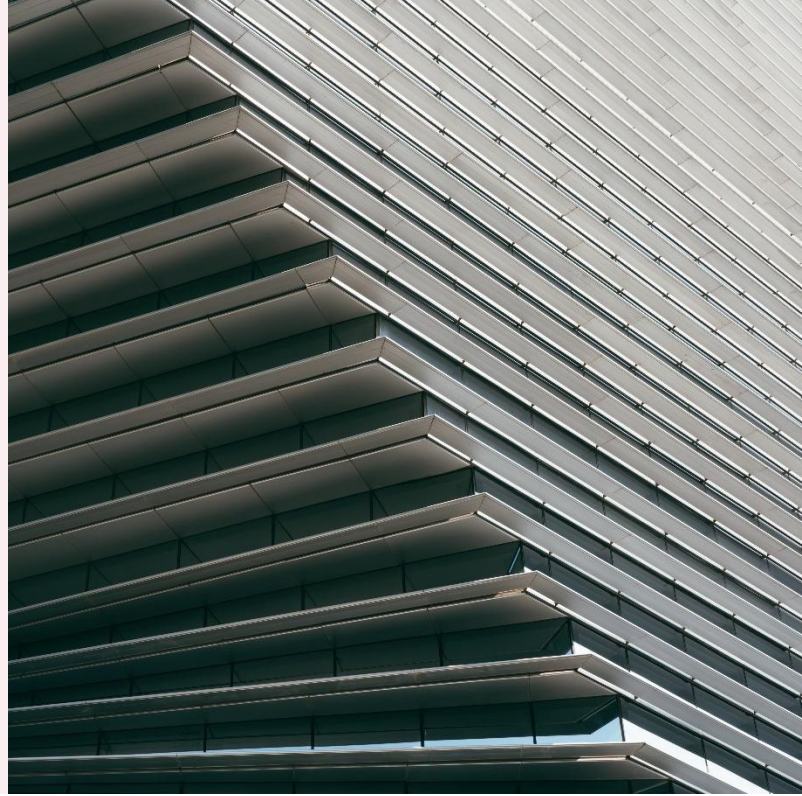


FTC's Price Discrimination Playbook Uncorked: Key Takeaways from the Consent Order in FTC v. Southern Glazer's

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The Robinson-Patman Act is no longer a relic. On October 2, 2026, the Federal Trade Commission ("**FTC**") uncorked its first completed Robinson-Patman Act ("**RPA**") enforcement action in more than 20 years, settling its case against Southern Glazer's Wine and Spirits ("**Southern Glazer's**"). The terms of the deal are essential reading for any company that prices the same product differently for different customers.ⁱ

Introduction

In December 2024 and January 2025, the FTC, under then-Chair Lina Khan, brought RPA enforcement actions against Southern Glazer's and PepsiCo, respectively.ⁱⁱ Five months later, under the leadership of Chairman Andrew Ferguson, the Commission voted 3-0 to dismiss the PepsiCo case without prejudice, with Chairman Ferguson calling the suit a "nakedly political effort" rushed out in the final days of the prior administration and Commissioner

Mark Meador describing it as "possibly the most reckless and irresponsible use of antitrust enforcement resources [he had] witnessed."ⁱⁱⁱ

But the FTC under Chairman Ferguson and Commissioner Meador did not walk away from previous leadership's RPA enforcement efforts altogether. In fact, even when Chairman Ferguson dissented from the decision to file the Southern Glazer's lawsuit on the basis that the case was "a poor use of the agency's resources," he still emphasized his belief that RPA enforcement is appropriate and consistent with the FTC's constitutional duty to enforce the law Congress enacted.^{iv} Unlike the PepsiCo case, the FTC continued to litigate the Southern Glazer's matter after the change in administration and ultimately settled the case.

The FTC's actions following the Southern Glazer's settlement further demonstrate that RPA enforcement remains a priority for the agency. Just days after settling with Southern Glazer's, the FTC announced that it had investigated t-shirt manufacturer Gildan Activewear SRL for potential violations of RPA Section 2(a) and wholesale distributor S&S Holdings LLC for potential violations of Section 2(f).^v According to the FTC, the parties' distribution agreement allegedly restricted Gildan from offering certain pricing and discounts to S&S's competitors. Following the FTC's investigation, the parties amended their agreement to remove the challenged restrictions, and the FTC closed its investigation. The matter underscores the agency's willingness to investigate alleged price discrimination and related conduct under the RPA.

The FTC's settlement with Southern Glazer's and subsequent enforcement activity provide the clearest indication yet of how the FTC intends to approach RPA enforcement going forward.

