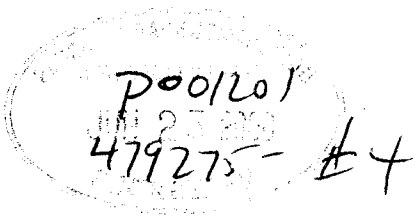
LAW OFFICE

JONATHAN WEISS

TELEPHONE: (310) 558-0404

415 NORTH CAMDEN DRIVE
BEVERLY HILLS, CALIFORNIA 90210-4424
E-MAIL: WEISSJ@MEDIAONE.NET

FACSIMILE: (310) 558-0100



May 15, 2000

David A. Balto
Assistant Director, Office of Policy and Evaluation
Bureau of Competition
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20580-0001

Re: Slotting Allowances Workshop (May 31-June 1, 2000)
FTC Matter No. P001201

Dear Mr. Balto:

We would like to draw the FTC's attention to the social purpose – as opposed to the economic purpose – behind the Robinson-Patman Act. Fundamental to the Act is the tenet that the public weal is served by a large number of small competitors. Quite apart from the presumed salutary economic effect of having multiple competitors battling each other in the marketplace, there is a *social benefit* to maintaining a large number of businesses. Local and regional small businesses employ our neighbors, contribute to our communities, and perpetuate the equilibrium and values of our society.

In *ABC Internat. Traders, Inc. v. Matsushita Electric Corp.* (1997) 14 Cal.4th 1247, the California Supreme Court stated that *social benefit* was one concern behind the Robinson-Patman Act (15 U.S.C. § 13, et seq.). The Court explained:

> "The problem [of unfair competitive practices of the large chain stores] was perceived to have both economic and, more broadly, social aspects. . . .. Socially, it was feared the result of chain store domination would be the loss of an endangered middle class, the 'prosperous *bourgeois* class [that] has been considered one of the mainstays of our civilization.' (Comment (1933) 22 Cal.L.Rev. 86, 101.)"

ABC, 14 Cal.4th at 1260, italics original.

The *ABC* Court quoted Senator Wright Patman, who

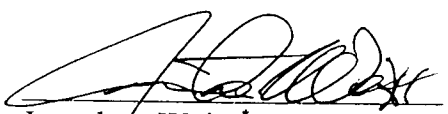
> "described *both aspects* [economic and social] of the chain store problem in characteristically vivid language: 'The Goliath is the huge chain stores *sapping the civic life of local communities* with an absentee overlordship, draining off their earnings to his coffers, and reducing their independent business men to employees or to idleness. . . ..' (Remarks of Rep. Wright Patman introducing H.R. No. 8442, 74th Cong., 1st Sess., 79 Cong. Rec. 9077 (June 11, 1935) reprinted in 4 Kintner, The Legislative History of the Federal Antitrust Laws and Related Statutes (1980) p. 2927) . . .."

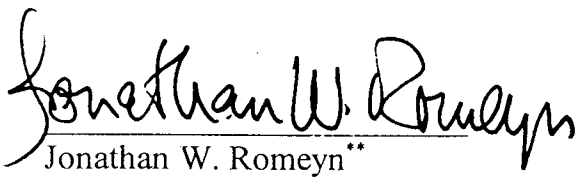
ABC, 14 Cal.4th at 1260, fn. 5, italics added.

The Robinson-Patman Act was enacted to protect our society as well as our economy. "Whether or not there is any appreciable economic difference between the small and large retail units, the former from a *social* aspect would seem to warrant protection." (Comment (1933) 22 Cal.L.Rev. 86, 101, italics original.) We must protect the small businesses, the endangered middle class, the "prosperous *bourgeois* class [that] has been considered one of the mainstays of our civilization."

We believe that a failure to control and ameliorate the burgeoning slotting fee phenomenon will undermine the legitimate social, as well as the economic, purposes of the Robinson-Patman Act.

Respectfully submitted,

by: 
Jonathan Weiss*

by: 
Jonathan W. Romeyn**

cc: Senator Christopher S. Bond
Chairman
Senate Committee on Small Business

Representative Henry J. Hyde
Chairman
House Committee on the Judiciary

* Jonathan Weiss represents route deliverymen, distributors, franchisees, and other "small businesses." In 1998, Mr. Weiss brought the case of Halabe v. Sara Lee (L.A. Super. Ct. no. BC 195957) under private attorney statutes alleging violations of California's Unfair Practices Act (*Calif. Bus. & Prof. Code*, § 17045) and Unfair Competition Law (*Calif. Bus. & Prof. Code*, § 17200) for allegedly secret, discriminatory, and predatory slotting fees. Two years later, the case, which gained national attention, was settled confidentially on terms that involved no admission of fault and that were not essentially financial. During the course of litigation, Weiss talked with dozens of small businesses who claimed to have been injured by slotting fees, most of whom were afraid of retribution if they spoke publicly.

** Admitted in California and New York, Mr. Romeyn was a member of the Antitrust, Litigation and Marketing staff of Eastman Kodak Company's Legal Department from 1974-1994. As Kodak's Senior Litigation Counsel, he handled major antitrust/unfair competition lawsuits, including the landmark case of *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451, 119 L.Ed.2d 265, 112 S.Ct. 2072, decided by the U.S. Supreme Court in 1992. Since moving to California in 1994, Mr. Romeyn has represented agribusiness clients affected by slotting fees, and has spoken to numerous trade groups about consolidation in the retail industry and its effect on agriculture.