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ALERT

Supreme Court Curbs FTC Power to Seek Monetary Relief

April 22, 2021

In a unanimous decision on April 22, 2021, the U.S. Supreme Court significantly limited the ability of the Federal Trade Commission (FTC) to obtain monetary relief in federal court cases. In *AMG Capital Management, LLC v. FTC,* the Court held that the FTC does not have the authority to seek equitable monetary relief when it files cases in federal court under Section 13(b) of the FTC Act.

The FTC relies on Section 13(b) to recover money in a wide range of cases – including marketing and advertising cases – and the Court's decision will restrict the FTC's ability to obtain money in pending investigations and litigation. While the FTC has called on Congress to pass a statutory fix, the agency also has signaled it is more likely to consider rulemaking as well as new enforcement approaches.

Case and Statutory Background

Section 13(b) of the FTC Act, codified at 15 U.S.C. § 53(b), authorizes the FTC to seek—and federal courts to grant—"a permanent injunction" to enjoin acts or practices that violate the FTC Act. Courts had for decades held that this provision authorizes equitable monetary relief in addition to an injunction. However, in 2019 the Seventh Circuit in *FTC v. Credit Bureau Center* held that the term "permanent injunction" did *not* encompass "[a]n implied restitution remedy," based on the text and structure of the FTC Act. Predating that decision, the Ninth Circuit, adhering to precedent, had come to the opposite conclusion in *AMG Capital Management v. FTC*—marking a clear circuit split. The Court granted *certiorari* last year to review the Ninth Circuit's *AMG Capital* decision.

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In *AMG*, the Petitioners argued that the text and structure of Section 13(b) forecloses the FTC from seeking monetary relief pursuant to that provision. They argued that an "injunction" is a traditional equitable tool in which a court orders a party to engage or not engage in specific activities—*not* an order to pay money. Additionally, they noted that Section 19 of the Act explicitly authorizes monetary remedies when the FTC seeks relief for violation of a cease and desist order. Thus, the Petitioners argued that an "injunction" alone cannot encompass other forms of equitable relief—such as the monetary equitable relief at issue in the *AMG* case.

The Decision

In a unanimous decision written by Justice Breyer, the Court agreed with Petitioners' arguments and held that Section 13(b) does not authorize equitable monetary relief. The Court noted that Section 13(b) refers to a permanent injunction and held that the "language and structure of §13(b), taken as a whole, indicate that the words 'permanent injunction' have a limited purpose—a purpose that does not extend to the grant of monetary relief." In doing so, it examined the structure of the FTC Act and pointed to other provisions where monetary relief was explicitly authorized. That includes Section 19 of the FTC Act, which authorizes the FTC to seek consumer redress only after bringing an administrative action alleging conduct is unlawful, and which contains additional procedural protections.

Notably, the decision was based on statutory interpretation, and thus can be addressed by Congress. As the opinion notes, "If the Commission believes [its] authority too cumbersome or otherwise inadequate, it is, of course, free to ask Congress to grant it further remedial authority."

What's Next?

In the near term, the FTC is likely to focus more on its rulemaking authority. As we have analyzed, the FTC recently announced the creation of a new rulemaking group within the FTC's Office of the General Counsel, and signaled that the FTC under Acting Chairwoman Slaughter will be much more active in proposing rules on high profile issues. The FTC can also seek monetary penalties for Commission rule violations, meaning that the FTC is more likely to allege rule violations and also establish new rules in order to obtain monetary relief. The FTC may also return to bringing more administrative litigation.

Additionally, the Commissioners have pushed for Congress to pass legislation that would revise Section 13(b) to give the FTC authority to seek monetary relief, including in testimony yesterday before the Senate Committee on Commerce, Science, and Transportation. In a statement released after the decision, Acting Chairwoman Slaughter stated that "[w]ith this ruling, the Court has deprived the FTC of the strongest tool we had to help consumers when they need it most," and "[w]e urge Congress to act swiftly to restore and strengthen the powers of the agency so we can make wronged consumers whole."

Regardless of whether Congress acts, the decision will have an immediate impact on the FTC's current investigations and litigation, and likely will invite further challenges to its authority.

Wiley's FTC Regulation Practice counsels clients on FTC compliance, investigations, enforcement, and rulemaking, and regularly advocates before the agency. Contact the authors for additional information.