Background of the Case

Government enforcement of the RPA has largely languished for decades.^{vi} That changed in December 2024, when the FTC sued Southern Glazer's, the nation's largest wine and spirits distributor, alleging that it charged independent and smaller retailers meaningfully higher prices than it charged large chain retailers for identical bottles of wine and spirits, sold in reasonably contemporaneous transactions and in close geographic proximity.^{vii} The complaint alleged this conduct violated Section 2(a) of the RPA and constituted an unfair method of competition under Section 5 of the FTC Act.^{viii}

Section 2(a) of the RPA makes it unlawful for a seller to charge different prices to different purchasers for commodities of like grade and quality where the effect may be to injure competition, unless the price difference is justified by certain defenses, including actual cost savings, a good-faith effort to meet a competitor's price, or changing market conditions. The FTC framed Southern Glazer's alleged conduct as a textbook violation of Section 2(a): quantity discounts, cumulative volume rebates, scan rebates, and supplier-funded "discount support" that were, in practice, available only to large chains such as Total Wine, Walmart, and Kroger, and not justified by Southern Glazer's actual cost of serving those accounts.^{ix}

In June 2026, the parties told the court they had reached an agreement in principle and executed a memorandum of understanding, and they jointly asked the court to stay the case pending finalization of a proposed order.^x At that point, the case had been in active fact discovery, with a discovery cutoff originally set for September 2027. On October 2, 2026, the parties filed, and the Central District of California granted, a stipulated consent decree and order resolving the case.^{xi}

Southern Glazer's Requirements under the Settlement

The order would remain in effect for six years and requires the appointment of an independent monitor to oversee Southern Glazer's compliance. Under the order, if the monitor determines that Southern Glazer's sold the same product, around the same time and in the same general area, to a chain retailer at a meaningfully lower price than it charged a smaller, independent retailer, Southern Glazer's may resolve the violation by paying the independent retailer 1.5 times the amount of the alleged overcharge.

The order runs for six years and requires the appointment of an independent monitor to oversee Southern Glazer's compliance, which will be paid for by Southern Glazer's and have full access to Southern Glazer's books, records, and personnel to monitor compliance. Under the order, if the monitor determines that Southern Glazer's sold the same product, around the same time and in the same general area, to a chain retailer at a meaningfully lower price than it charged a smaller, independent retailer, Southern Glazer's may resolve the violation by paying the independent retailer 1.5 times the amount of the alleged overcharge within 60 days of the violation.^{xii} If Southern Glazer's declines to cure the violate and the FTC later prevails in an enforcement action, the multiplier doubles to twice the excess payment.^{xiii}

The order's geographic and temporal proximity tests are notably precise. Discriminatory transactions must occur within 1.5 miles in Chicago, New York City, San Francisco, and Seattle; 2.5 miles in other urban areas; 6 miles in suburban areas; and 12 miles in rural areas, all within the same state. And the transactions must be within 45 to 75 days of each other, depending on the retailer involved.^{xiv}

The order is explicit that Southern Glazer paying overcharged retailers does not constitute an admission that Southern Glazer's violated the RPA or the order.

The Defenses the FTC Left on the Table

Southern Glazer's is not required to pay for all price differentials. The order expressly preserves Southern Glazer's right to assert three RPA defenses to justify different prices:

- **Functional availability:** that the pricing or deal terms at issue were practically available to the disadvantaged retailer and the disadvantaged retailer knew that the differential was available to them (with the FTC

reserving the right to argue the terms were not realistically attainable or affirmatively communicated).^{xv}

- **Meeting competition:** that the price difference reflected a good-faith effort to meet a competitor's equally low price, which Southern Glazer's bears the burden of proving by a preponderance of the evidence.^{xvi}
- **Changing market conditions:** that the differential reflects good-faith sales tied to discontinuance of a product line or closeout sales, also a defense Southern Glazer's must prove by a preponderance of the evidence.^{xvii}

The order also requires Southern Glazer's to maintain business records sufficient to support any of these defenses, including documentation of supplier-funded support used to justify a price differential, and to make that documentation available to the monitor on request.^{xviii}

Ongoing Compliance Obligations

Beyond the pricing mechanics, the order layers on a compliance infrastructure that gives insight into what the FTC expects to resolve an RPA enforcement action:

- Semi-annual compliance reports to the monitor and the FTC.
- A designated Compliance Officer responsible for a formal RPA compliance program.
- Annual RPA training for executive and commercial staff, and training within 60 days of anyone newly stepping into such a role.
- Confidential internal reporting channels for employees to flag potential violations without fear of retaliation.

What this Means for Your Business

The Southern Glazer's settlement is the clearest window yet into how the FTC approaches RPA enforcement, and it is worth bottling up a few points regardless of your industry.

First, the fact pattern that draws FTC attention is specific and now well defined: the same product, sold to a large chain and a small independent competitor, in close geographic proximity, within a short window of time, at a meaningfully different net price that is not explained by cost-to-serve. If your sales organization offers discounts, rebates, or promotional support that functionally sort customers by size rather than by cost, this order should prompt a hard look at how those programs are documented and justified.

Second, the RPA's statutory defenses are alive, and the FTC is willing to preserve them even in a settlement. That is good news, but it is conditioned on documentation. The order's data retention requirements, three years for underlying pricing records, and requirement to contemporaneously document

supplier support, are reminders that these defenses are only as strong as the paper trail behind them.

