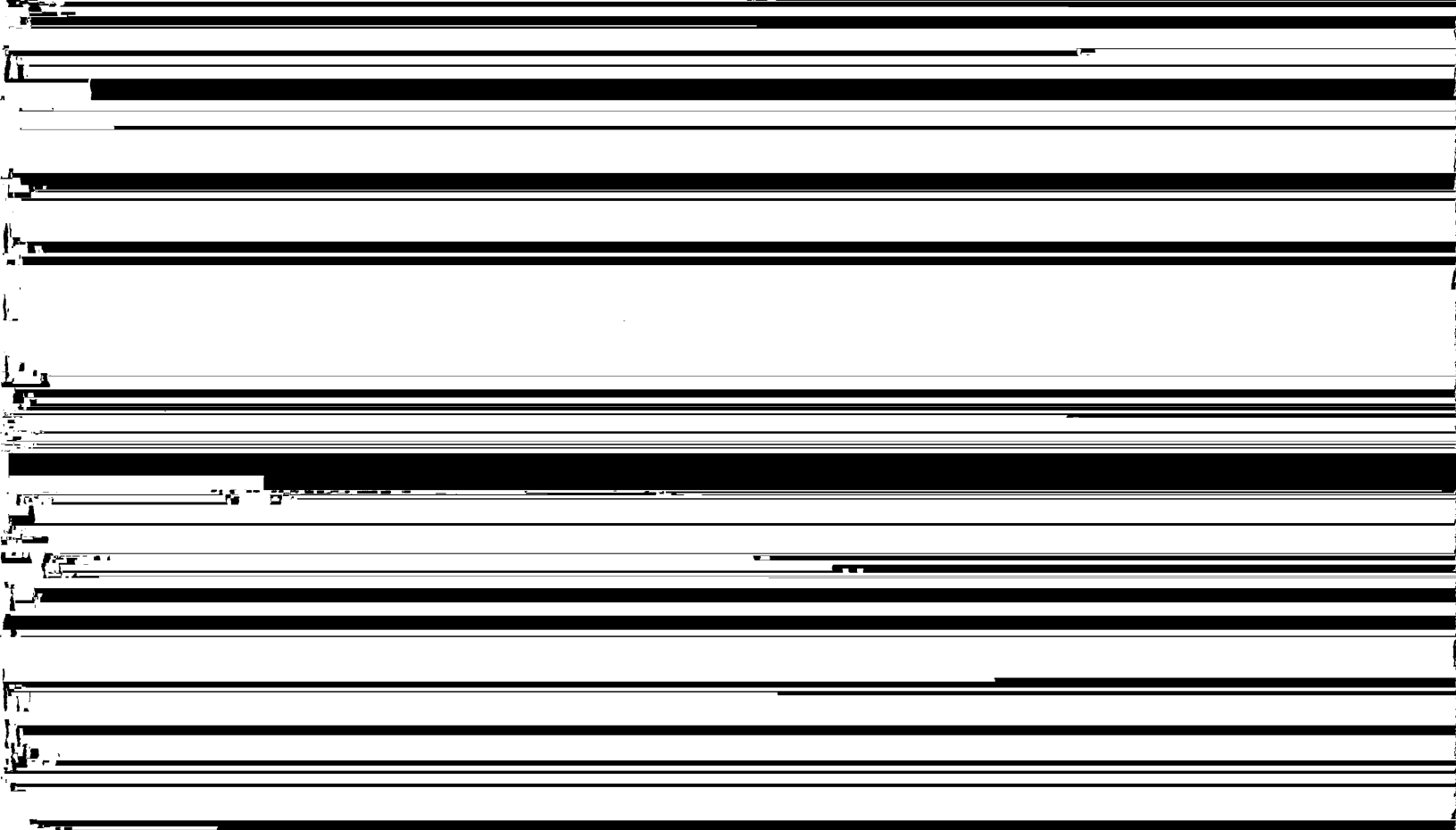
Conclusion

For all of the reasons stated above and in the accompanying Affidavit of Andrew Cohen, Nine West respectfully requests that parts (A)-(D) of Paragraph II of the

April 11, 2000 Decision and Order be deleted as to paragraph 11.

Exhibit 1

UNITED STATES OF AMERICA



Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of

NEW WEST GROUP INC

DECISION AND ORDER

a corporation.

