

Supreme Court Restricts Power Of The Federal Trade Commission To Seek Monetary Relief In Courts

Client Alert | April 22, 2021

Decided April 22, 2021

AMG Capital Management v. FTC, No. 19-508

Today, the Supreme Court held 9-0 that Section 13(b) of the Federal Trade Commission Act, which authorizes federal courts to issue “permanent injunction[s]” in FTC enforcement actions, does not include the power to award equitable monetary relief such as restitution.

Background:

Scott Tucker owned several businesses that provided high-interest, short-term loans over the Internet. The Federal Trade Commission sued Tucker and his businesses under Section 5 of the Federal Trade Commission Act, which prohibits “unfair or deceptive acts or practices.” The FTC sought a “permanent injunction” under Section 13(b) of the Act, as well restitution and disgorgement of Tucker’s monetary gains. The district court granted the FTC’s requested relief, and the Ninth Circuit affirmed, relying on its precedent holding that Section 13(b) “empowers district courts to grant any ancillary relief necessary to accomplish complete justice, including restitution.”

Issue:

Whether the authorization of a “permanent injunction” in Section 13(b) of the Act also authorizes federal courts to award equitable monetary relief such as restitution and disgorgement.

Court's Holding:

Section 13(b) does not authorize federal courts to award equitable monetary relief, because a “permanent injunction” is distinct from equitable monetary relief and other sections of the Act expressly authorize the FTC to seek monetary relief if it follows certain procedures not required under Section 13(b).

“The question presented is whether th[e] statutory language authorizes the Commission to seek, and a court to award, equitable monetary relief such as restitution or disgorgement. We conclude that it does not.”

Justice Breyer, writing for the Court

What It Means:

- The Court’s decision significantly cabins the FTC’s historically broad authority under Section 13(b) in consumer protection and antitrust matters. The FTC has used Section 13(b) “to win equitable monetary relief directly in court with great frequency.” Until the Seventh Circuit rejected the FTC’s authority to seek such

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relief in a 2019 decision, all eight federal courts of appeals to address the issue had upheld the FTC's authority to seek such relief under the Act.

- The Court's decision does not preclude the FTC from seeking monetary relief in all cases. Under Sections 5 and 19 of the Act, the FTC may seek monetary relief on behalf of consumers when the FTC has engaged in administrative proceedings and issued cease and desist orders.
- The Court explained that the FTC is "free to ask Congress to grant it further remedial authority" if Sections 5 and 19 are "too cumbersome or otherwise inadequate." In fact, the FTC has recently asked Congress for broader authority, and it remains to be seen whether Congress will grant the FTC's request in light of the Court's decision.

The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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