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# FTC Settles Southern Glazer's: First Robinson-Patman Act Relief in a Generation

On October 2, 2026, the Federal Trade Commission [announced](#) a proposed stipulated consent decree to resolve its Robinson-Patman Act (RPA) case against Southern Glazer's Wine and Spirits, LLC (Southern). This settlement is the first relief that the FTC has secured under the Robinson-Patman Act since 2000. The statements from Chairman Ferguson and Commissioner Meador said that the FTC should exercise prosecutorial discretion in RPA enforcement and focus on harm to consumers.

## Background: RPA Primer and Case History

- **RPA refresher.** As laid out in our [client memo](#) from when the complaint was brought, the RPA prohibits selling the same or similar commodities at different prices to competing purchasers with a resulting competitive injury. It applies to tangible goods, not services. The statutory defenses are meeting competition, cost justification and changing market conditions. Courts have also recognized “functional availability” and functional-discount defenses.
- **The allegations.** The FTC sued in December 2024 on a 3-2 party-line vote. It alleged that Southern, the largest U.S. wine and spirits distributor, charged independent “mom-and-pop” retailers drastically higher prices than large chains, like Costco, Total Wine and Target. The FTC alleged that favored chains and nearby independents compete for the same consumers and that the price gaps resulted in diverted sales and lost profits for independent retailers. This is known as a secondary-line RPA case, which involves price discrimination that injures competition among the discriminating seller's customers.
- **Ferguson's dissent.** In dissent, then-Commissioner Ferguson argued that there was a lack of demonstrable evidence of harm to competition or consumers and that the case was an imprudent use of agency resources.
- **Motion to dismiss denied.** The FTC continued to litigate against Southern after the administration changeover, and in April 2025, the Central District of California denied Southern's motion to dismiss, holding that the FTC had adequately pleaded all four elements of a secondary-line claim: “(1) the challenged sales were made in interstate commerce; (2) the items sold were of like grade and quality; (3) the seller discriminated in price between the disfavored and the favored buyer; and (4) the effect of such discrimination may be to injure, destroy, or prevent competition to the advantage of a favored purchaser.” *FTC v. Southern Glazer's Wine and Spirits, LLC*, No. 8:24-cv-02684-FWS-ADS (C.D. Cal. Apr. 17, 2025), at \*5.
- **Dismissal of PepsiCo RPA complaint.** On January 17, 2025, in the waning days of the prior administration, the FTC voted 3-2 to bring an RPA complaint against PepsiCo. On May 22, 2025, the FTC, now consisting of three Republican commissioners, [dismissed](#) the lawsuit. In statements issued along with the dismissal, the commissioners said that while the RPA is a valid law, enforcement should follow a thorough investigation. Commissioner Meador wrote that, for example, the complaint did not give an example of PepsiCo refusing comparable terms to competing buyers.

## Key Settlement Terms

- **Core prohibition.** In 26 states, for six years, the order targets paired transactions, in which Southern sells a product to a chain retailer at one price and, within 45 days (or 75 days for certain chains) sells a product of “like grade and quality” to a nearby independent retailer at a significantly higher price. The order defines “nearby” (what it calls “Geographic Proximity”) as within 12 miles in rural areas, 6 miles in suburban areas and 1.5 or 2.5 miles in urban areas. Under the order, a violation occurs when, among other conditions, the paired transactions involve:
  - ◆ *Significant* price discrimination, meaning a price gap above a safe-harbor maximum based on state-specific operating costs.
  - ◆ *Recurring* price discrimination, meaning more than \$5,000 in total excess payments to a single independent retailer over a 12-month period.
- **Monitoring and penalties.** Twice a year for six years, Southern must give sales data on paired transactions to an independent monitor. When the monitor finds an overcharge, Southern may cure it by paying the affected independent retailer 1.5 times the aggregated price differential. If Southern does not cure and the FTC has to get a court order, the payment rises to twice the disparity.
- **Reserved defenses.** Southern keeps its functional-availability, meeting-competition and changing-market-conditions defenses. As Chairman Ferguson noted in his statement, the settlement “impos[es] concrete requirements on Southern before it can avail itself” of the meeting-competition and cost-justification defenses.

