

Recent Robinson-Patman Act Cases Demonstrate Size Doesn't Always Matter

When you hear about the Robinson-Patman Act, you may remember it as a law that protects smaller product re-sellers ("mom and pop" stores, local dealers, etc.) by preventing product suppliers from giving better prices to larger re-sellers just because of their size. You would be correct, but two recent cases serve as important reminders that the Robinson-Patman Act applies to more than just prices. The cases—*Dahl Automotive Onalaska Inc. v. Ford Motor Co.*, 20-cv-932-jdp, 2022 WL 602904 (W.D. Wis. 2021) and *Woodman's Food Market, Inc. v. Clorox Co.*, 833 F.3d 743 (7th Cir. 2016)—highlight that the Act also prevents discrimination in **promotional support**. However, they also demonstrate how difficult it can be for smaller re-sellers to prevail in Robinson-Patman actions, even when the big guys seem to be getting an advantage.

The *Woodman's* case involved claims of discrimination under the Robinson-Patman Act, specifically 15 U.S.C. § 13(e), concerning discrimination in providing promotional "services or facilities." Woodman's, a grocery store chain, alleged that Clorox violated the Act by offering it only smaller product pack options that were less appealing than the large pack options that Clorox offered to large warehouse-type stores like Costco. But after protracted litigation in the district court, the 7th Circuit held that while the Robinson-Patman Act does forbid discrimination in promotional support in general, the size of the product alone is not a promotional "service or facility" covered by the Act. Therefore, Clorox was not liable for providing larger-sized product options only to its bigger resellers.

The *Dahl* court was similarly unpersuaded that discrimination under the Robinson-Patman Act, specifically 15 U.S.C. § 13(a) and (d), could be established on a mere showing that a seller's program might possibly benefit larger buyers in the future. In *Dahl*, several auto dealers challenged a Ford program that provided bonuses to dealers for each Lincoln brand car sold if the dealer had constructed an exclusive Lincoln showroom. The program had options to accommodate smaller dealers—for example, the size of the showroom depended on expected annual Lincoln sales. But the dealers argued that the program discriminatorily benefited larger dealers who could more easily fund construction of a new showroom (costing millions of dollars) and more quickly recoup their investment. They also alleged that larger dealers would soon be able to use the bonuses to undercut the smaller dealers, ultimately luring car buyers away from them.

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However, the district court found that (1) the bonus payments were not a rebate, allowance, or otherwise a reduction in "price" of the vehicles (so Ford wasn't engaging in price discrimination); (2) the plaintiffs had not sufficiently established that they were likely to be harmed by the program—in fact, the court noted that dealers who built new showrooms incurred a substantial cost that the complaining dealers avoided, leaving the participating dealers at a cost disadvantage that would last well into the future and might never be fully recouped depending on how long Ford paid bonuses, and (3) the program and showrooms were not the type of promotional "services or facilities" covered by the Act because they were not sufficiently tied to advertising.

Dahl and *Woodman's* provide important reminders about the Robinson-Patman Act. Suppliers must consider the Act not only when setting prices, but also when launching promotional programs that offer re-sellers special sales bonuses, incentives, or rewards. Litigation is expensive and damages for violations of the Robinson-Patman Act can be steep—successful plaintiffs may recover treble damages, costs, and attorneys' fees. For re-seller plaintiffs, the cases highlight the notable barriers to a successful Robinson-Patman claim. Namely, size alone—of the re-seller or of the product—may not be enough to show the type of discrimination covered by the Act.

Reinhart's Commercial & Competition Law Team can help you navigate the Robinson-Patman Act and how it may impact you or your business. Please feel free to contact [Laura Brenner](#), [Olivia Brooks](#) or any member of the [Commercial & Competition Law Team](#) if you have a question about the Robinson-Patman Act or how your current or planned practices comport with the Act.

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