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Robinson-Patman Act Defense Rejected in Breach-of-Contract Case

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Asserting a breach-of-contract defense based on the illegality of the contact under the Robinson-Patman Act appears to be as difficult as successfully alleging a Robinson-Patman Act claim itself.

Earlier this week, the federal district court in San Francisco refused to allow a manufacturer of premium pet food to nullify its agreement with a retailer on the ground that the agreement violates the Robinson-Patman Act. Summary judgment was granted to the retailer as to the manufacturer's antitrust-based defenses and counterclaims. The retailer was entitled to seek damages for the alleged breach of contract.

The retailer, Pet Food Express, operated a chain of 35 stores in the greater San Francisco Bay area. It sold premium pet food and invested heavily in employee education and training and customer education. By a multi-year agreement entered in 2004, the manufacturer, Royal Canin, agreed to pay the retailer—in return for promoting the manufacturer's products—a one-time volume rebate, a promotional allowance (PA) and a market development allowance (MDA).

In 2009, the manufacturer refused to pay the retailer the 2008 MDA, which had a payment amount between $310,000 and $320,000. The manufacturer allegedly told the retailer that it would not pay the MDA because it had determined that the promotional allowances and MDA payments it had been making to the retailer since 2004 were illegal and unenforceable under section 2(d) of the federal Robinson-Patman Act and a parallel provision of California state law.

The retailer filed its breach of contract action. In response, the manufacturer raised an illegality-based affirmative defense as well as an illegality-based counterclaim, contending that certain terms of the MDA and PA terms in the contract violated Secs. 2(a), (d), and (f) of the Robinson-Patman Act and the California Unfair Practices Act (UPA).

Questing the manufacturer's "good-Samaratin instincts," the court decided *sua sponte* that the manufacturer lacked standing to assert the antitrust-based defense and counterclaim.

"Although couched in vague terms of some alleged harm to competition, defendant's true injury here is its continued obligation to perform under a contract whose terms are now objectionable to defendant," the court said.

According to the court, any alleged antitrust injury here would be to the retailer's secondary line competitors and not to the manufacturer, who was a primary line seller. Thus, the manufacturer

suffered no injury-in-fact to assert its affirmative defense and counterclaim. There were more appropriate parties who should bring these claims, according to the court, such as the retailer's competitors—Petco and Petsmart.

Even if the manufacturer had standing to raise its claims, it failed to establish that the MDA and the PA clauses amounted to illegal, secret, and unearned discounts under the California UPA, the court also ruled. Among other things, the manufacturer failed to proffer evidence of harm to a competitor which was necessary to establish a prima facie violation of California Business and Professions Code section 17045. Similarly, the court ruled that the manufacturer failed to proffer evidence as to its federal Robinson-Patman Act claims sufficient to survive summary judgment.

The April 18, 2011, decision in *Pet Food Express Ltd. v. Royal Canin USA, Inc.*, No. CV 09-01483 MHP, will appear at 2011-1 Trade Cases ¶77,418.