## Chairman Ferguson's and Commissioner Meador's Statements

- **Why the FTC settled:**
  - ◆ Chairman Ferguson wrote that discovery in this case bore out many of the concerns from his dissent: Seven of the 33 states produced no evidence of a violation, and in the remaining 26, there was only “modest quantifiable harm.” He wrote that, on the FTC’s strongest theory, total harm across the remaining 26 states was only about \$15.7 million per year.
  - ◆ He noted, however, that in a number of states, the FTC still had a credible argument of substantial injury, and both sides faced real litigation risk and heavy future costs.
  - ◆ Finally, he noted that greater relief after a trial victory was unlikely.
  - ◆ In a footnote, Chairman Ferguson again criticized the prior administration for bringing the *PepsiCo* RPA case, saying that the FTC “had conducted no meaningful investigation before filing that complaint and had nowhere near the amount of evidence the government should have before accusing someone of breaking the law.” Conversely, in the *Southern* case, he congratulated the staff for its work and noted that the FTC had a credible argument but said he was “baffled” that the prior FTC would bring a case that was “purely about the margins of liquor stores,” not about lower alcohol prices for consumers.
- **Milestone remedy.** Chairman Ferguson noted that because the FTC had not enforced the RPA in a generation, it “therefore had little experience doing the difficult work of articulating an enforceable remedy,” and this difficulty was compounded by the context of differing state liquor laws and regulatory requirements.
- **RPA enforcement philosophy of FTC leadership.** Chairman Ferguson reiterated certain principles from his dissent from the complaint, saying that the FTC should bring only RPA cases where both retailers and consumers are injured. He acknowledged that while courts generally do not require proof of consumer injury, the FTC should require it as a matter of prosecutorial discretion. He said cases involving buyers with market power would be a better use of resources. Commissioner Meador said that the FTC “should consider developing guidance explaining its current views on the Robinson-Patman Act’s requirements and the circumstances under which it would pursue an enforcement action.” After such guidance, Commissioner Meador would support a targeted inquiry in an industry that more directly affects the cost of living, such as food and groceries, “where there is clear consumer harm.”

## Key Takeaways

- **Commissioner statements focus on the need for guidance and for proof of consumer harm.** While it is unclear whether or how the current FTC will enforce the RPA again, the commissioners' statements provide meaningful information. Commissioner Meador urged the FTC to issue guidance before bringing more cases and focused on the need for consumer harm. Chairman Ferguson urged a focus on cases that harm both retailers and consumers, especially those involving powerful buyers.
- **RPA enforcement remains a possibility.** A Republican-led FTC has taken a Biden-era case through to relief and says it will act on unlawful price discrimination. Private RPA litigation also continues. Pricing and promotional allowances should be regularly reviewed for adherence to the RPA.
- **The settlement is the first governmental RPA relief in over 25 years.** As the first governmental RPA relief in a generation, the settlement, including its thresholds and safe harbors, shows how this FTC turned RPA concepts into operating rules.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

**Katherine B. Forrest**  
+1-212-373-3195  
[kforrest@paulweiss.com](mailto:kforrest@paulweiss.com)

**Katharine R. Haigh**  
+1-212-373-3607  
[khaigh@paulweiss.com](mailto:khaigh@paulweiss.com)

**Djordje Petkoski**  
+1-202-288-6467  
[dpetkoski@paulweiss.com](mailto:dpetkoski@paulweiss.com)

**Christopher M. Wilson**  
+1-212-373-3111  
[cmwilson@paulweiss.com](mailto:cmwilson@paulweiss.com)

**Zuzanna Knypinski**  
+1-202-419-7128  
[zknypinski@paulweiss.com](mailto:zknypinski@paulweiss.com)

**Robert J. O'Loughlin**  
+1-212-373-3343  
[roloughlin@paulweiss.com](mailto:roloughlin@paulweiss.com)

*Senior Knowledge & Innovation Attorney Timothy J. Haney contributed to this Client Memorandum.*