Third, expect the FTC to pair a pricing fix with a durable compliance overlay: a named compliance officer, mandatory annual training reaching well into the commercial organization, and a multi-year monitorship. Companies with meaningful chain-versus-independent pricing differentials should treat this structure as a preview of what a future consent order, or a voluntary compliance refresh, might look like.

Recommended Next Steps

- Audit pricing programs (including discounts, rebates, and promotional support) for any pattern that systematically favors large chain customers over smaller retail competitors without a cost or competitive justification.
- Implement or tighten documentation to justify any price differential with defenses to RPA enforcement, including cost justification, meeting competition, changing market conditions, functional availability, and functional discount defenses.
- Build or refresh RPA training for sales, pricing, and revenue management personnel, and anyone else responsible for pricing decisions.
- Revisit retention policies for pricing and rebate data, particularly given how long the FTC expects this kind of documentation to survive.

We will continue to monitor RPA developments, including how this consent order is implemented in practice, and would be glad to walk through what it means for your specific pricing programs.



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ⁱ FED. TRADE COMM'N, *FTC Secures Settlement that Protects Small Businesses from Illegal Price Discrimination* (Oct. 2, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/10/ftc-secures-settlement-protects-small-businesses-illegal-price-discrimination>.

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- ⁱⁱ FED. TRADE COMM'N, *FTC Sues Southern Glazer's for Illegal Price Discrimination* (Dec. 12, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/12/ftc-sues-southern-glazers-illegal-price-discrimination>; FED. TRADE COMM'N, *FTC Sues PepsiCo for Rigging Soft Drink Competition* (Jan. 17, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-sues-pepsico-rigging-soft-drink-competition>, <https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-dismisses-lawsuit-against-pepsico>; Dissenting Statement of Comm'r Andrew N. Ferguson, *In re Southern Glazer's Wine and Spirits*, Matter No. 2110155, at 21–23 (Dec. 12, 2024).
- ⁱⁱⁱ FED. TRADE COMM'N, *FTC Dismisses Lawsuit Against PepsiCo* (May 22, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-dismisses-lawsuit-against-pepsico>.
- ^{iv} Dissenting Statement of Comm'r Andrew N. Ferguson, *In re Southern Glazer's Wine and Spirits*, Matter No. 2110155, at 21–23 (Dec. 12, 2024) ("The upshot is that unelected bureaucrats cannot take it upon themselves to repeal a law. We must of course prioritize our enforcement resources consistently with the public interest. But the power to prioritize does not carry with it the power to suspend. We have a constitutional obligation to treat the Robinson-Patman Act as valid law, and to make enforcement decisions accordingly."), available at https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-southernglazers-statement.pdf.
- ^v FED. TRADE COMM'N, *FTC Secures Fair Pricing Protections by Taking Action Against Major Wholesale T-Shirt Distributors* (Oct. 8, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/10/ftc-secures-fair-pricing-protections-taking-action-against-major-wholesale-t-shirt-distributors>.
- ^{vi} See Statement of Commissioner Alvaro M. Bedoya Joined by Chair Lina M. Khan and Commissioner Rebecca Kelly Slaughter, *In re Southern Glazer's Wine and Spirits*, Matter No. 2110155, at 3 (Dec. 12, 2024) ("Then, for much of the last half-century, discussions of Robinson-Patman were dominated by confident and at times florid denunciations of the law's impact on competition. Robinson Patman is 'the misshapen progeny of intolerable draftsmanship coupled to wholly mistaken economic theory,' proclaimed Judge Bork in *The Antitrust Paradox*. More sober critiques, including from former chairmen and commissioners of the FTC, boil down to the argument that Robinson-Patman is an anticompetitive outlier in the antitrust laws that protects inefficient smaller retailers from the cost-cutting efficiencies of national businesses – raising prices to consumers. Against this backdrop, law enforcers let the law fall dormant."), available at https://www.ftc.gov/system/files/ftc_gov/pdf/statement-bedoya-joined-by-khan-slaughter-southern-glazers.pdf.
- ^{vii} *FTC v. Southern Glazer's Wine and Spirits, LLC*, 8:24-cv-02684-FWS-ADS, ECF No. 1 (C.D. Cal. Dec. 12, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/redacted_version_of_complaint_2.10.2025_dkt_57.pdf.
- ^{viii} *Id.* ¶¶ 85–88.
- ^{ix} *Id.* ¶ 36.
- ^x *FTC v. Southern Glazer's Wine and Spirits, LLC*, 8:24-cv-02684-FWS-ADS, ECF No. 224 (C.D. Cal. June 22, 2026).
- ^{xi} *FTC v. Southern Glazer's Wine and Spirits, LLC*, 8:24-cv-02684-FWS-ADS, ECF No. 237 (C.D. Cal. Oct. 2, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/SGWS-ProposedStipulatedConsentDecreeandOrder.pdf.
- ^{xii} *Id.* at 3, 8–9.
- ^{xiii} *Id.* at 10.
- ^{xiv} *Id.* at 4.
- ^{xv} *Id.* at 10.
- ^{xvi} *Id.* at 11.
- ^{xvii} *Id.*
- ^{xviii} *Id.*