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Federal District Court in Wisconsin Tosses Price Discrimination Lawsuit Over Legality of Exclusive Car Showrooms Under the Robinson-Patman Act

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On March 1, 2022, a federal judge granted summary judgment in favor of Ford Motor Company ("Ford"), holding that Ford's Brand Exclusivity Standard, part of Ford's Lincoln Commitment Program, does not violate the Robinson-Patman Act's prohibitions on price discrimination or discriminatory compensation under Sections 2(a) and (d) of the Robinson-Patman Act, codified at 15 U.S.C. § 13(a) and (d). The court held that Ford's program, which pays its Lincoln dealers a percentage of the manufacturer's suggested retail price for each vehicle sold if the dealer agrees to build (or already has built) a showroom devoted exclusively to Lincoln vehicles, does not amount to a discriminatory rebate or allowance, nor does such an exclusive showroom constitute a "promotional facility" under the Robinson-Patman Act.

The Lawsuit

A group of Wisconsin dealers of Lincoln Ford vehicles brought suit against Ford in the Western District of Wisconsin in October 2020. *See Dahl Automotive Onalaska Inc. d/b/a Dahl Lincoln et al. v. Ford Motor Company d/b/a Lincoln Motor Company*, No. 20-CV-932-JDP (W.D. Wis. Oct. 6, 2020). The plaintiffs alleged[1] that Ford's Brand Exclusivity Standard ran afoul of the Robinson-Patman Act because it unfairly favors large dealers at the expense of smaller ones, like the group of dealer-plaintiffs. Under Ford's program, if a dealer constructs a showroom devoted exclusively to Lincoln vehicles (the required size of the showroom depending on the dealer's estimated sales), then the dealer would receive a "per-vehicle payment" equaling 2.75% of the manufacturer's suggested retail price.

The plaintiffs argued that it would cost them anywhere from $2 to $4 million to construct a showroom and that it would take them anywhere from 12 to 170 years to offset the construction costs under the program, whereas large dealers could pay off a showroom in less than seven years. In the meantime, according to the plaintiffs, larger dealers participating in the program unfairly benefit by being able to use the incentive payment to lower prices and undersell smaller dealers.

The Decision

The Robinson-Patman Act was enacted as a means to remedy harm to competition caused by powerful buyers that could obtain lower prices for goods than smaller buyers. Subsection 13(a) does so by prohibiting price discrimination between purchasers of similar commodities. Other sections of the Robinson-Patman Act, such as subsection 13(d), were subsequently enacted to address attempts to conceal price discrimination through the provision or payment of promotional support and services. The court disposed of the plaintiffs' theories under both subsections.

Section 13(a) Claims

First, the court held that Ford's 2.75% incentive payment under the program does not constitute price discrimination under subsection 13(a). In so holding, the court rejected the plaintiffs' argument that the incentive payment is really a "rebate" or "allowance" that effectively reduces the price that a dealer must otherwise pay for the vehicle. Although the price discrimination analysis "take[s] into consideration anything that effectively lowers the price, including rebates and allowances," the court explained that "rebates and allowances are essentially free money that a buyer receives without a corresponding cost or obligation." Because Ford's incentive payment is tied to a dealer's commitment to spend millions of dollars constructing an exclusive showroom, the court rejected the notion that it was a rebate or allowance.

The court also found that the plaintiffs failed to show competitive harm. Unpersuaded by the plaintiffs' theory that larger dealers participating in the program are able to undersell the plaintiff-dealers by virtue of the 2.75% incentive payment, the court explained that plaintiffs assume that larger dealers receive the incentive payments without having incurred any costs. But the court emphasized that participating dealers "either already constructed an exclusive, multimillion-dollar showroom or they have committed to doing so in 2022" and that it would take even the largest dealers at least six to seven years to pay off those construction costs. Although the court observed that the plaintiffs would have a stronger claim if Ford continued making incentive payments to dealers after they recouped their costs, such a claim was premature. The court also noted that Ford's program runs from year to year and that Ford could therefore withdraw the incentive payments regardless of whether a dealer made a return on their investment.

The plaintiffs disagreed, arguing that at least one large dealer already has an exclusive showroom and that Ford provides it with incentive payments even though the dealer incurred no additional investment costs. The court rejected that argument as well, stating that "plaintiffs cite no authority for the view that § 13(a) prohibits a seller from partially reimbursing a buyer for costs that it has already incurred." In fact, the court reasoned that if Ford withheld an incentive payment "simply because a dealer already incurred those costs, that itself could be considered discriminatory."

Section 13(d) Claims

Second, the court held that exclusive showrooms are not "promotional facilities" within the meaning of subsection 13(d). According to the court, the crux of the plaintiffs' argument was that an exclusive showroom is a promotional facility because that is where vehicles are sold. The court explained that the law is not so expansive.

Relying on the Seventh Circuit's decision in *Woodman's Food Mkt., Inc. v. Clorox Co.*, 833 F.3d 743 (7th Cir. 2016), which we covered previously, as well as the Federal Trade Commission's interpretive

guidance at 16 C.F.R. § 240.7,[2] the court explained that subsection 13(d) of the Robinson-Patman Act targets only a narrow brand of conduct that Congress identified as problematic – "the provision of advertising-related perks to purchasers as a way around subsection 13(a)'s prohibition on price discrimination." According to the court, it is not enough that an exclusive showroom may aid dealers in reselling vehicles. To hold otherwise would expand the application of subsection 13(d) well beyond the Seventh Circuit's view that it is limited to "advertising-related perks."

The court reasoned that the plaintiffs' interpretation would cause subsection 13(d) to apply to service departments, warranties, or any other attractive features of a vehicle, and that the Seventh Circuit already rejected the argument in *Woodman's* that subsection 13(d) applies to any product attribute that makes the product more desirable. This is consistent with the FTC's interpretive guidance. Noting that the FTC's guidance "is instructive as to what qualifies as a service or facility under § 13(d)," the court found that a "showroom bears no resemblance to any of the items" on the FTC's list.

Ultimately, given the narrow construction of subsection 13(d), as well as the fact that the plaintiffs were unable to identify any case law supporting their position, the court concluded that the payments under Ford's program do not fall within the purview of subsection 13(d) of the Robinson-Patman Act.

Conclusion

In order to compete more effectively in the marketplace, manufacturers may ask dealers to use exclusive showrooms. If they do, manufacturers may need to compensate or reward dealers for these types of investments required for this level of commitment to a brand. Here, the court concluded that the plaintiffs failed to show that Ford's Lincoln Commitment Program constitutes price discrimination because the incentive payment was not a rebate or allowance, and the program did not have any effect on competition in any event. The decision is also notable because it provides additional guidance interpreting subsection 13(d) of the Robinson-Patman Act, and in so doing, relies heavily on precedent and interpretive guidance to narrowly construe the scope of subsection 13(d).

ENDNOTES:

[1] The court also granted summary judgment in favor of Ford and dismissed the plaintiffs' claims under Wisconsin's motor vehicle dealer law and the Uniform Commercial Code's duty of good faith and fair dealing.

[2] These are also known as the Fred Meyer Guidelines, which are the FTC's Guides for Advertising Allowances and Other Merchandising Payments and Services. *See* 79 Fed. Reg. 58245-01 (FTC Sept. 29, 2014) (codified at 16 C.F.R. Part 240).

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