

The Federal Trade Commission (FTC) cracks down on discriminatory pricing

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After decades of limited Robinson-Patman Act enforcement, the FTC announced on October 8, 2026, that it had secured relief in its second Robinson-Patman Act matter in just one week.

The Robinson-Patman Act generally prohibits sellers from charging competing purchasers different prices for the same product, or from providing discriminatory discounts, rebates or promotional allowances. Price differences may be lawful, however, if they reflect actual differences in the seller's costs of serving customers, or are offered in good faith to meet a competitor's price or discount.

Violations of the Robinson-Patman Act can result in FTC administrative orders requiring companies to cease discriminatory pricing or promotional practices, private lawsuits seeking treble damages, and, in certain circumstances, criminal penalties, including fines and imprisonment.

The FTC recently investigated Gildan Activewear SRL, a leading T-shirt manufacturer, and S&S Holdings LLC, a major wholesale T-shirt distributor, for potential Robinson-Patman Act violations. According to the FTC, a partnership agreement between the companies prevented Gildan from offering competing distributors the same pricing and discounts available to S&S. Following the FTC's investigation, Gildan and S&S amended the agreement by removing provisions that limited those pricing and discount opportunities exclusively to S&S. The revised agreement permits Gildan to offer comparable pricing and discounts to other North American wholesale distributors. In light of those changes, the FTC closed its investigation.

This action follows another significant Robinson-Patman Act enforcement matter announced by the FTC on October 2, 2026. In that case, Southern Glazer's Wine and Spirits, the nation's largest wine and spirits distributor, agreed to end practices that allegedly denied small, independent retailers access to discounts and rebates available to larger competitors.

Taken together, these matters signal renewed FTC scrutiny of pricing and discounting practices that may disadvantage smaller businesses and reflect the agency's increased commitment to enforcing the Robinson-Patman Act.

Why this matters

These recent FTC actions demonstrate that Robinson-Patman Act compliance is once again a regulatory priority. Manufacturers, distributors and other businesses that offer different prices, discounts, rebates, promotional allowances or other incentives to competing customers should expect increased scrutiny, particularly where smaller businesses may be placed at a competitive disadvantage.

Many companies have not closely evaluated their Robinson-Patman Act exposure in recent years because enforcement activity has been relatively dormant.

The FTC's recent actions suggest that even longstanding pricing and distribution arrangements may warrant renewed review.

What companies should do

To reduce risk and prepare for heightened enforcement, companies should consider the following steps:

- **Audit pricing programs** – Review customer classifications, volume discounts, rebates and other pricing arrangements to ensure that price differences are supported by documented and legitimate business justifications, such as cost savings, rather than preferential treatment.
- **Document competitor-match pricing** – When offering special pricing to meet a competitor's lower price, require sales personnel to verify and document the competing offer and maintain records demonstrating a good-faith basis for the price match.
- **Standardize promotional programs** – Establish clear written policies governing cooperative advertising funds, marketing allowances and similar promotional benefits so that competing customers understand what opportunities are available and how they may qualify.
- **Involve legal counsel early** – Require legal review of custom pricing arrangements, exclusivity provisions, favored-customer clauses and agreements involving large or strategically important purchasers to identify potential Robinson-Patman Act risks before they become enforcement issues.

As the FTC continues to focus on practices that may disadvantage smaller competitors, proactive compliance efforts can help companies reduce enforcement risk while preserving effective pricing and distribution strategies.

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