

# *Landmark Win for Retailers: Tribunal Rules Against Deckers' Anti-Competitive Sales Practices in Up & Running v Deckers*

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In a pivotal judgment for retail independence, the Competition Appeal Tribunal (CAT) found in favour of *Up & Running (UK) Limited* ("Up & Running") in its claim against *Deckers UK Limited* ("Deckers"), the distributor of HOKA-branded running shoes. TupperS Law proudly supported the litigant, who was present in the CAT in person to argue his position - an unusual occurrence. The case serves to set important precedents for the legality of restrictive practices in selective distribution and online sales. It says equally important things about access to justice.

The decision provides clear guidance for brand owners, particularly regarding how far they can control the sales practices of retail partners without infringing competition law. The Tribunal's findings emphasized that the selective distribution model employed by Deckers crossed the line, impeding competition and restraining the freedom of retailers.

## *Background of the Case*

Up & Running's claim was brought under Section 47A of the Competition Act 1998 and challenged two key practices by Deckers:

### **1. Online Sales Restrictions**

Deckers prohibited Up & Running from selling HOKA products on a newly established discount website, [runningshoes.co.uk](http://runningshoes.co.uk). Up & Running created this online outlet to clear excess stock at competitive (and, importantly, low) prices, which was said to be particularly essential following pandemic-related store closures that had left significant inventory unsold. Deckers rejected this plan without providing clear, legitimate criteria for the refusal/restriction.

### **2. Retail Price Maintenance (RPM)**

Up & Running argued that Deckers' refusal to approve the new online discount platform effectively limited Up & Running's ability to set competitive prices online, thereby enforcing an anti-competitive RPM practice. This pricing control, according to the claim, impeded Up & Running from responding to market demands and freely competing in the e-commerce space.

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# *The Tribunal's Analysis and Where Deckers Fell Short*

The Tribunal's analysis highlighted several missteps in Deckers' selective distribution approach, criticising the practices Deckers used to control retailer pricing and sales channels.

## **1. Failure to Apply Clear, Non-Discriminatory Criteria in Selective Distribution**

One of the Tribunal's central criticisms was Deckers' lack of transparency and consistency in enforcing its selective distribution model. Deckers argued that its policies were necessary to protect the HOKA brand's image and integrity, requiring sales only through channels that met specific brand-aligned standards. However, the Tribunal found that the criteria for approval were vague, inconsistently applied, and offered excessive discretion to Deckers. This absence of defined standards led to discrimination in the treatment of retail partners.

The CAT stressed that selective distribution agreements are only lawful when they rely on objective, non-discriminatory criteria that are clearly defined and uniformly applied. By failing to provide these safeguards, Deckers was found to have unfairly disadvantaged Up & Running, placing them at a competitive disadvantage without legitimate justification.

## **2. Excessive Discretion Leading to an Anti-Competitive "By Object" Infringement**

The Tribunal found that Deckers' broad discretion over sales approval led to an infringement by object – meaning that the practice itself was deemed inherently anti-competitive, without needing proof of actual effects on the market. The Tribunal noted that allowing one party in a selective distribution agreement to exercise unchecked control over another's sales channels, with little justification, introduced a significant risk of competitive harm.

In this case, Deckers' actions were found to have an anti-competitive intent, aiming to limit price competition within the HOKA brand rather than genuinely upholding brand standards. The Tribunal noted that Deckers' restrictions unjustly blocked Up & Running from using an effective online platform to manage inventory and serve customers, restricting both intra-brand competition (between retailers selling the same brand) and broader retail competition.

## **3. Absence of Legitimate Basis for Online Sales Restrictions**

Deckers claimed that restricting online sales through [runningshoes.co.uk](http://runningshoes.co.uk) was necessary to protect HOKA's brand value. However, the Tribunal found that Deckers failed to justify this restriction as genuinely required. The CAT highlighted that selective distribution arrangements can legitimately aim to protect brand image, but restrictions must have a clear connection to maintaining brand quality – something Deckers failed to demonstrate.

The Tribunal specifically critiqued Deckers' lack of documented standards for its online sales approval process. The absence of such criteria left Up & Running with no clear explanation for the refusal, pointing to an arbitrary approach rather than one grounded in objective brand maintenance. This arbitrary rejection not only hurt Up & Running's business but also contravened competition law by imposing undue restrictions on the retailer's freedom to operate online.

#### **4. Misuse of Brand Standards to Control Price Competition**

The Tribunal’s findings also suggested that Deckers’ restrictions on online sales channels served a hidden agenda of maintaining higher retail prices. The decision noted that while selective distribution can be used to ensure consistent brand presentation, Deckers used this framework to limit discounted sales, restricting Up & Running’s ability to offer customers more competitive prices. This approach was considered a de facto price maintenance tactic — a “hardcore” restriction under competition law.

In doing so, Deckers failed to meet the high bar set for selective distribution practices, which are permissible only when legitimately protecting brand image without unduly limiting price competition. The Tribunal emphasized that enforcing minimum retail pricing or similar practices restricts retailers’ pricing autonomy, ultimately harming consumer choice.

### ***The Outcome: Tribunal’s Ruling in Favor of Up & Running***

The CAT’s decision upheld Up & Running’s right to operate independently within the e-commerce space and struck down Deckers’ restrictive practices. Deckers were directed to adjust its selective distribution arrangements to introduce transparent, objective standards that aligned with competition law requirements.

The decision reinforces that while selective distribution agreements are allowed, they cannot be used to arbitrarily control retail channels or maintain high prices under the guise of brand protection.

\*Deckers has sought leave to appeal the judgement\*

### ***Key Lessons from the Judgment***

For retailers and brand owners, this judgment offers clear guidance on structuring lawful selective distribution frameworks:

#### **1. Clear, Consistent Criteria Are Essential**

Distribution systems must apply clear, objective standards across all retail partners, especially in selective agreements. Criteria should be transparent and linked to legitimate brand quality standards, not pricing control.

#### **2. Limited Discretion Reduces Legal Risks**

Allowing excessive discretion in enforcing distribution agreements is a red flag for competition authorities. Terms should include specific limits and frameworks for sales channel approvals.

#### **3. Pricing Freedom for Retailers**

Restricting a retailer’s ability to set prices — particularly with respect to discounted inventory — is likely to constitute anti-competitive conduct. Retailers should have the freedom to price as they see fit within legal bounds.

#### **4. Avoid Unjustified Online Sales Restrictions**

While selective distribution can protect brand image, online sales restrictions should be justifiable and proportionate, focusing on maintaining quality rather than stifling competition.

## *How This Affects Your Business*

If your business faces similar restrictions or if you need to ensure your distribution agreements align with competition law, our competition law team can help. We advocate for retailers' rights to operate without excessive restrictions and assist brand owners in creating compliant distribution frameworks that support competition rather than inhibit it.

This decision is a significant step toward levelling the playing field for retailers and highlights the need for brands to respect their retail partners' autonomy in both pricing and online sales.

## *Contact Us for Strategic Guidance*

TupperS Law was only too pleased to assist Up and Running in its claim. Competition law is no doubt a complex area of law, but one that affects all businesses, big and small.

Our team of competition law experts is available to discuss the implications of this decision and to provide guidance tailored to your business needs, ensuring compliance with competition law and supporting your competitive position.

***Reach out to Lee Chisman-Russell, Stephen Tupper, or our wider Competition Law team for bespoke advice and representation.***