

# The Goods on Antitrust & Consumer Packaged Goods: A Sneak Preview of Axinn's Thoughts in Advance of the CPG Legal Forum

A photograph of a modern building's curved glass facade, showing multiple floors and windows, set against a light blue sky.

2 MIN READ

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Americans buy consumer packaged goods (CPG) every single day. As such, the CPG industry is on the radar of a variety of regulators and law enforcers, including federal and state antitrust enforcers. As counsel to a number of CPG companies, Axinn keeps abreast of current antitrust issues that are particularly relevant to the industry. As we look ahead to the Consumer Brands Association's Legal Forum in San Diego later this week, here are two topics from the antitrust world for CPG companies to keep an eye on:

## **What we can learn from blocked supermarket and handbag deals**

Last year saw two different federal district courts block transactions on grounds that have implications for consumer goods deals moving forward. In September 2024, a judge in the Southern District of New York enjoined Tapestry's (owner of brands such as Coach and Kate Spade) acquisition of Capri (the owner of brands such as Michael Kors and Versace). A few months later in December, a judge in the District of Oregon blocked a proposed acquisition in the supermarket space between Kroger and Albertsons. Notably, Albertsons later sued Kroger for having violated provisions of the merger agreement related to securing regulatory approval.

At the Forum, we'll discuss what lessons CPG companies can learn from these litigated mergers for purposes of assessing the antitrust risk of deals or negotiating efforts clauses in

the merger agreement.

## **FTC enforcement of the Robinson-Patman Act: a fad or here to stay?**

FTC enforcement of the Robinson-Patman Act, a law prohibiting price discrimination in the sale of commodities to competing buyers, had long lain dormant, to the point that some in the antitrust bar considered it all but dead. That changed under the FTC as led by Biden Administration appointee Lina Khan, and the beverage industry was at the center of the action.

At the very end of the Biden Administration, the FTC filed two Robinson-Patman actions against beverage companies in a matter of six weeks. In the first action, which marked the first government enforcement of the Robinson-Patman Act in nearly 25 years, the FTC alleged that Southern Glazer, a major distributor of alcoholic beverages, charged mom-and-pop stores higher prices than chain stores. The FTC then filed another Robinson-Patman action just days before President Trump took office, this time against PepsiCo, alleging that it charged chains and convenience stores higher prices than big box stores to sell Pepsi's products. Both cases remain in the early stages, but recent dissenting statements from sitting Republican Commissioners, as well as comments from President Trump's nominees, may give us some insight into the likelihood that these cases proceed and the extent to which Robinson-Patman enforcement will continue under the new leadership at the FTC.

We look forward to diving deeper into these areas and others with friends and colleagues from the consumer packaged goods industry in sunny San Diego!



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