DOCKET NO. C-3937

III.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date on which this order becomes final, Nine West shall clearly and conspicuously state the following on any list, advertising, book, catalogue, or promotional material where it has suggested any resale price

PRODUCTS, RETAILERS ARE FREE TO DETERMINE ON THEIR OWN
THE PRICES AT WHICH THEY WILL ADVERTISE AND SELL NINE WEST

IV.

IT IS FURTHER ORDERED that, within thirty (30) days after the date on which this

with the Commission a verified written report setting forth in detail the manner and form in
which the [redacted] is complying with this order

VIII.

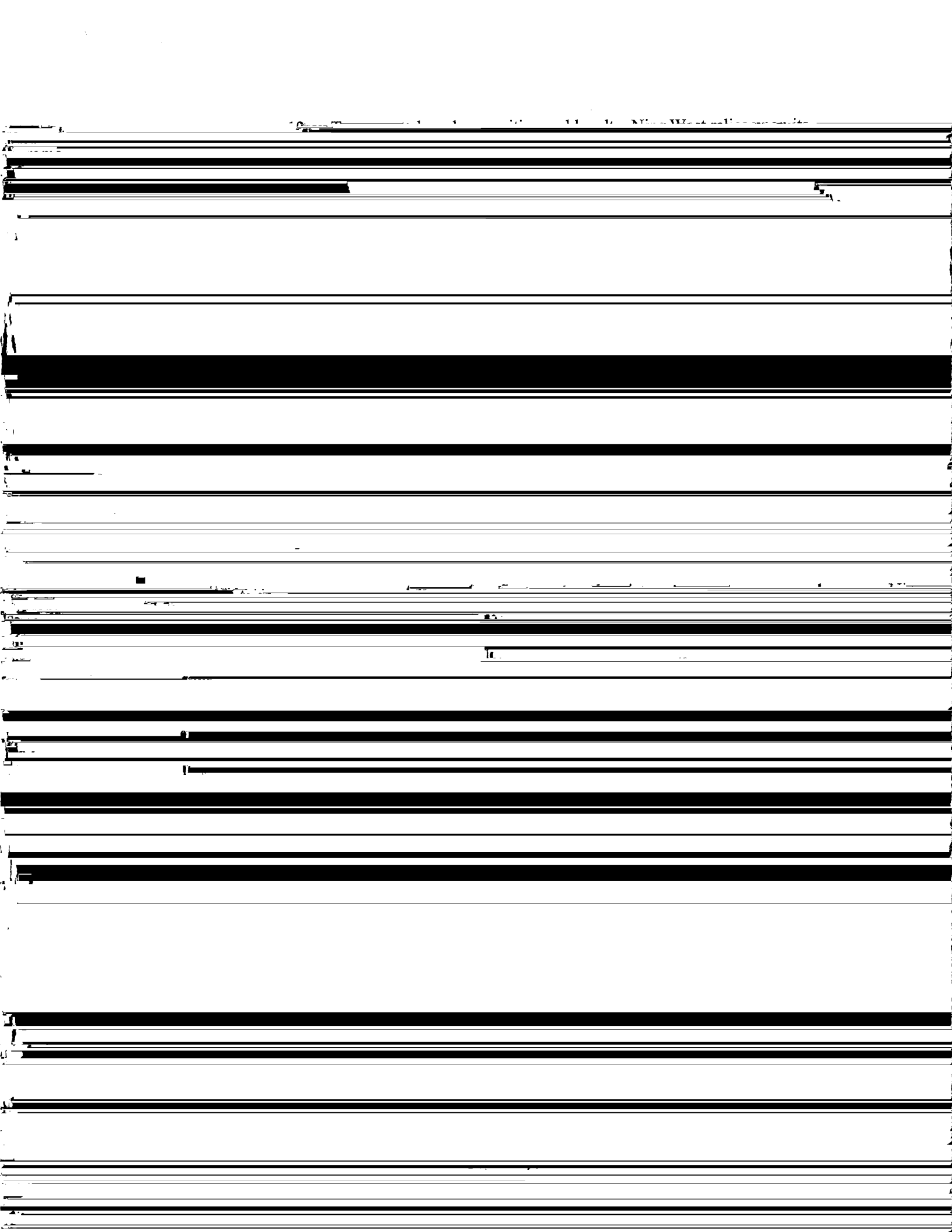
By the Commission

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

[REDACTED]

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known to provide margin support, or the retailer may have offered up exclusion from point-of-sale events as an incentive for a salon or designer vendor to sell to that retailer.

16. *II. Limit Order Nike West is at an unfair competitive disadvantage*

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17. *III. Limit Order Nike West is at an unfair competitive disadvantage*
