

The Burger Court Opinion Writing Database

Falls City Industries, Inc. v. Vanco Beverage, Inc.

460 U.S. 428 (1983)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

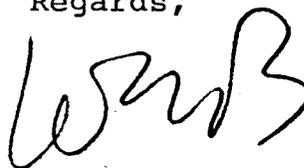
March 9, 1983

Re: No. 81-1271, Falls City Industries, Inc. v. Vanco Beverage

Dear Harry:

I join.

Regards,

A handwritten signature in dark ink, appearing to be "W. E. B.", written in a cursive style.

Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

October 18, 1982



RE: No. 81-1271 Falls City Industries v. Vanco Beverage

Dear John:

Thurgood, Lewis, you and I voted to reverse on the two market question, whereas our five colleagues voted to reverse on the 2(b) defense. If it is necessary to do some writing in support of our view, would you undertake it?

Sincerely,

A handwritten signature, likely "Bill", is written in cursive below the word "Sincerely,".

Justice Stevens

Copies to:

Justice Marshall
Justice Powell

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 3, 1983

RE: No. 81-1271 Falls City Industries v. Vanco Beverage

Dear Harry:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Blackmun".

Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 15, 1983

81-1271

Re: Falls City Industries,
Inc. v. Vanco Beverage,
Inc.

Dear Harry,

Please join me.

Sincerely,

Byron

Justice Blackmun
Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 3, 1983

Re: No. 81-1271 - Falls City Industries v.
Vanco Beverage, Inc.

Dear Harry:

Please join me.

Sincerely,

J.M.

T.M.

Justice Blackmun

cc: The Conference

HAB

February 8, 1982

Re: No. 81-1271 - Falls City Industries, Inc.
v. Vanco Beverage, Inc.

Dear John:

You, not I, are the expert in antitrust law. I anticipate from my conference notes that you will not agree with this proposed opinion. If, however, you see any error in antitrust lingo or basic principle which I have made, please let me know.

Sincerely,

HAB

Justice Stevens

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Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

~~HAB~~

From: **Justice Blackmun**

Circulated: FEB 8 1983

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1271

FALLS CITY INDUSTRIES, INC., PETITIONER *v.*
VANCO BEVERAGE, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

[February —, 1983]

Blackmun

JUSTICE BLACKMUN delivered the opinion of the Court.

Section 2(b) of the Clayton Act, 38 Stat. 730, as amended by the Robinson-Patman Act, 49 Stat. 1526, 15 U. S. C. § 13(b), provides that a defendant may rebut a prima facie showing of illegal price discrimination by establishing that its lower price to any purchaser or purchasers "was made in good faith to meet an equally low price of a competitor."¹ The United States Court of Appeals for the Seventh Circuit has concluded that the "meeting-competition" defense of § 2(b) is available only if the defendant sets its lower price on a customer-by-customer basis and creates the price discrimination by lowering rather than by raising prices. We conclude that § 2(b) is not so inflexible.

I

From July 1, 1972, through Nov. 30, 1978, petitioner Falls City Industries, Inc., sold beer f.o.b. its Louisville, Ky.,

¹ Section 2(b)'s "meeting-competition" proviso reads:

"[N]othing 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."

Justice Brennan
 Justice White
 Justice Marshall
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Blackmun**

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STYLISTIC CHANGES
 + pp. 11, 14

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1271

FALLS CITY INDUSTRIES, INC., PETITIONER *v.*
 VANCO BEVERAGE, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SEVENTH CIRCUIT

[February —, 1983]

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Justice Brennan
 Justice White
 Justice Marshall
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

Recirculated: **FEB 15 1983**

STYLISTIC CHANGES
 PP. 5-7

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1271

FALLS CITY INDUSTRIES, INC., PETITIONER *v.*
 VANCO BEVERAGE, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SEVENTH CIRCUIT

[February —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 1, 1983

Re: No. 81-1271 - Falls City Industries, Inc.
v. Vanco Beverage, Inc.

Dear John:

Thank you for your letter of March 1. Your suggestion is a good one, and I shall be glad to insert the comment you propose with a very minor change in wording that, I am sure, you will find acceptable. This goes to the printer today.

