

A yellow right-angled triangle pointing towards the top-left corner.

BLOGS
Antitrust

Federal Court in Texas Allows Plaintiff to Proceed With Price Discrimination Claim Against Nike

A federal court recently allowed a price discrimination claim against Nike to proceed to discovery. *Games People Play, Inc. v. Nike, Inc.*, 2015 U.S. Dist. LEXIS 33217 (E.D. Tex. Feb. 12, 2015). Games People Play (GPP) is a golf retailer in Texas that had been selling Nike apparel and equipment since 1986. In 2010, GPP discovered what it considered to be a significant price disparity between what it was paying for specialty Nike golf clubs and what its competitors were paying for the same clubs. GPP alleged that in the two years after it complained to Nike about this price disparity, Nike refused on multiple occasions to sell to GPP merchandise that was being offered to GPP's competitors. GPP filed suit in 2014 alleging various violations of state and federal law, including price discrimination claims under the Robinson-Patman Act.

Nike moved to dismiss GPP's Robinson-Patman Act claims, arguing that GPP had failed to allege a sufficient injury to competition to maintain a price discrimination claim under section 2(a) of the Act. Nike argued that GPP could not show a direct injury based on sales diverted from GPP to a favored purchaser, nor could GPP show that the isolated disparity in golf club prices created a significant price differential over a substantial period of time such that GPP could rely on a judicial inference of harm. The court acknowledged that Nike's argument may ultimately prove meritorious, but it declined to dismiss the claim before discovery had been commenced. The court did, however, dismiss GPP's claims under sections 2(d) and 2(e) of the Act, which prohibit a seller from discriminating against certain buyers with regard to promotional favors, such as advertising and merchandising. The court concluded that GPP's allegations about discrimination in promotional opportunities were limited to examples of Nike refusing to sell specific products to GPP, but it is well settled that a refusal to deal does not constitute a violation of the Robinson-Patman Act.

Related People

Maisa Frank

Partner

Washington, D.C.

202.295.2209

maisa.frank@lathropgpm.com