

Insights

ONE MORE FOR THE ROAD: FTC FILES PRICE DISCRIMINATION SUIT AGAINST BEVERAGE COMPANY IN FINAL WEEKS OF BIDEN ADMINISTRATION

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This month, the Federal Trade Commission (“FTC”) filed its much-anticipated lawsuit against Southern Glazer’s Wine and Spirits, LLC (“Southern Glazer’s”), alleging the alcohol distributor violated the Robinson-Patman Act (“RPA”). The RPA is a New Deal-era law outlawing price discrimination that harms competition. While private plaintiffs have invoked the RPA in a number of successful suits over the decades, FTC has not enforced the prohibition in over twenty years and has not litigated an RPA case in over forty years.

The FTC complaint alleges Southern Glazer’s, the largest U.S. distributor of wine and spirits—one in three bottles of liquor in the United States is sold by Southern Glazer’s—has repeatedly violated the RPA by discriminating against smaller, “mom and pop” retailers. FTC alleges that Southern Glazer’s engaged in price discrimination by not offering smaller retailers rebates and volume discounts that are simultaneously offered to larger, national retailers.

As recognized by the complaint, rebates and volume discounts are common distribution practices. However, FTC alleges that Southern Glazer’s pricing practices went too far, harming competition without any recognized justification, such as reflecting the differences in serving competing customers or meeting a competitor’s prices in good faith.

The fact FTC initiated this action at the very end of the Biden Administration is not surprising, as Democratic leaders fight to make their final impact before the incoming Trump appointees take the helm. The complaint fulfills the promise of FTC Chair Lina Khan and Biden-appointed FTC Commissioner Alvaro Bedoya to end the FTC’s long period of non-enforcement of this law. As it is exceedingly rare for FTC to withdraw a filed case, the case will likely proceed into the next administration.

Arguably, FTC need not have hustled to revive the RPA ahead of 2025. While Commissioner—and incoming FTC Chair—Andrew Ferguson dissented in the decision to authorize the filing of the lawsuit, he ultimately wrote in favor of enforcing the RPA—just not through the Southern Glazer’s suit, which Ferguson views as an “imprudent use of the Commission’s enforcement resources.”

Ferguson's dissent emphasized that the FTC should not categorically refuse to enforce the RPA—as he criticized previous Commissions of doing. Moreover, Trump's newest nominee for FTC Commissioner, Mark Meador, previously [agreed](#) that not enforcing the RPA is bad for consumers. Read more about Trump's picks for FTC leadership [here](#).

Whether the Southern Glazer's lawsuit survives the change of administration, future FTC Chair Ferguson and private plaintiffs alike are likely to push for additional RPA enforcement. Businesses should pay particularly close attention to developments in FTC's stance on the law and should consider the justification for—and impact of—their rebates and volume discounts. While the RPA was originally enacted to curb market power of large grocery chains and their suppliers, its applicability is not strictly limited to such consumer goods.

It is a good time to reflect on wholesale pricing strategy, including particularly large discrepancies in net wholesale pricing (post-rebate, promotional allowance, loyalty rewards and other credits) between channels or categories of customers. If you have any questions about these issues and their impact on your business, please reach out to BCLP's Antitrust & Competition Team for further guidance.

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MEET THE TEAM



Rebecca A. D. Nelson

St. Louis / Washington

rebecca.nelson@bcplaw.com

[+1 314 259 2412](tel:+13142592412)



David B. Schwartz

Washington

david.schwartz@bcplaw.com

[+1 202 508 6086](tel:+12025086086)



Lindsay Sklar Johnson

Atlanta

lindsay.johnson@bcplaw.com

[+1 404 572 6732](tel:+14045726732)



Emilee L. Hargis

St. Louis

emilee.hargis@bclplaw.com

+1 314 259 2028

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