Sincerely,



Justice Stevens

cc: The Conference

Justice Brennan
 Justice White
 Justice Marshall
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

Recirculated: MAR 2 1983

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1271

FALLS CITY INDUSTRIES, INC., PETITIONER *v.*
 VANCO BEVERAGE, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SEVENTH CIRCUIT

[March —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

Section 2(b) of the Clayton Act, 38 Stat. 730, as amended by the Robinson-Patman Act, 49 Stat. 1526, 15 U. S. C. § 13(b), provides that a defendant may rebut a prima facie showing of illegal price discrimination by establishing that its lower price to any purchaser or purchasers "was made in good faith to meet an equally low price of a competitor."¹ The United States Court of Appeals for the Seventh Circuit has concluded that the "meeting-competition" defense of § 2(b) is available only if the defendant sets its lower price on a customer-by-customer basis and creates the price discrimination by lowering rather than by raising prices. We conclude that § 2(b) is not so inflexible.

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pp. 6, 7, & 21

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 19, 1982

81-1271 Falls City Industries v. Vanco Beverage

Dear Bill:

This refers to your letter to John, suggesting that he might incorporate his "two market" view of this case in a draft writing.

At Conference, and I quote from my scribbled notes at the time, I said:

"I may be able to agree with WJB as to our freedom (as a matter of law) to find two markets. . . Apart from this, and accepting the one market holding below, I agree largely with the SG - though need not reach this conclusion as matter of law."

I am still open to consider the two market approach, and write only to say that I am not committed to it in view of the posture in which the case comes here. I am glad that John is willing to write out his views.

Sincerely,



Justice Brennan

lfp/ss

cc: Justice Marshall
Justice Stevens

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 3, 1983

81-1271 Falls City Industries v. Vanco Beverage

Dear Harry:

Please join me.

Sincerely,

Lewis

Justice Blackmun

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

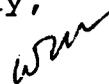
March 16, 1983

Re: No. 81-1271 Falls City Industries, Inc. v.
Vanco Beverage

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 18, 1982

Re: 81-127¹ - Falls City Inds. v.
Vanco Beverage

Dear Bill:

Thank you for your note. I will be delighted to try to spell out the reasons why the case should be decided on a two market basis.

Respectfully,



Justice Brennan

cc: Justice Marshall
Justice Powell

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 1, 1983

Re: 81-1271 - Falls City Inds. v. Vanco
Beverage, Inc.

Dear Harry:

After reviewing your circulation more carefully and pondering about this case a little more, I have concluded that I will join your opinion. I have nothing to suggest with respect to your discussion of the good faith defense, but I would like to make one suggestion concerning your treatment of the competitive injury point.

In a technical sense, I think the injury to competition that is relevant is not the injury to competition between Vanco and Dawson City, but rather to competition at the retail level between their respective customers. This means that in a strictly literal sense, the Morton Salt rule may not directly apply. What I would like to suggest is that you consider adding this thought on page 7 immediately after your sentence that now reads: "The Morton Salt rule was not misapplied in this case." A comment along the following line might be inserted:

"In a strictly literal sense, this case differs from Morton Salt because Vanco and Dawson Springs did not compete with each other at the wholesale level; Vanco sold only to Indiana retailers and Dawson Springs sold only to Kentucky retailers. But the competitive injury component of a Robinson-Patman Act violation is not limited to the injury to competition between the favored and the disfavored purchaser; it also encompasses the injury to competition between their customers-- in this case the competition between Kentucky retailers and Indiana retailers who, under the District Court's finding which is not challenged

in this Court, were selling in a single, interstate retail market."

I am not particularly concerned about the exact language that expresses this additional thought, but I do think it may be worth while either to make the point in general terms, or perhaps to quote the last few words of the portion of the statute that you quote in footnote 2 on page 3.

As you know, I had been thinking about writing separately to emphasize the significance of the existence of two separate wholesale markets created by the Indiana statutes, but your opinion already brings out the significance of this feature of the case and therefore my additional thoughts would be just superfluous. I really think your opinion is first rate.

Respectfully,



Justice Blackmun

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 2, 1983

Re: 81-1271 - Falls City v. Vanco Beverage

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

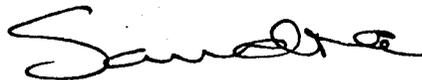
February 9, 1983

No. 81-1271 Falls City Industries, Inc. v.
Vanco Beverage, Inc.

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference