

## FIFTY YEARS [1936–1986] OF THE *ROBINSON-PATMAN ACT* IN THE UNITED STATES: DOES ANYONE UNDERSTAND IT?

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### *Introduction*

Marketing managers in Japan must be familiar with applicable laws of each country where they are selling their products. Undoubtedly the most complex marketing law in the United States is the *Robinson-Patman Act*, which is the subject of this article on its 50th anniversary.

The Federal Trade Commission (FTC) enforces compliance of the *Robinson-Patman Act*, although under the Reagan Administration, enforcement has involved less enthusiasm than with previous administrations.<sup>1</sup> Nevertheless, many corporations are using other companies claiming violations of the *Robinson-Patman Act*. In recent years, each of the following non-United States based corporations have been involved with the *Robinson-Patman Act*: Daimler-Benz,<sup>2</sup> Hapag-Lloyd,<sup>3</sup> Honda,<sup>4</sup> Japanese Electronics Products Antitrust Litigation,<sup>5</sup> Kawasaki,<sup>6</sup> North American Philips,<sup>7</sup> Saab,<sup>8</sup> and Toyota.<sup>9</sup> Exhibits 1 through 5 present case summaries of five Japanese companies that have been sued under the *Robinson-Patman Act*.

This 1936 law was designed to curb the growing strength of large retail grocery chains that were crippling smaller “mom and pop” food stores. The *Robinson-Patman Act* accomplished its objectives by mandating that manufacturers (and wholesalers) must not discriminate in pricing between large and small retail firms. Although there are exceptions, manufacturers must generally maintain uniform prices to all retailers when selling identical products, at approximately the same time, and in the same geographic region.

### I. *Bouldis Versus U.S. Suzuki Motor Corporation [1983]*

Peter Bouldis was co-owner of a motorcycle dealership known as Bold-Morr. This company brought an antitrust suit against Suzuki Motor Corporation, alleging violations of

<sup>1</sup> See: Y.D. Scholar, “Price Discrimination: A Threat to Distributor-Manufacturer Relations,” *Industrial Distributor* (October, 1983), p. 48.

<sup>2</sup> *Metrix Warehouse, Inc. v. Daimler-Benz Aktiengesellschaft*, 716 F. 2d 245 (1983).

<sup>3</sup> *Hapag-Lloyd, A.G. v. Levine*, 473 F. Supp 991 (1979).

<sup>4</sup> *General United Co. v. American Honda Motor Co.*, 618 F. Supp 1452 (1985).

<sup>5</sup> *Japanese Electronics Products Antitrust Litigation*, 723 F. 2d 238 (1983).

<sup>6</sup> *Dobbins v. Kawasaki Motors Corp.*, 362 F. Supp 54 (1973).

<sup>7</sup> *North American Philips Co.*, 55 FTC 682 (1958).

<sup>8</sup> *Rod Baxter Imports, Inc. v. Saab-Scania of America*, 489 F. Supp 245 (1980).

<sup>9</sup> *Anderson Foreign Motors, Inc. v. New England Toyota Distributor, Inc.*, 492 F. Supp 1383 (1980).

the *Robinson-Patman Act*. Bold-Morr became a Suzuki dealer in 1975 and in late 1976 the dealership failed. Bold-Morr believed part of the reason it went out of business was that Suzuki did not treat it fairly and therefore Bold-Morr sued Suzuki.

Bold-Morr lost its case at the District Court level and appealed to the U.S. Court of Appeals. Two issues will be noted here. First, Bold-Morr stated that Suzuki violated Section 2(a) of the R-P Act by not giving it the same credit terms that were available to other Suzuki motorcycle dealers in the same region. The Appeals Court found that Suzuki did not violate the R-P Act, because its credit terms to Bold-Morr were based on its credit worthiness—they were not designed to discriminate against Bold-Morr relative to other dealers. The court noted that when credit decisions are based upon legitimate business reasons, then Section 2(a) is not violated. The Appeals Court noted, "Application of these factors to Bold-Morr's financial position reveals a prudent credit decision by Suzuki. Bold-Morr had a history of late payments for parts ordered and for models it procured under pay as sold terms. . . . In addition, Bold-Morr had liabilities considerably exceeding its net worth."

A second issue involved Section 2(d) of the R-P Act. Bold-Morr claimed it could not participate in co-op advertising programs because of its relatively small size. Section 2(d) prohibits a seller from making payments to one customer for services or facilities furnished by the customer, unless such payments are available to all purchasers on a proportionately equal basis. The court found no merit to Bold-Morr's claim. Suzuki's co-op advertising funds were made available to each dealer in relationship to the sales that they were generating. Since Bold-Morr did not sell many motorcycles, they received fewer co-op ad dollars. But they were still available on a proportionately equal basis as required by the R-P Act.

The Appeals Court upheld the lower court and ruled in favor of Suzuki. For further information about this case, see 711 F. 2nd 1319-1331.

## II. *Municipality of Anchorage Versus Hitachi Cable, Ltd.* [1982]

This case involved an alleged violation of Section 2(c) of the *Robinson-Patman Act*, which states it is unlawful for any person engaged in commerce to accept compensation for services not rendered in connection with the sale or purchase of products. Although Section 2(c) originally was concerned about illegal utilization of brokerage allowances (a discount given to buyers when a broker was not utilized), and hence rendered them totally illegal, this section in recent years has also been construed to outlaw bribes given to a seller's broker by the buyer. This would take place when the broker has been given authority to negotiate the price of the product with the buyer. The bribe given by the buyer to the seller's broker would disrupt the fiduciary responsibility of the broker to negotiate the highest price with the buyer. The net effect is that the buyer receives a price that is lower than its competitors.

This case involved Hitachi Cable, Ltd., a Japanese corporation engaged in the manufacture and sales of industrial cables. The firm had paid bribes of \$250,000 to two purchasing agents for the Anchorage Telephone Utility, which is owned and operated by the City of Anchorage. Hitachi admitted that the bribes took place and had pleaded guilty to this charge, but claimed they could not be further charged under the R-P Act. Hitachi noted that for a violation of the R-P Act, only competitors of the buyer who were injured have a standing to bring a lawsuit. Since a public utility has no competitors, there are no parties

who can claim a violation of the R-P Act.

The court ruled that when bribes are paid to obtain additional business, the employer of the dishonest employees has a legal basis to bring a suit under Section 2(c) against the company who offered the bribes. The court noted that Section 2(c) was designed to limit illegal practices that do not directly relate to price discrimination. Therefore, it is not necessary under this section of the R-P Act to prove that the illegal practice had an injurious or destructive impact on competitors. Thus Hitachi must pay the fines specified by the R-P Act to the Municipality of Anchorage.

Further details of this case can be found at 547 F. Supp 633-645.

### III. *Paceco, Inc. Versus Ishikawajima-Harima Heavy Industries* [1979]

The issue in this case is whether a Japanese manufacturer of large steel cranes used to unload ships can be subject to the *Robinson-Patman Act* when it purchases steel from steel suppliers in Japan.

Specifically, Ishikawajima-Harima Heavy Industries (IHHA) in Japan purchased steel components in Japan to manufacture cranes that are eventually sold throughout the world, including the United States. The plaintiff in this case, Paceco, Inc. is a California based corporation that also manufactures steel cranes that compete against those made by IHHA. Paceco also buys its steel from the same steel companies that supply IHHA. Plaintiffs allege that IHHA knowingly buys its steel at prices so much lower than Paceco can buy its steel that it is not able to compete in the U.S. market against IHHA.

IHHA defended itself by noting that purchases made in Japan by one Japanese company with another are not subject to United States' laws. The U.S. District Court for the Northern District of California ruled that in this situation the above transaction was subject to the *Robinson-Patman Act*, because the products are eventually sold in the U.S. The R-P Act uses the phrase "is in unlawful for any person engaged in commerce. . . ." Section 2 of the R-P Act defines commerce as trade among the states and that involving foreign nations. Therefore the court found that the R-P Act applies to this situation.

The actual violation of the R-P Act was alleged to be Section 2(f) which makes it illegal "for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section." IHHA asked the court to dismiss the charges and the District Court ruled against this motion.

Further details about this case can be found at 468 F. Supp 256-264.

### IV. *Schwimmer Versus Sony Corporation of America* [1979 and 1980]

This case involved a large electronics retailer, Supersonic Electronics Company, owned by Mendal Schwimmer, bringing an antitrust action against Sony Corporation of America (Sonam). Schwimmer alleged that Sonam violated the *Robinson-Patman Act* by selling to it at substantially higher prices than were available to another Sonam customer Interocean,

Inc.

At issue was Section 2(a) of the R-P Act. It states that price discrimination is illegal, "... where the effect of such discrimination may be to substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them . . . ." The District Court noted that Interocean sold Sony products in Central and South America, while Supersonic sold products primarily in the eastern region of the U.S.

The District Court noted that since Supersonic and Interocean did not sell to customers in the same geographic or "target" area, then there can be no action brought under the R-P Act, since Supersonic was not damaged by the sales to Interocean at lower prices. The Court declared, "In this case plaintiff does not suggest that the discrimination in price was aimed at him. . . . Plaintiff therefore has no standing to assert the Robinson-Patman claims, and they will be dismissed."

Schwimmer appealed this case to the U.S. Court of Appeals and again Sonam won.

Further details of this case can be found at 471 F. Supp 793-797 and 637 F. 2nd 41-49.

### V. *Zenith Radio Corporation Versus Matsushita Electrical Industrial Co. [1975]*

Zenith Radio Corporation brought an action against Matsushita Electrical Industrial Company alleging a violation of Section 2(a) of the *Robinson-Patman Act*. Section 2(a) states in part, "It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States. . . ."

Zenith alleged that Matsushita violated Section 2(a) because it sold products to customers in the United States at lower prices than it sold the identical products to customers in Japan. Zenith contended that in many cases the R-P Act has involved sales that took place in foreign countries and therefore Section 2(a) applies in this situation. Matsushita defended itself by noting that Section 2(a) does not apply to products that are not sold in the U.S. The District Court agreed with Matsushita. The court noted that since 1936, the year the R-P Act was enacted, "... No one until the present plaintiffs has ever prosecuted an action under paragraph 2(a) where the alleged violation involved an import transaction in the United States as one "leg" of the price discrimination and a transaction that occurred wholly within a foreign country as the other."

The case against Matsushita was dismissed.

Further details of this case can be found at 402 F. Supp 244-251.

Because this 1936 law necessarily impacts on almost every pricing decision of manufacturers, it is a key interface between the legal system and marketing. Professor William Lazer noted:

The *Robinson-Patman Act* attempted to establish desirable standards of competi-

tion, to eliminate some unsavory and unfair pricing practices, to stop the granting of undue privileges to large purchasers, and in general to provide equality of opportunity for buyers. *For marketing actions and decisions, it is probably one of the most important prices of legislation.* (Emphasis added)<sup>10</sup>

Everyone who interacts with pricing decisions must be familiar with the basic provisions of the *Robinson-Patman Act*. Why? Because as Professor W. David Robbins observed, "The *Robinson-Patman Act* is a *marketing* statute and the most basic pricing law with which the marketing executive must deal."<sup>11</sup> Unfortunately, the *Robinson-Patman Act* is exceedingly complex. Professor Rom J. Markin astutely observed:

Marketers, economists, lawyers, legislators, and others who are concerned with the contemporary morass of government legislation share . . . bafflement as they grope for words to describe their own strange encounter with the *Robinson-Patman Act*—the main piece of regulatory legislation dealing with price discrimination which has been in existence, virtually intact, since 1936.<sup>12</sup>

The purpose of this article is to: (a) present an overview of the controversy surrounding the *Robinson-Patman Act*, (b) examine the complexity of this law, (c) note succinctly the historical environment that led to the passage of the *Robinson-Patman Act*, (d) briefly outline the current status of this law, and finally (e) present a brief self-administered true/false test so each reader can determine his or her understanding of the basic aspects of the *Robinson-Patman Act*.

### THE CONTROVERSIAL ROBINSON-PATMAN ACT

To call the *Robinson-Patman Act* controversial is to understate the true level of polemics involved. Opponents have been known to take pleasure in kicking Messes. Robinson's and Patman's "Legislative dog."<sup>13</sup> Proponents have referred to the same law as the "Magna Carta" of small businesses.<sup>14</sup> The following quotes illustrate the intensity of this controversy.

\*The attempt to counter the supposed threat to competition posed by price discrimination constitutes what is surely antitrust's least glorious hour. The instrument fashioned for the task was the *Robinson-Patman Act*, the misshapen progeny of intolerable draftsmanship coupled to wholly mistaken economic theory. One often hears of the baseball player who, although a weak hitter, was also a poor fielder. *Robinson-Patman* is a little like that. Although it does not prevent much price discrimination, at least it has stifled a great deal of competition.<sup>15</sup>

<sup>10</sup> William Lazer, *Marketing Management: A Systems Perspective* (New York: John Wiley, Inc., 1971), p. 579.

<sup>11</sup> W. David Robbins, "A Marketing Appraisal of the Robinson-Patman Act," *Journal of Marketing* (July, 1959), p. 15.

<sup>12</sup> Rom J. Markin, "The Robinson-Patman Act: Regulatory Pariah," in Robert F. Lusch and Paul H. Zinszer, editors, *Contemporary Issues In Marketing Channels* (Norman: The University of Oklahoma, 1979), p. 121.

<sup>13</sup> Earl W. Kintner, *A Robinson-Patman Primer* (New York: Macmillan Company, 1970), p. 309.

<sup>14</sup> Representative Henry B. Gonzalez in *Recent Efforts To Amend Or Repeal The Robinson-Patman Act*, Committee on Small Business, House of Representatives, 94th Congress, 2nd Session, House Report No. 94-1738 (1976), p. 1. Hereafter cited as *Recent Efforts to Amend*.

<sup>15</sup> Robert H. Bork, *The Antitrust Paradox* (New York: Basic Books, Inc., 1978), p. 382.

\*The fact that the *Robinson-Patman Act* provides a full employment program for antitrust lawyers and professors—and provides comic relief for law students— does not necessarily mean that the public is well served.<sup>16</sup>

\*If we did not have a *Robinson-Patman Act*, however, it would be necessary to invent one. The imperviousness of the *Act* to amendment is a significant indication that it was and is a response to a definite need. Therefore, however much we may decry the law's defects, we must recognize that a broad consensus supports its two primary objects:

1. To prevent unscrupulous suppliers from attempting to gain an unfair advantage over their competitors by discriminating among buyers.
2. To prevent unscrupulous buyers from using their economic power to exact discriminatory prices from suppliers to the disadvantage of less powerful buyers.<sup>17</sup>

#### THE ROBINSON-PATMAN ACT: A PERPLEXING STATUTE

Besides being controversial, the *Robinson-Patman Act* is also one of the most puzzling statutes ever enacted by the U.S. Congress. A major contributing factor to this confusion is that the bill creating this law was amended from the floor by both the House and Senate. Therefore, inconsistencies and fuzziness of expression were present, because the *Act* was amended in such a hasty manner.<sup>18</sup> Since both House and Senate versions of this *Act* were muddled, one could expect that the final wording that emerged from the House-Senate conference committee would also be mystifying. Witness these observations:

\*A British law professor studied U.S. antitrust laws and noted, "It is interesting that its [the *Robinson-Patman Act's*] case law is the richest in muddle and anomaly."<sup>19</sup>

\*U.S. Supreme Court Justice Felix Frankfurter observed that "Precision of expression is not an outstanding characteristic of this [Robinson-Patman] *Act*."<sup>20</sup>

#### BRIEF HISTORY OF THE 1936 ROBINSON-PATMAN ACT

In 1933 the unemployment rate in the U.S. was 24.9 percent. It had been 3.2 percent four years earlier.<sup>21</sup> Many people believed that the free enterprise system of business and government had failed. Massive unemployment created an economic environment of despair and desperation among workers. The electorate demanded that something—anything—be tried in order to return the economy to the prosperity of the 1920's.

<sup>16</sup> Donald I. Baker in *Recent Efforts To Amend*, *op. cit.*, p. 87.

<sup>17</sup> Kinter, *A Robinson-Patman Primer*, *op. cit.*, p. 61.

<sup>18</sup> Frederick M. Rowe, "The Federal Trade Commission's Administration of the Anti-Price Discrimination Law—A Paradox of Antitrust Policy," *Columbia Law Review* (Vol. 64, 1964), p. 435.

<sup>19</sup> A.D. Neale, *The Antitrust Laws of the United States of America*, (Cambridge, England: Cambridge University Press, 1970), p. 468.

<sup>20</sup> As quoted in Earl W. Kinter, *An Antitrust Primer*, 2nd ed. (New York: The Macmillan Co., 1973), p. 61.

<sup>21</sup> Ross M. Robertson, *History of the American Economy*, 2nd ed. (New York: Harcourt, Brace, and World, Inc., 1964), p. 616.

In such an emotionally charged atmosphere, people looked for scapegoats. A primary villain, according to many people, was the growth of large corporate business—personified by large retail chain-stores.<sup>22</sup> Prosperity would again return if federal government policy actively favored small, independently owned and operated businesses and merchants.

The *Robinson-Patman Act* was specifically designed to help small retailers by curbing the growth of retail chain stores. The popular name of this legislation was the *Anti-Chain Store Act*. Emotions in Congress were strongly against the evil represented by “big business.” A Department of Justice study of this period noted that many Congressmen would have voted for legislation that would have completely abolished chain stores.<sup>23</sup> Listen to U.S. Representative Sabath in 1936:

The chain-store octopuses, mainly controlled by Wall Street financiers, must be restricted from unfair and discriminatory practices. Since the ethics of fair dealing seem to be unknown to them, these overlords must be prevented by legislation from obtaining special inducements, at the expense of independent dealers, through threats and coercion.<sup>24</sup>

Because chain stores were perceived as a malevolent aspect of business by both “Main Street” and Congress, the *Robinson-Patman Act* was admired legislation. It received only sixteen negative votes in the House and none in the Senate.<sup>25</sup> President Roosevelt signed the *Robinson-Patman Act* into law on June 19, 1936.

#### THE *ROBINSON-PATMAN ACT*: ITS CURRENT STATUS

Today the *Robinson-Patman Act* stands like the Rock of Gibraltar—impervious to change! This is not for lack of attempts to alter it. Numerous proposals have been made to clarify, strengthen, weaken, lengthen, shorten, and repeal this law.<sup>26</sup> None have been seriously considered by Congress, because the *Robinson-Patman Act* is regarded as sacred legislation in terms of protecting small businesses. In 1976, during the Ford Administration, the Justice Department proposed a bill to revoke certain provisions of the 1936 *Act*. This bill was never considered by Congress because the Department of Justice could not find one member of either the House or the Senate to formally introduce the bill as proposed legislation!<sup>27</sup> *The Wall Street Journal* made this statement about William Baxter, the Reagan Administration’s senior antitrust officer in the Department of Justice:

He would like to repeal the *Robinson-Patman Act* that generally bars companies from giving lower prices to larger customers than small ones. He believes the law fosters inefficiency and high costs. But he has decided that a repeal attempt, which

<sup>22</sup> Donald V. Harper, *Price Policy and Procedure* (New York: Harcourt, Brace, and World, Inc., 1966), pp. 100-103.

<sup>23</sup> *Report on the Robinson-Patman Act*, U.S. Department of Justice (1977), p. 104.

<sup>24</sup> *Congressional Record*, Vol. 80 (1936), p. 8102.

<sup>25</sup> *Recent Efforts To Amend*, *op. cit.*, p. 18.

<sup>26</sup> See, for example: *Recent Efforts To Amend*, *op. cit.*; *Report on the Robinson-Patman Act*, *op. cit.*, Chapter 6; Markin, *op. cit.*, pp. 127-128 and Posern, *op. cit.*, Chapter 4.

<sup>27</sup> James C. Hamill, “FTC Approach To The *Robinson-Patman Act* In The Wake of the A&P Decision,” *Antitrust Law Journal* (Vol. 48, 1979), p. 1687.

would be fought bitterly by small business, isn't worth the effort.<sup>28</sup>

Today, the *Robinson-Patman Act* is virtually unchanged since its enactment in 1936. It is improbable that it will be amended or repealed in the future. Therefore, Japanese marketers must possess a general understanding of its provisions.

SELF-ADMINISTERED TRUE/FALSE  
TEST COVERING BASIC ASPECTS OF  
THE *ROBINSON-PATMAN ACT*

Below the reader will find seven true/false questions. Please read each question carefully and then mark the question true or false on the line provided to the left of each question. When you have finished answering each question, read the next section which will give the correct answer to each question with an explanation of the issue involved.

QUESTION 1: THE "GOOD FAITH" DEFENSE

\_\_\_\_\_ The "good-faith" defense in the *Robinson-Patman Act* allows a manufacturer to charge a Lower price to one customer than another in order to meet the equally low price of a competitor.

QUESTION 2: THE "COST" DEFENSE

\_\_\_\_\_ The "cost" defense in the *Robinson-Patman Act* allows a manufacturer to plead *Nolo contendere* (i.e., no contest) if the cost of presenting a defense is prohibitive.

QUESTION 3: PROPORTIONALLY EQUAL TERMS FOR  
PROMOTIONAL ASSISTANCE

\_\_\_\_\_ It is legal under the *Robinson-Patman Act* for a manufacturer to offer prospective buyers promotional assistance (e.g., cooperative advertising, demonstrators) provided such assistance is offered to all customers in a geographical area on proportionally equal terms.

QUESTION 4: VALUE OF PROMOTIONAL ASSISTANCE

\_\_\_\_\_ If the monetary value of any promotional assistance offered to buyers exceeds ten percent of purchase price of the product involved, the arrangement is illegal.

QUESTION 5: BROKERAGE ALLOWANCES

\_\_\_\_\_ A manufacturer makes a direct sale to a retail chain and, as part of the purchase agreement, grants the retail chain an allowance equal to what the brokerage commission would have been if the sale had been through a broker. This practice is illegal.

QUESTION 6: A GOVERNMENT SALE

\_\_\_\_\_ A manufacturer sells a product to a U.S. Government agency at a lower price than is offered to privately owned corporations. This sale is illegal under provisions of the *Robinson-Patman Act*.

<sup>28</sup> Robert E. Taylor, "Chances of Settling AT&T, IBM Cases Are Slim, Says U.S. Antitrust Chief," *The Wall Street Journal* (May 7, 1981), p. 3.



### QUESTION 7: RETAILER INDUCES A LOWER PRICE FROM VENDOR

———— A retailer knowingly induces a vendor to grant a lower selling price than is offered to the retailer's competitors by that vendor by threatening to buy from another source. This practice is illegal.

### ANSWERS TO TRUE/FALSE QUESTIONS

#### QUESTION 1: TRUE

Section 2(b) of the *Robinson-Patman Act* states in part:

Nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.<sup>29</sup>

#### QUESTION 2: FALSE

Section 2(a) of the Act states in part:

Nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered.<sup>30</sup>

#### QUESTION 3: TRUE

Section 2(d) of the Act declares in part:

It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer . . . unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.<sup>31</sup>

#### QUESTION 4: FALSE

The *Robinson-Patman Act* contains no reference to any percentage of purchase price involving promotional assistance.

#### QUESTION 5: TRUE

The Act completely prohibits brokerage allowances to non-brokers.

Section 2(c) of the *Robinson-Patman Act* states in part:

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof . . .<sup>32</sup>

<sup>29</sup> See: George R. Hall and Charles F. Phillips, Jr., "Good Faith, Discrimination, and Market Organization," *Southern Economic Journal* (October, 1963), pp. 144-155.

<sup>30</sup> See: Donald J. Fennelly, "On The Judging of Mince Pies," *Harvard Business Review* (November-December, 1964), pp. 77-86; E.J. Linder and Allan H. Savage, "Price Discrimination and Cost Defense—Change Ahead?" *MSU Business Topics* (Summer, 1971), pp. 21-26; Robert A. Lynn, "Is The Cost Defense Workable?" *Journal of Marketing* (January, 1965), pp. 37-42 and Itzhak Sharav, "Cost Justification Under the *Robinson-Patman Act*," *Management Accounting* (July, 1978), pp. 15-22.

<sup>31</sup> See: Joe L. Welch, *Marketing Law* (Tulsa: PennWell Books, Inc., 1980), pp. 76-78.

<sup>32</sup> See: Corwin D. Edwards, "Twenty Years of the *Robinson-Patman Act*," *The Journal of Business of the University of Chicago* (July, 1956), pp. 151-152.

## QUESTION 6: FALSE

A House of Representatives study of the *Robinson-Patman Act* declared:

Sales to the Federal Government are exempt from the Act's coverage, as are also purchases of supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.<sup>33</sup>

## QUESTION 7: TRUE

Section 2(f) of the Act states:

It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price . . .<sup>34</sup>

### Conclusion

After 50 years, the *Robinson-Patman Act* is still an enigmatic statute. Nevertheless, Japanese marketers in the United States must be familiar with the basics of this law, because it is still the subject of numerous lawsuits each year. The authors' recommend that Japanese marketers in the U.S. would be well advised to retain American legal counsel to consult them on what is permissible under the *Robinson-Patman Act*. While this impediment to Japanese marketers is regrettable—at least they are no worse off than American marketers, who also must retain counsel to help them determine what is acceptable under the most puzzling American statute dealing with marketing activities.

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<sup>33</sup> See: *Recent Efforts To Amend, op. cit.*, p. 22.

<sup>34</sup> See: Russell Decker, "Robinson-Patman's 2(f): The Buyers' Provision," *Purchasing* (February 21, 1979), pp. 64-65; Warren French, Jan Henkel and James Cox, III, "When The Buyer Is The Object of Price Discrimination," *Journal of Purchasing and Materials Management* (Spring, 1979), pp. 2-7; Paul J. Galanti, "Buyer Liability For Inducing Or Receiving Discriminatory Prices," *Indiana Law Review* (Vol. 7, No. 6, May, 1974), pp. 962-1000; and Roy O. Werner, "Robinson-Patman: Purchasing's Responsibility Still Unclear," *Journal of Purchasing and Materials Management* (Spring, 1978), pp. 12-15.