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Price Discrimination Litigation Remains Hot (Even as FTC Enforcement Cools Down)

Price discrimination remains an active area of litigation, with recent court decisions addressing pricing disputes among manufacturers, wholesalers, and retailers. The key federal price discrimination law—the Robinson-Patman Act—generally prohibits product suppliers from offering better prices, rebates or promotional support to "favored" (typically larger) retailers if the discrimination might substantially lessen competition. Congress passed the Robinson-Patman Act during the Depression era to protect small independent grocers from supplier favoritism of large chain stores that purchased in larger volumes. But the law applies broadly to buyers and sellers of many kinds of goods.

Despite the Federal Trade Commission's stated intention to increase enforcement of the Robinson-Patman Act a few years ago, federal action has been limited. Most notably, the FTC dismissed its high-profile Robinson-Patman Act case against PepsiCo in May 2025. Nonetheless, the Act continues to generate private civil litigation. See e.g., U.S. Wholesale Outlet & Distribution, Inc. v. Innovation Ventures, LLC, 89 F.4th 1126 (9th Cir. 2023); Power Buying Dealers USA, Inc. v. JUUL Labs, Inc., No. 21-cv-03154 (N.D. Ill. Feb. 27, 2026).

A recent example of the Robinson-Patman Act in action is the U S. Court of Appeals for the Ninth Circuit's recent decision in LA International Corp. v. Prestige Brands Holdings, Inc., No. 24-3776, No. 24-5009, No. 24-5227, 2026 WL 504763 (9th Cir. Feb. 24, 2026). In that case, wholesalers serving convenience stores, gas stations, and liquor stores alleged that an eye-drop manufacturer engaged in price discrimination by charging them higher prices while offering favorable pricing and rebates to large retailers like Costco and Sam's Club. The jury agreed, awarding the wholesalers a total of $680,000 in damages—$350,000 for the Robinson Patman Act claims—which the court subsequently trebled to over $1 million for both the Act and state law claims. The court also entered a permanent injunction and awarded several million dollars in attorneys' fees to the plaintiffs. On appeal, the Ninth Circuit affirmed the verdict, rejecting the manufacturer's arguments that, among other things, it qualified for a "functional discount" exception to the Act. The court remanded the case to address a likely increase to the multimillion-dollar fee award.

While the Robinson-Patman Act (and similar state laws) preclude price

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discrimination when it comes to the sale of goods, there are several exceptions that apply if handled correctly. Knowledge of the Act is important for suppliers because, like other antitrust laws, the Act provides for treble damages and attorneys' fees, and lawsuits are typically intrusive, time-consuming, and costly. Wholesalers and retailers who are disfavored when it comes to prices and promotional support should likewise check on their rights under the Act.

Please contact Laura Brenner or any member of Reinhart's Commercial and Competition Law Team with questions about the Robinson-Patman Act, including whether your current or planned pricing or promotional practices comply with it.

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